

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

KENNETH RICHE, On Behalf of  
Himself and All Others Similarly  
Situated,

Plaintiff,  
v.

JAMES C. PAPPAS, JOHN H.  
WALKER, DOUGLAS J. GLASPEY,  
PAUL LARKIN, LELAND “ROY”  
MINK, RANDOLPH J. HILL, and ALI  
G. HEDAYAT,

Defendants.

C.A. No. 2018-0177-JTL

**CLASS ACTION**

**STIPULATION AND AGREEMENT OF  
COMPROMISE, SETTLEMENT, AND RELEASE**

This Stipulation and Agreement of Compromise, Settlement, and Release (the “Stipulation”), dated May [REDACTED], 2020, is entered into between: lead plaintiff Kenneth Riche (“Plaintiff”), on his own behalf and on behalf of the Class (as defined herein); and defendants James C. Pappas, John H. Walker, Douglas J. Glaspey, Paul Larkin, Leland “Roy” Mink, Randolph J. Hill, And Ali G. Hedayat (together “Defendants”), by and through their undersigned attorneys. Together, Plaintiff and Defendants, the “Settling Parties.”

This Stipulation states all of the terms of the settlement and resolution of this matter as between Plaintiff, on the one hand, and Defendants, on the other hand, and

is intended by the Settling Parties to fully and finally compromise, resolve, discharge, and settle the Released Plaintiff's Claims against the Released Defendant Parties and the Released Defendants' Claims against the Released Plaintiff Parties, subject to the approval of the Court of Chancery of the State of Delaware (the "Court"). All terms herein with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings ascribed to them in Paragraph 1 below.

**I. Relevant Factual and Procedural Background**

A. Prior to the Merger (defined below), U.S. Geothermal Inc. ("U.S. Geothermal" or the "Company") was a publicly traded Delaware corporation based in Boise, Idaho that engaged in the geothermal energy business. On January 24, 2018, U.S. Geothermal agreed to be acquired by Ormat Technologies, Inc. ("Ormat Technologies"), Ormat Nevada Inc. ("Ormat Nevada" and, together with Ormat Technologies, "Ormat"), and OGP Holding Corp. ("Merger Sub") for \$5.45 per share (the "Merger").

B. On March 12, 2018, Plaintiff filed his original complaint. In addition, Plaintiff moved for expedited discovery and a preliminary injunction, primarily regarding certain disclosure issues Plaintiff identified in the preliminary proxy. On March 20, 2018, U.S. Geothermal filed its definitive proxy statement (the "Proxy"). Thereafter, Plaintiff withdrew his motion for expedited discovery and a preliminary injunction as mooted.

C. On April 19, 2018, U.S. Geothermal's shareholders approved the Transaction. The Transaction closed on April 24, 2018. On May 24, 2018, Plaintiff filed the Amended Complaint. The Amended Complaint alleged one claim for breach of fiduciary duty against Defendants.

D. On June 25, 2018, Defendants moved to dismiss the Amended Complaint. On October 2, 2018, following briefing and oral argument, the Court denied Defendants' motion to dismiss. *Riche v. Pappas, et. al.*, C.A. No. 2018-0177-VCL (Del. Ch. Oct. 2, 2018) (Tr.).

E. On December 3, 2018, Defendants filed an Answer to the Verified Amended Class Action Complaint, in which they denied all liability and asserted affirmative defenses.

F. In the interim and thereafter, the parties conducted discovery, which included the production of more than 85,000 pages of documents from parties and non-parties and the depositions of thirteen parties and non-parties and three experts.

G. On July 31, 2019, Plaintiff filed a Motion for Class Certification. On September 9, 2019, the Court certified the class of former U.S. Geothermal stockholders.

H. On September 12, 2019, the Parties, as well as counsel for Defendants' Insurer and Ormat, engaged in a full-day mediation session before Michelle Yoshida of Phillips ADR (the "Mediation"), in an effort to resolve the Action. The Settling

Parties provided to Ms. Yoshida mediation statements and exhibits addressing both liability and damages. After extensive, arm's-length negotiations at the Mediation, the Settling Parties did not reach an agreement in Mediation.

I. On October 18, 2019, Defendants sought leave to move for summary judgment; on October 28, 2019, Plaintiff filed an opposition to Defendants' request for leave to file a motion for summary judgment. On November 7, 2019, the Court denied Defendants' request for leave to move for summary judgment.

J. Between December 2019 and February 2020, the Parties engaged in intermittent potential settlement discussions to Settle the Action, but did not reach a settlement.

K. The Parties compiled and exchanged trial witness lists and a joint exhibit list containing more than 1,000 exhibits on February 7, 2020.

L. The parties filed simultaneous Pre-Trial Briefs on February 14, 2020

M. Plaintiff provided Defendants his proposed Pre-Trial order on February 28, 2020.

N. Defendants provided Plaintiff their proposed Pre-Trial order on March 6, 2020.

O. Plaintiff provided Defendants a revised proposed Pre-Trial order on March 10, 2020.

P. In the interim, the Parties exchanged private letters regarding the order of presentation at trial; unable to come to an agreement on this issue, the Parties then submitted letters to the Court regarding the same.

Q. Between March 6 and March 12, 2020, the Parties reengaged in settlement discussions with the assistance of Ms. Yoshida, who made a mediator's proposal, which was accepted by the Parties on March 12, 2020, to settle the Action for \$6,500,000 in cash, subject to definitive documentation and approval by the Court.

R. Trial was set to begin on March 30, 2020.

S. The Settlement set forth herein reflects the results of the Settling Parties' negotiations. An agreement was reached only after arm's-length negotiations between the Settling Parties, all of whom were represented by counsel with extensive experience and expertise in stockholder class action litigation, and all of whom were well-informed regarding the strengths and weaknesses of their respective claims and defenses. Plaintiff's Counsel has concluded that the terms contained in this Stipulation are fair and adequate for the members of the Class, and that it is reasonable to settle the Action based upon the procedures, the substantial benefits, and the protections contained herein and the attendant risks of litigation.

## **II. Plaintiff's Claims and the Benefits of Settlement**

Plaintiff states that he has brought his claims in good faith and continues to believe that his claims have legal merit, and the entry by Plaintiff into this Stipulation is not an admission as to the lack of any merit of any claims asserted in the Action. In negotiating and evaluating the terms of this Stipulation, Plaintiff's Counsel considered the legal and factual defenses to Plaintiff's claims and the uncertainties inherent in such litigation and at trial. Plaintiff believes that the terms contained in the Stipulation are fair, reasonable, and adequate to the Class and that it is reasonable to pursue the settlement of the Action before the Court based upon the terms outlined herein and the benefits and protections offered hereby, and wish to document his agreement in this Stipulation.

### **III. Defendants' Denials of Wrongdoing and Liability**

The entry by the Defendants into this Stipulation is not an admission as to the merit of any claims asserted in the Action. The Defendants (to the extent applicable to any given defendant) state that they have denied, and continue to deny, all allegations of wrongdoing, fault, liability, or damage to Plaintiff or the Class, deny that they engaged in any wrongdoing, deny that they committed any violation of law, deny that the Proxy (or any other public disclosures) were in any way deficient, deny that the process by which the Merger was negotiated was insufficient in any way, deny that the price paid to U.S. Geothermal's stockholders in connection with the Merger was insufficient in any way, deny that they acted improperly in any

way, believe that they acted properly and in accordance with their fiduciary duties at all times, believe that the Action lacks merit, and maintain that they have committed no disclosure violations or any other breach of duty whatsoever in connection with the Merger or any public disclosures, but wish to enter into the Settlement solely because they consider it desirable to, among other things, (i) eliminate the burden, inconvenience, expense, risk, and distraction to the Defendants of further litigation and trial, and (ii) finally put to rest and terminate all the claims that were or could have been asserted against the Released Defendant Parties in the Action.

**NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED**, by Plaintiff, individually and on behalf of the Class, and the Defendants, by and through their attorneys of record and subject to the approval of the Court, that, pursuant to Court of Chancery Rule 23 and the other conditions set forth herein, for the good and valuable consideration set forth herein to be conferred on Plaintiff and the Class, the sufficiency of which is hereby acknowledged, the Action shall be finally and fully settled, compromised, and dismissed on the merits with prejudice (and without costs to any Settling Party or any of its attorneys, experts, advisors, agents, or representatives, except as provided for herein), upon and subject to the terms and conditions of the Stipulation as follow (the “Settlement”):

#### **IV. Definitions**

1. The following capitalized terms, used in this Stipulation, shall have the meanings specified below:

(a) “Class,” as previously certified by the Court on September 9, 2019, means a non-opt-out class consisting of all record and beneficial holders of U.S. Geothermal common stock who held such stock at any time between and including January 24, 2018, through and including the effective time of the closing of the Merger, April 24, 2018, including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate or remote, and any person or entity acting on behalf of, or claiming under, any of them and each of them, and excluding Defendants James C. Pappas, John H. Walker, Douglas J. Glaspey, Paul Larkin, Leland “Roy” Mink, Randolph J. Hill, and Ali G. Hedayat, members of the immediate family of any defendant, any entity in which a defendant has or had a controlling interest, officers of defendants, and the associates, affiliates, legal representatives, heirs, successors in interest, transferees and assigns of any such excluded person or entity.

(b) “Class Member” means a member of the Class.

(c) “Class Period” means January 24, 2018 to April 24, 2018, inclusive.



(d) “Common Fund” means the interest-bearing account established by Plaintiff’s Counsel (or the Class Administrator, as Plaintiff’s Counsel’s escrow agent) for deposit of the Settlement Payment.

(e) “Defendants’ Counsel” means counsel of record for the respective Defendants in the Action.

(f) “Effective Date” means the first business day following the date of Final Approval of the Settlement.

(h) “Excluded Stockholders” means Defendants James C. Pappas, John H. Walker, Douglas J. Glaspey, Paul Larkin, Leland “Roy” Mink, Randolph J. Hill, and Ali G. Hedayat, members of the immediate family of any defendant, any entity in which a defendant has or had a controlling interest, officers of defendants, and the associates, affiliates, legal representatives, heirs, successors in interest, transferees and assigns of any such excluded person or entity. For the avoidance of doubt, “Excluded Stockholders” specifically includes, but it not limited to, JCP Investment Partnership, LP, JCP Investment Partners, LP, JCP Investment Holdings, LLC, JCP Investment Management, LLC, Maryanna Capital Inc., and any other entity through which any of the named Defendants indirectly or directly held U.S. Geothermal stock and/or otherwise had a controlling interest.

(i) “Final Approval” of the Settlement means (i) that the Court has entered the [Proposed] Order and Final Judgment attached as Exhibit C hereto (with

no material modification thereto) approving the Settlement, dismissing the Action with prejudice on the merits and without costs to any Settling Party (except those costs set forth in Paragraphs 2 and 13-16), providing for the releases set forth in Paragraphs 3–5, and (ii) that such Order and Final Judgment is final and no longer subject to further appeal or review, whether by affirmance on or exhaustion of any possible appeal or review, lapse of time, or otherwise; provided, however, and notwithstanding any provision to the contrary in the Stipulation, Final Approval shall not include (and the Settlement is expressly not conditioned on) the award of attorneys’ fees and the reimbursement of expenses as provided in Paragraphs 13-16, and any appeal related thereto.

(j) “Order and Final Judgment” means the order by the Court entered in substantially the form as, and with no material modification to, the [Proposed] Order and Final Judgment attached as Exhibit C hereto.

(k) “Person” means any individual, corporation, partnership, limited liability company, association, affiliate, parent, subsidiary, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

(l) “Plaintiff’s Counsel” means counsel of record for Plaintiff in the Action.

(m) “Released Claims” means the Released Defendants’ Claims and the Released Plaintiff’s Claims.

(n) “Released Defendants’ Claims” means any known and unknown claims that have been or could have been asserted in the Action, or in any court, tribunal, forum, or proceeding, by the Defendants or any of their respective successors and assigns against the Released Plaintiff, which arise out of or relate in any way to the institution, prosecution, settlement, or dismissal of the Action; provided, however, that the Released Defendants’ Claims shall not include the right to enforce the Stipulation.

(o) “Released Plaintiff’s Claims” means all known and unknown claims which Plaintiff or any or all other members of the Class ever had, now have, or may have against any of the Released Defendant Parties, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule (including, but not limited to, any claims that could be asserted derivatively on behalf of U.S. Geothermal), which, now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, claims or any other matters, that were, could have been, or in the future can or might be alleged, asserted, or claimed, directly or indirectly, in the Action, or relate to the subject matter thereof, in any court, tribunal, forum, or

proceeding; provided, however, that the Released Plaintiff's Claims shall not include the right to enforce the Stipulation.

(p) "Released Parties" means the Released Defendant Parties and the Released Plaintiff.

(q) "Released Defendant Parties" means the Defendants and each of their respective past or present affiliates, parents and subsidiaries (specifically including U.S. Geothermal, Inc., Ormat Technologies, Ormat Nevada, each and every subsidiary of Ormat Technologies, whether owned or controlled directly or indirectly, and Merger Sub), as well as each of their respective past or present or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employers, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders and beneficial owners, principals, officers, managers, directors, managing directors, members, managing members, managing agents, insurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-

insurers, reinsurers, and associates, and all other Persons who have, may have, or purport to have a right of contribution from any of the foregoing.

(r) “Released Plaintiff” means Plaintiff, all other Class Members, and his respective counsel (including Plaintiff’s Counsel).

(s) “Settlement Hearing” means the hearing to be held by the Court to determine whether the proposed Settlement should be approved as fair, reasonable, and adequate, whether all Released Claims should be dismissed with prejudice, whether the Order and Final Judgment approving the Settlement should be entered, whether and in what amount an award of attorneys’ fees and expenses should be paid to Plaintiff’s Counsel, whether and in what amount an incentive award should be paid to Plaintiff, and any other matters the Court deems appropriate.

(t) “Settlement Payment” means Six Million Five Hundred Thousand United States dollars (\$6,500,000.00), to be paid by or on behalf of the Defendants, and as set forth in Paragraph 2(c), in exchange for the full and final settlement between Plaintiff and the Defendants and release of all Released Plaintiff’s Claims by Plaintiff and the Class.

(u) “Unknown Claims” means any claims that a Settling Party does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation

those which, if known, might have affected the decision to enter into the Stipulation. With respect to any of the Released Claims, the Settling Parties stipulate and agree that upon Final Approval of the Settlement, the Settling Parties shall be deemed to have, and by operation of the Order and Final Judgment entered by the Court shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code §1542 or any law or principle of common law of the United States or any state of the United States or territory of the United States, or other jurisdiction, which is similar, comparable or equivalent to Cal. Civ. 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.**

The Settling Parties acknowledge, and the Class by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Settling Parties, and by operation of law the Class, to completely, fully, finally, and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which 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, and the Class by

operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of “Released Plaintiff’s Claims” was separately bargained for and was a material element of the Settlement and was relied upon by each and all of the Settling Parties in entering into the Stipulation.

**V. Settlement Consideration and Common Fund**

2. In consideration for the full and final settlement between the Settling Parties and the release of all Released Plaintiff’s Claims by Plaintiff and the Class:

(a) Upon the Court’s entry of the Scheduling Order (defined herein and attached as Exhibit A), Plaintiff’s Counsel shall provide to Defendants’ Counsel complete wire transfer information and instructions for payment of the Settlement Payment (including a W-9, telephone and contact information, identifying information for the Common Fund, and a physical address for the designated recipient of the Settlement Payment) (the “Wire Transfer Information”).

(b) Within fifteen (15) business days after the Court’s entry of the Scheduling Order, and provided that Defendants’ Counsel is in receipt of the Wire Transfer Information, no less than Five Hundred Thousand Dollars (\$500,000) of the Settlement Payment shall be paid into the Common Fund, and, within thirty (30) calendar days from the entry of the Order and Final Judgment by the Court, the remaining amount of the Settlement Payment shall be paid into the Common Fund.

(c) The Settlement Payment shall be paid by or on behalf of the Defendants, in accordance with such allocation and contribution as the Defendants alone determine in their sole discretion. The allocation and contributions of the Settlement Payment between the Defendants is and shall remain confidential to the Plaintiff and the Defendants.

(d) The Common Fund, including all interest accruing thereon, shall be deemed to be in the custody of the Court. Plaintiff's Counsel shall retain an administrator (the "Administrator"), which shall, subject to the jurisdiction, supervision, direction, and approval of the Court, oversee the administration and distribution of the Common Fund. Any and all costs and expenses associated with retaining the Administrator, providing notice of the Settlement to the Class, administering and distributing the Common Fund (including, but not limited to, any costs associated with taxes due), or otherwise carrying out the terms of the Stipulation (collectively, the "Administrative Costs") shall be paid from the Common Fund prior to distribution to the Class. In no event shall Defendants be responsible or liable for any Administrative Costs.

(e) Within seven (7) days of the entry of the Final Order and Judgment, Plaintiff shall submit to the Court for its approval a Plan of Allocation that provides for the mechanics of the distribution of the Common Fund. The Court's acceptance, modification, or rejection of the Plan of Allocation shall not in any way



affect the validity of the Settlement, and Defendants shall have no responsibility for the distribution of the Common Fund or any costs and expenses associated therewith.

(f) Following approval of the Plan of Allocation and Final Approval of the Settlement, the Administrator shall distribute the Common Fund—less Administrative Costs, the Fee and Expense Award (defined below), the Incentive Award (defined below), and any other expense, fee, or cost outlined herein or in the Plan of Allocation—on a *pro rata* basis to the Class Members who were holders of record of shares of U.S. Geothermal common stock as of the close of business on April 24, 2018 (the date the Merger closed); provided, however, that no distribution or payment shall be made to any Person excluded from the Class and/or to any Excluded Stockholder.

(g) Excluded Stockholders shall have no claim to and shall not receive any payment from the Common Fund, in whole or in part. The Excluded Stockholders hereby relinquish any right to receive any part of the Common Fund. In the event that any Excluded Stockholder learns that it has received payment from the Common Fund, he, she, or it shall provide reasonable notice to the Administrator and take steps reasonably requested by the Administrator to promptly return said funds to the Administrator.

(h) Within fifteen (15) calendar days of the execution of this Stipulation, Defendants shall use good faith efforts to provide or cause to be

provided to Plaintiffs' Counsel or the Administrator a shareholder list and/or securities position report as of the close of the Merger sufficient for providing notice of the Settlement and payment to the Class. Defendants shall use good faith efforts to (a) provide or cause to be provided to Plaintiffs' Counsel or the Administrator a complete list of shares held by each Defendant and the Excluded Stockholder(s) with which each Defendant is respectively affiliated and (b) execute any necessary suppression letters with respect to excluded shares held by each Defendant and the Excluded Stockholder(s) with which each Defendant is respectively affiliated, both as sufficient to permit the Administrator to take appropriate steps to ensure that no Excluded Stockholders inadvertently receives any payment from the Common Fund. Plaintiff's Counsel agrees, and the Administrator shall agree, that this information will be kept confidential and not used for any purpose other than to provide the notice contemplated by this Settlement.

(i) Defendants shall have no involvement in, responsibility for, or liability relating to (i) the administration of or distributions from the Common Fund, (ii) the distribution of the Common Fund to the Class, or (iii) any costs and expenses related to the foregoing.

(j) In the event that the Order and Final Judgment is not approved by the Court in substantially the form attached hereto as Exhibit C, is not upheld on appeal, or is otherwise vacated, the Common Fund—excluding any and

all Administrative Costs incurred or paid—shall be returned by Plaintiff’s Counsel to the Persons making the Settlement Payment within ten (10) business days.

## **VI. Releases**

3. As of the Effective Date, Plaintiff and all Class Members, on behalf of themselves, their legal representatives, heirs, executors, administrators, estates, predecessors, successors, predecessors-in-interest, successors-in-interest, affiliates and assigns, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their respective officers, directors, employees, and agents, shall thereupon fully, finally, and forever, release, settle, and discharge the Released Defendant Parties from and with respect to every one of the Released Plaintiff’s Claims on the terms set forth herein, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Plaintiff’s Claims against any of the Released Defendant Parties.

4. As of the Effective Date, Plaintiff and each and every Class Member shall be deemed bound by the Stipulation and the Order and Final Judgment. The Order and Final Judgment, including the release of all Released Plaintiff’s Claims against all Released Defendant Parties, shall have *res judicata*, collateral estoppel, and all other preclusive effect in all pending and future lawsuits, arbitrations, or other proceedings maintained by, or on behalf of, Plaintiff or any Class Members, as well as their respective heirs, executors, administrators, estates, predecessors-in-

interest, predecessors, successors-in-interest, successors, and assigns and anyone claiming through or on behalf of any of them.

5. As of the Effective Date, the Defendants shall thereupon fully, finally, and forever, release, settle, and discharge the Released Plaintiff from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, or prosecuting any of the Released Defendants' Claims against the Released Plaintiff.

## **VII. Scheduling Order, Notice, and Settlement Hearing**

6. As soon as practicable upon execution of this Stipulation, Plaintiff's Counsel shall submit the Stipulation together with its exhibits to the Court and shall apply for entry of an order (the "Scheduling Order"), substantially in the form of Exhibit A hereto, requesting: (a) approval of the form and content of the proposed notice of the Settlement; and (b) a date for the Settlement Hearing. At the Settlement Hearing, the Settling Parties shall jointly request that the Order and Final Judgment be entered substantially in the form attached hereto as Exhibit C.

7. Notice to the Class shall consist of a Notice of Pendency of Class Action, Proposed Settlement of the Class Action, and Settlement Hearing (the "Notice"), substantially in the form attached hereto as Exhibit B.

8. No fewer than sixty (60) calendar days before the Settlement Hearing, a copy of the Notice shall be mailed to all stockholders of record of U.S. Geothermal

who are members of the Class at their last-known address appearing in the stock transfer records maintained by or on behalf of U.S. Geothermal. Plaintiff's Counsel shall be responsible for providing the Notice to the Class, and all costs and expenses incurred in providing such notice shall be paid solely from the Common Fund. No Defendant or any other Person shall have any obligation to pay any costs and expenses incurred in providing notice of the Settlement to the Class. At least ten (10) business days prior to the Settlement Hearing, Plaintiff's Counsel shall file with the Court an appropriate affidavit or declaration verifying dissemination of the Notice.

9. The Settling Parties will present the Settlement to the Court for Final Approval as soon as reasonably practicable following appropriate notice to the Class Members, and will use their individual and collective best efforts to obtain Final Approval of the Settlement and the dismissal of the Action with prejudice without costs to any Settling Party, except as expressly provided herein.

#### **VIII. Conditions of Settlement and Effect of Disapproval, Cancellation, or Termination**

10. The Settlement is conditioned on the occurrence of all of the following events:

(a) Entry of the Scheduling Order substantially in the form attached hereto as Exhibit A;

(b) Entry of the Order and Final Judgment substantially in the form attached hereto as Exhibit C;

(c) Final Approval of the Settlement; and

(d) Dismissal with prejudice of the Action with respect to all Class Members (including Plaintiff) without the award of any damages, costs, or fees or the grant of further relief except for the payments contemplated by this Stipulation.

11. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action with respect to the Released Claims. Defendants shall not be responsible or liable for any costs or expenses associated with the administration of the Common Fund or Notice or facilitating the distribution of the Common Fund or Notice, or any other aspect of the Settlement other than the Settlement Payment.

12. In the event that the proposed Settlement (or any amendment thereof by the Settling Parties) is rendered null and void as to all Settling Parties for any reason, (a) all of the Settling Parties shall be deemed to have reverted to their respective litigation statuses immediately prior to the execution of the Stipulation, and they shall proceed in all respects as if this Stipulation had not been executed and any related orders had not been entered, (b) all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way, (c) the statements made in connection with the negotiations of this Stipulation

shall not be deemed to prejudice in any way the positions of any of the Settling Parties with respect to the Action, or to constitute an admission of fact of wrongdoing by any Settling Party, shall not be used or entitle any Settling Party to recover any fees, costs, or expenses incurred in connection with the Action, and neither the existence of this Stipulation nor its contents nor any statements made in connection with its negotiation or any settlement communications shall be admissible in evidence or shall be referred to for any purpose in the Action, or in any other litigation or judicial proceeding.

**IX. Attorneys' Fees, Expenses and Incentive Award**

13. In connection with the Court's consideration of the Settlement, Plaintiff and his counsel intend to petition the Court for an award of attorneys' fees and expenses solely from the Common Fund, which amount shall be wholly inclusive of all fees, expenses, cost disbursements, and expert and consulting fees associated with the creation of the Common Fund (the "Fee and Expense Award"), as well as an incentive award for Plaintiff paid from the Fee and Expense Award (the "Incentive Award"). The Settling Parties agree that no Person shall have any responsibility to contribute to any Fee and Expense Award or Incentive Award in connection with the Settlement beyond any amounts that may be awarded to Plaintiff's counsel and Plaintiff from the Common Fund.

14. Resolution of the Fee and Expense Award and/or the Incentive Award shall not be a precondition to the Settlement or to the dismissal with prejudice of the Action. Any disapproval or modification of the application for the Fee and Expense Award and/or the Incentive Award by the Court or on appeal shall not affect or delay the enforceability of the Stipulation, provide any of the Settling Parties with the right to terminate the Settlement, impose any obligation on any of the Defendants, or subject them in any way to an increase in the amount paid by them or on their behalf in connection with the Settlement, or affect or delay the binding effect or finality of the Order and Final Judgment and the release of the Released Claims. The Court may consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of any Fee and Expense Award and/or Incentive Award.

15. No fees or expenses or incentive award shall be paid to Plaintiff's Counsel or Plaintiff from the Common Fund in the absence of the entry of the Order and Final Judgment, including providing for the releases set forth in Paragraphs 3–5 of this Stipulation.

16. Plaintiff's Counsel in the Action shall be solely responsible for the allocation of any fee paid to Plaintiff's Counsel in the Action. Defendants shall have no responsibility or liability with respect to any Fee and Expense Award allocation among Plaintiff's Counsel.

**X. Stay Pending Final Approval**



17. Pending negotiation, execution, and Final Approval of the Settlement by the Court, Plaintiff, on his own behalf and on behalf of the Class, agrees to stay any and all claims against the Defendants in the Action and not to initiate any other proceedings bringing claims against any Released Party, other than those incident to the Settlement itself.

18. The Parties will request the Court to order (in the Scheduling Order) that, pending final determination of whether the Settlement should be approved, Plaintiff and all Class Members are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any Released Plaintiff's Claim, either directly, representatively, derivatively, or in any other capacity, against any Released Defendant Party.

**XI. Stipulation Not an Admission**

19. The Defendants deny any and all allegations of wrongdoing, fault, liability, or damage in the Action. Neither this Stipulation nor the fact of or any terms of the Settlement, or any communications relating thereto, is evidence, or a presumption, admission, or concession by any Settling Defendant, any Defendants' Counsel, or any other Released Defendant Party, of any fault, liability, wrongdoing, or damages whatsoever, which are expressly denied and disclaimed by each Settling Defendant. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action or any wrongdoing by any of the Defendants

named therein or any damages or injury to any Plaintiff or other Class Member. Neither this Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, shall (a) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Parties, or of any infirmity of any defense, or of any damage to any Plaintiff or any other Class Member, (b) otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Parties concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted in the Action, or of any purported liability, fault, or wrongdoing of the Released Defendant Parties or of any injury or damages to any Person, or (c) be admissible, referred to, interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any Person in the Action, or in any other action or proceeding whatsoever, whether civil, criminal, or administrative; provided, however, that the Stipulation and/or Order and Final Judgment may be introduced in any proceeding, whether in this Court or otherwise,

as may be necessary to argue that the Stipulation and/or Order and Final Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Stipulation, Settlement, and/or Order and Final Judgment or as otherwise required by law. This provision shall remain in force in the event that the Settlement is terminated for any reason whatsoever.

## **XII. Miscellaneous Provisions**

### **A. Choice of Law, Forum, and Waiver of Jury Trial**

20. Each of the Settling Parties (a) irrevocably submits to the personal jurisdiction of any state or federal court sitting in Wilmington, Delaware, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, in any suit, action or proceeding arising out of or relating to this Stipulation and/or the Settlement, (b) agrees that all claims in respect of such suit, action or proceeding shall be brought, heard, and determined exclusively in the Court (provided that, in the event that subject matter jurisdiction is unavailable in the Court, then all such claims shall be brought, heard and determined exclusively in any other state or federal court sitting in Wilmington, Delaware), (c) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court, (d) agrees not to bring any action or proceeding arising out of or relating to this Stipulation and/or the Settlement in any other court, and (e) EXPRESSLY WAIVES, AND AGREES NOT TO PLEAD OR TO MAKE ANY CLAIM THAT

ANY SUCH ACTION OR PROCEEDING IS SUBJECT (IN WHOLE OR IN PART) TO A JURY TRIAL. Each of the Settling Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding brought in accordance with this Paragraph. Each of the Settling Parties further agrees to waive any bond, surety, or other security that might be required of any other Settling Party with respect to any action or proceeding, including an appeal thereof. Each of the Settling Parties further consents and agrees that process in any suit, action, or proceeding may be served on such Party by certified mail, return receipt requested, addressed to such Party or such Party's registered agent in the state of its incorporation or organization, or in any other manner provided by law, and in the case of Plaintiff by giving such written notice to Plaintiff's Counsel.

21. The consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain exclusive jurisdiction for the purpose of entering orders providing for an award of attorneys' fees and expenses to Plaintiff's Counsel and enforcing the terms of this Stipulation.

**B. Modification and Entire Agreement**

22. This Stipulation and the Exhibits constitute the entire agreement as between Plaintiff, on the one hand, and the Defendants, on the other hand, and, with respect to the subject matter hereof, supersedes all written or oral communications, agreements, or understandings that may have existed between Plaintiff, on one hand,

and the Defendants, on the other hand, prior to the execution of this Stipulation, and may be modified or amended only by a writing signed by the Settling Parties. No representations, warranties, or inducements whatsoever, whether written or oral, have been made to or relied upon by any party hereto concerning the agreement between Plaintiff, on the one hand, and the Defendants, on the other hand, reflected in this Stipulation and its Exhibits, other than the representations, warranties, and covenants expressly set forth in such documents.

23. This Stipulation may not be amended or modified, nor any of its provisions be waived, except by a written instrument signed by counsel for all Settling Parties or their successors-in-interest.

24. Without further order of the Court, Plaintiff and the Defendants may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

**C. Interpretation of Agreement**

25. 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.

26. This Stipulation shall not be construed more strictly against one Settling 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 Settling Parties, it being recognized that the Stipulation is the result of arm's-length negotiations among the Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

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

28. Should any part of this Stipulation be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this Stipulation should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

**D. Breach and Waiver**

29. The Settling Parties acknowledge and agree that (a) any breach of this Stipulation will result in immediate and irreparable injury for which there is no adequate remedy available at law; and (b) in addition to any other remedies available, specific performance and injunctive relief are appropriate remedies to compel performance of this Stipulation.

30. The waiver by any Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of any provision of this Stipulation by any other Settling Party.

**E. Representations**

31. Each counsel signing this Stipulation represents that such counsel has authority to sign this Stipulation on behalf of his or her clients.

32. Plaintiff and Plaintiff's Counsel represent and warrant that Plaintiff is a member of the Class and that none of Plaintiff's or the Class' claims or causes of action asserted in any of the complaints filed in the Action, or any claims Plaintiff or the Class could have alleged in the Action, have been assigned, encumbered, or in any manner transferred in whole or in part.

33. Plaintiff's Counsel warrants that no portion of any Fee and Expense Award shall be paid to Plaintiff or any Class Member, except any such Incentive Award or as otherwise approved by the Court.

**F. Best Efforts**

34. The Settling Parties agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and the Settlement, and to use their 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, this Stipulation and the Settlement provided for herein.

**G. Successors**

35. This Stipulation, and all rights and powers granted thereby, shall be binding upon and shall inure to the benefit of the Settling Parties and their respective

agents, executors, heirs, successors, affiliates, and assigns. The Released Parties who are not signatories hereto shall be third-party beneficiaries under this Stipulation entitled to enforce this Stipulation in accordance with its terms.

**H. Execution**

36. The Settling Parties may execute this Stipulation in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Settling Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or electronic mail is as effective as executing and delivering this Stipulation in the presence of all other Settling Parties.

***[Signatures Appear On the Following Pages]***



Dated: April \_\_\_, 2020

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