

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE ADVANCE AUTO PARTS, INC.  
SECURITIES LITIGATION

Case No. 18-CV-00212-RTD-SRF

CLASS ACTION

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement dated as of December 23, 2021 (“Stipulation”) is entered into between (a) Public Employees’ Retirement System of Mississippi (“Class Representative” or “Lead Plaintiff”), on behalf of itself and the Court-certified Class (defined below); and (b) Advance Auto Parts, Inc. (“AAP” or the “Company”), Thomas R. Greco, and Thomas Okray (“Defendants” and, together with Class Representative, the “Parties”), and embodies the terms and conditions of the settlement of the above-captioned action (“Action”).<sup>1</sup> Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all Released Class Claims (defined below) against Defendants.

WHEREAS:

A. On February 6, 2018, a putative securities class action complaint was filed in the United States District Court for the District of Delaware (“Court”) styled *Wigginton v. Advance Auto Parts, Inc., et al.*, No. 1:18-cv-00212, on behalf of purchasers of AAP securities. D.I. 1.

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 below.

B. By Order dated November 2, 2018, the Court appointed Public Employees' Retirement System of Mississippi as Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") and approved Lead Plaintiff's selection of Kessler Topaz Meltzer & Check, LLP as Lead Counsel and Rosenthal, Monhait & Goddess, P.A. as Liaison Counsel for the class. D.I. 44.

C. On January 25, 2019, Lead Plaintiff filed the Amended Class Action Complaint for Violations of the Federal Securities Laws ("Amended Complaint") against Defendants, as well as Starboard Value LP ("Starboard") and Starboard's Chief Executive Officer, Jeffrey C. Smith (together, the "Starboard Defendants"). D.I. 46. The Amended Complaint asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder.

D. On April 12, 2019, Defendants and the Starboard Defendants moved to dismiss the Amended Complaint. D.I. 56, 57. On June 14, 2019, Lead Plaintiff opposed the motions to dismiss (D.I. 65), and on July 19, 2019, Defendants and the Starboard Defendants filed replies in further support of their motions (D.I. 67, 68).

E. By Memorandum and Order dated February 7, 2020, the Court granted in part and denied in part Defendants' motion to dismiss ("MTD Order"). D.I. 74. By the MTD Order, the Court also granted the Starboard Defendants' motion to dismiss, dismissing all claims asserted against the Starboard Defendants without prejudice. D.I. 57.

F. On March 18, 2020, Defendants filed their Answer to the Amended Complaint. D.I. 79. Thereafter, discovery in the Action commenced.

G. On May 15, 2020, Lead Plaintiff filed its motion for class certification. D.I. 98. On August 26, 2020, Defendants opposed Lead Plaintiff's motion (D.I. 128), and on October 9, 2020,

Lead Plaintiff filed a reply in further support of its motion (D.I. 140). By Memorandum Opinion and Order dated November 6, 2020, the Court granted Lead Plaintiff's motion ("Class Certification Order"), certifying a class consisting of all persons and entities who purchased or otherwise acquired the common stock of AAP between November 14, 2016 and August 15, 2017, inclusive, and were damaged thereby. D.I. 151, 152. By the Class Certification Order, the Court also appointed Lead Plaintiff as Class Representative and appointed Kessler Topaz Meltzer & Check, LLP as Class Counsel and deLeeuw Law LLC as Liaison Counsel.

H. On November 20, 2020, Defendants filed a petition with the Third Circuit Court of Appeals for permission to appeal the Class Certification Order, which Class Representative opposed. The Third Circuit denied Defendants' petition on January 12, 2021.

I. On February 23, 2021, Defendants moved for reconsideration of the Court's MTD Order. D.I. 170. On March 15, 2021, Defendants filed a renewed motion for reconsideration of the Court's MTD Order. D.I. 192. On March 29, 2021, Class Representative opposed Defendants' renewed motion for reconsideration. D.I. 201.

J. On May 27, 2021, Class Representative filed a motion to approve the form and manner of notice to the Class. D.I. 239. On June 10, 2021, Defendants opposed Class Representative's motion (D.I. 248), and on June 17, 2021, Class Representative filed a reply in further support of its motion (D.I. 53).

K. On September 30, 2021, fact and expert discovery concluded, which included voluminous document productions from Defendants, third parties, and Class Representative, 21

merits depositions, the exchange by the Parties of expert reports of two experts retained by Class Representative and three experts retained by Defendants, and depositions of all five experts.

L. On October 1, 2021, this Action was transferred from the Honorable Richard G. Andrews to the Honorable Robert T. Dawson for all further proceedings.

M. On October 15, 2021, Defendants filed a motion for summary judgment. D.I. 290. Also, on October 15, 2021, the Parties filed motions to exclude in whole or part the testimony of each other's experts. D.I. 283, 286, 291, 302, 304.

N. While certain motions were pending before the Court, the Parties began discussing the possibility of resolving the Action through settlement, ultimately agreeing to mediate before David Murphy of Phillips ADR. A mediation session with David Murphy was held on September 9, 2021. In advance of the mediation, the Parties exchanged detailed mediation statements addressing liability and damages issues. The Parties were unable to resolve the Action at the September 9, 2021 mediation, but continued to engage in discussions, through Mr. Murphy.

O. Over the course of the next seven weeks, through negotiations that continued to be facilitated by Mr. Murphy, and ultimately based on Mr. Murphy's mediator's recommendation accepted by the Parties, the Parties reached an agreement to settle the Action. The Parties memorialized their agreement in a binding term sheet executed on November 5, 2021 ("Term Sheet"). The Term Sheet sets forth, among other things, the Parties' agreement to settle and release all claims against Defendants in return for a cash payment by or on behalf of Defendants of

\$49,250,000 for the benefit of the Class, and contemplates the execution of a customary “long form” stipulation and agreement of settlement and related papers.

P. On November 12, 2021, the Court entered the Parties’ Stipulation and Proposed Order to Stay Action in order to allow the Parties to further document the Settlement. D.I. 351.

Q. This Stipulation (together with the exhibits hereto) reflects the final and binding agreement between the Parties and supersedes the Term Sheet.

R. Based upon their investigation, prosecution, and mediation of the case, Class Representative and Class Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to Class Representative and the other members of the Class, and in their best interests. Based on Class Representative’s direct oversight of the prosecution of this matter and with the advice of its counsel, Class Representative has agreed to settle and release the Released Class Claims pursuant to the terms and provisions of this Stipulation, after considering, among other things: (a) the substantial financial benefit that Class Representative and the other members of the Class will receive under the proposed Settlement; (b) the significant risks and costs of continued litigation and trial; and (c) the desirability of permitting the proposed Settlement to be consummated as provided by this Stipulation.

S. This Stipulation constitutes a compromise of all matters that are in dispute between the Parties and in no way represents, and may not be construed as, an admission of liability or an admission against interest or an admission of any wrongdoing by any of the Defendants.

T. Despite maintaining that they are not liable for the claims asserted herein and that they have good and valid defenses thereto, Defendants have determined to enter into this Stipulation, among other reasons, to avoid further expense, inconvenience, and the burden of protracted litigation, to avoid the distraction and diversion of their personnel and resources, to

avoid the risk of litigation, and to obtain a full release of all claims and related potential claims from the Class. Each of the Defendants denies that they have committed any violations of law or other wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or allegation of any fault or liability or wrongdoing or damages whatsoever, or any infirmity in the defenses that Defendants have, or could have, asserted. Defendants expressly deny that Class Representative has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Class Representative of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit. The Stipulation and all negotiations, discussions, and proceedings in connection with the Stipulation shall not create an inference of wrongdoing, and are inadmissible for any purpose other than the enforcement of the terms of this Stipulation.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Class Representative (individually and on behalf of all other members of the Class) and Defendants, by and through their respective undersigned attorneys and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties from the Settlement, all Released Class Claims as against the Released

Parties and all Released Defendants' Claims as against the Releasing Parties shall be settled and released, upon and subject to the terms and conditions set forth below.

**DEFINITIONS**

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

- a. "AAP" or the "Company" means Advance Auto Parts, Inc.
- b. "Action" means the securities class action styled *In re Advance Auto Parts, Inc. Securities Litigation*, Case No. 1:18-cv-00212 (D. Del.).
- c. "Alternate Judgment" means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Stipulation.
- d. "Authorized Claimant" means a Class Member who submits a Claim to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund.
- e. "Claim" means a paper claim submitted on a Proof of Claim Form or an electronic claim that is submitted to the Claims Administrator.
- f. "Claim Form" or "Proof of Claim Form" means the form, substantially in the form attached hereto as Exhibit 3 to Exhibit A that a Claimant must complete and submit should that Claimant seek to share in a distribution of the Net Settlement Fund.
- g. "Claimant" means a person or entity who or which submits a Claim to the Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.
- h. "Claims Administrator" means Kurtzman Carson Consultants LLC, the firm retained by Class Counsel, subject to approval of the Court, to provide all notices approved by the Court to potential Class Members and to administer the Settlement.

i. “Class” means, as certified by the Court pursuant to Memorandum Opinion and Order dated November 6, 2020, all persons and entities who purchased or otherwise acquired the common stock of Advance Auto Parts, Inc. between November 14, 2016 and August 15, 2017, inclusive, and were damaged thereby. Excluded from the Class are: (i) the Company; (ii) Starboard Value LP; (iii) Thomas R. Greco, Thomas Okray, and Jeffrey C. Smith (the “Excluded Individuals”); (iv) members of the Immediate Families of the Excluded Individuals; (v) the Company’s and Starboard’s subsidiaries and affiliates; (vi) any person who is or was an officer or director of the Company, Starboard, or any of the Company’s or Starboard’s subsidiaries or affiliates during the Class Period; (vii) any entity in which the Company, Starboard, or any Excluded Individual has a controlling interest; and (viii) the legal representatives, heirs, successors, and assigns of any such excluded person or entity. Also excluded from the Class are any persons and entities who or which submit a request for exclusion from the Class that is accepted by the Court.

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

k. “Class Member” means each person and entity who or which is a member of the Class.

l. “Class Period” means the period between November 14, 2016 and August 15, 2017, inclusive.

m. “Complaint” or “Amended Complaint” means the Amended Class Action Complaint and Demand for Jury Trial filed in the Action on January 25, 2019.

n. “Court” means the United States District Court for the District of Delaware.



- o. “Defendants” means AAP, Thomas R. Greco, and Thomas Okray.
- p. “Defendants’ Counsel” means Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and Richards, Layton & Finger, P.A.
- q. “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in ¶ 33 of this Stipulation have been met and have occurred or have been waived.
- r. “Escrow Account” means an account maintained at The Huntington National Bank wherein the Settlement Amount shall be deposited and held in escrow under the control of Class Counsel.
- s. “Escrow Agent” means The Huntington National Bank.
- t. “Escrow Agreement” means the agreement between Class Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.
- u. “Final,” with respect to the Judgment or, if applicable, the Alternate Judgment, or any other court order, means: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to

(i) attorneys' fees, costs, or expenses, or (ii) the plan of allocation of Settlement proceeds (as submitted or subsequently modified), shall not in any way delay or preclude a judgment from becoming Final.

v. "Immediate Family" or "Immediate Families" means, as defined in 17 C.F.R § 229.404, Instructions 1(a)(iii) and 1(b)(ii), children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law and any persons (other than a tenant or employee) sharing the household.

w. "Individual Defendants" means Thomas R. Greco and Thomas Okray.

x. "Judgment" means the final judgment, substantially in the form attached hereto as Exhibit B, to be entered by the Court approving the Settlement.

y. "Lead Counsel" or "Class Counsel" means Kessler Topaz Meltzer & Check, LLP.

z. "Lead Plaintiff" or "Class Representative" means Public Employees' Retirement System of Mississippi.

aa. "Liaison Counsel" means deLeeuw Law LLC.

bb. "Litigation Expenses" means costs and expenses incurred in connection with commencing, prosecuting, and settling the Action (which may include the costs and expenses of Class Representative directly related to its representation of the Class), for which Class Counsel intends to apply to the Court for payment or reimbursement from the Settlement Fund.

cc. "Mediator" means David Murphy of Phillips ADR.

dd. "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court;

(iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court.

ee. "Notice" means the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be posted on the Settlement Website.

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

gg. "Parties" means Defendants and Class Representative, on behalf of itself and the Class and each Class Member.

hh. "Plaintiffs' Counsel" means Class Counsel and all other legal counsel who, at the direction and under the supervision of Class Counsel, performed services on behalf of Class Representative and the Class in the Action.

ii. "Plan of Allocation" means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

jj. "Postcard Notice" means the notice, substantially in the form attached hereto as Exhibit 2 to Exhibit A, which is to be mailed and/or e-mailed to Class Members.

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

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

mm. “Released Claims” means all Released Defendants’ Claims and all Released Class Claims.

nn. “Released Class Claims” means any and all claims, debts, actions, causes of action, suits, dues, sums of money, accounts, liabilities, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, awards, extents, executions, and demands whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability), whether known or Unknown Claims (as defined below), whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, whether at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether direct, indirect, or consequential, whether suspected or unsuspected, which Lead Plaintiff or any other Class Member, on behalf of themselves, their heirs, executors, representatives, administrators, predecessors, successors, assigns, officers and directors, any and all other persons they represent and any other person or entity claiming (now or in the future) through or on behalf of them, in their individual capacities and in their capacities as purchasers of AAP common stock, ever had, now has, or hereafter can, shall, or may have, whether in their own right or by assignment, transfer or grant from any other person, thing or entity that: (i) have been asserted in this Action by Lead Plaintiff or any other Class Member against any of the Released Parties; or (ii) could have been asserted in any court or forum by Lead Plaintiff or any other Class Member against any of the Released Parties, that arise out of, are based upon or relate to, directly or indirectly, the

allegations, transactions, facts, statements, matters or occurrences, representations or omissions involved, set forth, or referred to in the Amended Complaint or that relate to the purchase, sale, and/or other acquisition of AAP common stock during the Class Period. Released Class Claims shall not include: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims of any person or entity who or which submits a request for exclusion from the Class that is accepted by the Court.

oo. “Released Defendants’ Claims” means all claims, demands, losses, rights, and causes of action of every nature and description, whether known or Unknown Claims (as defined below), whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether direct, indirect, or consequential, whether suspected or unsuspected, which arise out of or relate in any way to the institution, prosecution, assertion, settlement, or resolution of the claims asserted in the Action against Defendants. Released Defendants’ Claims shall not include any claims relating to the enforcement of the Settlement.

pp. “Releasee(s)” means each and any of the Released Parties and each and any of the Releasing Parties.

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

rr. “Released Party” or “Released Parties” means Defendants and all of their respective past, present, and future (including heirs, successors, and assigns) parents, subsidiaries, affiliates, divisions, departments, joint ventures, subcontractors, agents, advisors, auditors, accountants, attorneys, associates, associations, consultants, shareholders, underwriters, insurers, subrogates, co-insurers and reinsurers, and all of their respective past, present, and future officers,

directors, divisions, employees, members, partners (general and/or limited), principals, shareholders, successors, representatives, and owners, and anyone acting in concert with any of them, in their capacities as such.

ss. “Releasing Party” or “Releasing Parties” means: (i) Class Representative and each of the Class Members, and (ii) each of their respective Immediate Family members, and their respective general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, supervisors, employees, contractors, consultants, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, re-insurers, trusts, trustees, trustors, agents, attorneys, professionals, predecessors, subsidiaries, successors, assigns, heirs, estates, executors, beneficiaries, administrators, and any controlling person thereof, in their capacities as such.

tt. “Settlement” means the settlement between Class Representative and Defendants on the terms and conditions set forth in this Stipulation.

uu. “Settlement Amount” means \$49,250,000.00 in cash.

vv. “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

ww. “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

xx. “Settlement Website” means the website created specifically for the Action on which the Notice and Claim Form, as well as other information related to the Action and the Settlement, will be posted.

yy. “Summary Notice” means the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and

Litigation Expenses, substantially in the form attached hereto as Exhibit 4 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

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

aaa. "Unknown Claims" means any Released Class Claims which any Releasing Party does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Released Party does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have materially affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Class Representative and Defendants shall expressly waive, and each of the Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

Lead Plaintiff, as Class Representative, and Defendants acknowledge that they may discover facts in addition to or different than those that they now know or believe to be true with respect to the

subject matter of the Released Class Claims or the Released Defendants' Claims, but Lead Plaintiff and Defendants shall expressly fully, finally, and forever settle and release, and each of the Releasing Parties and each of the Released Parties shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or the Alternative Judgment, if applicable, shall have fully, finally, and forever settled and released, any and all Released Class Claims and Released Defendants' Claims, as applicable, known or unknown, suspected or unsuspected, which now exist or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts. Lead Plaintiff and Defendants acknowledge, and each of the Releasing Parties and each of the Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Class Claims and Released Defendants' Claims was separately bargained for and is a key element of the Settlement.

**PRELIMINARY APPROVAL OF SETTLEMENT**

2. Within a reasonable time from the execution of this Settlement, but by no later than December 23, 2021, Class Representative will move for preliminary approval of the Settlement, authorization to provide notice of the Settlement to the Class, and the scheduling of a hearing for consideration of final approval of the Settlement, which motion shall be unopposed by Defendants provided it is in a form that is reasonably acceptable to Defendants and provided to Defendants at least five days prior to filing. Concurrently with the motion for preliminary approval, Class Representative shall apply to the Court for, and Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.



**RELEASE OF CLAIMS**

3. The obligations incurred pursuant to this Stipulation are in consideration of: (a) the full and final disposition of the Action as against Defendants; and (b) the Releases provided for herein.

4. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Class Representative and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Class Claim against the Released Parties, and shall forever be barred and enjoined from prosecuting any or all of the Released Class Claims against any of the Released Parties.

5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, the Released Parties, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim against the Releasing Parties, and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Releasing Parties. This release shall not apply to any person or entity who or which submits a request for exclusion from the Class that is accepted by the Court.

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

7. Pending the Court's final determination of whether the Settlement should be approved, the Releasing Parties shall not commence or prosecute, or assist in the commencement or prosecution of, any Released Class Claim, in any capacity, against any of the Released Parties in any court or tribunal or other proceeding, and the Released Parties shall not commence or prosecute, or assist in the commencement or prosecution of, any Released Defendants' Claim, in any capacity, against any of the Releasing Parties in any court or tribunal or other proceeding.

8. The Judgment shall include, pursuant to the PSLRA, as codified at 15 U.S.C. § 78u-4(f)(7)(A), a bar order ("Bar Order") that shall, upon the Effective Date, permanently and forever bar all future claims, counterclaims, cross-claims, third-party claims or other actions in any other federal, foreign, state or local court, forum or tribunal, based upon, relating to, or arising out of the Released Class Claims and/or the claims or allegations asserted by Class Representative in the Amended Complaint, or in any other pleadings filed in the Action (including, without limitation, any claim or action seeking indemnification and/or contribution, however denominated), whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, or are asserted under federal, foreign, state, local or common law.

#### **THE SETTLEMENT CONSIDERATION**

9. In consideration of the settlement of the Released Class Claims against the Released Parties, Defendants shall pay or cause their insurance carriers to pay the Settlement Amount into the Escrow Account within twenty (20) business days after the later of: (i) the Court's entry of the

Preliminary Approval Order; or (ii) Defendants' Counsel's receipt of complete and accurate payment instructions and a W-9 for the Settlement Fund. The Settlement Amount is an all-in settlement number, meaning that it includes all attorneys' fees to Plaintiffs' Counsel, administrative costs, expenses, Class Member benefits, Class Representative PSLRA award, and other costs associated with the Settlement. Defendants shall bear their own costs and expenses, including costs, expenses, and fees of their counsel; the costs of providing their shareholder lists for purposes of notice (*see* ¶ 20 below); and the costs of providing notice under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (*see* ¶ 21 below).

**USE OF SETTLEMENT FUND**

10. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any attorneys' fees awarded by the Court; and (e) any other costs and fees approved by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 22-29 below.

11. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. At the written direction of Class Counsel, the Escrow Account shall invest any funds in the Escrow Account exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a United States Treasury Fund or bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation

(“FDIC”), or (b) secured by instruments backed by the full faith and credit of the United States Government. The Escrow Agent shall reinvest the proceeds of these instruments or accounts as they mature in similar instruments or accounts at their then-current market rates.

12. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Class Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Class Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released Parties shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Class Counsel the statement described in Treasury Regulation § 1.468B-3(e). Class Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

13. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Class Counsel and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Parties

shall have no responsibility or liability for the acts or omissions of Class Counsel or its agents with respect to the payment of Taxes, as described herein.

14. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Released Party or any other person or entity (including Defendants' insurance carriers) who or which paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including without limitation, the number of Claims submitted, the collective amount of Recognized Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

15. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Class Counsel may pay from the Escrow Account, without further approval from Defendants or further order of the Court, up to \$200,000 in Notice and Administration Costs actually incurred and paid or payable ("Notice and Administration Costs Cap"). Following the Effective Date, Class Counsel may pay from the Escrow Account, without further approval from Defendants or further order of the Court, all Notice and Administration Costs exceeding the Notice and Administration Costs Cap. Notice and Administration Costs shall include, without limitation, the actual costs of printing and mailing the Postcard Notice and Notice, publishing the Summary Notice, reimbursements to nominee owners for searching and providing the names/addresses of prospective Class Members for noticing or forwarding the Postcard Notice directly to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and administering the Settlement (including processing the submitted Claims), and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration

Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants, any of the other Released Parties, or any other person or entity (including Defendants' insurance carriers) who or which paid any portion of the Settlement Amount.

**ATTORNEYS' FEES AND LITIGATION EXPENSES**

16. Class Counsel will apply to the Court for a collective award of attorneys' fees to Plaintiffs' Counsel to be paid solely from (and out of) the Settlement Fund. Class Counsel also will apply to the Court for reimbursement of Plaintiffs' Counsel's Litigation Expenses, which may include a request for reimbursement of Class Representative's costs and expenses directly related to its representation of the Class, to be paid solely from (and out of) the Settlement Fund. Class Counsel's application for attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Class Counsel other than what is set forth in this Stipulation.

17. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Class Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Class Counsel's joint and several obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or reversing the award has become Final. Class Counsel shall make the appropriate refund or repayment in full no later than thirty (30) business days after receiving from Defendants' Counsel or from a court of appropriate jurisdiction notice of any such reduction of the award of attorneys' fees and/or Litigation Expenses by a non-appealable order, or notice of the termination of the

Settlement. Any disapproval or modification of an application for an award of attorneys' fees and/or Litigation Expenses by the Court shall not affect the enforceability of this Stipulation, provide any of the Parties with the right to cancel or terminate the Settlement, or impose an obligation on Defendants to increase the compensation paid in connection with the Settlement. Any appeal relating to an award of attorneys' fees or expenses will not affect the finality of the Settlement, the Judgment, or the Releases provided herein.

18. Class Counsel shall allocate the attorneys' fees awarded among Plaintiffs' Counsel in a manner in which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action. The Released Parties shall have no responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Plaintiffs' Counsel shall be payable solely from the Escrow Account.

#### **NOTICE AND SETTLEMENT ADMINISTRATION**

19. As part of the Preliminary Approval Order, Class Counsel shall select a Claims Administrator, which selection shall be subject to Court approval. The Claims Administrator shall administer the Settlement, including but not limited to the process of receiving, reviewing, and approving or denying Claims, under Class Counsel's supervision and subject to the jurisdiction of the Court. None of the Released Parties shall have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Claims Administrator, the Plan of Allocation, the administration of the Settlement, the Claims process, or disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but not limited to, Class Representative, any other Class Members, or Class Counsel in connection with

the foregoing. Defendants' Counsel shall reasonably cooperate in the administration of the Settlement to the extent necessary to effectuate its terms.

20. In accordance with the terms of the Preliminary Approval Order to be entered by the Court, Class Counsel shall cause the Claims Administrator to mail the Postcard Notice to those members of the Class as may be identified through reasonable effort. Class Counsel shall also cause the Claims Administrator to have the long-form Notice and Claim Form posted on the Settlement Website and the Summary Notice published in accordance with the terms of the Preliminary Approval Order to be entered by the Court. For the purposes of identifying and providing notice to the Class, within five (5) business days after entry of the Preliminary Approval Order, Defendants shall provide to the Claims Administrator in electronic format, such as Excel, at no cost to the Settlement Fund, Class Representative, Plaintiffs' Counsel, or the Claims Administrator, lists (consisting of names, addresses, and e-mail addresses (if available)) of purchasers of record of AAP common stock during the Class Period.

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

22. The Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation



set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the Court approves).

23. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Class Representative and Class Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Any order of the Court modifying or rejecting the Plan of Allocation will not operate to terminate the Settlement or affect its finality or binding nature, including the releases of Defendants or the Parties released by the Class. The Released Parties shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action. No Released Party shall have any involvement with or liability, obligation, or responsibility whatsoever for the application of the Court-approved plan of allocation.

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

25. Class Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to Court approval. No Released Party shall be permitted to review, contest, or object to any Claim, or any decision of the

Claims Administrator or Class Counsel with respect to accepting or rejecting any Claim for payment. Class Counsel shall have the right, but not the obligation, to waive what it deems to be formal or technical defects in any Claims submitted in the interests of achieving substantial justice.

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

a. Each Claimant shall be required to submit a Claim in paper form, substantially in the form attached hereto as Exhibit 3 to Exhibit A, or in electronic form, in accordance with the instructions for the submission of such Claims, and supported by such documents as are designated therein, including proof of the Claimant's loss, or such other documents or proof as the Claims Administrator or Class Counsel, in their discretion, may deem acceptable;

b. All Claims must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the notices. Any Class Member who fails to submit a Claim by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such Class Member's Claim is accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Party with respect to any Released Class Claim. Provided that it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions

thereon. In all other cases, the Claim Form shall be deemed to have been submitted on the date when actually received by the Claims Administrator;

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

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

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

27. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery

under the Federal Rules of Civil Procedure, provided, however, that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action or of the Settlement in connection with the processing of Claims.

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

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

30. No person or entity shall have any claim against Class Representative, Class Counsel, the Claims Administrator, or any other agent designated by Class Counsel, or the Released Parties and/or their respective counsel, arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or any order of the Court. Class Representative and Defendants, and their respective counsel, and Class Representative's damages expert and all other Releasees shall have no liability whatsoever for the

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

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

**TERMS OF THE JUDGMENT**

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

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

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

- a. the Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A attached hereto, as required by ¶ 2 above;
- b. the Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of ¶ 9 above;

c. Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation;

d. Class Representative has not exercised its option to terminate the Settlement pursuant to the provisions of this Stipulation; and

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

34. Upon the occurrence of all of the events referenced in ¶ 33 above, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

35. If (i) Defendants exercise their right to terminate the Settlement as provided in this Stipulation; (ii) Class Representative exercises its right to terminate the Settlement as provided in this Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails to occur, then:

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

b. Class Representative and Defendants shall revert to their respective litigation positions in the Action immediately prior to the execution of the Term Sheet on November 5, 2021;

c. Neither Class Representative nor Defendants will use or rely on any statement, document, admission, or agreement concerning the Settlement and/or settlement discussions in the Action;

d. The terms and provisions of this Stipulation, with the exception of this ¶ 35 and ¶¶ 15, 17, 38, and 59, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment, or Alternate Judgment, if applicable, or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and

e. Within five (5) business days after joint written notification of termination is sent by Defendants' Counsel and Class Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon, and change in value as a result of the investment of the Settlement Fund, and any funds received by Class Counsel consistent with ¶ 17 above), less any Notice and Administration Costs actually incurred, paid or payable and less any Taxes paid, due or owing shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as Defendants may direct). In the event that the funds received by Class Counsel consistent with ¶ 17 above have not been refunded to the Settlement Fund within the five (5) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as Defendants may direct) immediately upon their deposit into the Escrow Account consistent with ¶ 17 above.

36. It is further stipulated and agreed that Defendants, provided they unanimously agree, and Class Representative shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so ("Termination Notice") to the other Parties to this Stipulation within thirty (30) calendar days of: (a) the Court's final and non-appealable refusal to enter the Preliminary Approval Order in any material respect; (b) the Court's final and non-appealable refusal to approve the Settlement or any material part thereof; (c) the Court's final and non-appealable refusal to enter the Judgment in any material respect as to the

Settlement; (d) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Third Circuit or the United States Supreme Court; or (e) the date upon which an Alternate Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Third Circuit or the United States Supreme Court, and the provisions of ¶ 35 above shall apply. However, any decision or proceeding, whether in this Court or any appellate court, with respect to an application for attorneys' fees or Litigation Expenses or with respect to any plan of allocation shall not be considered material to the Settlement, shall not affect the finality of any Judgment or Alternate Judgment, if applicable, and shall not be grounds for termination of the Settlement.

37. In addition to the grounds set forth in ¶ 36 above, Defendants, provided they unanimously agree, shall have the unilateral right to terminate the Settlement in the event that Class Members timely and validly requesting exclusion from the Class meet the conditions set forth in Defendants' confidential supplemental agreement with Class Representative ("Supplemental Agreement"), in accordance with the terms of that agreement. The Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless the Court otherwise directs or a dispute arises between Class Representative and Defendants concerning its interpretation or application, in which event the Parties shall submit the Supplemental Agreement to the Court in camera and request that the Court afford it confidential treatment.



**NO ADMISSION OF WRONGDOING**

38. Neither the Term Sheet, this Stipulation (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the Parties' mediation and subsequent Settlement, the communications and/or discussions leading to the execution of the Term Sheet and this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, this Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

a. shall be offered against any of the Released Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Parties with respect to the truth of any alleged fact, alleged claim, allegation of fault, allegation of liability, allegation of wrongdoing, or allegation of damages by any Releasing Party or the validity or infirmity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Parties or in any way referred to for any other reason as against any of the Released Parties, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

b. shall be offered against any of the Releasing Parties, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Releasing Parties that any of their claims are without merit, that any of the Released Parties had meritorious defenses, or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Amount or with respect to

any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Releasing Parties, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

c. shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

*provided, however,* that if this Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

#### **MISCELLANEOUS PROVISIONS**

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

40. Each Defendant warrants, as to the payments made or to be made on behalf of himself or itself only, that at the time of entering into this Stipulation and at the time of such payment they, or to the best of their knowledge any persons or entities contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of them render them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by each of the Defendants and not by their counsel.

41. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Class Representative, Class Representative and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment, if applicable, entered in favor of Defendants and the other Releasees pursuant to this Stipulation, in which event the Releases and Judgment, or Alternate Judgment, if applicable, shall be null and void, and the Parties shall be restored to their respective positions in the Action as provided in ¶ 35(b) above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned as provided in ¶ 35(e) above.

42. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Class Representative and any other Class Members against the Released Parties with respect to the Released Class Claims. Class Representative and Defendants agree not to pursue sanctions, whether pursuant to Rule 11 of the Federal Rules of Civil Procedure or otherwise, against each other for conduct occurring in this Action. The proposed Judgment will contain a proposed finding that neither Class Representative nor Defendants have violated Rule 11. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, including through a mediation process supervised and conducted by David Murphy of Phillips ADR, and reflect that the Settlement was reached voluntarily after extensive negotiations and consultation

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

43. Class Representative understands that none of the Defendants make any admissions of liability. The Parties will endeavor in good faith to communicate the terms of the Settlement in a manner that is respectful of the fact that there has been no final adjudication of fault by a court or jury in this Action.

44. Class Representative and its attorneys will not disparage Defendants in any statement about the Settlement, the Action, or any other matter. Defendants and their attorneys will not disparage Class Representative in any public statements about the Settlement, the Action, or any other matter. Absent the consent and approval of Defendants, neither Class Representative nor its attorneys shall issue a press release or make other public announcement(s) of this Settlement until notice is provided to the Class or this Stipulation is filed with the Court. Absent the consent and approval of Class Representative, neither Defendants nor their attorneys shall issue a press release or make other public announcement(s) of the Settlement until notice is provided to the Class or the Stipulation is filed with the Court, except as may be required pursuant to law. Defendants, Class Representative and their respective attorneys shall provide 48 hours advance notice to all Parties of any intention to issue a press release or make other public announcement of the Settlement.

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

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

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

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

49. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among Class Representative and Defendants concerning the Settlement and this Stipulation and its exhibits. All Parties acknowledge that no other agreements, representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation, its exhibits or the Supplemental Agreement other than those contained and memorialized in such documents.

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

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

52. The construction, interpretation, operation, effect, and validity of this Stipulation, the Supplemental Agreement and all documents necessary to effectuate the Settlement shall be

governed by the internal laws of Delaware without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

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

54. None of the Parties hereto shall be considered to be the drafter of this Stipulation or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. All Parties agree that this Stipulation was drafted at arm's-length, and that no parol or other evidence may be offered to explain, construe, contradict or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which the Stipulation was made or executed.

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

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

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

If to Class Representative or Class Counsel: Kessler Topaz Meltzer & Check, LLP  
Attn: Sharan Nirmul, Esq.  
280 King of Prussia Road  
Radnor, PA 19087  
Telephone: (610) 667-7706  
Facsimile: (610) 667-7056  
Email: snirmul@ktmc.com

If to Defendants: Mintz, Levin, Cohn, Ferris, Glovsky,  
and Popeo, P.C.  
Attn: Douglas P. Baumstein, Esq.  
Chrysler Center  
666 Third Avenue  
New York, NY 10017  
Telephone: (212) 935-3000  
Facsimile: (212) 983-3115  
Email: dbaumstein@mintz.com

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

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

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

61. No opinion or advice concerning the tax consequences of the Settlement to individual 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 Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed,  
by their duly authorized attorneys, as of December 23, 2021.

**KESSLER TOPAZ  
MELTZER & CHECK, LLP**

By: 

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Sharan Nirmul (#4589)  
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-and-

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of Mississippi and the Class*

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*Liaison Counsel for the Class*

**MINTZ, LEVIN, COHN, FERRIS, GLOVSKY  
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*-and-*

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