

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

IN RE FARO TECHNOLOGIES)
SECURITIES LITIGATION)
_____)

Case No. 6:05-cv-1810-Orl-22DAB

STIPULATION OF SETTLEMENT

This Stipulation of Settlement dated as of April 9, 2008 (the "Stipulation"), is made and entered into by and among: (i) Lead Plaintiff, Kornitzer Capital Management, Inc. ("KCM" or "Lead Plaintiff"); (ii) the Class (as defined herein) (the "Class" and "Lead Plaintiff" are collectively herein referred to as "Plaintiffs" unless otherwise noted; and (iii) Defendants, FARO Technologies, Inc. ("FARO"), Simon Raab, Gregory A. Fraser and Barbara R. Smith (collectively, the "Defendants"), by and through their counsel of record in this action (the "Litigation"). The Stipulation is intended by the Plaintiffs and Defendants ("Settling Parties") to fully, finally and forever resolve, discharge and settle the Released Claims and Released Defendants' Claims (as defined herein), upon and subject to the terms and conditions hereof, and subject to the approval of the Court.

I. THE LITIGATION

A. The Commencement and Progress of the Action

On December 6, 2005, and on various dates thereafter, four putative federal securities class action complaints were filed¹ in the United States District Court for the Middle District of

¹The four actions were individually styled: *Goldberger v. FARO Technologies, Inc. et al*, 6:05-cv-01810-ACC-DAB (M.D.Fla.); *Belfi v. FARO Technologies, Inc. et al*, 6:06-cv-00008 ACC- DAB (M.D.Fla.); *Burrus v. FARO Technologies, Inc. et al*, 6:06-cv-00016-ACC-DAB (M.D.Fla.); and *Johnson v. FARO Technologies, Inc. et al*, 6:06-cv-00057-ACC-DAB (M.D.Fla.).

Florida, on behalf of a class of persons who purchased the securities of FARO and allegedly were injured thereby. These cases identified a putative class period of May 6, 2004 through November 3, 2005 (the “Initial Class Period”) and were consolidated by the Court. Following publication of notice of these actions in accordance with the Private Securities Litigation Reform Act of 1995 (“PLSRA”), the Court heard motions for appointment of Lead Plaintiff and approval of Lead Plaintiff’s counsel. By Orders dated April 19, 2006 and April 26, 2006, the Court appointed KCM to serve as Lead Plaintiff, and appointed the law firms of Shepherd, Finkelman, Miller & Shah, LLC and The Edgar Law Firm, LLC to serve as lead counsel (“Lead Counsel”).

Lead Plaintiff filed its Consolidated Amended Class Action Complaint on May 16, 2006 (the “Complaint”), which alleged a class period of April 15, 2004 through March 15, 2006 (the “Class Period”). The parties briefed and argued Defendants’ Motions to Dismiss, and those motions were granted on February 3, 2007, but provided KCM with leave to amend the Complaint. On February 22, 2007, Lead Plaintiff filed a Consolidated Second Amended Class Action Complaint (“Amended Complaint”) and, after the Defendants moved to dismiss the Amended Complaint, on September 18, 2007, the Court denied the Defendants’ Motion to Dismiss.² On January 2, 2008, Lead Plaintiff moved to certify the Class, which the Defendants opposed. Pursuant to an agreement to participate in a mediation in an effort to reach a fair resolution of the Litigation, KCM and the Defendants attended a mediation before the Honorable Nicholas H. Politan (ret.) in West Palm Beach, Florida, on February 11 and 12, 2008. Those

²The Court granted the Motion to Dismiss of Grant Thornton LLP with prejudice by the same Order dated September 18, 2007.

parties ultimately were able to reach an agreement to settle the Litigation with the assistance of Judge Politan. As a result of a series of full and frank discussions between the parties and with Judge Politan, KCM and the Defendants reached an agreement-in-principle to settle the Litigation for the sum of \$6,875,000 (the "Settlement"), and subsequently executed a Memorandum of Understanding ("MOU") reflecting the principal terms of the Settlement, dated as of February 26, 2008. Pursuant to the terms of the MOU, Lead Plaintiff, on behalf of the Class, and the Defendants have agreed to file this Stipulation and all other documents necessary to obtain preliminary and final approval of the Settlement.

B. The Claims Asserted By Plaintiffs

In the Amended Complaint, Lead Plaintiff, on behalf of itself and a putative class of those persons who purchased or otherwise acquired the publicly-traded securities of FARO during the Class Period, alleged that Defendants violated the Securities Exchange Act of 1934 (the "Exchange Act"). The Amended Complaint alleged that, throughout the Class Period FARO represented that its reported financial results were truthful and accurate. The Amended Complaint alleged that, throughout the Class Period, FARO and certain Defendants misrepresented certain information regarding FARO's financial performance and its systems of internal controls in order to increase and maintain the Company's stock price. Specifically, the Amended Complaint alleged that, during the Class Period, FARO's representations regarding its sales, gross margin and profit income calculations were false and misleading when issued. Specifically, the Amended Complaint alleged that on November 3, 2005, FARO disclosed that its prior Class Period statements regarding the value of its inventory, its gross margins and its profits had been false and misleading because its inventory had been overvalued by between

\$1.6 and \$2.1 million and that its prior Class Period statements regarding its alleged systems of internal controls had been false and misleading. The Amended Complaint also alleged that on January 19, 2006, FARO disclosed that its 2005 Class Period statements regarding the selling expenses it had incurred and expected to incur were false and misleading because these expenses were materially \$2.5 million higher than previously reported and/or anticipated and that its prior Class Period statements regarding its alleged systems of internal controls had been false and misleading. Finally, the Amended Complaint alleged that on March 15, 2006, FARO was forced to reveal that certain of the Asian sales that it had reported during the Class Period had been the product of material, unlawful payments, in violation of the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. §§ 78dd, and that its prior Class Period statements regarding its alleged systems of internal controls had been false and misleading.³

II. DEFENDANTS’ DENIALS OF WRONGDOING AND LIABILITY

Defendants deny each and all of the claims and contentions alleged by Lead Plaintiff. Defendants expressly deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also deny, *inter alia*, the allegations that the Lead Plaintiff or the Class have suffered damage, that any of the Defendants intentionally overstated FARO’s financials by reasons of alleged misrepresentations, non-disclosures or otherwise, or that Lead Plaintiff or the Class were harmed by the conduct alleged in the Amended Complaint. Nevertheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and

³The Amended Complaint alleges that the market reacted to these partial, corrective disclosures in recognition of the materiality of the alleged false and misleading statements and that loss causation existed in recognition of that materiality.

that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Litigation. Defendants have, therefore, determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

III. CLAIMS OF THE LEAD PLAINTIFF AND BENEFITS OF SETTLEMENT

Lead Plaintiff believes that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims. Additionally, Plaintiffs' Co-Lead Counsel in the Litigation have researched the applicable law with respect to the claims and believe they could successfully refute any defenses to the claims raised by Defendants. However, both Lead Plaintiff and Plaintiffs' Co-Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against the Defendants through trial and through appeals. Lead Plaintiff and Plaintiffs' Co-Lead Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiffs' Co-Lead Counsel are particularly mindful of the inherent problems of proof of damages and of the Defendants' state of mind, two of the elements required to establish the underlying federal securities law violations asserted in the Litigation.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, and each of them, and Defendants, and each of them, that, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the

benefits flowing to the Settling Parties from the Settlement set forth herein, that the Litigation, the Released Claims and the Released Defendants' Claims (as defined herein), shall be finally and fully compromised, settled and released, and the Litigation shall be dismissed with prejudice, as to all Parties, upon and subject to the terms and conditions of this Stipulation.

1. Definitions

As used in the Stipulation, the following terms have the meanings specified below.

1.1. "Authorized Claimant" means any Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.

1.2. "Claimant" means any Class Member who files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.3. "Claims Administrator" means the firm of Strategic Claims Services.

1.4. "Class" means all Persons (as defined herein) who purchased or otherwise acquired the common stock and/or other publicly-traded securities of FARO during the period April 15, 2004 through and including March 15, 2006. Excluded from the Class are Defendants and members of each Individual Defendant's immediate family, any entity in which a Defendant has a controlling interest, and the legal representatives, heirs, successors, predecessors in interest or assigns, of any such excluded party. Also excluded from the Class are the Judge(s) to whom this case is assigned and those persons who submit a valid request to be excluded from the Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action.

1.5. "Class Member" or "Member of the Class" means any Person who

falls within the definition of the Class (as set forth in ¶ 1.4 above) and who has not filed a valid request to be excluded from the Class.

1.6. “Court” means the United States District Court for the Middle District of Florida.

1.7. “Defendants” means FARO Technologies, Inc., Simon Raab, Gregory A. Fraser and Barbara R. Smith.

1.8. “Defendants’ Counsel” means the law firms of Foley & Lardner LLP and Skadden, Arps, Slate, Meagher & Flom LLP.

1.9. “Effective Date” means the first date by which all of the events and conditions specified in ¶ 7.1 of this Stipulation have been met and occurred.

1.10. “Escrow Agent” means Citizens Bank.

1.11. “Final” means: (i) the date of final affirmance on an appeal of a Final Judgment and Order of Dismissal with Prejudice approving the Stipulation and substantially in the form of Exhibit "B" attached hereto (the “Judgment”), the expiration of the time for a petition for or a denial of a writ of certiorari to review the Judgment and, if certiorari is granted, the date of final affirmance of the Judgment following review pursuant to that grant; or (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on certiorari to review the Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Judgment, *i.e.*, thirty (30) days after entry of the Judgment. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation and/or application for attorneys’ fees, costs or expenses and/or application for a class representative award, shall not in any way delay or

preclude the Judgment from becoming Final.

1.12. "Judgment" means the Final Judgment and Order of Dismissal With Prejudice to be entered by the Court, substantially in the form attached hereto as Exhibit "B."

1.13. "Lead Plaintiff" means Kornitzer Capital Management, Inc.

1.14. "Notice" means the Notice of Pendency and Proposed Settlement of Class Action, which is to be sent to Members of the Class substantially in the form attached hereto as Exhibit "A-1."

1.15. "Preliminary Order" or "Notice Order" mean the Order Preliminarily Approving Settlement and Providing for Notice to the Class, substantially in the form attached hereto as Exhibit "A."

1.16. "Party" or "Parties" or "Settling Parties" means Lead Plaintiff, the Class, and the Defendants.

1.17. "Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, association, joint venture, joint stock company, estate, legal representative, trust, estate, unincorporated association, government or any political subdivision or agency thereof, or any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.18. "Plaintiffs' Counsel" means counsel who have appeared for any plaintiff in the Litigation – before or after consolidation of the four lawsuits referred to in footnote 1 of this Stipulation.

1.19. "Plaintiffs' Co-Lead Counsel" means the law firms of Shepherd,

Finkelman, Miller & Shah, LLC and The Edgar Law Firm, LLC.

1.20. "Plan of Allocation" means a plan or formula of allocation of the Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the Settlement, taxes and tax expenses and such attorneys' fees, costs, expenses and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation and Defendants shall have no responsibility or liability with respect thereto.

1.21. "Proof of Claim" means the Proof of Claim and Release to be submitted by Claimants, substantially in the form attached as Exhibit "A-2."

1.22. "Released Claims" collectively means any and all claims (including "Unknown Claims" as defined in ¶ 1.28 below), demands, rights, causes of action or liabilities, of every nature and description whatsoever, whether based in law or equity, on federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by the Class Members, or any of them, or the successors or assigns of any of them, whether directly, indirectly, derivatively, representatively or in any other capacity against any of the Released Parties (as defined in ¶ 1.24 below), which arise out of, or relate in any way, directly or indirectly, to the allegations, transactions, facts, events, matters, occurrences, acts, representations or omissions involved, set forth, referred to, or that could have been asserted in the Litigation, including, without limitation, claims for negligence, gross negligence, breach of duty of care, breach of duty of loyalty, breach of duty of candor, fraud, negligent misrepresentation, and breach of fiduciary duty, arising out of, based upon or related in any way

to the purchase, acquisition, sale or disposition of FARO common stock or other publicly-traded securities by any Class Member during the Class Period. Specifically excluded are any claims asserted in the following pending action: *Alverson v. Caldwell et al*, 6:08-cv-00045-ACC-DAB (M.D.Fla.).

1.23. “Released Defendants’ Claims” collectively means all claims (including “Unknown Claims” as defined in ¶ 1.28 below), demands, rights, causes of action or liabilities, of every nature and description whatsoever, whether based in law or equity, on federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by any of the Defendants, or the successors or assigns of any of them, whether directly, indirectly, representatively, or in any other capacity against the Lead Plaintiff, the Class, Plaintiffs’ Co-Lead Counsel and Plaintiffs’ Counsel, or any of them, which arise out of, or are related in any way, directly or indirectly, to the Litigation or its institution, prosecution, or settlement (except for claims to enforce the Stipulation).

1.24. “Released Parties” means Lead Plaintiff, the Class, Plaintiffs’ Counsel, Defendants, Grant Thornton LLP, Ernst & Young LLP, Deloitte & Touche LLP, and their respective past or present affiliates, parents, subsidiaries, representatives, shareholders, creditors, partners, principals, officers, directors, employees, insurers, reinsurers, professional advisors, financial advisors, accountants, auditors, associates, general and limited partners and partnerships, heirs, executors, administrators, attorneys, agents, successors in interest (including but not limited to a trustee appointed in a Chapter 7 or 11 proceeding, a receiver, an assignee for the benefit of creditors, or any similar successors other than securities broker dealers who were

not named as parties in the Amended Complaint), and assigns.

1.25. "Settled Claims" means all of the Released Claims (as defined in ¶ 1.22 above) and Released Defendants' Claims (as defined in ¶ 1.23 above) against the Released Parties (as defined in ¶ 1.24 above).

1.26. "Settlement Fund" means the principal amount of \$6,875,000 paid by FARO's insurer(s) pursuant to ¶ 2.1 of the Stipulation and delivered to the Escrow Agent, plus any accrued interest.

1.27. "Summary Notice" means the Summary Notice to be published in the national edition of the *Investor's Business Daily* and on the internet via *PR Newswire* or *Business Wire*, substantially in the form of Exhibit "A-3."

1.28. "Unknown Claims" means any Released Claims (as defined in ¶ 1.22 above) that Lead 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 (as defined in ¶ 1.24 above) and any Released Defendants' Claims (as defined in ¶ 1.23 above) that any of the Released Parties does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which, if known by him, her, or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her, or its decision(s) not to object to this Settlement. Upon the Effective Date, the Settling Parties, and all other Persons and entities whose claims are being released, shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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.

Lead Plaintiff, Defendants and the Released Parties have, and each of the Class Members shall be deemed to have, and -- by operation of the Judgment -- shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable and equivalent to California Civil Code § 1542. Lead Plaintiff, Defendants and the Released Parties may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and/or the Released Defendants' Claims, but Lead Plaintiff and each Defendant shall expressly and each Class Member and each of the Released Parties, upon the Effective Date, shall be deemed to have, and -- by operation of the Judgment -- shall have fully, finally, and forever settled and released any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, or are known to exist, or heretofore have existed upon any theory of law or equity not existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff and Defendants acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver of Unknown Claims was separately bargained for and a key element of the Settlement of which this release is a part.

2. The Settlement

a. The Settlement Fund

2.1.a. By no later than ten (10) business days after the entry of the Preliminary Order, FARO will use its best efforts to cause to be paid by its insurer the sum of \$150,000 in cash (the “First Cash Payment”) into an interest-bearing escrow account on behalf of Lead Plaintiff and the Class to be designated by the Escrow Agent. The First Cash Payment will be deposited into a third-party interest bearing account, to be held on behalf of the Class, pending disbursement, at an institution designated by the Escrow Agent (the “Escrow Account”).

2.1.b. By no later than ten (10) business days after the entry of the Judgment, FARO will use its best efforts to cause to be paid by its insurer the sum of \$6,725,000 (the “Remaining Cash Settlement Amount”). The Remaining Cash Settlement Amount will be deposited into a third-party interest bearing account, to be held on behalf of the Class, pending disbursement, in the Escrow Account.

2.1.c. The First Cash Payment and the Remaining Cash Settlement Amount, and any interest earned thereon, shall be the “Settlement Fund.”

b. Handling and Disbursement of Funds by the Escrow Agent

2.2 The Escrow Agent shall invest the Settlement Fund, deposited pursuant to ¶ 2.1, in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The Escrow Agent shall bear all risks related to investment of the Settlement Fund.

2.3 The Escrow Agent shall not disburse the Settlement Fund except as provided in the Stipulation, by an order of the Court, or with the written agreement of the Defendants' Counsel and each of Plaintiffs' Co-Lead Counsel.

2.4 Subject to further orders and/or directions as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Class Members as are consistent with the terms of the Stipulation.

2.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

2.6 The Escrow Agent may pay from the Settlement Fund up to \$150,000.00, without further approval from the Defendants or the Court, for the costs and expenses reasonably and actually incurred in connection with providing notice to the Class, locating Class Members, soliciting Class claims, assisting with the filing of claims, processing Proof of Claim and Release forms and paying escrow fees and costs, if any, but not Plaintiffs' Counsel's attorneys fees ("Notice and Administration Expenses"). To the extent that the Notice and Administration Expenses exceed \$150,000.00, after the Effective Date, Plaintiffs' Co-Lead Counsel or the Escrow Agent may withdraw such amounts from the Settlement Fund as may be necessary to pay any additional Notice and Administration Expenses without further order of the Court.

c. Tax Expenses

2.7 (a) Settling Parties and the Escrow Agent agree to treat the

Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 2.7, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in ¶ 2.7(a) hereof) shall be consistent with this ¶ 2.7 and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the cash portion of the Settlement Fund shall be paid out of the Settlement Fund (“Taxes”) as provided in ¶ 2.7(c) hereof.

(c) Defendants, their attorneys and their insurer(s) shall have no liability or responsibility for any Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Defendants, their counsel or their insurer(s) with respect to any income earned by the Settlement Fund for any period during which the Settlement

Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes. All (a) Taxes and (b) expenses and costs incurred in connection with the operation and implementation of this ¶ 2.7 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 2.7) (“Tax Expenses”), shall be paid out of the Settlement Fund; in all events the Defendants, their counsel and their insurer(s) shall have no liability or responsibility for the Taxes or Tax Expenses. The Escrow Agent shall indemnify and hold each of the Defendants, Defendants’ Counsel, Defendants’ insurer(s) and Person(s) and/or entities paying monies into the Settlement Fund harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither the Defendants, Defendants’ Counsel, nor Defendants’ insurer(s) are responsible nor shall they have any liability therefor. The Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 2.7.

d. Termination of Settlement

2.8 Lead Plaintiff, on behalf of the Class, or the Defendants, and any

of them, shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto within thirty (30) days of: (i) the Court's declining to enter the Preliminary Approval Order in any material respect; (ii) the Court's refusal to approve this Stipulation or any material part of it; (iii) the Court's declining to enter the Judgment in any material respect (including the Court's entering of an Alternative Judgment in a form not consented to by one or more of the Parties); (iv) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Eleventh Circuit or the United States Supreme Court; (v) the date upon which an Alternative Judgment (defined in ¶ 7.1(d) below) is modified or reversed in any material respect by the United States Court of Appeals for the Eleventh Circuit or the United States Supreme Court; or (vi) the Defendants' election to rescind pursuant to the Parties' Supplemental Agreement, described in ¶ 5.3(d) below.

3. Preliminary Approval Order and Settlement Hearing

3.1 Promptly after execution of the Stipulation, Plaintiffs' Co-Lead Counsel shall submit the Stipulation together with its Exhibits to the Court and shall apply for entry of the Preliminary Approval Order, substantially in the form of Exhibit A attached hereto, requesting, *inter alia*, the certification of the Class for settlement purposes only, preliminary approval of the Settlement set forth in the Stipulation, and approval for the mailing of the Notice and publication of the Summary Notice, substantially in the form of Exhibits "A-1" and "A-3" attached hereto. The Notice shall include the general terms of the Settlement set forth in the Stipulation, the proposed Plan of Allocation, the general terms of the Fee and Expense Application as defined in ¶ 6.1 below and the date of the Settlement Hearing as defined below.

3.2 Plaintiffs' Co-Lead Counsel shall request that after notice is given, the Court hold a hearing (the "Settlement Hearing") and approve the Settlement as set forth herein. At or after the Settlement Hearing, Plaintiffs' Co-Lead Counsel also will request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application.

4. Releases and Released Claims

4.1 The obligations incurred pursuant to this Stipulation shall be a full and final disposition of the Litigation, any and all Released Claims and any and all Released Defendants' Claims as against all Released Parties.

4.2 Upon the Effective Date, Lead Plaintiff and the Class, on behalf of themselves, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against Defendants, and each of them, and the Released Parties, whether or not any individual Class Member executes and delivers the Proof of Claim. Delivery of a Proof of Claim executed by a Class Member, which is substantially in the form contained in Exhibit "A-2" attached hereto, shall release all Released Claims against the Defendants and all of the Released Parties. Any member of the Class who does not submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

4.3 Upon the Effective Date, Defendants shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and

discharged all Released Defendants' Claims against Lead Plaintiff, all Class Members, and the Released Parties.

4.4 The Parties agree to entry of a Final Judgment providing that Lead Plaintiff, Members of the Class and Defendants, on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall, with respect to each and every Released Claim, be enjoined from instituting, commencing, prosecuting, or cooperating with, either directly or indirectly, representatively, or in any other capacity, any and all Released Claims against any of the Released Parties, whether or not such Class Member executes and delivers the Proof of Claim and Release, or otherwise shares in the Settlement Fund.

4.5 The Parties agree to an entry of a Judgment providing that, to the full extent provided by Section 21D(f)(7) of the Exchange Act, 15 U.S.C. § 78u-4(f)(7), and the common law of the U.S. Court of Appeals for the Eleventh Circuit, all claims, including, but not limited to, claims for contribution, or equitable indemnification brought by any Party, any Class Member (who has not filed a proper Request for Exclusion) or any third party so permitted by law related, directly or indirectly, to the facts of this action shall be barred (the "Bar Order").

5. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of Settlement Fund

5.1 The Claims Administrator, subject to such supervision and direction of the Court or Plaintiffs' Co-Lead Counsel, as may be necessary or as circumstances may require, shall administer and calculate the claims submitted by Class Members and shall oversee distribution of the Net Settlement Fund (as defined below) to Authorized Claimants.

5.2 The Settlement Fund shall be applied as follows:

(a) To pay the Taxes and Tax Expenses described in ¶ 2.7 hereof;

- (b) To pay the Notice and Administration Expenses;
- (c) To pay Plaintiffs' Counsel's attorneys' fees, expenses and costs with interest thereon (the "Fee and Expense Award"), and to pay Lead Plaintiff's Expenses incurred in representing the Class, if and to the extent allowed by the Court; and
- (d) To distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

5.3 Upon the Effective Date and thereafter, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court, as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

- (a) Any Person falling within the definition of the Class may be excluded from the Class by submitting to the Claims Administrator a request for exclusion ("Request for Exclusion"), which complies with the requirements set forth in the Preliminary Approval Order, Exhibit A hereto, and is timely postmarked pursuant to the terms of the Preliminary Approval Order. All Persons who submit valid and timely Requests for Exclusion shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment. However, a Class Member may submit to the Claims Administrator a written revocation of a Request for Exclusion up until the Bar Date (defined below) and receive payments pursuant to this Stipulation provided the Class Member also submits a valid Proof of Claim, as set forth in subparagraph 5.3(b), below, prior to the Bar Date (defined below);

(b) Within one hundred-twenty (120) days of the mailing of the Notice (or the first business day thereafter if the 120th day falls on a weekend day or a legal holiday as defined in Fed. R. Civ. P. 6(a)), or such other time as may be set by the Court (hereafter “Bar Date”), each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim substantially in the form of Exhibit A-2 attached hereto, signed under penalty of perjury and supported by such documents as specified in the Proof of Claim, or such other documents or proof, as are reasonably available to the Authorized Claimant, as Plaintiffs’ Co-Lead Counsel, in their discretion, may deem acceptable;

(c) Except as otherwise ordered by the Court, all Class Members who fail to timely submit a Proof of Claim by the Bar Date, or such other period as may be ordered by the Court, or otherwise allowed, or who file a Proof of Claim that is rejected, shall be forever barred from receiving any payments pursuant to this Stipulation, but will in all other respects be subject to and bound by the provisions of this Stipulation, the releases contained herein, and the Judgment, and will be barred and enjoined from bringing any action against the Released Parties concerning the Released Claims. Notwithstanding the foregoing, Plaintiffs’ Co-Lead Counsel may, in their discretion, accept for processing late filed claims so long as the distribution of the Net Settlement Fund is not materially delayed; and

(d) Simultaneously herewith, Plaintiffs’ Co-Lead Counsel and the Defendants’ Counsel are executing a “Supplemental Agreement” setting forth, among other things, certain conditions under which this Stipulation may be withdrawn or terminated by any of the Defendants including if, prior to the Settlement Hearing, Class Members whose aggregate purchases or acquisition of shares of FARO common stock and/or other publicly-traded

securities during the Class Period are more than an agreed upon percentage of the minimum average number of shares of FARO common stock outstanding during the Class Period have submitted valid and timely Requests for Exclusion. For the purposes of determining whether the conditions set forth in the Supplemental Agreement have occurred, copies of all Requests for Exclusion timely received, together with copies of all written revocations of Requests for Exclusion, shall be delivered to the Defendants' Counsel within three (3) days of receipt by Plaintiffs' Co-Lead Counsel, but, in no event, later than ten (10) Court days before the Settlement Hearing. The Supplemental Agreement shall not be filed unless (i) required by the Court, (ii) a dispute arises regarding its terms, or (iii) the Defendants exercise their rights thereunder. In the event of a withdrawal from this Stipulation in accordance with the terms of the Supplemental Agreement, this Stipulation shall become null and void and of no further force and effect. Notwithstanding the foregoing, the Stipulation shall not become null and void as a result of the election by any of the Defendants to exercise their option to withdraw from the Stipulation pursuant to the Supplemental Agreement until the conditions set forth in the Supplemental Agreement have been satisfied.

5.4 This is not a claims-made settlement. Defendants may not recoup any portion of the Settlement Fund in the event the Court enters the Judgment approving the Settlement, except as provided for in this Stipulation or the terms of the Supplemental Agreement executed herewith. The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation described in the Notice and approved by the Court. However, if there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason

of tax refunds, uncashed checks or otherwise), the Claims Administrator shall reallocate such balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any balance which still remains in the Net Settlement Fund shall be donated to an appropriate non-profit organization, designated by Plaintiffs' Co-Lead Counsel.

5.5 The Defendants, their counsel and their insurers (except as provided in ¶ 7.4) shall have no responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, or any losses incurred in connection therewith. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

5.6 No Person shall have any claim against Plaintiffs' Counsel, the Claims Administrator, the Escrow Agent, or any other Person, based on the distributions made in good faith and substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court.

5.7 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in the Stipulation, and any orders or proceedings relating to the Plan of Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's Judgment approving the Stipulation and the Settlement set forth therein, or any other orders entered pursuant to the Stipulation.

6. Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of Expenses

6.1 The Lead Plaintiff or Plaintiffs' Co-Lead Counsel will submit an application or applications (the "Fee and Expense Application") for distribution to Plaintiffs' Counsel from the Settlement Fund for: (a) an award of attorneys' fees payable from the Settlement Fund; plus (b) reimbursement of actual expenses, including the fees and expenses of any experts or consultants, incurred in connection with prosecuting the Litigation, plus any interest on such attorneys' fees, costs and expenses, at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. Defendants will not oppose the Fee and Expense Application, so long as it is in accordance with this Stipulation. Plaintiffs' Co-Lead Counsel reserve the right to make additional applications for fees and expenses incurred.

6.2 The attorneys' fees, expenses and costs, including the fees and expenses of experts and consultants, as awarded by the Court, shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund, as ordered, immediately after the Court executes an order awarding such fees and expenses, notwithstanding the existence of any timely-filed objections, or potential appeal therefrom, or collateral attack on the Settlement or any part thereof. Plaintiffs' Co-Lead Counsel may, at their discretion, allocate the attorneys' fees among Plaintiffs' Counsel in any manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Litigation. In the event attorneys' fees or expenses are awarded by the Court pursuant to ¶ 6.1 hereof and paid to Plaintiffs' Counsel from the Settlement Fund, all Plaintiffs' Counsel who receive any payment of attorneys' fees or expenses agree that they accept payment subject to the joint and several obligation of each and every Plaintiffs' Counsel

(including their respective partners, shareholders and firms) receiving payments to make repayment to the Settlement Fund within ten (10) business days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction, of the entire amount required by any court or appellate court to be repaid with accrued interest, in the event, for any reason, including, without limitation, appeal, further proceeding on remand or successful collateral attack, the attorneys' fees or expense award is reduced or reversed. Furthermore, all Plaintiffs' Counsel (including their respective partners, shareholders and/or firms) agree that they remain subject to the continuing jurisdiction of the Court for the purpose of enforcing their joint and several obligation to repay required attorneys' fees and expenses to the Settlement Fund as provided in this paragraph, as well as with respect to any restrictions contained in the Supplemental Agreement, which is described, in part, in section 5.3(d) above.

6.3 The procedure for and the allowance or disallowance by the Court of any applications by Plaintiffs' Co-Lead Counsel for attorneys' fees and expenses, including the fees and expenses of experts and consultants, to be paid out of the Settlement Fund, are not part of the Settlement set forth in the Stipulation, 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 the Stipulation, and any order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the settlement of the Litigation set forth therein.

6.4 Defendants and their Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment to Plaintiffs' Co-Lead Counsel or

any other counsel or Person who receives payment from the Settlement Fund.

6.5 Defendants and their Released Parties shall have no responsibility for, and no liability whatsoever with respect to the allocation among Plaintiffs' Counsel and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Litigation, and Defendants and their respective Released Parties take no position with respect to such matters.

7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

(a) The First Cash Payment and the Remaining Cash Settlement Amount shall be paid by the Defendants' insurer to the Settlement Fund as required by ¶ 2.1;

(b) The Court has entered the Preliminary Approval Order, substantially in the form attached hereto as Exhibit "A";

(c) The Court has approved the Settlement, following notice to the Class and a hearing, as provided in Rule 23 of the Federal Rules of Civil Procedure, and the Court has entered Judgment substantially in the form attached hereto as Exhibit "B"; and

(d) The Judgment has become Final, as defined in ¶ 1.11 above, or, in the event that the Court enters a judgment other than substantially in the form of Exhibit "B" hereto, but which form is consented to by the Parties ("Alternative Judgment"), when such Alternative Judgment becomes Final.

7.2 Upon the occurrence of all of the events referenced in ¶ 7.1 above, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be

absolutely and forever extinguished.

7.3 If some or all of the conditions specified in ¶ 7.1 above are not met, or in the event that this Stipulation is not approved by the Court, or the Settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, then this Stipulation shall be canceled and terminated subject to ¶ 7.6 hereof, unless Plaintiffs' Co-Lead Counsel and the Defendants' Counsel mutually agree in writing to proceed with the Stipulation. None of the Settling Parties, or any of them, shall have any obligation whatsoever to proceed under any terms other than those provided for and agreed herein. If any Party engages in a material breach of the terms hereof, any other party may terminate this Stipulation on notice to all of the Settling Parties.

7.4 Unless otherwise ordered by the Court, if this Stipulation is terminated or fails to become effective for the reasons set forth in ¶¶ 7.1 and 7.3 above, the Settling Parties shall be restored to their respective positions in the Litigation as of February 8, 2008. In such event:

(a) Any Judgment or other order entered by the Court in accordance with the terms of this Stipulation, shall be treated as vacated, *nunc pro tunc*;

(b) The Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered. Furthermore, the sum of (i) an amount equal to that portion of the Settlement Fund previously paid by the Defendants' insurer(s) pursuant to ¶¶ 2.1.a and 2.1.b and (ii) an amount equal to any interest or other income earned thereon; less the sum of (iii) an amount equal to any Taxes paid or due with respect to such income; and (iv) an amount equal to the Notice and Administration Expenses (as defined in Paragraph 2.6) actually incurred

and paid or payable from the Settlement Fund, shall be paid from the Escrow Account to the Defendants' insurer(s) that made the payment(s) to the Settlement Fund. Such repayment (except for any tax refund owed to the Settlement Fund) will be made within five (5) business days after written notification of the termination is sent by the Court or the Defendants' Counsel to Lead Plaintiffs' Counsel. At the written request of the Defendants' Counsel or the Defendants' insurer's counsel, the Escrow Agent or its designee, shall apply for any tax refund owed to the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to the Defendants' insurer(s) that made the payment(s) to the Settlement Fund.

7.5 No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, expenses and interest awarded by the Court to the Lead Plaintiff or to any of Plaintiffs' Counsel shall constitute grounds for cancellation or termination of the Stipulation, unless the Court otherwise orders.

7.6 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither the Lead Plaintiff nor any of Plaintiffs' Counsel shall have any obligation to repay any amounts actually and reasonably disbursed for the items set forth in ¶ 7.4(b) for which proof is shown that such amounts have already been reasonably incurred as expenses. In addition, any expenses set forth in ¶ 7.4(b) already reasonably incurred and chargeable at the time of such termination or cancellation, but which have not been paid, shall be paid by the Escrow Agent from the Settlement Fund in accordance with the terms of this Stipulation prior to the balance being refunded in accordance with ¶ 7.4(b) above.

8. Miscellaneous Provisions

8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree, subject to their fiduciary and other obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Stipulation, including that the Defendants will provide shareholder transfer records maintained by FARO's transfer agent at no cost to the Class. Plaintiffs' Co-Lead Counsel and Defendants' Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation, and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

8.2 Each Defendant warrants as to himself, herself or itself that, at the time any of the payments provided for herein were made on behalf of himself, herself or itself pursuant to ¶ 2.1, he/she/it is not insolvent and such payment will not render him/her/it insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code, including, without limitation, 11 U.S.C. §§ 101 and 547 thereof. This warranty is made by each of the Defendants and not by Defendants' Counsel.

8.3 If a case is commenced in respect to FARO (or any insurer contributing funds to the Settlement Fund on behalf of any Defendant) under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof on behalf of

Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by or on behalf of other Defendants, then, at the election of Plaintiffs' Co-Lead Counsel, the Parties shall jointly move the Court to vacate and set aside the releases given and Judgment entered in favor of the Defendants, which releases and Judgment shall be null and void, and the Parties shall be restored to their respective positions in the Litigation immediately prior to the execution of this Stipulation and any cash amounts in the Settlement Fund shall be returned as provided in ¶ 7.4 above, provided however that if any portions of the Settlement Fund has been paid to Class Members, and such Class Members are permitted to retain those funds, than all Class Members will remain bound by the Settlement.

8.4 The Parties intend this Stipulation to be a final and complete resolution of all disputes between them with respect to the Litigation. 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 or defense. While retaining their right to deny that the claims advanced in the Litigation were meritorious, Defendants, in any statement made to any media (whether or not for attribution), will not deny that the Litigation was filed in good faith and is being settled voluntarily after consultation with competent legal counsel. The Final Judgment will contain a statement that, during the course of the Litigation, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement were negotiated at arms' length and in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal

counsel. The Settling Parties agree not to assert in any forum that the Litigation was brought by the Lead Plaintiff and the Class, or each or any of them, or defended by any of the Defendants, or each or any of them, in bad faith or without a reasonable basis. However, the Settling Parties, and each of them, reserve their right to rebut, in a manner that such Party or Parties determine(s) to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without reasonable basis.

8.5 Whether or not the Effective Date occurs or this Stipulation is terminated, neither this Stipulation nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:

(a) Is, may be deemed, or shall be used, offered or received against Defendants, or any of the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Lead Plaintiff and the Class, or any of them, the deficiency of any defense that has been or could have been asserted in the Litigation, or of any alleged wrongdoing, liability, negligence, fault of the Defendants or any of the Released Parties, or any of them;

(b) Is, may be deemed, or shall be used, offered or received against Defendants, or each or any of them, as an admission, concession or evidence of, any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant and by any of the Released Parties;

(c) Is, may be deemed, or shall be used, offered or received against Lead Plaintiff and the Class, or each or any of them, as an admission, concession or evidence of, the validity of any of the Released Defendants' Claims, the infirmity of any claims raised in the

Litigation, the truth of any fact alleged by Defendants, or the availability of meritorious defenses to the claims raised in the Litigation;

(d) Is, may be deemed, or shall be used, offered or received against Lead Plaintiff and the Class and, or each or any of them, or against Defendants, or any of the Released Parties, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Parties to the Stipulation, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal, other than in such proceedings as may be necessary to effectuate the provisions of this Stipulation. However, if this Stipulation is approved by the Court, any Released Party may file this Stipulation and/or the Final Judgment in any action that may be brought against such Party or Parties 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;

(e) Is, may be deemed, or shall be construed against Lead Plaintiff and the Class or against any of the Released Parties, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than, or greater than that amount which could have or would have been recovered after trial; and

(f) Is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Lead Plaintiff and the Class, or each and any of them, that any of their claims are without merit or that damages recoverable under the Amended Complaint would not have exceeded the principal amount to be paid by FARO's insurer into the Settlement Fund.

8.6 The headings used herein are for convenience only and are not meant to have legal effect.

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

8.8 All of the Exhibits to this Stipulation are material and integral parts thereof and are fully incorporated herein by this reference.

8.9 This Stipulation may be amended or modified only by written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest and consented to in writing by the Defendants' insurer(s).

8.10 This Stipulation and the Exhibits attached hereto and the Supplemental Agreement constitute the entire agreement among the Parties hereto 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 therein, each Party shall bear his/her/its own costs.

8.11 Plaintiffs' Co-Lead Counsel, on behalf of the Class, are expressly authorized by the Lead Plaintiff to take all appropriate action required or permitted to be taken by the Class pursuant to the Stipulation to effectuate its terms and also are expressly authorized to enter into any modification or amendments to the Stipulation on behalf of the Class which they deem appropriate.

8.12 Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any Party hereto hereby warrants that such Person has the full authority to do so.

8.13 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

8.14 This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

8.15 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

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

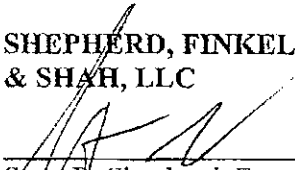
8.17 This Stipulation is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiation among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Stipulation, it shall not be construed more strictly against one Party than another.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation

to be executed, by their duly authorized attorneys, dated as of April 9, 2008.

**SHEPHERD, FINKELMAN, MILLER
& SHAH, LLC**



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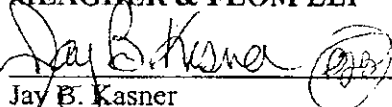
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