

# Exhibit 1

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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

MOHAMMED USMAN ALI,  
Individually and on Behalf of All  
Others Similarly Situated,

Plaintiff,

vs.

FRANKLIN WIRELESS CORP.,  
OC KIM, and DAVID BROWN,

Defendants.

No. 3:21-cv-00687-AJB-MSB

**AMENDED STIPULATION AND AGREEMENT OF SETTLEMENT**

This Amended Stipulation and Agreement of Settlement, dated as of February 7, 2024 (the “Amended Stipulation”), which embodies the terms and conditions of settlement of the above-captioned action (the “Action”), is entered into between (a) Class Representative Gergely Csaba (“Plaintiff”), on behalf of himself and the Class (defined below); and (b) Defendants Franklin Wireless Corp., OC Kim, and David

1 Brown (the “Defendants,” and collectively with Plaintiff, the “Parties”).<sup>1</sup> Subject to the  
2 approval of the Court and the terms and conditions expressly provided herein, this  
3 Amended Stipulation is intended to fully, finally and forever compromise, settle,  
4 release, resolve, and dismiss with prejudice the Action and all claims asserted therein  
5 or that could have been asserted therein.

6       Whereas:

7       A.     On April 16, 2021, Mohammed Usman Ali commenced this Action in the  
8 U.S. District Court for the Southern District of California, styled *Mohammed Usman*  
9 *Ali v. Franklin Wireless, Corp. et al.*, Case No. 3:21-cv-00687-AJB-MSB. ECF No. 1.

10       B.     On September 15, 2021, the Court appointed Gergely Csaba as Lead  
11 Plaintiff, and Pomerantz LLP as Lead Counsel. ECF No. 14.

12       C.     On November 15, 2021, Plaintiff filed a Class Action Amended  
13 Complaint, ECF No. 26, alleging that Defendants violated Sections 10(b) and 20(a) of  
14 the Securities Exchange Act of 1934 (the “Exchange Act”) and U.S. Securities and  
15 Exchange Commission (“SEC”) Rule 10b-5 promulgated thereunder, by making  
16 materially false and misleading statements fraudulently implying that their core  
17 products, the Jetpacks, were functioning properly and were not suffering from any  
18 noteworthy defects when Defendants knew—but failed to disclose—that the Jetpacks  
19 had defective batteries that caused the devices to spark, catch fire, burn, explode, or  
20 otherwise combust, and so presented a risk of causing severe injury.

21       D.     On January 14, 2022, Defendants filed their answer to the Amended  
22 Complaint. ECF No. 27.

23       E.     On January 3, 2023, the Court granted Plaintiff’s motion to certify the  
24 Class. ECF No. 44.

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

1 F. On May 1, 2023, the Parties participated in a private mediation with Jed  
2 Melnick of JAMS. In advance of the mediation, the Parties submitted and exchanged  
3 detailed mediation statements and exhibits, which addressed, among other things,  
4 issues related to liability, loss causation, and damages. The mediation was conducted  
5 live via videoconference. During the mediation, the Parties reached an agreement in  
6 principle to settle and release all claims asserted against Defendants in the Action in  
7 exchange for a payment of \$2,400,000.00 for the benefit of the Class, subject to the  
8 execution of a settlement stipulation and related papers and Court approval.

9 G. The agreement was memorialized in a memorandum of understanding (the  
10 “Memorandum of Understanding”) which was fully executed on May 3, 2023. The  
11 Memorandum of Understanding sets forth, among other things, the Parties’ agreement  
12 to fully and finally settle and release all claims that were asserted or could have been  
13 asserted in the Action in return for a payment by or on behalf of Defendants of two  
14 million four hundred thousand dollars and zero cents (\$2,400,000.00) for the benefit of  
15 the Class.

16 H. This Amended Stipulation (together with the exhibits hereto) reflects the  
17 final and binding agreement between the Parties.

18 I. Based upon their investigation, prosecution and the early neutral  
19 evaluation of the case, Plaintiff and Class Counsel have concluded that the terms and  
20 conditions of this Amended Stipulation are fair, reasonable and adequate to Plaintiff  
21 and the other members of the Class, and in their best interests. Based on Plaintiff’s  
22 direct oversight of the prosecution of this matter and with the advice of his counsel,  
23 Plaintiff has agreed to settle and release the claims that were asserted or could have  
24 been asserted in the Action pursuant to the terms and provisions of this Amended  
25 Stipulation, after considering, among other things: (a) the substantial financial benefit  
26 that Plaintiff and the other members of the Class will receive under the proposed  
27 Settlement; and (b) the significant risks and costs of continued litigation and trial.  
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1 J. This Amended Stipulation constitutes a compromise of matters that are in  
2 dispute between the Parties. The Defendants are entering into this Amended Stipulation  
3 solely to eliminate the uncertainty, burden and expense of further litigation. Each of  
4 the Defendants denies any wrongdoing, and the Memorandum of Understanding and  
5 this Amended Stipulation shall in no event be construed or deemed to be evidence of  
6 or an admission or concession on the part of any of the Defendants or any of  
7 Defendants' Releasees with respect to any claim or allegation of any fault or liability  
8 or wrongdoing or damage whatsoever, or any infirmity in the defenses that the  
9 Defendants have, or could have, asserted. The Defendants expressly deny that Plaintiff  
10 has asserted any valid claims as to any of the Defendants, and expressly deny any and  
11 all allegations of fault, liability, wrongdoing or damages whatsoever. Similarly, this  
12 Amended Stipulation shall in no event be construed or deemed to be evidence of or an  
13 admission or concession on the part of Plaintiff of any infirmity in any of the claims  
14 asserted in the Action, or an admission or concession that any of the Defendants'  
15 defenses to liability had any merit. Each of the Parties recognizes and acknowledges,  
16 however, that the Action has been initiated, filed and prosecuted by Plaintiff in good  
17 faith and defended by Defendants in good faith, that the Action is being voluntarily  
18 settled with the advice of counsel, and that the terms of the Settlement are fair,  
19 adequate, and reasonable.  
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21 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and  
22 among Plaintiff (individually and on behalf of all other members of the Class) and  
23 Defendants, by and through their respective undersigned attorneys and subject to the  
24 approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure,  
25 that, in consideration of the benefits flowing to the Parties from the Settlement, all  
26 Released Plaintiff's Claims as against the Defendants' Releasees and all Released  
27 Defendants' Claims as against the Plaintiff's Releasees shall be settled and released,  
28 upon and subject to the terms and conditions set forth below.

1 **DEFINITIONS**

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

4 a) “Action” means the putative securities class action currently pending in  
5 the United States District Court for the Southern District of California styled as *Ali v.*  
6 *Franklin Wireless Corp., et al.*, 3:21-cv-00687-AJB-MSB.

7 b) “Amended Complaint” means Class Action Amended Complaint filed  
8 by Plaintiff on January 14, 2022. ECF No. 26.

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

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

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

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

20 g) “Claims Administrator” means the firm Epiq, which shall provide all  
21 notices approved by the Court to potential Class Members and administer the  
22 Settlement.

23 h) “Class” means all persons and entities other than defendants who  
24 purchased or otherwise acquired Franklin common stock between September 17, 2020  
25 and April 8, 2021, inclusive. Excluded from the Class are any parties who are or have  
26 been Defendants in this litigation, the present and former officers and directors of  
27 Franklin and any subsidiary thereof, members of their immediate families and their  
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1 legal representatives, heirs, successors or assigns and any entity in which any current  
2 or former Defendant has or had a controlling interest.

3 i) “Class Counsel” means Pomerantz LLP.

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

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

9 l) “Class Period” means the Class Period set forth in the Amended  
10 Complaint (*i.e.*, September 17, 2020 through April 8, 2021, inclusive).

11 m) “Court” means the United States District Court for the Southern District  
12 of California.

13 n) “Defendants” means Franklin and the Individual Defendants.

14 o) “Defendants’ Counsel” means Seltzer Caplan McMahon Vitek and  
15 SML Avvocati, P.C.

16 p) “Defendants’ Releasees” means Individual Defendants and Franklin’s  
17 current or former parents, subsidiaries, predecessors, successors, divisions, joint  
18 ventures and general or limited partnerships, and each of their respective current or  
19 former Officers, directors, trustees, partners, contractors, auditors, principals, agents,  
20 managing agents, employees, attorneys, accountants, investment bankers,  
21 underwriters, insurers or reinsurers in their capacities as such, as well as each of the  
22 immediate family members, heirs, executors, personal or legal representatives, estates,  
23 beneficiaries, predecessors, successors and assigns of the Individual Defendants and  
24 other individuals referred to in this paragraph.

25 q) “Effective Date” with respect to the Settlement means the first date by  
26 which all of the events and conditions specified in ¶ 31 of this Amended Stipulation  
27 have been met and have occurred or have been waived.  
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1           r) “Escrow Account” means an account maintained at The Huntington  
2 National Bank wherein the Settlement Amount shall be deposited and held in escrow  
3 under the control of Class Counsel.

4           s) “Escrow Agent” means The Huntington National Bank or its appointed  
5 agents. The Escrow Agent shall perform the duties as set forth in this Amended  
6 Stipulation and any order of the Court in connection with the Settlement.

7           t) “Escrow Agreement” means the agreement between Class Counsel and  
8 the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain  
9 the Escrow Account.

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

24           v) “Franklin” means Franklin Wireless Corporation.

25           w) “Franklin Securities” means Franklin Wireless Corp.’s common stock  
26 trading on the NASDAQ under the ticker symbol “FKWL.”  
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1 x) “Immediate Family” means children, stepchildren, parents, stepparents,  
2 spouses, marital communities, siblings, mothers-in-law, fathers-in-law, sons-in-law,  
3 daughters-in-law, brothers-in-law, and sisters-in-law. As used in this paragraph,  
4 “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic  
5 relationship or civil union.

6 y) “Individual Defendants” means OC Kim and David Brown.

7 z) “Judgment” means the final judgment, substantially in the form attached  
8 hereto as Exhibit B, to be entered by the Court approving the Settlement.

9 aa) “Litigation Expenses” means the costs and expenses incurred in  
10 connection with commencing, prosecuting and settling the Action (which may include  
11 the costs and expenses of Plaintiff directly related to his representation of the Class),  
12 for which Class Counsel intends to apply or could have applied to the Court for  
13 reimbursement from the Settlement Fund.

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

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

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

26 ee) “Officer” means any officer as that term is defined in Securities and  
27 Exchange Act Rule 16a-1(f).  
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1 ff) “Parties” means the Defendants and Plaintiff, on behalf of themselves and  
2 the Class.

3 gg) “Plaintiff” means Gergely Csaba.

4 hh) “Plaintiff’s Releasees” means Plaintiff, Class Counsel, and all other  
5 Class Members, and their respective current and former officers, directors, agents,  
6 parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees,  
7 employees, and attorneys, in their capacities as such.

8 ii) “Plan of Allocation” means the proposed plan of allocation of the Net  
9 Settlement Fund set forth in the Notice.

10 jj) “Preliminary Approval Order” means the Order, substantially in the form  
11 attached hereto as Exhibit A, to be entered by the Court preliminarily approving the  
12 Settlement and directing that notice of the Settlement be provided to the Class.

13 kk) “PSLRA” means the Private Securities Litigation Reform Act of 1995,  
14 15 U.S.C. § 78u-4, as amended.

15 ll) “Released Claims” means all Released Defendants’ Claims and all  
16 Released Plaintiff’s Claims.

17 mm) “Released Defendants’ Claims” means any and all claims, demands,  
18 rights, causes of action, and liabilities, whether based in law or equity, arising under  
19 federal, state, local, statutory or common law or any other law, rule or regulation  
20 including both known and Unknown Claims, that arise out of or relate in any way to  
21 the institution, prosecution, or settlement of the claims asserted in this Action against  
22 the Defendants, including under Rule 11 of the Federal Rules of Civil Procedure or for  
23 any other fees or cost shifting. Released Defendants’ Claims do not include any claims  
24 relating to the enforcement of the Settlement, any claims between or among the  
25 Defendants and Defendants’ Releasees, any claims between the Defendants and  
26 Defendants’ Releasees and their respective insurers, or any claims against any person  
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1 or entity who or which submits a request for exclusion from the Class that is accepted  
2 by the Court.

3 nn) “Released Plaintiff’s Claims” means any and all claims, demands, rights,  
4 causes of action and liabilities, of every nature and description whatsoever, whether  
5 based in law or equity, arising under federal, state, local, statutory or common law, or  
6 any other law, rule or regulation, including both known and Unknown Claims, that  
7 have been or could have been asserted in any forum by the members of the Class, or  
8 the successors or assigns of any of them, in any capacity, arising out of or based on the  
9 factual allegations in the operative complaint or the circumstances and conduct giving  
10 rise to the Action. Released Plaintiff’s Claims do not include: (i) any claims relating to  
11 the enforcement of the Settlement; (ii) any claims of any person or entity who or which  
12 submits a request for exclusion that is accepted by the Court; and (iii) any claims that  
13 already have been brought derivatively related to Franklin Securities during the Class  
14 Period.

15 oo) “Releasee(s)” means each and any of the Defendants’ Releasees and each  
16 and any of the Plaintiff’s Releasees.

17 pp) “Releases” means the releases set forth in ¶¶ 4–5 of this Amended  
18 Stipulation.

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

21 rr) “Settlement Amount” means \$2,400,000.00 in cash or immediately  
22 available funds.

23 ss) “Settlement Fund” means the Settlement Amount plus any and all interest  
24 earned thereon.

25 tt) “Settlement Hearing” means the hearing set by the Court under Rule  
26 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the  
27 Settlement.  
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1           uu) “Summary Notice” means the Summary Notice of (I) Pendency of Class  
2 Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for  
3 an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially  
4 in the form attached hereto as Exhibit A-3, to be published as set forth in the  
5 Preliminary Approval Order.

6           vv) “Taxes” means: (i) all federal, state and/or local taxes of any kind  
7 (including any interest or penalties thereon) on any income earned by the Settlement  
8 Fund; (ii) the expenses and costs incurred by Class Counsel in connection with  
9 determining the amount of, and paying, any taxes owed by the Settlement Fund  
10 (including, without limitation, expenses of tax attorneys and accountants); and (iii) all  
11 taxes imposed on payments by the Settlement Fund, including withholding taxes.

12           ww) “Unknown Claims” means any Released Plaintiff’s Claims which  
13 Plaintiff or any other Class Member does not know or suspect to exist in his, her or its  
14 favor at the time of the release of such claims, and any Released Defendants’ Claims  
15 which any Defendant or any other Defendants’ Releasee does not know or suspect to  
16 exist in his, her, or its favor at the time of the release of such claims, which, if known  
17 by him, her or it, might have affected any of his, her or its decision(s) with respect to  
18 this Settlement, including, without limitation, a Class Members’ decision not to opt-  
19 out or object. With respect to any and all Released Claims, the Parties stipulate and  
20 agree that, upon the Effective Date of the Settlement, Plaintiff and Defendants shall  
21 expressly waive, and each of the other Class Members and each of the Defendants’  
22 Releasees and each of the Plaintiff’s Releasees shall be deemed to have waived, and  
23 by operation of the Judgment shall have expressly waived, any and all provisions,  
24 rights, and benefits conferred by any law of any state or territory of the United States,  
25 or principle of common law or foreign law, which is similar, comparable, or equivalent  
26 to California Civil Code §1542, which provides:  
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1 A general release does not extend to claims that the creditor or releasing party  
2 does not know or suspect to exist in his or her favor at the time of executing  
3 the release and that, if known by him or her, would have materially affected  
his or her settlement with the debtor or released party.

4 Plaintiff, any other Class Member, Defendants, and their respective Releasees  
5 may hereafter discover facts in addition to or different from those which he, she, or it  
6 now knows or believes to be true with respect to the subject matter of the Released  
7 Claims, but the Parties stipulate and agree that, upon the Effective Date of the  
8 Settlement, Plaintiff and each of the Defendants shall expressly waive, and each of the  
9 other Class Members and Releasees shall be deemed to have waived, and by operation  
10 of the Judgment shall have expressly waived any and all Released Claims without  
11 regard to the subsequent discovery or existence of such different or additional facts.  
12 The Parties acknowledge, and each of the other Class Members and each of the  
13 Defendants' Releasees shall be deemed by operation of law to have acknowledged, that  
14 the foregoing waiver was separately bargained for and a key element of the Settlement.

15 **PRELIMINARY APPROVAL OF SETTLEMENT**

16 2. Promptly upon execution of this Amended Stipulation, Plaintiff will move  
17 for preliminary approval of the Settlement and the scheduling of a hearing for  
18 consideration of final approval of the Settlement, which motion shall be unopposed by  
19 Defendants. Concurrently with the motion for preliminary approval, Plaintiff shall  
20 apply to the Court for, and Defendants shall agree to, entry of the Preliminary Approval  
21 Order, substantially in the form attached hereto as Exhibit A.

22 **RELEASE OF CLAIMS**

23 3. The obligations incurred pursuant to this Amended Stipulation are in  
24 consideration of: (i) the full and final disposition of the Action as against Defendants;  
25 and (ii) the Releases provided for herein.

26 4. Pursuant to the Judgment, and without further action by anyone, upon the  
27 Effective Date of the Settlement, Plaintiff and each of the other Class Members, on  
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1 behalf of themselves, and their current and former officers, directors, agents, parents,  
2 affiliates, subsidiaries, successors, predecessors, assigns, assignees, employees,  
3 attorneys, heirs, executors, and administrators in their capacities as such, shall be  
4 deemed to have, and by operation of law and of the judgment shall have, fully, finally  
5 and forever compromised, settled, released, resolved, relinquished, waived and  
6 discharged any and all Released Plaintiff's Claims against the Defendants and the  
7 Defendants' Releasees, and shall be:

- 8 (a) permanently and forever enjoined from instituting, commencing or  
9 prosecuting, in any capacity, any and all Released Plaintiff's Claims against any  
10 of the Defendants' Releasees, and  
11 (b) deemed to permanently covenant to refrain from instituting, commencing  
12 or prosecuting, in any capacity, any and all Released Plaintiff's Claims against  
13 any of the Defendants' Releasees.  
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15 5. Pursuant to the Judgment, and without further action by anyone, upon the  
16 Effective Date of the Settlement, Defendants, on behalf of themselves, and their current  
17 and former officers, directors, agents, parents, affiliates, subsidiaries, successors,  
18 predecessors, assigns, assignees, employees, attorneys, heirs, executors, and  
19 administrators in their capacities as such, shall be deemed to have, and by operation of  
20 law and of the judgment shall have, fully, finally and forever compromised, settled,  
21 released, resolved, relinquished, waived and discharged any and all Released  
22 Defendants' Claims against Plaintiff and Plaintiff's Releasees, and shall forever be  
23 barred and enjoined from prosecuting any or all of the Released Defendants' Claims  
24 against any of Plaintiff's Releasees. This release shall not apply to any person or entity  
25 who or which submits a request for exclusion from the Class that is accepted by the  
26 Court.  
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1 be distributed or returned pursuant to the terms of this Amended Stipulation and/or  
2 further order of the Court. The Escrow Agent shall invest any funds in the Escrow  
3 Account exclusively in United States Treasury Bills (or a mutual fund invested solely  
4 in such instruments) and shall collect and reinvest all interest accrued thereon, except  
5 that any residual cash balances up to the amount that is insured by the FDIC may be  
6 deposited in any account that is fully insured by the FDIC. In the event that the yield  
7 on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills,  
8 all or any portion of the funds held by the Escrow Agent may be deposited in any  
9 account that is fully insured by the FDIC or backed by the full faith and credit of the  
10 United States. Additionally, if short-term placement of the funds is necessary, all or  
11 any portion of the funds held by the Escrow Agent may be deposited in any account  
12 that is fully insured by the FDIC or backed by the full faith and credit of the United  
13 States.

14  
15 10. The Parties agree that the Settlement Fund is intended to be a Qualified  
16 Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Class  
17 Counsel, as administrator of the Settlement Fund within the meaning of Treasury  
18 Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed  
19 all informational and other tax returns as may be necessary or appropriate (including,  
20 without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the  
21 Settlement Fund. Class Counsel shall also be responsible for causing payment to be  
22 made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund.  
23 Defendants or the Defendants' Releasees shall not have any liability or responsibility  
24 whatsoever for any such Taxes. Upon written request, Defendants will provide to Class  
25 Counsel the statement described in Treasury Regulation § 1.468B-3(e). Class Counsel,  
26 as administrator of the Settlement Fund within the meaning of Treasury Regulation  
27 § 1.468B 2(k)(3), shall timely make such elections as are necessary or advisable to  
28 carry out this paragraph, including, as necessary, making a "relation back election," as



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

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

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

21 13. Notwithstanding the fact that the Effective Date of the Settlement has not  
22 yet occurred, Class Counsel may pay from the Settlement Fund, without further  
23 approval from Defendants or further order of the Court, all Notice and Administration  
24 Costs actually incurred and paid or payable up to \$250,000.00 Such costs and expenses  
25 shall include, without limitation, the actual costs of printing and mailing the Notice,  
26 publishing the Summary Notice, reimbursements to nominee owners for forwarding  
27 the Notice to their beneficial owners, the administrative expenses incurred and fees  
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1 charged by the Claims Administrator in connection with providing notice,  
2 administering the Settlement (including processing the submitted Claims), and the fees,  
3 if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to  
4 the terms of this Amended Stipulation, all Notice and Administration Costs paid or  
5 incurred, including any related fees and Taxes, shall not be returned or repaid to  
6 Defendants, any of the Defendants' Releasees, or any other person or entity who or  
7 which paid any portion of the Settlement Amount.

8 14. If there is any balance remaining in the Net Settlement Fund (whether by  
9 reason of tax refunds, uncashed checks, or otherwise) after at least six (6) months from  
10 the date of initial distribution of the Net Settlement Fund, the Claims Administrator  
11 shall, if feasible and economical after payment of Notice and Administration Expenses,  
12 Taxes, and attorneys' fees and Litigation Expenses, if any, redistribute such balance,  
13 in an equitable and economic fashion, among Authorized Claimants who have cashed  
14 their checks. Once it is no longer feasible or economical to make further distributions,  
15 any balance that still remains in the Net Settlement Fund after redistribution(s) and  
16 after payment of outstanding Notice and Administration Expenses, Taxes, and  
17 attorneys' fees and expenses, if any, shall be contributed to Consumer Federation of  
18 America, or such other private, non-profit, non-sectarian 501(c)(3) organization  
19 designated by Lead Plaintiffs and approved by the Court.  
20

21 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

22 15. Class Counsel will apply to the Court for a collective award of attorneys'  
23 fees to Class Counsel to be paid from the Settlement Fund, which will include interest  
24 accrued from the time of the creation of the Settlement Fund. Class Counsel also will  
25 apply to the Court for reimbursement of Litigation Expenses with interest, which may  
26 include a request for reimbursement of Plaintiff's costs and expenses, including time  
27 and/or lost wages incurred in prosecuting the Action, directly related to his  
28 representation of the Class, to be paid from the Settlement Fund. Class Counsel's

1 application for an award of attorneys' fees and/or Litigation Expenses is not the subject  
2 of any agreement between Defendants and Plaintiff other than what is set forth in this  
3 Amended Stipulation.

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

23       17. Class Counsel shall allocate the attorneys' fees in a manner which it, in  
24 good faith, believes reflects the contributions of such counsel to the institution,  
25 prosecution and settlement of the Action. Defendants or the Defendants' Releasees  
26 shall have no responsibility for or liability whatsoever with respect to the allocation or  
27 award of attorneys' fees or Litigation Expenses. The attorneys' fees and Litigation  
28 Expenses that are awarded to Class Counsel shall be payable solely from the Escrow

1 Account. Under no circumstances shall Defendants and the Defendants' Releasees be  
2 responsible to pay any portion of Class Counsel's attorneys' fees and/or any Litigation  
3 Expenses.

4 **NOTICE AND SETTLEMENT ADMINISTRATION**

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

20 19. In accordance with the terms of the Preliminary Approval Order to be  
21 entered by the Court, Class Counsel shall cause the Claims Administrator to mail the  
22 Notice and Proof of Claim Form to those members of the Class as may be identified  
23 through reasonable effort. Class Counsel shall also cause the Claims Administrator to  
24 have the Summary Notice published in accordance with the terms of the Preliminary  
25 Approval Order to be entered by the Court. For the purposes of identifying and  
26 providing notice to the Class, within five (5) business days after entry of the  
27 Preliminary Approval Order, Franklin shall provide or cause to be provided to the  
28 Claims Administrator in electronic format, such as an Excel spreadsheet (at no cost to

1 the Settlement Fund, Class Counsel or the Claims Administrator), its reasonably  
2 available lists (consisting of names and addresses) of the holders of Franklin Securities  
3 during the Class Period.

4 20. The Claims Administrator shall receive Claims and determine first,  
5 whether the Claim is a valid Claim, in whole or part, and second, each Authorized  
6 Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized  
7 Claimant's Recognized Claim compared to the total Recognized Claims of all  
8 Authorized Claimants (as set forth in the Plan of Allocation set forth in the Notice  
9 attached hereto as Exhibit A-1, or in such other plan of allocation as the Court  
10 approves).

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

21 22. Any Class Member who does not submit a valid Claim Form will not be  
22 entitled to receive any distribution from the Net Settlement Fund, but will otherwise be  
23 bound by all of the terms of this Amended Stipulation and Settlement, including the  
24 terms of the Judgment to be entered in the Action and the releases provided for herein  
25 and therein, and will be permanently barred and enjoined from bringing any action,  
26 claim, or other proceeding of any kind against Defendants or the Defendants' Releasees  
27  
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1 with respect to the Released Plaintiff's Claims in the event that the Effective Date  
2 occurs with respect to the Settlement.

3 23. Class Counsel shall be responsible for supervising the administration of  
4 the Settlement and the disbursement of the Net Settlement Fund subject to Court  
5 approval. No Defendant, nor any of the Defendants' Releasees, shall be permitted to  
6 review, contest or object to any Claim Form, or any decision of the Claims  
7 Administrator or Class Counsel with respect to accepting or rejecting any Claim for  
8 payment by a Class Member. Class Counsel shall have the right, but not the obligation,  
9 to waive what it deems to be formal or technical defects in any Claim Forms submitted  
10 in the interests of achieving substantial justice.

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

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

19 b) All Claim Forms must be submitted by the date set by the Court in the  
20 Preliminary Approval Order and specified in the Notice. Any Class Member who fails  
21 to submit a Claim Form by such date shall be forever barred from receiving any  
22 distribution from the Net Settlement Fund or payment pursuant to this Amended  
23 Stipulation (unless by Order of the Court such Class Member's Claim Form is  
24 accepted), but shall in all other respects be bound by all of the terms of this Amended  
25 Stipulation and the Settlement, including the terms of the Judgment and the Releases  
26 provided for herein and therein, and will be permanently barred and enjoined from  
27 bringing any action, claim or other proceeding of any kind against any Defendants or  
28

1 the Defendants' Releasees with respect to any Released Plaintiff's Claim. Provided that  
2 it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be  
3 submitted when postmarked, if received with a postmark indicated on the envelope and  
4 if mailed by first-class mail and addressed in accordance with the instructions thereon.  
5 In all other cases, the Claim Form shall be deemed to have been submitted on the date  
6 when actually received by the Claims Administrator;

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

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

20 e) If any Claimant whose Claim has been rejected in whole or in part  
21 desires to contest such rejection, the Claimant must, within ten (10) after the date of  
22 mailing of the notice required in subparagraph (d) above, serve upon the Claims  
23 Administrator a notice and statement of reasons indicating the Claimant's grounds for  
24 contesting the rejection along with any supporting documentation, and requesting a  
25 review thereof by the Court. If a dispute concerning a Claim cannot be otherwise  
26 resolved, Class Counsel shall thereafter present the request for review to the Court.  
27  
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1           25. Each Claimant shall be deemed to have submitted to the jurisdiction of the  
2 Court with respect to the Claimant's Claim, and the Claim will be subject to  
3 investigation and discovery under the Federal Rules of Civil Procedure, provided,  
4 however, that such investigation and discovery shall be limited to that Claimant's status  
5 as a Class Member and the validity and amount of the Claimant's Claim. No discovery  
6 whatsoever shall be allowed on the merits of this Action or of the Settlement in  
7 connection with the processing of Claim Forms.

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

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

24           28. No person or entity shall have any claim against Plaintiff, Class Counsel,  
25 the Claims Administrator or any other agent designated by Class Counsel, or the  
26 Defendants' Releasees and/or their respective counsel, arising from distributions made  
27 substantially in accordance with the Amended Stipulation, the Plan of Allocation  
28



1 approved by the Court, or any order of the Court. Plaintiff and Defendants, and their  
2 respective counsel, and Plaintiff’s damages expert and all other Releasees shall have  
3 no liability whatsoever for the investment or distribution of the Settlement Fund or the  
4 Net Settlement Fund, the plan of allocation, or the determination, administration,  
5 calculation, or payment of any claim or nonperformance of the Claims Administrator,  
6 the payment or withholding of taxes (including interest and penalties) owed by the  
7 Settlement Fund, or any losses incurred in connection therewith.

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

14 **TERMS OF THE JUDGMENT**

15 30. If the Settlement contemplated by this Amended Stipulation is approved  
16 by the Court, Class Counsel and Defendants’ Counsel shall request that the Court enter  
17 a Judgment, substantially in the form attached hereto as Exhibit B.

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

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

- 22 a) the Court has entered the Preliminary Approval Order, substantially in  
23 the form set forth in Exhibit A attached hereto, as required by ¶ 2 above;
  - 24 b) the Settlement Amount has been deposited into the Escrow Account in  
25 accordance with the provisions of ¶ 7 above;
- 26  
27  
28

1           c) Defendants have not exercised their option to terminate the Settlement  
2 pursuant to the provisions of this Amended Stipulation (including the Supplemental  
3 Agreement described in ¶ 34 below);

4           d) Plaintiff has not exercised its option to terminate the Settlement  
5 pursuant to the provisions of this Amended Stipulation; and

6           e) the Court has approved the Settlement as described herein, following  
7 the period set forth for notice under the Class Action Fairness Act (“CAFA”), and  
8 following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal  
9 Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final  
10 and none of the Parties seek to terminate the Settlement.

11           32. Upon the occurrence of all of the events referenced in ¶ 30 above, any and  
12 all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall  
13 be absolutely and forever extinguished and the Releases herein shall be effective.

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

18           a) The Settlement and the relevant portions of this Amended Stipulation  
19 shall be canceled and terminated.

20           b) Plaintiff and Defendants shall revert to their respective positions in the  
21 Action as of May 3, 2023 prior to the execution of the Memorandum of Understanding.

22           c) The terms and provisions of this Amended Stipulation, with the  
23 exception of this ¶ 32 and ¶¶ 12, 15, 35, and 56, shall have no further force and effect  
24 with respect to the Parties and shall not be used in the Action or in any other proceeding  
25 for any purpose, and any Judgment or order entered by the Court in accordance with  
26 the terms of this Amended Stipulation shall be treated as vacated, *nunc pro tunc*.  
27  
28

1           d) Within thirty (30) calendar days after joint written notification of  
2 termination is sent by Defendants' Counsel and Class Counsel to the Escrow Agent or  
3 the Defendants' Counsel's unilateral notification of termination to the Escrow Agent  
4 as permitted under ¶ 34 of the Amended Stipulation, the Settlement Fund (including  
5 accrued interest thereon and any funds received by Class Counsel consistent with ¶ 15  
6 above), less any Notice and Administration Costs actually incurred, paid or payable  
7 and less any Taxes paid, due or owing shall be refunded by the Escrow Agent to the  
8 person(s) that made the respective deposits or as otherwise directed by such persons.  
9 In the event that the funds received by Class Counsel consistent with ¶ 15 above have  
10 not been refunded to the Settlement Fund within the thirty (30) calendar days specified  
11 in this paragraph, those funds shall be refunded by the Escrow Agent to the person(s)  
12 that made the respective deposits or as otherwise directed by such persons immediately  
13 upon their deposit into the Escrow Account consistent with ¶ 15 above.

14           34. It is further stipulated and agreed that Plaintiff and Defendants shall each  
15 have the right to terminate the Settlement and this Amended Stipulation, by providing  
16 written notice of their election to do so ("Termination Notice") to the other Parties to  
17 this Amended Stipulation within thirty (30) days of: (a) the Court's final refusal to enter  
18 the Preliminary Approval Order in any material respect; (b) the Court's final refusal to  
19 approve the Settlement or any material part thereof; (c) the Court's final refusal to enter  
20 the Judgment in any material respect as to the Settlement; or (d) the date upon which  
21 the Judgment is modified or reversed in any material respect by the United States Court  
22 of Appeals for the Ninth Circuit or the United States Supreme Court. However, any  
23 decision or proceeding, whether in this Court or any appellate court, with respect to an  
24 application for attorneys' fees or reimbursement of Litigation Expenses or with respect  
25 to any plan of allocation shall not be considered material to the Settlement, shall not  
26 affect the finality of any Judgment, and shall not be grounds for termination of the  
27 Settlement.  
28



1 or the Defendants' Releasees or in any way referred to for any other reason as against  
2 any of the Defendants or the Defendants' Releasees, in any civil, criminal or  
3 administrative action or proceeding, other than such proceedings as may be necessary  
4 to effectuate the provisions of this Amended Stipulation;

5 b) shall be offered against any of the Plaintiff's Releasees, as evidence  
6 of, or construed as, or deemed to be evidence of any presumption, concession or  
7 admission by any of the Plaintiff's Releasees that any of their claims are without merit,  
8 that any of the Defendants or the Defendants' Releasees had meritorious defenses, or  
9 that damages recoverable under the Amended Complaint would not have exceeded the  
10 Settlement Amount or with respect to any liability, negligence, fault or wrongdoing of  
11 any kind, or in any way referred to for any other reason as against any of the Plaintiff's  
12 Releasees, in any civil, criminal or administrative action or proceeding, other than such  
13 proceedings as may be necessary to effectuate the provisions of this Amended  
14 Stipulation; or

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

21 **NOTICE AS REQUIRED BY CAFA**

22 37. Defendants shall be responsible for timely service of any notices that  
23 might be required pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.  
24 Defendants shall provide a copy of such notices as well as proof of service of such  
25 notices to Class Counsel.  
26

27 **MISCELLANEOUS PROVISIONS**

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

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

19           40. The Parties intend this Amended Stipulation and the Settlement to be a  
20 final and complete resolution of all disputes asserted or which could be asserted by  
21 Plaintiff and any other Class Members against the Defendants or the Defendants'  
22 Releasees with respect to the Released Plaintiff's Claims, including Unknown Claims.  
23 Accordingly, Plaintiff and its counsel and Defendants and their counsel agree not to  
24 assert in any forum that this Action was brought by Plaintiff or defended by Defendants  
25 in bad faith or without a reasonable basis. No Party shall assert any claims of any  
26 violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution,  
27 prosecution, defense, or settlement of this Action. The Parties agree that the amounts  
28

1 paid and the other terms of the Settlement were negotiated at arm's-length and in good  
2 faith by the Parties, and reflect the Settlement that was reached voluntarily after  
3 extensive negotiations and consultation with experienced legal counsel, who were fully  
4 competent to assess the strengths and weaknesses of their respective clients' claims or  
5 defenses.

6 41. While retaining their right to deny that the claims asserted in the Action  
7 were meritorious, Defendants and their counsel, in any statement made to any media  
8 representative (whether or not for attribution) will not assert that the Action was  
9 commenced or prosecuted in bad faith, nor will they deny that the Action was  
10 commenced and prosecuted in good faith and is being settled voluntarily after  
11 consultation with competent legal counsel. In all events, Plaintiff and its counsel and  
12 Defendants and their counsel shall not make any accusations of wrongful or actionable  
13 conduct by any Party concerning the prosecution, defense, and resolution of the Action,  
14 and shall not otherwise suggest that the Settlement constitutes an admission of any  
15 claim or defense alleged. Moreover, Plaintiff and Class Counsel shall not, at any time  
16 on or after the Effective Date, make any statement, irrespective of whether written or  
17 oral, to any party, that (i) is, or may reasonably be construed to be, critical or derogatory  
18 of, or likely to be harmful to, Defendants or any of Defendants' Releasees, or (ii) is  
19 reasonably likely to be injurious to the goodwill, reputation or business standing of any  
20 of Defendants or any of Defendants' Releasees. In furtherance, and not in limitation,  
21 of the foregoing, neither Plaintiff nor Class Counsel shall make any statement that  
22 could in any way be construed as alleging that Defendants or any of Defendants'  
23 Releasees participated in any illegal, unethical or disreputable conduct whether in their  
24 business or personal affairs or otherwise.

26 42. The terms of the Settlement, as reflected in this Amended Stipulation, may  
27 not be modified or amended, nor may any of its provisions be waived, except by a  
28

1 writing signed on behalf of both Plaintiff and Defendants (or their successors-in-  
2 interest).

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

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

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

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

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

26 48. This Amended Stipulation shall be binding upon and inure to the benefit  
27 of the successors and assigns of the Parties, including any and all Releasees and any  
28



1 corporation, partnership, or other entity into or with which any Party hereto may merge,  
2 consolidate or reorganize.

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

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

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

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

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

25 54. If any Party is required to give notice to another Party under this Amended  
26 Stipulation, such notice shall be in writing and shall be deemed to have been duly given  
27  
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1 upon receipt of hand delivery or facsimile or email transmission, with confirmation of  
2 receipt. Notice shall be provided as follows:

3 If to Plaintiff or Class Counsel:

4 POMERANTZ LLP  
5 Attn: Jeremy A. Lieberman, Esq.  
6 600 Third Avenue, 20<sup>th</sup> Floor  
7 New York, New York 10016-1917  
8 Telephone: (212) 661-1100  
9 Facsimile: (917) 463-1044  
Email: jalieberman@pomlaw.com

10 If to Defendants:

11 SELTZER CAPLAN MCMAHON VITEK  
12 Attn: Richard D. Gluck  
13 750 B Street, Suite 2100  
14 San Diego, CA 92101-8177  
15 Telephone: (619) 685-3090  
16 Facsimile: (619) 685-3100  
17 Email: gluck@scmv.com

18 SML AVOCATTI P.C.  
19 Attn: Stephen Lobbin  
20 888 Prospect Street, Suite 200  
21 San Diego, California 92037  
22 Telephone: (949) 636-1391  
23 Email: sml@smlavvocati.com

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

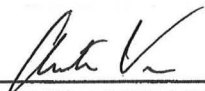
25 56. Whether or not the Amended Stipulation is approved by the Court and  
26 whether or not the Amended Stipulation is consummated, or the Effective Date occurs,  
27 the Parties and their counsel shall use their best efforts to keep all negotiations,  
28 discussions, acts performed, agreements,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

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

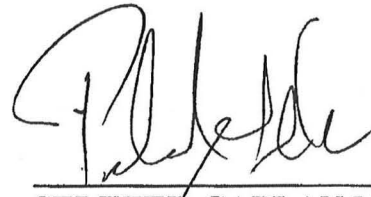
3 58. No opinion or advice concerning the tax consequences of the proposed  
4 Settlement to individual Class Members is being given or will be given by the Parties  
5 or their counsel; nor is any representation or warranty in this regard made by virtue of  
6 this Amended Stipulation. Each Class Member's tax obligations, and the determination  
7 thereof, are the sole responsibility of the Class Member, and it is understood that the  
8 tax consequences may vary depending on the particular circumstances of each  
9 individual Class Member.

10 **IN WITNESS WHEREOF**, the Parties hereto have caused this Amended  
11 Stipulation to be executed, by their duly authorized attorneys, as of February 7, 2024.

12 **SIGNED:**

13  
14   
15 \_\_\_\_\_  
16 **POMERANTZ LLP**  
17 Jeremy A. Lieberman (admitted *pro*  
18 *hac vice*)  
19 Austin P. Van (admitted *pro hac vice*)  
20 600 Third Avenue, 20th Floor  
21 New York, New York 10016-1917  
22 Telephone: 212-661-1100  
23 Facsimile: (917) 463-1044  
24 Email: jalieberman@pomlaw.com  
25 Email: avan@pomlaw.com

26 **POMERANTZ LLP**  
27 Jennifer Pafiti (SBN 282790)  
28 1100 Glendon Avenue, 15th Floor  
Los Angeles, California 90024  
Telephone: (310) 405-7190  
E-mail: jpafiti@pomlaw.com

  
\_\_\_\_\_  
**SELTZER CAPLAN MCMAHON**  
**VITEK**  
Richard D. Gluck  
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