

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Thomas Carnes, by and through his Guardian)
ad Litem, Juliana Christine Clegg, on his own) CASE NO.: 3:14-cv-02727-VC
behalf and on behalf of others similarly)
situated,) STIPULATION OF SETTLEMENT
)
Plaintiff,)
)
v.)
)
Atria Senior Living, Inc. and Does 1 Through)
100,)
)
Defendant.)

This Stipulation of Settlement is entered into by and among Plaintiff Thomas Carnes, by and through Juliana Christine Clegg, the Successor Trustee of the Thomas & Alice Family Trust (“Plaintiff”), on his own behalf, and on behalf of others similarly situated (“Settlement Class Members,” as defined below), and Defendant Atria Senior Living, Inc. (“Defendant”). Plaintiff, the Settlement Class Members and Defendant agree that, subject to approval by the United States District Court for the Northern District of California pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Action and all claims and matters raised in it are hereby settled, compromised, resolved and dismissed, with prejudice, on the terms and conditions set forth herein.

RECITALS

A. On June 12, 2014, Plaintiff filed the instant putative class action complaint against Atria Senior Living in the Northern District of California, for claims arising under the Consumer Legal Remedies Act (“CLRA”), California’s Unfair Competition Law, Business & Professions Code section 17200 *et seq.* & 17500 *et seq.* (“UCL”), and section 15610.30 of the Welfare and Institutions Code (the “Elder Fraud Act”) (collectively, the “Claims”). Plaintiff filed a First Amended Complaint on August 7, 2014 and a Second Amended Complaint on December 11, 2014.

B. On April 6, 2015, Defendant answered the Second Amended Complaint, wherein Defendant expressly denied the allegations and Claims alleged in the Second Amended Complaint.

C. When the Action was initially filed, Juliana Christine Clegg served as Mr. Carnes' personal representative. Thereafter, the Court approved Ms. Clegg to act as Mr. Carnes' guardian ad litem. Mr Carnes died on or about September 29, 2015. Ms. Clegg is the Successor Trustee of the Thomas & Alice Carnes Family Trust dated September 28, 2004. The Parties have stipulated to substitute Ms. Clegg as the named plaintiff in the Action, in her capacity as Mr. Carnes' guardian ad litem and the Successor Trustee of the Thomas & Alice Carnes Family Trust, dated September 28, 2004.

D. The Parties engaged in substantial investigation, motion practice, and discovery efforts before reaching a settlement. Among other things, the discovery included written discovery and responses exchanged between the parties (including interrogatories and requests for production of documents, depositions of Defendant’s employees, subpoenas to third parties for production of documents and production and review of said third-party documents.

E. On November 17, 2015, the Parties engaged in a full-day mediation before the Honorable Rebecca Westerfield (ret.) of JAMS in San Francisco. Although the case did not resolve at the initial mediation sessions, in the month following the mediation, the parties continued settlement efforts with Judge Westerfield’s assistance, which further efforts resulted in the mediator making a proposal for settlement of the case for the parties to either accept or reject. On December 17, 2015, the parties agreed to accept Judge Westerfield’s mediator’s proposal to resolve the entire Action in full. The mediation and negotiations resulted in this Agreement.

F. The Parties have reached the resolution set forth in this Agreement, providing for, among other things, the settlement of the Action between and among Plaintiff, on behalf of himself and the Settlement Class, and Defendant, on the terms and subject to the conditions set forth below. This Agreement was reached as a result of extensive arm's length negotiations between the Parties and their counsel.

G. Class Counsel have determined that a settlement of the Action on the terms reflected in this Agreement provides substantial benefits to the Settlement Class, is fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Class. In agreeing to the settlement set forth in this Agreement, Class Counsel have considered numerous risks of continued litigation and other factors, including but not limited to the following:

1. The expense and length of time necessary to prosecute the Action through trial;
2. The uncertainty of outcome at trial and the possibility of an appeal by either side following the trial;
3. The possibility that a contested class might not be certified, and if certified, the possibility that such certification would be reversed on appeal;
4. The fact that Defendant could file a motion for summary judgment that, if granted, would dispose of all or many of the claims in the Action;
5. The fact that Defendant could file a preemptive motion to strike some or all of the class allegations in the Second Amended Complaint; and
6. The risk that Plaintiff and the proposed class may recover no damages or substantially less damages than the amounts sought in the Action;
7. The benefits provided to Plaintiff and the Settlement Class members under the terms of this Agreement.

H. Weighing the above factors, as well as all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Plaintiff and his counsel are satisfied that the terms and conditions of this settlement are fair, adequate, and in the best interests of Plaintiff and the Settlement Class members.

I. Defendant, to avoid the costs, disruption to business operations and distraction of further litigation, and without admitting the truth of any allegations made in the Action, or any liability with respect thereto, or any wrongdoing whatsoever, has concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in this Agreement.

J. Therefore, it is hereby stipulated and agreed by and among Plaintiff, the Settlement Class and Defendant that the Second Amended Complaint shall be dismissed with prejudice upon the Effective Date (defined below), and this Action in its entirety, and the Claims, shall be finally and fully compromised, settled, and released, subject to the approval of the Court

as required by Rule 23 of the Federal Rules of Civil Procedure, on the following terms and conditions:

SETTLEMENT TERMS

1. Definitions

For purposes of this Settlement Agreement only, the words and terms used in this Agreement that are expressly defined in this Section or elsewhere in this Settlement Agreement shall have the meaning ascribed to them in those definitions.

1.1 “Action” means this lawsuit, *Thomas Carnes by and through his guardian ad litem, Juliana Christine Clegg v. Atria Senior Living, Inc. and DOES 1 through 100*, case no. 3:14-cv-02727-VC, which is currently pending in the United States District Court for the Northern District of California, including, without limitation, any appeals or requests for leave to appeal any ruling or judgment entered in that case.

1.2 “Agreement,” “Settlement Agreement,” or “Stipulation” means this Stipulation of Settlement (including all Exhibits attached hereto).

1.3 “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court based on the stipulation described herein to compensate Class Counsel as determined by the Court, but not to exceed one-third of the Settlement Fund, plus reimbursement of litigation costs actually incurred not to exceed \$135,000.

1.4 “Award” or “Settlement Award” means the relief obtained by Settlement Class Members, as described in section 9 of this Agreement.

1.5 “Class Notice” or “Notice” means the forms of notice to be disseminated to Settlement Class Members informing them about the Settlement Agreement. A copy of the proposed Notice is attached as Exhibit 2.

1.6 “Class Representative” means plaintiff Thomas Carnes, by and through his guardian ad litem and legal successor, Juliana Christine Clegg.

1.7 “Class Counsel” means:

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Michael D. Thamer
michael@trinityinstitute.com

1.8 “Court” means the United States District Court for the Northern District of California.

1.9 “Defendant” or “Atria” means Atria Senior Living, Inc.

1.10 “Defendant’s Counsel” means the following counsel of record for Defendant:

JONES DAY
3161 Michelson Drive, Suite 800
Irvine, CA 92612
Telephone: (949) 851-3939
Facsimile: (949) 553-7539

Darren K. Cottriel
darrencottriel@jonesday.com

1.11 “Distribution Request” means a request for payment of a Settlement Award made by a Settlement Class Member, or made by the legal representative of a deceased Settlement Class Member. Any Distribution Request must be submitted to the Settlement Administrator and post-marked not later than thirty (30) days after the Effective Date (herein the “Distribution Request Deadline”).

1.12 “Effective Date” means the later in time of: (a) the date of entry of the Final Judgment and Order Approving Settlement, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other effort to obtain review has been initiated, the date after such appeal or other review has

been finally concluded and is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise.

1.13 “Final Approval Hearing” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of this Agreement.

1.14 “Final Judgment and Order Approving Settlement” means the Final Judgment and Order Approving Settlement to be entered by the Court, substantially in the form of Exhibit 4 approving the settlement, as fair, adequate, and reasonable, confirming the certification of the Settlement Class, and issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Settlement Agreement.

1.15 “Motion for Preliminary Approval of Settlement” means the motion, to be filed by Class Counsel on behalf of Plaintiff, and not to be opposed by Defendant, for Preliminary Approval of this Agreement.

1.16 “Notice and Administration Expenses” means all costs and expenses incurred by the Settlement Administrator, including all notice expenses, the cost of administering the Notice Program and the costs of processing all payments to Settlement Class Members.

1.17 “Notice Date” means the date by which the Settlement Administrator substantially completes dissemination of the Class Notice as provided in the Agreement and shall be no later than ten (10) business days after Settlement Administrator receives the Settlement Class Member Information List.

1.18 “Objection Date” means the date by which Settlement Class Members must file and serve objections to the settlement, and shall be thirty-five (35) days after the Notice Date.

1.19 “Opt Out Date” means the postmark date by which a Request for Exclusion must be submitted to the Settlement Administrator in order for a Settlement Class Member to be excluded from the Settlement Class, and shall be thirty-five (35) days after the Notice Date.

1.20 “Parties” means Plaintiff, the Settlement Class and Defendant.

1.21 “Person” or “Persons” means any natural or artificial person, business entity or other legal entity, including without limitation individuals, sole proprietorships, associations, companies, firms, partnerships, joint ventures, corporations, employees or former employees, or any other business, governmental agencies, and any divisions, departments, or other units thereof.

1.22 “Plaintiff” means named plaintiff Thomas Carnes, by and through his guardian ad litem and legal successor, Juliana Christine Clegg.

1.23 “Preliminary Approval Order” means the order to be entered by the Court, substantially in the form of Exhibit 3, preliminarily approving the Settlement, certifying the Settlement Class, setting the date of the Final Approval Hearing, approving the Notice Program and Class Notice, and setting the Opt Out Date, Objection Date, and Notice Date.

1.24 “Related Persons” means any and all past, present and future parent companies and entities, predecessors, assigns, direct or indirect subsidiaries, divisions, subdivisions, brands, departments, affiliates, related corporations, limited liability companies, holding companies, operating companies and other entities, general partners, limited partners, partnerships, partners, joint ventures, co-venturers, shareholders, members, investors, owners, directors, officers, employees, agents, attorneys, insurers, experts, consultants, predecessors, successors, heirs, administrators, executors, trusts, trustees, fiduciaries, beneficiaries, creditors, assigns, agents and representatives of Defendant.

1.25 “Released Claims” means any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature whatsoever against the Released Parties, including without limitation any and all damages, loss, costs, expenses, penalties, attorneys’ fees and expert fees, and interest, whether known or unknown, suspected or unsuspected, assigned or unassigned, asserted or unasserted, whether as individual claims or claims asserted on a class basis or on behalf of the general public, in law or equity, arising out of or relating to statements, representations, acts, omissions or failures to disclose made prior to March 17, 2016 by the Released Parties regarding the Released Parties’ agreements, advertising, marketing, or promotion concerning the use or consideration of resident assessments to determine, evaluate, review or set facility staffing or staffing levels or care amounts, which have been asserted, could reasonably have been asserted or in the future might be asserted by the Releasing Parties in the Action, including but not limited to claims alleging any type of fraud, misrepresentation, omission, false advertising or unfair trade practice under any state or federal law.

Specifically excluded from this release are any and all individual claims solely for personal injuries, wrongful death, bodily harm, or emotional distress resulting therefrom. In the event that any Settlement Class Member asserts any such excluded claim in a future action against any Released Party, nothing in this Agreement shall preclude the Settlement Class Member from asserting any and all relevant allegations in support of such claim, including without limitation, allegations that the facility was understaffed.

Also specifically excluded from this release are claims based on a breach of this Agreement or the Stipulated Injunction.

1.26 “Released Parties” or “Released Party” means (i) Atria, (ii) all Related Persons, and (ii) any and all of their respective predecessors, successors, assigns, parents, direct or indirect subsidiaries, divisions, departments, and affiliates, and, in addition to the foregoing entities and individuals, any and all of their respective past, present and future officers, directors, employees, shareholders, member, partners, joint ventures, co-venturers, employees, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a Party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

1.27 “Releasing Party” or “Releasing Parties” means Plaintiff, each and every Settlement Class Member, and any Person claiming by or through him/her/it as his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, trustee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee or affiliate. The Parties expressly agree and

acknowledge that Releasing Party includes any legal successor to or trustee, executor or other legal representative of any deceased Settlement Class Member, including that deceased Settlement Class Member's estate.

1.28 "Request for Exclusion" means the written communication that must be submitted to the Settlement Administrator and postmarked on or before the Opt Out Date by a Settlement Class Member who wishes to be excluded from the Settlement Class.

1.29 "Reserve Fund" means the \$25,000 that the Settlement Administrator shall hold in the Settlement Fund to pay late-submitted Distribution Requests. The amount of any Settlement Award checks not cashed within the check cashing deadline (after reasonable reminders issued by the Settlement Administrator) shall be added to the Reserve Fund. Any moneys left in the Reserve Fund not paid to Settlement Class Members shall be paid to the Institute on Aging, or other appropriate cy pres recipient(s) qualified under 501(c)(3) and nominated by Class Counsel and approved the Court.

1.30 "Settlement Administrator" or "Administrator" means KCC/Gilardi & Co., LLC, which subject to Court approval, shall design and implement the program for disseminating notice to the Settlement Class, administer the payment portion of this settlement, and perform overall administrative functions.

1.31 "Settlement Class" means Plaintiff and all similarly situated Persons who resided at one of the California assisted living facilities owned, managed and/or operated by Defendant at any time between June 12, 2010 through and including March 17, 2016 (the "Settlement Class Period"), as defined for the purpose of this Settlement Agreement only.

1.32 "Settlement Class Member" means any Person falling within the description of the Settlement Class (including any legal successor, trustee or executor to any such Persons who are deceased) who does not opt out of the Settlement Class. "Eligible Settlement Class Member" means any Settlement Class Members for whom addresses have been provided to or located by the Settlement Administrator, or any Settlement Class Member (or in the case of any deceased Settlement Class Member, their successor(s) or trustee(s)) who submitted timely Distribution Requests.

1.33 "Settlement Class Member Information List" means and includes all the following information within Defendant's possession, custody or control: (a) a list of any Person meeting the definition of the Settlement Class; (b) names of any family member or representative of any such Person; and the (c) last-known addresses, phone numbers or other contact information for any Settlement Class Member and their family members or representatives.

1.34 "Settlement Fund" means the \$6.4 million that Defendant has agreed to pay in full settlement and resolution of the Action.

1.35 "Settlement Website" means the Internet website to be established for this settlement by the Settlement Administrator to provide information to the public and the Settlement Class about this Agreement.

1.36 “Stipulated Injunction” or “Injunction” means the Court-approved injunction agreed to by the parties as part of this Settlement, a copy of which is attached as Exhibit 1 hereto

1.37 Other capitalized terms in this Agreement not defined in this Section shall have the meanings ascribed to them elsewhere in this Agreement.

2. Preliminary Settlement Approval

2.1 As soon as practicable after the signing of this Agreement, Plaintiff at his sole expense shall move the Court for an order: (a) preliminarily approving this Agreement as fair, reasonable and adequate; (b) conditionally certifying the Settlement Class for settlement purposes only; (c) approving the form, manner, and content of the Class Notice; (d) setting the date and time of the Final Approval Hearing; (e) appointing Plaintiff as representatives of the Settlement Class for settlement purposes only; and (f) appointing Class Counsel for settlement purposes only. Defendant shall cooperate with Plaintiff to obtain the Preliminary Approval Order consistent with the terms herein.

2.2 This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation by Plaintiff, or of any defense asserted by Defendant, in the Action; (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Settlement Class Member, or their respective counsel; or (c) the propriety of class treatment of Plaintiff’s claims for any purpose other than for purposes of settlement and this Settlement Agreement.

2.3 With the Motion for Preliminary Approval, Plaintiff will seek certification of the Settlement Class for settlement purposes only. Defendant hereby consents, solely for purposes of settlement and this Settlement Agreement, to the certification of the Settlement Class, to the appointment of Class Counsel, and to the approval of Plaintiff as suitable representative of the Settlement Class; provided, however, that if the Court fails to approve this Agreement or the Agreement otherwise fails to be consummated, then Defendant shall retain all rights it had immediately preceding the execution of this Agreement to oppose and object to the maintenance of the Action as a class action for any purpose.

3. Notice to California and Federal Officials

3.1 In compliance with the provisions of the Class Action Fairness Act, 28 U.S.C. §1715, within ten (10) days after the Motion for Preliminary Approval is filed, Defendant, by and through the Settlement Administrator, shall provide notice of this proposed Settlement to the Attorney General of the United States and the California Attorney General, and shall file with the Court a certification stating the notice was provided and the date(s) on which the notices were sent.

4. Settlement Class Notice

4.1 No later than ten (10) business days after the entry by the Court of the Preliminary Approval Order, Defendant shall furnish the Settlement Administrator with the Settlement Class Member Information List.

4.2 No later than ten (10) business days after the Settlement Administrator receives the Settlement Class Member Information List, the Settlement Administrator shall substantially complete the dissemination of Class Notice to potential Settlement Class Members. The Parties agree that notice by United States mail and the other methods set forth herein constitutes the best means under the circumstances of this case to effect notice to the Settlement Class, and that the notice program described in this Section comports with the requirements of FRCP 23 and due process.

4.3 At or prior to the Final Approval Hearing, the Settlement Administrator shall provide the Court with an affidavit attesting that Notice was disseminated pursuant to the Notice Program set forth below.

4.4 Defendant agrees to respond to requests from the Settlement Administrator to review any relevant information held by Defendant if necessary to confirm updated addresses for Settlement Class Members, within five (5) business days of Defendant's receipt of the Settlement Administrator's request.

4.5 The Class Notice delivered to Settlement Class Members shall be substantially similar to Exhibit 2, attached hereto. At a minimum, the Notice shall include: (1) contact information for Class Counsel; (2) the address for the Settlement Website; (3) instructions on how to access the case docket via PACER or in person at any of the Court's locations; (4) the date of the Final Approval Hearing and a clear statement that the date may change without further notice to the class; (5) an advisory that Settlement Class Members should check the Settlement Website or the Court's PACER site to confirm that the date has not been changed; (6) an explanation of the procedures for opting out of the Settlement Class including the applicable deadline for opting out; (7) instructions to Settlement Class Members who wish to submit objections to the settlement; (8) a short, plain statement of the background of the Action and the proposed Agreement; (9) a statement that any Award to Settlement Class Members under the Agreement is contingent on the Court's final approval of the Agreement; (10) an explanation that any judgment or orders entered in the Action or the Other Actions, whether favorable or unfavorable to the Settlement Class shall include and be binding on all Settlement Class Members who have not been excluded, even if they have objected to the proposed Agreement and even if they have another claim, lawsuit, or proceeding pending against Defendant.

4.6 The Class Notice shall be provided as follows:

4.6.1 Notice by Mail: No later than ten (10) business days after the Settlement Administrator receives the Settlement Class Member Information List, the Settlement Administrator shall substantially complete the dissemination of the Notice by U.S. Mail to the last known addresses of the Settlement Class Member, and their family members or legal representatives, as provided by Defendant in the Settlement Class Member Information List.

4.6.2 Notice by Publication: No later than ten (10) business days after the Settlement Administrator receives the Settlement Class Member Information List, the Settlement Administrator shall substantially complete the publication of the Notice, or a summary version of the Notice as approved by the Court, through a single publication in the USA Today (California weekday edition), or equivalent media publication approved by the Court.

4.6.3 Posting of the Notice: On or before the date that Notice by Publication is accomplished, the Settlement Administrator shall post the Notice on the Settlement Website. The Notice shall remain available by these means until the Effective Date. The Notice may also be posted on the websites of Class Counsel at their option.

5. Opt-out and Objection Procedure

5.1 Any Settlement Class Member who intends to object to the fairness of the Settlement must do so in writing no later than the Objection Date. The written objection must be filed with the Court and served on the Class Counsel identified in the Notice and Defendant's Counsel no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and, if represented by counsel, of his/her counsel; (c) a statement that the objector resided at or signed a contract with Emeritus during the class period, or that the objector is the legal successor to such a person; (d) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (e) a clear statement of the objection to the Settlement and grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; and (g) the objector's signature.

5.2 Any Settlement Class Member who fails to file and serve a timely written objection in the time and manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by objection, appeal or otherwise) to the Settlement and this Agreement.

5.3 Any Settlement Class Member may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's sole expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement, including attorneys' fees.

5.4 Plaintiff, Class Counsel and Defendant and its counsel shall have the right and opportunity to respond in writing to any objections to the Settlement prior to the Fairness Hearing, as well as to respond to the objections at the Fairness Hearing. Plaintiff, Class Counsel and Defendant and its counsel shall file responses to objections with the Court concurrently with the filing of reply briefs in support of the final approval of the Settlement.

5.5 Any member of the Settlement Class may request to be excluded from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class and relinquish their rights to benefits under the Settlement Agreement must do so no later than Opt Out Date. In order to opt out, a Settlement Class Member must send to the Settlement Administrator via first class United States mail a written Request for Exclusion that is post-marked no later than the Opt Out Date. The Request for Exclusion must be personally signed by the Settlement Class Member requesting exclusion and must contain the following information: (a) the Settlement Class Member's name, current address and telephone number; and (b) a statement that indicates a desire to be excluded from the Settlement Class. Any Request for Exclusion postmarked after the Opt Out Date shall not be valid.

5.6 Any Settlement Class Member who does not make a timely written Request for exclusion shall be bound by all subsequent proceedings, orders and the Final Judgment and Order Approving Settlement in this Action, even if he or she has pending, or subsequently initiates, litigation, arbitration or any other proceeding against Defendant relating to the Released Claims.

5.7 Any Settlement Class Member who properly requests to be excluded from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the Agreement; (b) be entitled to an Award from the Settlement Fund, or be affected by, the Agreement; (c) gain any rights or obligations by virtue of the Agreement; or (d) be entitled to object to any aspect of the Agreement.

5.8 The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a final list of all timely Requests for Exclusion within five (5) business days after the Opt Out Date. Plaintiff shall file the final list of all timely Requests for Exclusion prior to or at the Final Approval Hearing.

5.9 Notwithstanding anything else in this Agreement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate this Agreement no later than ten (10) days prior to the Final Approval Hearing if 750 or more Persons elect to exclude themselves from the Settlement Class.

5.10 The Parties and their respective counsel agree that they will not solicit, facilitate or assist in any way, Requests for Exclusion or Objections by putative or actual Settlement Class Members. The Parties recognize that they have an obligation to support the Settlement and seek the Court's approval of its terms. Class Counsel will abide by all applicable governing ethical rules, opinions and obligations concerning any representation of opt outs.

6. Settlement Administrator

6.1 In addition to any tasks and responsibilities ordered by the Court, the Settlement Administrator shall be authorized to and shall in fact undertake the tasks set forth in this Section to help implement the terms of the proposed Agreement.

6.2 The Settlement Administrator shall undertake various administrative tasks, including, without limitation, (1) mailing or arranging for the mailing, emailing or other distribution of the Notice to Settlement Class Members, (2) handling returned mail and email not delivered to Settlement Class Members, (3) attempting to obtain updated address information for Settlement Class Members by all reasonable means, including running change of address, skip traces or other procedures on the Settlement Class Member Information List provided by Defendant, and any notices returned without a forwarding address or an expired forwarding address, (4) making any additional mailings required under the terms of this Agreement, (5) answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or their designee, (6) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion to the settlement, (7) establishing the Settlement Website that posts notices, distribution request forms and other related documents, (8) establishing a toll-telephone number that will provide

settlement-related information to Settlement Class Members, (9) receiving and processing payment requests and distributing payments to Settlement Class Members, and (10) otherwise assisting with administration of the Agreement.

6.3 The contract(s) with the Settlement Administrator(s) shall obligate the Administrator, among other duties, to abide by the following performance standards:

6.3.1 accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Agreement in communications with Settlement Class Members;

6.3.2 provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, Defendant and/or Defendant's Counsel.

6.3.3 execute all necessary Business Associate Agreements, as required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or any similar state or federal law.

6.3.4 maintain the confidentiality of the Settlement Class Member Information List, and all information contained therein. Such information may be disclosed *in camera* to the Court, as reasonably necessary to implement this Agreement.

6.4 The costs, fees and expenses of the Administrator, including without limitation the Notice and Administration Expenses and all other costs of disseminating Notice to Settlement Class Members, administration of the claims process, and all of the other functions of the Administrator as described herein, shall be paid from the Settlement Fund.

7. Final Judgment and Order Approving Settlement

7.1 This Agreement is subject to and conditioned upon the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Settlement Class for the purposes of this Settlement only, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such Final Judgment and Order Approving Settlement shall be substantially in the form attached hereto as Exhibit 4.

7.2 Fifteen (15) calendar days prior to the Opt Out Date, Plaintiff shall file a motion for final approval of the Settlement, and Class Counsel shall file a request for award of attorneys' fees and costs consistent with the terms and conditions of this Agreement.

7.3 The Parties shall request the Court to schedule and conduct a Fairness Hearing so that the Court may review any objections to the Settlement and this Agreement, consider the fairness, reasonableness and adequacy of the Settlement and this Agreement, and consider Class Counsel's request for award of attorneys' fees and costs. The date of the Fairness Hearing shall be stated in the Class Notice and posted on the settlement website in advance of the hearing. If the date of the Fairness Hearing is subsequently modified by the Parties or the Court, no further notice is required to be published to the Settlement Class Members, except that the Parties will

notify in writing any Settlement Class Member who has filed a timely objection to the Settlement regarding the change of date of the Fairness Hearing.

8. Settlement Relief - Injunction

8.1 As an integral part of the consideration provided under this Agreement, Defendant stipulates to entry of the Court-approved injunction substantially in the form attached as Exhibit 1 to this Agreement.

8.2 The Injunction shall become effective upon the Effective Date and remain in place for not less than three (3) years from the Effective Date.

9. Settlement Relief – Settlement Fund and Settlement Awards

9.1 Within fifteen (15) business days of the date the Court signs the Final Judgment and Order Approving Settlement, Defendant shall make a payment of \$6.4 million into the Settlement Fund to be administered and distributed by the Settlement Administrator consistent with the terms of this Section. The \$6.4 million payment shall cover all of Defendant's monetary obligations under the Settlement, exclusive of costs to comply with the Stipulated Injunction. The Settlement Fund shall be maintained in an interest-bearing, secure account that, to the extent feasible, meets the requirements for a “Qualified Settlement Fund” within the meaning of Treasury Regulation Section 1.468B. The Parties and Settlement Administrator shall treat the Settlement Fund as being at all times a “Qualified Settlement Fund.”

9.2 The Settlement Fund, less the money used from the Settlement Fund to pay Notice and Administration Expenses, taxes and tax expenses, Attorneys’ Fees and Expenses, Service Awards and the Reserve Fund, shall be the “Net Settlement Fund.”

9.3 The Net Settlement Fund will be distributed through Settlement Award checks made payable to each Settlement Class Member for whom a valid address has been provided to, or located by, the Settlement Administrator. In addition, any Settlement Class Member (or any legal successor to any deceased Settlement Class Member) that submits a timely Distribution Request to the Settlement Administrator shall likewise be mailed a Settlement Award check.

9.4 The Settlement Administrator shall calculate the Settlement Awards and distribute the Net Settlement Fund to Settlement Class Members as follows:

9.4.1 The Settlement Administrator shall first calculate an Initial Settlement Amount for each Settlement Class Member. The Initial Settlement Amount shall be calculated by dividing the Net Settlement Fund by the total number of Settlement Class Members to whom Class Notice has been mailed and Settlement Class Members who have made timely Distribution Requests.

9.4.2 Within thirty (30) calendar days after the Distribution Request Deadline, the Settlement Administrator shall determine if there are excess funds available in the Net Settlement Fund over and above those required to pay the total amount of the Initial Settlement Amount to all Eligible Settlement Class Members. If so, the extra amount (if any) in the Net Settlement Fund shall be divided by the total number of Eligible Settlement Class Members,

which calculation shall be the Additional Settlement Amount. The total Settlement Award payable to each Eligible Settlement Class Member shall be the total of the Initial and Additional Settlement Amounts, and any additional distribution(s) as calculated by the Settlement Administrator pursuant to paragraph 9.6 below.

9.4.3 The Settlement Administrator is authorized to and shall pay settlement checks in response to requests (including Distribution Requests) submitted after the Distribution Request Deadline, provided that the amount of such payments shall be the Initial Settlement Payment Amount, or such other amount as the Settlement Administrator in its discretion determines can be paid from the Reserve Fund.

9.5 The Settlement Administrator shall mail the Settlement Award checks to the above-described Settlement Class Members within forty-five (45) calendar days after the Distribution Request Deadline. The Settlement Payment checks shall allow for a check cashing period of one hundred eighty (180) calendar days.

9.6 There shall be no reversion to Defendant of any portion of the Settlement Fund, any unclaimed funds, any uncashed Settlement Awards, or any interest earned on any such funds. If the amount left in the Reserve Fund (after all Settlement Awards have been paid to Eligible Settlement Class Members) is sufficient to make another distribution economically practical, the remaining amount shall be paid in pro rata shares to all Eligible Settlement Class Members who cashed their initial settlement checks. If the Settlement Administrator determines a further distribution is not economically practical, the remaining balance in the Reserve Fund shall be distributed through cy pres payment to the Institute on Aging upon Court approval.

10. Releases

10.1 Upon entry of the Final Judgment and Order Approving Settlement and after the Effective Date, each and every Settlement Class Member shall be deemed to and does hereby release and forever discharge any and all Released Parties from any and all liability, obligation or responsibility for any and all Released Claims. Each Settlement Class Member shall be permanently barred and enjoined from initiating, asserting or prosecuting any of the Released Claims against any of the Released Parties. No Released Party shall be subject to liability or expense of any kind to any Releasing Party with respect to any Released Claim.

10.2 Upon entry of the Final Judgment and Order Approving Settlement, and after the Effective Date, the Defendant and Related Persons, and each of them, shall be deemed to and do hereby release and forever discharge Plaintiff, Settlement Class Members and Class Counsel solely from any claim arising from or related to the prosecution of the Action, including without limitation, any claim for malicious prosecution or abuse of process. The Settling Defendant and Related Persons, and each of them, shall be barred and enjoined from initiating, asserting or prosecuting any such claim against Plaintiff, Settlement Class Members and Class Counsel.

10.3 With respect to any and all claims released herein, for good and valuable consideration, all Parties shall be deemed to have, and by operation of the Final Judgment and Order Approving Settlement contemplated by this Agreement shall have, fully, finally, and forever expressly waived and relinquished, to the fullest extent permitted by law, any and all

provisions, rights and benefits of section 1542 of the Civil Code and any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable or equivalent to section 1542 of the Civil Code, 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.”

10.4 This waiver shall apply even if facts are later discovered that are different from or in addition to those which they now know or believe to be true with respect to the matters released herein.

11. Dismissal of Action

11.1 Upon entry of the Final Judgment and Order Approving Settlement and after the Effective Date, the Action shall be dismissed with prejudice subject to the Court retaining jurisdiction to implement and enforce the terms of this Agreement.

11.2 The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties and the Settlement Class Members to interpret and enforce the terms, conditions, and obligations under the Agreement.

12. Attorneys' Fees, Litigation Costs, Service Awards

12.1 Defendant agrees not to oppose Class Counsel's application for a single award of attorneys' fees not to exceed one-third of the Settlement Fund and litigation costs not to exceed \$135,000 . The fees and expenses awarded by the Court (the "Fees and Expenses Payment") shall be paid in full from the Settlement Fund within three (3) calendar days of the Settlement Administrator's receipt of the Defendant's payment pursuant to Section 9.1 above. In the event that the Final Judgment and Order Approving Settlement is reversed or modified, and the appellate decision results a reduction or vacation of the Fees and Expenses Payment, Class Counsel shall repay all such affected amounts of the Fees and Expenses Payment, together with any accrued interest ordered. In the event that repayment of affected amounts of Fees and Expenses Payment (including accrued interest) is required, Class Counsel, and each of them, shall be jointly and severally liable for the repayment obligation. Class Counsel shall be solely responsible for allocating the Fees and Expenses Payment among the respective Class Counsel. Defendant shall have no obligation or involvement whatsoever in regards to the allocation and sharing of the single fee, cost and expense award as between Class Counsel. The Parties agree that Defendant's single \$6.4 million payment, as provided herein, represents and constitutes Defendant's all-inclusive full payment for any and all settlement amounts, attorneys' fees, costs and other expenses in relation to the Settlement and the releases provided for herein. Defendant shall have no obligation for any fees, costs and expenses incurred by Class Counsel in responding to objections to the Settlement, if any, or any appeal from the Final Judgment and Order Approving Settlement.

12.2 The Court's award of fees, costs and expenses to Class Counsel shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the Settlement, but declines to award fees and costs to Class Counsel or awards a lesser amount of fees and costs than requested by Class Counsel, the Settlement will nevertheless be valid and binding on the Parties. If the Court declines to approve the Settlement and this Agreement, no award of fees, costs and expenses shall be paid to Class Counsel. The Parties have negotiated and reached agreement on Class Counsel's fees, costs and expenses only after reaching agreement on all other material terms of Settlement and this Agreement set forth herein.

12.3 Defendant agrees not to oppose Plaintiff's application for a Service Payment not to exceed \$3,500, which payment shall be in addition to any Settlement Award owed to Plaintiff. The Service Payment shall be paid in the full amount awarded by the Court from the Settlement Fund at the same time as Settlement Awards are paid to the Settlement Class. The Court's award of the Service Payment to Plaintiff shall be separate from its determination of whether to approve the Settlement as set forth in this Agreement. In the event the Court approves the Settlement, but declines to award the Service Payment to Plaintiff or awards a lesser amount than what is requested, the Settlement will nevertheless be binding on the Parties. If the Court declines to approve the Settlement, no Service Payment shall be made to Plaintiff.

13. Media Communications

13.1 It is the intent of the Parties to provide useful information about the settlement and to provide reasonably neutral descriptions about the Action, while not making inflammatory statements. Except as expressly permitted by this Section of this Agreement, the Parties will not make any public statements about the Agreement or any of the allegations or claims made in the Action.

13.2 Plaintiff, Defendant, Class Counsel and Defendant's Counsel shall not hold any press conference or issue any press release or comment regarding the settlement reflected in this Agreement except through the Class Notice process approved by the Court. Plaintiff, Defendant, Class Counsel and Defendant's Counsel may make disclosures as may be required to the Court, and may make such disclosures as may be required by law or to submit to a government agency, or as may be necessary for financial purposes (including without limitation, tax and audit purposes), or to respond to inquiries by Settlement Class Members (including their family members or representatives) or other Persons relating to the Action or the settlement reflected in this Agreement.

13.3 Nothing herein will prohibit Class Counsel, Defendant or Defendant's Counsel from responding to routine media questions or questions by other Persons (including prospective residents) about the settlement or the Action so as to permit timely responses to the inquiries consistent with the language of the Class Notice. Nothing herein will prohibit Class Counsel from responding to inquiries from Settlement Class Members or their representatives, or in any way limit communications by Class Counsel with Settlement Class Members or their representatives regarding the Action or the settlement consistent with the Class Notice. Defendant may respond to questions from Settlement Class Members (including their family members or representatives) regarding the Action and this Agreement, provided that Defendant's

statements are consistent with the language of the Class Notice and do not violate section 5.10 of this Agreement.

14. Representations and Warranties

14.1 Defendant represents and warrants: (1) it has the requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transactions contemplated hereby; (2) that the execution, delivery and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Defendant; and (3) that the Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid and binding obligation.

14.2 Plaintiff's representative represents and warrants that she is entering into the Agreement on behalf of Plaintiff individually, on behalf of his estate, and the proposed Settlement Class, of her own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Plaintiff's representative represents and warrants that she has reviewed the terms of the Agreement in consultation with Class Counsel, and that she fully understands and voluntarily accepts the terms and conditions of this Agreement. Class Counsel represent and warrant that they are fully authorized to execute the Agreement on behalf of Plaintiff.

14.3 The parties represent and warrant that no promise, inducement or consideration for the Agreement has been made, except those set forth herein.

15. No Admissions of Fault, No Use Except for Enforcement

15.1 The Parties acknowledge that Defendant contests and disputes the claims asserted in the Action, and denies the material allegations made by Plaintiff. By agreeing to settle the Action, Defendant and Related Persons do not acknowledge, admit or concede the validity of any Released Claim or any wrongdoing, fault, violation of law, or any liability of any kind whatsoever. The Agreement and every stipulation and term contained in or attached hereto, including without limitation, the Stipulated Injunction, it is conditioned upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement and the Stipulated Injunction shall not be: (a) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiff, Defendant, Related Persons, any Settlement Class Member or Releasing or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or (b) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiff, Defendant, Related Persons, any Releasing Party or Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

15.2 Without limiting the generality of the foregoing, the Stipulated Injunction shall not be: (a) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiff, Defendant, Related Persons, any Settlement Class Member or Releasing or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or (b) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiff, Defendant, Related Persons, any Releasing Party or Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

15.3 This Agreement and all negotiations, correspondence and communications leading up to its execution shall be deemed to be within the protection of Federal Rule of Evidence 408 and any analogous state or federal rules or principles. Neither this Agreement, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Agreement, shall constitute a precedent or be admissible for any purpose in any proceeding; provided, however, that this Agreement shall be admissible in any proceeding related to the approval of this Agreement, to enforce an of its terms and conditions, to support or defend this Agreement in an appeal from an order granting or denying final approval, or to enforce or assert a claim or defense of *res judicata*, collateral estoppel, claim preclusion, issue preclusion, settlement release, merger and bar, or any similar claim or defense against Plaintiff, the Settlement Class or any Settlement Class Member, or any third party.

16. Termination

16.1 Any Party may terminate this Agreement by providing written notice to the other Parties hereto within ten (10) days of any of the following events:

16.1.1 The Court does not enter a Preliminary Approval Order that conforms in material respects to Exhibit 2 hereof; or

16.1.2 The Court does not enter a Final Judgment and Order Approving Settlement conforming in material respects to Exhibit 3, or if entered, such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material respect by another court, except as provided for herein.

16.2 In the event that this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement, and shall proceed in all respects as if this Agreement and any related Court orders had not been made or entered. Upon termination, Sections 15 and 17.5 herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null and void. In that event, within five (5) business days after written notification of such event is sent by Defendant's Counsel or Class Counsel to the Settlement Administrator, the Settlement Fund (including

accrued interest), less expenses and any costs which have been disbursed or are determined to be chargeable as Notice and Payment Distribution Administration Expenses, shall be refunded by the Settlement Administrator to Defendant. In such event, Defendant shall be entitled to any tax refund owing to the Settlement Fund. At the request of Defendant, the Settlement Administrator or its designee shall apply for any such refund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for a refund, to Defendant. In no event will Defendant be entitled to recover any funds spent for Notice and Administration Expenses prior to termination of this Agreement.

17. Miscellaneous Provisions

17.1 Integration: The Agreement, including all Exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of the Agreement. The Agreement may not be changed, modified, or amended except in a writing signed by one of Class Counsel and one of Defendant's Counsel and, if required, approved by the Court. The Parties contemplate that the Exhibits to the Agreement may be modified by subsequent agreement of Defendant or Defendant's Counsel and Class Counsel, or by the Court.

17.2 Governing Law: The Agreement shall be construed under and governed by the laws of the State of California, applied without regard to laws applicable to choice of law.

17.3 Execution in Counterparts: The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures scanned to PDF and sent by e-mail shall be treated as original signatures and shall be binding.

17.4 Notices: Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class US Mail and email to:

If to Plaintiff or Class Counsel:

Kathryn A. Stebner
STEBNER & ASSOCIATES
870 Market Street
Suite 1212
San Francisco, CA 94102
Telephone: (415) 362-9800
Facsimile: (415) 362-9801
kathryn@stebnerassociates.com

Guy B. Wallace
SCHNEIDER WALLACE COTTRELL KONECKY, LLP
2000 Powell Street, Suite 1400

Emeryville, California 94608

Telephone: (415) 421-7100
Facsimile: (415) 421-7105

If to Defendant or Defendant's Counsel:

Darren K. Cottriel
JONES DAY
3161 Michelson Drive, Suite 800
Irvine, CA 92612
Telephone: (949) 851-3939
Facsimile: (949) 553-7539
darrencottriel@jonesday.com

17.5 Stay of Proceedings: Upon the execution of this Agreement, all discovery and other proceedings in the Action shall be stayed until further order of the Court, except for proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Settlement Agreement.

17.6 Good Faith: The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

17.7 Protective Orders: All orders, agreements and designations regarding the confidentiality of documents and information ("Protective Orders") remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of documents deemed Confidential under the Protective Orders. Notwithstanding such provision in the Protective Order, Defendant's Counsel and Class Counsel may retain copies of all deposition transcripts and exhibits and all documents submitted to the Court, but those documents must be kept confidential to the extent they were designated as "Confidential," and will continue to be subject to the Protective Order.

17.8 Assignment of Claims: Plaintiff's representative warrants and represents that no claim or any portion of any claim by Plaintiff referenced in or covered by this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other entity or Person.

17.9 Binding on Successors: This Agreement shall inure to the benefit of and be binding upon the respective agents, assigns, administrators, employees, trustees, executors, heirs, and successors in interest of each of the Parties, including without limitation any legal successors to or executors, trustees or other representatives for Settlement Class Members who previously deceased.

17.10 Arms-Length Negotiations: The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel. This Agreement shall not be construed against any Party on the basis that the

Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

17.11 Recitals: The Recitals are a material part of this Agreement and are incorporated herein in their entirety.

17.12 No Liability: The Parties agree that Defendant and Released Parties are in no way liable or responsible for any taxes Class Counsel, Plaintiff, Settlement Class Members or others may be required or obligated to pay as a result of the receipt of settlement benefits or payments relating to the Settlement or under this Agreement. No Settlement Class Member or any other Person shall have any claim against Plaintiff, Class Counsel, Defendant, the Released Parties, the Claims Administrator, or any designated agent thereof, based on any eligibility determination, distributions or payments made in accordance with the Settlement and this Agreement, or based on payments made or other relief provided and made substantially in accordance with this Agreement or with further orders of the Court or any appellate court.

17.13 Waiver: The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

17.14 Variance: In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s).

17.15 Exhibits: All Exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

17.16 Taxes: No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by Defendant, Defendant's Counsel, or Class Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

17.17 Implementation Before Effective Date: The Parties may agree in writing to implement the Agreement or any portion thereof after the entry of the Final Judgment and Order Approving Settlement, but prior to the Effective Date.

17.18 Reservation of Rights: This Agreement is made without prejudice to the rights of Defendant to oppose class certification in this Action for any purpose, including for purposes of trial, in the event that the Effective Date does not occur.

18. Retained Jurisdiction

18.1 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of

the Court for purposes of implementing and enforcing the Agreement embodied in this Agreement.