

The Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE CTI BIOPHARMA CORP.
SECURITIES LITIGATION

Case No. 2:16-cv-00216-RSL

Hon. Robert S. Lasnik

CLASS ACTION

STIPULATION AND AGREEMENT OF SETTLEMENT

1 This Stipulation and Agreement of Settlement, dated as of September 15, 2017 (the
2 “Stipulation”) is entered into between (a) DAFNA LifeScience, LP and DAFNA LifeScience
3 Select, LP (“DAFNA” or “Lead Plaintiff”), on behalf of itself and the Settlement Class (defined
4 below); (b) defendant CTI BioPharma Corp. (“CTI” or the “Company”); (c) defendants James A.
5 Bianco, Louis A. Bianco, Jack W. Singer, Frederick W. Telling, Reed V. Tuckson, Phillip M.
6 Nudelman, John H. Bauer, Karen Ignagni, Richard L. Love, and Mary O. Munding (collectively,
7 the “Individual Defendants” and, together with CTI, the “CTI Defendants”); and (d) defendants
8 Piper Jaffray & Co., Landenburg Thalmann & Co. Inc., Roth Capital Partners, LLC, and National
9 Securities Corporation (collectively, the “Underwriter Defendants,” and, together with the CTI
10 Defendants, the “Defendants”), collectively, the “Parties,” and embodies the terms and conditions
11 of the settlement of the above-captioned action (the “Action”).¹ Subject to the approval of the
12 Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully,
13 finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and
14 all claims asserted therein against Defendants.

15 WHEREAS:

16 A. On February 10, 2016, a securities class action complaint alleging claims against
17 CTI and the Individual Defendants was filed in the United States District Court for the Southern
18 District of New York, styled *Ahrens v. CTI BioPharma Corp.*, No. 1:16-cv-01044-PAE
19 (“*Ahrens*”). On February 12, 2016, a securities class action complaint alleging substantially
20 identical claims was filed in the Western District of Washington, styled *McGlothin v. CTI*
21 *BioPharma Corp.*, No. 2:16-cv-00216-RSL (“*McGlothin*”).

22 B. By Order dated May 19, 2016, the Southern District of New York granted the CTI
23 Defendants’ unopposed motion to transfer *Ahrens* to the Western District of Washington, where it
24

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

1 was docketed as *Ahrens v. CTI BioPharma Corp.*, No. 2:16-cv-00796-JPD. On June 13, 2016,
2 this Court entered an order consolidating *Ahrens* and *McGlothlin* and ordering that the consolidated
3 action be recaptioned as *In re CTI BioPharma Corp. Securities Litigation*, No. 16-cv-216-RSL.

4 C. Following a hearing on August 25, 2016, the Court appointed DAFNA as Lead
5 Plaintiff for the consolidated action; and approved Lead Plaintiff's selection of Bernstein Litowitz
6 Berger & Grossmann LLP as Lead Counsel for the class.

7 D. On November 8, 2016, Lead Plaintiff and additional plaintiff Michael Li filed and
8 served the Consolidated Class Action Complaint (the "Complaint"). The Complaint asserts claims
9 under Section 11 of the Securities Act of 1933 (the "Securities Act") against CTI, the Individual
10 Defendants, and the Underwriter Defendants; claims under Section 12(a)(2) of the Securities Act
11 against the Underwriter Defendants; and claims under Section 15 of the Securities Act against
12 Defendant James A. Bianco. The Complaint also asserts claims under Section 10(b) of the
13 Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder,
14 against CTI and James Bianco; and claims under Section 20(a) of the Exchange Act against James
15 Bianco. Among other things, the Complaint alleges that the Offering Materials issued by
16 Defendants in connection with the October 2015 offering of CTI Series N-1 Preferred Stock and
17 the December 2015 offering of CTI Series N-2 Preferred Stock contained materially false
18 statements and misleading omissions concerning CTI's drug candidate, pacritinib, and the results
19 of a Phase III pacritinib trial. The Complaint alleges that CTI and James Bianco made additional
20 misstatements and material omissions concerning pacritinib during investor conferences and press
21 releases, and that CTI and James Bianco made the false statements and omissions with scienter.
22 The Complaint further alleges the truth concealed by Defendants' misstatements and omissions
23 was revealed on February 8 and 9, 2016 when CTI disclosed that the FDA had placed a partial
24 hold and hold on clinical trials of pacritinib due to safety concerns, which caused the price of CTI's
25 securities to drop significantly.

1 E. On January 9, 2017, Defendants filed and served their motions to dismiss the
2 Complaint. On February 6, 2017, Lead Plaintiff filed and served its opposition to Defendants’
3 motions and, on February 22, 2017, Defendants filed and served their reply papers.

4 F. The Parties participated in two in-person mediation sessions with Jed D. Melnick
5 of JAMS, an experienced mediator. In advance of the first session on March 29, 2017, the Parties
6 exchanged mediation statements, which were submitted to Mr. Melnick together with numerous
7 exhibits. The first mediation session ended at an impasse. Discussions and the exchange of
8 information continued telephonically and in writing. The Parties submitted supplemental
9 mediation statements prior to the second session on June 26, 2017. It also ended without agreement
10 being reached.

11 G. Following the June 26, 2017 mediation, the Parties continued to conduct arm’s-
12 length settlement negotiations, with the assistance of Mr. Melnick. On August 3, 2017, the Parties
13 reached an agreement in principle to settle the Action that was memorialized in a term sheet (the
14 “Term Sheet”) executed that day. The Term Sheet sets forth, among other things, the Parties’
15 agreement to settle and release all claims asserted against Defendants in the Action in return for a
16 \$20,000,000 cash payment by or on behalf of the Defendants for the benefit of the Settlement
17 Class, subject to certain terms and conditions and the execution of a customary “long form”
18 stipulation and agreement of settlement and related papers.

19 H. This Stipulation (together with the exhibits hereto) reflects the final and binding
20 agreement between the Parties.

21 I. Based upon their investigation, prosecution, and mediation of the case, Lead
22 Plaintiff and Lead Counsel have concluded that the terms and conditions of this Stipulation are
23 fair, reasonable, and adequate to Lead Plaintiff and the other members of the Settlement Class, and
24 in their best interests. Based on Lead Plaintiff’s oversight of the prosecution of this matter and
25 with the advice of Lead Counsel, Lead Plaintiff has agreed to settle and release the claims raised
26 in the Action pursuant to the terms and provisions of this Stipulation, after considering, among

1 other things: (a) the substantial financial benefit that members of the Settlement Class will receive
2 under the proposed Settlement; and (b) the significant risks and costs of continued litigation and
3 trial.

4 J. This Stipulation constitutes a compromise of matters that are in dispute between
5 the Parties. Defendants are entering into this Stipulation solely to eliminate the uncertainty,
6 burden, and expense of further protracted litigation. Each of the Defendants denies any
7 wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an
8 admission or concession on the part of any of the Defendants with respect to any claim or allegation
9 of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that
10 the Defendants have, or could have, asserted. Defendants expressly deny that Lead Plaintiff has
11 asserted any valid claims as to any of them, and expressly deny any and all allegations of fault,
12 liability, wrongdoing, or damages whatsoever. Similarly, this Stipulation shall in no event be
13 construed or deemed to be evidence of or an admission or concession on the part of Lead Plaintiff
14 of any infirmity in any of the claims asserted in the Action, or an admission or concession that any
15 of the Defendants' defenses to liability had any merit. Each of the Parties recognizes and
16 acknowledges, however, that the Action has been initiated, filed, and prosecuted by Lead Plaintiff
17 in good faith and defended by Defendants in good faith, that the Action is being voluntarily settled
18 with the advice of counsel, and that the terms of the Settlement are fair, adequate, and reasonable.

19 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Lead
20 Plaintiff (individually and on behalf of all other members of the Settlement Class, including
21 additional named plaintiff Michael Li) and Defendants, by and through their respective
22 undersigned attorneys and subject to the approval of the Court pursuant to Rule 23(e) of the Federal
23 Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties from the
24 Settlement, all Released Plaintiffs' Claims as against the Defendants' Releasees and all Released
25 Defendants' Claims as against the Plaintiffs' Releasees shall be settled and released, upon and
26 subject to the terms and conditions set forth below.

1 **DEFINITIONS**

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

4 (a) “Action” means the consolidated securities class action in the matter styled
5 *In re CTI BioPharma Corp. Securities Litigation*, Case No. 2:16-cv-00216-RSL, and includes all
6 actions consolidated therein.

7 (b) “Alternate Judgment” means a form of final judgment that may be entered
8 by the Court herein but in a form other than the form of Judgment provided for in this Stipulation.

9 (c) “Authorized Claimant” means a Settlement Class Member who submits a
10 Proof of Claim Form to the Claims Administrator that is approved by the Court for payment from
11 the Net Settlement Fund.

12 (d) “Claim” means a Proof of Claim Form submitted to the Claims
13 Administrator.

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

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

20 (g) “Claims Administrator” means the firm retained by Lead Plaintiff and Lead
21 Counsel, subject to approval of the Court, to provide all notices approved by the Court to potential
22 Settlement Class Members and to administer the Settlement.

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

1 (i) “Class Period” means the period from March 9, 2015 through February 9,
2 2016, inclusive.

3 (j) “Complaint” means the Consolidated Class Action Complaint filed by Lead
4 Plaintiff in the Action on November 8, 2016.

5 (k) “Court” means the United States District Court for the Western District of
6 Washington.

7 (l) “CTI” or the “Company” means CTI BioPharma Corp.

8 (m) “CTI Defendants” means CTI and the Individual Defendants.

9 (n) “CTI Defendants’ Counsel” means the law firm O’Melveny & Myers LLP.

10 (o) “CTI Securities” means (i) CTI common stock; (ii) CTI Series N-1
11 Preferred Stock; and/or (iii) CTI Series N-2 Preferred Stock, but does not include any shares of
12 such securities that traded on an exchange outside the United States.

13 (p) “Defendants” means the CTI Defendants and the Underwriter Defendants.

14 (q) “Defendants’ Counsel” means the CTI Defendants’ Counsel and
15 Underwriter Defendants’ Counsel, collectively.

16 (r) “Defendants’ Releasees” means (i) Defendants and their current and former
17 officers, directors, agents, parents, affiliates, subsidiaries, successors, predecessors, assigns,
18 assignees, employees, and attorneys, in their capacities as such; and (ii) Berkley Insurance
19 Company, XL Specialty Insurance Company, Allied World National Assurance Company,
20 Continental Casualty Company, and Old Republic Insurance Company (together, the “CTI
21 Insurers”), and each of the CTI Insurers’ respective current and former officers, directors, agents,
22 parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees, employees, and
23 attorneys, in their capacities as such.

24 (s) “Effective Date” with respect to the Settlement means the first date by
25 which all of the events and conditions specified in ¶ 31 of this Stipulation have been met and have
26 occurred or have been waived.

1 (t) "ERISA" means the Employee Retirement Income Security Act of 1974.

2 (u) "Escrow Account" means an account maintained at Signature Bank wherein
3 the Settlement Amount shall be deposited and held in escrow under the control of Lead Counsel.

4 (v) "Escrow Agent" means Signature Bank.

5 (w) "Escrow Agreement" means the agreement between Lead Counsel and the
6 Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow
7 Account.

8 (x) "Final," with respect to the Judgment or, if applicable, the Alternate
9 Judgment, or any other court order, means: (i) if no appeal is filed, the expiration date of the time
10 provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure, *i.e.*,
11 thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment
12 or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding
13 on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal,
14 the expiration of the time to file a petition for a writ of certiorari or other form of review, or the
15 denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is
16 granted, the date of final affirmance following review pursuant to that grant. However, any appeal
17 or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect
18 to (i) attorneys' fees, costs, or expenses, or (ii) the plan of allocation of Settlement proceeds (as
19 submitted or subsequently modified), shall not in any way delay or preclude a judgment from
20 becoming Final.

21 (y) "Immediate Family Members" means children, stepchildren, parents,
22 stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law,
23 brothers-in-law, and sisters-in-law. As used in this paragraph, "spouse" shall mean a husband, a
24 wife, or a partner in a state-recognized domestic relationship or civil union.
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1 (z) "Individual Defendants" means James A. Bianco, Louis A. Bianco, Jack W.
2 Singer, Frederick W. Telling, Reed V. Tuckson, Phillip M. Nudelman, John H. Bauer, Karen
3 Ignagni, Richard L. Love, and Mary O. Mundinger.

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

6 (bb) "Lead Counsel" means the law firm Bernstein Litowitz Berger &
7 Grossmann LLP.

8 (cc) "Lead Plaintiff" or "DAFNA" means DAFNA LifeScience, LP and
9 DAFNA LifeScience Select, LP.

10 (dd) "Litigation Expenses" means costs and expenses incurred in connection
11 with commencing, prosecuting, and settling the Action (which may include the costs and expenses
12 of Plaintiffs directly related to their representation of the Settlement Class), for which Lead
13 Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

14 (ee) "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes;
15 (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and
16 (iv) any attorneys' fees awarded by the Court.

17 (ff) "Notice" means the Notice of (I) Pendency of Class Action and Proposed
18 Settlement; (II) Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and
19 Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to
20 Exhibit A, which is to be mailed to Settlement Class Members.

21 (gg) "Notice and Administration Costs" means the costs, fees, and expenses that
22 are incurred by the Claims Administrator and/or Lead Counsel in connection with: (i) providing
23 notices to the Settlement Class; and (ii) administering the Settlement, including but not limited to
24 the Claims process, as well as the costs, fees, and expenses incurred in connection with the Escrow
25 Account.

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

3 (ii) "Parties" means Defendants and Lead Plaintiff, on behalf of itself and the
4 Settlement Class.

5 (jj) "Plaintiffs" means Lead Plaintiff and additional named plaintiff Michael Li.

6 (kk) "Plaintiffs' Counsel" means Lead Counsel and local counsel, Breskin
7 Johnson & Townsend PLLC.

8 (ll) "Plaintiffs' Releasees" means Lead Plaintiff, all other plaintiffs in the
9 Action, their respective attorneys, and all other Settlement Class Members, and their respective
10 current and former officers, directors, agents, parents, affiliates, subsidiaries, successors,
11 predecessors, assigns, assignees, employees, and attorneys, in their capacities as such.

12 (mm) "Plan of Allocation" means the proposed plan of allocation of the Net
13 Settlement Fund set forth in the Notice.

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

17 (oo) "PSLRA" means the Private Securities Litigation Reform Act of 1995, 15
18 U.S.C. § 78u-4, as amended.

19 (pp) "Released Claims" means all Released Defendants' Claims and all Released
20 Plaintiffs' Claims.

21 (qq) "Released Defendants' Claims" means all claims and causes of action of
22 every nature and description, whether known claims or Unknown Claims, whether arising under
23 federal, state, common, or foreign law, that arise out of or relate in any way to the institution,
24 prosecution, or settlement of the claims asserted in the Action against the Defendants. Released
25 Defendants' Claims do not include any claims relating to the enforcement of the Settlement or any
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1 claims against any person or entity that submits a request for exclusion from the Settlement Class
2 that is accepted by the Court.

3 (rr) “Released Plaintiffs’ Claims” means, to the extent allowed by law, all
4 claims and causes of action of every nature and description, whether known claims or Unknown
5 Claims, whether arising under federal, state, common, or foreign law, that Lead Plaintiff or any
6 other member of the Settlement Class, including additional named plaintiff Michael Li:
7 (i) asserted in the Complaint; or (ii) could have asserted or could assert in any forum that arise out
8 of or are based upon the acts, omissions, nondisclosure, allegations, transactions, facts, matters,
9 occurrences, or oral or written representations or statements involved, set forth, or referred to in
10 the Complaint, and that relate to the purchase of CTI Securities during the Class Period. Released
11 Plaintiffs’ Claims do not include: (i) any claims relating to the enforcement of the Settlement; (ii)
12 any claims asserted in any shareholder derivative action or action under ERISA that are based on
13 similar allegations, including *In re CTI BioPharma Shareholder Derivative Action*, No. 2:16-cv-
14 00756 (W.D. Wash.) or any of the actions consolidated therein; and (iii) the claims of any person
15 or entity that submits a request for exclusion that is accepted by the Court.

16 (ss) “Releasee(s)” means each and any of the Defendants’ Releasees and each
17 and any of the Plaintiffs’ Releasees.

18 (tt) “Releases” means the releases set forth in ¶¶ 5-6 of this Stipulation.

19 (uu) “Settlement” means the settlement between Lead Plaintiff and Defendants
20 on the terms and conditions set forth in this Stipulation.

21 (vv) “Settlement Amount” means twenty million dollars (\$20,000,000) in cash.

22 (ww) “Settlement Class” means all persons and entities who purchased or
23 otherwise acquired CTI Securities during the Class Period, and were damaged thereby. Excluded
24 from the Settlement Class are (a) Defendants; (b) the Officers and directors of CTI during the Class
25 Period (the “Excluded Officers and Directors”); (c) the Immediate Family Members of the
26 Individual Defendants and Excluded Officers and Directors; (d) any entity in which any

1 Defendant, any Excluded Officer or Director, or any of their respective Immediate Family
2 Members had during the Class Period and/or has a controlling interest; (e) Defendants' liability
3 insurance carriers; (f) any affiliates, parents, or subsidiaries of CTI; (g) all CTI plans that are
4 covered by ERISA; and (h) the legal representatives, heirs, agents, affiliates, successors-in-
5 interest, or assigns of any excluded person or entity, in their respective capacity as such. Also
6 excluded from the Settlement Class are any persons and entities that exclude themselves by
7 submitting a request for exclusion that is accepted by the Court.

8 (xx) "Settlement Class Member" means each person and entity that is a member
9 of the Settlement Class.

10 (yy) "Settlement Fund" means the Settlement Amount plus any and all interest
11 earned thereon.

12 (zz) "Settlement Hearing" means the hearing set by the Court under
13 Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

14 (aaa) "Summary Notice" means the Summary Notice of (I) Pendency of Class
15 Action and Proposed Settlement; (II) Fairness Hearing; and (III) Motion for an Award of
16 Attorneys' Fees and Reimbursement of Litigation Expenses, substantially in the form attached
17 hereto as Exhibit 3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

18 (bbb) "Taxes" means: (i) all federal, state and/or local taxes of any kind (including
19 any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the expenses
20 and costs incurred by Lead Counsel in connection with determining the amount of, and paying,
21 any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys
22 and accountants); and (iii) all taxes imposed on payments by the Settlement Fund, including
23 withholding taxes.

24 (ccc) "Underwriter Defendants" means Piper Jaffray & Co., Landenburg
25 Thalmann & Co. Inc., Roth Capital Partners, LLC, and National Securities Corporation,
26 collectively.

1 (ddd) “Underwriter Defendants’ Counsel” means the law firm Dorsey & Whitney
2 LLP.

3 (eee) “Unknown Claims” means any Released Plaintiffs’ Claims that Lead
4 Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its
5 favor at the time of the release of such claims, and any Released Defendants’ Claims which any
6 Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of
7 such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with
8 respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and
9 agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly
10 waive, and each of the other Settlement Class Members shall be deemed to have waived, and by
11 operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived,
12 any and all provisions, rights, and benefits conferred by any law of any state or territory of the
13 United States, or principle of common law or foreign law, which is similar, comparable, or
14 equivalent to California Civil Code §1542, which provides:

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

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

21 **CLASS CERTIFICATION**

22 2. Solely for purposes of the Settlement and for no other purpose, Defendants stipulate
23 and agree to: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3)
24 of the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) certification of
25 Plaintiffs as Class Representatives for the Settlement Class; and (c) appointment of Lead Counsel
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1 as Class Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil
2 Procedure.

3 **PRELIMINARY APPROVAL OF SETTLEMENT**

4 3. Promptly upon execution of this Stipulation, Lead Plaintiff shall file a stipulated
5 motion for preliminary approval of the Settlement, certification of the Settlement Class for
6 settlement purposes only, and the scheduling of a hearing for consideration of final approval of the
7 Settlement. The motion shall be unopposed by Defendants. Concurrently with the motion for
8 preliminary approval, Lead Plaintiff shall apply to the Court for, and Defendants shall agree to,
9 entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

10 **RELEASE OF CLAIMS**

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

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

23 6. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further
24 action by anyone, upon the Effective Date of the Settlement, Defendants, on behalf of themselves,
25 and their respective heirs, executors, administrators, predecessors, successors, and assigns in their
26 capacities as such, shall be deemed to have, and by operation of law and of the judgment shall

1 have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived,
2 and discharged each and every Released Defendants' Claim against Lead Plaintiff and the other
3 Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the
4 Released Defendants' Claims against any of the Plaintiffs' Releasees. This release shall not apply
5 to any person or entity that submits a request for exclusion from the Settlement Class that is
6 accepted by the Court.

7 7. Notwithstanding ¶¶ 5-6 above, nothing in the Judgment, or the Alternate Judgment,
8 if applicable, shall bar any action by any of the Parties to enforce or effectuate the terms of this
9 Stipulation or the Judgment, or Alternate Judgment, if applicable.

10 **THE SETTLEMENT CONSIDERATION**

11 8. In consideration of the settlement of the Released Plaintiffs' Claims against
12 Defendants and the other Defendants' Releasees, the CTI Defendants shall pay or cause to be paid
13 the Settlement Amount into the Escrow Account no later than fifteen (15) business days after the
14 later of: (a) the date of entry by the Court of an order preliminarily approving this Settlement; or
15 (b) CTI Defendants' Counsel's receipt from Lead Counsel of the information necessary to
16 effectuate a transfer of funds to the Escrow Account, including wiring instructions that include the
17 bank name and ABA routing number, account name and number, and a signed W-9 reflecting a
18 valid taxpayer identification number for the qualified settlement fund in which the Settlement
19 Amount is to be deposited. The Underwriter Defendants shall have no payment obligations under
20 this Stipulation.

21 **USE OF SETTLEMENT FUND**

22 9. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and
23 Administration Costs; (c) any Litigation Expenses awarded by the Court; and (d) any attorneys'
24 fees awarded by the Court. The balance remaining in the Settlement Fund, that is, the Net
25 Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 18-29 below.
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1 10. Except as provided herein or pursuant to orders of the Court, the Net Settlement
2 Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow
3 Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction
4 of the Court until such time as the funds shall be distributed or returned pursuant to the terms of
5 this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the
6 Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in
7 such instruments) and shall collect and reinvest all interest accrued thereon, except that any
8 residual cash balances up to the amount that is insured by the FDIC may be deposited in any
9 account that is fully insured by the FDIC. In the event that the yield on United States Treasury
10 Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by
11 the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by
12 the full faith and credit of the United States. Additionally, if short-term placement of the funds is
13 necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any
14 account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

15 11. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement
16 Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as
17 administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3),
18 shall be solely responsible for filing or causing to be filed all informational and other tax returns
19 as may be necessary or appropriate (including, without limitation, the returns described in Treasury
20 Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for
21 causing payment to be made from the Settlement Fund of any Taxes owed with respect to the
22 Settlement Fund. The Defendants' Releasees shall not have any liability or responsibility for any
23 such Taxes. Upon written request, Defendants will provide to Lead Counsel the statement
24 described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement
25 Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such
26 elections as are necessary or advisable to carry out this paragraph, including, as necessary, making

1 a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the
2 Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or
3 cause to be taken all actions as may be necessary or appropriate in connection therewith.

4 12. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the
5 Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement,
6 and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well
7 as the election set forth therein) shall be consistent with the previous paragraph and in all events
8 shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the
9 Settlement Fund as provided herein. The Defendants’ Releasees shall have no responsibility or
10 liability for the acts or omissions of Lead Counsel or its agents with respect to the payment of
11 Taxes, as described herein.

12 13. The Settlement is not a claims-made settlement. Upon the occurrence of the
13 Effective Date, no Defendant, Defendants’ Releasee, or any other person or entity that paid any
14 portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any
15 portion thereof for any reason whatsoever, including without limitation, the number of Claim
16 Forms submitted, the collective amount of Recognized Claims of Authorized Claimants, the
17 percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net
18 Settlement Fund.

19 14. Notwithstanding the fact that the Effective Date of the Settlement has not yet
20 occurred, Lead Counsel may pay from the Settlement Fund, without further approval from
21 Defendants or further order of the Court, all Notice and Administration Costs actually incurred
22 and paid or payable. Such costs and expenses shall include, without limitation, the actual costs of
23 printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee
24 owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred
25 and fees charged by the Claims Administrator in connection with providing notice, administering
26 the Settlement (including processing the submitted Claims), and the fees, if any, of the Escrow

1 Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all
2 Notice and Administration Costs paid or incurred, including any related fees, shall not be returned
3 or repaid to Defendants, any of the other Defendants' Releasees, or any other person or entity that
4 paid any portion of the Settlement Amount.

5 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

6 15. Lead Counsel will apply to the Court for an award of attorneys' fees to Plaintiffs'
7 Counsel to be paid from (and out of) the Settlement Fund. Lead Counsel also will apply to the
8 Court for reimbursement of Litigation Expenses, which may include a request for reimbursement
9 of Plaintiffs' costs and expenses directly related to their representation of the Settlement Class, to
10 be paid from (and out of) the Settlement Fund. Lead Counsel's application for an award of
11 attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants
12 and Lead Plaintiff other than what is set forth in this Stipulation.

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

1 based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or
2 Litigation Expenses.

3 17. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs'
4 Counsel in a manner that it, in good faith, believes reflects the contributions of such counsel to the
5 institution, prosecution, and settlement of the Action. Defendants' Releasees shall have no
6 responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees
7 or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Lead
8 Counsel shall be payable solely from the Escrow Account.

9 **NOTICE AND SETTLEMENT ADMINISTRATION**

10 18. As part of the Preliminary Approval Order, Lead Plaintiff shall seek appointment
11 of a Claims Administrator. The Claims Administrator shall administer the Settlement, including
12 but not limited to the process of receiving, reviewing, and approving or denying Claims, under
13 Lead Counsel's supervision and subject to the jurisdiction of the Court. Other than CTI's and the
14 Underwriter Defendants' obligations to provide securities holders records as provided in ¶ 19
15 below, none of the Defendants, nor any other Defendants' Releasees, shall have any involvement
16 in or any responsibility, authority, or liability whatsoever for the selection of the Claims
17 Administrator, the Plan of Allocation, the administration of the Settlement, the Claims process, or
18 disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any person or
19 entity, including, but not limited to, Lead Plaintiff, any other Settlement Class Members or Lead
20 Counsel in connection with the foregoing. Defendants' Counsel shall cooperate in the
21 administration of the Settlement to the extent reasonably necessary to effectuate its terms.

22 19. In accordance with the terms of the Preliminary Approval Order to be entered by
23 the Court, Lead Counsel shall cause the Claims Administrator to mail the Notice and Proof of
24 Claim Form to those members of the Settlement Class as may be identified through reasonable
25 effort. Lead Counsel shall also cause the Claims Administrator to have the Summary Notice
26 published in accordance with the terms of the Preliminary Approval Order to be entered by the

1 Court. For the purposes of identifying and providing notice to the Settlement Class, within five
2 (5) business days of the date of entry of the Preliminary Approval Order (at no cost to the
3 Settlement Fund, Lead Counsel or the Claims Administrator), (a) CTI shall provide or cause to be
4 provided to the Claims Administrator, in electronic format, Depository Trust Company (“DTC”)
5 position reports covering dates on a monthly basis during the Class Period that CTI maintains in
6 the regular course of business or has access to; and (b) the Underwriter Defendants shall provide
7 or cause to be provided to the Claims Administrator, in electronic format, lists (consisting of names
8 and addresses) of the beneficial owners on whose behalf they purchased CTI Securities during the
9 Class Period and the persons and entities who purchased CTI Series N-1 Preferred Stock and CTI
10 Series N-2 Preferred Stock in the offerings of those securities.

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

17 21. The Plan of Allocation proposed in the Notice is not a necessary term of the
18 Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation
19 that any particular plan of allocation be approved by the Court. Lead Plaintiff and Lead Counsel
20 may not cancel or terminate the Settlement (or this Stipulation) based on this Court’s or any
21 appellate court’s ruling with respect to the Plan of Allocation or any other plan of allocation in this
22 Action. Defendants and the other Defendants’ Releasees shall not object in any way to the Plan
23 of Allocation or any other plan of allocation in this Action. No Defendant, nor any other
24 Defendants’ Releasees, shall have any involvement with or liability, obligation, or responsibility
25 whatsoever for the application of the Court-approved plan of allocation.
26

1 22. Any Settlement Class Member who does not submit a valid Claim Form will not
2 be entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound
3 by all of the terms of this Stipulation and Settlement, including the terms of the Judgment or, the
4 Alternate Judgment, if applicable, to be entered in the Action and the Releases provided for herein
5 and therein, and will be permanently barred and enjoined from bringing any action, claim, or other
6 proceeding of any kind against the Defendants' Releasees with respect to the Released Plaintiffs'
7 Claims in the event that the Effective Date occurs with respect to the Settlement.

8 23. Lead Counsel shall be responsible for supervising the administration of the
9 Settlement and the disbursement of the Net Settlement Fund subject to Court approval. No
10 Defendant, or any other Defendants' Releasees, shall be permitted to review, contest, or object to
11 any Claim Form, or any decision of the Claims Administrator or Lead Counsel with respect to
12 accepting or rejecting any Claim for payment by a Settlement Class Member. Lead Counsel shall
13 have the right, but not the obligation, to waive what it deems to be formal or technical defects in
14 any Claim Forms submitted in the interests of achieving substantial justice.

15 24. For purposes of determining the extent, if any, to which a Settlement Class Member
16 shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

17 (a) Each Settlement Class Member shall be required to submit a Claim Form,
18 substantially in the form attached hereto as Exhibit 2 to Exhibit A, supported by such documents
19 as are designated therein, including proof of the Claimant's loss, or such other documents or proof
20 as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

21 (b) All Claim Forms must be submitted by the date set by the Court in the
22 Preliminary Approval Order and specified in the Notice. Any Settlement Class Member who fails
23 to submit a Claim Form by such date shall be forever barred from receiving any distribution from
24 the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such
25 Settlement Class Member's Claim Form is accepted), but shall in all other respects be bound by
26 all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or

1 Alternate Judgment, if applicable, and the Releases provided for herein and therein, and will be
2 permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind
3 against any Defendants' Releasees with respect to any Released Plaintiffs' Claim. Provided that
4 it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted when
5 postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail
6 and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall
7 be deemed to have been submitted on the date when actually received by the Claims Administrator;

8 (c) Each Claim Form shall be submitted to and reviewed by the Claims
9 Administrator who shall determine in accordance with this Stipulation and the plan of allocation
10 the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant
11 to subparagraph (e) below as necessary;

12 (d) Claim Forms that do not meet the submission requirements may be rejected.
13 Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with
14 the Claimant in writing, to give the Claimant an opportunity to remedy any curable deficiencies in
15 the Claim Form submitted. The Claims Administrator shall notify, in a timely fashion and in
16 writing, any Claimant whose Claim the Claims Administrator proposes to reject in whole or in
17 part, setting forth the reasons for the partial or complete rejection, and shall indicate in such notice
18 that the Claimant whose Claim is to be rejected has the right to a review by the Court if the
19 Claimant so desires and complies with the requirements of subparagraph (e) below; and

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

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

7 26. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class
8 Distribution Order: (a) approving the Claims Administrator's administrative determinations
9 concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any
10 administration fees and expenses associated with the administration of the Settlement from the
11 Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net
12 Settlement Fund to Authorized Claimants from the Escrow Account.

13 27. Payment pursuant to the Class Distribution Order shall be final and conclusive
14 against all Settlement Class Members. All Settlement Class Members whose Claims are not
15 approved by the Court for payment shall be barred from participating in distributions from the Net
16 Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the
17 Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, to be entered
18 in this Action and the Releases provided for herein and therein, and will be permanently barred
19 and enjoined from bringing any action against any and all Defendants' Releasees with respect to
20 any and all of the Released Plaintiffs' Claims.

21 28. No person or entity shall have any claim against Lead Plaintiff, Lead Counsel, the
22 Claims Administrator or any other agent designated by Lead Counsel, or the Defendants'
23 Releasees and/or their respective counsel, arising from distributions made substantially in
24 accordance with the Stipulation, the plan of allocation approved by the Court, or any order of the
25 Court. Lead Plaintiff and Defendants, and their respective counsel, and Lead Plaintiff's damages
26 expert and all other Releasees shall have no liability whatsoever for the investment or distribution

1 of the Settlement Fund or the Net Settlement Fund, the plan of allocation, or the determination,
2 administration, calculation, or payment of any claim or nonperformance of the Claims
3 Administrator, the payment or withholding of taxes (including interest and penalties) owed by the
4 Settlement Fund, or any losses incurred in connection therewith.

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

11 **TERMS OF THE JUDGMENT**

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

15 **CONDITIONS OF SETTLEMENT AND EFFECT OF** 16 **DISAPPROVAL, CANCELLATION, OR TERMINATION**

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

19 (a) the Court has entered the Preliminary Approval Order, substantially in the
20 form set forth in Exhibit A attached hereto, as required by ¶ 3 above;

21 (b) the Settlement Amount has been deposited into the Escrow Account in
22 accordance with the provisions of ¶ 8 above;

23 (c) Defendants have not exercised their option to terminate the Settlement
24 pursuant to the provisions of this Stipulation (including the Supplemental Agreement described in
25 ¶ 35 below);
26

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

3 (e) the Court has (i) approved the Settlement as described herein, following
4 notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil
5 Procedure, and (ii) entered the Judgment and the Judgment has become Final, or the Court has
6 entered an Alternate Judgment and none of the Parties seek to terminate the Settlement and the
7 Alternate Judgment has become Final.

8 32. Upon the occurrence of all of the events referenced in ¶ 31 above, any and all of
9 Defendants' remaining interest in or right to the Settlement Fund, if any, shall be absolutely and
10 forever extinguished and the Releases herein shall be effective.

11 33. If (i) Defendants exercise their right to terminate the Settlement as provided in this
12 Stipulation; (ii) Lead Plaintiff exercises its right to terminate the Settlement as provided in this
13 Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the
14 Settlement otherwise fails to occur, then:

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

17 (b) Lead Plaintiff and Defendants shall revert to their respective positions in the
18 Action as of August 3, 2017;

19 (c) The terms and provisions of this Stipulation, with the exception of this ¶ 33
20 and ¶¶ 14, 16, 36 and 56, shall have no further force and effect with respect to the Parties and shall
21 not be used in the Action or in any other proceeding for any purpose, and any Judgment, or
22 Alternate Judgment, if applicable, or order entered by the Court in accordance with the terms of
23 this Stipulation shall be treated as vacated, *nunc pro tunc*; and

24 (d) Within five (5) business days after joint written notification of termination
25 is sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund
26 (including accrued interest thereon and any funds received by Lead Counsel consistent with ¶ 16

1 above), less any Notice and Administration Costs actually incurred, paid, or payable, and less any
2 Taxes paid, due, or owing shall be refunded by the Escrow Agent to the CTI Defendants (or such
3 other persons or entities as CTI Defendants may direct). In the event that the funds received by
4 Lead Counsel consistent with ¶ 16 above have not been refunded to the Settlement Fund within
5 the five (5) business days specified in this paragraph, those funds shall be refunded by the Escrow
6 Agent to the CTI Defendants (or such other persons or entities as the CTI Defendants may direct)
7 immediately upon their deposit into the Escrow Account consistent with ¶ 16 above.

8 34. It is further stipulated and agreed that Lead Plaintiff or the CTI Defendants,
9 provided they unanimously agree, shall each have the right to terminate the Settlement and this
10 Stipulation, and the provisions of ¶ 33 above shall apply, by providing written notice of their
11 election to do so (“Termination Notice”) to the other Parties to this Stipulation within thirty (30)
12 days of: (a) the Court’s final refusal to enter the Preliminary Approval Order in any material
13 respect; (b) the Court’s final refusal to approve the Settlement or any material part thereof; (c) the
14 Court’s final refusal to enter the Judgment in any material respect as to the Settlement; (d) the date
15 upon which the Judgment is modified or reversed in any material respect by the United States
16 Court of Appeals for the Ninth Circuit or the United States Supreme Court; or (e) the date upon
17 which an Alternate Judgment is modified or reversed in any material respect by the United States
18 Court of Appeals for the Ninth Circuit or the United States Supreme Court. However, any decision
19 or proceeding, whether in this Court or any appellate court, with respect to an application for
20 attorneys’ fees or reimbursement of Litigation Expenses or with respect to any plan of allocation
21 shall not be considered material to the Settlement, shall not affect the finality of any Judgment or
22 Alternate Judgment, if applicable, and shall not be grounds for termination of the Settlement.

23 35. In addition to the grounds set forth in ¶ 34 above, the CTI Defendants, provided
24 they unanimously agree, shall have the unilateral right to terminate the Settlement in the event that
25 Settlement Class Members timely and validly requesting exclusion from the Settlement Class meet
26 the conditions set forth in the CTI Defendants’ confidential supplemental agreement with Lead

1 Plaintiff (the “Supplemental Agreement”), in accordance with the terms of that agreement. The
2 Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with
3 the Court and its terms shall not be disclosed in any other manner (other than the statements herein
4 and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental
5 Agreement) unless and until the Court otherwise directs or a dispute arises between Lead Plaintiff
6 and Defendants concerning its interpretation or application, in which event the Parties shall submit
7 the Supplemental Agreement to the Court *in camera* and request that the Court afford it
8 confidential treatment.

9 **NO ADMISSION OF WRONGDOING**

10 36. Neither the Term Sheet, this Stipulation (whether or not consummated), including
11 the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation
12 that may be approved by the Court), the negotiations leading to the execution of the Term Sheet
13 and this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet,
14 this Stipulation and/or approval of the Settlement (including any arguments proffered in
15 connection therewith):

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

25 (b) shall be offered against any of the Plaintiffs’ Releasees, as evidence of, or
26 construed as, or deemed to be evidence of any presumption, concession, or admission by any of

1 the Plaintiffs' Releasees that any of their claims are without merit, that any of the Defendants'
2 Releasees had meritorious defenses, or that damages recoverable under the Complaint would not
3 have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or
4 wrongdoing of any kind, or in any way referred to for any other reason as against any of the
5 Plaintiffs' Releasees, in any arbitration, or civil, criminal, or administrative action or proceeding,
6 other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;
7 or

8 (c) shall be construed against any of the Releasees as an admission, concession,
9 or presumption that the consideration to be given hereunder represents the amount which could be
10 or would have been recovered after trial; *provided, however*, that if this Stipulation is approved by
11 the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate
12 the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

13 **MISCELLANEOUS PROVISIONS**

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

18 38. As set forth in the Class Action Fairness Act of 2005 ("CAFA"), Defendants shall
19 timely serve a CAFA notice within ten (10) calendar days of the filing of this Stipulation with the
20 Court. Defendants shall be responsible for all costs and expenses related thereto.

21 39. Defendants warrant that, as to the payments made or to be made by or on behalf of
22 them, at the time of entering into this Stipulation and at the time of such payment they, or to their
23 knowledge any persons or entities contributing to the payment of the Settlement Amount, were not
24 insolvent, nor will the payment required to be made by or on behalf of them render them insolvent
25 within the meaning of and/or for the purposes of the United States Bankruptcy Code, including
26

1 §§ 101 and 547 thereof. This representation is made by each of the Defendants and not by their
2 counsel.

3 40. In the event of the entry of a final order of a court of competent jurisdiction
4 determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf
5 of Defendants to be a preference, voidable transfer, fraudulent transfer, or similar transaction and
6 any portion thereof is required to be returned, and such amount is not promptly deposited into the
7 Settlement Fund by others, then, at the election of Lead Plaintiff, Lead Plaintiff and Defendants
8 shall jointly move the Court to vacate and set aside the Releases given and the Judgment or
9 Alternate Judgment, if applicable, entered in favor of Defendants and the other Releasees pursuant
10 to this Stipulation, in which event the releases and Judgment, or Alternate Judgment, if applicable,
11 shall be null and void, and the Parties shall be restored to their respective positions in the litigation
12 as provided in ¶ 33 above and any cash amounts in the Settlement Fund (less any Taxes paid, due
13 or owing with respect to the Settlement Fund and less any Notice and Administration Costs
14 actually incurred, paid or payable) shall be returned as provided in ¶ 33.

15 41. The Parties intend this Stipulation and the Settlement to be a final and complete
16 resolution of all disputes asserted or which could be asserted by Lead Plaintiff and any other
17 Settlement Class Members against the Defendants' Releasees with respect to the Released
18 Plaintiffs' Claims. Accordingly, Lead Plaintiff and its counsel and Defendants and their counsel
19 agree not to assert in any forum that this Action was brought by Lead Plaintiff or defended by
20 Defendants in bad faith or without a reasonable basis. No Party shall assert any claims of any
21 violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution,
22 defense, or settlement of this Action. The Parties agree that the amounts paid and the other terms
23 of the Settlement were negotiated at arm's length and in good faith by the Parties, including
24 through a mediation process supervised and conducted by Jed Melnick, Esq. of JAMS, and reflect
25 the Settlement that was reached voluntarily after extensive negotiations and consultation with
26

1 experienced legal counsel, who were fully competent to assess the strengths and weaknesses of
2 their respective clients' claims and defenses.

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

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

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

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

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

22 47. This Stipulation may be executed in one or more counterparts, including by
23 signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via e-mail.
24 All executed counterparts and each of them shall be deemed to be one and the same instrument.
25
26

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

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

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

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

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

19 53. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another
20 in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in
21 this Stipulation, and to use best efforts to promptly agree upon and execute all such other
22 documentation as may be reasonably required to obtain final approval by the Court of the
23 Settlement.

24 54. If any Party is required to give notice to another Party under this Stipulation, such
25 notice shall be in writing and shall be deemed to have been duly given upon receipt of hand
26

1 delivery, overnight delivery, or e-mail transmission, with confirmation of receipt. Notice shall be
2 provided as follows:

3 If to Lead Plaintiff or Lead Counsel: Bernstein Litowitz Berger & Grossmann LLP
4 Attn: David R. Stickney, Esq.
5 12481 High Bluff Drive, Suite 300
6 San Diego, CA 92130
7 Telephone: (858) 793-0700
8 Email: davids@blbglaw.com

9 If to the CTI Defendants: O'Melveny & Myers LLP
10 Attn: Ross B. Galin, Esq.
11 Times Square Tower
12 7 Times Square
13 New York, NY 10036
14 Telephone: (212) 326-4307
15 Email: rgalin@omm.com

16 If to the Underwriter Defendants: Dorsey & Whitney LLP
17 Attn: Thomas P. Swigert
18 50 South Sixth Street, Suite 1500
19 Minneapolis, MN 55402-1498
20 Telephone: (612) 492-5677
21 Email: swigert.tom@dorsey.com

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

23 56. Whether or not the Stipulation is approved by the Court and whether or not the
24 Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use
25 their best efforts to keep confidential all negotiations, discussions, acts performed, agreements,
26 drafts, documents signed, and proceedings in connection with the Stipulation.

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

58. No opinion or advice concerning the tax consequences of the proposed Settlement
to individual Settlement Class Members is being given or will be given by the Parties or their
counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation.
Each Settlement Class Member's tax obligations, and the determination thereof, are the sole

1 responsibility of the Settlement Class Member, and it is understood that the tax consequences may
2 vary depending on the particular circumstances of each individual Settlement Class Member.

3 **IN WITNESS WHEREOF**, the Parties hereto have caused this Stipulation to be executed,
4 by their duly authorized attorneys, as of September 15, 2017.

5 **BERNSTEIN LITOWITZ BERGER**
6 **& GROSSMANN LLP**

7 By: /s/ David R. Stickney

8 David R. Stickney
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