

Directors, Leslie H. Cross, Mortimer Berkowitz III, John H. Foster, R. Ian Molson, Stephen E. O’Neil, James R. Glynn, Rohit M. Desai, Siri S. Marshall, and Luke T. Faulstick (“Board”), (b) former members of the Board, Stephen H. Hochschuler and Dirk Kuyper (with the Board, “Director Defendants”), (c) Alphatec officers, Michael O’Neill, William Patrick Ryan, and Thomas McLeer (“Officer Defendants”), and (d) nominal defendant Alphatec (together with the Director Defendants and Officer Defendants, “Defendants”). Collectively, Plaintiff and Defendants are referred to herein as the “Settling Parties.” The Stipulation and the proposed settlement contemplated herein (“Settlement”) are intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Settled Claims (as defined in Section 3.1), upon and subject to the terms and conditions hereof.

I. LITIGATION AND SETTLEMENT DISCUSSIONS

Alphatec is a medical technology company. The Company, including its subsidiaries, designs, develops, manufactures, and markets products for the surgical treatment of spine disorders in the United States and internationally. Alphatec maintains a “surgeons’ culture” whereby it collaborates with spinal surgeons to conceptualize, design, and co-develop a broad portfolio of products. Most of its products are designed to promote natural spinal fusion, such as spinal implants and biologics. The Company manufactures these products in an in-house, state-of-the-art manufacturing facility.

Plaintiff Scott Phillips filed his Stockholder Derivative Complaint (“Complaint”) in this Court on May 28, 2013, instituting the above-captioned action (“Action”). The Complaint alleged, among other things, that Defendants breached their fiduciary duties by granting option awards in excess of the amount allowed by the Amended and Restated 2005 Employee, Director, and Consultant Stock Plan (“Plan”); the Director Defendants engaged in a waste of corporate

assets; the Officer Defendants received unjust enrichment as a result of the excess awards; and the Board breached its fiduciary duty of candor by making materially false and misleading statements in the 2013 Proxy. The Complaint sought, among other things, to rescind the excess grants awarded to the Officer Directors and to require Alphatec to take all necessary actions to reform and improve its corporate governance to ensure compliance with the Plan. On May 28, 2013, Plaintiff filed a Motion for Preliminary Injunction, which sought an order preliminarily enjoining Alphatec's annual meeting of stockholders scheduled to be held on June 17, 2013, until the Board corrected the false and misleading statements in the 2013 Proxy. The Court set a hearing on the Motion for Preliminary Injunction for June 12, 2013. On September 15, 2013, after arm's-length negotiations, the Settling Parties entered into a Memorandum of Understanding, which memorialized an agreement in principle providing for the settlement of all claims in the Action ("Memorandum of Understanding").

II. PLAINTIFF'S CLAIMS AND THE BENEFITS OF SETTLEMENT

Plaintiff believes that the claims asserted in the Action have merit. However, Plaintiff's Counsel recognizes and acknowledges the risk, expense, and length of continued proceedings necessary to prosecute the Action against the Defendants through trial and, potentially, through appeals. Plaintiff's Counsel has also taken into account the uncertain outcome inherent in any litigation, as well as the difficulties and delays of such litigation. Plaintiff's Counsel is mindful of the inherent problems of proof under, and possible defenses to, the claims asserted in the Action. Plaintiff's Counsel believes that the proposed Settlement set forth in this Stipulation confers benefits, through the provision and adoption of corporate governance reforms and remedial measures, upon the Company and its stockholders. Based on a thorough investigation and evaluation of the facts and analysis of applicable law, Plaintiff's Counsel has determined that

the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Company and the Company's stockholders.

III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

Defendants deny any liability in connection with the Action and the claims asserted by Plaintiff in the Complaint. Nonetheless, Defendants have concluded that litigating the Action to conclusion could be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendants also have taken into account the uncertainty and risks inherent in any litigation. Defendants have, therefore, determined that it is desirable and beneficial for them that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation. By agreeing to the Settlement and entering into this Stipulation, Defendants do not admit or concede any alleged fact, wrongdoing, liability, and/or violations of any laws.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiff, for himself and derivatively on behalf of the Company and the Class (as defined in Section 1.1), and the Defendants, by and through their respective counsel, subject to the approval of the Court, as follows:

1. The Class

1.1 The Settling Parties shall jointly move the Court to conditionally certify the Action as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of a class consisting of all record and beneficial owners of Alphatec common stock during the period beginning on April 23, 2013 through the date of the 2013 annual meeting of stockholders on June 21, 2013, including any and all of their respective successors in interest, predecessors,

representatives, trustees, executors, administrators, heirs, assigns, or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them (“Class,” to be composed of “Class Members”). Excluded from the Class are Defendants, members of the immediate family of any Defendant, any entity in which a Defendant has or had a controlling interest, and the legal representatives, heirs, successors or assigns of any such excluded person. Also excluded from the Class are those record and beneficial owners of Alphatec common stock who validly request exclusion from the Class, to the extent that they are able to do so under Rule 23 of the Federal Rules of Civil Procedure, pursuant to the Notice (as defined in Section 2.2).

1.2 In the event the Settlement does not become final for any reason, Defendants reserve the right to oppose certification of any class in future proceedings.

1.3 Solely for the purpose of implementing this Stipulation and effectuating the Settlement, the Settling Parties stipulate that the Court may enter an order preliminarily certifying the Class, appointing Scott Phillips as the Class Representative, and appointing the following as Class Counsel:

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FARNAN LLP
Brian E. Farnan
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Rosemary J. Piergiovanni
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Wilmington, DE 19801
(302) 777-0300

1.4 Solely for the purpose of implementing this Stipulation and effectuating the Settlement, the Settling Parties stipulate that Scott Phillips is an adequate representative of the Class.

2. Settlement of the Derivative Claims; Notice; Preliminary Approval Order; Settlement Hearing

2.1 *Corrective Actions and Reforms; Corporate Governance.* Without admitting any wrongdoing, Defendants acknowledge that they were aware of and considered the commencement of the Action, and that the Action was a contributory factor in Alphatec's decision to adopt and implement the Correction of Prior Equity Awards ("Corrective Actions") and Corporate Governance Reforms ("Reforms") detailed herein, and that these Corrective Actions and Reforms confer a benefit upon Alphatec and its stockholders and are designed to improve the overall corporate governance of Alphatec, with the intent of increasing stockholder value:

A. Subject to their fiduciary duties, the Board shall consider the adoption of resolutions and/or the amendment of the committee charters to the extent necessary to effectuate and implement the Corrective Actions and Reforms. If any Corrective Action or Reform listed herein conflicts with any existing external law, rule or regulation (including, without limitation, regulations, or rules of any stock exchange on which Alphatec is listed), Defendants shall not be required to implement or maintain any such Corrective Action or Reform. However, this shall not affect or eliminate Defendants' obligations to implement and/or maintain the remaining Corrective Actions and Reforms.

B. The Board has taken the following Corrective Actions:

i. The Board postponed the annual stockholder meeting until June 21, 2013.

ii. The Board adopted an amendment to the Plan to increase the per participant award limit from 200,000 shares per year to 1,500,000 shares per year (“Amended Plan”).

iii. The Board cancelled the following excess grants to the individuals listed:

Participant	Original Grant Date	Original Exercise Price Per Share	Number of Shares Subject to Original Award	Number of Shares in Excess of Annual Award Limit to be Voided	Number of Shares Remaining Subject to Original Award
Leslie H. Cross Chairman and Chief Executive Officer	3/13/12	\$2.05	400,000	400,000	—
	12/1/12	N/A ⁽¹⁾	300	300	—
	1/4/13	\$1.72	400,000	200,000	200,000
Michael O’Neill Chief Financial Officer, Vice President and Treasurer	10/11/10	\$2.23	200,000	100,000	100,000
William Patrick Ryan Chief Operating Officer and President, International	12/19/12	\$2.05	250,000	50,000	200,000
Thomas McLeer Senior Vice President, U.S. Commercial Operations	10/11/12	\$1.76	200,000	100,000	100,000
Thomas Gardner	11/6/12	\$1.65	200,000	100,000	100,000

(1) This award was a restricted stock award.

iv. The Board filed a supplemental proxy disclosure and Form 8-K on June 11, 2013.

C. The Board shall adopt and implement, for a period of at least five years, the following cash and stock award processes and procedures, which shall constitute the Reforms:

i. With respect to the grant of any equity award, the Board and its committees, including the Compensation Committee, shall at all times comply with the law, the committees’ charters and other governing documents, and any applicable Alphatec equity

plan, including the Amended Plan or any successor to the Amended Plan (“Current Plan”).

ii. To ensure such compliance, the Company will engage a third party to review the process by which equity award grants are made and delivered. This engagement shall include (1) a review of the Company’s committee charters and other governing documents, and any applicable compensation plans, including the Current Plan, and (2) the development of a checklist of key provisions to be reviewed prior to the issuance and delivery of any incentive awards. That checklist must provide that the Company’s General Counsel or his/her designee, which may include outside counsel, will analyze and confirm that, with respect to any contemplated incentive award: (i) the overall shares available under the applicable plan are sufficient to cover the proposed grant; and (ii) the individual limits set forth in the applicable plan would not be exceeded by awarding the proposed grant, such evaluation to include an analysis of the proposed grant and all other grants occurring during the relevant period.

iii. The Compensation Committee will retain adequate documentation of all awards made under the Current Plan and will appoint an appropriate individual(s) to monitor compliance with the foregoing compliance procedures and checklist, based on the types of grants and types of recipients (*e.g.*, director, officer, employee or consultant).

iv. In negotiating an employment agreement with an executive officer or prospective executive officer, the Board or its designee will review the proposed terms of the agreement to ensure that such terms are not inconsistent with the terms of the Current Plan or any other applicable compensation plan, provided, the Board, in its sole

discretion, may make non-Current Plan based grants to the extent permitted by applicable law (such as inducement grants).

2.2 **Notice.** The Settling Parties shall jointly move the Court to approve the form and content of the Summary Notice of Proposed Settlement of Representative Action (“Summary Notice”), attached hereto as Exhibit A, and the Notice of Pendency and Proposed Settlement of Representative Action (“Notice”), attached hereto as Exhibit B. Alphatec shall be responsible for publishing the Notice on the Company’s website. Alphatec shall also be responsible for publishing the Summary Notice in *Investor’s Business Daily*, or in such other form and manner as the Court shall direct, and shall refer stockholders to the Company’s website to view the Stipulation and the Notice. Alphatec shall pay all costs and expenses incurred in publishing the Notice and Summary Notice.

2.3 **Preliminary Approval Order.** The Settling Parties shall submit the Stipulation together with its exhibits to the Court and shall apply for entry of the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice (the “Preliminary Approval Order”), substantially in the form attached hereto as Exhibit C, seeking: (i) preliminary approval of the Settlement as set forth in the Stipulation; (ii) approval of the form and content of the Notice and Summary Notice (as defined in Section 2.2); and (iii) a date for the Settlement Hearing.

2.4 **Settlement Hearing and Judgment.**

A. Plaintiff’s Counsel shall request that the Court hold the Settlement Hearing after due and sufficient notice is given to the Class and finally approve the Settlement and enter judgment in the form attached hereto as Exhibit D (the “Judgment”). “Final Judgment” means

the later of: (a) the date of final affirmance on an appeal of the Judgment, the expiration of the time for a petition to review the Judgment and, if any such writ or petition is granted, the date of final affirmance of the Judgment following review pursuant to that grant; or (b) the date of final, non-appealable dismissal of any appeal from the Judgment or the final, nonappealable dismissal of any proceeding on petition for review of the Judgment; or (c) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court's Judgment approving the Stipulation. At the Settlement Hearing and as provided in Section 4, Plaintiff's Counsel also will apply to the Court for an award of attorneys' fees and reimbursement of expenses. Defendants may oppose this application.

B. The Settling Parties shall use their individual and collective best efforts to obtain Final Judgment without costs to any party, except as expressly provided herein.

C. The Settling Parties shall jointly move the Court for an order that, pending final determination of whether the Settlement should be approved, Plaintiff and any and all members of the Class are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Settled Claims (as defined in Section 3.1), either directly, representatively, derivatively or in any other capacity, against any Released Party (also defined in Section 3.1).

3. Releases

3.1 Pursuant to the Judgment, upon the Effective Date (as defined in Section 5.1), Plaintiff, the Company, and all members of the Class in their capacity as stockholders or on behalf of any Released Party (defined below) shall have, and by operation of the Judgment shall be deemed to have, released and forever discharged, and shall forever be barred and enjoined

from initiating, continuing, filing or otherwise prosecuting “Settled Claims,” defined as any and all manner of claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters, and issues known, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, including Unknown Claims (as defined in Section 3.3), relating to, arising out of, or concerning (i) the Plan, Amended Plan or any options granted thereunder, or any element, term or condition of the Plan, Amended Plan or any options granted thereunder, (ii) Defendants’ consideration, evaluation, and/or approval of the Plan, Amended Plan or any options granted thereunder, (iii) the disclosures or any public filings, periodic reports, press releases, proxy statements or other statements issued, made available, filed, or otherwise disclosed or communicated related to the Plan, Amended Plan or any options granted thereunder, (iv) any stockholder vote on the Plan, Amended Plan or any options granted thereunder, (v) payments to any of the Company’s directors, executive officers or advisors in connection with the Plan, Amended Plan or any options granted thereunder, and (vi) any fees, costs or expenses incurred by the Class or any member of the Class in prosecuting, defending, or settling the Settled Claims (other than any award pursuant to Section 4 hereof) against Defendants and their respective present and former predecessors, successors-in-interest, parents, subsidiaries, affiliates, officers, directors, employees, trustees, executors, heirs, spouses, marital communities, assigns or transferees and any person or entity acting for or on behalf of any of them and each of them, and each of their respective present and former predecessors, successors-in-interest, parents, subsidiaries, affiliates, officers, directors, employees, representatives, agents, accountants, advisors, attorneys, commercial and investment bankers, insurers, reinsurers, trustees, executors, heirs, spouses, marital communities, assigns or transferees and any person or

entity acting for or on behalf of any of them and each of them (collectively, “Released Parties”). The Settled Claims shall not include any claims to enforce the terms of this Stipulation or the Settlement.

3.2 Defendants release Plaintiff, the Class, and their counsel from all claims arising out of the institution, prosecution, settlement or resolution of the Action (“Settled Defendants’ Claims”), provided however, that Defendants and Released Parties shall retain the right to enforce in the Court the terms of this Stipulation or the Settlement.

3.3 The Settled Claims and the Settled Defendants’ Claims shall include “Unknown Claims.” The phrase “Unknown Claims” means any Settled Claim that the Company, Plaintiff, or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants’ Claims that any Defendant or any other Released Party does not know or suspect to exist in his, her or its favor at the time of the release of the Plaintiff and the Class, which, if known, might have affected the decision to enter into the Settlement. With respect to Unknown Claims, the Settling Parties each expressly waive any and all provisions, rights, and benefits of California Civil Code Section 1542, which provides:

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

The Settling Parties each shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code Section 1542.

The Settling Parties each acknowledge that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part. Nothing herein shall, however, bar any action or claim to enforce the terms of this Stipulation, the Settlement, or the Judgment. The Settling Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to fully, finally, and forever settle and release any and all claims released hereby, known or unknown, suspected or unsuspected, which now exist, heretofore exist, or may hereafter exist, and without regard to the subsequent discovery of such additional or different facts.

3.4 The Settling Parties will seek entry of the Judgment by the Court, dismissing the Action with prejudice and barring the Settled Claims.

4. Plaintiff's Counsel's Attorneys' Fees and Reimbursement of Expenses

4.1 Plaintiff's Counsel shall apply to the Court for an award of attorneys' fees and reimbursement of expenses, which application Defendants may oppose ("Fee and Expense Award"). Any failure by the Court to approve the amount of such fees and/or expenses shall not affect the finality or the validity of the Settlement.

4.2 Alphatec, its insurer(s), or its successors, shall bear responsibility for the payment of the Fee and Expense Award to the extent approved by the Court which sum shall be Plaintiff's Counsel's sole application for an award of fees or expenses in connection with any litigation concerning the Plan or Amended Plan.

4.3 Alphatec, its insurer(s), or its successor shall pay the Fee and Expense Award to the extent approved by the Court to Plaintiff's Counsel within twenty (20) business days of Final

Judgment. The Fee and Expense Award shall be subject to the joint and several obligation of Plaintiff's Counsel to refund within twenty (20) business days all amounts received if and when, as a result of any proceeding or successful collateral attack, the Fee and Expense Award is reduced or reversed, the award does not become final, the Settlement itself is voided by any party as provided herein or by the terms of the Settlement, or the Settlement is later reversed by any court of competent and valid jurisdiction.

4.4 Plaintiff's Counsel shall be responsible for allocating the Fee and Expense Award amongst themselves in their sole discretion, and in consultation with their client. Plaintiff and Plaintiff's Counsel may not cancel or terminate the Stipulation or the Settlement based on the Court's or any appellate court's ruling with respect to attorneys' fees and expenses. Defendants shall have no responsibility for, or liability with respect to, the allocation among any counsel for Plaintiff of any award of fees and expenses that the Court may make, and Defendants take no position with respect to such matters.

4.5 At the time the Fee and Expense Award is paid it shall be paid via wire transfer to an account designated by Plaintiff's Counsel, and payment in accordance with the wire instructions provided by Plaintiff's Counsel shall fully and completely discharge the obligations of Defendants to pay any fees awarded by the Court.

4.6 Payment of the Fee and Expense Award shall constitute final and complete payment for Plaintiff's attorneys' fees and reimbursement of expenses that have been incurred or will be incurred in connection with the Action and resolution of the claims asserted in the Action.

4.7 No fees or expenses shall be paid to Plaintiff's Counsel pursuant to the Stipulation absent final approval by the Court of a complete release of all Released Parties, in the form customarily approved by the Court in connection with such settlements, and the final dismissal with prejudice of the Action.

5. Conditions of Settlement and Effect of Disapproval, Cancellation, or Termination

5.1 The Effective Date of the Stipulation and Settlement shall mean the first date by which all of the events and conditions specified in this Section 5.1 have been met and have occurred. The Effective Date, the Stipulation and the Settlement shall be conditioned on the occurrence of all of the following events:

- (a) the Court's conditional certification of the Class as contemplated by Section 1;
- (b) the approval of the Amended Plan and any and all options granted thereunder;
- (c) entry by the Court of the Preliminary Approval Order;
- (d) final Court approval of the Settlement following notice to the Class and the final Settlement Hearing;
- (e) dismissal with prejudice of the Action;
- (f) entry of a Judgment, which shall be in all material respects substantially in the form set forth in Exhibit D attached hereto, or, if the Court enters a judgment substantially different from the form of Judgment set forth in Exhibit D hereto (an "Alternative Judgment")

and none of the Settling Parties elects to terminate this Settlement, entry of an Alternative Judgment; and

(g) the Judgment or Alternative Judgment becoming a Final Judgment.

5.2 If any of the conditions specified in Section 5.1 is not met, then Plaintiff and Defendants each shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so, through counsel, to all other Settling Parties hereto within thirty (30) calendar days of the failure of a condition specified in Section 5.1.

5.3 In the event that any of the conditions set forth in Section 5.1 is not met, or the Stipulation is not approved, or is otherwise terminated for any reason:

(a) the Settling Parties shall be restored to their respective positions in the Action as of the date before the Stipulation was fully executed;

(b) the refund provided for in Section 4.1 shall be made in accordance with the terms of Section 4.3;

(c) this Stipulation and any related Settlement documents shall be null and void, of no force and effect, and nothing herein shall be deemed to prejudice the position of any of the parties or any Released Parties with respect to the Action or otherwise, and neither the existence of this Stipulation nor the facts of its existence nor any of the terms thereof shall be admissible in evidence or shall be referred to for any purpose in the Action or any other litigation.

6. Representations and Warranties

6.1 Plaintiff and his counsel represent and warrant that Plaintiff is a stockholder of the Company and has been a stockholder at all relevant times and that none of Plaintiff's claims or

causes of action referred to in the Complaint or this Stipulation, or any claims Plaintiff could have alleged, have been assigned, encumbered, or in any manner transferred in whole or in part.

6.2 Each counsel or other person executing the Stipulation or its exhibits on behalf of any Settling Party hereby warrants that such person has the full authority to do so.

7. Miscellaneous Provisions

7.1 With respect to any press or public statements, the Settling Parties agree that words to the following effect will be utilized to describe the resolution: the matter was resolved to both sides' mutual satisfaction with no admissions of liability.

7.2 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement to the fullest extent possible; and (b) agree to cooperate to the fullest extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

7.3 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes among them with respect to the Action. The Settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim, allegation, or defense.

7.4 The Stipulation shall be deemed drafted equally by all Settling Parties.

7.5 Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Settled Claim, or of any wrongdoing or liability of the Defendants or the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of

any of the Defendants or the Released Parties in any proceeding of any nature. Defendants or any Released Party may file the Stipulation and/or the Judgment in any action that has been or may be brought against him, her, or it in order to support a defense or counterclaim 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.

7.6 The exhibits to this Stipulation are a material and integral part hereof and are fully incorporated herein by this reference.

7.7 The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

7.8 This Stipulation and the exhibits attached hereto constitute the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any party concerning the Stipulation or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each Settling Party shall bear his, her, or its own costs.

7.9 The Stipulation may be executed by one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

7.10 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

7.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all Settling Parties submit to the jurisdiction of

the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

7.12 This Stipulation and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed in the State of Delaware, and the rights and obligations of the Settling Parties shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Delaware without giving effect to that State's choice of law principles.

7.13 Any dispute arising out of or relating in any way to the Memorandum of Understanding, the Stipulation, or the Settlement shall not be litigated or otherwise pursued in any forum or venue other than the United States District Court for the District of Delaware, and the Settling Parties expressly waive any right to demand a jury trial as to any such dispute.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated as of September 20, 2013.

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