

EXECUTION COPY

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

TRADEX GLOBAL MASTER FUND SPC LTD., THE
ABL SEGREGATED PORTFOLIO 3, and TRADEX
GLOBAL MASTER FUND SPC LTD., THE ORIGINAL
SEGREGATED PORTFOLIO 3, on behalf of themselves
and all others similarly situated,

Plaintiffs,

- against -

LANCELOT INVESTMENT MANAGEMENT, L.L.C.,
GREGORY BELL, McGLADREY & PULLEN, LLP,
McGLADREY & PULLEN, CAYMAN,
ALTSCHULER, MELVOIN & GLASSER, CAYMAN,
ALTSCHULER, MELVOIN & GLASSER, LLP, AND
SIMON LESSER,

Defendants.

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2018 APR 13 PM 1:04
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
CHANCERY DIV.
CLERK
REBECCAH BROWN

10 – CH – 13264

Judge David B. Atkins

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Stipulation”), dated as of April 12, 2018, which is entered into by and among Plaintiffs (as defined herein), on their own behalf and on behalf of the Settlement Class (as defined herein), and the Auditor Defendants (as defined herein), by and through their undersigned attorneys, states all of the terms of the settlement and resolution of this matter by the Settling Parties (as defined herein) and is intended by the Settling Parties to fully and finally release, resolve, remise and discharge the Released Claims (as defined herein) against the Released Parties (as defined herein), subject to the approval of the Circuit Court of Cook County, County of Illinois, County Department, Chancery Division (the “Court”). All undefined terms below with initial capitalization shall have the meanings ascribed to them in Section I(1).

WHEREAS:

The Action

A. On June 9, 2009, Plaintiffs filed a proposed class action in the United States District Court for the Northern District of Illinois, entitled *Tradex Global Master Fund SPC LTD., et al. v. Lancelot Investment Management, LLC., et al.*, Civ. No. 09-3499 (the “Federal Court Action”). The Federal Court Action was brought on behalf of Plaintiffs and other persons and entities who purchased shares in Lancelot Investors Fund, Ltd. (the “Lancelot Fund”). On March 10, 2010, Plaintiffs voluntarily dismissed the Federal Court Action based on the district court’s purported lack of subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

B. On March 30, 2010, Plaintiffs filed an action in this Court on behalf of themselves and others similarly situated entitled *Tradex Global Master Fund SPC Ltd., et al. v. Lancelot Investment Management, LLC, et al.*, Docket No. 2010 CH 13264 (the “Action”). Named as Defendants in the Action were: (i) Lancelot Investment Management, LLC and Gregory Bell (collectively, the “Lancelot Defendants”); (ii) Swiss Financial Services Bahamas, Ltd. and Swiss Financial Services, Inc. (collectively, the “Swiss Financial Defendants”); (iii) McGladrey & Pullen, LLP (n/k/a RSM US LLP) (“RSM”), McGladrey & Pullen, Cayman (f/k/a Altschuler, Melvoin and Glasser (Cayman)), and Simon Lesser (the “McGladrey Defendants”); and (iv) Altschuler, Melvoin and Glasser LLP (“Altschuler”) (collectively with the McGladrey Defendants,” the “Auditor Defendants”).

The Bankruptcy Proceedings and the Stay

C. On October 20, 2008, the Lancelot Fund filed a petition for bankruptcy with the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”)

entitled *In re Lancelot Investors Fund, Ltd.*, Case No. 08-28227 (Bankr. N.D. Ill.) (jointly administered with *In re Lancelot Investors Fund, L.P.*, Case No. 08-28225 (Bankr. N.D. Ill.)) (the “Lancelot Bankruptcy Proceeding”). Thereafter, the United States Trustee appointed a trustee for the Lancelot Bankruptcy Proceeding (the “Trustee”) and, on December 7, 2009, the Trustee filed an adversary action against certain of the Auditor Defendants that was later removed to federal court and ultimately entitled *Peterson v. McGladrey & Pullen LLP et al.*, Case No. 10-c-00274 (N.D. Ill.) (the “Trustee Adversary Action”).

D. On May 27, 2010, in a related matter pending before the Bankruptcy Court entitled *Peterson, et al. v. Ellerbrock Family Trust, LLC, et al.*, Adversary No. 09-413, the Trustee filed a motion for a preliminary injunction seeking to stay Plaintiffs from continuing the Action until the Trustee Adversary Action was closed (the “Stay Proceedings”). On June 14, 2010, the Court issued an order staying prosecution of the Action pending the Bankruptcy Court’s ruling on the Trustee’s motion in the Stay Proceedings. On August 24, 2010, the Bankruptcy Court entered an order enjoining Plaintiffs from prosecuting the Action until the bankruptcy case was closed (the “Bankruptcy Stay Order”) and, on September 7, 2010, the Court stayed the Action pursuant to the Bankruptcy Stay Order.

The Swiss Financial Partial Settlement

E. On July 12, 2013, Plaintiffs and the Swiss Financial Defendants entered into a Stipulation of Partial Settlement releasing all claims against the Swiss Financial Defendants in consideration for the payment of \$350,000.00 (the “Swiss Financial Settlement”). By Order dated June 3, 2014, the Bankruptcy Court modified the Bankruptcy Stay Order to allow Plaintiffs to facilitate the Swiss Financial Settlement. After a hearing on October 10, 2014, the Court entered an Order and Final Judgment approving the Swiss Financial Settlement and dismissing Plaintiffs’

claims against the Swiss Financial Defendants.

The Auditor Defendants' Motions to Dismiss

F. On July 7, 2015, the United States Court of Appeals for the Seventh Circuit affirmed a lower court decision dismissing the Trustee Adversary Action based on the affirmative defense of *in pari delicto*. As a result of that ruling, by Order dated January 12, 2016, this Court: (i) lifted its stay of the Action; (ii) directed Plaintiffs to file an Amended Complaint; and (iii) stayed discovery in the Action.

G. On February 12, 2016, Plaintiffs filed their Amended Complaint against the Lancelot Defendants and the Auditor Defendants. On March 4, 2016, the Auditor Defendants filed motions to dismiss the Amended Complaint. After a hearing, the Court denied the motions to dismiss pursuant to a Memorandum Opinion and Order dated January 10, 2017 (the "Opinion"). On May 26, 2017, the McGladrey Defendants filed a Rule 308(a) Application for Interlocutory Appeal of the Opinion (the "Application"). By Order dated August 23, 2017, the Appellate Court of Illinois, First Judicial District, denied the Application.

Merits Discovery

H. By Order dated April 28, 2017, the Court permitted merits discovery in the Action to proceed along with class discovery. Plaintiffs' Counsel represent that, after negotiating a protective order and exchanging requests for discovery, Plaintiffs' Counsel reviewed more than one million pages of documents produced by the Trustee, the Swiss Financial Defendants, the Auditor Defendants, and others. In addition, depositions were conducted of certain party and non-party witnesses, including current or former employees of Plaintiffs, the Swiss Financial Defendants, and the Auditor Defendants, as well as certain members of the putative class. Plaintiffs also responded to interrogatories and requests for the production of documents and

produced documents to the Auditor Defendants.

The Proposed Settlement With the Auditor Defendants

I. On December 7, 2017 and February 27, 2018, Plaintiffs' Counsel and the Auditor Defendants' Counsel participated in all-day mediation sessions before the Honorable Daniel Weinstein (Ret.). At the close of the second session, Judge Weinstein made a mediator's proposal that was accepted by the Settling Parties.

J. In return for the consideration described herein, this Stipulation is intended to fully and finally release, resolve, and discharge the Released Claims against the Released Parties with prejudice. The Settling Parties' entry into this Stipulation is not and shall not be construed as, or deemed to be evidence of, an admission as to the merit or lack of merit of any claims or defenses asserted in the Action.

K. Plaintiffs' Counsel represent that, through the extensive discovery described above, Plaintiffs' Counsel have conducted a comprehensive investigation relating to the claims and the underlying events alleged in the Action. Plaintiffs' Counsel further represent that they have analyzed the evidence and information adduced through discovery and investigation, and have researched the applicable law with respect to Plaintiffs and the Settlement Class (as defined herein). In negotiating and evaluating the terms of this Stipulation, Plaintiffs' Counsel represent that they considered the significant legal and factual defenses to Plaintiffs' claims; continuing developments on several key legal issues that may adversely affect Plaintiffs' claims; the lengthy amount of time that would be entailed in addressing contested class certification issues, as well as further motion practice, trial, and likely appeals. Plaintiffs' Counsel represent that they received sufficient information to evaluate the merits of the proposed Settlement. Based upon their evaluation, Plaintiffs and Plaintiffs' Counsel unanimously have determined that the Settlement set

forth in this Stipulation is fair, reasonable and adequate and in the best interests of the Settlement Class, and that it confers substantial benefits upon the Settlement Class Members.

L. With respect to the claims and underlying events in the Action, the Auditor Defendants deny any and all allegations of wrongdoing, fault, liability, or damage whatsoever; deny that they engaged in, committed, or aided or abetted the commission of any breach of duty, breach of contract, fraud, wrongdoing, or violation of law; deny that they acted improperly in any way; deny that they owed any duty or caused any damage whatsoever to Plaintiffs or any of the other Settlement Class Members; believe that they acted properly at all times; maintain that they complied with any fiduciary, contractual, or other duties to the extent such duties existed; and maintain that they have complied with all applicable laws at all times. The Auditor Defendants enter into this Stipulation solely to eliminate the uncertainties, burden, and expense of further litigation. Nothing in this Stipulation shall be construed as any admission by any of the Released Parties of any wrongdoing, fault, liability, or damages whatsoever.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, for themselves and on behalf of the Settlement Class, and the Auditor Defendants, by and through their respective undersigned counsel that, subject to the approval of the Court, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, the Action and the Released Claims as against the Auditor Defendants shall be finally and fully compromised, settled, and released; the Action shall be dismissed with prejudice; and the Released Claims shall be finally and fully released as against the Released Parties, all upon and subject to the terms and conditions of this Stipulation, as follows.

I. Definitions

In addition to the terms defined above, the following capitalized terms, used in this

Stipulation, shall have the meanings specified below:

a. “Administrative Costs” means all costs and expenses associated with providing notice of the Settlement to the Settlement Class or otherwise administering or carrying out the terms of the Settlement, excluding legal fees.

b. “Auditor Defendants’ Counsel” means Williams & Connolly LLP, Honigman Miller Schwartz and Cohn LLP, and Sidley Austin LLP.

c. “Auditor Defendant Released Claims” shall have the meaning ascribed to it in ¶ 13.

d. “Claims” means any and all manner of claims, demands, rights, actions, potential actions, causes of action, liabilities, duties, damages, losses, diminutions in value, obligations, agreements, suits, fees, attorneys’ fees, expert or consulting fees, debts, expenses, costs, sanctions, judgments, decrees, matters, issues, and controversies of any kind or nature whatsoever, whether known or unknown, contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, apparent or not apparent, foreseen or unforeseen, matured or not matured, which now exist, or heretofore or previously existed, or may hereafter exist (including, but not limited to, any claims arising under federal, state or foreign law, common law, bankruptcy law, statute, rule, or regulation relating to alleged fraud, breach of any duty, breach of any contract, negligence, fraudulent conveyance, avoidance, violations of the federal securities laws, or otherwise), whether individual, class, direct, derivative, representative, on behalf of others, legal, equitable, regulatory, governmental, or of any other type or in any other capacity.

e. “Claims Administrator” means Duff & Phelps LLC, which is consultant to the Official Liquidator of the Lancelot Fund and shall administer the Settlement.

f. “Current Legal Owner” means any one of, and “Current Legal Owners” means all of, those Settlement Class Members who, as identified by the Claims Administrator: (i) are legal owners of record of shares in the Lancelot Fund as of the date the Court enters the Final Approval Order attached hereto as Exhibit C; and (ii) suffered a Net Loss with respect to those shares.

g. “Defendants” means the Lancelot Defendants, the Swiss Financial Defendants, and the Auditor Defendants, collectively.

h. “Escrow Agent” means Signature Bank, which shall be subject to the joint control of McLaughlin & Stern, LLP and Williams & Connolly LLP, except after the occurrence of the Effective Date.

i. “Escrow Account” means an account maintained and controlled by the Escrow Agent into which the Auditor Defendants shall cause to be deposited the Settlement Amount.

j. “Effective Date” means the first date by which all of the events and conditions specified in ¶ 29 have been met and have occurred.

k. “Fee and Expense Application” shall have the meaning ascribed to it in ¶ 22.

l. “Fee and Expense Award” shall have the meaning ascribed to it in ¶ 23.

m. “Final,” when referring to the Final Judgment, means exhaustion of all possible appeals, meaning (i) if no objections are filed pursuant to ¶ 10, the day after entry of the Final Judgment; or (ii) if any objections are filed pursuant to ¶ 10, (a) if no appeal or request for review of the Final Judgment is filed, the day after the date of expiration of any time for appeal or review of the Final Judgment, *i.e.*, thirty (30) days after the Final Judgment or order is entered

on the Court's docket; or (b) if an appeal or request for review of the Final Judgment is filed, the day after the date the appeal or request for review is dismissed, or the Final Judgment is upheld on appeal or review in all material respects, and is not subject to further review on appeal or by certiorari or otherwise; provided, however, that any dispute or appeals relating solely to the amount, payment, or allocation of attorneys' fees and expenses, the Plan of Allocation, or the provisions of ¶ 14 shall have no effect on finality for purposes of determining the date the Final Judgment becomes Final.

n. "Final Judgment" means the final order and judgment to be entered by the Court approving the Settlement, materially in the form attached hereto as Exhibit C, or an alternative judgment finally approving the Settlement that is materially different from Exhibit C and that does not result in any Settling Party terminating the Settlement and Stipulation pursuant to ¶ 28.

o. "NAV" shall have the meaning ascribed to it in ¶ 31.

p. "Net Loss" means the net loss of principal, *i.e.*, the total cash investment made by a Settlement Class Member in the Lancelot Fund, directly or indirectly through one or more predecessor owners, assignors, transferors, or intermediaries, less the total amount of any redemptions or withdrawals by that Settlement Class Member or its assignors, transferors, or intermediaries, from or with respect to such investment in the Lancelot Fund, as calculated by the Claims Administrator.

q. "Mailed Notice" means the "Notice of Proposed Settlement of Class Action and Settlement Fairness Hearing, and Motion for Attorneys' Fees and Reimbursement of Expenses," substantially in the form attached hereto as Exhibit B-1.

r. "Net Settlement Fund" shall have the meaning ascribed to it in ¶ 17.

s. “Non-Dismissed Defendant Judgment” shall have the meaning ascribed to it in ¶ 15.

t. “Notices” means the Mailed Notice and the Published Notice.

u. “Opt-Out” means any one of, and “Opt-Outs” means all of, any Persons who otherwise would be Settlement Class Members and have timely and validly requested exclusion from this Settlement Class in accordance with the provisions of the Preliminary Approval Order and the Notices given pursuant thereto.

v. “Person” means any individual, corporation, fund, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

w. “Plaintiffs” means Tradex Global Master Fund SPC Ltd., the ABL Segregated Portfolio 3 and Tradex Global Master Fund SPC Ltd., the Original Segregated Portfolio 3.

x. “Plaintiffs’ Counsel” means McLaughlin & Stern, LLP and Cohen Milstein Sellers & Toll PLLC.

y. “Plan of Allocation” means a plan or formula for allocating the Settlement Fund to Current Legal Owners after payment of Administrative Expenses, Taxes and Tax Expenses, and such attorneys’ fees, costs and expenses as may be awarded by the Court. Any Plan of Allocation is not a condition to the effectiveness of this Stipulation, and the Released Parties shall have no responsibility or liability with respect thereto.

z. “Preliminary Approval Order” means the proposed order preliminarily

approving the Settlement and directing notice thereof to the Settlement Class substantially in the form attached hereto as Exhibit A.

aa. “Prior Opt-Outs” means all Persons, identified in Exhibit D hereto, who previously opted out of the Class by filing or settling their own claims against one or more of the Auditor Defendants.

bb. “Published Notice” means the Summary Notice, substantially in the form of Exhibit B-2, that is to be published in accordance with the Preliminary Approval Order.

cc. “Released Claims” means any and all Claims, including Unknown Claims, that have been, could have been, or in the future can or might be asserted in any federal, state or foreign court, or in any arbitration proceeding, tribunal, or any other proceeding or forum by or on behalf of any of the Releasing Parties against any one or more of the Released Parties, regardless of whether any such Released Parties were named in the Action, which have arisen, could have arisen, arise now, or hereafter arise out of or relate in any manner to the allegations, facts, events, matters, acts, occurrences, statements, representations, purported misrepresentations or omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, at issue, or set forth in, or referred to or otherwise related in any way, directly or indirectly, to: (i) the Action, and the allegations, claims, defenses, and counterclaims asserted in the Action, (ii) audits or reviews of the financial statements of the Lancelot Fund, (iii) any disclosures or failures to disclose, by one or more of the Auditor Defendants and/or the Released Parties, (iv) any fiduciary, contractual, common law, or other obligations of one or more of the Auditor Defendants and/or the Released Parties (to the extent such duties existed) related to the Lancelot Fund or the investors of the Lancelot Fund, (v) any other services provided to the Lancelot Fund by one or more of the Auditor Defendants and/or

the Released Parties, (vi) due diligence by one or more of the Auditor Defendants and/or the Released Parties related to the Lancelot Fund, (viii) purchases of, sales of (or decisions not to sell), or fees paid in relation to, direct or indirect investments in the Lancelot Fund, (ix) any direct or indirect investment in the Lancelot Fund, or (x) any claims in connection with, based upon, arising out of, or relating to the Settlement (but excluding any claims to enforce the terms of the Settlement).

dd. “Released Parties” means (i) each of the Auditor Defendants, their respective past, present and future, direct or indirect parent entities, subsidiaries, member firms, and other affiliates, predecessors and successors of each and all such entities, and each and all of the foregoing entities’ respective past, present, and future directors, officers, employees, partners (in the broadest concept of that term), principals, alleged partners, stockholders, members and owners, attorneys, advisors, consultants, trustees, insurers, co-insurers, reinsurers, representatives, and assigns; (ii) to the extent not included in (i) above, any and all persons, firms, trusts, corporations, and other entities in which any of the Auditor Defendants has a financial interest or was a founder, settler, or creator of the entity, and, in their capacity as such, any and all officers, directors, employees, trustees, beneficiaries, settlers, creators, attorneys, consultants, insurers, co-insurers, reinsurers, agents, or representatives of any such person, firm, trust, corporation, or other entity; and (iii) in their capacity as such, the legal representatives, heirs, executors, and administrators, of any of the foregoing.

ee. “Releasing Parties” means Plaintiffs, each and every Settlement Class Member, and each of their respective predecessors, successors, assigns, parents, subsidiaries and other affiliates, officers, directors, employees, partners, members, managers, owners, agents, trustees, beneficiaries, advisors, consultants, insurers, reinsurers, stockholders, investors,

nominees, custodians, leverage providers, attorneys, heirs, representatives, administrators, executors, devisees, legatees, and estates.

ff. “Settlement” means the settlement contemplated by this Stipulation.

gg. “Settlement Amount” means the cash sum of \$27,500,000 (twenty-seven million, five-hundred thousand U.S. dollars).

hh. “Settlement Class” means the class of all Persons who purchased or who are currently, or were at any point in time, legal and/or beneficial owners or custodians of record of shares in the Lancelot Fund, including their assignees and transferees, excluding: (i) the Prior Opt-Outs; (ii) the Opt-Outs; and (iii) the Defendants and their past or present shareholders, officers, directors, and employees.

ii. “Settlement Class Member” means any one of, and “Settlement Class Members” means all of, the members of the Settlement Class.

jj. “Settlement Fund” means the Settlement Amount, and interest earned thereon.

kk. “Settlement Hearing” means the hearing at or after which the Court makes a final decision as to whether the Settlement contained in the Stipulation is fair, reasonable and adequate, and therefore, should receive final approval from the Court.

ll. “Settling Party” means any one of, and “Settling Parties” means all of, the parties to the Stipulation, namely the Auditor Defendants and Plaintiffs on behalf of themselves and the Settlement Class.

mm. “Tax Expenses” shall have the meaning ascribed to it in ¶ 9.

nn. “Taxes” shall have the meaning ascribed to it in ¶ 9.

oo. “Termination Notice” shall have the meaning ascribed to it in ¶ 28.

pp. “Unknown Claims” shall mean all claims, demands, rights, liabilities, and causes of action of every nature and description which any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her, or its settlement with and release of the Released Parties, or might have affected his, her, or its decision not to opt-out of or object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Judgment shall have expressly waived, the provisions, rights, and benefits of 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.

Plaintiffs shall expressly waive and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state, territory, country, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Settlement Class Members may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiffs shall expressly fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon

any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any fiduciary, contractual, or other duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs acknowledge, and the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

II. The Settlement Consideration

1. In consideration for the promises and obligations contained herein and the full and final release, settlement and discharge of all Released Claims against the Released Parties, the Settling Parties have agreed to payments and waivers as set forth in ¶ 2 and ¶ 3, subject to the conditions set forth in this Stipulation.

2. Subject to the terms of the Stipulation, no later than fifteen (15) business days after the date on which the Court grants preliminary approval of the Settlement, the Auditor Defendants shall cause the Settlement Amount to be deposited into the Escrow Account under the control of the Escrow Agent.

3. Apart from the payments identified in ¶ 2 and ¶ 8, the Auditor Defendants shall have no further monetary obligation to Plaintiffs' Counsel, Plaintiffs, the Settlement Class Members, or the Settlement Class under this Settlement.

III. Representations and Warranties Regarding the Settlement Consideration

4. RSM warrants that it is not insolvent nor will the payments set forth in ¶ 2 or ¶ 8 herein render it insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code, including §101 and §547 thereof, or any similar provisions of foreign law.

IV. Handling and Disbursement of Funds by the Escrow Agent

5. No monies will be disbursed from the Settlement Fund until after the Effective Date except:

- i. As provided in ¶ 8 below;
- ii. As provided in ¶ 35 below, if applicable; and
- iii. To pay Taxes and Tax Expenses (as defined in ¶ 9 below) on the income earned by the Settlement Fund. Taxes and Tax Expenses shall be paid out of the Settlement Fund in the Escrow Account and shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent (pursuant to written instructions from Plaintiffs' Counsel pursuant to this Stipulation) without prior order of the Court.

6. The Escrow Agent (pursuant to written instructions from Plaintiffs' Counsel) shall invest any funds deposited into the Settlement Fund in short term instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof (or funds that invest solely in such instruments), and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates.

7. The Escrow Agent shall not disburse the Settlement Fund, except as provided in this Stipulation, by an order of the Court, or with the written agreement of counsel for each of the Settling Parties pursuant to this Stipulation.

8. The Escrow Agent may, without further approval from the Auditor Defendants or the Court, disburse at the direction of Plaintiffs' Counsel up to \$100,000 (one hundred thousand U.S. dollars) from the Settlement Fund prior to the Effective Date to pay Administrative Costs, including, without limitation: escrow agent costs and costs for printing, mailing, and publishing the Notices as directed by the Court. In the event that such costs are incurred prior to payment of the Settlement Amount by the Auditor Defendants and the Settlement is not consummated for any reason, the Auditor Defendants shall promptly reimburse such costs up to a maximum of \$50,000 (fifty thousand U.S. dollars). The foregoing sentence shall survive termination of the Settlement.

V. Taxes

9. The Settling Parties agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1. In addition, Plaintiffs' Counsel or their designee shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 9, including the "relation-back election" (as defined in Treasury Regulation § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Plaintiffs' Counsel or their designee to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

i. For purposes of § 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation § 1.468B-2(k)(3) promulgated thereunder, the "administrator" shall be Plaintiffs' Counsel or their designee. Plaintiffs' Counsel or their designee shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described

in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this ¶ 9) shall be consistent with this ¶ 9 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund in the Escrow Account as provided in ¶ 9(ii).

ii. All taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Auditor Defendants or the Auditor Defendants' Counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes ("Taxes"), and expenses and costs incurred in connection with the operation and implementation of this ¶ 9 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses or penalties relating to filing (or failing to file) the returns described in this ¶ 9) ("Tax Expenses")), shall be paid out of the Settlement Fund in the Escrow Account, as appropriate. The Auditor Defendants and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid out of the Settlement Fund without prior order from the Court. The Escrow Agent (pursuant to written instructions from Plaintiffs' Counsel pursuant to this Stipulation) shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Current Legal Owners any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be withheld under Treasury Regulation § 1.468B-2(l)(2)). Neither the Auditor Defendants nor the Auditor Defendants' Counsel is responsible therefore nor shall they have any liability with respect thereto.

The Settling Parties agree to cooperate with each other, and their tax attorneys and accountants, to the extent reasonably necessary to carry out the provisions of this ¶ 9.

VI. Preliminary Approval Order, Notices, and Settlement Hearing

10. Promptly after the execution of this Stipulation, Plaintiffs' Counsel shall submit this Stipulation and its exhibits to the Court and shall apply for preliminary approval of the Settlement set forth in this Stipulation, entry of a preliminary approval order (substantially in the form of Exhibit A), and approval for the mailing, publication, and/or dissemination of the Notices. The Mailed Notice (substantially in the form of Exhibit B-1) and the Published Notice (substantially in the form of Exhibit B-2) shall include the general terms of the Settlement and the provisions of the Plan of Allocation, and shall set forth the procedure by which recipients of either of the Notices may object to the Settlement or the Plan of Allocation or request to be excluded from the Settlement Class. The date and time of the Settlement Hearing shall be added to the Notices before they are mailed, published, or otherwise provided to Settlement Class Members.

11. At the time of the submission described in ¶ 10, the Settling Parties, through their counsel, shall jointly request that, after the Notices are provided, the Court hold the Settlement Hearing and approve the Settlement as set forth herein as promptly after the Settlement Hearing as possible, except to the extent a Settling Party has exercised the right to terminate the Settlement pursuant to ¶ 28, ¶ 31, or ¶ 32.

VII. Releases

12. Upon the Effective Date, the Releasing Parties, on behalf of themselves, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means any disbursement from the Settlement Fund, shall be deemed to have, and by operation of the Final Judgment shall have,

as of the Effective Date, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties and shall have covenanted not to sue the Released Parties with respect to all such Released Claims, and shall be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties. Nothing contained herein shall, however, bar the Releasing Parties from bringing any action or claim to enforce the terms of this Stipulation or the Final Judgment.

13. Upon the Effective Date, the Released Parties shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of Plaintiffs, Settlement Class Members, and Plaintiffs' Counsel from all Claims which arise out of, concern or relate to the institution, prosecution, settlement, or dismissal of the Action (the "Auditor Defendant Released Claims"), and shall be permanently enjoined from prosecuting the Auditor Defendant Released Claims against Plaintiffs, Settlement Class Members, and Plaintiffs' Counsel. Nothing contained herein shall, however, bar the Auditor Defendants from bringing any action or claim to enforce the terms of this Stipulation or the Final Judgment.

14. To the fullest extent permitted by law, the proposed Final Judgment will include an order providing that all Persons shall be permanently enjoined, barred, and restrained from bringing, commencing, prosecuting, or asserting any claims, actions, or causes of action for contribution, indemnity, or otherwise against any of the Released Parties seeking as damages or otherwise, the recovery of all or any part of any liability, judgment, or settlement which any such

Person pays or is obligated to pay or agrees to pay to the Settlement Class or any Settlement Class Member arising out of, relating to, or concerning any acts, facts, statements, or omissions that were or could have been alleged in the Action, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, third-party claims, or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, tribunal, or any other proceeding or forum. For the avoidance of doubt, nothing in the Final Judgment shall apply to claims between and among the Auditor Defendants, on the one hand, and their insurers, co-insurers or reinsurers, on the other hand.

15. Any final verdict or judgment that may be obtained by one or more of Plaintiffs or one or more of the other Settlement Class Members, whether individually or on behalf of a class, against one or more Persons barred from seeking contribution pursuant to this Stipulation (a “Non-Dismissed Defendant Judgment”) shall be reduced, to the extent permitted by applicable law, by the greater of (i) the amount that corresponds to the percentage of responsibility attributed to the Released Parties under the Non-Dismissed Defendant Judgment; and (ii) the gross monetary consideration provided to such Plaintiff or other Settlement Class Member or Settlement Class Members pursuant to this Stipulation.

VIII. Administration and Calculation of Claims, Final Awards and Supervision and Distribution of the Settlement Fund

16. Under the supervision of Plaintiffs’ Counsel, acting on behalf of the Settlement Class, and subject to such supervision and direction of the Court as may be necessary or as circumstances may require, the Claims Administrator shall administer and calculate the amounts to be paid to Settlement Class Members and shall oversee distribution of the Net Settlement Fund (as defined below).

17. The Settlement Fund shall be applied as follows:

- i. To pay the Taxes and Tax Expenses described in ¶ 9 above;
- ii. To pay Administrative Costs;
- iii. To pay Plaintiffs' Counsel's attorneys' fees and expenses and Plaintiffs' actual out-of-pocket expenses relating to the representation of the Settlement Class (including lost wages) and, if appropriate, an incentive award as provided in ¶¶ 22 and ¶ 23, to the extent allowed by the Court; and
- iv. To distribute the balance of the Settlement Fund, that is, the Settlement Fund less the items set forth in ¶¶ 17(i), (ii), and (iii) (the "Net Settlement Fund"), to the Current Legal Owners (less applicable bank fees) as allowed by this Stipulation, the Plan of Allocation, or the Court.

18. Upon and after the Effective Date with respect to the Net Settlement Fund, and in accordance with the terms of the Plan of Allocation or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Current Legal Owners subject to and in accordance with the Plan of Allocation set forth in the Notices.

19. This is not a claims-made settlement, and if all conditions of the Stipulation are satisfied and the Final Judgment becomes Final, no portion of the Settlement Fund will be returned to the Auditor Defendants. Neither the Auditor Defendants, the Auditor Defendants' Counsel, nor any other of the Released Parties shall have any responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claims against Plaintiffs, Plaintiffs' Counsel, the Claims Administrator, or any of their respective employees and agents based on distribution determinations or claim

rejections made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

20. It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to a Settlement Class Member's claim set forth therein, is not a condition of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. Any order or proceedings relating to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate, or cancel this Stipulation, or affect or delay the finality of the Final Judgment or any other orders entered pursuant to this Stipulation.

21. Consistent with 735 ILCS 5/2-807(b), if any portion of the Net Settlement Fund remains following distribution pursuant to ¶ 17 and is of such an amount that in the discretion of the Claims Administrator it is not cost effective or effective to redistribute to the Current Legal Owners, then such remaining funds, after payment of any further Administrative Costs and Taxes and Tax Expenses, shall be donated to an "eligible organization," as defined in 735 ILCS 5/2-807(a), as designated by Plaintiffs' Counsel.

IX. Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of Expenses

22. Plaintiffs' Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Settlement Fund in the Escrow Account for (i) an award of attorneys' fees; (ii) reimbursement of actual costs and expenses, including the fees and expenses of experts and/or consultants, incurred in connection with prosecuting the Action; and (iii) reimbursement to Plaintiffs of their actual out-of-pocket expenses (including lost wages) and, if appropriate, an incentive award.

23. Within five (5) business days of the date the Court enters its order awarding the amount of Plaintiffs' Counsel's attorneys' fees and expenses, Plaintiffs' expenses, and any incentive award to be paid (collectively, the "Fee and Expense Award"), the Fee and Expense Award shall be paid from the Settlement Fund in the Escrow Account to McLaughlin & Stern, LLP. In the event the Court's Fee and Expense Award is reversed, vacated, or modified on motion for reconsideration or on appeal such that the Fee and Expense Award is reduced, Plaintiffs' Counsel shall be liable to refund to the Escrow Account the full amount of such reduction, within ten (10) business days of such event. In the event the Court's Final Judgment is reversed, vacated, or modified on motion for reconsideration or on appeal such that the Settlement is not approved, or in the event the Settlement is terminated pursuant to any of the provisions of ¶ 28, ¶ 31, or ¶ 32, Plaintiffs' Counsel shall be liable to refund RSM the full amount of the Fee and Expense Award, within ten (10) business days of such event.

24. The procedure for, and allowance or disallowance by the Court of the Fee and Expense Application are not conditions of the Settlement set forth in this Stipulation and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. Any order of or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Final Judgment or any other orders entered pursuant to this Stipulation.

25. Any Fee and Expense Award shall be paid solely from the Settlement Fund in the Escrow Account and shall reduce the settlement consideration paid to the Settlement Class accordingly. The Released Parties shall have no responsibility for, and no liability whatsoever

with respect to, any payments to Plaintiffs' Counsel or Plaintiffs and/or any other Person who receives payment from the Settlement Fund.

X. Class Certification

26. In the Final Judgment, the Settlement Class shall be certified solely for purposes of this Settlement, but in the event that the Final Judgment does not become Final or the Settlement fails to become effective for any reason, all Settling Parties reserve all their rights on all issues, including whether a class should be certified in the Action. For settlement purposes only, in connection with the Final Judgment, the Auditor Defendants shall consent to (i) the appointment of Plaintiffs as the class representatives, (ii) the appointment of Plaintiffs' Counsel as class counsel, and (iii) the certification of the Settlement Class pursuant to 735 ILCS 5/2-801.

XI. Stay of Litigation

27. The Settling Parties agree to stay the litigation of claims in the Action as against the Auditor Defendants pending the occurrence of the Effective Date and shall work together in good faith to seek any necessary orders from the Court to effectuate such a stay.

XII. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

28. Plaintiffs, on behalf of the Settlement Class, or any of the Auditor Defendants, shall have the right to terminate the Settlement and Stipulation by providing written notice of their election to do so ("Termination Notice") to all other Settling Parties within ten (10) business days of: (i) entry of a Court order declining to enter the Preliminary Approval Order in any material respect; (ii) entry of a Court order refusing to approve this Stipulation in any material respect; (iii) entry of a Court order declining to enter the Final Judgment in any material respect; or (iv) entry of an order by which the Final Judgment is modified or reversed in any material respect by the Court, the Appellate Court of Illinois, the Illinois Supreme Court, or the United States Supreme Court. No Settling Party shall have the right to terminate or withdraw from the

Settlement and Stipulation based on any event or ruling in any other lawsuit or proceeding, including an action entitled *RS Investments Ltd. v. RSM US LLP*, Circuit Court of Cook County, Chancery Division (16-L-011459) and its appeal, *RS Investments Ltd. v. RSM US LLP*, Appellate Court of Illinois, First Judicial District (1-17-2410).

29. The Effective Date of this Stipulation shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

i. The Settling Parties have not exercised their respective rights to terminate the Settlement as provided in ¶ 28 or ¶ 31, and the time to exercise those rights has expired;

ii. The Court has entered the Preliminary Approval Order attached hereto as Exhibit A or an order containing materially the same terms;

iii. The Court has approved the Settlement, following issuance of the Notices and the Settlement Hearing, and has entered the Final Judgment; and

iv. The Final Judgment has become Final.

30. Upon the occurrence of the Effective Date, any and all interest or right of the Auditor Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation. At the occurrence of the Effective Date, counsel for the McGladrey Defendants shall no longer have joint control of the Escrow Agent with respect to the Settlement Fund.

31. If the aggregate Net Asset Value (“NAV”) of Opt-Outs exceeds the threshold specified in a separate “Supplemental Agreement” between the Settling Parties, then RSM shall have, in its sole and absolute discretion, the option to terminate this Stipulation and to render the Settlement null and void in accordance with the procedures set forth in the Supplemental

Agreement. The individual and/or aggregate NAV of the Prior Opt-Outs identified in Exhibit D shall not be included in the calculation set forth in this paragraph. The Supplemental Agreement is confidential and shall not be filed with the Court, except as may be required by court order (in which case, the Settling Parties shall request that it be filed and maintained with the Court under seal).

32. If some or all of the conditions specified in ¶ 29 above are not met, or in the event that this Stipulation is not approved by the Court, or the Settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, then this Stipulation shall be canceled and terminated, unless all of the Settling Parties agree in writing to proceed with this Stipulation. None of the Settling Parties, or any of them, shall have any obligation whatsoever to proceed under any terms other than those provided for and agreed herein. If any Settling Party engages in a material breach of the terms hereof, any other Settling Party, provided that it is in substantial compliance with the terms of this Stipulation, may terminate this Stipulation on notice to all the Settling Parties.

33. In the event the Stipulation shall terminate, or be canceled, or shall not become effective for any reason, the Settling Parties shall be restored to their respective positions in the Action immediately prior to March 8, 2018, and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice and the Settling Parties shall negotiate in good faith any remaining deadlines and re-schedule any previously set depositions.

34. In the event the Stipulation shall terminate, or be canceled, or shall not become effective for any reason, the terms and provisions of this Stipulation, except as otherwise

provided herein, shall have no further force and effect with respect to the Settling Parties and shall not be used in this 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*.

35. In the event the Stipulation shall be terminated, or be canceled, or shall not become effective for any reason, within seven (7) business days after the occurrence of such event, the Settlement Fund, less taxes, any Administrative Costs which have either been disbursed or are determined to be chargeable, shall be refunded by the Escrow Agent to the Auditor Defendants (pursuant to written instructions from counsel pursuant to this Stipulation). At the request of the Auditor Defendants' Counsel, Plaintiffs' Counsel or their designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, pursuant to written direction from the Auditor Defendants.

36. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation, ¶ 14 hereof, or the amount of the Fee and Expense Award, shall constitute grounds for cancellation or termination of the Stipulation.

37. The provisions in this Stipulation governing the rights and responsibilities of the Settling Parties and the Claims Administrator in the event that the Settlement is terminated, canceled, or does not become effective for any reason shall survive such termination, cancellation, or failure to become effective.

XIII. Miscellaneous Provisions

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

39. Each of the attorneys executing this Stipulation, any of its exhibits, or any related

settlement documents on behalf of any Settling Party hereto hereby warrants and represents that he or she has been duly empowered and authorized to do so by the Settling Parties he or she represents.

40. This Stipulation, together with the Supplemental Agreement, constitute the entire agreement between the Settling Parties and supersede any prior agreements. No representations, warranties, or inducements have been made to or relied upon by any Settling Party concerning this Stipulation, other than the representations, warranties and covenants expressly set forth herein and in the Supplemental Agreement. Except as otherwise provided herein, each Settling Party shall bear its own costs.

41. This Stipulation shall be binding upon, and shall inure to the benefit of, the Settling Parties and their respective agents, successors, executors, heirs, and assigns.

42. This Stipulation may be executed in any number of counterparts by any of the signatories hereto and the transmission of an original signature page electronically (including by facsimile or portable document format) shall constitute valid execution of the Stipulation as if all signatories hereto had executed the same document. Copies of this Stipulation executed in counterpart shall constitute one agreement.

43. This Stipulation, the Settlement, and any all disputes arising out of or relating in any way to this Stipulation, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of laws principles.

44. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this

Stipulation.

45. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Settling Parties or their counsel or their respective successors in interest.

46. The Settling Parties, Plaintiffs' Counsel, and the Auditor Defendants' Counsel represent that they will not encourage or otherwise influence any Settlement Class Members to request exclusion from, or object to, the Settlement.

47. The Settling Parties covenant and agree that neither this Stipulation, nor the fact nor any terms of the Settlement, nor any communication relating thereto, is evidence, or an admission or concession by any Settling Party, Plaintiffs' Counsel, the Auditor Defendants' Counsel, or any Released Party, of any fault, liability, or wrongdoing whatsoever, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, or as to the validity or merit of any of the claims or defenses alleged or asserted in any such action or proceeding. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by any Settling Party or Released Party, or any damages or injury to any Settling Party or Released Party. Neither this Stipulation nor the Supplemental Agreement, nor any of the terms and provisions of this Stipulation or Supplemental Agreement, 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 statement in connection therewith, shall (i) 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 Auditor Defendants or Released Parties, or of any infirmity of any defense, or of any damages to Plaintiffs or any other Settlement Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact or any purported liability, fault, or wrongdoing of the Released Parties or any injury or damages to any person or entity, or (iii) shall otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Stipulation or the Supplemental Agreement or the Final Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue and establish that the Stipulation or Supplemental Agreement or Final Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement or Final Judgment, or as otherwise required by law.

48. The 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 Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties, and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

49. All agreements by, between or among the Settling Parties, their counsel and their other advisors as to the confidentiality of information exchanged between or among them shall remain in full force and effect, and shall survive the execution and any termination of this Stipulation and the final consummation of the Settlement, if finally consummated, without regard to any of the conditions of the Settlement.

50. Plaintiffs and Plaintiffs' Counsel represent and warrant that Plaintiffs are Settlement Class Members and none of Plaintiffs' claims or causes of action against one or more

Auditor Defendants in the Action, or referred to in this Stipulation, or that could have been alleged against one or more Defendants in the Action, have been assigned, encumbered, or in any manner transferred in whole or in part.

51. Any failure by any of the Settling Parties to insist upon the strict performance by any other Settling Party of any of the provisions of the Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Settling Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by the other Settling Parties to this Stipulation.

52. The waiver, express or implied, by any Settling Party of any breach or default by any other Settling Party in the performance of such Settling Party of its obligations under the Stipulation shall not be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

IN WITNESS WHEREOF, the Settling Parties have executed this Stipulation by their undersigned counsel as set forth below.



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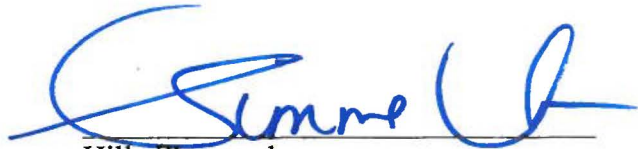
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