

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE VIRTUS INVESTMENT PARTNERS,
INC. SECURITIES LITIGATION

Case No. 15-cv-1249 (WHP)

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement, dated as of May 18, 2018 (the “Stipulation”) is entered into between (a) Arkansas Teacher Retirement System (“Lead Plaintiff” or “ATRS”), on behalf of itself and the other members of the Class (defined below); and (b) defendants Virtus Investment Partners, Inc. (“Virtus”), Virtus Opportunities Trust (“VOT”), and George R. Aylward, Jeffrey T. Cerutti, and Francis G. Waltman (collectively, the “Individual Defendants,” and, together with Virtus and VOT, the “Defendants”), and embodies the terms and conditions of the settlement of the above-captioned Action.¹ Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all claims asserted therein against Defendants.

WHEREAS:

A. On February 20, 2015, a class action complaint was filed in the United States District Court for the Southern District of New York (the “Court”), styled *Cummins v. Virtus Investment Partners Inc., et al.*, No. 1:15-cv-1249-WHP.

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 herein.

B. By Order dated June 9, 2015, the Court ordered that the case be recaptioned as *In re Virtus Investment Partners, Inc. Securities Litigation*, Civil Action No. 15-cv-1249 (the “Action”), and that any subsequently filed, removed, or transferred actions that arise out of the subject matter of the Action be consolidated with the Action; appointed ATRS as Lead Plaintiff in the Action; and approved ATRS’s selection of Bernstein Litowitz Berger & Grossmann LLP and Labaton Sucharow LLP as Co-Lead Counsel for the Class.

C. On August 21, 2015, Lead Plaintiff filed and served its Consolidated Class Action Complaint (the “Complaint”) asserting claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. Among other things, the Complaint alleged that Defendants made materially false and misleading statements and omissions concerning certain mutual funds issued by VOT bearing the AlphaSector name, including that the indices that certain of those funds sought to track had an “inception date” of April 1, 2001, and that the performance of those indices had been achieved through live trading with real client assets since that time, when in fact Defendants allegedly knew or were reckless in not knowing that the AlphaSector indices did not come into existence until 2008. The Complaint further alleges that the price of Virtus publicly traded common stock was artificially inflated as a result of Defendants’ allegedly false and misleading statements, and declined when the truth was revealed.

D. On October 21, 2015, Defendants filed and served their motion to dismiss the Complaint. On November 20, 2015, Lead Plaintiff filed and served its memorandum of law in opposition to the motion to dismiss and, on December 4, 2015, Defendants filed and served their reply papers. Oral argument on Defendants’ motion to dismiss was held on December 17, 2015,

and on July 1, 2016, the Court entered its Opinion and Order that granted in part, and denied in part, Defendants' motion.

E. Discovery in the Action commenced promptly after the Court denied Defendants' motion to dismiss on July 1, 2016, and continued until August 15, 2017. In connection with discovery, over 900,000 documents—constituting over five million pages—were produced, including over 600,000 documents from Defendants. In addition, over twenty depositions were taken, including fifteen fact witnesses. Multiple expert reports and rebuttal reports were also exchanged.

F. On November 7, 2016, Lead Plaintiff filed its motion to certify the Action as a class action. On May 15, 2017, the Court granted Lead Plaintiff's motion, certifying a Class consisting of all persons and entities that, during the period between January 25, 2013 and May 11, 2015, inclusive, purchased or otherwise acquired shares of the publicly traded common stock of Virtus and were damaged thereby. The Court also appointed Lead Plaintiff as "Class Representative" and Co-Lead Counsel as "Class Counsel."

G. By Order entered November 17, 2017, the Court granted Lead Plaintiff's unopposed motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and amended the definition of the Class to exclude explicitly Defendants and their affiliates; approved the proposed form and content of notices to be disseminated to the Class; and approved the proposed method for dissemination of these notices (the "Notice Order"). Among other things, the Notice Order found that the form and content of Class notice met the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled to receive notice.

H. On December 15, 2017, the Court granted Lead Plaintiff's unopposed request to extend the deadline for mailing notice to the Class in light of the Parties' agreement to conduct a private settlement mediation on December 21, 2017, the day after the original deadline to mail notice.

I. On December 21, 2017, Co-Lead Counsel and Defendants' Counsel participated in a full-day mediation session before Jed D. Melnick, Esq. of JAMS (the "Mediator"). In advance of that session, the Parties provided detailed mediation statements and exhibits to the Mediator, which addressed the issues of both liability and damages. The session ended without any agreement being reached.

J. Beginning on January 22, 2018, the Notice of Pendency of Class Action was mailed to potential Class Members, and on February 1, 2018, the Summary Notice of Pendency of Class Action was published in the *Wall Street Journal* and *Financial Times* and transmitted over the *PR Newswire*.

K. Pursuant to the Court's November 17, 2017 order, as modified by the Court's December 15, 2017 order, the Class Notice provided Class Members with the opportunity to request exclusion from the Class, explained that right, and set forth the deadline and procedures for doing so. The Class Notice stated that it would be within the Court's discretion whether to permit a second opportunity to request exclusion if there is a settlement. The Class Notice informed Class Members that if they chose to remain a member of the Class, they would "be bound by all past, present, and future orders and judgments in the Action, whether favorable or unfavorable." The deadline for requesting exclusion from the Class pursuant to the Class Notice was March 23, 2018. 37 persons and entities requested exclusion from the Class pursuant to the Class Notice. *See* ECF No. 141.

L. On October 6, 2017, Defendants moved for summary judgment. Lead Plaintiff filed its opposition papers on December 4, 2017, and, on December 22, 2017, Defendants filed their reply papers. Oral argument on Defendants' motion for summary judgment was held on January 18, 2018.

M. Trial of the Action was scheduled by the Court to begin on March 19, 2018.

N. On February 6, 2018, following extensive arm's-length negotiations, as well as additional efforts by the mediator, the Parties reached an agreement in principle to settle the Action for \$22,000,000, subject to the execution of a customary "long form" stipulation and agreement of settlement and related papers. This Stipulation (together with the exhibits hereto) constitutes the final and binding agreement between the Parties.

O. Based upon their investigation, prosecution and mediation of the case, Lead Plaintiff and Co-Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiff and the other members of the Class, and in their best interests. Based on Lead Plaintiff's direct oversight of the prosecution of this matter and with the advice of their counsel, Lead Plaintiff has agreed to settle, release and dismiss with prejudice all claims asserted in the Action pursuant to the terms and provisions of this Stipulation, after considering, among other things: (a) the substantial financial benefit that Lead Plaintiff and the other members of the Class will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

P. Defendants deny any improper conduct or violation of the federal securities laws or any other law or regulation, and are entering into this Stipulation solely to avoid and eliminate the uncertainty, burden and expense of further protracted litigation. Specifically, Defendants

contend that they disclosed all material information about Virtus's AlphaSector funds and that all disclosures concerning Virtus's AlphaSector funds were true and accurate at all times.

Q. This Stipulation constitutes a compromise of matters that are in dispute between the Parties. Each of the Defendants denies any wrongdoing and all of Lead Plaintiff's allegations, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted. The Defendants expressly deny that Lead Plaintiff has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit. Each of the Parties recognizes and acknowledges, however, that the Action has been initiated, filed and prosecuted by Lead Plaintiff in good faith and defended by Defendants in good faith, that the Action is being voluntarily settled with the advice of counsel, and that the terms of the Settlement are fair, adequate and reasonable. NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Lead Plaintiff (individually and on behalf of all other members of the Class) and Defendants, by and through their respective undersigned attorneys and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties from the Settlement, all Released Plaintiff's Claims as against the Defendants' Releasees and all Released Defendants' Claims as against the Plaintiff's Releasees shall be settled, released and dismissed with prejudice, upon and subject to the terms and conditions set forth below.

DEFINITIONS

1. As used in this Stipulation and any exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) “Action” means the consolidated securities class action in the matter styled *In re Virtus Investment Partners, Inc. Securities Litigation*, Civil Action No. 15-cv-1249.

(b) “Authorized Claimant” means a Claimant who submits a Claim to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund.

(c) “Co-Lead Counsel” or “Class Counsel” means the law firms of Bernstein Litowitz Berger & Grossmann LLP and Labaton Sucharow LLP.

(d) “Claim” means a paper claim submitted on a Proof of Claim Form or an electronic claim that is submitted to the Claims Administrator.

(e) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant must complete and submit should that Claimant seek to share in a distribution of the Net Settlement Fund.

(f) “Claimant” means a person or entity who or which submits a Claim to the Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.

(g) “Claims Administrator” means the administrator, Garden City Group, LLC, retained by Co-Lead Counsel on behalf of the Class and approved by the Court in connection with the distribution of the Class Notice, to provide all notices approved by the Court to potential Class Members and to administer the Settlement.

(h) “Class” means the class certified in the Court’s Opinion and Order dated May 15, 2017 (ECF No. 97), as modified by Order dated November 17, 2017 (ECF No. 116). Specifically, the Class includes all persons and entities that, during the period between January 25,

2013 and May 11, 2015, inclusive (the “Class Period”), purchased or otherwise acquired shares of the publicly traded common stock of Virtus and were damaged thereby. Excluded from the Class by definition are: (i) Defendants; (ii) former Defendants; (iii) the affiliates, parents, and subsidiaries of Virtus and VOT; (iv) the Officers and directors of Virtus, VOT, and the affiliates, parents, and subsidiaries of Virtus and VOT during the Class Period; (v) members of the Immediate Family of any excluded person; (vi) any entity in which any excluded person or entity has or had during the Class Period a controlling interest; and (vii) the legal representatives, heirs, successors, and assigns of any excluded person or entity. Also excluded from the Class are any persons and entities that submitted a request for exclusion from the Class in connection with the Class Notice and whose requests are accepted by the Court. If and only if the Court requires a second opportunity for Class Members to request exclusion from the Class, also excluded from the Class shall be any persons and entities who exclude themselves by submitting a request for exclusion in connection with the Settlement Notice and whose requests are accepted by the Court.

(i) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(j) “Class Member” means each person and entity who or which is a member of the Class.

(k) “Class Notice” means the notice of pendency previously directed by the Court’s November 17, 2017 order, as modified by the Court’s December 15, 2017 order, which was disseminated to Class Members in accordance with those orders.

(l) “Class Period” means the period between January 25, 2013 and May 11, 2015, inclusive.

(m) “Complaint” means the Consolidated Class Action Complaint filed by Lead Plaintiff in the Action on August 21, 2015.

(n) “Court” means the United States District Court for the Southern District of New York.

(o) “Defendants” means Virtus, VOT, and the Individual Defendants.

(p) “Defendants’ Counsel” means Simpson Thacher & Bartlett LLP.

(q) “Defendants’ Releasees” means Defendants and their respective current and former parent entities, business units, business divisions, affiliates or subsidiaries and each and all of their current and former officers, directors, attorneys, employees, agents, trustees, parents, affiliates, subsidiaries, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, insurers, engineers, advisors, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates, administrators, and each of their successors, predecessors, assigns, and assignees, and any of the Individual Defendants’ Immediate Family members.

(r) “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in ¶ 32 of this Stipulation have been met and have occurred or have been waived.

(s) “Escrow Agent” means the Court Registry Investment System maintained for the United States District Court for the Southern District of New York.

(t) “Final,” with respect to the Judgment or any other court order, means: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure, *i.e.*, currently thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment or order, (a) the date of final dismissal of

all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys' fees, costs or expenses, or (ii) the plan of allocation of Settlement proceeds (as submitted or subsequently modified), shall not in any way delay or preclude a judgment from becoming Final.

(u) "Immediate Family" means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this paragraph, "spouse" shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

(v) "Individual Defendants" means George R. Aylward, Jeffrey T. Cerutti, and Francis G. Waltman.

(w) "Judgment" means the final judgment, substantially in the form attached hereto as Exhibit B, to be entered by the Court approving the Settlement.

(x) "Lead Plaintiff" means Arkansas Teacher Retirement System.

(y) "Litigation Expenses" means costs and expenses incurred in connection with commencing, prosecuting and settling the Action (which may include the costs and expenses of Lead Plaintiff directly related to its representation of the Class), for which Co-Lead Counsel intend to apply to the Court for payment from the Settlement Fund.

(z) "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court;

(iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court.

(aa) "Notice and Administration Costs" means the costs, fees, and expenses that are incurred by the Claims Administrator and/or Co-Lead Counsel in connection with: (i) providing notices to the Class (including, but not limited to, the Class Notice and the Settlement Notice); and (ii) administering the Settlement, including but not limited to the Claims process, as well as any costs, fees, and expenses incurred in connection with maintaining the Settlement Fund, which shall be paid from (and out of) the Settlement Fund.

(bb) "Officer" means any officer as that term is defined in Securities and Exchange Act Rule 16a-1(f).

(cc) "Parties" means Defendants and Lead Plaintiff, on behalf of itself and the Class.

(dd) "Plaintiff's Counsel" means Co-Lead Counsel and all other legal counsel who, at the direction and under the supervision of Co-Lead Counsel, performed services on behalf of the Class in the Action.

(ee) "Plaintiff's Releasees" means Lead Plaintiff and all other Class Members, and their respective current and former parent entities, business units, business divisions, affiliates or subsidiaries and each and all of their current and former officers, directors, attorneys, employees, agents, trustees, parents, affiliates, subsidiaries, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, insurers, engineers, advisors, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates, administrators, and each of their successors, predecessors, assigns, and assignees.

(ff) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Settlement Notice.

(gg) “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing that notice of the Settlement be provided to the Class.

(hh) “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended.

(ii) “Released Claims” means all Released Defendants’ Claims and all Released Plaintiff’s Claims.

(jj) “Released Defendants’ Claims” means all claims, demands, losses, rights, causes of action, liabilities, obligations, judgments, suits, matters, and issues of any kind or nature whatsoever, whether known claims or Unknown Claims, whether arising under federal, state, or foreign law, common law, statute, rule or regulation, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against Defendants. Released Defendants’ Claims do not include any claims relating to the enforcement of the Settlement. Also, for the avoidance of doubt, Released Defendants’ Claims do not include: (i) any claims against any person or entity that submitted a request for exclusion from the Class in connection with the Class Notice and whose request is accepted by the Court; or (ii) if and only if the Court requires a second opportunity for Class Members to request exclusion from the Class, any claims against any person or entity that submits a request for exclusion from the Class in connection with the Settlement Notice and whose request is accepted by the Court.

(kk) “Released Plaintiff’s Claims” means all claims, demands, losses, rights, causes of action, liabilities, obligations, judgments, suits, matters, and issues of any kind or nature

whatsoever, whether known claims or Unknown Claims, whether arising under federal, state, or foreign law, common law, statute, rule or regulation, whether individual or class in nature, that Lead Plaintiff or any other member of the Class: (i) asserted in the Complaint; or (ii) could have asserted in this Action or in any other forum, including without limitation any claims relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws, or otherwise, and including all claims within the exclusive jurisdiction of the federal courts, which Lead Plaintiff or any other Class Member ever had or now has, that arise out of, are based upon, or relate to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase or other acquisition of Virtus publicly traded common stock during the Class Period. Released Plaintiff's Claims do not include any claims relating to the enforcement of the Settlement. Also, for the avoidance of doubt, Released Plaintiff's Claims do not include: (i) any claims of any person or entity that submitted a request for exclusion from the Class in connection with the Class Notice and whose request is accepted by the Court; or (ii) if and only if the Court requires a second opportunity for Class Members to request exclusion from the Class, any claims of any person or entity that submits a request for exclusion from the Class in connection with the Settlement Notice and whose request is accepted by the Court.

(ll) "Releasee(s)" means each and any of the Defendants' Releasees and each and any of the Plaintiff's Releasees.

(mm) "Releases" means the releases set forth in ¶¶ 4-5 of this Stipulation.

(nn) "Settlement" means the settlement between Lead Plaintiff and Defendants on the terms and conditions set forth in this Stipulation.

(oo) "Settlement Amount" means \$22,000,000 in immediately negotiable funds.

(pp) “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

(qq) “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(rr) “Settlement Notice” means the Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys’ Fees and Payment of Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Class Members.

(ss) “Summary Settlement Notice” means the Summary Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys’ Fees and Payment of Litigation Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(tt) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the expenses and costs incurred by Co-Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(uu) “Unknown Claims” means any Released Plaintiff’s Claims which Lead Plaintiff or any other Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants’ Claims which any Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon

the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the other Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and Defendants acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

(vv) “Virtus” means Virtus Investment Partners, Inc.

(ww) “VOT” means Virtus Opportunities Trust.

PRELIMINARY APPROVAL OF SETTLEMENT

2. Promptly upon execution of this Stipulation, Lead Plaintiff will move for preliminary approval of the Settlement and the scheduling of a hearing for consideration of final approval of the Settlement. Concurrently with the motion for preliminary approval, Lead Plaintiff shall apply to the Court for, and Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A. In connection with the motion for preliminary approval of the Settlement, the Parties agree to request that the Court not permit a second opportunity for Class Members to request exclusion from the Class. However, the Settlement is not contingent on the Court’s decision regarding whether or not a second opportunity to request exclusion from the Class shall be required.

RELEASE OF CLAIMS

3. The obligations incurred pursuant to this Stipulation are in consideration of: (i) the full and final disposition of the Action as against Defendants; and (ii) the Releases provided for herein.

4. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiff's Claim against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiff's Claims against any of the Defendants' Releasees.

5. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants' Claim against Lead Plaintiff and the other Plaintiff's Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiff's Releasees.

6. Notwithstanding ¶¶ 4-5 above, nothing in the Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of this Stipulation or the Judgment.

THE SETTLEMENT CONSIDERATION

7. (a) In consideration of the full and final settlement, satisfaction, compromise and release of the Released Plaintiff's Claims against Defendants and the other Defendants' Releasees, Defendants shall pay or cause to be paid the Settlement Amount no later than fifteen (15) business days after the later of: (a) the date of entry by the Court of an order preliminarily approving this Settlement; or (b) Defendants' Counsel's receipt from Co-Lead Counsel of the information necessary to effectuate a transfer of funds to the Escrow Agent. Upon the full and timely payment of the Settlement Amount to the Escrow Agent, Defendants shall have no further monetary obligations of any sort or kind to Lead Plaintiff, any Class Members, or any counsel for Lead Plaintiff and Class Members under the terms and conditions of the Settlement.

(b) The Settlement Amount, plus any and all interest earned thereon, shall constitute the Settlement Fund. In accordance with 28 U.S.C. §1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk of the Court is directed, without further order of this Court, to deduct from the income earned on the money in the Settlement Fund a fee equal to the lesser of (i) 10% of the income earned on the money in the Settlement Fund or (ii) the fee authorized by the Judicial Conference of the United States as currently set by the Director of the Administrative Office. The Clerk of the Court shall provide to Co-Lead Counsel the monthly statements of interest earned by the Settlement Fund.

USE OF SETTLEMENT FUND

8. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any and all Notice and Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any attorneys' fees awarded by the Court; and (e) any other costs and fees approved by the Court. The balance

remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 18-30 below.

9. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall be held by the Escrow Agent prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest all money in the Settlement Fund exclusively in instruments backed by the full faith and credit of the United States (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. Subject to further order(s) and/or directions as may be made by the Court, or as provided in this Stipulation, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Stipulation. The Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

10. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Co-Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k) for the Settlement Fund. Co-Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Defendants' Releasees shall not have any liability or

responsibility for any such Taxes. Upon written request, Defendants will provide to Co-Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Co-Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation-back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

11. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Co-Lead Counsel. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

12. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Defendant, Defendants’ Releasee, or any other person or entity who or which paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including without limitation, the number of Claims submitted, the collective amount of Recognized Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund, except as otherwise provided in ¶ 40 below.

13. All Notice and Administration Costs actually incurred and paid or payable shall be paid out of the Settlement Fund. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Class Notice and Settlement Notice, publishing the

Summary Settlement Notice, reimbursements to nominee owners for forwarding the Class Notice and/or Settlement Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice, administering the Settlement (including processing the submitted Claims), and the fees, if any, of the Escrow Agent. Notwithstanding the fact that the Effective Date has not yet occurred, Lead Counsel may seek Court approval to pay Notice and Administration Costs actually and reasonably incurred. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants, any of the other Defendants' Releasees, or any other person or entity who or which paid any portion of the Settlement Amount.

OBJECTIONS BY CLASS MEMBERS

14. In connection with the motion for preliminary approval of the Settlement, the Parties agree to request that any objections by Class Members to the fairness, reasonableness or adequacy of the Settlement, to the proposed Plan of Allocation, or to Co-Lead Counsel's motion for an award of attorneys' fees and payment of Litigation Expenses shall be received no later than twenty-one (21) calendar days prior to the Settlement Hearing, and subject to the requirements set out in the Preliminary Approval Order and Settlement Notice.

ATTORNEYS' FEES AND LITIGATION EXPENSES

15. Co-Lead Counsel will apply to the Court for a collective award of attorneys' fees to Plaintiff's Counsel to be paid from (and out of) the Settlement Fund. Co-Lead Counsel also will apply to the Court for payment of Litigation Expenses, which may include a request for reimbursement of Lead Plaintiff's costs and expenses directly related to their representation of the Class, to be paid from (and out of) the Settlement Fund. Co-Lead Counsel's application for an

award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Lead Plaintiff other than what is set forth in this Stipulation.

16. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Co-Lead Counsel from (and out of) the Settlement Fund immediately upon the Court's award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiff's Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after: (a) receiving from Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the award of attorneys' fees and/or Litigation Expenses has become Final. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation and is not a condition of the Settlement embodied herein. Neither Lead Plaintiff nor Co-Lead Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

17. Co-Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiff's Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution and settlement of the Action. Defendants' Releasees shall have no responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees

or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Plaintiff's Counsel shall be payable solely from (and out of) the Settlement Fund.

NOTICE AND SETTLEMENT ADMINISTRATION

18. The Claims Administrator shall administer the Settlement, including but not limited to the process of receiving, reviewing and approving or denying Claims, under Co-Lead Counsel's supervision and subject to the jurisdiction of the Court. None of the Defendants, nor any other Defendants' Releasees, shall have any involvement in or any responsibility, authority or liability whatsoever for the selection of the Claims Administrator, the Plan of Allocation, the administration of the Settlement, the Claims process, or disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but not limited to, Lead Plaintiff, any other Class Members or Co-Lead Counsel in connection with the foregoing. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms, but any and all Notice and Administration Costs shall be paid from (and out of) the Settlement Fund.

19. In accordance with the terms of the Preliminary Approval Order to be entered by the Court, Co-Lead Counsel shall cause the Claims Administrator to mail the Settlement Notice and Proof of Claim Form to all persons and entities who were previously mailed copies of the Notice of Pendency of Class Action and any other potential Class Members who can be identified through reasonable effort. Co-Lead Counsel shall also cause the Claims Administrator to have the Summary Settlement Notice published in accordance with the terms of the Preliminary Approval Order to be entered by the Court. For the purposes of identifying and providing notice of the Settlement to the Class, Virtus has previously provided or caused to be provided to the Claims

Administrator the shareholder information previously requested by Lead Plaintiff and ordered by the Court.

20. No later than ten (10) calendar days following the filing of this Stipulation with the Court, Defendants shall serve upon the appropriate state official of each state in which a Class Member resides and the Attorney General of the United States a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.* (“CAFA”). Defendants are solely responsible for the costs of the CAFA notice and administering the CAFA notice. At least seven (7) calendar days before the Settlement Hearing, Defendants shall cause to be served on Co-Lead Counsel and filed with the Court proof, by affidavit or declaration, regarding compliance with 28 U.S.C. § 1715(b).

21. The Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant’s *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant’s Recognized Claim compared to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Settlement Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the Court approves).

22. The Plan of Allocation proposed in the Settlement Notice is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiff and Co-Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this Court’s or any appellate court’s ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Defendants and the other Defendants’ Releasees shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action. No Defendant, nor any other

Defendants' Releasees, shall have any involvement with or liability, obligation or responsibility whatsoever for the application of the Court-approved plan of allocation.

23. Any Class Member who does not submit a valid Claim will not be entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Stipulation and Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Defendants' Releasees with respect to the Released Plaintiff's Claims in the event that the Effective Date occurs with respect to the Settlement.

24. Co-Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to Court approval. No Defendant, or any other Defendants' Releasees, shall be permitted to review, contest or object to any Claim, or any decision of the Claims Administrator or Co-Lead Counsel with respect to accepting or rejecting any Claim for payment. Co-Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or technical defects in any Claims submitted in the interests of achieving substantial justice.

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

(a) Each Claimant shall be required to submit a Claim in paper form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, or in electronic form, in accordance with the instructions for the submission of such Claims, and supported by such documents as are designated therein, including proof of the Claimant's loss, or such other

documents or proof as the Claims Administrator or Co-Lead Counsel, in their discretion, may deem acceptable;

(b) All Claims must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Settlement Notice. Any Class Member who fails to submit a Claim by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such Class Member's Claim is accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Defendants' Releasees with respect to any Released Plaintiff's Claim. Provided that it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted on the date when actually received by the Claims Administrator;

(c) Each Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Co-Lead Counsel, who shall determine in accordance with this Stipulation and the plan of allocation the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below as necessary;

(d) Claims that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all

Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below; and

(e) If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above or a lesser time period if the Claim was untimely, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Co-Lead Counsel shall thereafter present the request for review to the Court.

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

27. Co-Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any unpaid Notice and Administration Costs; and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

28. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Claimants. All Class Members whose Claims are not approved by the Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in this Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action against any and all Defendants' Releasees with respect to any and all of the Released Plaintiff's Claims.

29. No person or entity shall have any claim against Lead Plaintiff, Plaintiff's Counsel, the Claims Administrator or any other agent designated by Co-Lead Counsel, or the Defendants' Releasees and/or their respective counsel, arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or any order of the Court. Lead Plaintiff and Defendants, and their respective counsel, and Lead Plaintiff's damages expert and all other Releasees shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

30. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court. All Class Members, other Claimants, and parties to this Settlement expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

TERMS OF THE JUDGMENT

31. If the Settlement contemplated by this Stipulation is approved by the Court, Co-Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form attached hereto as Exhibit B.

CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

32. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events:

(a) the Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A attached hereto, as required by ¶ 2 above;

(b) the Settlement Amount has been deposited with the Escrow Agent in accordance with the provisions of ¶ 7 above;

(c) Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation;

(d) Lead Plaintiff has not exercised its option to terminate the Settlement pursuant to the provisions of this Stipulation; and

(e) the Court has approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final.

33. Upon the occurrence of all of the events referenced in ¶ 32 above, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

34. If (i) Defendants exercise their right to terminate the Settlement as provided in this Stipulation; (ii) Lead Plaintiff exercises its right to terminate the Settlement as provided in this

Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated.

(b) Lead Plaintiff and Defendants shall revert to their respective positions in the Action as of February 6, 2018.

(c) The terms and provisions of this Stipulation, with the exception of this ¶ 34 and ¶¶ 13, 16, 38 and 59, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment, or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

(d) Within five (5) business days after joint written notification of termination is sent by Defendants' Counsel and Co-Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon and any funds received by Co-Lead Counsel consistent with ¶ 16 above), less any Notice and Administration Costs actually incurred, paid or payable and less any Taxes paid, due or owing shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as Defendants may direct). In the event that the funds received by Co-Lead Counsel consistent with ¶ 16 above have not been refunded to the Settlement Fund within the five (5) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as Defendants may direct) immediately upon their deposit with the Escrow Agent consistent with ¶ 16 above.

35. It is further stipulated and agreed that Lead Plaintiff and Defendants shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their

election to do so (“Termination Notice”) to the other Parties to this Stipulation within thirty (30) days of: (a) the Court’s final refusal to enter the Preliminary Approval Order in any material respect; (b) the Court’s final refusal to approve the Settlement or any material part thereof; (c) the Court’s final refusal to enter the Judgment in any material respect as to the Settlement; or (d) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the United States Supreme Court. However, any decision or proceeding, whether in this Court or any appellate court, with respect to an application for attorneys’ fees or payment of Litigation Expenses or with respect to any plan of allocation shall not be considered material to the Settlement, shall not affect the finality of any Judgment and shall not be grounds for termination of the Settlement.

36. In addition to the grounds set forth in ¶ 35 above, Lead Plaintiff shall have the right to terminate the Settlement in the event that the Settlement Amount has not been paid in the time period provided for in ¶ 7 above, by providing written notice of the election to terminate to all other Parties.

37. In addition to the grounds set forth in ¶ 35 above, if and only if the Court requires that Class Members be given a second opportunity to exclude themselves from the Class in connection with this Settlement, Defendants (provided Defendants unanimously agree amongst themselves) shall have the unilateral right to terminate the Settlement in the event that Class Members who timely and validly request exclusion from the Class meet the conditions set forth in Defendants’ confidential supplemental agreement with Lead Plaintiff (the “Supplemental Agreement”), in accordance with the terms of that agreement. The Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Settlement Notice,

to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises between Lead Plaintiff and Defendants concerning its interpretation or application, in which event the Parties shall submit the Supplemental Agreement to the Court in camera and request that the Court afford it confidential treatment.

NO ADMISSION OF WRONGDOING

38. Neither this Stipulation (whether or not consummated), including all exhibits and appendices attached hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the Supplemental Agreement, the negotiations leading to the execution of this Stipulation, nor any proceedings taken pursuant to or in connection with this Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Releasees with respect to the truth of any fact alleged by Lead Plaintiff in the Action or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Releasees or in any way referred to for any other reason as against any of the Defendants' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Plaintiff's Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Plaintiff's Releasees that any of their claims are without merit, that any of the Defendants'

Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiff's Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; *provided, however*, that if this Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

MISCELLANEOUS PROVISIONS

39. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

40. If a court of competent jurisdiction enters a final order determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Lead Plaintiff, Lead Plaintiff and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendants and the other Releasees pursuant to this Stipulation, in which event the releases and Judgment shall be null and void, and the Parties shall be restored to their respective positions in the litigation as

provided in ¶ 34 above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned as provided in ¶ 34 above.

41. Lead Plaintiff, through Co-Lead Counsel, represents and warrants that none of its Released Plaintiff's Claims has been assigned, encumbered or in any manner transferred in whole or in part.

42. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Lead Plaintiff and any other Class Members against the Defendants' Releasees with respect to the Released Plaintiff's Claims. Accordingly, Lead Plaintiff and its counsel and Defendants and their counsel agree not to assert in any forum that this Action was brought by Lead Plaintiff or defended by Defendants in bad faith or without a reasonable basis. No Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or settlement of this Action. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, including through a mediation process supervised and conducted by the Mediator, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

43. While retaining their right to deny that the claims asserted in the Action were meritorious, Defendants and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Lead

Plaintiff and its counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by either Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

44. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of both Lead Plaintiff and Defendants (or their successors-in-interest).

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

46. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Plaintiff's Counsel and enforcing the terms of this Stipulation, including the Plan of Allocation (or such other plan of allocation as may be approved by the Court) and the distribution of the Net Settlement Fund to Class Members.

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

48. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among Lead Plaintiff and Defendants concerning the Settlement and this Stipulation and its exhibits. All Parties acknowledge that no other agreements, representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation, its exhibits or the Supplemental Agreement other than those contained and memorialized in such documents.

49. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

50. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Parties, including any and all Releasees and any corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate or reorganize.

51. The construction, interpretation, operation, effect and validity of this Stipulation, the Supplemental Agreement and all documents necessary to effectuate it shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

52. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in the Court.

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

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

55. Co-Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such

other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

56. If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Lead Plaintiff or Co-Lead Counsel: Bernstein Litowitz Berger & Grossmann LLP
Attn: John C. Browne, Esq.
1251 Avenue of the Americas
New York, NY 10020
Tel: (212) 554-1400
Fax: (212) 554-1444
Email: johnb@blbglaw.com

Labaton Sucharow LLP
Attn: Michael H. Rogers, Esq.
140 Broadway
New York, NY 10005
Tel: (212) 907-0700
Fax: (212) 818-0477
Email: mrogers@labaton.com

If to Defendants: Simpson Thacher & Bartlett LLP
Attn: Joseph M. McLaughlin, Esq.
425 Lexington Avenue
New York, NY 10017
Tel: (212) 455-2000
Fax: (212) 455-2502
Email: jmclaughlin@stblaw.com

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

58. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use

their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

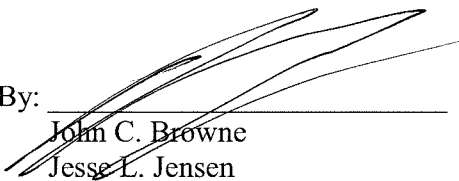
59. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

60. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

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

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

By: _____


John C. Browne

Jesse L. Jensen

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New York, NY 10020

Tel: (212) 554-1400

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