



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

NANTAHALA CAPITAL PARTNERS  
II LIMITED PARTNERSHIP, on behalf  
of itself and all other similarly situated  
stockholders of QAD INC.,

Plaintiff,

v.

QAD INC., PAMELA M. LOPKER,  
ANTON CHILTON, SCOTT J.  
ADELSON, KATHLEEN M. CRUSCO,  
PETER R. VAN CUYLENBURG,  
THOMA BRAVO, LP, QAD ULTIMATE  
PARENT, LP (F/K/A PROJECT QUICK  
ULTIMATE PARENT, LP), and QAD  
PARENT, LLC (F/K/A PROJECT QUICK  
PARENT, LLC),

Defendants.

C.A. No. 2021-0573-PAF

**STIPULATION AND AGREEMENT OF  
COMPROMISE AND SETTLEMENT**

This Stipulation and Agreement of Compromise and Settlement (the “Stipulation”) is made and entered into as of August 28, 2023.<sup>1</sup> The parties to this Stipulation (each a “Party” and, collectively, the “Parties”), by and through their undersigned attorneys, have reached an agreement for the settlement of the claims asserted against QAD Inc. (“QAD” or the “Company”), Pamela M. Lopker, Anton Chilton, Scott J. Adelson, Kathleen M. Crusco, Peter R. van Cuylenburg, Thoma

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<sup>1</sup> All terms in this Stipulation with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings ascribed to them in Section 1 of this Stipulation.

Bravo LP, QAD Ultimate Parent, LP, and QAD Parent, LLC (collectively, the “Defendants”) in the above-captioned matter styled *Nantahala Capital Partners II Limited Partnership v. QAD Inc.*, filed in the Court of Chancery of the State of Delaware (the “Court”), C.A. No. 2021-0573-PAF (the “Action”) on the terms set forth below (the “Settlement”) and subject to Court approval pursuant to Court of Chancery Rule 23. This Stipulation is intended to fully, finally, and forever resolve, discharge, and settle (i) all of Plaintiff’s Claims against the Defendants, (ii) all of the Class’s Claims against the Defendants, and (iii) all of the Defendants’ Claims against Plaintiff (the Claims in (i)–(iii) shall collectively be referred to as, the “Settled Claims”). The Parties are: (i) Nantahala Capital Partners II Limited Partnership (“Plaintiff”), on behalf of itself and the Class (as defined herein); and (ii) the Defendants.

**WHEREAS,**

**Summary of the Action**

A. On June 27, 2021, Scott J. Adelson, Kathleen M. Crusco, and Peter R. van Cuylenburg, each in their capacity as members of the special committee of the board of QAD (the “Special Committee”), recommended that the QAD board formally approve a sale of QAD’s outstanding stock to Thoma Bravo, L.P. and affiliated entities QAD Ultimate Parent, LP (f/k/a Project Quick Ultimate Parent, LP) and QAD Parent, LLC (f/k/a Project Quick Parent, LLC) (collectively, “Thoma

Bravo”) for \$87.50 per share (the “Merger”), including a rollover of approximately \$300 million in shares owned by Lopker and certain members of her immediate family into the post-Merger entity (the “Rollover”).

B. In July 2021, Plaintiff brought this Action and filed a motion for expedited proceedings (in contemplation of a subsequent motion for a preliminary injunction, which was ultimately filed on September 10, 2021), seeking to enjoin the Merger on the grounds that the Rollover violated section 2(B)(d) of the Company’s amended and restated certificate of incorporation (the “Charter”), which stated, in part, “[t]he holders of Class A Common Stock shall be entitled to receive an amount and form of consideration per share no less favorable than the per share consideration, if any, received by any holder of the Class B Common Stock in any merger, business combination or consolidation of [the Company]” (the “No Less Favorable Provision”). The Parties engaged in expedited discovery, which consisted of document production, fact and expert depositions, and expert reports.

C. On August 2, 2021, QAD filed a preliminary proxy statement with the Securities and Exchange Commission. In response, on August 16, 2021, Plaintiff filed a complaint supplement, alleging that the preliminary proxy statement contained false and misleading disclosures. On September 9, 2021, QAD filed its definitive proxy statement regarding the Merger (the “Proxy”). The Proxy included a detailed account of the sale process. QAD filed a supplement to its Proxy on

September 27, 2021.

D. Between September 10, 2021, and September 27, 2021, the Parties fully briefed Plaintiff's motion for a preliminary injunction.

E. On October 8, 2021, (following a hearing on October 1, 2021), the Court issued a bench ruling granting in part and denying in part Plaintiff's motion for a preliminary injunction, and enjoining the Company from holding the stockholder vote on the Merger for twenty days following the Company's dissemination of certain additional disclosures regarding the Merger. In accordance with such ruling, on October 12, 2021, QAD filed two separate Proxy supplements that addressed the disclosure issues upon which the Court granted in part the preliminary injunction. The Court subsequently entered an Order Concerning Payment of Interim Mootness Fee, pursuant to which Defendants, QAD, and/or their insurers caused to be paid to Plaintiff's Counsel (as defined below) \$2,450,000.00 in attorneys' fees in connection with the supplemental disclosures in QAD's proxy supplements.

F. On November 2, 2021, at a special meeting of the Company's stockholders, the stockholders voted to approve the Merger. The Merger closed on November 5, 2021.

G. On February 3, 2022, Plaintiff filed a Verified Amended Stockholder Class Action Complaint (the "Complaint"), reasserting its claims from its initial

complaint and supplement and adding a claim for tortious interference with contract against Thoma Bravo.

H. Following the filing of the Complaint, Plaintiff and Defendants continued to engage in discovery, including preparing, serving, and responding to requests for production of documents and interrogatories, serving subpoenas on various third parties, and engaging in various written and oral communications concerning the scope of document production. As of the date of this Stipulation: (i) Defendants and third parties have produced, and Plaintiff has reviewed, several hundred thousand pages of documents to Plaintiff; (ii) Plaintiff has produced over four thousand pages of documents; and (iii) Plaintiff has deposed four fact witnesses, deposed one expert witness, sat for a deposition, and defended one expert deposition.

I. On March 1, 2023, the Parties participated in a full-day mediation session (the “Mediation”). The Mediation was presided over by the Hon. Layn R. Phillips (Ret.) of Phillips ADR, who was mutually agreed upon by the Parties (the “Mediator”). Before the Mediation, the Parties exchanged mediation statements and exhibits, which addressed the issues of liability and potential damages. The Action was not resolved during the March 1, 2023 session, and discussions continued between and among the Parties and the Mediator over the course of several weeks.

J. On April 27, 2023, after further discussions following the Mediation, the Mediator made a proposal to the Parties for resolution of the Action. In response

to the Mediator's proposal, on April 28, 2023, the Parties agreed to settle and release the Settled Claims in return for a cash payment on behalf of the Defendants of \$65,000,000 for the benefit of the Class (the "Settlement Amount"), subject to certain terms and conditions.

### **Plaintiff's Claims and the Benefits of the Settlement**

K. Plaintiff believes that the claims asserted in the Action have merit, but also believes that the Settlement set forth below provides substantial and immediate benefits for the Class. In addition to these substantial benefits, Plaintiff and Plaintiff's Counsel (as defined below) have considered: (i) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; (ii) the probability of success on the merits against the Defendants; (iii) the inherent problems of proof associated with, and possible defenses to, the claims asserted in the Action against the Defendants; (iv) the desirability of permitting the Settlement to be consummated according to its terms; and (v) the conclusion of Plaintiff and Plaintiff's Counsel that the terms and conditions of the Stipulation are fair, reasonable, and adequate, and that it is in the best interests of the Class to settle the claims asserted against the Defendants in the Action on the terms set forth herein. For the avoidance of doubt, the Defendants do not endorse Plaintiff's assertion as to the merit of the claims asserted in the Action.

L. Based on Plaintiff's Counsel's thorough review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Plaintiff's Counsel believes that the settlement set forth in this Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon the Class. Based upon Plaintiff's Counsel's evaluation as well as its own evaluations, Plaintiff has determined that the Settlement is in the best interests of the Class and has agreed to the terms and conditions set forth herein.

**Defendants' Denial of Wrongdoing and Liability**

M. The Defendants deny any and all allegations of wrongdoing, liability, violations of law or damages arising out of or related to any of the conduct, statements, acts, or omissions alleged against Defendants in the Action, and maintain that their conduct was at all times proper, in the best interests of QAD and its stockholders, and in compliance with applicable law. The Defendants further deny any breach of contract, breach of fiduciary duties, aiding and abetting any breach of fiduciary duties, and any tortious interference with contract alleged against Defendants in the Action. The Defendants affirmatively assert that the Merger was the best available transaction for QAD and its stockholders, was entirely fair to QAD and its stockholders, and has provided QAD and its stockholders with substantial benefits. The Defendants also deny that QAD or its stockholders were harmed by any conduct of the Defendants alleged in the Action or that could have been alleged

therein. Each of the Defendants asserts that, at all relevant times, he, she, or it acted in good faith and in a manner reasonably believed to be in the best interests of QAD and all of its stockholders. Nevertheless, the Defendants wish to eliminate the uncertainty, risk, burden, and expense of further litigation. The Defendants have therefore determined to settle the claims asserted against them in the Action on the terms and conditions set forth in this Stipulation solely to put the Released Plaintiff's Claims (as defined below) to rest, finally and forever, without in any way acknowledging any wrongdoing, fault, liability, or damages. For the avoidance of doubt, Plaintiff does not endorse any of the Defendants' assertions in the foregoing paragraph.

N. For the avoidance of doubt, nothing in this Stipulation shall be construed as any admission by the Defendants, nor shall entry of the Judgment (as defined below) be construed as a finding by the Court, of wrongdoing, fault, liability, or damages on the part of Defendants whatsoever.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, BY AND AMONG THE PARTIES TO THIS STIPULATION, subject to the approval of the Court pursuant to Court of Chancery Rule 23, that the Action against the Defendants and all Settled Claims shall be fully and finally compromised and settled, and the Released Plaintiff's Claims shall be fully and finally compromised, settled, released, discharged, and dismissed with prejudice as against the Released



Defendants' Persons, and that the Released Defendants' Claims shall be finally and fully compromised, settled, released, discharged and dismissed with prejudice as against the Released Plaintiff's Persons, upon and subject to the following terms and conditions of the Settlement, as follows:

## **I. DEFINITIONS**

All terms in this Stipulation with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings ascribed to them below.

1.1 "Claims" means all claims and causes of action, rights, liabilities, suits, debts, obligations, demands, damages, losses, costs, expenses, judgments, executions, matters, issues of every nature and description whatsoever, including Unknown Claims, whether arising under federal law, state law, statutory law, common law, foreign law, or any other law, rule or regulation.

1.2 "Class" means the non-opt-out class of all record holders and beneficial owners of QAD Inc. Class A common stock as of the closing of the Merger and who received \$87.50 in cash per Class A share as Merger consideration, excluding (i) QAD, Pamela M. Lopker, Anton Chilton, Scott J. Adelson, Kathleen M. Crusco, Peter R. van Cuylenburg, Thoma Bravo, LP, QAD Ultimate Parent, LP (f/k/a Project Quick Ultimate Parent, LP), and QAD Parent, LLC (f/k/a Project Quick Parent, LLC), and their immediate family members, legal representatives, heirs, estates, successors, or assigns; (ii) any entity in which any of the Defendants has a direct

controlling interest; and (iii) any Person who has entered into a separate settlement agreement with any Defendant for claims based on the same or similar facts, transactions, or occurrences as those alleged in the Complaint and which prohibits such Person from participating as a member of the Class (each such person or entity listed in Paragraph 1.2(i)–(iii), an “Excluded Person”). The information for the Excluded Persons referenced in Paragraph 1.2(iii) will be provided to Plaintiff as set forth in Paragraph 10.3(b).

1.3 “Class Member” means a member of the Class.

1.4 “Closing” means the closing of the Merger on November 5, 2021.

1.5 “Court” means the Court of Chancery of the State of Delaware.

1.6 “Effective Date” means the first date by which all of the events and conditions specified in Paragraph 7.1 of this Stipulation have been met and have occurred or have been waived in writing.

1.7 “Escrow Account” means the bank account that is maintained by Plaintiff’s Counsel and into which the Settlement Amount will be deposited and wherein the Settlement Fund will be held.

1.8 “Escrow Agent” means the agent or agents who shall be chosen by Plaintiff’s Counsel to administer the Escrow Account.

1.9 “Fee and Expense Award” means an award to Plaintiff’s Counsel of fees and expenses to be paid from the Settlement Fund, approved by the Court and

in full satisfaction of any and all claims for attorneys' fees that have been, could be, or could have been, asserted by Plaintiff's Counsel or any other counsel or any Class Member against the Defendants with respect to the Action or the Settlement.

1.10 "Final" means, with respect to any judgment or order entered by the Court, that (i) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal of the judgment or order; or (ii) if there is an appeal from the judgment or order, (a) the date of the final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise to review the judgment or order, or (b) the date the judgment or order has been affirmed in all material respects on an appeal or after reconsideration or other review and is no longer subject to review upon 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 of the judgment or order, and, if certiorari or other form of review is granted, the date of final affirmance of the judgment or order following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to attorneys' fees or expenses or any plan of allocation in this Action shall not in any way delay or preclude the Judgment from becoming Final.

1.11 "Immediate Family" means children, stepchildren, parents, stepparents, spouses, siblings and step-siblings. As used in this Paragraph, "spouse" shall mean

a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

1.12 “Judgment” means the Order and Final Judgment to be entered by the Court, materially in the form attached hereto as Exhibit D (subject to Sections 11.1 and 11.2).

1.13 “Merger” means the November 5, 2021 merger of QAD with Project Quick Merger Sub, Inc., a wholly owned subsidiary of Defendant QAD Parent, LLC (f/k/a Project Quick Parent, LLC), with QAD surviving as an indirect subsidiary of Thoma Bravo, L.P.

1.14 “Merger Cash Consideration” means the cash consideration of \$87.50 per share paid in connection with the Merger.

1.15 “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes and Tax Expenses; (ii) any Notice and Administration Costs; (iii) any Fee and Expense Award awarded by the Court; and (iv) any other costs or fees approved by the Court.

1.16 “Notice” means the Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B.

1.17 “Notice and Administration Costs” means the reasonable costs, fees, and expenses that are incurred by the Settlement Administrator and/or Plaintiff’s

Counsel in connection with: (i) providing notice to the Class; and (ii) administering the Settlement, including without limitation the costs, fees, and expenses incurred in connection with the Escrow Account. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Settlement Administrator in connection with providing notice and administering the Settlement, and the fees, if any, of the Escrow Agent.

1.18 “Person” means a natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, or any other business or legal entity.

1.19 “Plaintiff’s Counsel” means Labaton Sucharow LLP.

1.20 “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

1.21 “Released Claims” means Released Plaintiff’s Claims and Released Defendants’ Claims.

1.22 “Released Persons” means Released Defendants’ Persons and Released Plaintiff’s Persons.

1.23 “Released Plaintiff’s Claims” means all Claims that were alleged, asserted, set forth, or claimed in the Complaint or could have been alleged, asserted, set forth, or claimed in the Complaint or in any other court, tribunal, or proceeding by Plaintiff or any other member of the Class, individually, or as a member of the Class directly in their capacities as current or former QAD stockholders, against the Defendants, in each case arising out of, based on, or relating to the allegations, transactions, facts, events, matters, occurrences, representations, or omissions involved, set forth, or referred to in the Complaint, including without limitation all such claims relating to (i) the Merger or any element, term, condition, or circumstance of the Merger or the sale process leading up to the Merger; (ii) any actions, deliberations, negotiations, discussions, offers, inquiries, solicitations of interest, indications of interest, bids, due diligence, or any act or omission in connection with the review of strategic alternatives available to QAD or the Merger, including the process of deliberation or negotiation concerning the Merger; (iii) the consideration received by Plaintiff and/or the Class in connection with the Merger; and (iv) any fiduciary obligations of the Defendants relating to the Merger, the process of deliberation or negotiation leading to the Merger, or the disclosures respecting the Merger. For the avoidance of doubt, the Released Plaintiff’s Claims do not include any Claims based on conduct that occurred after the Effective Date.

1.24 “Released Plaintiff’s Persons” means (i) Plaintiff, all other Class Members, and Plaintiff’s Counsel, and (ii) their legal representatives, advisors, heirs, executors, administrators, trusts, trustees, parents, affiliates, subsidiaries, officers, directors, partnerships, partners, agents, employees, Immediate Family Members, insurers, reinsurers, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing.

1.25 “Released Defendants’ Claims” means all claims and causes of action, rights, liabilities, suits, debts, obligations, demands, damages, losses, judgments, matters, issues of every nature and description whatsoever, including Unknown Claims, whether arising under federal law, state law, statutory law, common law, foreign law, or any other law, rule or regulation, arising out of or relating to the Action other than claims relating to the enforcement of the Settlement, including without limitation, all actions taken by Plaintiff in connection with the initiation, prosecution, and settlement of the Action. For the avoidance of doubt, the Released Defendants’ Claims do not include any Claims based on conduct that occurred after the Effective Date.

1.26 “Released Defendants’ Persons” means (i) the Defendants, and Defendants’ counsel; and (ii) their current or former legal representatives, officers, directors, managers, employees, agents, partners, representatives, attorneys, auditors, accountants, advisors, heirs, executors, administrators, trusts, trustees,

Immediate Family Members, insurers, reinsurers, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing.

1.27 “Releases” means the releases set forth in Paragraphs 3.2 and 3.3 of this Stipulation.

1.28 “Scheduling Order” means an order scheduling a hearing on the proposed Settlement and approving the form of and method of giving notice of the Settlement, substantially in the form attached hereto as Exhibit A.

1.29 “Settlement Administrator” means the firm selected by Plaintiff, subject to the approval of the Court, to administer the Settlement and provide notice to the Class.

1.30 “Defendants’ Counsel” means Kirkland & Ellis LLP, Morris, Nichols, Arsht, & Tunnell LLP, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Potter Anderson & Corroon LLP, Paul Hastings LLP, and Richards, Layton & Finger, PA.

1.31 “Settlement Fund” means the Settlement Amount, plus any and all interest earned thereon, held in the Escrow Account.

1.32 “Settlement Hearing” means the hearing (or hearings) to be held by the Court to determine, among other things, whether: (i) Plaintiff and Plaintiff’s Counsel have adequately represented the interests of the Class; (ii) the proposed Settlement should be approved by the Court as fair, reasonable, adequate, and in the best interests of the Class; (iii) the Action should be dismissed with prejudice as against



the Defendants and all of the Released Claims against the Released Persons should be fully, finally, and forever released, settled, and discharged; (iv) whether and in what amount any Fee and Expense Award should be paid to Plaintiff's Counsel out of the Settlement Fund; and (v) the Judgment approving the Settlement of the Action should be entered in accordance with the terms of this Stipulation.

1.33 "Summary Notice" means the Summary Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit C, to be published as set forth in the Scheduling Order.

1.34 "Taxes" means any taxes (including any estimated taxes, interest, penalties, or additional amounts) arising with respect to income earned by the Settlement Fund, including with respect to (i) any income earned by the Settlement Fund for any period during which the Settlement Fund on deposit in the Escrow Account is not treated, or does not qualify, as a "qualified settlement fund" for federal or state income tax purposes, and (ii) the payment or reimbursement by the Settlement Fund of any amounts described in clause (i).

1.35 "Tax Expenses" means expenses and costs incurred in connection with determining the amount of, and paying, any Taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and/or accountants and

mailing and distribution costs and expenses relating to filing (or failing to file) any tax returns).

1.36 “Unknown Claims” means, as appropriate, (i) any Released Plaintiff’s Claims that any Plaintiff or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendants’ Persons, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement, or (ii) any Released Defendants’ Claims that any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff’s Persons, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Plaintiff’s Claims and Released Defendants’ Claims, the Parties stipulate and agree that Plaintiff and the Defendants shall expressly waive, and each of the other Class Members by operation of law shall be deemed to have waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law or foreign law, which is similar, comparable, or equivalent to Cal. Civ. 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.

Plaintiff and the Defendants acknowledge, and each of the other Class Members by operation of law are deemed to acknowledge, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Plaintiff's Claims and the Released Defendants' Claims, but that it is the intention of Plaintiff and the Defendants, and by operation of law the other Class Members, to completely, fully, finally, and forever extinguish any and all Released Plaintiff's Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiff and the Defendants also acknowledge, and each of the other Class Members by operation of law are deemed to acknowledge, that the inclusion of "Unknown Claims" in the definition of Released Plaintiff's Claims and Released Defendants' Claims is separately bargained for and is a key element of the Settlement.

## **II. SETTLEMENT CONSIDERATION**

2.1 In connection with the Settlement and in consideration of the Releases set forth herein, the Defendants shall cause to be paid into the Escrow Account (i) \$100,000.00 of the Settlement Amount, within five business days from the entry of a Scheduling Order by the Court in connection with this Stipulation, such Scheduling Order being proposed jointly by the Parties pursuant to Paragraph 5.1 and substantially in the form attached hereto as Exhibit A; (ii) 50% of the total Settlement

Amount *less* the \$100,000.00 deposited pursuant to Paragraph 2.1(i), within forty-five days from the entry of the Scheduling Order substantially in the form attached hereto as Exhibit A; and (iii) the remaining 50% of the Settlement Amount not previously paid into the Escrow Account, within ten (10) business days from the Effective Date (as defined in Paragraph 7.1, below).

2.2 The Released Defendants' Persons shall not be responsible for the payment of any amounts in connection with the Settlement other than the Settlement Amount. The Released Defendants' Persons (except for the insurance carriers who have committed to fund a portion of the Settlement Amount from the proceeds of their policies (the "Insurance Carriers"), as well as the Company and Lopker, for the amounts each has respectively agreed to contribute), shall bear no personal responsibility for any payment in connection with this Stipulation or the Settlement. Nothing in this Paragraph, nor any other in this Stipulation will affect or have any impact on the rights and obligations of any of the Parties with respect to their contribution obligations as set forth under any other agreement.

If the Defendants fail to cause the full payment of the Settlement Amount in a timely manner, Plaintiff may exercise its right under Paragraph 11.1 of this Stipulation to terminate the Settlement.

### **III. SCOPE OF THE SETTLEMENT**

3.1 Upon entry of the Judgment, the Action against the Defendants shall be dismissed with prejudice. Plaintiff and the Defendants shall each bear his, her, or its own fees, costs, and expenses, except as expressly provided in this Stipulation, provided that nothing herein shall affect any Defendants' claims for advancement or indemnity of their legal fees, costs, and expenses incurred in connection with the Action and this Settlement, or any claims that any Defendant may have against any of his, her or its respective insurers, co-insurers, or reinsurers.

3.2 Upon the Effective Date, Plaintiff and each and every other member of the Class, on behalf of themselves and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns, each of the foregoing in their capacities as such only, shall have fully, finally, and forever released, settled, and discharged the Released Defendants' Persons from and with respect to every one of the Released Plaintiff's Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Plaintiff's Claims against any of the Released Defendants' Persons.

3.3 Upon the Effective Date, the Defendants, on behalf of themselves and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns, each of the foregoing in their capacities as such only, shall have fully, finally, and forever released, settled, and discharged the Released Plaintiff's Persons from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Defendants' Claims against any of the Released Plaintiff's Persons.

#### **IV. CLASS CERTIFICATION**

4.1 Solely for purposes of the Settlement and for no other purpose, Defendants stipulate and agree to: (a) certification of the Action as a non-opt out class action pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2) on behalf of the Class; (b) appointment of Plaintiff as Class Representative for the Class; and (c) appointment of Plaintiff's Counsel as Class Counsel for the Class. In the event that this Stipulation is terminated pursuant to its terms or the Effective Date otherwise fails to occur, the stipulation and agreement addressed in

this Paragraph shall be deemed vacated and the Action shall proceed as though the Defendants had not made the stipulation or agreement addressed in this Paragraph.

4.2 The certification of the Class shall be binding only with respect to this Stipulation and the Settlement. In the event that this Stipulation is terminated pursuant to its terms or the Effective Date otherwise fails to occur, the certification of the Class shall be deemed vacated and the Action shall proceed as though the Class had never been certified.

## **V. PROCEDURE FOR APPROVAL**

5.1 As soon as practicable following the execution of this Stipulation, the Parties shall submit this Stipulation, together with the Exhibits, to the Court and shall jointly apply to the Court for entry of the Scheduling Order, substantially in the form attached hereto as Exhibit A.

5.2 In accordance with the Scheduling Order, the Settlement Administrator shall mail, or cause to be mailed, by first class U.S. mail or other mail service if mailed outside the U.S., postage prepaid, the Notice, substantially in the form attached hereto as Exhibit B, to each Class Member at their last known address appearing in the stock transfer records maintained by or on behalf of QAD (“Stock Transfer Records”). Within ten business days from the filing of this Stipulation with the Court, Defendants’ Counsel will provide Plaintiff’s Counsel with the list of QAD Class A common stockholders of record as of Closing. All stockholders of record

who held QAD Class A common stock on behalf of beneficial owners and who receive the Notice shall be directed to forward the Notice promptly to such beneficial owners. Plaintiff's Counsel shall use reasonable efforts to provide notice to such beneficial owners by making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners. In accordance with the Scheduling Order, Plaintiff's Counsel shall also cause the Summary Notice to be published through *Business Wire*. Any and all costs and expenses related to providing Notice shall be paid from the Settlement Fund, regardless of the form or manner of notice approved or directed by the Court and regardless of whether the Court declines to approve the Settlement or the Effective Date otherwise fails to occur. In no event shall the Plaintiff, the Released Defendants' Persons, or any of their attorneys have any liability or responsibility for the costs and expenses associated with providing the Notice.

5.3 The Parties agree to use their individual and collective best efforts to obtain Court approval of the Settlement. The Parties further agree to use their individual and collective best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, the Settlement provided for hereunder and the dismissal of the Action with prejudice as against all Defendants. The Parties agree



to cooperate fully with one another in seeking the Court's approval of this Stipulation and to use their best efforts to effect consummation of the Settlement.

5.4 If the Settlement embodied in this Stipulation is approved by the Court, the Parties shall request that the Court enter the Judgment, materially in the form attached hereto as Exhibit D.

## **VI. STAY PENDING COURT APPROVAL**

6.1 All litigation activities related to the pursuit of Plaintiff's claims against the Defendants are stayed upon execution of this Stipulation and, unless otherwise terminated, through the pendency of the Court's consideration of the proposed Settlement. Plaintiff agrees to not initiate any other proceedings against the Defendants asserting any Released Plaintiff's Claims pending the occurrence of the Effective Date. The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Class Member in, any other proceedings against any of the Defendants or the other Released Defendants' Persons that challenge the Settlement or otherwise assert or involve, directly or indirectly, a Released Plaintiff's Claim against the Released Defendants' Persons.

6.2 Notwithstanding Paragraph 6.1 above, nothing herein shall in any way impair or restrict the rights of any Party to defend this Stipulation or to otherwise

respond in the event any Person objects to the Stipulation, the proposed Judgment to be entered, the Fee and Expense Award, or the Plan of Allocation.

## **VII. CONDITIONS OF SETTLEMENT**

7.1 The Effective Date of the Settlement shall be deemed to occur on the occurrence or written waiver of all of the following events, which events the Parties shall use their best efforts to achieve:

(a) the payment of the Settlement Amount into the Escrow Account in accordance with Paragraph 2.1 above;

(b) the Court's certification of the Class as a non-opt-out class;

(c) the Court's entry of the Judgment materially in the form attached hereto as Exhibit D, including Releases materially in the form set out herein (subject to Paragraphs 11.1 and 11.2) and the dismissal with prejudice of the Action as to all Defendants (subject to Paragraphs 11.1 and 11.2) without the award of any damages, costs, or fees, except as provided for in this Stipulation; and

(d) the Judgment becoming Final.

7.2 Upon the occurrence of the Effective Date, any and all remaining interest or right of the Defendants or the Insurance Carriers in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

## **VIII. ATTORNEYS' FEES AND EXPENSES**

8.1 Plaintiff's Counsel intends to petition the Court for a Fee and Expense Award, which application will be wholly inclusive of any request for attorneys' fees and expenses on behalf of any Class Member or his, her, or its counsel in connection with the Settlement. The Parties acknowledge and agree that any Fee and Expense Award in connection with the Settlement shall be paid from the Settlement Fund and shall reduce the Settlement consideration paid to the Class accordingly. Plaintiff's Counsel's application for a Fee and Expense Award is not the subject of any agreement among Plaintiff and Defendants other than what is set forth in this Stipulation; provided, however, that Plaintiff's Counsel's petition for a Fee and Expense Award shall not seek payment of any fees or expenses previously paid to Plaintiff in connection with the Action.

8.2 The Fee and Expense Award shall be paid from the Settlement Fund to Plaintiff's Counsel immediately upon award by the Court, notwithstanding the existence of any timely filed objections to the Fee and Expense Award or any appeal or potential for appeal therefrom, or collateral attack on the Fee and Expense Award, the Settlement, or any part thereof, subject to Plaintiff's Counsel's obligation to make 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 Fee and Expense Award is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than thirty (30) calendar days after: (a) Plaintiff's or the Defendants' receipt of any notice of the termination of the Settlement; or (b) any order disapproving, reducing, reversing, or otherwise modifying the Fee and Expense Award has become Final.

8.3 This Stipulation, the Settlement, the Judgment, and whether the Judgment becomes Final, are not conditioned upon the approval of an award of attorneys' fees, costs, or expenses, either at all or in any particular amount, by the Court. The Fee and Expense Award may be considered separately from the proposed Settlement. Any disapproval or modification of the Fee and Expense Award by the Court or on appeal shall not affect or delay the enforceability of this Stipulation or the Settlement; provide any of the Parties with the right to terminate the Settlement; affect or delay the binding effect or finality of the Judgment and the release of the Released Claims; or prevent the occurrence of the Effective Date.

8.4 Plaintiff's Counsel warrants that no portion of any such award of attorneys' fees or expenses shall be paid to Plaintiff, except as may be approved by the Court.

## **IX. THE SETTLEMENT FUND**

9.1 The Settlement Fund shall be used to pay: (a) any Taxes and Tax Expenses; (b) any Notice and Administration Costs; (c) any Fee and Expense Award awarded by the Court; and (d) any other costs or fees approved by the Court. The Net Settlement Fund shall be distributed pursuant to the proposed Plan of Allocation or such other plan of allocation approved by the Court.

9.2 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.

9.3 The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the Federal Deposit Insurance Corporation (“FDIC”) may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by

the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

9.4 The Settlement Fund is intended to be a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, and Plaintiff’s Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for timely and properly 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. Plaintiff’s 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. Upon written request, Defendants shall cause the Insurance Carriers to provide to Plaintiff’s Counsel the statement described in Treasury Regulation § 1.468B-3(e). Plaintiff’s 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.

9.5 All Taxes and Tax Expenses shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Plaintiff's 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 Defendants' Persons shall have no responsibility or liability for any such Taxes or Tax Expenses or the acts or omissions of Plaintiff's Counsel or its agents with respect to the payment of Taxes, as described herein.

9.6 The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Person 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.

9.7 Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Plaintiff's Counsel may pay from the Settlement Fund, without further approval from the Defendants or further order of the Court, all Notice and Administration Costs actually incurred and paid or payable. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing

the Notice, publishing the Summary Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Settlement Administrator in connection with providing notice and administering the Settlement, 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, Taxes, or Tax Expenses paid or incurred, including any related fees, shall not be returned or repaid to any Person who or which paid any portion of the Settlement Amount.

## **X. SETTLEMENT ADMINISTRATION**

10.1 Plaintiff shall retain a Settlement Administrator to provide notice of the Settlement and for the disbursement of the Net Settlement Fund to eligible Class Members. The Released Defendants' Persons shall not have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Settlement Administrator.

10.2 As soon as reasonably practicable after the Effective Date, the Settlement Administrator shall allocate the Net Settlement Fund to the eligible Class Members consistent with the Plan of Allocation.

10.3 For purposes of distributing the Net Settlement Fund to eligible Class Members, within five (5) business days after the Court's entry of the Judgment, at no cost to the Settlement Fund, Plaintiff's Counsel, or the Settlement Administrator,



QAD shall make reasonable efforts to provide to Plaintiff's Counsel or the Settlement Administrator in an electronically-searchable form, such as Excel, the following information (the "Merger Records"):

(a) the names, mailing addresses and, if available, email addresses of all registered holders of QAD Class A common stock listed on QAD's stockholder register ("Registered Holders") who held shares of QAD Class A common stock at the Closing and therefore received or were entitled to receive the Merger Cash Consideration, other than the Excluded Persons ("Merger Record Holders") and the number of shares of QAD Class A common stock held by the Merger Record Holders at the Closing and for which the Merger Record Holders received or were entitled to receive the Merger Cash Consideration;

(b) For any Excluded Person, the following information: (i) the name of the Excluded Person; (ii) an indication of whether the Excluded Person was, at the Closing, either (a) a Registered Holder of QAD Class A common stock listed or (b) a beneficial holder of QAD Class A common stock whose shares were held via a financial institution on behalf of the Excluded Person ("Beneficial Holder"); (iii) the number of shares of QAD Class A common stock beneficially owned by the Excluded Person at the Closing and for which the Excluded Person received or were entitled to receive the Merger Cash Consideration ("Excluded Shares"); and (iv) for each Excluded Person that is a Beneficial Holder, (a) the name and DTCC number

of the financial institution where his, her, or its Excluded Shares were held and (b) the account number(s) where his, her, or its Excluded Shares were held; and

(c) Any allocation or position report generated by the Depository Trust & Clearing Corporation, including its subsidiary the Depository Trust Company (“DTCC”), or other similar entity in anticipation of the Merger to facilitate the allocation of the Merger Cash Consideration to QAD Class A common stockholders (the “DTCC Allocation Report”), which shall include, for each DTCC participant to which DTCC distributed the Merger Cash Consideration (a “DTCC Participant”), the DTCC Participant’s DTCC number and the number of shares of QAD Class A common stock reflected on the DTCC Allocation Report used by DTCC to distribute the Merger Cash Consideration, or the one-time grant of authority from the Defendants to Plaintiff’s Counsel for purposes of Plaintiff’s Counsel, or its agent acting at the direction of Plaintiff’s Counsel, to request such a report.

10.4 In addition to the information to be provided under Paragraph 10.3 above, the Defendants, at the request of Plaintiff, and at no cost to the Settlement Fund, Plaintiff, Plaintiff’s Counsel, or the Settlement Administrator, shall make reasonable efforts to provide such additional information or to cause QAD to provide such additional information as may be required to distribute the Net Settlement Fund

to eligible Class Members and to ensure that the Net Settlement Fund is paid only to eligible Class Members and not to Excluded Persons.

10.5 The Defendants and all other Excluded Persons shall not have any right to receive any part of the Settlement Fund for his, her, or its own account(s) (*i.e.*, accounts in which he, she or it holds a proprietary interest), or any additional amount based on any claim relating to the fact that Settlement proceeds are being received by any other stockholder, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

10.6 The Net Settlement Fund shall be distributed to eligible Class Members in accordance with the proposed Plan of Allocation set forth in the Notice or such other plan of allocation as may be approved by the Court. Notwithstanding anything to the contrary in this Stipulation, 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. Plaintiff and Plaintiff's 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. The Defendants shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action and shall not have any involvement with the application of the Court-approved plan of allocation.

10.7 The Net Settlement Fund shall be distributed to eligible Class Members only after the Effective Date of the Settlement and after: (a) all Notice and Administration Costs, all Taxes, and any Fee and Expense Award have been paid from the Settlement Fund or reserved; and (b) the Court has entered an order authorizing the specific distribution of the Net Settlement Fund (the “Class Distribution Order”). At such time that Plaintiff’s Counsel, in their sole discretion, deems it appropriate to move forward with the distribution of the Net Settlement Fund to the Class, Plaintiff’s Counsel will apply to the Court, on notice to Defendants’ Counsel, for the Class Distribution Order.

10.8 Payment pursuant to the Class Distribution Order shall be final and conclusive against all Class Members. Plaintiff, Defendants, and the other Released Defendants’ Persons and their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the determination, administration, or calculation of any payment from the Net Settlement Fund, the nonperformance of the Settlement Administrator or a nominee holding shares on behalf of a Class Member, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

10.9 Notwithstanding any other provision of this Stipulation, the Defendants shall have no responsibility or liability for any claims, payments or determinations

that the Administrator makes with respect to any Class Member claims for payment under this Stipulation.

10.10 All proceedings with respect to the administration of the Settlement and distribution pursuant to the Class Distribution Order shall be subject to the exclusive jurisdiction of the Court.

#### **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

11.1 Plaintiff and the Defendants 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: (i) the Court's refusal to approve the Settlement or any term or part of it that materially affects any Party's rights or obligations hereunder; (ii) the Court's declining to enter the Judgment in any material respect; or (iii) the date upon which the Judgment is modified or reversed in any material respect by an appellate court. In addition to the foregoing, Plaintiff shall have the unilateral right to terminate the Settlement and this Stipulation, by providing written notice of its election to do so to Defendants within thirty (30) calendar days of any failure of Defendants to cause the full payment of the Settlement Amount into the Escrow Account in a timely manner in accordance with Paragraph 2.1 of this Stipulation. Neither a modification nor a reversal on appeal of the amount of fees, costs, and expenses awarded by the Court to Plaintiff's Counsel nor any order modifying or

rejecting the Plan of Allocation shall be deemed a material modification of the Judgment or this Stipulation. For the avoidance of doubt, any modification of the definition of “Class” hereunder such that it means an opt-out class, rather than a non-opt-out class, shall be a material modification of the Settlement and/or the Judgment.

11.2 The Parties agree and acknowledge that if any provision of this Agreement is determined by a final judgment of a Court of competent jurisdiction to be illegal or unenforceable, such assertion or determination shall not affect the balance of this Stipulation, which shall remain in full force and effect as such invalid provision shall be deemed severable; provided, however, that severability provided by this Paragraph 11.2 shall not apply to the conditions contained in Paragraph 7.1. Further, subject to Paragraph 11.1, the Parties agree that if any material provision in this Stipulation is determined by a Court of competent jurisdiction to be illegal or unenforceable, within five business days of such determination by the Court, the Parties will make a good faith effort to confer concerning any necessary and appropriate modifications to the Stipulation. The Parties agree to endeavor to obtain approval of the Settlement under Rule 23 of the Rules of the Court Chancery of the State of Delaware, including any revisions to the Stipulation made pursuant to this Paragraph.

11.3 In the event that the Settlement is terminated pursuant to the terms of Paragraph 11.1 of this Stipulation, or the Effective Date otherwise fails to occur for

any other reason, then (i) the Settlement and this Stipulation (other than this Paragraph 11.3 and Paragraphs 4.2, 8.2, 9.2, 9.3, 9.5, 9.6, 10.1, 10.8, 11.2, 12.1, 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.9, 13.10, 13.11, 13.12, 13.13, 13.14, 13.15, and 13.16 of this Stipulation) shall be canceled and terminated; (ii) any judgment entered in the Action and any related orders entered by the Court shall in all events be treated as vacated, nunc pro tunc; (iii) the Releases provided under the Settlement shall be null and void; (iv) the fact of the Settlement shall not be admissible in any proceeding before any court or tribunal; (v) all proceedings in the Action shall revert to their status as of immediately prior to the execution of this Stipulation on August 28, 2023, and no materials created by or received from another Party that were used in, obtained during, or related to settlement discussions shall be admissible for any purpose in any court or tribunal, or used, absent consent from the disclosing party, for any other purpose or in any other capacity, except to the extent that such materials are otherwise required to be produced during discovery in the Action or in any other litigation; (vi) the Parties shall jointly petition the Court for a revised schedule for trial; (vii) the Parties shall proceed in all respects as if the Settlement and this Stipulation (other than this Paragraph) had not been entered into by the Parties; and (viii) within thirty (30) calendar days after joint written notification of termination is sent by Defendants' Counsel and Plaintiff's 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 Plaintiff's Counsel consistent with Paragraph 8.2 of this Stipulation), less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes and Tax Expenses paid, due, or owing shall be refunded by the Escrow Agent directly to the Persons who made payments pursuant to Paragraph 2.1 above in such amounts as directed by the Defendants. In the event that the funds received by Plaintiff's Counsel consistent with Paragraph 8.2 of this Stipulation above have not been refunded to the Settlement Fund within the thirty (30) calendar days specified in this Paragraph, those funds shall be refunded by the Escrow Agent immediately upon their deposit into the Escrow Account directly to the Persons who made payment pursuant to Paragraph 2.1 above in such amounts as directed by the Defendants.

## **XII. NO ADMISSION OF LIABILITY**

12.1 It is expressly understood and agreed that neither the Settlement nor any act or omission in connection therewith is intended or shall be deemed or argued to be evidence of or to constitute an admission or concession by: (a) Defendants as to (i) the truth of any fact alleged by Plaintiff; (ii) the validity of any claims or other issues raised, or which might be or might have been raised, in the Action or in any other litigation; (iii) the deficiency of any defense that has been or could have been asserted in the Action or in any litigation; or (iv) any wrongdoing, breach, fault, or liability of any kind by any of them, which each of them expressly denies or (b)



Plaintiff that any of its claims are without merit or that damages recoverable from the Defendants under the Complaint would not have exceeded the Settlement Amount.

12.2 The Defendants and the Released Persons may file this Stipulation and/or the Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim or in connection with any insurance litigation.

### **XIII. MISCELLANEOUS**

13.1 Each of the Defendants warrants that, as to the payments made or to be made on behalf of such Defendant, at the time of entering into this Stipulation and at the time of such payment such Defendant, to the best of his, her, or its knowledge, any Persons contributing to the payment of the Settlement Amount were not insolvent, nor will the payment required to be made 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.

13.2 In the event of the entry of a partial Final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion

thereof 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 another Person, then Plaintiff may elect to move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendants and the other Released Persons pursuant to this Stipulation, in which event (i) the Releases and Judgment shall be null and void; (ii) Plaintiff and Defendants shall be restored to their respective positions in the litigation as provided in Paragraph 11.2 of this Stipulation; (iii) Plaintiff's Counsel shall refund the Fee and Expense Award consistent with Paragraph 8.2 of this Stipulation; and (iv) 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 Paragraph 11.2 of this Stipulation.

13.3 This Stipulation shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them by reason of authorship.

13.4 The Parties agree that in the event of any breach of this Stipulation, all of the Parties' rights and remedies at law, equity, or otherwise, are expressly reserved.

13.5 This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the

same document. Any signature to the Stipulation by means of facsimile or electronic scanning shall be treated in all manner and respects as an original signature and shall be considered to have the same binding legal effect as if it were the original signed version thereof and without any necessity for delivery of the originally signed signature pages in order for this to constitute a binding agreement.

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

13.7 Each counsel or other person executing this Stipulation on behalf of any Party warrants that he or she has the full authority to bind his or her principal to this Stipulation.

13.8 Plaintiff and Plaintiff's Counsel represent and warrant that none of Plaintiff's Released Claims have been assigned, encumbered, or in any manner transferred in whole or in part.

13.9 This Stipulation shall not be modified or amended, nor shall any provision of this Stipulation be deemed waived, unless such modification, amendment, or waiver is in writing and executed by or on behalf of the Party or Parties against whom such modification, amendment, or waiver is sought to be enforced.

13.10 Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver

of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party. Waiver by any 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, and failure by any Party to assert any claim for breach of this Stipulation shall not be deemed to be a waiver as to that or any other breach and will not preclude any Party from seeking to remedy a breach and enforce the terms of this Stipulation. Each of the Defendants' respective obligations hereunder are several and not joint, and the breach or default by one Defendant shall not be imputed to, nor shall any Defendant have any liability or responsibility for, the obligations of any other Defendant herein.

13.11 This Stipulation is and shall be binding upon, and shall inure to the benefit of, the Parties and all Released Persons as third-party beneficiaries) and their respective legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns of any of the foregoing, including without limitation any corporation or other entity with which any party hereto may merge, reorganize, or otherwise consolidate.

13.12 Notwithstanding the entry of the Judgment, the Court shall retain jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of the Stipulation, and all Parties submit to the jurisdiction of the Court for

all matters relating to the administration, enforcement, and consummation of the Settlement and the implementation, enforcement, and interpretation of the Stipulation, including, without limitation, any matters relating to awards of attorneys' fees and expenses. Each Party (i) consents to personal jurisdiction in any such action (but no other action) brought in the Court; (ii) consents to service of process by registered mail upon such Party or such Party's agent; and (iii) waives any objection to venue in the Court and any claim that Delaware or the Court is an inconvenient forum.

13.13 The construction and interpretation of this Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware and without regard to the laws that might otherwise govern under principles of conflicts of law applicable hereto.

13.14 Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

13.15 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.

13.16 To the extent permitted by law and all applicable Court Rules, all agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement and the Effective Date.

13.17 This Stipulation and the following exhibits (“Exhibits”) constitute the entire agreement among the Parties with respect to the subject matter hereof:

- (a) Exhibit A: [Proposed] Scheduling Order With Respect to Notice and Settlement Hearing;
- (b) Exhibit B: Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear;
- (c) Exhibit C: Summary Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear;
- (d) Exhibit D: [Proposed] Order and Final Judgment.

These Exhibits are incorporated by reference as if set forth herein verbatim, and the terms of all Exhibits are expressly made part of this Stipulation. No representations, warranties, or inducements have been made to or relied upon by any Party concerning this Stipulation or its Exhibits, other than the representations, warranties, and covenants expressly set forth in such documents.

13.18 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 Plaintiff

and any other Class Members against Defendants with respect to the Released Plaintiff's Claims. Accordingly, Plaintiff and its counsel and Defendants and their counsel agree not to assert in any forum that this Action was brought by Plaintiff or defended by Defendants in bad faith. Plaintiff and the Defendants represent and agree that the terms of the Settlement reached between Plaintiff and the Defendants were negotiated at arm's-length and in good faith by Plaintiff and the Defendants, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

13.19 While retaining their right to deny that the claims asserted in the Action were meritorious, Defendants and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action is being settled voluntarily after consultation with competent legal counsel. In all events, Plaintiff and their counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by any Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

13.20 No opinion or advice concerning the tax consequences of the proposed 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, IT IS HEREBY AGREED** by the undersigned as of the date noted above.



**LABATON SUCHAROW LLP**

/s/ Ned Weinberger

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