



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THEODORE V. BUERGER, PHILIP D.
GUNN, and JERRY SESLOWE,

Plaintiffs,

v.

DENNIS APFEL, JASON APFEL, ERIC
APFEL, and ERIC SALZMAN,

Defendants,

and

FRAGRANCENET.COM, INC., a
Delaware Corporation,

Nominal Defendant.

C.A. No. 6539-VCL

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Stipulation”) is made and entered into by: (i) nominal defendant FragranceNet.com, Inc. (“FGNT” or the “Company”); (ii) plaintiffs Theodore V. Buerger, Philip D. Gunn, and Jerry Seslowe (collectively, “Plaintiffs”); (iii) defendants Dennis Apfel, Jason Apfel, and Eric Apfel (collectively, the “Apfels” or the “Apfel Defendants”); and (iv) defendant Eric Salzman (collectively with the Apfels, “Individual Defendants”) (FGNT, Plaintiffs, and the Individual Defendants are collectively referred to as the “Parties”). The Parties intend for this Stipulation to fully, finally, and forever resolve, discharge,

and settle the above-captioned derivative action and any and all Released Claims (defined below), upon and subject to the terms and conditions herein.

RECITALS

Whereas, the Company is a Delaware corporation headquartered in Deer Park, New York, whose business is the online sale of fragrances and other beauty supplies at the website www.FragranceNet.com;

Whereas, Defendants Dennis Apfel, Jason Apfel, and Eric Apfel collectively own approximately 65% of the Company's shares of stock, hold the top three executive positions at the Company and, at all times relevant to this Action (except as described herein), were members of the Company's Board of Directors (the "Board");

Whereas, Plaintiffs Theodore V. Buerger, Philip D. Gunn, and Jerry Seslowe are and were at all times relevant to this Action stockholders of the Company, and collectively hold approximately 20% of the Company's shares of stock;

Whereas, on November 19, 2010, Plaintiffs Buerger and Gunn transmitted a Demand to Inspect Books and Records under 8 Del. C. § 220 (the "Section 220 Demand") for the purposes of (i) determining the value of their shares of stock in the Company, and (ii) investigating certain related-party transactions of the Company that had been disclosed in the Company's audited consolidated financial statements;

Whereas, following the Company's production of documents in response to the Section 220 Demand, Plaintiffs requested that the Board take certain steps, including remedying fiduciary breaches alleged by Plaintiffs, which the Apfel Defendants refused;

Whereas, on June 3, 2011, Plaintiffs filed a Verified Derivative Complaint with the Court of Chancery, captioned *Buerger et al. v. Apfel et al.*, and docketed at C.A. No. 6539-VCL;

Whereas, the Verified Derivative Complaint asserted claims on behalf of FGNT and alleging that the Apfel Defendants breached their fiduciary duties to FGNT, asserting the following counts:

Count I: Against the Apfel Defendants for Breach of Fiduciary Duties as Directors of FGNT

Count II: Against the Apfel Defendants for Waste of the Company's Assets

Count III: Against the Apfel Defendants for Unjust Enrichment

Whereas, on August 2, 2011, the Apfel Defendants moved for partial judgment on the pleadings under Court of Chancery Rule 12(c);

Whereas, on March 15, 2012, the Court denied in part and granted in part the Rule 12(c) motion, ruling that certain of the Plaintiffs' claims were time-barred in whole or in part, and permitting Plaintiffs to file an amended complaint to replead certain counts within sixty days;

Whereas, on April 5, 2012, Plaintiffs filed an Amended Verified Derivative Complaint with the Court of Chancery, alleging that the Apfel Defendants breached their fiduciary duties to FGNT, asserting the following counts:

Count I: Against the Apfel Defendants for Breach of Fiduciary Duties as Directors of FGNT

Count II: Against the Apfel Defendants for Waste of the Company's Assets

Count III: Against the Apfel Defendants for Unjust Enrichment

Whereas, between April 5, 2012 and October 12, 2012, the Parties engaged in fact and third-party discovery, which included the production and review of over 17,000 pages of documents;

Whereas, on October 1, 2012, the Board expanded itself by one member, appointed Mr. Michael Mellis as a director of the Company, adopted a resolution creating a Special Litigation Committee (the "SLC"), charging it with investigating the claims Plaintiffs advanced in the Action, and appointed Mr. Mellis as the sole member of the SLC;

Whereas, the Company moved for a stay of litigation for 180 days to permit the SLC to conduct its investigation, which request the Court granted on October 12, 2012;

Whereas, on April 30, 2013, the SLC filed a report of its investigation (the "SLC Report") with the Court, recommending the approval of a proposed stipulation of partial settlement ("2013 Partial Settlement");

Whereas, following submission of the SLC Report, the Parties agreed upon the parameters of discovery Plaintiffs would be permitted to take in order to examine the *bona fides* of the SLC's process and conclusions;

Whereas, from April 30, 2013 through November 26, 2013, Plaintiffs conducted fact and expert discovery into various aspects of the SLC's formation and investigation;

Whereas, Defendant Eric Salzman was appointed to the Company's Board on or about January 16, 2014;

Whereas, during January and February 2014, the Parties submitted briefs concerning approval of the 2013 Partial Settlement, but before any hearing occurred, the Parties agreed to a full settlement that was conditioned on the sale of the Company ("2014 Conditional Settlement");

Whereas, on July 28, 2014, the Court approved the 2014 Conditional Settlement;

Whereas, from May 23, 2014 to February 3, 2017, the litigation was stayed while the Company engaged in a sales process pursuant to the 2014 Conditional Settlement,

Whereas, on February 3, 2017, after no satisfactory buyers of the Company were located, the 2014 Conditional Settlement was terminated and the stay was

lifted so that the Court could consider approval of the 2013 Partial Settlement that the SLC recommended and the Plaintiffs opposed;

Whereas, on July 28, 2017, the Court declined to approve the 2013 Partial Settlement;

Whereas, on October 23, 2017, the Court permitted the Plaintiffs to file a Second Amended Verified Derivative Complaint with the Court of Chancery, alleging that the Individual Defendants breached their fiduciary duties to FGNT, asserting the following counts:

Count I: Against the Apfel Defendants for Breach of Fiduciary Duties as Directors of FGNT;

Count II: Against Defendant Salzman for Breach of Fiduciary Duty as a Director of FGNT;

Count III: Against the Apfel Defendants for Waste of the Company's Assets;

Count IV: Against the Apfel Defendants for Unjust Enrichment;

Whereas, following the Court's rejection of the 2013 Partial Settlement, the Plaintiffs engaged in additional fact and third-party discovery, which included the production and review of over 94,000 pages of documents;

Whereas, in 2018, the Company restarted its process of looking for a potential purchaser;

Whereas, on July 2, 2018, the Company signed a non-binding Letter of Intent ("LOI") from B&S Group S.A. ("B&S Group") to acquire all issued and

outstanding equity in the Company based on an aggregate fully diluted equity value of \$115 million, subject to various adjustments and subject to Jason and Eric Apfel rolling over a significant portion of their equity into the Buyer;

Whereas, pursuant to that LOI, the equity interests of all minority shareholders would be purchased in cash upon closing of the proposed transaction;

Whereas, the terms of the LOI were shared with the Plaintiffs;

Whereas, in August of 2018, the Parties reached agreement on resolution of the derivative claims conditioned on acquisition of the Company's equity under terms generally similar to those in the LOI;

Whereas, on August 27, 2018, the Company signed an Agreement and Plan of Merger by and among FNet Acquisition Company LLC, a Delaware limited liability company and an affiliate of B&S Group ("Buyer"), Scent Acquisition Corporation, a Delaware corporation and wholly owned subsidiary of Buyer ("Merger Sub"), the Company and Shareholder Representative Services LLC, a Colorado limited liability company, as representative of the equityholders of the Company ("Merger Agreement") (attached as **Exhibit 1**), pursuant to which, upon the terms and subject to the conditions in the Merger Agreement, Merger Sub will merge with and into the Company, with the Company surviving as a wholly owned subsidiary of Buyer (the "Merger"), and which provides for the acquisition of the equity (including all minority shareholders' stock) of the Company at a valuation

equal to \$115 million for all of the equity, subject to certain adjustments and subject to Jason and Eric Apfel rolling over a significant portion of their equity into the Buyer;

Whereas, the closing of the Merger and other transactions contemplated by the Merger Agreement is conditioned upon the Court's entry of Judgment;

Whereas, Plaintiffs maintain that the claims asserted in this Action are legally meritorious and are capable of being proven at trial but, having thoroughly considered the facts and law underlying this Action, and after weighing the costs and uncertainties of continued litigation against the likelihood of success, have determined that it is in the best interests of the Company and its stockholders that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation, and that these terms and conditions are fair, reasonable, and adequate to FGNT and its stockholders; and

Whereas, the Individual Defendants, who believe they have substantial defenses to the claims alleged against them in the Second Amended Complaint, have denied and continue to deny the allegations of wrongdoing, liability and/or violations of any laws and/or the existence of any damages asserted in or arising from the Action, but have nevertheless concluded that further litigation in connection with the Action would be time consuming and expensive, and after weighing the costs and uncertainties of continued litigation, have determined that

the Action should be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation, and that these terms and conditions are fair, reasonable, and adequate to FGNT and its stockholders;

Whereas, the Parties jointly agreed to a proposed attorneys' fee after agreement was reached on the settlement of this Action.

Now, therefore, it is hereby stipulated and agreed, by and among the Parties that, subject to the approval of the Court, the Action shall be fully and finally compromised and settled, the Released Claims (as defined below) shall be released as against the Released Persons (as defined below), and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Stipulation, as follows:

I. DEFINITIONS

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

1. "Action" means the shareholder derivative lawsuit captioned *Buerger et al. v. Apfel et al.*, and docketed at C.A. No. 6539-VCL before the Delaware Court of Chancery.
2. "Approval Date" means the date on which the Court enters Judgment.

3. “Attorneys’ Fees and Expenses Award” means the amount of attorneys’ fees and expense reimbursement awarded by the Court in response to Plaintiffs’ Counsel’s request pursuant to Section IV.

4. “Award Payment Date” means the date by which FGNT shall satisfy the Attorneys’ Fees and Expenses Award, which date shall be no later than five (5) Business Days following the entry by the Court of the Attorneys’ Fees and Expenses Award either as part of the Judgment or through such other order as the Court may issue following the entry of the Judgment.

5. “Business Day” means a day other than a Saturday, Sunday or Legal Holiday.

6. “Claims” means: (i) any and all causes of action, claims, damages, and awards; (ii) equitable, legal and administrative relief; and/or (iii) interest, demands or rights. “Claims” includes, without limitation, claims for contribution, disgorgement, subrogation, rescission, restitution, attorneys’ fees, costs and/or expenses (except as set forth in this Stipulation with respect to Plaintiffs’ Counsel’s fees and expenses), unjust enrichment, and all other forms of recovery or damages of any kind, including those in excess of actual damages and whether based on federal, state or local law, statute, ordinance, regulation, contract, common law, or any other source.

7. “Company Sale” means the closing of the Merger and other transactions contemplated by the Merger Agreement.
8. “Court” means the Court of Chancery of the State of Delaware.
9. “Current Shareholders” means all individuals or entities who hold of record, or beneficially own, directly or indirectly, common stock of the Company as of the date the Court approves the form and manner of Notice contemplated in this Stipulation.
10. “Defendants” means the Individual Defendants and nominal defendant FGNT.
11. “FGNT” or the “Company” means FragranceNet.com, Inc., including but not limited to its predecessors, successors, controlling stockholders, partners, joint venturers, subsidiaries, affiliates, divisions, and assigns.
12. “Individual Defendants” means defendants Dennis Apfel, Jason Apfel, Eric Apfel, and Eric Salzman.
13. “Judgment” means the order and/or judgment of the Court approving the Settlement and dismissing this Action with prejudice, including the claims asserted in the Second Amended Complaint, substantially in the form attached hereto as **Exhibit 3**.
14. “Legal Holiday” means New Year’s Day, the observance of the Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence

Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day designated as a federal or Delaware state holiday.

15. “Minority Shareholders” means all shareholders other than the Individual Defendants or any entity owned or controlled by the Individual Defendants and any shareholder in whose shares the Individual Defendants maintain any beneficial interest.

16. “Notice” means the legal notice of the terms of the Stipulation in the form attached hereto as **Exhibit 4**.

17. “Parties” means Plaintiffs, the Company, and the Individual Defendants.

18. “Plaintiffs’ Counsel” means the law firms of Richards, Layton & Finger, P.A. and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., their employees, agents, principals, directors, associates, partners and anyone acting on their behalf.

19. “Releases” means the releases set forth in Section II.C.

20. “Released Claims” mean any and all Claims of any nature, whether known or unknown, suspected or unsuspected, from the beginning of time to the present that have been, could have been, or might have been asserted by or on behalf of FGNT, Plaintiffs, or any stockholder of FGNT in the Action or in any other court, tribunal or proceeding and that are based upon or related to the facts,

transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act which were alleged in the Action, and the fiduciary obligations of the Defendant Released Persons in connection therewith, including but not limited to any of the allegations made in or that could have been made in the Action, including but not limited to all claims asserted in the Second Amended Complaint or related to any of the events that were the subject of the Second Amended Complaint; provided, however, that Released Claims shall not mean and do not include (i) any appraisal or dissenter's rights with respect to any Company Sale; or (ii) any Claims to enforce the terms of this Stipulation or any Claims concerning the indemnification and/or advancement of legal fees and expenses, including under the Company's Certificate of Incorporation, Bylaws or any agreements, in connection with the Action. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Court's entry of Judgment, the Plaintiffs, Individual Defendants and FGNT shall expressly waive, and each of FGNT's stockholders by operation of the Judgment shall have expressly waived, the provisions, rights and benefits of California Civil Code § 1542, which provides:

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

21. “Released Persons” means each of the Individual Defendants and the Company and/or their respective parents, divisions, subsidiaries, predecessors, successors, assigns, affiliates, partnerships, and joint ventures, as well as, solely in their capacities as such, past or present officers, directors, employees, agents, contractors, subcontractors, representatives, auditors, accountants, attorneys, and bankers, including any person or entity controlled by, controlling, or under common control with any of them. For the avoidance of doubt, Released Persons shall not mean and does not include any insurance carriers who have issued insurance to (i) the company and/or (ii) its present and former directors or officers including the Individual Defendants.

II. TERMS OF SETTLEMENT

A. Limitation on Objections to Proposed Sale of the Company

1. Plaintiffs agree that they will vote in favor of, or consent to, any stockholder resolution reasonably necessary to effectuate the Company Sale, and that they will not seek to exercise appraisal or dissenter’s rights with respect to the Company Sale. For the avoidance of doubt, this undertaking shall bind only the named Plaintiffs and shall not affect the right of any other stockholder to object to, vote against or exercise appraisal or dissenter’s rights with respect to any Company Sale, in such other stockholder’s sole and absolute discretion.

B. Settlement Consideration

1. The Parties agree that the Apfels' agreement to a Company Sale is a material term of this Stipulation. In addition, upon the occurrence of both a Company Sale and the Court's entry of Judgment, the Apfels will waive \$4 million of merger consideration that would otherwise be payable to the Apfels at the closing and direct the payment of such \$4 million to the Minority Shareholders, to be allocated ratably among such Minority Shareholders based on the number of shares (including, as applicable, options and RSU's) held by each Minority Shareholder.

2. The \$4 million payment will be treated as an inducement payment made by the Apfels to the Minority Shareholders in order for the Minority Shareholders to approve the transaction and agree to the terms thereof. The Parties acknowledge and agree that such \$4 million inducement payment shall be treated for federal and applicable state and local income tax purposes as additional merger consideration payable to the Minority Shareholders in exchange for their shares in the Company. For the avoidance of doubt, the Apfels agree that they will not seek or accept indemnification from the Company, under 8 Del. C. sec. 145 or otherwise, for such \$4 million inducement payment.

C. Releases

1. Upon entry of Judgment, the Parties agree that the Litigation will be dismissed with prejudice, as provided in Section II.D.

2. Upon entry of Judgment, FGNT, Plaintiffs (acting on their own behalf and derivatively on behalf of FGNT), and each of FGNT's stockholders (solely in their capacity as FGNT stockholders) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Claims against the Released Persons and any and all claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the Action against the Released Persons. FGNT, Plaintiffs (acting on their own behalf and derivatively on behalf of FGNT), and each of FGNT's stockholders (solely in their capacity as FGNT stockholders) shall be deemed to have, and by operation of the Judgment shall have, covenanted not to sue any Released Person with respect to such Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting the Released Claims against the Released Persons except to enforce the Releases and other terms and conditions contained in this Stipulation and/or Judgment entered pursuant thereto. Nothing herein shall in any way impair or restrict Plaintiffs' Counsel's right to seek the Attorneys' Fees and Expenses Award contemplated in Section IV. Nothing herein shall in any way impair or restrict the rights of any Party to enforce the terms of this Stipulation.

3. Upon the Court's entry of Judgment, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of FGNT, Plaintiffs and Plaintiffs' Counsel from all Claims, whether known or unknown, arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims. Nothing herein shall in any way impair or restrict the right of any Party to enforce the terms of the Stipulation.

4. The Parties expressly acknowledge, and all FGNT stockholders shall be deemed to acknowledge that: (i) they may hereafter discover facts in addition to those that they now know or believe to be true with respect to the Action and the Released Claims; and (ii) they may have sustained damages, losses, fees, costs and/or expenses in connection with the Action and the Released Claims that are presently unknown and unsuspected, and that such damages, losses, fees, costs and/or expenses as the Parties and any FGNT stockholder may have sustained might give rise to additional damages, losses, fees, costs and/or expenses in the future. Nevertheless, the Parties expressly acknowledge, and all FGNT stockholders shall be deemed to acknowledge, that this Stipulation has been negotiated and agreed upon in light of such possible unknown facts and such possible damages, losses, fees, costs and/or expenses, and each expressly waives,

or shall be deemed to have waived, any and all rights with respect to the Action and the Released Claims under California Civil Code section 1542 and under any other federal or state statute or law of similar effect. The Parties expressly acknowledge, and all FGNT stockholders shall be deemed to acknowledge, that this waiver was separately bargained for and is a material term of this Stipulation.

D. Dismissal of Derivative Action

1. The Parties agree that they will ask the Court to approve the Settlement contemplated by this Stipulation and to enter a Judgment substantially in the form attached hereto as **Exhibit 3**.

2. The Parties agree and understand that, if a final closing of a Company Sale fails to occur, this Stipulation may be terminated as set forth in Section V.A.ii, notwithstanding that the Court may have entered the Judgment before such termination occurs. In the event of such a termination after entry of the Judgment, the Parties shall promptly advise the Court of the fact of the termination of this Stipulation.

3. The Action shall be dismissed with prejudice effective upon entry of a final Judgment by the Court. Plaintiffs, the Company and the Individual Defendants shall bear their own fees, costs and expenses, except as expressly provided in this Stipulation or by further order of the Court.

III. NOTICE

A. Within three (3) Business Days after executing this Stipulation, but in any event prior to September 7, 2018, the Parties shall inform the Court of this Stipulation and request the entry of the Scheduling Order attached hereto as **Exhibit 6**.

B. Within ten (10) calendar days after the Scheduling Order is granted, FGNT shall mail, or cause to be mailed, to Current Shareholders as shown on the stock records maintained by or on behalf of FGNT, by first class U.S. mail, postage prepaid, a Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing, and Right to Appear (the "Notice") substantially in the form attached hereto as **Exhibit 4**. All Current Shareholders who are record holders of FGNT securities on behalf of beneficial owners shall be requested to forward the Notice to the beneficial owners of those securities.

C. Within ten (10) calendar days after the granting of the Scheduling Order, the Company shall cause the Notice to be posted on the website of FGNT and shall publish the Summary Notice (in the form attached hereto as **Exhibit 5**) via PR Newswire.

IV. ATTORNEYS' FEES

A. The Parties agree that this action was legally meritorious when filed and that the efforts of Plaintiffs and Plaintiffs' Counsel have been a substantial

causal factor in bringing about the Settlement and Defendants' agreement to the Merger. The Parties therefore agree that, subject to the approval of the Court, Plaintiffs' Counsel are entitled to an award of fees and expenses for work completed as of the date of execution of this Stipulation (the "Attorneys' Fees and Expenses Award"). The Individual Defendants will not oppose any application for an Attorneys' Fees and Expenses Award that does not exceed eight million dollars (\$8,000,000). Plaintiffs agree not to seek an Attorneys' Fees and Expenses Award in excess of eight million dollars (\$8,000,000). The Parties agree that the Apfels' agreement to a Company Sale is a material term of this Stipulation.

B. FGNT has agreed that in the event the Court awards an Attorneys' Fees and Expenses Award, it will, subject to the Court's approval, pay or cause to be paid the Attorneys' Fees and Expenses Award. For the avoidance of doubt, FGNT's payment of the Attorneys' Fees and Expenses Award will reduce the proceeds received by all shareholders from the Company Sale; in other words, each shareholder will bear a pro rata share of such Award.

C. FGNT shall satisfy the Attorneys' Fees and Expenses Award by the Award Payment Date, subject to the following conditions:

1. FGNT shall deliver the Attorneys' Fees and Expenses Award to Plaintiffs' Counsel, pursuant to instructions provided by Plaintiffs' Counsel,

which instructions shall be provided to FGNT within one (1) Business Day following the Approval Date.

2. Payment of the amount the Court awards to Plaintiffs' Counsel as the Attorneys' Fees and Expenses Award shall constitute full satisfaction of any obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses, or costs incurred by any attorney on behalf of Plaintiffs with respect to the claims asserted in the Action against the Individual Defendants, and shall relieve the Individual Defendants of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of Plaintiffs.

3. If, after payment of the Attorneys' Fees and Expenses Award pursuant to this Section IV, (i) the Attorneys' Fees and Expenses Award is vacated, or (ii) this Agreement is properly and timely terminated in accordance with its terms (each of (i) and (ii) being a "Fee Recovery Event"), Plaintiffs' Counsel shall, within ten (10) Business Days following such termination, return to FGNT the Attorneys' Fees and Expenses Award pursuant to this Section IV.

4. If, after payment of the Attorneys' Fees and Expenses Award pursuant to this Section IV, the Attorneys' Fees and Expenses Award is reduced, Plaintiffs' Counsel shall, within ten (10) Business Days following such reduction,

return to FGNT the amount by which the Attorneys' Fees and Expenses Award has been reduced.

D. As a condition of receiving the Attorneys' Fees and Expenses Award, Plaintiffs' Counsel agree that each firm is subject to the jurisdiction of this Court for purposes of enforcing Section IV.

E. Neither any Defendant nor FGNT shall be liable for or obligated to pay any fees, expenses, costs or disbursements, or to incur any expense on behalf of, any person or entity (including, without limitation, any Plaintiff, or Plaintiffs' Counsel) directly or indirectly, in connection with the Action or this Stipulation, except as expressly provided for in this Stipulation. Neither Plaintiffs nor Plaintiffs' Counsel shall be liable for or obligated to pay any fees, expenses, costs or disbursements to, or incur any expenses on behalf of, any person or entity (including, without limitation, any Defendant, FGNT, or counsel for the foregoing) directly or indirectly, in connection with the Action or this Stipulation except as expressly provided for in this Stipulation.

F. This Stipulation, the Settlement of the Action, and the entry of Judgment are not conditioned upon the approval of any award of attorneys' fees, costs and/or expenses, either at all or in any particular amount, by the Court. In the event that attorneys' fees are not awarded by the Court, or awarded in a manner that is unsatisfactory to any of the Parties, this Stipulation nevertheless shall

remain in force, including, without limitation, the obligations imposed in Section II.

V. TERMINATION

A. In the event that: (i) the Judgment is not entered by the Court or is materially altered by the Court before its entry or (ii) a final closing of a Company Sale fails to occur; this Stipulation shall be terminated and shall become null and void and of no force and effect and the Parties shall be restored to their respective positions prior to the execution of the Stipulation, unless otherwise agreed to in writing by the Parties.

B. In the event of termination under Section V.A, this Stipulation shall not be admissible for any purpose in any proceeding before any court or tribunal. In the event of such termination, all proceedings in the Action will revert to their status as of August 27, 2018, and no materials created by or received from another Party that were used in, obtained during, or related to settlement discussions shall be admissible for any purpose in any court or tribunal or used, absent consent from the disclosing Party, in any other capacity.

VI. NO ADMISSION OF LIABILITY

It is expressly understood and agreed that neither this Stipulation nor any act or omission in connection therewith is intended or shall be deemed or argued to be evidence or to constitute as an admission by: (i) the Individual Defendants, or any

of them, or the Company, as to the validity of any claims, defenses, other issues raised, or which might be or might have been raised, in the Action or in any other litigation, or to be evidence of or constitute an admission of any wrongdoing or liability by any of them, and each of them expressly denies any such wrongdoing or liability; or (ii) Plaintiffs as to the infirmity of any claim or the validity of any defense.

VI. MISCELLANEOUS PROVISIONS

A. The Exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by reference.

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

C. The Stipulation may be executed in one or more counterparts, each of which shall be deemed an original and, when taken together with the other signed counterparts, shall constitute one and the same instrument. Facsimile or PDF signatures shall constitute valid evidence of execution. The Stipulation shall be deemed to be executed as of the date that all counsel for the Parties have executed a counterpart, even though no single counterpart is executed by all counsel for the Parties.

D. This Stipulation and the Exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning the Stipulation or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

E. The Stipulation may be amended or any of its provisions waived only by a writing executed by or on behalf of all Parties or their respective successors-in-interest.

F. Each Party acknowledges that he, she, or it has been advised by counsel in connection with this Stipulation.

G. The provisions contained in this Stipulation shall not be deemed a presumption, concession or admission by any Defendant of any fault, liability, or wrongdoing as to any facts or claims that have been or might have been alleged or asserted in the Action, or any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, offered in evidence or otherwise used by any person in the Action, or in any other action or proceeding that has been, will be, or could be brought, whether civil, criminal or administrative, for any purpose other than to enforce the terms of the Stipulation, or as provided for expressly herein.

H. The provisions contained in this Stipulation shall not be deemed a presumption, concession, or admission by Plaintiffs or Plaintiffs' Counsel in any way regarding the merits of the claims asserted in the Action, or any other action nor proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, offered in as evidence or otherwise used by any person in the Action or in any other action or proceeding, whether civil, criminal or administrative, for any purpose other than to enforce the terms of the Stipulation, or as provided for expressly herein.

I. In the event that any dispute arises among or between the Parties regarding the interpretation of this Stipulation, or any provision thereof, the Parties acknowledge and agree that all of the Parties shall be deemed collectively to be the drafting party and any rule of construction pursuant to which ambiguities are to be construed against the drafting party shall not be applicable.

J. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party. Waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation, and

failure by any Party to assert any claim for breach of this Stipulation shall not be deemed to be a waiver as to that or any other breach and will not preclude any Party from seeking to remedy a breach and enforce the terms of this Stipulation.

K. The Company represents and warrants that the information set forth in the Capitalization Table in **Exhibit 2** hereto is true and accurate as of the date of execution of this Stipulation.

L. Plaintiffs and Plaintiffs' Counsel represent and warrant that Plaintiffs are each stockholders of the Company and were stockholders of the Company at all relevant times for purposes of maintaining standing in the Action.

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

N. The Stipulation shall be binding upon, and inure to the benefit of, the heirs, executors, successors and assigns of the Parties.

O. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of laws principles. Any action relating to this Stipulation will be filed exclusively in the Court. Each Party: (i) consents to personal jurisdiction in any such action (but not other action) brought in the Court; (ii) consents to service of process by registered mail upon such Party and/or such Party's agent; and (iii) waives any objection to

venue in the Court and any claim that Delaware or the Court is an inconvenient forum.

P. In addition to the actions specifically provided for in this Stipulation, the Parties will use their best efforts from the date hereof to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable laws, regulations or agreements, to consummate and make effective this Stipulation. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and to use their best efforts to effect the consummation of this Stipulation. Without further order of the Court, the Parties may agree to reasonable extensions of time not expressly set by the Court in order to carry out any of the provisions of this Stipulation.

Q. Each Party hereto represents and warrants that he, she or it is the legal owner of all rights and claims attributable to him, her, or it that are the subject matter of this Stipulation and that there has been no assignment, hypothecation or transfer by operation of law or otherwise of any such rights and claims.

IN WITNESS WHEREOF, the Parties have caused the Stipulation to be executed by their duly authorized attorneys and dated August 27, 2018.

Dated: August 29, 2018

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