

EXECUTION VERSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Richard Di Donato, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

Insys Therapeutics, Inc.; Michael L. Babich;
Darryl S. Baker; and John N. Kapoor,

Defendants.

No. 16-cv-00302-NVW

CLASS ACTION

**STIPULATION AND
AGREEMENT OF SETTLEMENT
BETWEEN LEAD PLAINTIFF
AND DEFENDANT JOHN N.
KAPOOR**

1 This Stipulation and Agreement of Settlement Between Lead Plaintiff and
2 Defendant John N. Kapoor dated July 1, 2020 (“Stipulation”) is entered into between (1)
3 Court-appointed Lead Plaintiff and Class Representative Clark Miller (“Lead Plaintiff”
4 or “Class Representative”), on behalf of himself and the Court-certified Class; and (2)
5 John N. Kapoor (“Settling Defendant” or “Defendant Kapoor” and, together with Class
6 Representative, the “Settling Parties”), and embodies the terms and conditions of the
7 Settling Parties’ settlement of the above-captioned action (“Action”).¹ Subject to the
8 approval of the Court, this Stipulation is intended to fully, finally, and forever
9 compromise, settle, release, resolve, and dismiss with prejudice the Action and all
10 Released Class Representative’s Claims (defined in ¶ jj below) against Defendant
11 Kapoor. This Stipulation does not release any claims of Class Representative and the
12 other members of the Class against the Non-Settling Defendants (defined in ¶ aa below)
13 in the Action.

14 WHEREAS:

15 A. On February 2, 2016, the initial complaint in the Action was filed in the
16 Court against Insys Therapeutics, Inc. (“Insys” or the “Company”), Michael L. Babich,
17 Darryl S. Baker, Alec Burlakoff,² and Defendant Kapoor, asserting violations of Sections
18 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§
19 78j(b) and 78t(a), and Rule 10b-5, promulgated thereunder by the U.S. Securities and
20 Exchange Commission (“SEC”), 17 C.F.R. § 240.10b-5. Doc. 1.

21 B. On June 3, 2016, the Court appointed Clark Miller as Lead Plaintiff
22 pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”) and
23 approved Lead Plaintiff’s selection of Kessler Topaz Meltzer & Check, LLP as Lead
24 Counsel and Bonnett, Fairbourn, Friedman & Balint, P.C. as Liaison Counsel. Doc. 40.

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

27 ² The Court dismissed Lead Plaintiff’s claims against Alec Burlakoff in its August
28 1, 2017 Order. Doc. 107.

1 On June 24, 2016, Lead Plaintiff filed the Amended Complaint for Violation of the
2 Federal Securities Laws (“Amended Complaint”). Doc. 49.

3 C. On August 19, 2016, defendants filed a motion to dismiss the Amended
4 Complaint for failure to state a claim pursuant to Rules 9(b) and 12(b)(6) of the Federal
5 Rules of Civil Procedure (“Federal Rules”) and pursuant to the pleading requirements of
6 the PSLRA. Doc. 61. Lead Plaintiff opposed defendants’ motion to dismiss on September
7 6, 2016. Doc. 67.

8 D. Thereafter, based on information that became available after the filing of
9 the Amended Complaint, and with the consent of all defendants, Lead Plaintiff, on
10 December 22, 2016, filed the operative complaint in the Action – the Second Amended
11 Class Action Complaint for Violation of the Federal Securities Laws (“Second Amended
12 Complaint”), asserting claims under Sections 10(b) and/or 20(a) of the Exchange Act, 15
13 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17
14 C.F.R. § 240.10b-5. Doc. 77.

15 E. On January 18, 2017, defendants moved to dismiss the Second Amended
16 Complaint for failure to state a claim pursuant to Rules 9(b) and 12(b)(6) of the Federal
17 Rules and pursuant to the pleading requirements of the PSLRA. Doc. 85. On February 2,
18 2017, Lead Plaintiff opposed defendants’ motion to dismiss. Defendants’ motion was
19 fully briefed and, following oral argument by the parties, the Court granted in part and
20 denied in part defendants’ motion to dismiss on August 1, 2017. Doc. 107.

21 F. Defendants filed their answer to the Second Amended Complaint on April
22 13, 2018, and an amended answer on May 4, 2018. Docs. 131, 135. Thereafter, discovery
23 in the Action commenced.³

24 G. On August 31, 2018, Lead Plaintiff filed a motion for class certification
25 (“Class Certification Motion”). Doc. 159. Defendants opposed Lead Plaintiff’s motion on
26 October 26, 2018. Doc. 165.

27 _____
28 ³ The parties completed discovery on November 22, 2019.

1 H. While the parties' discovery efforts were ongoing and the Class
2 Certification Motion was pending, Insys, on June 10, 2019, notified the Court and the
3 parties to the Action that the Company filed for bankruptcy protection under chapter 11
4 of title 11 of the United States Code in the United States Bankruptcy Court for the District
5 of Delaware. Doc. 230. Accordingly, pursuant to 11 U.S.C. § 362(a) of the United States
6 Code, the Action was automatically stayed as to Insys.

7 I. On July 19, 2019, Lead Plaintiff and Defendant Kapoor, participated in a
8 full-day mediation in New York, New York before Michelle Yoshida of Phillips ADR,
9 which did not result in an agreement to resolve any portion of the Action.

10 J. On September 20, 2019, the Court granted Lead Plaintiff's Class
11 Certification Motion ("Class Certification Order"), while making clear that the Class
12 Certification Order did not apply to Insys based upon the automatic stay provisions of 11
13 U.S.C. § 362(a) of the United States Code. Doc. 271. On October 4, 2019, Defendant
14 Kapoor filed with the United States Court of Appeals for the Ninth Circuit a petition for
15 permission to appeal the Court's Class Certification Order pursuant to Federal Rule 23(f)
16 ("Petition"). Doc. 273. On December 18, 2019, the Ninth Circuit denied Defendant
17 Kapoor's Petition.

18 K. On December 13, 2019, Class Representative filed a consent motion to
19 voluntarily dismiss Insys from the Action with prejudice ("Insys Dismissal Motion").
20 Doc. 311. On that same day, Class Representative also filed a consent motion to approve
21 the form and manner of providing notice to the Class regarding the Court's certification
22 of the Action as a class action pursuant to Federal Rule 23, as well as the Insys Dismissal
23 Motion ("Class Notice Motion"). Doc. 312.

24 L. The Court granted the Class Notice Motion on March 20, 2020. Doc. 331.
25 Among other things, the Court found that the proposed notice to the Class met the
26 requirements of Federal Rule 23 and due process and constituted the best notice
27 practicable under the circumstances. Notice was mailed to potential Class Members
28

1 beginning on April 3, 2020 and a summary notice was published in *Investor's Business*
2 *Daily* and transmitted over *PR Newswire* on April 6, 2020. *See* Doc. 336.

3 M. Pursuant to the Court's March 20, 2020 Order, notice to the Class ("Class
4 Notice") provided Class Members the opportunity to request exclusion from the Class,
5 explained that right, and set forth the procedures for doing so.⁴ The Notice also provided
6 the opportunity for members of the Class to object to the Insys Dismissal Motion.

7 N. Pursuant to the Court's March 20, 2020 Order, and as set forth in the Class
8 Notice, the deadline for submitting requests for exclusion from the Class or objecting to
9 the Insys Dismissal Motion was April 30, 2020. In response to the Class Notice, no
10 requests for exclusion from the Class or objections to the Insys Dismissal Motion were
11 received. Docs. 336, 337. By Order dated May 15, 2020, the Court dismissed Insys from
12 the Action with prejudice. Doc. 338.

13 O. Also in December 2019, defendants Kapoor, Babich, and Baker filed a
14 motion for summary judgment asserting that Class Representative cannot establish a
15 triable issue of fact as to certain elements of his claims, and that defendants are entitled
16 to summary judgment under Rule 56 of the Federal Rules on December 20, 2019
17 ("Summary Judgment Motion"). Doc. 317. Class Representative opposed the Summary
18 Judgment Motion on February 3, 2020, and defendants Kapoor, Babich, and Baker filed
19 a reply in support of their motion on February 18, 2020. Docs. 326, 328. On May 8, 2020,
20 the Court denied the Summary Judgment Motion in its entirety. Doc. 333.

21
22
23
24 ⁴ The Class Notice informed Class Members that if they elected to remain members
25 of the Class, they would "be bound by all past, present and future orders and judgments
26 in the Action, whether favorable or unfavorable." The Class Notice also informed Class
27 Members that it would be within the Court's discretion whether to permit a second
28 opportunity to request exclusion if there was a settlement. Pursuant to the Court's Order
Preliminarily Approving Settlement with Defendant Darryl S. Baker and Providing for
Notice dated June 5, 2020 (Doc. 347), the Court exercised its discretion not to permit
Class Members a second opportunity to exclude themselves from the Class in connection
with the settlement proceedings.

1 P. On May 8, 2020, Class Representative and defendant Darryl S. Baker
2 informed the Court that they had reached an agreement in principle to resolve the Action
3 as to defendant Darryl S. Baker only (the “Baker Settlement”). Doc. 332.

4 Q. On May 22, 2020, the Court scheduled a jury trial to commence on August
5 17, 2020. Doc. 229. Thereafter, the Settling Parties engaged in substantial trial
6 preparations, including submission of proposed exhibit and witness lists; filed in limine
7 motions; and exchanged their contentions of law and fact and other key pretrial
8 disclosures. Docs. 349-52, 355-56, 358-62.

9 R. While the Settling Parties’ trial preparations were ongoing, Class
10 Representative and Defendant Kapoor restarted their earlier discussions concerning the
11 possibility of resolving the Action. Following hard-fought, arm’s-length negotiations
12 with the assistance of Ms. Yoshida, the Settling Parties agreed to resolve the Action
13 against Defendant Kapoor for Settlement Consideration of at least Seven Hundred
14 Thousand Dollars in cash (\$700,000) with the potential to increase to up to Ten Million
15 Dollars in cash (\$10,000,000), payable in accordance with the terms and schedule set forth
16 in ¶ 7 below. This agreement was set forth in a term sheet executed on the evening of
17 June 24, 2020. On June 25, 2020, the Settling Parties filed a Notice of Settlement
18 informing the Court that they had reached an agreement in principle to resolve the Action
19 as to Defendant Kapoor. Doc. 364.

20 S. Based upon their investigation and prosecution of the Action, and the
21 Settling Parties’ settlement negotiations, Class Representative and Class Counsel have
22 concluded that the terms and conditions of this Stipulation are fair, reasonable, and
23 adequate to Class Representative and the other members of the Class, and in their best
24 interests, particularly in light of Defendant Kapoor’s current and expected future financial
25 condition and the substantial likelihood that the Department of Justice could seize and
26 ultimately liquidate the entirety of Defendant Kapoor’s assets, leaving the Class with
27 nothing if Class Representative demanded and received more consideration as part of the
28

1 Settlement or was successful in obtaining a judgment against Defendant Kapoor at trial.
2 Based on Class Representative's direct oversight of the prosecution of this matter and
3 with the advice of counsel, Class Representative has agreed to settle and release the
4 Released Class Representative's Claims against the Settling Defendant pursuant to the
5 terms and provisions of this Stipulation, after considering, among other things: (a) the
6 financial benefit that members of the Class will receive under the proposed Settlement;
7 (b) the significant risks and costs of trial and the likely appeals that would follow; (c) the
8 bankruptcy of the corporate defendant; and (d) Defendant Kapoor's limited uncommitted
9 financial resources, to fund a settlement or judgment in the Action.⁵

10 T. This Stipulation constitutes a compromise of all matters that are in dispute
11 between the Settling Parties. Defendant Kapoor is entering into this Stipulation solely to
12 eliminate the burden, expense, and uncertainties of further litigation. Defendant Kapoor
13 denies any wrongdoing, and this Stipulation shall in no event be construed or deemed to
14 be evidence of or an admission or concession on the part of Defendant Kapoor with
15 respect to any claim or allegation of any fault or liability or wrongdoing or damages
16 whatsoever, or any infirmity in the defenses that Defendant Kapoor (or the Non-Settling
17 Defendants) has, or could have, asserted. Defendant Kapoor has denied, and continues to
18 deny, any and all allegations and claims asserted in the Action against him, has denied
19 and continues to deny that he has committed any act or omission giving rise to any liability
20 and/or violation of law, and has denied and continues to deny that Class Representative
21 or any Class Members have suffered damages or were otherwise harmed by Defendant
22 Kapoor's conduct. Similarly, this Stipulation shall in no event be construed or deemed to
23 be evidence of or an admission or concession on the part of Class Representative of any
24 infirmity in any of the claims asserted in the Action, or an admission or concession that
25

26 _____
27 ⁵ Defendant Kapoor's insurance carriers have consistently and repeatedly denied
28 coverage in this matter, including, without limitation, refusing to pay defense costs as
well, in light of Defendant Kapoor's criminal indictment and subsequent conviction.

1 any of Defendant Kapoor's (or the Non-Settling Defendants') defenses to liability had
2 any merit.

3 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among
4 Class Representative (individually and on behalf of all other members of the Class) and
5 Defendant Kapoor, by and through their respective undersigned attorneys and subject to
6 the approval of the Court pursuant to Rule 23(e) of the Federal Rules, that, in
7 consideration of the benefits flowing to the Settling Parties from the Settlement, all
8 Released Class Representative's Claims as against the Settling Defendant's Releasees and
9 all Released Settling Defendant's Claims as against Class Representative's Releasees
10 shall be settled and released, upon and subject to the terms and conditions set forth below.

11 **DEFINITIONS**

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

14 a. "Action" means the securities class action styled *Di Donato v. Insys*
15 *Therapeutics, Inc., et al.*, No. 16-cv-00302-NVW (D. Ariz.).

16 b. "Alternate Judgment" means a form of final judgment that may be
17 entered by the Court herein but in a form other than the form of Judgment provided for in
18 this Stipulation.

19 c. "Authorized Claimant" means a Class Member who either:
20 (i) submits a Claim to the Claims Administrator in connection with the Baker Settlement;
21 or (ii) submits a Claim to the Claims Administrator in connection with this Settlement,
22 and who is approved by the Court for payment from the Net Settlement Fund.

23 d. "Baker Settlement" means the settlement reached between Lead
24 Plaintiff and defendant Darryl S. Baker, which the Court preliminarily approved by Order
25 dated June 5, 2020. Docs. 341, 347.

26 e. "Claim" means a paper claim submitted on a Proof of Claim Form
27 or an electronic claim that is submitted to the Claims Administrator.

28

1 f. “Claim Form” or “Proof of Claim Form” means the form,
2 substantially in the form attached hereto as Attachment 4 to Exhibit A, which a Claimant
3 must complete and submit (or completes and submits in connection with the Baker
4 Settlement) should that Claimant seek to share in a distribution of the Net Settlement
5 Fund.

6 g. “Claimant” means a person or entity who or which submits a Claim
7 to the Claims Administrator (or submits a Claim to the Claims Administrator in
8 connection with the Baker Settlement) seeking to be eligible to share in the proceeds of
9 the Net Settlement Fund.

10 h. “Claims Administrator” means A.B. Data, Ltd., the firm retained by
11 Class Counsel and approved by the Court in connection with Class Notice and the Baker
12 Settlement, subject to continuing approval of the Court, to provide all notices approved
13 by the Court to potential Class Members and to administer the Settlement.

14 i. “Class” means the class certified by the Court in its September 20,
15 2019 Order (Doc. 271). Specifically, the Class includes all persons and entities who
16 purchased or otherwise acquired Insys common stock during the period from March 3,
17 2015, through January 25, 2016, and were damaged thereby. Excluded from the Class are
18 (a) Defendants;⁶ (b) present and former directors or executive officers of Insys and
19 members of their immediate families (as defined in 17 C.F.R. § 229.404, Instructions
20 (1)(a)(iii) and (1)(b)(ii)); (c) any of the foregoing individuals’ or entities’ legal
21 representatives, heirs, successors, or assigns; and (d) any entity in which any Defendant
22 has or had a controlling interest, or which is related to or affiliated with any Defendant.

23 j. “Class Counsel” means Kessler Topaz Meltzer & Check, LLP.
24
25
26

27 ⁶ For purposes of the Class definition, the term “Defendants” refers collectively to
28 Defendant Kapoor and the Non-Settling Defendants.

1 k. "Class Distribution Order" means an order entered by the Court
2 authorizing and directing that the Net Settlement Fund be distributed, in whole or in part,
3 to Authorized Claimants.

4 l. "Class Member" means each person and entity who or which is a
5 member of the Class.

6 m. "Class Period" means the period from March 3, 2015, through
7 January 25, 2016.

8 n. "Class Representative" or "Lead Plaintiff" means Clark Miller.

9 o. "Class Representative's Releasees" means (i) Class Representative,
10 his attorneys and all other Class Members; (ii) the current and former parents, affiliates,
11 subsidiaries, successors, predecessors, assigns, and assignees of each of the foregoing in
12 (i), if applicable; and (iii) the current and former officers, directors, immediate family
13 members (as defined in 17 C.F.R. §229.404, Instructions (1)(a)(iii) and (1)(b)(ii)), heirs,
14 trusts, trustees, executors, estates, administrators, beneficiaries, agents, affiliates,
15 insurers, reinsurers, predecessors, successors, assigns, and advisors of each of the persons
16 or entities listed in (i) and (ii), in their capacities as such.

17 p. "Court" means the United States District Court for the District of
18 Arizona.

19 q. "Effective Date" with respect to the Settlement means the first date
20 by which all of the events and conditions specified in ¶ 34 of this Stipulation have been
21 met and have occurred or have been waived.

22 r. "Escrow Account" means an account maintained at Huntington
23 National Bank wherein the Settlement Consideration shall be deposited and held in
24 escrow under the control of Class Counsel.

25 s. "Escrow Agent" means Huntington National Bank.
26
27
28

1 t. “Escrow Agreement” means the agreement between Class Counsel
2 and the Escrow Agent setting forth the terms under which the Escrow Agent shall
3 maintain the Escrow Account.

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

18 v. “Insys” or “Company” means Insys Therapeutics, Inc.

19 w. “Judgment” means the final judgment, substantially in the form
20 attached hereto as Exhibit B, to be entered by the Court approving the Settlement.

21 x. “Liaison Counsel” means Bonnett, Fairbourn, Friedman & Balint,
22 P.C.

23 y. “Litigation Expenses” means the costs and expenses incurred in
24 connection with commencing, prosecuting, and settling the Action, for which Class
25 Counsel intend to apply to the Court for payment or reimbursement from the Settlement
26 Fund.

1 z. “Net Settlement Fund” means the Settlement Fund less any:
2 (i) Taxes; (ii) Notice and Administration Costs; (iii) Litigation Expenses awarded by the
3 Court; (iv) attorneys’ fees awarded by the Court; and (v) any other costs or fees approved
4 by the Court.

5 aa. “Non-Settling Defendants” means Darryl S. Baker and Michael L.
6 Babich.

7 bb. “Notice and Administration Costs” means the costs, fees, and
8 expenses that are incurred by the Claims Administrator and/or Class Counsel in
9 connection with: (i) providing notices to the Class (including, but not limited to, the Class
10 Notice and the notices informing the Class of the Settlement); and (ii) administering the
11 Settlement, including but not limited to the Claims process, as well as the costs, fees, and
12 expenses incurred in connection with the Escrow Account.

13 cc. “Plaintiffs’ Counsel” means Class Counsel, Liaison Counsel, the
14 Schall Law Firm, and Goldberg Law PC.

15 dd. “Plan of Allocation” means the proposed plan of allocation of the
16 Net Settlement Fund set forth in the Settlement Notice and the same plan of allocation
17 being proposed in connection with the Baker Settlement.

18 ee. “Postcard Settlement Notice” means the postcard notice,
19 substantially in the form attached hereto as Attachment 1 to Exhibit A, which is to be
20 mailed and/or emailed to Class Members.

21 ff. “Preliminary Approval Order” means the order, substantially in the
22 form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the
23 Settlement with Defendant Kapoor and directing that notice of the Settlement be provided
24 to the Class.

25 gg. “Promissory Notice” means the promissory note attached hereto as
26 Exhibit C, to be executed by Defendant Kapoor setting forth his obligation with respect to
27 the Savings Payment described in ¶ 7(iv) below.
28

1 hh. “PSLRA” means the Private Securities Litigation Reform Act of
2 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended.

3 ii. “Released Claims” means all Released Settling Defendant’s Claims
4 and all Released Class Representative’s Claims.

5 jj. “Released Class Representative’s Claims” means all claims and
6 causes of action of every nature and description, whether known claims or Unknown
7 Claims, whether arising under federal, state, local, common, statutory, administrative or
8 foreign law, or any other law, rule or regulation, at law or in equity, whether class or
9 individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated,
10 whether matured or unmatured, that Class Representative or any other member of the
11 Class: (i) asserted in any of the complaints filed in the Action or (ii) could have asserted
12 in the Action or in any other court or forum that arise out of or in any way relate to the
13 allegations, transactions, facts, matters or occurrences, representations, or omissions set
14 forth in any of the complaints filed in the Action and that relate to the purchase,
15 acquisition or sale of Insys common stock during the period from August 12, 2014
16 through December 8, 2016. “Released Class Representative’s Claims” shall not include:
17 (i) any claims against the Non-Settling Defendants; (ii) any claims relating to the
18 enforcement of the Settlement with Defendant Kapoor; or (iii) any of the claims asserted
19 in the following actions: *Soltau v. Kapoor, et al.*, No. 28-1720-SPL (D. Ariz.), *In re Insys*
20 *Therapeutics, Inc. Deriv. Litig.*, No. 12696-VCL (Del. Ch.), *Bennett v. Kapoor*, No. 2:18-
21 cv-02170-DCG (D. Ariz.), and *In re Insys Therapeutics, Inc. Sec. Litig.*, No. 17-1954-
22 PAC (S.D.N.Y.).

23 kk. “Released Settling Defendant’s Claims” means all claims and causes
24 of action of every nature and description, whether known claims or Unknown Claims,
25 whether arising under federal, state, local, common, statutory, administrative or foreign
26 law, or any other law, rule or regulation, at law or in equity, whether class or individual
27 in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether
28

1 matured or unmatured, that arise out of or relate in any way to the institution, prosecution,
2 or settlement of the claims against Defendant Kapoor. “Released Settling Defendant’s
3 Claims” shall not include any claims relating to the enforcement of the Settlement.

4 ll. “Releasee(s)” means each and any of the Settling Defendant’s
5 Releasees and each and any of the Class Representative’s Releasees.

6 mm. “Releases” means the releases set forth in ¶¶ 4-5 of this Stipulation.

7 nn. “Second Amended Complaint” means the operative Second
8 Amended Class Action Complaint for Violation of the Federal Securities Laws filed in
9 the Action on December 22, 2016. Doc. 77.

10 oo. “Settlement” means the settlement between Class Representative
11 and Defendant Kapoor on the terms and conditions set forth in this Stipulation.

12 pp. “Settlement Consideration” means at least Seven Hundred Thousand
13 Dollars in cash (\$700,000) with the potential to increase to up to Ten Million Dollars in
14 cash (\$10,000,000), payable in accordance with the terms and schedule set forth in ¶ 7
15 below.

16 qq. “Settlement Fairness Hearing” means the hearing set by the Court
17 under Rule 23(e)(2) of the Federal Rules to consider final approval of the Settlement.

18 rr. “Settlement Fund” means the Settlement Consideration plus interest
19 earned on the Settlement Consideration while in escrow, if any.

20 ss. “Settlement Notice” means the Notice of (I) Proposed Settlement
21 with Defendant John N. Kapoor; (II) Settlement Fairness Hearing; and (III) Motion for
22 Attorneys’ Fees and Litigation Expenses, substantially in the form attached hereto as
23 Attachment 2 to Exhibit A, which is to be posted on the Website and mailed or emailed
24 to Class Members upon request.

25 tt. “Settling Defendant” means John N. Kapoor.

26 uu. “Settling Defendant’s Counsel” or “Defendant Kapoor’s Counsel”
27 means Nixon Peabody LLP and Osborn Maledon, P.A.
28

1 vv. “Settling Defendant’s Releasees” means Defendant Kapoor, all past,
2 present, or future entities owned, affiliated with or controlled by Defendant Kapoor,
3 including any of those entities’ parents, consultants, insurers, attorneys, advisors,
4 successors, heirs, assigns, executors, personal representatives, marital communities and
5 members of his immediate family (as defined in 17 C.F.R. §229.404, Instructions
6 (1)(a)(iii) and (1)(b)(ii)), or any trust of which Defendant Kapoor is the settler or which
7 is for the benefit of Defendant Kapoor or member(s) of his family. “Settling Defendant’s
8 Releasees” does not include any of the Non-Settling Defendants, nor any of their related
9 persons or entities.

10 ww. “Settling Parties” means Defendant Kapoor and Class
11 Representative, on behalf of himself and the Class.

12 xx. “Summary Settlement Notice” means the Summary Notice of
13 (I) Proposed Settlement with Defendant John N. Kapoor; (II) Settlement Fairness
14 Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses, substantially in
15 the form attached hereto as Attachment 3 to Exhibit A, to be published as set forth in the
16 Preliminary Approval Order.

17 yy. “Taxes” means: (i) all federal, state, and/or local taxes of any kind
18 (including any interest or penalties thereon) on any income earned by the Settlement
19 Fund; and (ii) the expenses and costs incurred by Class Counsel in connection with
20 determining the amount of, and paying, any taxes owed by the Settlement Fund
21 (including, without limitation, expenses of tax attorneys and accountants).

22 zz. “Unknown Claims” means any Released Class Representative’s
23 Claims which Class Representative or any other Class Member do not know or suspect
24 to exist in his, her, or its favor at the time of the release of such claims, and any Released
25 Settling Defendant’s Claims which the Settling Defendant does not know or suspect to
26 exist in his favor at the time of the release of such claims, which, if known by him, her,
27 or it, might have affected his, her, or its decision(s) with respect to this Settlement,
28

1 including, but not limited to, whether or not to object to the Settlement or to the release
2 of the Released Claims. With respect to any and all Released Claims, the Settling Parties
3 stipulate and agree that, upon the Effective Date of the Settlement, Class Representative
4 and the Settling Defendant shall expressly waive, and each of the Class Members shall be
5 deemed to have, and by operation of the Judgment or the Alternative Judgment, if
6 applicable, shall have, expressly waived, the provisions, rights, and benefits conferred by
7 any law of any state or territory of the United States, or principle of common law or
8 foreign law, which is similar, comparable, or equivalent to California Civil Code §1542,
9 which provides:

10 A general release does not extend to claims that the creditor or releasing party
11 does not know or suspect to exist in his or her favor at the time of executing
12 the release and that, if known by him or her, would have materially affected
13 his or her settlement with the debtor or released party.

14 Class Representative and the Settling Defendant acknowledge, and each of the other Class
15 Members shall be deemed by operation of law to have acknowledged, that the foregoing
16 waiver was separately bargained for and a key element of the Settlement.

17 aaa. “Website” means the website created specifically for the Action in
18 connection with Class Notice, www.InsysRXSecuritiesLitigation, which will be updated
19 to include information regarding the Settlement and on which the Settlement Notice and
20 Claim Form will be posted.

21 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

22 2. Concurrently with execution of this Stipulation, Class Representative will
23 move for preliminary approval of the Settlement, authorization to provide notice of the
24 Settlement to the Class, and the scheduling of a hearing for consideration of final approval
25 of the Settlement, which motion shall be unopposed by Defendant Kapoor. Concurrently
26 with this motion, Class Representative shall apply to the Court for, and Defendant Kapoor
27
28

1 shall agree to, entry of the Preliminary Approval Order, substantially in the form attached
2 hereto as Exhibit A.

3 **RELEASE OF CLAIMS**

4 3. The obligations incurred pursuant to this Stipulation are in consideration of:
5 (a) the full and final disposition of the Action as against Defendant Kapoor; and
6 (b) the Releases provided for herein. On the Effective Date, the Action shall be dismissed
7 only against Defendant Kapoor with prejudice.

8 4. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without
9 further action by anyone, upon the Effective Date of the Settlement, Class Representative
10 and each of the other Class Members, on behalf of themselves, and their respective
11 spouses, heirs, executors, administrators, predecessors, successors, and assigns, in their
12 capacities as such, shall be deemed to have, and by operation of law and of the judgment
13 shall have, fully, finally, and forever compromised, settled, released, resolved,
14 relinquished, waived, and discharged each and every Released Class Representative's
15 Claim against the Settling Defendant and the other Settling Defendant's Releasees, and
16 shall forever be barred and enjoined from prosecuting any or all of the Released Class
17 Representative's Claims against any of the Settling Defendant's Releasees whether or not
18 such Class Member executes and delivers a Claim Form.

19 5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without
20 further action by anyone, upon the Effective Date of the Settlement, the Settling
21 Defendant, on behalf of himself, and his spouses, heirs, executors, administrators,
22 predecessors, successors, and assigns, in their capacities as such, shall be deemed to have,
23 and by operation of law and of the judgment shall have, fully, finally, and forever
24 compromised, settled, released, resolved, relinquished, waived, and discharged each and
25 every Released Settling Defendant's Claim against Class Representative and the other
26 Class Representative's Releasees, and shall forever be barred and enjoined from
27
28

1 prosecuting any or all of the Released Settling Defendant's Claims against any of the
2 Class Representative's Releasees.

3 6. Notwithstanding ¶¶ 4-5 above, nothing in the Judgment, or the Alternate
4 Judgment, if applicable, shall bar any action by any of the Settling Parties to enforce or
5 effectuate the terms of this Stipulation or the Judgment, or Alternate Judgment, if
6 applicable.

7 **THE SETTLEMENT CONSIDERATION**

8 7. In consideration of the full and final settlement of the claims asserted in the
9 Action against Defendant Kapoor and the Releases specified in ¶¶ 3-6 above, Defendant
10 Kapoor shall pay or cause to be paid to the Class consideration of at least Seven Hundred
11 Thousand Dollars in cash (\$700,000) (the "Minimum Settlement Amount") with the
12 potential to increase to up to Ten Million Dollars in cash (\$10,000,000), payable in
13 accordance with the terms and schedule set forth below (collectively referred to as the
14 "Settlement Consideration"). The components of the Settlement Consideration are
15 described as follows:

16 (i) **Down Payment:** Two Hundred and Fifty Thousand Dollars
17 (\$250,000) (the "Down Payment") of the Minimum Settlement Amount shall be paid
18 by or on behalf of Defendant Kapoor into the Escrow Account within fifteen (15)
19 business days following the Court's entry of the Preliminary Approval Order.

20 (ii) **Monthly Payments:** On the first day of the month following the
21 Court's entry of the Judgment, Defendant Kapoor shall pay or cause to be paid
22 Twenty Five Thousand Dollars (\$25,000) and will continue to pay \$25,000 per
23 month, on the first day of each month, for a period of ten (10) months (for a monthly
24 payment consideration totaling Two Hundred and Fifty Thousand Dollars
25 (\$250,000)), into the Escrow Account.

26 (iii) **Appeal Payment:** In connection with Defendant Kapoor's criminal
27 conviction in *United States of America v. Babich, et al.*, No. 1:16-cr-10343-ADB (D.
28

1 Mass.) (the “Criminal Conviction”), Defendant Kapoor’s sentencing included an
2 obligation to pay \$59,755,362.45 in restitution, \$1,914,771.20 in forfeiture, and a
3 fine of \$250,000.00 (collectively, this \$61,920,133.65 shall be referred to herein as
4 the “Criminal Obligation”). Defendant Kapoor is in the process of appealing his
5 Criminal Conviction, and the appeal will also implicate his Criminal Obligation. In
6 the event that Defendant Kapoor is unsuccessful in having the Criminal Conviction
7 overturned on appeal, within thirty (30) calendar days after the entry of the
8 aforementioned appellate decision, Defendant Kapoor shall pay or cause to be paid
9 Two Hundred Thousand Dollars (\$200,000) (the “Appeal Loss Payment”), into the
10 Escrow Account. In the event that Defendant Kapoor is successful at having the
11 Criminal Conviction overturned on appeal, even if the Department of Justice retries
12 Defendant Kapoor or otherwise seeks further relief in connection with the ruling on
13 the appeal of the Criminal Conviction, within thirty (30) calendar days after the entry
14 of the aforementioned appellate decision, Defendant Kapoor shall pay or cause to be
15 paid Two Million Dollars (\$2,000,000) (the “Appeal Win Payment”), into the
16 Escrow Account.

17 (iv) **Savings Payment**: Separate and distinct from the Down Payment,
18 the Monthly Payments and/or the Appeal Loss Payment or Appeal Win Payment,
19 as part of the Settlement, within thirty (30) calendar days after the satisfaction in
20 full of the Criminal Obligation (regardless of how the Criminal Obligation is
21 satisfied or who pays the Criminal Obligation), Defendant Kapoor shall pay into
22 the Escrow Account, subject to the cap set forth below, Fifty Percent (50%) of any
23 amount of the original Criminal Obligation that has not been paid by Defendant
24 Kapoor (the “Savings Payment”). For purposes of clarity, this Savings Payment
25 obligation can arise from a scenario in which Defendant Kapoor does not pay the
26 full amount of the Criminal Obligation (a) because the Criminal Obligation is
27 satisfied in part or in full by persons other than Defendant Kapoor (e.g., if any
28

1 portion of the Criminal Obligation is paid by or on behalf of Defendant Michael L.
2 Babich, the bankrupt estate of Insys, through insurance proceeds covering any
3 insured including Defendant Kapoor or by or on behalf of any person or corporate
4 entity other than Defendant Kapoor); or (b) if the Criminal Obligation is reduced in
5 any amount or eliminated for any reason and not subject to reinstatement or
6 reassessment in further proceedings. In no event shall the Savings Payment exceed
7 Seven Million Five Hundred Thousand Dollars (\$7,500,000). Defendant Kapoor
8 agrees that the obligation set forth in this provision is non-dischargeable in the event
9 he files for bankruptcy. Attached as Exhibit C hereto is a Promissory Notice to be
10 executed by Defendant Kapoor setting forth his obligation pursuant to this
11 provision.

12 (v) **Escrow Account Instructions:** Within five (5) business days
13 following the Court's entry of the Preliminary Approval Order, Class Counsel
14 shall provide written instructions to Defendant Kapoor's Counsel setting forth the
15 necessary account information for the Escrow Account to allow for payment by or
16 on behalf of Defendant Kapoor for the Down Payment, the Monthly Payments, the
17 Appeal Loss Payment or the Appeal Win Payment, and any Savings Payment.

18 8. By executing this Stipulation, Defendant Kapoor's Counsel is affirmatively
19 representing that he believes that the consideration provided for in the Settlement is the
20 maximum consideration that Defendant Kapoor is able to pay, and has advised the
21 Department of Justice prosecuting Defendant Kapoor's Criminal Conviction of the
22 consideration provided for in the Settlement and further confirmed that the consideration
23 will not interfere with Defendant Kapoor's obligation to satisfy his Criminal Obligation,
24 without which such confirmation Defendant Kapoor would be subject to the risk of
25 immediate seizure of his assets by the Department of Justice.
26
27
28

USE OF THE SETTLEMENT FUND

1
2 9. The Settlement Consideration plus interest earned on the Settlement
3 Consideration while in escrow, if any, is referred to herein as the “Settlement Fund.” The
4 Settlement Fund shall be used to pay any: (a) Taxes; (b) Notice and Administration Costs;
5 (c) Litigation Expenses awarded by the Court; (d) attorneys’ fees awarded by the Court;
6 and (e) any other costs and fees approved by the Court. The balance remaining in the
7 Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized
8 Claimants as provided in ¶¶ 19-31 below.

9 10. Except as provided herein or pursuant to orders of the Court, the Net
10 Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds
11 held by the Escrow Agent shall be deemed to be in the custody of the Court and shall
12 remain subject to the jurisdiction of the Court until such time as the funds shall be
13 distributed or returned pursuant to the terms of this Stipulation and/or further order of the
14 Court. At the written direction of Class Counsel, the Escrow Account shall invest any
15 funds in the Escrow Account exclusively in instruments or accounts backed by the full
16 faith and credit of the United States Government or fully insured by the United States
17 Government or an agency thereof, including a United States Treasury Fund or bank
18 account that is either (a) fully insured by the Federal Deposit Insurance Corporation
19 (“FDIC”), or (b) secured by instruments backed by the full faith and credit of the United
20 States Government. The Escrow Agent shall reinvest the proceeds of these instruments
21 or accounts as they mature in similar instruments or accounts at their then-current market
22 rates.

23 11. The Settling Parties agree that the Settlement Fund is intended to be a
24 Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and
25 that Class Counsel, as administrator of the Settlement Fund within the meaning of
26 Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to
27 be filed all informational and other tax returns as may be necessary or appropriate
28

1 (including, without limitation, the returns described in Treasury Regulation § 1.468B-
2 2(k)) for the Settlement Fund. Class Counsel shall also be responsible for causing
3 payment to be made from the Settlement Fund of any Taxes owed with respect to the
4 Settlement Fund. The Settling Defendant's Releasees shall not have any liability or
5 responsibility for any such Taxes. Upon written request, Defendant Kapoor will provide
6 to Class Counsel the statement described in Treasury Regulation § 1.468B-3(e). Class
7 Counsel, as administrator of the Settlement Fund within the meaning of Treasury
8 Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or
9 advisable to carry out this paragraph, including, as necessary, making a "relation back
10 election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified
11 Settlement Fund to come into existence at the earliest allowable date, and shall take or
12 cause to be taken all actions as may be necessary or appropriate in connection therewith.

13 12. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid,
14 or caused to be paid, by Class Counsel and without further order of the Court. Any tax
15 returns prepared for the Settlement Fund (as well as the election(s) set forth therein) shall
16 be consistent with the previous paragraph and in all events shall reflect that all Taxes on
17 the income earned by the Settlement Fund shall be paid out of the Settlement Fund as
18 provided herein. The Settling Defendant's Releasees shall have no responsibility or
19 liability for the acts or omissions of Class Counsel or its agents with respect to the
20 payment of Taxes, as described herein.

21 13. The Settlement is not a claims-made settlement. Upon the occurrence of the
22 Effective Date, neither Defendant Kapoor, any of the Settling Defendant's Releasees, nor
23 any other person or entity who or which funded any portion of the Settlement
24 Consideration shall have any right to the return of the Settlement Consideration or any
25 portion thereof for any reason whatsoever, including without limitation, the number of
26 Claims submitted, the collective amount of recognized losses of Authorized Claimants,
27
28

1 the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants
2 from the Net Settlement Fund.

3 14. Notwithstanding the fact that the Effective Date of the Settlement has not
4 yet occurred, Class Counsel may pay from the Settlement Fund, without further approval
5 from Defendant Kapoor or further order of the Court, all Notice and Administration Costs
6 actually incurred and paid or payable. Such costs and expenses shall include, without
7 limitation, the actual costs of Class Notice, the actual costs of printing and mailing the
8 Postcard Settlement Notice, adapting and maintaining the Website and posting the
9 Settlement Notice and Claim Form, publishing the Summary Settlement Notice,
10 reimbursements to nominee owners for forwarding notices to their beneficial owners, the
11 administrative expenses incurred and fees charged by the Claims Administrator in
12 connection with providing Class Notice and notice of the Settlement, and the fees, if any,
13 of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms
14 of this Stipulation, all Notice and Administration Costs paid or incurred, including any
15 related fees, shall not be returned or repaid to Defendant Kapoor, any of the other Settling
16 Defendant's Releasees, or any other person or entity who or which funded any portion of
17 the Settlement Consideration.

18 15. Any Notice and Administration Costs paid from the Settlement Fund prior
19 to the Effective Date which are determined to be costs pertaining to both this Settlement
20 and the Baker Settlement (e.g., processing Claims) will be paid from the Settlement Fund
21 based on the proportion such costs represent to the respective settlement amounts.

22 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

23 16. Class Counsel, on behalf of Plaintiffs' Counsel, will apply to the Court for
24 an award of attorneys' fees to be paid solely from (and out of) the Settlement Fund. Class
25 Counsel's fee request will be inclusive of any remaining unreimbursed Litigation
26 Expenses which have not been awarded in connection with the Baker Settlement. Class
27 Counsel's application for attorneys' fees and/or Litigation Expenses is not the subject of
28

1 any agreement between the Settling Defendant and Class Representative other than what
2 is set forth in this Stipulation.

3 17. Any attorneys' fees and Litigation Expenses that are awarded by the Court
4 shall be paid to Class Counsel from the Down Payment immediately upon award, and
5 immediately from any other proceeds obtained through the Settlement as those proceeds
6 are received into the Escrow Account (without the need for additional Court Orders),
7 notwithstanding the existence of any timely filed objections thereto, or potential for
8 appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to
9 Class Counsel's obligation to make appropriate refunds or repayments to the Settlement
10 Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the
11 Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any
12 appeal or further proceedings on remand, or successful collateral attack, the award of
13 attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing
14 or reversing the award has become Final. Class Counsel shall make the appropriate refund
15 or repayment in full no later than thirty (30) days after: (a) receiving from Settling
16 Defendant's Counsel notice of the termination of the Settlement; or (b) any order reducing
17 or reversing the award of attorneys' fees and/or Litigation Expenses has become Final.
18 An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this
19 Stipulation and is not a condition of the Settlement embodied herein. Any order of the
20 Court awarding attorneys' fees and/or Litigation Expenses will not operate to terminate
21 the Settlement or affect the finality or binding nature of the Settlement. Further, neither
22 Class Representative nor Class Counsel may cancel or terminate the Settlement based on
23 this Court's or any appellate court's ruling with respect to an award of attorneys' fees
24 and/or Litigation Expenses.

25 18. Class Counsel shall, after paying unreimbursed Litigation Expenses,
26 allocate any remaining attorneys' fees awarded amongst Plaintiffs' Counsel in a manner
27 which it, in good faith, believes reflects the contributions of such counsel to the
28

1 institution, prosecution, and settlement of the Action. Neither Defendant Kapoor nor any
2 of the other Settling Defendant's Releasees shall have any responsibility for or liability
3 whatsoever with respect to Plaintiffs' Counsel's attorneys' fees or Litigation Expenses,
4 including the allocation thereof among Plaintiffs' Counsel and/or any other person or
5 entity who may assert some claim to any attorneys' fees or Litigation Expenses awarded
6 by the Court. Any attorneys' fees and/or Litigation Expenses that are awarded to
7 Plaintiffs' Counsel shall be payable solely from the Escrow Account.

8 **NOTICE AND SETTLEMENT ADMINISTRATION**

9 19. As part of the Preliminary Approval Order, Class Representative shall
10 request the Court's authorization to retain A.B. Data, Ltd. as the Claims Administrator.
11 A.B. Data, Ltd. was previously approved by the Court as the administrator in connection
12 with the dissemination of Class Notice and was authorized by the Court to serve as the
13 Claims Administrator for the Baker Settlement. Docs. 331, 347. The Claims
14 Administrator shall administer the Settlement, including but not limited to the process of
15 receiving, reviewing, and approving or denying Claims, under Class Counsel's
16 supervision and subject to the jurisdiction of the Court. Neither Defendant Kapoor, nor
17 any of the other Settling Defendant's Releasees, shall have any involvement in or any
18 responsibility, authority, or liability whatsoever for the selection of the Claims
19 Administrator, the Plan of Allocation, the administration of the Settlement, the Claims
20 process, or disbursement of the Net Settlement Fund, and shall have no liability
21 whatsoever to any person or entity, including, but not limited to, Class Representative,
22 any other Class Members, or Class Counsel in connection with the foregoing. Settling
23 Defendant's Counsel shall cooperate in the administration of the Settlement to the extent
24 reasonably necessary to effectuate its terms.

25 20. In accordance with the terms of the Preliminary Approval Order to be
26 entered by the Court, Class Counsel shall cause the Claims Administrator to mail, and/or
27 email, the Postcard Settlement Notice to those members of the Class identified in
28

1 connection with Class Notice and the Baker Settlement, and any additional Class
2 Members that may be identified. Class Counsel shall also cause the Claims Administrator
3 to post the Settlement Notice and Claim Form on the Website as well as cause the Claims
4 Administrator to have the Summary Settlement Notice published in accordance with the
5 terms of the Preliminary Approval Order to be entered by the Court.

6 21. No later than ten (10) calendar days following the filing of this Stipulation
7 with the Court, the Settling Defendant shall serve the notice required under the Class
8 Action Fairness Act, 28 U.S.C. § 1715 *et seq.* (“CAFA”). The Settling Defendant is solely
9 responsible for the costs of the CAFA notice and administering the CAFA notice. At least
10 seven (7) calendar days before the Settlement Fairness Hearing, the Settling Defendant
11 shall cause to be served on Class Counsel and filed with the Court proof, by affidavit or
12 declaration, regarding compliance with CAFA § 1715(b).

13 22. The Claims Administrator shall receive Claims and determine first, whether
14 the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant’s *pro*
15 *rata* share of the Net Settlement Fund based upon each Authorized Claimant’s
16 Recognized Claim compared to the total Recognized Claims of all Authorized Claimants
17 (as set forth in the Plan of Allocation set forth in the Settlement Notice attached hereto as
18 Attachment 2 to Exhibit A, or in such other plan of allocation as the Court approves).

19 23. The Plan of Allocation will be proposed solely by Class Representative,
20 subject to Court Approval. The proposed Plan of Allocation (as set forth in the Settlement
21 Notice) is the same plan of allocation being proposed in connection with the Baker
22 Settlement. The Plan of Allocation is not a necessary term of the Settlement or of this
23 Stipulation and it is not a condition of the Settlement or of this Stipulation that any
24 particular plan of allocation be approved by the Court. Class Representative and Class
25 Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this
26 Court’s or any appellate court’s ruling with respect to the Plan of Allocation or any other
27 plan of allocation in this Action. The Settling Defendant and the Settling Defendant’s
28

1 Releasees shall not object in any way to the Plan of Allocation or any other plan of
2 allocation in this Action. Neither the Settling Defendant, nor any of the Settling
3 Defendant's Releasees, shall have any involvement with or liability, obligation, or
4 responsibility whatsoever for the application of the Court-approved plan of allocation.
5 Any order of the Court modifying or rejecting the proposed Plan of Allocation will not
6 operate to terminate the Settlement or affect the finality or binding nature of the
7 Settlement.

8 24. Claim Forms submitted by or on behalf of Class Members in connection
9 with the Baker Settlement will be considered as resubmitted in connection with the
10 Settlement with Defendant Kapoor; Class Members need not resubmit Claim Forms in
11 connection with this Settlement. However, an additional opportunity for submitting Claim
12 Forms in connection with this Settlement will be allowed as set forth in the Preliminary
13 Approval Order. Any Class Member who does not submit (or did/does not submit in
14 connection with the Baker Settlement) a valid Claim will not be entitled to receive any
15 distribution from the Net Settlement Fund, but will otherwise be bound by all of the terms
16 of this Stipulation and the Settlement, including the terms of the Judgment or, the
17 Alternate Judgment, if applicable, to be entered in the Action against Defendant Kapoor
18 and the Releases provided for herein and therein, and will be permanently barred and
19 enjoined from bringing any action, claim, or other proceeding of any kind against the
20 Settling Defendant's Releasees with respect to the Released Class Representative's
21 Claims in the event that the Effective Date occurs with respect to the Settlement.

22 25. Class Counsel shall be responsible for supervising the administration of the
23 Settlement and the disbursement of the Net Settlement Fund subject to Court approval.
24 Neither the Settling Defendant, nor any Settling Defendant's Releasees, shall be permitted
25 to review, contest, or object to any Claim, or any decision of the Claims Administrator or
26 Class Counsel with respect to accepting or rejecting any Claim for payment. Class
27 Counsel shall have the right, but not the obligation, to waive what it deems to be formal
28

1 or technical defects in any Claims submitted in the interests of achieving substantial
2 justice.

3 26. For purposes of determining the extent, if any, to which a Class Member
4 shall be entitled to be treated as an Authorized Claimant, the following conditions shall
5 apply:

6 a. Unless a Claim Form was submitted in connection with the Baker
7 Settlement, each Claimant shall be required to submit a Claim in paper form, substantially
8 in the form attached hereto as Attachment 4 to Exhibit A, or in electronic form, in
9 accordance with the instructions for the submission of such Claims, and supported by
10 such documents as are designated therein, including proof of the Claimant's loss, or such
11 other documents or proof as the Claims Administrator or Class Counsel, in their
12 discretion, may deem acceptable;

13 b. All Claims must be submitted by the date set by the Court in the
14 Preliminary Approval Order and specified in the Settlement notices. Any Class Member
15 who fails to submit a Claim by such date shall be forever barred from receiving any
16 distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless
17 by Order of the Court such Class Member's Claim is accepted), but shall in all other
18 respects be bound by all of the terms of this Stipulation and the Settlement, including the
19 terms of the Judgment or Alternate Judgment, if applicable, and the Releases provided
20 for herein and therein, and will be permanently barred and enjoined from bringing any
21 action, claim, or other proceeding of any kind against any of the Settling Defendant's
22 Releasees with respect to any Released Class Representative's Claim. Provided that it is
23 mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted
24 when postmarked, if received with a postmark indicated on the envelope and if mailed by
25 first-class mail and addressed in accordance with the instructions thereon. In all other
26 cases, the Claim Form shall be deemed to have been submitted on the date when actually
27 received by the Claims Administrator;

28

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

5 d. Claims that do not meet the submission requirements may be
6 rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall
7 communicate with the Claimant in writing, to give the Claimant the chance to remedy
8 any curable deficiencies in the Claim submitted. The Claims Administrator shall notify,
9 in a timely fashion and in writing, all Claimants whose Claim the Claims Administrator
10 proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate
11 in such notice that the Claimant whose Claim is to be rejected has the right to a review
12 by the Court if the Claimant so desires and complies with the requirements of
13 subparagraph (e) below; and

14 e. If any Claimant whose Claim has been rejected in whole or in part
15 desires to contest such rejection, the Claimant must, within twenty (20) days after the date
16 of mailing of the notice required in subparagraph (d) above or a lesser time period if the
17 Claim was untimely, serve upon the Claims Administrator a notice and statement of
18 reasons indicating the Claimant's grounds for contesting the rejection along with any
19 supporting documentation, and requesting a review thereof by the Court. If a dispute
20 concerning a Claim cannot be otherwise resolved, Class Counsel shall thereafter present
21 the request for review to the Court.

22 27. Each Claimant shall be deemed to have submitted to the jurisdiction of the
23 Court with respect to the Claimant's Claim, and the Claim will be subject to investigation
24 and discovery under the Federal Rules, provided, however, that such investigation and
25 discovery shall be limited to that Claimant's status as a Class Member and the validity
26 and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this
27 Action or of the Settlement in connection with the processing of Claims.
28

1 28. Class Counsel will apply to the Court, on notice to Settling Defendant's
2 Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's
3 administrative determinations concerning the acceptance and rejection of the Claims
4 submitted; (b) approving payment of any unpaid administration fees and expenses
5 associated with the administration of the Settlement from the Escrow Account; and (c) if
6 the Effective Date has occurred, directing payment of the Net Settlement Fund to
7 Authorized Claimants from the Escrow Account.

8 29. Payment pursuant to the Class Distribution Order shall be final and
9 conclusive against all Claimants. All Class Members whose Claims are not approved by
10 the Court for payment shall be barred from participating in distributions from the Net
11 Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and
12 the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable,
13 to be entered in this Action and the Releases provided for herein and therein, and will be
14 permanently barred and enjoined from bringing any action against any and all Settling
15 Defendant's Releasees with respect to any and all of the Released Class Representative's
16 Claims.

17 30. No person or entity shall have any claim against Class Representative,
18 Plaintiffs' Counsel, the Claims Administrator, or any other agent designated by Class
19 Counsel, or the Settling Defendant's Releasees and/or their respective counsel, arising
20 from distributions made substantially in accordance with the Stipulation, the plan of
21 allocation approved by the Court, or any order of the Court. Class Representative and the
22 Settling Defendant, and their respective counsel, and Class Representative's damages
23 consultant and all other Releasees shall have no liability whatsoever for the investment
24 or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation,
25 or the determination, administration, calculation, or payment of any claim or
26 nonperformance of the Claims Administrator, the payment or withholding of taxes
27
28

1 (including interest and penalties) owed by the Settlement Fund, or any losses incurred in
2 connection therewith.

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

9 **TERMS OF THE JUDGMENT**

10 32. If the Settlement contemplated by this Stipulation is approved by the Court,
11 Class Counsel and Settling Defendant's Counsel shall request that the Court enter a
12 Judgment, substantially in the form attached hereto as Exhibit B.

13 33. The Judgment shall contain a bar order ("Bar Order") substantially in the
14 form set forth in Exhibit B hereto that shall, upon the Effective Date, bar, pursuant to the
15 PSLRA, specifically 15 U.S.C. § 78u-4(f)(7)(A), and common law, all future claims by
16 any individual or entity against any of the Settling Defendant's Releasees, and by the
17 Settling Defendant's Releasees against any individual or entity other than a person whose
18 liability has been extinguished by the Settlement, for (a) contribution or indemnity (or
19 any other claim, however denominated on whatsoever theory) arising out of or related to
20 the claims or allegations asserted by Class Representative in the Action, or (b) any other
21 claim of any type, whether arising under state, federal, common, or foreign law, for which
22 the injury claimed is that person's or entity's actual or threatened liability to Class
23 Representative and/or members of the Class arising out of or related to the claims or
24 allegations asserted by Class Representative in the Action. The Bar Order shall also
25 provide that, pursuant to the PSLRA and common law, any final verdict or judgment that
26 may be obtained by or on behalf of the Class or a Class Member against any individual
27 or entity subject to the Bar Order, pursuant to 15 U.S.C. § 78u-4(f)(7)(B), shall be reduced
28

1 by the greater of: (a) an amount that corresponds to the percentage of responsibility of the
2 Settling Defendant for common damages; or (b) the amount paid by or on behalf of the
3 Settling Defendant to the Class or Class Member for common damages.

4 **CONDITIONS OF SETTLEMENT AND EFFECT OF**
5 **DISAPPROVAL, CANCELLATION OR TERMINATION**

6 34. The Effective Date of the Settlement shall be deemed to occur on the
7 occurrence or waiver of all of the following events:

8 a. the Court has entered the Preliminary Approval Order, substantially
9 in the form set forth in Exhibit A attached hereto, as required by ¶ 2 above;

10 b. the Down Payment, the Monthly Payments and the Appeal Payment
11 (either the Appeal Loss Payment or the Appeal Loss Payment) have been deposited into
12 the Escrow Account in accordance with the provisions of ¶¶ 7(i) – (iii) above;

13 c. Defendant Kapoor has not exercised his option to terminate the
14 Settlement pursuant to ¶ 37 of this Stipulation;

15 d. Class Representative has not exercised his option to terminate the
16 Settlement pursuant to ¶¶ 37 and 38 of this Stipulation; and

17 e. the Court has approved the Settlement as described herein, following
18 notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules, and
19 entered the Judgment and the Judgment has become Final, or the Court has entered an
20 Alternate Judgment and none of the Settling Parties seek to terminate the Settlement and
21 the Alternate Judgment has become Final.

22 35. Upon the occurrence of all of the events referenced in ¶ 34 above, any and
23 all remaining interest or right of Defendant Kapoor in or to the Settlement Fund, if any,
24 shall be absolutely and forever extinguished and the Releases herein shall be effective.

25 36. If (i) Defendant Kapoor exercises his right to terminate the Settlement
26 pursuant to ¶ 37 of this Stipulation; (ii) Class Representative exercises his right to
27 terminate the Settlement pursuant to ¶¶ 37 or 38 of this Stipulation; (iii) the Court
28

1 disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails
2 to occur, then:

3 a. The Settlement and the relevant portions of this Stipulation shall be
4 canceled and terminated.

5 b. Class Representative and Defendant Kapoor shall revert to their
6 respective positions in the Action immediately prior to the execution of the term sheet on
7 June 24, 2020.

8 c. The terms and provisions of this Stipulation, with the exception of
9 this ¶ 36 and ¶¶ 14, 17, 39, and 48, shall have no further force and effect with respect to
10 the Settling Parties and shall not be used in the Action or in any other proceeding for any
11 purpose, and any Judgment, or Alternate Judgment, if applicable, or order entered by the
12 Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc*
13 *pro tunc*.

14 d. Within fifteen (15) calendar days after joint written notification of
15 termination is sent by Settling Defendant's Counsel and Class Counsel to the Escrow
16 Agent, the Settlement Fund (including accrued interest thereon and any funds received
17 by Class Counsel consistent with ¶ 17 above), less any Notice and Administration Costs
18 actually incurred, paid, or payable and less any Taxes paid, due, or owing shall be
19 refunded by the Escrow Agent to Defendant Kapoor (or such other persons or entities as
20 Defendant Kapoor may direct). In the event that the funds received by Class Counsel
21 consistent with ¶ 17 above have not been refunded to the Settlement Fund within the
22 fifteen (15) calendar days specified in this paragraph, those funds shall be refunded by
23 the Escrow Agent to Defendant Kapoor (or such other persons or entities as Defendant
24 Kapoor may direct) immediately upon their deposit into the Escrow Account consistent
25 with ¶ 17 above.

26 37. It is further stipulated and agreed that Defendant Kapoor and Class
27 Representative shall each have the right to terminate the Settlement and this Stipulation,
28

1 by providing written notice of their election to do so (“Termination Notice”) to the other
2 Settling Party to this Stipulation within thirty (30) days of: (a) the Court’s final refusal to
3 enter the Preliminary Approval Order in any material respect; (b) the Court’s final refusal
4 to approve the Settlement or any material part thereof; (c) the Court’s final refusal to enter
5 the Judgment in any material respect as to the Settlement; (d) the date upon which the
6 Judgment is modified or reversed in any material respect by the United States Court of
7 Appeals for the Ninth Circuit or the United States Supreme Court; or (e) the date upon
8 which an Alternate Judgment is modified or reversed in any material respect by the United
9 States Court of Appeals for the Ninth Circuit or the United States Supreme Court, and the
10 provisions of ¶ 36 above shall apply. However, any decision or proceeding, whether in
11 this Court or any appellate court, with respect to an application for attorneys’ fees or
12 Litigation Expenses or with respect to any plan of allocation shall not be considered
13 material to the Settlement, shall not affect the finality of any Judgment or Alternate
14 Judgment, if applicable, and shall not be grounds for termination of the Settlement.

15 38. Class Representative shall also have the option to terminate the Settlement
16 in the event that the Settlement Consideration has not been paid as provided for in ¶ 7
17 above, by providing written notice of the election to terminate to Settling Defendant’s
18 Counsel.

19 **NO ADMISSION OF WRONGDOING**

20 39. Neither this Stipulation (whether or not consummated), including the
21 exhibits hereto and the Plan of Allocation contained therein (or any other plan of
22 allocation that may be approved by the Court), the negotiations leading to the execution
23 of this Stipulation, nor any proceedings taken pursuant to or in connection with this
24 Stipulation, and/or approval of the Settlement (including any arguments proffered in
25 connection therewith):

26 a. shall be offered against any of the Settling Defendant’s Releasees as
27 evidence of, or construed as, or deemed to be evidence of any presumption, concession,
28

1 or admission by any of the Settling Defendant's Releasees with respect to the truth of any
2 fact alleged by Class Representative or the validity of any claim that was or could have
3 been asserted or the deficiency of any defense that has been or could have been asserted
4 in this Action or in any other litigation, or of any liability, negligence, fault, or other
5 wrongdoing of any kind of any of the Settling Defendant's Releasees or in any way
6 referred to for any other reason as against any of the Settling Defendant's Releasees, in
7 any arbitration proceeding or other civil, criminal, or administrative action or proceeding,
8 other than such proceedings as may be necessary to effectuate the provisions of this
9 Stipulation;

10 b. shall be offered against any of the Class Representative's Releasees,
11 as evidence of, or construed as, or deemed to be evidence of any presumption, concession,
12 or admission by any of the Class Representative's Releasees that any of their claims are
13 without merit, that any of the Settling Defendant's Releasees had meritorious defenses,
14 or that damages recoverable under the Second Amended Complaint with respect to
15 Defendant Kapoor would not have exceeded the Settlement Consideration or with respect
16 to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to
17 for any other reason as against any of the Class Representative's Releasees, in any
18 arbitration proceeding or other civil, criminal, or administrative action or proceeding,
19 other than such proceedings as may be necessary to effectuate the provisions of this
20 Stipulation; or

21 c. shall be construed against any of the Releasees as an admission,
22 concession, or presumption that the consideration to be given hereunder represents the
23 amount which could be or would have been recovered from Defendant Kapoor after trial;
24 *provided, however,* that if this Stipulation is approved by the Court, the Settling Parties
25 and the Releasees and their respective counsel may refer to it to effectuate the protections
26 from liability granted hereunder or otherwise to enforce the terms of the Settlement.

27
28

MISCELLANEOUS PROVISIONS

1
2 40. All of the exhibits attached hereto are hereby incorporated by reference as
3 though fully set forth herein. Notwithstanding the foregoing, in the event that there exists
4 a conflict or inconsistency between the terms of this Stipulation and the terms of any
5 exhibit attached hereto, the terms of the Stipulation shall prevail.

6 41. Defendant Kapoor warrants and represents that he is not “insolvent” on a
7 balance sheet basis (excluding contingent litigation claims which he disputes) as of the
8 execution of this Stipulation and that he does not anticipate that he will be insolvent under
9 such test as of the anticipated time the Down Payment is to be actually transferred or
10 made as reflected herein. In the event of a final order of a court of competent jurisdiction,
11 not subject to any further proceedings, determining the transfer of the Down Payment, or
12 any portion thereof, by or on behalf of Defendant Kapoor to be a preference, voidable
13 transfer, fraudulent transfer or similar transaction under Title 11 of the United States Code
14 (Bankruptcy) or applicable state law, and any portion thereof is required to be refunded
15 and such amount is not promptly deposited in the Escrow Account, Class Counsel may
16 elect to terminate the settlement with Defendant Kapoor. In such event, all of the releases
17 given and the judgments entered in favor of Defendant Kapoor pursuant to the Settlement
18 shall be null and void, and all parties shall be restored to their respective positions in the
19 litigation as provided in ¶ 36(b) above and any cash amounts in the Settlement Fund (less
20 any Taxes paid, due, or owing with respect to the Settlement Fund and less any Notice
21 and Administration Costs actually incurred, paid, or payable) shall be returned as
22 provided in ¶ 36.

23 42. The Settling Parties intend this Stipulation and the Settlement to be a final
24 and complete resolution of all disputes asserted or which could be asserted by Class
25 Representative and any other Class Members against the Settling Defendant’s Releases
26 with respect to the Released Class Representative’s Claims. The Settling Parties agree
27 that each has complied fully with the strictures of Rule 11 of the Federal Rules and no
28

1 Settling Party shall assert any claims of any violation of Rule 11 relating to the institution,
2 prosecution, defense, or settlement of this Action. The Settling Parties agree that the
3 amount paid and the other terms of the Settlement were negotiated at arm's length and in
4 good faith by the Settling Parties, and reflect the Settlement that was reached voluntarily
5 after extensive negotiations and consultation with experienced legal counsel, who were
6 fully competent to assess the strengths and weaknesses of their respective clients' claims
7 or defenses.

8 43. While retaining their right to deny that the claims asserted in the Action
9 were meritorious, Defendant Kapoor and his counsel, in any statement made to any media
10 representative (whether or not for attribution) will not assert that the Action was
11 commenced or prosecuted in bad faith, nor will they deny that the Action was commenced
12 and prosecuted in good faith and is being settled voluntarily after consultation with
13 competent legal counsel. In all events, Class Representative and his counsel and
14 Defendant Kapoor and his counsel shall not make any accusations of wrongful or
15 actionable conduct by the other side concerning the prosecution, defense, and resolution
16 of the Action, and shall not otherwise suggest that the Settlement constitutes an admission
17 of any claim or defense alleged.

18 44. The terms of the Settlement, as reflected in this Stipulation, may not be
19 modified or amended, nor may any of its provisions be waived except by a writing signed
20 on behalf of both Class Representative and Defendant Kapoor (or their successors-in-
21 interest).

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

24 46. The administration and consummation of the Settlement as embodied in this
25 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction
26 for the purpose of entering orders providing for awards of attorneys' fees and Litigation
27 Expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation, including the
28

1 Plan of Allocation (or such other plan of allocation as may be approved by the Court) and
2 the distribution of the Net Settlement Fund to Class Members.

3 47. The waiver by one Settling Party of any breach of this Stipulation by any
4 other Settling Party shall not be deemed a waiver of any other prior or subsequent breach
5 of this Stipulation.

6 48. This Stipulation and its exhibits constitute the entire agreement among
7 Class Representative and Defendant Kapoor concerning the Settlement. The Settling
8 Parties acknowledge that no other agreements, representations, warranties, or
9 inducements have been made by any Settling Party hereto concerning this Stipulation or
10 its exhibits other than those contained and memorialized in such documents.

11 49. This Stipulation may be executed in one or more counterparts, including by
12 signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via
13 email. All executed counterparts and each of them shall be deemed to be one and the same
14 instrument.

15 50. This Stipulation shall be binding upon and inure to the benefit of the
16 successors and assigns of the Settling Parties, including any and all Releasees and any
17 corporation, partnership, or other entity into or with which any of them may merge,
18 consolidate, or reorganize.

19 51. The construction, interpretation, operation, effect and validity of this
20 Stipulation and all documents necessary to effectuate it shall be governed by the internal
21 laws of the State of Arizona without regard to conflicts of laws, except to the extent that
22 federal law requires that federal law govern.

23 52. Any action arising under or to enforce this Stipulation or any portion
24 thereof, shall be commenced and maintained only in the Court.

25 53. This Stipulation shall not be construed more strictly against one Settling
26 Party than another merely by virtue of the fact that it, or any part of it, may have been
27 prepared by counsel for one of the Settling Parties, it being recognized that it is the result
28

1 of arm's-length negotiations between both Settling Parties and both Settling Parties have
2 contributed substantially and materially to the preparation of this Stipulation.

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

7 55. Class Counsel and Settling Defendant's Counsel agree to cooperate fully
8 with one another in seeking Court approval of the Preliminary Approval Order and the
9 Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon
10 and execute all such other documentation as may be reasonably required to obtain final
11 approval by the Court of the Settlement.

12 56. If any Settling Party is required to give notice to another Settling Party
13 under this Stipulation, such notice shall be in writing and shall be deemed to have been
14 duly given upon receipt of hand delivery or facsimile or email transmission, with
15 confirmation of receipt. Notice shall be provided as follows:

16 If to Class Representative or Kessler Topaz Meltzer & Check, LLP
17 Class Counsel: Attn: Johnston de F. Whitman, Jr., Esq.
280 King of Prussia Road
18 Radnor, PA 19087
Tel: (610) 667-7706
19 Fax: (610) 667-7056
Email: jwhitman@ktmc.com
20

21 If to Defendant Kapoor: Nixon Peabody LLP
22 Attn: Brian T. Kelly, Esq.
Matthew T. McLaughlin, Esq.
23 Exchange Place
53 State Street
24 Boston, MA 02109-2835
Tel: (617) 345-1000
25 Fax: (617) 345-1300
Email: bkelly@nixonpeabody.com
26 mmclaughlin@nixonpeabody.com
27
28

1 57. Except as otherwise provided herein, each Settling Party shall bear its own
2 costs.

3 58. Whether or not the Stipulation is approved by the Court and whether or not
4 the Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their
5 counsel shall use their best efforts to keep all negotiations, discussions, acts performed,
6 agreements, drafts, documents signed, and proceedings in connection with the Stipulation
7 confidential.

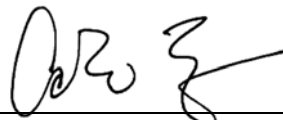
8 59. All agreements made and orders entered during the course of this Action
9 relating to the confidentiality of information shall survive this Settlement.

10 60. No opinion or advice concerning the tax consequences of the proposed
11 Settlement to individual Class Members is being given or will be given by the Settling
12 Parties or their counsel; nor is any representation or warranty in this regard made by virtue
13 of this Stipulation. Each Class Member's tax obligations, and the determination thereof,
14 are the sole responsibility of the Class Member, and it is understood that the tax
15 consequences may vary depending on the particular circumstances of each individual
16 Class Member.

17 IN WITNESS WHEREOF, the Settling Parties hereto have caused this Stipulation
18 to be executed, by their duly authorized attorneys, on July 1, 2020.

19
20 Dated: July 1, 2020

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

21
22 

23 Andrew L. Zivitz (admitted *Pro Hac Vice*)
azivitz@ktmc.com

24 Johnston de F. Whitman, Jr. (admitted *Pro Hac Vice*)
jwhitman@ktmc.com

25 Jonathan F. Neumann (admitted *Pro Hac Vice*)
jneumann@ktmc.com

26 280 King of Prussia Road
27 Radnor, PA 19087
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Telephone: (610) 667-7706
Facsimile: (610) 667-7056

-and-

Jennifer L. Joost (admitted *Pro Hac Vice*)
jjoost@ktmc.com
One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: (415) 400-3000
Facsimile: (415) 400-3001

Class Counsel and Counsel for Class Representative

**BONNETT, FAIRBOURN,
FRIEDMAN & BALINT, P.C.**

Francis J. Balint, Jr.
fbalint@bffb.com
Andrew S. Friedman
afriedman@bffb.com
2325 E. Camelback Road, Suite 300
Phoenix, AZ 85016
Telephone: (602) 274-1100
Facsimile: (602) 274-1199

*Liaison Counsel for the Class and Class
Representative*

Dated: July 1, 2020

NIXON PEABODY LLP



Brian T. Kelly (*Pro Hac Vice*)
Matthew T. McLaughlin (*Pro Hac Vice*)
NIXON PEABODY LLP
Exchange Place
53 State Street
Boston, MA 02109-2835
Telephone: (617) 345-1000
Facsimile: (617) 345-1300
bkelly@nixonpeabody.com
mmclaughlin@nixonpeabody.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OSBORN MALEDON, P.A.

David B. Rosenbaum, No. 009819

Joseph N. Roth, No. 025725

2929 North Central Avenue, 21st Floor

Phoenix, Arizona 85012-2793

Telephone: (602) 640-9000

Facsimile: (602) 640-9050

drosenbaum@omlaw.com

jroth@omlaw.com

Attorneys for Defendant John N. Kapoor