

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE MEXICAN GOVERNMENT BONDS  
ANTITRUST LITIGATION

Master Docket No. 18-cv-02830

THIS DOCUMENT RELATES TO:

**STIPULATION AND  
AGREEMENT OF SETTLEMENT**

ALL ACTIONS

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**STIPULATION AND AGREEMENT OF SETTLEMENT**

THIS STIPULATION AND AGREEMENT OF SETTLEMENT (the “**Settlement Agreement**”) is made and entered into on March 27, 2020. This Settlement Agreement is entered into on behalf of Plaintiffs Oklahoma Firefighters Pension & Retirement System, Electrical Workers Pension Fund Local 103, I.B.E.W., Manhattan and Bronx Surface Transit Operating Authority Pension Plan, Metropolitan Transportation Authority Defined Benefit Pension Plan Master Trust, Boston Retirement System, Southeastern Pennsylvania Transportation Authority Pension Plan, United Food and Commercial Workers Union and Participating Food Industry Employer Tri-State Pension Fund, and Government Employees’ Retirement System of the Virgin Islands and the Settlement Class (“Plaintiffs”), by and through Plaintiffs’ Lead Counsel (as defined in Section 1(GG) herein), and on behalf of Settling Defendants Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Barclays Capital Securities Limited, Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México, and Grupo Financiero Barclays México, S.A. de C.V. (collectively, “Settling Defendants”) by and through their undersigned counsel of record in this Action (as defined in Section 1(A) herein).

WHEREAS, Plaintiffs have filed putative class actions, *Oklahoma Firefighters Pension and Retirement System et al. v. Banco Santander S.A. et al.*, 18-cv-02830 (JPO) (S.D.N.Y.), *Manhattan and Bronx Surface Transit Operating Authority et al. v. Banco Santander S.A. et al.*, 18-cv-03985 (JPO) (S.D.N.Y.), *Boston Retirement System v. Banco Santander S.A., et al.*, 18-cv-04294 (JPO) (S.D.N.Y.), *Southeastern Pennsylvania Transportation Authority v. Banco Santander S.A. et al.*, 18-cv-0440 (JPO) (S.D.N.Y.), *United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund v. Banco Bilbao Vizcaya Argentaria S.A. et al.*, 18-cv-04402 (JPO) (S.D.N.Y.), and *Government Employees’ Retirement*

*System of the Virgin Islands v. Banco Santander S.A. et al.*, 18-cv-4673 (S.D.N.Y.), that have been consolidated into the above-captioned Action;

WHEREAS, Plaintiffs have alleged, among other things, that Defendants (as defined in Section 1(L) herein), including Settling Defendants, from January 1, 2006 through April 19, 2017, acted unlawfully by, *inter alia*, manipulating, aiding and abetting the manipulation of, conspiring, and colluding to manipulate the market for Mexican Government Bonds and the prices of Mexican Government Bond Transactions (as defined in Sections 1(Z), and 1(Y) respectively herein), in violation of the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, and federal and state common law;

WHEREAS, Plaintiffs further contend that they and the Settlement Class are entitled to monetary damages as a result of Settling Defendants' and other Defendants' conduct;

WHEREAS, Settling Defendants deny each and all of the claims and allegations of wrongdoing in Plaintiffs' pleadings, and maintain that they have good and meritorious defenses, including lack of personal jurisdiction, to the claims of liability and damages made by Plaintiffs;

WHEREAS, arm's-length settlement negotiations have taken place between Plaintiffs, Plaintiffs' Lead Counsel, counsel for Settling Defendants, and Settling Defendants, and this Settlement Agreement has been reached, subject to the final approval of the Court;

WHEREAS, Settling Defendants agree to cooperate with Plaintiffs and Plaintiffs' Lead Counsel as set forth below in this Settlement Agreement;

WHEREAS, Plaintiffs' Lead Counsel conducted an investigation of the facts and the law regarding the Action, considered the Settlement set forth herein to be fair, reasonable, adequate and in the best interests of Plaintiffs and the Settlement Class, and determined that it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of complex litigation and to assure a benefit to the Settlement Class;

WHEREAS, Settling Defendants, while continuing to deny that they are liable for the claims asserted against them in the Action and believing that they have good and meritorious defenses thereto, have nevertheless agreed to enter into this Settlement Agreement to avoid further expense, inconvenience, and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the risks inherent in complex litigation;

WHEREAS, Plaintiffs, for themselves individually and on behalf of each Settling Class Member, and Settling Defendants agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence by any Released Party of any violation of any statute or law or of any liability or wrongdoing by Settling Defendant or of the truth of any of the claims or allegations in the Action, and that this Settlement Agreement nor any statement made in negotiation thereof may not be used or offered in any proceeding for any purpose, except to enforce the terms of this Settlement; and

WHEREAS, the Parties enter into the Settlement with full knowledge that adverse or favorable court decisions and/or other events may take place in the future that might affect the positions of the Parties, including prior to the entry of the Final Approval Order and Final Judgment, and they intend to be bound by this Settlement, subject to final approval of the Court, notwithstanding the possibility or occurrence of any such future events or changes in position;

NOW, THEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class by and through Plaintiffs' Lead Counsel, and Settling Defendants, by and through the undersigned counsel, agree that the Action and Released Claims (as defined in Section 1(JJ) herein) be settled, compromised, and dismissed on the merits and with prejudice as to Settling Defendants and Released Parties and without costs as to Plaintiffs, the Settlement Class, or Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

**1. Terms Used In This Agreement**

The words and terms used in this Settlement Agreement, which are expressly defined below, shall have the meaning ascribed to them.

(A) **“Action”** means *In re Mexican Government Bonds Antitrust Litigation*, No. 18-cv-02830 (JPO) (S.D.N.Y.), and all actions consolidated therein.

(B) **“Agreement”** or **“Settlement Agreement”** means this Stipulation and Agreement of Settlement, together with any exhibits attached hereto, which are incorporated herein by reference.

(C) **“Alternative Judgment”** means a form of final judgment that may be entered by the Court herein but in a form other than the form of Final Judgment provided for in this Settlement Agreement, provided that the Alternative Judgment may not differ materially from the form of Final Judgment provided for in this Settlement Agreement.

(D) **“Authorized Claimant”** means any Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution from the Net Settlement Fund pursuant to any Distribution Plan or order of the Court.

(E) **“Business Days”** means Monday through Friday, inclusive, of each week unless such day is a holiday in the United States.

(F) **“Class”** or **“Settlement Class”** means all Persons that entered into a Mexican Government Bond Transaction at any time between at least January 1, 2006, and April 19, 2017 (the “Class Period”), where such persons were either domiciled in the United States or its territories or, if domiciled outside the United States or its territories, transacted in the United States or its territories, provided that if, prior to moving for Final Approval of the Settlement, Plaintiffs expand the Class in any subsequent amended

complaint, class motion or in any other stipulation or settlement agreement Plaintiffs reach with any other Defendant involving this Action, the defined Class in this Settlement Agreement shall be expanded so as to be coterminous with such expansion. Excluded from the Class are Defendants and their employees, agents, affiliates, parents, subsidiaries and co-conspirators, whether or not named in the Complaint in this Action, and the United States and Mexican governments; provided, however, that Investment Vehicles shall not be excluded from the definition of “Class” or “Settlement Class” solely on the basis of being deemed to be Defendants or affiliates or subsidiaries of Defendants.

(G) **“Class Member”** means a Person who is a member of the Class.

(H) **“Class Notice”** means the form of notice of the proposed Settlement to be distributed to the Settlement Class as provided in this Agreement and the Preliminary Approval Order.

(I) **“Class Period”** is defined in Section 1(F).

(J) **“Cooperation Materials”** is defined in Section 4(F).

(K) **“Court”** means the United States District Court for the Southern District of New York.

(L) **“Defendants”** means the defendants previously named in the Action, currently named in the Action, and any parties that may be added to the Action as defendants through amended or supplemental pleadings, and includes Settling Defendants as well as Banco Bilbao Vizcaya Argentaria, S.A., BBVA Securities, Inc., BBVA Compass Bancshares, Inc., BBVA Bancomer S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer, Grupo Financiero BBVA Bancomer, S.A. de C.V., Banco Santander S.A., Santander Investment Securities, Inc., Santander Holdings USA, Inc., Banco



Santander (Mexico) S.A. Institución de Banca Múltiple, Grupo Financiero Santander Mexico, Santander Investment Bolsa, Sociedad de Valores, S.A.U., Bank of America N.A., Bank of America Corporation, BankAmerica International Financial Corporation, Bank of America Mexico, S.A., Institución de Banca Múltiple, Grupo Financiero Bank of America, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Inc., Citigroup Global Markets Inc., Citigroup Financial Products Inc., Citigroup Global Markets Holdings Inc., Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex, S.A. de C.V., Credit Suisse Group AG, Credit Suisse AG, Grupo Financiero Credit Suisse (Mexico), S.A. de C.V., Banco Credit Suisse (Mexico), S.A., Deutsche Bank AG, Deutsche Bank Securities Inc., Deutsche Bank Americas Holding Corp., Deutsche Bank México, S.A. Institución de Banca Múltiple, HSBC Holdings plc, HSBC Bank plc, HSBC Securities (USA) Inc., HSBC Markets (USA) Inc., HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC, HSBC North America Holdings Inc., HSBC Latin America Holdings (UK) Limited, ING Groep N.V., ING Bank, N.V., ING Financial Markets LLC, JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, J.P. Morgan Securities LLC, J.P. Morgan Securities plc, J.P. Morgan Broker-Dealer Holdings Inc., Banco J.P. Morgan, S.A. Institución de Banca Múltiple, and J.P. Morgan Grupo Financiero.

(M) **“Distribution Plan”** means the plan of allocation of the Net Settlement Fund, which will be developed by Plaintiffs’ Lead Counsel and will be submitted to the Court for approval, or any revised plan of allocation, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants. Plaintiffs shall provide any

Distribution Plan to Settling Defendants at least five Business Days before it is submitted to the Court.

(N) **“Effective Date”** means the date when this Settlement Agreement becomes final as set forth in Section 18 of this Settlement Agreement.

(O) **“Escrow Account”** means an interest-bearing account mutually agreeable to the Parties and administered by the Escrow Agent.

(P) **“Escrow Agent”** means any Person designated by Plaintiffs’ Lead Counsel with the consent of Settling Defendants and approved by the Court to act as escrow agent for the Settlement Fund. Plaintiffs’ Lead Counsel anticipates the Escrow Agent will be The Huntington National Bank.

(Q) **“Execution Date”** means the date on which this Agreement is executed by the last Party to do so.

(R) **“Fairness Hearing”** means a hearing scheduled by the Court following the issuance of the Preliminary Approval Order to consider the fairness, adequacy and reasonableness of the proposed Settlement and Settlement Agreement.

(S) **“Fee and Expense Application”** is defined in Section 5(D).

(T) **“Final”** means, with respect to any court order, including, without limitation, the Final Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed

time, if any, for commencing any further appeal has expired. Any appeal or other proceeding pertaining solely to any order adopting or approving the Distribution Plan, and/or any order issued in respect of an application for attorneys' fees and expenses pursuant to Sections 5 and 6 below, shall not in any way delay or prevent the Final Judgment from becoming Final.

(U) **“Final Approval Order”** means an order of the Court in substantially the form attached hereto as Exhibit B approving of the Settlement following (i) preliminary approval of the Settlement Agreement, (ii) the issuance of the Class Notice pursuant to the Preliminary Approval Order, and (iii) the Fairness Hearing.

(V) **“Final Judgment”** means the order of judgment and dismissal of the Action and the Released Claims with prejudice and without costs as to Settling Defendants, in substantially the form attached hereto as Exhibit C.

(W) **“Incentive Award”** means any award by the Court to Plaintiffs as described in Section 5.

(X) **“Investment Vehicles”** means any investment company, separately managed account or pooled investment fund, including, but not limited to: (i) mutual fund families, exchange-traded funds, funds of funds and hedge funds; and (ii) employee benefit plans.

(Y) **“Mexican Government Bond Transaction”** means any purchase, sale, or exchange of Mexican Government Bonds, whether in the primary, secondary, or any other market.

(Z) **“Mexican Government Bonds”** means any debt securities issued by the United Mexican States that are Mexican Peso-denominated, including, but not limited to, CETES, Bondes D, UDIBONOS, and BONOS.

(AA) **“Net Settlement Fund”** means the Settlement Fund less Court-approved disbursements, including: (i) notice, claims administration and escrow costs; (ii) taxes; (iii) any attorneys’ fees and/or expenses awarded by the Court; (iv) any Incentive Award(s) awarded by the Court; and (v) all other expenses, costs, and other charges approved by the Court.

(BB) **“Other Settlement”** means any stipulation and settlement agreement Plaintiffs reach with any other Defendant involving this Action that will be submitted to the Court for notice to be provided in the same Class Notice as notice of this Settlement Agreement.

(CC) **“Parties”** means Settling Defendants and Plaintiffs collectively, and **“Party”** applies to each individually.

(DD) **“Person”** means a natural person, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint-stock company, estate, legal representative, trust, unincorporated association, proprietorship, municipality, state, state agency, entity that is a creature of any state, any government, governmental or quasi-governmental body or political subdivision, authority, office, bureau, agency or instrumentality of the government, any business or legal entity, or any other entity or organization; and any spouses, heirs, predecessors, successors, representatives or assigns of any of the foregoing.

(EE) **“Plaintiffs”** means Oklahoma Firefighters Pension & Retirement System, Electrical Workers Pension Fund Local 103, I.B.E.W., Manhattan and Bronx Surface Transit Operating Authority Pension Plan, Metropolitan Transportation Authority Defined Benefit Pension Plan Master Trust, Boston Retirement System, Southeastern Pennsylvania Transportation Authority Pension Plan, United Food and Commercial Workers Union and Participating Food Industry Employer Tri-State Pension Fund, and Government Employees Retirement System of the Virgin Islands and any other Person named as a named plaintiff in the Action who was not subsequently withdrawn as a named plaintiff, and any named plaintiff who may be added to either of the Action through amended or supplemental pleadings. This Settlement Agreement is entered into with each and every Plaintiff. In the event that one or more Plaintiff(s) fails to secure court approval to act as a Plaintiff, the validity of this Settlement Agreement as to the remaining Plaintiffs, the Settlement Class, and Plaintiffs’ Lead Counsel shall be unaffected.

(FF) **“Plaintiffs’ Counsel”** means Plaintiffs’ Lead Counsel and other counsel for the Plaintiffs.

(GG) **“Plaintiffs’ Lead Counsel”** means Lowey Dannenberg, P.C.

(HH) **“Preliminary Approval Order”** means an order of the Court, substantially in the form attached hereto as Exhibit A, issued in response to the Motion for Preliminary Approval described in Section 13.

(II) **“Proof of Claim and Release”** means the form to be sent to potential Class Members, upon further order(s) of the Court, by which any Class Member may make a claim against the Net Settlement Fund.

(JJ) **“Released Claims”** means any and all manner of claims, rights, demands, obligations, damages, actions or causes of action, cross-claims, counterclaims, judgments, suits, obligations, debts, setoffs, rights of recovery, charges or liabilities of any kind whatsoever (however denominated), of every nature and description, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether class, derivative or individual, whether fixed or contingent, in law or in equity, whether arising under federal, state, common, statutory or foreign law or regulation (including FED. R. CIV. P. 11), whether directly, representatively, derivatively, or in any other capacity, which any member of the Settlement Class ever had, now have, or hereafter can, shall, or may have that arise out of or relate in any way to the acts, facts, statements, or omissions that were or could have been alleged or asserted by Plaintiffs or any member of the Settlement Class in the Action, including, but not limited to, any claims arising from or related to (a) any purported conspiracy, collusion, racketeering activity, or other improper conduct related to Mexican Government Bonds or Mexican Government Bond Transactions, (b) any alleged manipulation of the prices of Mexican Government Bonds or Mexican Government Bond Transactions, or (c) the sharing or exchange of customer information or confidential information, including, but not limited to, customer identity, trading patterns, net positions, or orders with respect to Mexican Government Bonds or Mexican Government Bond Transactions. For the avoidance of doubt, Released Claims do not include claims relating to enforcement of the Settlement and do not include claims arising under foreign law based solely on transactions executed entirely outside of the United States by members of the Settlement Class domiciled outside the United States.

(KK) “**Released Parties**” or “**Released Party**” means Settling Defendants and each of their respective past and present direct and indirect corporate parents (including holding companies), subsidiaries, related entities, affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), divisions, joint ventures, predecessors, and successors, and each of their respective past or present officers, directors, partners, members, managers, managing directors, employees, agents, contractors, attorneys, legal or other representatives, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, shareholders, advisors, and assigns of each of the foregoing.

(LL) “**Releasing Parties**” means, individually and collectively, Plaintiffs and each Settling Class Member, on behalf of themselves and any of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries and affiliates, and on behalf of their respective past or present officers, directors, stockholders, agents, employees, legal representatives, partners, principals, members, participants, associates, trustees, beneficiaries, parents, subsidiaries, divisions, affiliates, and the heirs, executors, administrators, purchasers, predecessors, successors, and assigns of each of the foregoing, whether or not they object to the Settlement and whether or not they make a claim for payment from the Net Settlement Fund.

(MM) “**Settlement**” means the settlement of the Released Claims set forth herein.

(NN) “**Settlement Administrator**” means any Person that the Court approves to perform the tasks necessary to provide notice of the Settlement to the Class and to otherwise administer the Settlement Fund, as described further herein.

(OO) “**Settlement Amount**” means five million seven hundred thousand U.S. dollars (\$5,700,000.00).

(PP) “**Settlement Fund**” means the Settlement Amount plus any interest that may accrue.

(QQ) “**Settling Class Members**” means Plaintiffs and other members of the Settlement Class who do not timely and validly exclude themselves from the Settlement pursuant to FED. R. CIV. P. 23(c) and in accordance with the procedure to be established by the Court.

(RR) “**Settling Defendants**” means Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Barclays Capital Securities Limited, Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México, and Grupo Financiero Barclays México, S.A. de C.V.

## 2. Settlement Class

Plaintiffs will file an application, as part of the motion for preliminary approval under Section 13, seeking the certification of the Settlement Class as described herein pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. Notwithstanding the sentence in Section 1(F) above that “[e]xcluded from the Class are Defendants and their employees, agents, affiliates, parents, subsidiaries, and co-conspirators, whether or not named in the Complaint, and the United States and Mexican governments,” and solely for purposes of this Settlement and this Settlement Class, Investment Vehicles shall not be excluded from the Settlement Class solely on the basis of being deemed to be Defendants or affiliates or subsidiaries of Defendants; provided, however, that under no circumstances may a Defendant (or any of its direct or indirect parents,



subsidiaries, affiliates, or divisions) receive a distribution from the Settlement Fund through an Investment Vehicle.

The Parties' agreement as to certification of the Settlement Class is solely for purposes of effectuating the Settlement and for no other purpose. Settling Defendants retain all of their objections, arguments, and defenses with respect to class certification, and reserve all rights to contest class certification, if the Settlement set forth in this Settlement Agreement does not receive the Court's Final approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement does not receive the Court's Final approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Class, or in support of an argument for certifying any class for any purpose related to this Action or any other proceeding.

### **3. Settlement Payments**

Settling Defendants shall pay the Settlement Amount by wire transfer to the Escrow Account within fifteen (15) Business Days after the Court preliminarily approves the Settlement and Plaintiffs' Lead Counsel provide the undersigned counsel for Settling Defendants with wire transfer information for the Escrow Account and any other information that Settling Defendants reasonably may request. All interest earned by any portion of the Settlement Amount paid into

the Escrow Account shall be added to and become part of the Settlement Fund. Upon occurrence of the Effective Date, no funds may be returned to Settling Defendants through a reversion or other means. The Escrow Agent shall only act in accordance with instructions mutually agreed upon by the Parties in writing, except as otherwise provided in this Agreement. Other than the payment of the Settlement Amount as set forth in this Section 3, Settling Defendants shall have no responsibility or obligation for any interest, costs, or other monetary payment, including any attorneys' fees and expenses, taxes, or costs of notice or claims administration, except that Settling Defendants shall be responsible for notice as required by 28 U.S.C. § 1715, as set forth in Section 14(B).

#### **4. Cooperation**

(A) Settling Defendants have begun and shall continue to provide reasonable cooperation in the Action, as described in this Section 4, to benefit the Settlement Class. All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided and with a view towards minimizing unnecessary burdens and costs to Settling Defendants in connection with collecting, reviewing and producing data.

(B) Notwithstanding any other provision in this Agreement, Settling Defendants shall have no obligation to produce any materials or information protected from disclosure by the work-product doctrine, the attorney-client privilege, the common interest privilege, the joint defense privilege, the bank regulatory or examination privilege, obligations under applicable data privacy or bank secrecy laws or regulations (including, but not limited to, Article 16 of the Mexican Constitution, Mexican Civil Codes, the Ley Federal de Protección de Datos Personales en Posesión de los Particulares, the Ley de Responsabilidad Civil para la Protección del Derecho a la Vida Privada, el Honor y la Propia Imagen en el Distrito Federal, article 142 of the Ley de Instituciones

de Credito, article 192 of the Ley del Mercado de Valores, and any provisions related to the foregoing), and/or any other applicable privilege or protection (“Protected Information”). The Parties agree that Settling Defendants may redact any Protected Information from documents they produce in the Action. None of the cooperation provisions set forth herein are intended to, nor do they, waive any such privileges or immunities. Any disputes regarding privilege shall be reserved for resolution pursuant to the alternative dispute resolution procedures set forth in Section 36 of this Settlement Agreement.

To the extent privilege logs exist that relate to documents or data reasonably requested by Plaintiffs as cooperation materials herein, at a reasonable time to be negotiated in good faith, Settling Defendants agree to provide Plaintiffs, through Plaintiffs’ Lead Counsel, with any existing privilege logs for documents that Settling Defendants withheld from U.S. governmental authorities (including the United States Department of Justice and United States Commodity Futures Trading Commission) but not from any non-U.S. governmental authority, as part of its investigation, if any, into such Settling Defendants’ alleged manipulation of the market for Mexican Government Bonds and Mexican Government Bond Transactions. Settling Defendants’ production of existing privilege logs, if any, will be made in such a way so as not to identify the regulatory agency or agencies from which Settling Defendants withheld the logged data or information. Any disputes concerning the production of privilege logs shall be reserved for resolution pursuant to the alternative dispute resolution procedures set forth in Section 36 of this Settlement Agreement.

If, in connection with this Action, Settling Defendants claim that they have inadvertently produced Protected Information, such disclosure, in itself, shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or protection with respect to the Protected Information or its subject matter. If Settling Defendants make a claim of inadvertent disclosure,

the Plaintiffs shall, within fourteen (14) business days, return or destroy all copies of the inadvertently disclosed Protected Information, and provide a written certification of counsel that all such information has been returned or destroyed.

(C) Notwithstanding any other provision of this Agreement, in the event that Settling Defendants believe that Plaintiffs' Lead Counsel has requested cooperation of a kind or to an extent that is not reasonable or not within the scope of Settling Defendants' obligations as set forth herein, Settling Defendants' counsel and Plaintiffs' Lead Counsel agree to meet and confer with each other regarding such disagreement and to seek resolution pursuant to the alternative dispute resolution procedures set forth in Section 36 of this Settlement Agreement if necessary.

(D) Plaintiffs and Plaintiffs' Lead Counsel agree to use any and all of the documents, data, and information provided by Settling Defendants in connection with the cooperation obligations set forth in this Settlement Agreement only for the purpose of the Action and not for any other purpose whatsoever, and they agree to be bound by the terms of a stipulation and protective order (or any other such agreement) agreed to by the Parties concerning the treatment of Cooperation Materials provided. Prior to the entry of a stipulation and protective order or any other applicable agreement, the Cooperation Materials will be treated as highly confidential material for attorneys' eyes only and cannot be disclosed to any third party absent Settling Defendants' consent.

(E) **Settling Defendants' Production.** Subject to the restrictions set forth above, Settling Defendants will provide cooperation to Plaintiffs by producing to Plaintiffs' Lead Counsel the Cooperation Materials listed below, to the extent reasonably available.

(F) Settling Defendants shall promptly commence or continue the production of the following materials and information to Plaintiffs' Lead Counsel (the "Cooperation Materials") and

shall use its best efforts to complete such production on the schedule to be agreed upon by the Parties:

(i) The set of interbank Bloomberg chat communications previously identified by Settling Defendants' counsel, which Settling Defendants have produced.

(ii) Reasonably available transaction data regarding Mexican Government Bond Transactions that may be produced without undue burden or expense from January 1, 2006 through December 31, 2017.

(iii) Additional reasonably available documents or information from the Class Period relevant to the allegations made in the Action that Plaintiffs may request and Settling Defendants may agree to provide. Settling Defendants' agreement to provide additional documents or information shall not be unreasonably withheld.

(G) **Witnesses.** To the extent Settling Defendants have control over any Barclays-affiliated fact witness(es) with information regarding the conduct alleged in the Action, Settling Defendants will work in good faith with Plaintiffs to identify such witness(es) and use reasonable efforts to make such Barclays-affiliated witness(es) available to Plaintiffs to the extent reasonably necessary and only to the extent that the information sought by Plaintiffs cannot be otherwise obtained, such as through written statements.

(H) **Other Information.** Settling Defendants will use their reasonable best efforts to provide information necessary for Plaintiffs to authenticate or otherwise make usable at trial any Cooperation Materials produced by Settling Defendants.

(I) **Continuation, Scope, and Termination of Settling Defendants' Obligation.** Settling Defendants' respective obligations to cooperate are continuing until and shall terminate upon the earlier of (i) six years from the execution of this Agreement and (ii) the date when Final

Judgment has been rendered against all Defendants in the Action with no remaining rights of appeal.

**5. Payment of Attorneys' Fees and Reimbursement of Expenses, and Application for Incentive Award**

(A) Subject to Court approval, Plaintiffs and Plaintiffs' Lead Counsel shall be reimbursed and paid solely out of the Settlement Fund for all fees and expenses including, but not limited to, attorneys' fees, and past, current or future litigation expenses, and any incentive award approved by the Court. Settling Defendants shall have no responsibility for any costs, fees, or expenses incurred for or by Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents, or representatives. Nothing in this provision shall expedite the date(s) for Settling Defendants' payments as set forth in Section 3.

(B) Plaintiffs' Lead Counsel, on behalf of all Plaintiffs' Counsel, may apply to the Court for an award from the Settlement Fund of attorneys' fees, plus interest. Plaintiffs' Lead Counsel also may apply to the Court for reimbursement from the Settlement Fund of Plaintiffs' Counsel's litigation expenses, plus interest. Settling Defendants shall take no position with respect to Plaintiffs' Lead Counsel's motion for attorneys' fees and expenses. Plaintiffs may make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Award.

(C) The Released Parties shall have no responsibility for, and no liability with respect to, the attorneys' fees, litigation expenses, or any Incentive Award that the Court may award in the Action.

(D) The procedures for, and the allowance or disallowance by the Court of, any application for approval of fees, expenses and costs or an Incentive Award (collectively, "Fee and Expense Application") are not part of the Settlement set forth in this Agreement, and are to be

considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to a Fee and Expense Application, or the reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Application or the Distribution Plan shall constitute grounds for termination of this Agreement.

(E) Prior to the Fairness Hearing, Plaintiffs' Lead Counsel and Plaintiffs shall file any motions seeking awards from the Settlement Fund for payment of attorneys' fees and reimbursement of costs and expenses, and for the payment of an Incentive Award as follows:

(i) Plaintiffs' Counsel shall seek attorneys' fees of no more than thirty-three percent (33%) of the Settlement Fund;

(ii) Plaintiffs' Lead Counsel shall seek reimbursement for their costs and expenses incurred as of the date the Motion for Final Approval and Entry of Final Judgment is filed pursuant to Section 16; and

(iii) Plaintiffs may make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Award.

(F) Upon the Court's approval of an award of attorneys' fees, costs and expenses, such approved amount from Subsections (E)(i) and (E)(ii), above, shall be paid from the Escrow Account within ten (10) Business Days after their approval by the Court. If an event occurs that will cause the Settlement Agreement not to become final pursuant to Section 18 or if Plaintiffs or a Settling Defendant terminates the Settlement Agreement pursuant to Sections 21 through 23,

then within ten (10) Business Days after Plaintiffs' Lead Counsel either gives written notice of termination on behalf of Plaintiffs or receives notice of such an event from counsel for Settling Defendants or from a court of appropriate jurisdiction, Plaintiffs' Counsel shall refund to the Settlement Fund any attorneys' fees, costs and expenses (not including any non-refundable expenses as described in Section 9(B)) that were withdrawn plus interest thereon at the same rate at which interest is accruing for the Settlement Fund. In the event the Settlement is terminated, Plaintiffs' Counsel, including each of the law firm's individual partners and/or principals, shall be severally liable for the return to Settling Defendants of any sums paid as attorneys' fees and expenses.

**6. Application for Approval of Fees, Expenses, and Costs of Settlement Fund Administration**

Plaintiffs' Lead Counsel may apply to the Court, at the time of any application for distribution to Authorized Claimants, for an award from the Settlement Fund of attorneys' fees for services performed and reimbursement of expenses incurred in connection with the administration of the Settlement after the date of the Fairness Hearing. Plaintiffs' Lead Counsel reserves the right to make additional applications to the Court for payment from the Settlement Fund for attorneys' fees for services performed and reimbursement of expenses incurred. Any such applications are subject to Court approval.

**7. No Liability for Fees and Expenses of Plaintiffs' Lead Counsel**

The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Plaintiffs' Lead Counsel for attorneys' fees, costs and expenses and/or to any other Person who may assert some claim thereto, or any fee and expense award the Court may make in the Action.



**8. Distribution of and/or Disbursements from Settlement Fund**

The Settlement Administrator, subject to such supervision and direction by the Court and/or Plaintiffs' Lead Counsel as may be necessary, shall administer the Proof of Claim and Release forms submitted by the Settling Class Members and shall oversee the distribution of the Settlement Fund pursuant to the Distribution Plan. Upon the Effective Date (or earlier if provided in Section 5 herein), the Settlement Fund shall be applied in the order and as follows:

- (i) to pay costs and expenses associated with the distribution of the Class Notice and administration of the Settlement as provided in this Section and Section 6, including all costs and expenses reasonably and actually incurred in assisting Class Members with the filing and processing of claims against the Net Settlement Fund at any time after Settling Defendants make payments described in Section 3;
- (ii) to pay Escrow Agent costs;
- (iii) to pay taxes assessed on the Settlement Fund, and tax preparation fees in connection with such taxes;
- (iv) to pay any attorneys' fees, costs and expenses approved by the Court upon submission of a Fee and Expense Application, as provided in Section 5;
- (v) to pay the amount of any Incentive Award for Plaintiffs, as provided in Section 5; and
- (vi) to pay the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan, or order of the Court.

**9. Disbursements Prior to Effective Date**

(A) Except as provided in Subsection (B) herein or by Court order, no distribution to any Class Member or disbursement of fees, costs and expenses of any kind may be made from the Settlement Fund until the Effective Date. As of the Effective Date, all fees, costs and expenses and Incentive Awards as approved by the Court may be paid out of the Settlement Fund.

(B) Upon written notice to the Escrow Agent by Plaintiffs' Lead Counsel with a copy to Settling Defendants, the following may be disbursed prior to the Effective Date: (i) reasonable costs of Class Notice and administration may be paid from the Settlement Fund as they become due (up to a maximum of \$500,000, unless any Other Settlement is reached, in which case the maximum will be \$250,000) without prior order of the Court; (ii) reasonable costs of the Escrow Agent may be paid from the Settlement Fund as they become due without prior order of the Court; (iii) taxes and tax expenses may be paid from the Settlement Fund as they become due without prior order of the Court; and (iv) Plaintiffs' Counsel's attorneys' fees and costs and expenses as approved by the Court (in accordance with Section 5(F)). In the event the Settlement is terminated or does not become final for any reason, Settling Defendants shall be entitled to return of all such funds, plus all interest accrued thereon within ten (10) Business Days, except for up to \$500,000 (or \$250,000 if there is any Other Settlement) for reasonable costs of Class Notice and administration that have been actually disbursed prior to the date the Settlement was terminated or otherwise does not become final for any reason, on the terms specified in Section 22.

(C) Plaintiffs' Lead Counsel will attempt in good faith to minimize the costs of the Escrow Agent, Class Notice and administration.

**10. Distribution of Balances Remaining in Net Settlement Fund to Authorized Claimants**

The Net Settlement Fund shall be distributed to Authorized Claimants and, except as provided in Section 9(B), there shall be no reversion to Settling Defendants. The distribution to Authorized Claimants shall be in accordance with the Distribution Plan that has been or hereafter is to be approved by the Court upon such notice to the Class as may be required. Any such Distribution Plan is not a part of this Agreement. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the later of (i) the Effective Date or (ii) the date by which the Distribution Plan has received final approval and the time for any further appeals with respect to the Distribution Plan has expired. Should there be any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Plaintiffs' Lead Counsel shall submit an additional distribution plan to the Court for its approval. Settling Defendants will have no involvement in (or liability for) selection of any claims administrator, the claims administration process, or any plan of allocation of the Settlement proceeds.

**11. Administration/Maintenance of Settlement Fund**

(A) The Settlement Fund shall be maintained by the Escrow Agent and Plaintiffs' Lead Counsel under supervision of the Court and shall be distributed solely at such times, in such manner, and to such Persons as shall be directed by subsequent orders of the Court (except as provided for in this Settlement Agreement). The Parties intend that the Settlement Fund be treated as a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B. Plaintiffs' Lead Counsel shall ensure that the Settlement Fund at all times complies with Treasury Regulation § 1.468B in order to maintain its treatment as a qualified settlement fund. To this end, Plaintiffs' Lead Counsel shall ensure that the Settlement Fund is approved by the Court as a qualified settlement fund and that any Escrow Agent, Settlement Administrator or other administrator of the

Settlement Fund complies with all requirements of Treasury Regulation § 1.468B-2. Any failure to ensure that the Settlement Fund complies with Treasury Regulation § 1.468B-2, and the consequences thereof, shall be the sole responsibility of Plaintiffs' Lead Counsel.

**12. Release and Covenant Not To Sue**

(A) Upon the Effective Date, the Releasing Parties shall release and be deemed to release and forever discharge and shall be forever enjoined from prosecuting the Released Claims against the Released Parties.

(B) Although the foregoing release is not a general release, such release constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Settlement Agreement, the Parties assume the risk

of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

(C) Upon the Effective Date, Settling Defendants will release Plaintiffs, the Settlement Class, and their respective attorneys, from all claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law (including FED. R. CIV. P. 11), that arise out of or relate in any way to the institution, prosecution, or settlement of the Action as against Settling Defendants, except for claims relating to the enforcement of the Settlement.

### **13. Motion for Preliminary Approval**

As soon as practicable after the Execution Date, at a time to be mutually agreed by Settling Defendants and Plaintiffs' Lead Counsel, Plaintiffs' Lead Counsel, on behalf of the Plaintiffs, shall submit this Settlement Agreement to the Court and shall file a motion for entry of the Preliminary Approval Order in the Action.

### **14. Class Notice**

(A) In the event that the Court preliminarily approves the Settlement, Plaintiffs' Lead Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure, provide Class Members whose identities can be determined after reasonable efforts with notice of the date of the Fairness Hearing. The Class Notice may be sent solely for this Settlement or combined with notice of any Other Settlements. The Class Notice shall explain the general terms of the Settlement Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application, and a description of Class Members' rights to object to the Settlement, request exclusion from the Class and appear at the Fairness Hearing. The text of the Class Notice shall be agreed upon by the Parties before its submission to the Court for approval thereof. Settling

Defendants agree to provide Plaintiffs' Lead Counsel with reasonably available contact information for potential Class Member counterparties to Settling Defendants' Mexican Government Bond Transactions during the Class Period, to the extent not prevented from doing so by any court order or any domestic or foreign law, regulation, policy, or other rule of any regulatory agency or governmental body restricting disclosure of such information. Plaintiffs agree that Settling Defendants may, at their sole discretion, (i) directly notice certain counterparties to Settling Defendants' Mexican Government Bond Transactions during the Class Period; (ii) have their third-party agent provide the Class Notice to any counterparties to Settling Defendants' Mexican Government Bond Transactions during the Class Period; or (iii) provide counterparty information only to the Settlement Administrator for purposes of distributing the Class Notice, to the extent that Settling Defendants reasonably conclude in good faith that such steps are required or advisable based on such counterparty information being subject to any applicable domestic or foreign data privacy, bank secrecy, or other law, rule, or regulation. If Settling Defendants do provide Class Notice pursuant to this Section, Settling Defendants shall complete such notice no later than the date set by the Court to complete mailed notice pursuant to the Preliminary Approval Order and provide Plaintiffs' Lead Counsel with the number of Class Notices sent by Settling Defendant pursuant to this Section. All reasonable fees, costs, and expenses of Settling Defendants and/or Settling Defendants' third-party agent(s) in mailing the Class Notice to any counterparties to Settling Defendants' Mexican Government Bond Transactions during the Class Period will be paid from the Settlement Fund. Such reasonable fees, costs, and expenses of Settling Defendants' third-party agent(s) shall not exceed \$100,000.00.

(B) In the event that the Court preliminarily approves the Settlement, Settling Defendants shall bear the costs and responsibility for timely serving notice of the Settlement to the

extent required by the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715. Settling Defendants shall also cause a copy of such CAFA notice and proof of service of any such notice to be provided to Plaintiffs’ Lead Counsel.

**15. Publication**

Plaintiffs’ Lead Counsel shall cause to be published a summary in accord with the Class Notice submitted to the Court by the Parties and approved by the Court. Settling Defendants shall have no responsibility for providing publication or distribution of the summary or any notice of the Settlement to Class Members or for paying for the cost of providing notice of the Settlement to Class Members except as provided for in Section 9(B). The Parties shall mutually agree on any content relating to Settling Defendants that will be used by Plaintiffs’ Lead Counsel and/or the Settlement Administrator in any Settlement-related press release or other media publication, including on websites.

**16. Motion for Final Approval and Entry of Final Judgment**

(A) After Class Notice is issued, and prior to the Fairness Hearing, Plaintiffs’ Lead Counsel, on behalf of the Plaintiff(s), shall move for entry of the Final Approval Order and Final Judgment in this Action:

- (i) finally certifying solely for settlement purposes the Settlement Class as defined in Section 1(F) herein;
- (ii) finding that the Class Notice constituted the best notice practicable under the circumstances and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;

(iii) finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement of the Settlement Class' claims against Settling Defendants under Rule 23 of the Federal Rules of Civil Procedure;

(iv) directing that, as to the Released Parties, the Action be dismissed with prejudice and without costs as against the Settling Class Members;

(v) discharging and releasing the Released Claims as to the Released Parties;

(vi) barring and enjoining claims by any Person against the Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise;

(vii) discharging and releasing the Released Parties from any claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law (including FED. R. CIV. P. 11) that arise out of or relate in any way to the institution, prosecution, or settlement of the Action as against Settling Defendants, except for claims relating to the enforcement of the Settlement;

(viii) determining pursuant to FED. R. CIV. P. 54(b) that there is no just reason for delay and directing that the Final Judgment shall be final and appealable;



(ix) reserving the Court's continuing and exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Agreement; and

(x) containing such other and further provisions consistent with the terms of this Agreement to which Settling Defendants and Plaintiffs expressly consent in writing.

(B) Prior to the Fairness Hearing, as provided in Section 5, Plaintiffs' Lead Counsel will timely request by separate motion that the Court approve its Fee and Expense Application. The Fee and Expense Application and the Distribution Plan are matters separate and apart from the Settlement between the Parties. If the Fee and Expense Application or the Distribution Plan is not approved, in whole or in part, it will have no effect on the finality of the Final Approval Order(s) approving the Settlement and the Final Judgment(s) dismissing each of the Action with prejudice as to Settling Defendants.

#### **17. Best Efforts to Effectuate This Settlement**

The Parties agree to cooperate with one another to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Agreement.

#### **18. Effective Date**

Unless terminated earlier as provided in this Settlement Agreement, this Settlement Agreement shall become effective and final as of the date upon which all of the following conditions have been satisfied:

(A) The Settlement Agreement has been fully executed by Settling Defendants and Plaintiffs through their counsel;

(B) The Court has certified a Settlement Class, and entered the Preliminary Approval Order, substantially in the form agreed to by the Parties and attached hereto as Exhibit A, approving this Settlement Agreement, and approving the program and form for the Class Notice;

(C) Class Notice has been issued as ordered by the Court;

(D) The Court has entered the Final Approval Order, substantially in the form agreed to by the Parties and attached hereto as Exhibit B, finally approving the Settlement Agreement in all respects as required by Rule 23(e) of the Federal Rules of Civil Procedure; however, this required approval does not include the approval of the Fee and Expense Application and the Distribution Plan;

(E) The Court has entered its Final Judgment as to the Released Parties with respect to Plaintiffs and Settling Class Members, substantially in the form agreed to by the Parties and attached hereto as Exhibit C; and

(F) The Final Approval Order(s) approving the Settlement and the Final Judgment(s) dismissing each of the Action with prejudice as to Settling Defendants become Final.

#### **19. Occurrence of Effective Date**

Upon the occurrence of all of the events specified in Section 18, any and all remaining interest or right of Settling Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, and the Net Settlement Fund shall be transferred from the Escrow Agent to the Settlement Administrator at the written direction of Plaintiffs' Lead Counsel.

#### **20. Failure of Effective Date to Occur**

If any of the conditions specified in Section 18 are not satisfied, then this Agreement shall be terminated, subject to and in accordance with Section 21, unless the Parties mutually agree in writing to continue with this Agreement for a specified period of time.

## 21. Termination

(A) Settling Defendants shall have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by providing written notice to Plaintiffs' Lead Counsel within twenty-five (25) Business Days of Settling Defendants learning of any of the following events:

(i) the Court declines to enter or modifies the Preliminary Approval Order(s) sought pursuant to Section 13 or the Final Approval Order(s) sought pursuant to Section 16 in any material respect;

(ii) the Court declines to approve the Settlement Agreement or any material part of it;

(iii) the Court declines to enter the Final Judgment(s) in any material respect or an Alternative Judgment(s); or

(iv) the Final Approval Order(s) or the Final Judgment(s) (or the Alternative Judgment(s)) is modified or reversed or vacated by any appellate court in any material respect.

(B) Plaintiffs' Lead Counsel, acting on behalf of the Plaintiffs, shall have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by providing written notice to Settling Defendants' counsel within twenty-five (25) Business Days of any of the following events, provided that the occurrence of the event substantially deprives Plaintiffs of the benefit of the Settlement:

(i) the Court declines to enter or modifies the Preliminary Approval Order(s) sought pursuant to Section 13 or the Final Approval Order(s) sought pursuant to Section 16 in any material respect;

(ii) the Court declines to approve the Settlement Agreement or any material part of it;

(iii) the Court declines to enter the Final Judgment(s) in any material respect or an Alternative Judgment(s); or

(iv) the Final Approval Order(s) or the Final Judgment(s) (or the Alternative Judgment(s)) is modified or reversed or vacated by any appellate court in any material respect.

(C) In the event that Settling Defendants, for any reason, fail to comply with Section 3 and fail to cure such non-compliance as hereafter provided, then on ten (10) Business Days' written notice to Settling Defendants' counsel, during which ten-Business Day period Settling Defendants shall have the opportunity to cure the default without penalty, Plaintiffs, by and through Plaintiffs' Lead Counsel, may terminate this Settlement Agreement or may elect to enforce the Settlement Agreement as provided by the Federal Rules of Civil Procedure and any applicable laws.

## **22. Effect of Termination**

Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the Settlement as described herein is not finally approved by the Court or the Final Judgment is reversed or vacated following any appeal, then:

(A) Within ten (10) Business Days after written notification of such event is sent by counsel for Settling Defendants or Plaintiffs' Lead Counsel to all Parties and the Escrow Agent, the Settlement Amount, all interest earned in the Settlement Fund and any amount required to be

refunded by Plaintiffs' Lead Counsel pursuant to Section 5(F) will be refunded, reimbursed, and repaid by the Escrow Agent to Settling Defendants, except as provided in Section 9(B).

(B) The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to Settling Defendants, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund;

(C) The Parties shall be returned, to the maximum extent possible, to their respective positions in the Action as of immediately prior to the execution of the settlement term sheet dated October 9, 2019, with all of their respective legal claims and defenses preserved as they existed at that time; and

(D) Upon termination of this Settlement Agreement with respect to all Parties, then:

(i) this Agreement shall be null and void and of no further effect, and none of Settling Defendants, the Plaintiffs, or members of the Settlement Class shall be bound by any of its terms;

(ii) any and all releases hereunder shall be of no further force and effect;

(iii) the Parties shall be deemed to reverted *nunc pro tunc* to their respective status in the Action as of October 9, 2019 and shall proceed in all respects as if this Settlement Agreement had not been executed, without prejudice in any way from the negotiation, fact or terms of the Settlement, and with all of their respective legal claims, objections and defenses preserved as they existed on that date (including any objection to or defense based on, among other things, a lack of personal jurisdiction); and

(iv) any and all rulings, orders, or judgments entered, altered, amended or vacated by the Court in accordance with the terms of this Settlement Agreement shall be deemed reverted *nunc pro tunc* to their respective status as of October 9, 2019 and shall proceed in all respects as if this Settlement Agreement had not been executed, without prejudice in any way from the negotiation, fact or terms of the Settlement.

**23. Supplemental Agreement**

In addition to the provisions contained in Section 21 herein, Settling Defendants shall have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement pursuant to the terms and conditions of a Supplemental Agreement. The Supplemental Agreement shall not be submitted to the Court except in the event of a dispute thereunder or upon the Court's request, in which case the Parties shall seek to file it only under seal.

**24. Confidentiality Protection**

Plaintiffs, Plaintiffs' Lead Counsel, counsel for Settling Defendants, and Settling Defendants agree to maintain the confidentiality of the terms of this Settlement prior to the filing of a Motion for Preliminary Approval. During this period, the Settlement and its terms are and shall be treated as confidential and shall not be disclosed, described, or characterized to any other person, attorney, entity, publication, or member of the media, except as may be required by law, judicial process, or order of a court, to enforce the terms of the Settlement, or as otherwise agreed by the Parties. Notwithstanding the foregoing, any Settling Defendant may disclose such information to a regulatory authority, the IRS, its auditors, or its insurance carriers if it determines that disclosure is appropriate or required by applicable law. Further, any Settling Defendant may

disclose such information in its securities filings and/or financial disclosures if it determines that disclosure is appropriate or required by applicable law.

**25. Binding Effect**

(A) This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Settling Defendants, the Released Parties, the Plaintiffs, and Releasing Parties.

(B) The waiver by any Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of such breach by any other Party or a waiver by any Party of any other prior or subsequent breach of this Settlement Agreement.

**26. Integrated Agreement**

This Settlement Agreement, including any exhibits hereto and agreements referenced herein, contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and is not subject to any condition not provided for or referenced herein. This Settlement Agreement supersedes all prior or contemporaneous discussions, agreements, and understandings among the Parties to this Settlement Agreement with respect hereto. This Settlement Agreement may not be modified in any respect except by a writing that is executed by all the Parties hereto.

**27. Headings**

The headings used in this Settlement Agreement are for the convenience of the reader only and shall not have any substantive effect on the meaning and/or interpretation of this Settlement Agreement.

**28. No Party is the Drafter**

None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision herein for the purpose of any statute, case law, or rule of interpretation or construction that might cause any provision to be construed against the drafter. This Settlement Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's length negotiations and that all Parties have contributed substantially and materially to the preparation of the Agreement.

**29. Choice of Law**

All provisions of this Settlement Agreement and its exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of New York, without regard to its choice of law or conflict of laws principles.

**30. Execution in Counterparts**

This Settlement Agreement may be executed in one or more counterparts. Facsimile and scanned/PDF signatures shall be considered valid signatures. All executed counterparts shall be deemed to be one and the same instrument. There shall be no agreement until the fully signed counterparts have been exchanged and delivered to each of the Parties.

**31. Submission to and Retention of Jurisdiction**

The Parties, Released Parties, and the Releasing Parties irrevocably submit, to the fullest extent permitted by law, to the exclusive jurisdiction of the United States District Court for the Southern District of New York solely for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement, or the exhibits hereto. For the purpose of such suit, action, or proceeding, to the fullest extent permitted by law, the Parties, Released Parties and the Releasing



Parties irrevocably waive and agree not to assert, by way of motion, as a defense, or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is, in any way, an improper venue or an inconvenient forum or that the Court lacked power to approve this Settlement Agreement or enter any of the orders contemplated hereby.

**32. Contribution and Indemnification**

This Settlement Agreement is expressly intended to absolve the Released Parties against any claims for contribution, indemnification, or similar claims from other Defendants in the Action and other alleged co-conspirators, arising out of or related to the Released Claims, in the manner and to the fullest extent permitted under the law of New York or any other jurisdiction that might be construed or deemed to apply for claims for contribution, indemnification, or similar claims against any Released Parties. Notwithstanding the foregoing, should any court determine that any Defendant or other co-conspirator is/was legally entitled to any kind of contribution or indemnification from any Released Parties arising out of or related to the Released Claims, Plaintiffs agree that any money judgment subsequently obtained by Plaintiffs against any Defendant or other co-conspirator shall be reduced to an amount such that, upon paying the entire amount, the Defendant or other co-conspirator would have no claim for contribution, indemnification, or similar claims against the Released Parties.

**33. Reservation of Rights**

This Settlement Agreement does not settle or compromise any claims by Plaintiffs or any Class Member asserted against any Defendant or any potential defendant other than Settling Defendants and the Released Parties. The rights of any Class Member against any other Person other than Settling Defendants and the Released Parties are specifically reserved by Plaintiffs and the Class Members.

**34. Notices**

All notices and other communications under this Settlement Agreement shall be sent to the Parties to this Settlement Agreement at their address set forth on the signature page herein, *viz*, if to Plaintiffs, then to: Vincent Briganti, Lowey Dannenberg, P.C., 44 South Broadway, Suite 1100, White Plains, New York 10601 and if to Settling Defendants, then to Jeffrey Scott and Matthew Porpora, Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004, or such other address as each party may designate for itself, in writing, in accordance with this Settlement Agreement.

**35. Authority**

In executing this Settlement Agreement, Plaintiffs' Lead Counsel represent and warrant that they have been fully authorized to execute this Settlement Agreement on behalf of the Plaintiffs and the Settlement Class (subject to final approval by the Court after notice to all Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken. Settling Defendants represent and warrant that their undersigned counsel is fully empowered to execute the Settlement Agreement on behalf of Settling Defendants and that all actions necessary for the execution of this Settlement Agreement have been taken.

**36. Disputes or Controversies**

Any dispute or controversy arising out of or relating to the cooperation set forth in Section 4 herein, including any claims under any statute, law, or regulation, shall be resolved first by discussion among counsel for the Parties, and failing that by confidential mediation administered by a neutral mediator agreed upon by all Parties to the dispute ("Participating Parties"). The mediation shall be conducted on a strictly confidential basis, and the Parties shall not disclose the existence or nature of any claim; any documents, correspondence, briefing, exhibits, or

information exchanged or presented in connection with any claim; or any rulings, decisions, or results of any claim or argument (collectively, “Mediation Materials”) to any third party, with the sole exception of the Parties’ respective legal counsel (who shall also be bound by these confidentiality terms) or under seal in any judicial proceeding commenced in connection with this Section 36 or to the extent that such disclosure is required or advisable pursuant to bank regulatory requirements, SEC requirements, or other legal or regulatory requirements. The mediation decision shall be final and binding upon the Participating Parties. Any award may be entered as a judgment or order in any court of competent jurisdiction. Except as otherwise agreed, the Participating Parties shall share the mediation administrative fees (if any) and the mediator’s fees and expenses, with Plaintiffs responsible for 50% and Settling Defendants responsible for 50%. Each Party shall be responsible for such Party’s attorneys’ fees and costs, except as otherwise provided by any applicable statute or other law. Either Party may commence litigation in this Court to obtain injunctive relief in aid of mediation. The Parties agree to take all steps necessary to protect the confidentiality of the Mediation Materials in connection with any such proceeding, agree to use their best efforts to file all confidential information (and documents containing confidential information) under seal, and agree to the entry of an appropriate protective order encompassing the confidentiality terms of any settlement agreement. The seat of mediation, unless otherwise agreed, shall be New York, New York.

**37. Stay**

The Parties stipulate and agree that all proceedings and deadlines in the Action (including with respect to discovery) between Plaintiffs and Settling Defendants shall be stayed pending the Court’s entry of the Preliminary Approval Order. The stay will automatically be dissolved if the

Settlement is terminated in accordance with the provisions of Sections 21 or 23 of this Settlement Agreement.

*[remainder of page intentionally left blank]*

Dated: March 27, 2020

By: Vincent Briganti  
Vincent Briganti  
Christian Levis  
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*Lead Counsel for Plaintiffs and the Proposed Class*

Dated: March 27, 2020

By: \_\_\_\_\_  
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Dated: March 27, 2020

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