

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

RAFAL APONOWICZ, derivatively  
on behalf of AYTU BIOPHARMA,  
INC. and individually on behalf of  
himself and all other similarly situated  
stockholders of AYTU  
BIOPHARMA, INC.,

Plaintiff,

v.

GARY CANTRELL, JOSHUA  
DISBROW, CARL DOCKERY,  
JOHN DONOFRIO, JR., AND  
MICHAEL MACALUSO,

Defendants,

and

AYTU BIOPHARMA, INC.,

Nominal Defendant.

C.A. No. 2022-0135-KSJM

PAUL JOHN M. PAGUIA,  
derivatively on behalf of AYTU  
BIOPHARMA, INC., and directly on  
behalf of himself and all others  
similarly situated,

Plaintiff,

v.

GARY CANTRELL, JOSHUA  
DISBROW, CARL DOCKERY,  
JOHN DONOFRIO, JR., AND  
MICHAEL MACALUSO,

Defendants,

C.A. No. 2022-0200-KSJM

and  
AYTU BIOPHARMA, INC.,  
Nominal Defendant.

### **STIPULATION OF COMPROMISE AND SETTLEMENT**

This Stipulation of Compromise and Settlement (the “Stipulation”) is entered into this 19<sup>th</sup> day of December, 2022, by and among (i) Plaintiffs Rafal Aponowicz and Paul John M. Pagua (together, “Plaintiffs”), individually, derivatively on behalf of Aytu BioPharma, Inc. (“Aytu” or the “Company”), and on behalf of a class of Aytu stockholders (the “Class,” as defined herein); (ii) Defendants Gary Cantrell, Joshua Disbrow, Carl Dockery, John Donofrio, Jr., and Michael Macaluso (collectively, the “Individual Defendants”); and (iii) Nominal Defendant Aytu (collectively with the Individual Defendants, “Defendants”), by and through their respective undersigned counsel, and embodies the general terms and conditions of the parties’ negotiated resolution of the above-captioned stockholder derivative and class action lawsuits (the “Settlement”). Plaintiffs and Defendants are collectively referred to herein as the “Settling Parties” and each individually as a “Settling Party.”

Subject to the approval of the Court of Chancery of the terms and conditions set forth herein, the Settlement embodied in this Stipulation is intended (i) to be a full and final disposition of the above-captioned stockholder derivative and class

action lawsuits; (ii) to state all of the terms of the Settlement and the resolution of the Actions; and (iii) to fully and finally compromise, resolve, dismiss, discharge and settle each and every one of the Released Claims against each and every one of the Released Persons. All capitalized terms herein shall have the meanings ascribed to them in Section II.1 below, unless defined elsewhere in this Stipulation.

## **I. RECITALS**

WHEREAS, on February 9, 2022, Plaintiff Rafal Aponowicz filed in the Court of Chancery a stockholder derivative and class action lawsuit titled *Aponowicz v. Cantrell, et al.*, No. 2022-0135-KSJM (the “*Aponowicz Action*”);

WHEREAS, on March 3, 2022, Plaintiff Paul John M. Paguia filed in the Court of Chancery a stockholder derivative and class action lawsuit titled *Paguia v. Cantrell, et al.*, No. 2022-0200-KSJM (the “*Paguia Action*” and together with the *Aponowicz Action*, the “Actions”);

WHEREAS, the complaints in the Actions allege that the Individual Defendants breached their fiduciary duties and breached a contract with the Company’s stockholders by failing to adjust the share reserve from 5,000,000 shares to 500,000 shares under the 2015 Stock Option and Incentive Plan (the “2015 Plan”) after implementing a reverse stock split, violating the express terms of the 2015 Plan;

WHEREAS, the complaints further allege that the Board granted certain of its members awards in excess of the proper share reserve of the 2015 Plan, thus violating the 2015 Plan and breaching their fiduciary duties under Delaware law;

WHEREAS, on April 6, 2022, Defendants filed a Partial Motion to Dismiss the Verified Complaint in the *Aponowicz* Action and the *Paguia* Action;

WHEREAS, the Defendants' Partial Motion to Dismiss the Verified Complaint in the *Paguia* Action is fully briefed;

WHEREAS, since April 2022, the Settling Parties have engaged in extensive, arm's-length discussions, negotiations, and communications regarding a possible resolution of Plaintiffs' claims;

WHEREAS, on June 30, 2022, the Defendants notified the Court that Defendants and plaintiff Aponowicz had executed a Memorandum of Understanding Regarding Settlement of the *Aponowicz* Action and requested that the Court stay Defendants' Partial Motion to Dismiss;

WHEREAS, the Settling Parties' various discussions to date have further involved, among other things, the nature of the potential claims at issue, the potential defenses to those claims, the approximate dollar amounts at issue, and the potential costs and expenses of litigation to judgment;

WHEREAS, based on the above, and following weeks of arm's-length negotiations regarding a potential resolution, on October 14, 2022, the Settling

Parties executed a Memorandum of Understanding Regarding Settlement of both the *Aponowicz* Action and the *Paguia* Action (the “October 14 MOU”), providing for the Settlement on the terms and conditions set forth below;

WHEREAS, Plaintiffs and their counsel (“Plaintiffs’ Counsel”) determined that the settlement in principle as negotiated was fair and adequate to the Company, its stockholders and the Class Members, and that it was appropriate and reasonable to pursue Court approval of the Settlement based on the terms and procedures set forth herein;

WHEREAS, after the substantive terms of the Settlement had been agreed to and documented in the October 14 MOU, Plaintiffs’ Counsel and counsel for Defendants separately negotiated and reached agreement regarding the amount of attorneys’ fees and expenses to be paid to Plaintiffs’ Counsel;

WHEREAS, Plaintiffs and Defendants did not discuss the appropriateness or amount of attorneys’ fees and expenses at any time prior to reaching agreement on the terms of the Settlement;

WHEREAS, Plaintiffs commenced the Actions in good faith and continue to believe that their claims have legal merit, and the entry by Plaintiffs into this Stipulation is not an admission as to a lack of any merit of any claims asserted or that could be asserted in the Actions;

WHEREAS, Plaintiffs and Plaintiffs' Counsel also recognize and acknowledge the significant risk, expense and length of continued proceedings necessary to prosecute the Actions through trial and possible appeal, and have taken into account the uncertain outcome of any litigation, especially in complex cases such as the Actions, as well as the difficulties inherent in such litigation and possible defenses to the claims alleged in the Actions;

WHEREAS, based upon Plaintiffs' Counsel's evaluation, Plaintiffs have determined that the Settlement is fair, reasonable, adequate and in the best interests of Aytu, its stockholders and the Class Members and that the Settlement confers benefits upon Aytu, its stockholders and the Class Members and Plaintiffs have agreed to settle the Actions upon the terms and subject to the conditions set forth herein;

WHEREAS, each of the Individual Defendants has denied, and continues to deny, that they have committed any breach of fiduciary duty or any other duty owed to Aytu, its stockholders or the Class Members, that they have breached any contract, or that they committed any violations of law or wrongdoing whatsoever, or that Aytu, its stockholders or the Class Members suffered any damage or harm as a result of any act, omission or conduct alleged in the Actions or otherwise;

WHEREAS, the Individual Defendants have further asserted, and continue to assert, that at all relevant times, they have acted in good faith and in a manner that

they believed to be in the best interests of Aytu, its stockholders and the Class Members, and that they are entering into this Stipulation and the Settlement solely to eliminate the uncertainty, distraction, disruption, burden, expense, and risk inherent in further litigation; and

WHEREAS, neither this Stipulation, nor any of its terms or provisions, nor entry of the Final Judgment, nor any document or exhibit attached to or referred to in the Stipulation, nor any action taken to carry out this Stipulation, may be construed as, or may be used as evidence of, an admission by or against Defendants of any fault, wrongdoing or concession of liability whatsoever in the Actions or any other action or proceeding.

## **II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by Plaintiffs (individually on behalf of themselves, on behalf of the Class, and derivatively on behalf of Aytu) and Defendants, each by and through their respective counsel, subject to the approval of the Court pursuant to Court of Chancery Rules 23 and 23.1, that in exchange for the good and valuable consideration set forth herein, the Released Claims shall be and hereby are fully and finally compromised, settled, and released, and the Actions shall be dismissed on the merits and with prejudice as to Defendants, upon the terms and subject to the conditions set forth herein:

## **1. DEFINITIONS**

As used in this Stipulation, and in addition to the terms defined elsewhere in this Stipulation, the following terms have the meanings specified below:

1.1 “Class” means a class consisting of all record and beneficial owners of Aytu common stock as of April 16, 2021. Excluded from the Class are Defendants and any person, firm, trust, corporation, or other entity affiliated with them and their predecessors or successors in interest (each an “Excluded Person,” and collectively, the “Excluded Persons”).

1.2 “Class Member” means a Person who falls within the definition of the Class.

1.3 “Effective Date” means the date on which all of the events and conditions specified in Section II.7.1 have been met and have occurred.

1.4 “Final” when referring to the Final Judgment means (1) entry of the Final Judgment or (2) if there is an objection to the Settlement, the expiration of any time for appeal or review of the Final Judgment, or, if any appeal is filed and not dismissed or withdrawn, issuance of a decision upholding the Final Judgment on appeal in all material respects, which is no longer subject to review upon appeal or other review, and the expiration of the time for the filing of any petition for reargument, appeal or review of the Final Judgment or any order affirming the Final Judgment; provided, however, that any disputes or appeals relating solely to the



amount, payment, or allocation of attorneys' fees, costs and expenses shall have no effect on finality for purposes of determining the date on which the Final Judgment becomes Final and shall not otherwise prevent, limit or otherwise affect the Final Judgment, or prevent, limit, delay, or hinder entry of the Final Judgment.

1.5 "Final Judgment" means the Order and Final Judgment entered by the Court dismissing the Actions with prejudice, substantially in the form annexed hereto as Exhibit C.

1.6 "Notice" means the Notice of Pendency of Settlement of Actions, substantially in the form annexed hereto as Exhibit B.

1.7 "Person" means a natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, any business or legal entity, and any spouse, heir, legatee, executor, administrator, predecessor, successor, representative, or assign of any of the foregoing.

1.8 "Plaintiffs' Counsel" means the law firms of Rowley Law PLLC, Long Law LLC, Kessler Topaz Meltzer & Check, LLP, and Smith, Katzenstein & Jenkins LLP.

1.9 “Released Claims” means and includes any and all manner of claims, causes of action, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, penalties, or sanctions of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (as defined herein), whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule, that have been or could have been asserted by Plaintiffs, any other Aytu stockholder, or any other Class Member or any other Person individually or acting or purporting to act on behalf of Aytu against the Released Persons in the Actions or in any other court, tribunal, or proceeding arising out of, based upon, or relating in any way to the allegations, actions, transactions, occurrences, statements, omissions, disclosures, facts, practices, events, or claims alleged or referred to in the Actions, including without limitation (i) with respect to the challenged awards under the 2015 Plan and (ii) any decision of the Company’s officers or directors related to the foregoing; provided, however, that it is understood that “Released Claims” and any release provided by this Settlement shall not include: (a) those claims asserted in *Witmer v. Armistice Capital LLC, et al.*, No. 2022-0807-MTZ in the Delaware Court of Chancery, (b) any claims to enforce the Settlement,

and (c) any claims by Defendants or any insured to enforce their rights under any contract or insurance policy.

1.10 “Released Person” means each of the Individual Defendants and Aytu and their parents, subsidiaries, affiliates, predecessors, successors, and controlling persons, and each of their respective past or present officers, directors, employees, stockholders, family members, spouses, heirs, trusts, trustees, executors, beneficiaries, agents, representatives, partners, members, advisors, consultants, representatives, accountants, attorneys, insurers, and associates.

1.11 “Releasing Persons” means Plaintiffs (individually, on behalf of the Class, and derivatively on behalf of Aytu), any Class Member, any other Aytu stockholder acting or purporting to act on behalf of Aytu, and Aytu. “Releasing Person” means, individually, any of the Releasing Persons.

1.12 “Scheduling Order” means the Scheduling Order With Respect to Notice and Settlement Hearing scheduling a hearing on the proposed Settlement and approving the proposed form of Notice and method of giving notice, substantially in the form annexed hereto as Exhibit A.

1.13 “Settlement Hearing” means the hearing set by the Court to consider Final approval of the Settlement.

1.14 “Unknown Claims” means any Released Claim(s) which Plaintiffs or Defendants do not know of or suspect to exist in their or its favor at the time of the

release of the Released Claims, including without limitation those which, if known, might have affected the decision to enter into the Settlement. With respect to any and all Released Claims, the Settling Parties agree that upon the Effective Date, the Settling Parties expressly and all Releasing Persons shall be deemed to have waived the provisions, rights, and benefits conferred by or under California Civil Code Section 1542, or any other law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

The Settling Parties acknowledge that they may hereafter discover facts in addition to or different from those now known or believed to be true by them, with respect to the subject matter of the Released Claims, but it is the intention of the Settling Parties to completely, fully, finally, and forever compromise, settle, release, discharge, and extinguish any and all Released Claims, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which do now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Settling Parties

acknowledge that the foregoing waiver was separately bargained for and is a key element of this Stipulation of which this release is a part, and was relied upon by each and all of the Defendants in entering into the Settlement.

## **2. TERMS OF SETTLEMENT**

2.1 The Board shall cancel 25% of the aggregate share awards challenged in the Actions, the resulting reduction to be allocated among Defendants as follows:

	<b>Granted</b>	<b>Rescinded</b>
Joshua Disbrow	800,000	80,000
Gary Cantrell	187,804	40,000
Carl Dockery	187,804	40,000
John Donofrio	187,804	187,804
Michael Macaluso	187,804	40,000
	<u>1,551,216</u>	<u>387,804</u>

2.2 The Company shall add to its board of directors (the “Board”) two new directors who meet the NASDAQ standard of independence. One such new director has already been added to the Board and, within six months of the date of Final Court approval of the Settlement, shall serve as the Chair of the Board’s Compensation Committee. The other new director shall be appointed within six months of the date of Final Court approval of the Settlement and will also be appointed to the Compensation Committee.

2.3 The Company shall designate a Lead Independent Director to coordinate the activities of the other independent directors and, among other things,

to preside at all meetings of the Board when the chair is not present, to call meetings of the independent directors, to retain advisors and consultants on behalf of the Board, to interview and make recommendations regarding director candidates, and to perform such other duties and responsibilities as the Board may determine. The Lead Independent Director shall be a director who meets the standard of “independence” under the NASDAQ rules. He or she may be removed or replaced from his/her position as Lead Independent Director at any time with or without cause by a majority vote of the Board.

2.4 The Board shall adopt a new equity compensation plan and seek stockholder approval of this new plan at the Company’s next annual stockholder meeting. That plan shall include the following terms:

- a. The plan administrator shall adjust the maximum number of shares reserved for issuance under the plan, in the event of any reorganization, reclassification, stock dividend, stock split, reverse stock split, or similar change in the Company’s capital stock, proportionately unless the Board’s Compensation Committee determines, in a good faith exercise of its sole discretion, that a fully proportional adjustment would not be conducive to retention and recruitment needs, in which case the Board’s Compensation Committee may make an adjustment that is not less than 50% of the number that would be fully proportional; and
- b. The number of shares reserved for issuance under the plan shall not ever exceed 15% of the Company’s then total authorized and outstanding shares.

2.5 The Board shall not award Defendants any further equity awards under the 2015 Plan.

2.6 From 2022–2024, the Board shall limit to a maximum of \$175,000 the total annual compensation (*i.e.*, annual retainer, meeting fees, annual equity awards, etc.) payable to each of the Company’s non-employee directors.

2.7 On at least a bi-annual basis (*i.e.*, every other year), qualified experts in the field shall make a presentation to the Compensation Committee about recent developments and best practices concerning equity compensation practices.

### **3. CLASS CERTIFICATION**

3.1 For purposes of the Settlement only, the Settling Parties agree to certification of the Actions as non-opt-out class actions, pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and (b)(2), on behalf of the Class. For purposes of the Settlement only, the Settling Parties also agree to the appointment of Plaintiffs as Class Representatives for the Class, and the appointment of Plaintiffs’ Counsel as Class Counsel.

3.2 The certification of the Class shall be binding only with respect to this Stipulation. In the event that this Stipulation is terminated pursuant to its terms or the Effective Date of the Settlement otherwise fails to occur, the certification of the Class shall be deemed vacated, and the Actions shall proceed as though the Class had never been certified.

#### **4. SCHEDULING ORDER, NOTICE, AND APPROVAL**

4.1 Promptly after execution of this Stipulation, Plaintiffs shall submit this Stipulation together with its exhibits to the Court and shall apply for entry of the proposed Scheduling Order, substantially in the form of Exhibit A attached hereto, requesting: (i) the approval of the manner of Notice to Aytu stockholders and Class Members substantially in the form attached hereto as Exhibit B; (ii) the Court's consideration of the proposed Settlement and Plaintiffs' application for an award of attorneys' fees and expenses; and (iii) a date for the Settlement Hearing.

4.2 Notice to Aytu stockholders and Class Members shall consist of the Notice, substantially in the form attached hereto as Exhibit B, and shall be provided as follows: within ten (10) business days after the entry of the Scheduling Order, the Company shall (i) mail the Notice to all record Aytu stockholders at their respective addresses currently set forth in Aytu's stock records (all record holders of Aytu common stock who are not also the beneficial owners of the shares held by them of record shall be asked to forward the Notice to the beneficial owners of those shares) (ii) file a Form 8-K with the Securities and Exchange Commission ("SEC") that discloses the Settlement and attaches the Notice as an exhibit, and (iii) post a copy of the Notice on the Company's website.

4.3 At least ten (10) business days prior to the Settlement Hearing, Defendants' counsel shall serve on counsel in the Actions and file with the Court an



appropriate affidavit with respect to the dissemination of the Notice in the manner set forth in Section II.4.2.

4.4 Aytu shall be responsible for all costs associated with dissemination of the Notice. If additional notice is required by the Court, then the cost and administration of such additional notice will be borne by Aytu.

4.5 The Settling Parties believe the content and manner of the Notice constitutes adequate and reasonable notice to Aytu stockholders and Class Members pursuant to applicable law and due process.

4.6 Pending the Court's determination as to Final approval of the Settlement, Plaintiffs agree to stay any and all proceedings in the Actions and not to initiate any and all other proceedings other than those incident to the Settlement itself.

4.7 The Settling Parties will request the Court to order (in the Scheduling Order) that, pending Final determination of whether the Settlement should be approved, Plaintiffs in the Actions and all Aytu stockholders and Class Members are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding asserting any Released Claim against Defendants or any of the Released Persons.

4.8 The Settling Parties and their attorneys agree to use their individual and collective best efforts to obtain Court approval of the Stipulation. The Settling

Parties and their attorneys further agree to use their individual and collective best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, the Stipulation provided for hereunder and the dismissal of the Actions.

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

5.1 Defendants acknowledge and agree that Plaintiffs are entitled to a fee award in connection with the Actions. Subject to the terms and conditions of this Stipulation and subject to Final approval of the Settlement and any Order of the Court, Aytu has agreed to pay attorneys' fees and expenses to Plaintiffs' Counsel of \$425,000 or any lesser amount permitted by the Court or the Delaware Supreme Court (the "Fee and Expense Amount"). The Fee and Expense Amount shall be paid by Aytu. Plaintiffs' Counsel may apply for attorneys' fees and expenses only in the Delaware Court of Chancery and shall make no application for attorneys' fees or expenses in any other jurisdiction. Plaintiffs' Counsel will not seek fees or expenses from the Court in excess of the agreed-to amount, and Defendants will not oppose the fee application for the agreed-to amount. If approved by the Court, the Fee and Expense Amount shall be paid to Plaintiffs' Counsel, within ten (10) business days after the Court enters the Final Judgment, subject to Plaintiffs' Counsel's timely provision of the requisite payment information, including wire instructions and

completed Forms W-9, and obligation to refund that amount within ten (10) business days if the Settlement is reversed or modified on appeal or by collateral attack. Except as otherwise provided herein, each of the Settling Parties shall bear his, her, or its own fees and costs, and neither Aytu nor any other Released Person shall have any obligations with respect to Plaintiffs' Counsel's fees and/or expenses beyond the Fee and Expense Amount.

5.2 Any failure of the Court to approve a request for attorneys' fees and expenses in whole or in part shall not affect the remainder of the Settlement.

5.3 Except as provided in this Section 5 of this Stipulation, Defendants shall have no obligation to pay or reimburse any fees, expenses, costs or damages alleged or incurred by Plaintiffs, by Aytu stockholders or Class Members, or by their attorneys, experts, advisors, or representatives with respect to the Released Claims.

## **6. RELEASES**

6.1 Upon the Effective Date, the Releasing Persons shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims (including Unknown Claims) against the Individual Defendants and each of the Released Persons; provided, however, that such release shall not affect any rights of any Settling Party to enforce the terms of this Stipulation.

6.2 Upon the Effective Date, the Released Persons and Aytu shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Actions against the Releasing Persons and Plaintiffs' Counsel; provided, however, that such release shall not affect any rights of any Settling Party to enforce the terms of this Stipulation.

**7. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

7.1 The Settlement shall be conditioned on the occurrence of all of the following events:

7.1.1. Court approval of the Settlement following Notice to Aytu stockholders and Class Members and the Settlement Hearing;

7.1.2. Entry of the Final Judgment in the Actions approving the proposed Settlement and providing for the dismissal with prejudice of the Actions and approving the grant of the release of the Released Claims;

7.1.3. The dismissal with prejudice of the Actions without the award of any damages, costs, fees, or the grant of any further relief, except as provided in Section II.5.1 of this Stipulation; and

7.1.4. The passing of the date upon which the Final Judgment becomes Final.

7.2 If any of the conditions listed in Section 7.1 are not met, this Stipulation and any Settlement documentation shall be null and void and of no force and effect. In the event that any of the conditions listed in Section 7.1 are not met, the Settling Parties shall be restored to their positions on the date immediately prior to the execution date of this Stipulation, this Stipulation shall not be deemed to constitute an admission of fact by any Settling Party, and neither the existence of this Stipulation nor its contents shall be admissible in evidence or be referred to for any purposes in the Actions or in any litigation or judicial proceeding. Also, this Stipulation shall not be deemed to entitle any party to the recovery of costs and expenses incurred in connection with the intended implementation of the Settlement, except as provided in Section II.5.1 of this Stipulation. Further, all releases delivered in connection with this Stipulation shall be null and void.

7.3 In the event that any claims related to the subject matter of the Actions are commenced or prosecuted against any of the Released Persons in any court prior to Final approval of the Settlement, the Settling Parties agree to cooperate and use their reasonable best efforts to secure the dismissal (or a stay in contemplation of dismissal following Final approval of the Settlement) thereof.

## **8. DISMISSAL OF ACTION**

8.1 If the Court approves the Stipulation, the Settling Parties shall promptly request the Court to enter the proposed Final Judgment, substantially in the form annexed hereto as Exhibit C.

## **9. THE STIPULATION IS NOT AN ADMISSION**

9.1 This Stipulation reflects, among other things, the compromise and settlement of disputed claims among the Settling Parties hereto, and neither this Stipulation nor the releases given herein, nor any consideration, nor any actions taken to carry out this Stipulation are intended to be, nor may they be deemed or construed to be, an admission or concession of liability (or lack thereof), or of the validity of any claim, or defense, or of any point of fact or law on the part of any Settling Party hereto regarding those facts that have been or might have been alleged in the Actions or in any other proceeding. Defendants and the Released Persons may file the Stipulation and/or Final Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

## **10. MISCELLANEOUS PROVISIONS**

10.1 The Settling Parties acknowledge that it is their intent to consummate the terms and conditions of this Stipulation and agree to cooperate to the extent

reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the terms and conditions of the Stipulation expeditiously.

10.2 The Settling Parties agree that the terms of the Settlement were negotiated in good faith by the Settling Parties and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Actions were brought or defended in bad faith or without a reasonable basis.

10.3 This Stipulation shall be deemed to have been mutually prepared by the Settling Parties hereto and shall not be construed against any of them by reason of authorship.

10.4 This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document. Any signature to the Stipulation by means of facsimile or electronically scanned and sent via email shall be treated in all manner and respects as an original signature and shall be considered to have the same binding legal effect as if it were the original signed version thereof.

10.5 All Persons executing this Stipulation thereby represent that they have been authorized and empowered to do so.

10.6 Plaintiffs and Plaintiffs' Counsel represent and warrant that none of Plaintiffs' claims referred to in this Stipulation or that could have been alleged in the Actions have been assigned, encumbered, or in any manner transferred in whole or in part.

10.7 This Stipulation embodies and represents the full agreement of the Settling Parties and supersedes any and all prior agreements and understandings relating to the subject matter hereof between or among any of the Settling Parties hereto. This Stipulation shall not be modified or amended, nor shall any provision of this Stipulation be deemed waived, unless such modification, amendment, or waiver is in writing and executed by or on behalf of the Settling Parties. The waiver by any Settling Party of any provision or the breach of this Stipulation shall not be deemed a waiver of any other provision or breach of this Stipulation.

10.8 If any provision of this Stipulation is held to be unlawful, invalid, or unenforceable: (i) such provision will be fully severable; (ii) this Stipulation will be construed and enforced as if such unlawful, invalid, or unenforceable provision had never comprised a part of this Stipulation; and (iii) the remaining provisions of this Stipulation will remain in full force and effect and will not be affected by the unlawful, invalid, or unenforceable provision or by its severance from this Stipulation, except that in no event will this Stipulation or any part thereof be



enforceable if any of Sections 1.9, 1.10, 1.11, 1.14, 6.1 or 6.2 are found to be unlawful, invalid or unenforceable.

10.9 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto.

10.10 Notwithstanding the entry of the Final Judgment, the Court shall retain jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of the Stipulation and Settlement, and all Settling Parties submit to the jurisdiction of the Court for purposes of implementing, enforcing, and interpreting the Stipulation and Settlement.

10.11 The construction and interpretation of this Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware and without regard to the laws that might otherwise govern under principles of conflicts of law applicable hereto.

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

10.13 The following exhibits are annexed hereto and incorporated herein by reference:

- (a) Exhibit A: Scheduling Order With Respect to Notice and Settlement Hearing
- (b) Exhibit B: Notice of Pendency of Settlement of Actions

(c) Exhibit C: [Proposed] Order and Final Judgment

**IN WITNESS WHEREOF, IT IS HEREBY AGREED** by the undersigned

as of the date noted above.

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