

1 ROBBINS GELLER RUDMAN
& DOWD LLP
2 SHAWN A. WILLIAMS (213113)
WILLOW E. RADCLIFFE (200087)
3 MATTHEW S. MELAMED (260272)
Post Montgomery Center
4 One Montgomery Street, Suite 1800
San Francisco, CA 94104
5 Telephone: 415/288-4545
415/288-4534 (fax)
6 shawnw@rgrdlaw.com
willowr@rgrdlaw.com
7 mmelamed@rgrdlaw.com

- and -

8 ELLEN GUSIKOFF STEWART (144892)
655 West Broadway, Suite 1900
9 San Diego, CA 92101-8498
Telephone: 619/231-1058
10 619/231-7423 (fax)
elleng@rgrdlaw.com

MOTLEY RICE LLC
JAMES M. HUGHES (*pro hac vice*)
WILLIAM S. NORTON
CHRISTOPHER F. MORIARTY (*pro hac vice*)
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
Telephone: 843/216-9000
843/216-9450 (fax)
jhughes@motleyrice.com
bnorton@motleyrice.com
cmoriarty@motleyrice.com

14 Co-Lead Counsel for Plaintiffs

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 In re LEAPFROG ENTERPRISES, INC.) Master File No. 3:15-cv-00347-EMC
SECURITIES LITIGATION)

18) CLASS ACTION

19 This Document Relates To:) STIPULATION OF SETTLEMENT

20 ALL ACTIONS.)
21)

1 This Stipulation of Settlement (the “Stipulation”) is made and entered into by and between
2 Lead Plaintiff KBC Asset Management NV (“KBC”), on behalf of itself and the proposed Settlement
3 Class (defined below), on the one hand, by and through its counsel of record in the Action (as
4 defined herein), and Defendants LeapFrog Enterprises, Inc. (“LeapFrog” or the “Company”), John
5 Barbour and Raymond L. Arthur (collectively, “Defendants”) on the other hand, by and through their
6 counsel of record in the Action.

7 All words or terms used herein that are capitalized shall have the meaning ascribed to those
8 words or terms as set forth herein and in ¶1 hereof entitled “Definitions.”

9 **I. THE LITIGATION**

10 This is a consolidated securities class action brought against Defendants by Lead Plaintiff
11 individually and on behalf of all persons or entities who purchased or otherwise acquired LeapFrog
12 common stock between May 5, 2014 and June 11, 2015, inclusive (the “Class Period”).

13 On January 23, 2015, the initial complaint in *Newett v. LeapFrog Enterprises, Inc., et al.*, No.
14 3:15-cv-00347-EMC, was filed in the United States District Court for the Northern District of
15 California (the “Court”). ECF No. 1. Two related actions were filed on February 2, 2015. On
16 March 24, 2015, motions to consolidate the related actions, to appoint a lead plaintiff, and to approve
17 the proposed lead plaintiffs’ selection of counsel were filed by four separate movants.

18 On May 5, 2015, the Court issued an order consolidating the actions, appointing KBC as lead
19 plaintiff, and approving its selection of Motley Rice LLC and Robbins Geller Rudman & Dowd LLP
20 as co-lead counsel. ECF No. 43.

21 Lead Plaintiff filed the Corrected Consolidated Class Action Complaint for Violation of the
22 Federal Securities Laws (“CAC”) on July 10, 2015, alleging violations of §§10(b) and 20(a) of the
23 Securities Exchange Act of 1934 (“1934 Act”). ECF No. 52.

24 On July 24, 2015, each of the Defendants moved to dismiss the CAC and filed a Request for
25 Judicial Notice. ECF Nos. 53-55. Lead Plaintiff filed its responses on August 25, 2015. ECF Nos.
26 56-59. The Court heard oral argument on the motion to dismiss on October 8, 2015. Lead Plaintiff
27 filed its First Amended Consolidated Class Action Complaint for Violation of the Federal Securities
28 Laws (the “FAC”) on December 4, 2015. ECF No. 70.

1 Defendants moved to dismiss the FAC on January 15, 2016 (ECF Nos. 72-74), and Lead
2 Plaintiff filed its opposition on February 12, 2016 (ECF Nos. 75-78). Defendants filed their reply on
3 March 11, 2016 (ECF Nos. 80-81), and the Court heard oral argument on the motion on April 11,
4 2016. On August 2, 2016, the Court dismissed the FAC (“August 2 Order”). ECF No. 88.

5 Lead Plaintiff moved for leave to file a motion for reconsideration of the Court’s August 2
6 Order with respect to Lead Plaintiff’s goodwill and long-lived asset allegations. ECF No. 90. The
7 Court denied the motion on August 31, 2016. ECF No. 93.

8 On September 20, 2016, Lead Plaintiff filed the Second Amended Consolidated Class Action
9 Complaint for Violation of the Securities Laws (the “SAC”). ECF No. 97. Defendants moved to
10 dismiss the SAC on November 4, 2016 (ECF Nos. 100-102), and Lead Plaintiff filed its opposition
11 on December 19, 2016 (ECF Nos. 103-106). The motion was fully briefed by January 19, 2017, and
12 on February 24, 2017, the Court issued an order granting in part and dismissing in part the motion
13 (“February 24 Order”). ECF No. 117.

14 On April 6, 2017, the Court referred the case to private mediation and ordered the parties to
15 meet and confer on a focused pre-mediation discovery plan to be submitted to the Court. ECF No.
16 123. The parties submitted their Joint Pre-Mediation Discovery Plan to the Court on April 27, 2017.
17 ECF No. 127.

18 On July 5, 2017, Defendants moved for leave to file a motion for reconsideration of the
19 Court’s February 24 Order granting in part and denying in part their motion to dismiss the SAC.
20 ECF No. 131. The Court denied Defendants’ motion for leave to seek reconsideration by order
21 dated August 10, 2017. ECF No. 137.

22 On July 27, 2017, the parties filed a joint discovery letter in which Lead Plaintiff sought an
23 order compelling the production of documents pursuant to the Joint Pre-Mediation Discovery Plan.
24 ECF No. 134. The Court issued an Order stating that the Private Securities Litigation Reform Act of
25 1995 (“PSLRA”) discovery stay was not in effect and ordered the parties to confer regarding the
26 scope of production of documents. ECF No. 135.

27 On August 30, 2017, the parties attended a full-day mediation with the Hon. James Ware
28 (Ret.). The parties negotiated in good faith but did not reach an agreement, and litigation continued.

1 Lead Plaintiff filed its motion for class certification on November 7, 2017. ECF Nos. 158-
2 160. On November 29, 2017, the parties participated in a subsequent mediation before Judge Ware.
3 After extensive negotiations, the parties reached an agreement-in-principle to settle the case on the
4 terms set forth herein.

5 **II. LEAD PLAINTIFF’S CLAIMS AND BENEFITS OF SETTLEMENT**

6 Lead Plaintiff, through Lead Counsel, conducted a thorough investigation relating to the
7 claims, defenses, and underlying events and transactions that are the subject of the Action. This
8 process included reviewing and analyzing: (i) documents filed publicly by the Company with the
9 U.S. Securities and Exchange Commission (“SEC”); (ii) publicly available information, including
10 press releases, news articles, and other public statements issued by or concerning Defendants; (iii)
11 research reports issued by financial analysts concerning the Company; (iv) approximately 15,000
12 pages of documents produced by Defendants and third parties; and (v) the applicable law governing
13 the claims and potential defenses. Lead Counsel also consulted with experts on damages and market
14 efficiency issues.

15 Lead Plaintiff believes that the claims asserted in the Action have merit and that the evidence
16 developed to date supports the claims asserted. However, Lead Plaintiff and Lead Counsel
17 recognize and acknowledge the expense and length of continued proceedings necessary to prosecute
18 the Action through class certification, discovery, summary judgment, and trial (and any possible
19 appeals). Lead Plaintiff and Lead Counsel also have taken into account the uncertain outcome and
20 the risk of any litigation, especially in complex actions such as the Action, as well as the difficulties
21 and delays inherent in such litigation. For example, the Court to date has only upheld Lead
22 Plaintiff’s allegations with respect to LeapFrog’s long-lived assets. Lead Counsel also are mindful
23 of the inherent problems of proof and the possible defenses to the claims alleged in the Action.
24 Based on their evaluation, Lead Plaintiff and Lead Counsel believe that the Settlement set forth in
25 this Stipulation confers substantial monetary benefits upon the Settlement Class and is in the best
26 interests of the Settlement Class.

27 As set forth in ¶¶12.1-12.3 below, and pursuant to the Federal Rules of Evidence, this
28 Stipulation, whether or not consummated, any proceedings relating to any settlement, or any of the

1 terms of any settlement, whether or not consummated, shall in no event be construed as, or deemed
2 to be evidence of, an admission or concession by Lead Plaintiff, any Settlement Class Member, or
3 Lead Counsel that any of the claims lack merit, that any of the Defendants' defenses to the claims
4 have merit, or that damages recoverable in the Action would not have exceeded the Settlement
5 Amount.

6 **III. DEFENDANTS' DENIALS OF LIABILITY**

7 The Defendants have denied and continue to deny each and all of the claims, contentions, and
8 allegations made by Lead Plaintiff in the Action. They have expressly denied and continue to deny
9 that they have violated the federal securities laws or any other laws, or have otherwise misled
10 investors as alleged in the Action. Each Defendant has denied and continues to deny specifically
11 each and all of the claims alleged in the Action; all charges of wrongdoing or liability against them
12 arising out of any of the conduct, statements, acts, or omissions alleged in the Action; the allegations
13 that any of the Defendants made any material misstatements or omissions; and that any member of
14 the Settlement Class has suffered damages resulting from the conduct alleged in the Action. In
15 addition, the Defendants maintain that they have meritorious defenses to the claims alleged in the
16 Action.

17 Nonetheless, the Defendants have concluded that further conduct of the Action could be
18 protracted, burdensome, expensive, and distracting. The Defendants also have taken into account the
19 uncertainty, risks, and costs inherent in any litigation, especially in complex cases such as this
20 Action. The Defendants have, therefore, determined that it is desirable and beneficial to them that
21 the Action be fully, finally, and forever resolved, discharged, and settled in the manner and upon the
22 terms and conditions set forth in this Stipulation.

23 As set forth in ¶¶12.1-12.3 below, and pursuant to the Federal Rules of Evidence, this
24 Stipulation, whether or not consummated, any proceedings relating to any settlement, or any of the
25 terms of any settlement, whether or not consummated, shall in no event be construed as, or deemed
26 to be evidence of, an admission or concession on the part of the Defendants, or any of them, with
27 respect to any fact or matter alleged in the Action, or any claim of fault or liability or wrongdoing or
28

1 damage whatsoever, or any infirmity in any claim or defense that has been or could have been
2 asserted.

3 NOW THEREFORE, without any concession by Lead Plaintiff that the Action lacks merit,
4 and without any concession by Defendants of any liability or wrongdoing or lack of merit in their
5 defenses, it is hereby **STIPULATED AND AGREED**, by and among the parties to this Stipulation
6 (“Parties”), through their respective attorneys, subject to approval by the Court pursuant to Rule
7 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the
8 Parties hereto, all Released Claims (including Unknown Claims) and all Released Defendants’
9 Claims (including Unknown Claims), as against all Released Parties, shall be fully, finally, and
10 forever compromised, settled, released, discharged, and dismissed with prejudice, and without costs
11 (except as provided in the Stipulation), upon and subject to the following terms and conditions:

12 **1. Definitions**

13 As used in this Stipulation, the following terms shall have the meanings set forth below.
14 Prior to the Effective Date, in the event of any inconsistency between any definition set forth below
15 and any definition set forth in any other document related to the Settlement set forth in this
16 Stipulation, the definition set forth below shall control. Following the Effective Date, in the event of
17 any inconsistency between any definition set forth below and any definition set forth in any other
18 document related to the Settlement, the definition set forth in the Judgment shall control.

19 1.1 “Action” means the civil action captioned *In re LeapFrog Enterprises, Inc. Securities*
20 *Litigation*, Master File No. 3:15-cv-00347-EMC (N.D. Cal.), pending in the United States District
21 Court for the Northern District of California before the Honorable Edward M. Chen.

22 1.2 “Alternative Judgment” means a form of final judgment that may be entered by the
23 Court but in a form other than the form of Judgment provided for in this Stipulation and where none
24 of the Parties hereto elects to terminate the Settlement by reason of such variance.

25 1.3 “Authorized Claimant” means a Settlement Class Member whose claim for recovery
26 from the Settlement has been allowed pursuant to the terms of the Stipulation.

27 1.4 “Claims Administrator” means the firm of Gilardi & Co. LLC. Defendants shall have
28 no involvement in the retention of the Claims Administrator or any other claims administrator.

1 1.5 “Class Period” means the period from May 5, 2014 through June 11, 2015, inclusive.

2 1.6 “Defendants” means LeapFrog, John Barbour and Raymond L. Arthur.

3 1.7 “Defendants’ Counsel” means the law firm of Morrison & Foerster LLP.

4 1.8 “Effective Date” means the date upon which the Settlement shall have become
5 effective, as set forth in ¶10.1 below.

6 1.9 “Escrow Account” means the separate escrow account designated and controlled by
7 Lead Counsel into which the Settlement Amount will be deposited for the benefit of the Settlement
8 Class.

9 1.10 “Escrow Agent” means Lead Counsel.

10 1.11 “Fee and Expense Application” means Lead Counsel’s application for an award of
11 attorneys’ fees and payment of litigation expenses, including any expenses to Lead Plaintiff pursuant
12 to 15 U.S.C. §78u-4(a)(4) of the PSLRA.

13 1.12 “Final” means, with respect to any order of court, including, without limitation, the
14 Judgment, that such order represents a final and binding determination of all issues within its scope
15 and is not subject to further review on appeal or otherwise. Without limitation, an order becomes
16 “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has
17 expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the
18 prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been
19 affirmed in all material respects and the prescribed time, if any, for commencing any further appeal
20 has expired. For purposes of this definition of “Final,” an “appeal” includes any motion to alter or
21 amend under Rule 52(b) or Rule 59(e) of the Federal Rules of Civil Procedure, any appeal as of
22 right, discretionary appeal, interlocutory appeal, petition for writ of certiorari, or other proceeding
23 involving writs of certiorari or mandamus, and any other proceedings of like kind. However, any
24 appeal or proceeding seeking subsequent judicial review pertaining solely to the Plan of Allocation,
25 or to the Court’s award of attorneys’ fees or expenses, shall not in any way delay or affect the time
26 set forth above for the Judgment or Alternative Judgment to become Final or otherwise preclude the
27 Judgment or Alternative Judgment from becoming Final.

28 1.13 “Individual Defendants” means John Barbour and Raymond L. Arthur.

1 1.14 “Judgment” means the proposed judgment to be entered by the Court approving the
2 Settlement, substantially in the form attached hereto as Exhibit B.

3 1.15 “Lead Counsel” means Motley Rice LLC and Robbins Geller Rudman & Dowd LLP.

4 1.16 “Lead Plaintiff” means KBC Asset Management NV.

5 1.17 “Mediator” means the Hon. James Ware (Ret.).

6 1.18 “Net Settlement Fund” means the Settlement Fund less: (i) Court-awarded attorneys’
7 fees and expenses; (ii) Notice and Administration Expenses; (iii) Taxes; and (iv) any other fees or
8 expenses approved by the Court.

9 1.19 “Notice” means the Notice of Proposed Settlement of Class Action to be sent to
10 Settlement Class Members, which shall be substantially in the form attached hereto as Exhibit A-1.

11 1.20 “Notice and Administration Expenses” means all costs, fees, and expenses incurred
12 by the Claims Administrator and/or the Escrow Agent in connection with providing notice to the
13 Settlement Class and the administration of the Settlement, including, but not limited to: (i)
14 providing notice of the Settlement by mail, publication, and other means to Settlement Class
15 Members; (ii) receiving and reviewing claims; (iii) applying the Plan of Allocation; (iv)
16 communicating with Persons regarding the Settlement and claims administration process; (v)
17 distributing the proceeds of the Settlement; and (vi) fees related to the Escrow Account and
18 investment of the Settlement Fund.

19 1.21 “Person(s)” means any individual, corporation (including all divisions and
20 subsidiaries), general or limited partnership, limited liability partnership, domestic partnership,
21 marital community, association, joint stock company, joint venture, or joint venturer, limited liability
22 company, professional corporation, estate, legal representative, trust, unincorporated association,
23 government or any political subdivision or agency thereof, and any other business or legal entity.

24 1.22 “Plan of Allocation” means the plan for allocating the Net Settlement Fund as set
25 forth in the Notice, or such other plan of allocation as the Court may approve.

26 1.23 “Preliminary Approval Order” means the proposed Order Granting Preliminary
27 Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for
28 Hearing on Final Approval of Settlement, substantially in the form attached hereto as Exhibit A.

1 1.24 “Proof of Claim” or “Claim Form” means the Proof of Claim and Release form for
2 submitting a claim, which shall be substantially in the form attached hereto as Exhibit A-2.

3 1.25 “Released Claims” means any and all claims, rights, liabilities, and causes of action
4 of every nature and description, including both known claims and Unknown Claims, whether
5 contingent or absolute, mature or unmature, discoverable or undiscoverable, liquidated or
6 unliquidated, accrued or unaccrued, including those that are concealed or hidden, regardless of legal
7 or equitable theory, that Lead Plaintiff or any other member(s) of the Settlement Class asserted or
8 could have asserted in any forum that: (i) arise out of, are based upon, or are related in any way
9 directly or indirectly, in whole or in part, to the allegations, transactions, facts, events, matters,
10 occurrences, disclosures, statements, representations, or omissions referred to in the Action and that
11 relate to the purchase, sale, acquisition, or ownership of LeapFrog common stock by the Settlement
12 Class during the Class Period; or (ii) are related to the administration of the Settlement. The Parties
13 intend that the releases provided hereunder provide for claim and issue preclusion. For the
14 avoidance of doubt, Released Claims include any claims under Sections 10(b) and 20(a) of the 1934
15 Act, which were or could have been alleged in the Action. Notwithstanding the foregoing,
16 “Released Claims” does not include claims (i) relating to the enforcement of the Settlement; or (ii)
17 which were or could be asserted on behalf of LeapFrog in any derivative action based on similar
18 allegations.

19 1.26 “Released Defendant Parties” means each and all of: (i) Defendants, the members of
20 each Individual Defendant’s immediate family, any entity in which any Defendant or member of any
21 Individual Defendant’s immediate family has, or had during the Class Period, a controlling interest
22 (directly or indirectly), any estate or trust of which any Individual Defendant is a settlor or which is
23 for the benefit of any Individual Defendant and/or members of his family, Defendants’ Counsel, and
24 Defendants’ insurers, co-insurers, and re-insurers; and (ii) for each and every Person listed in part (i),
25 each of their respective past, present, and future heirs, executors, administrators, predecessors,
26 successors, assigns, employees, agents, affiliates, analysts, assignees, attorneys, auditors, co-insurers,
27 commercial bank lenders, consultants, controlling shareholders, directors, divisions, domestic
28 partners, financial advisors, general or limited partners, general or limited partnerships, insurers,

1 investment advisors, investment bankers, investment banks, joint ventures and joint venturers,
2 managers, managing directors, marital communities, members, officers, parents, personal or legal
3 representatives, principals, reinsurers, selling shareholders, shareholders, spouses, subsidiaries
4 (foreign or domestic), trustees, underwriters, and other retained professionals, in their respective
5 capacities as such.

6 1.27 “Released Defendants’ Claims” means all claims and causes of action of every nature
7 and description, including both known claims and Unknown Claims (as defined below), whether
8 arising under federal, state, common or foreign law, or any other law, that Defendants could have
9 asserted against any of the Released Plaintiff Parties that arise out of or relate in any way to the
10 institution, prosecution, or settlement of the claims in the Action, except for claims relating to the
11 enforcement of the Settlement.

12 1.28 “Released Parties” means the Released Defendant Parties and the Released Plaintiff
13 Parties.

14 1.29 “Released Plaintiff Parties” means each and every Settlement Class Member, Lead
15 Plaintiff, Lead Counsel, and each of their respective past or present trustees, officers, directors,
16 partners, employees, contractors, auditors, principals, agents, attorneys, predecessors, successors,
17 assigns, insurers, parents, subsidiaries, general or limited partners or partnerships, and limited
18 liability companies; and the spouses, members of the immediate families, representatives, and heirs
19 of any Released Plaintiff Party who is an individual, as well as any trust of which any Released
20 Plaintiff Party is the settlor or which is for the benefit of any of their immediate family members.
21 Released Plaintiff Parties does not include any Person who timely and validly seeks exclusion from
22 the Settlement Class.

23 1.30 “Settlement” means the resolution of the Action in accordance with the terms and
24 provisions of the Stipulation.

25 1.31 “Settlement Amount” means five million, five hundred thousand U.S. dollars
26 (\$5,500,000) in cash.

27 1.32 “Settlement Class” or “Settlement Class Member” mean all Persons that purchased or
28 acquired LeapFrog common stock between May 5, 2014 and June 11, 2015, inclusive. Excluded

1 from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of the
2 Individual Defendants; (iii) LeapFrog’s subsidiaries; (iv) the officers and directors of LeapFrog
3 during the Class Period; (v) any entity in which any Defendant has a controlling interest; and (vi) the
4 legal representatives, heirs, successors and assigns of any such excluded person or entity. Also
5 excluded from the Settlement Class will be any Person who timely and validly seeks exclusion from
6 the Settlement Class.

7 1.33 “Settlement Fund” means the Settlement Amount and any interest earned thereon.

8 1.34 “Settlement Hearing” means the hearing to be held by the Court to determine whether
9 (i) the Settlement is fair, reasonable, and adequate and should be approved; (ii) the Plan of
10 Allocation is fair, reasonable, and adequate and should be approved; and (iii) Lead Counsel’s request
11 for an award of attorneys’ fees and expenses should be approved.

12 1.35 “Stipulation” means this Stipulation of Settlement.

13 1.36 “Summary Notice” means the Summary Notice for publication, which shall be
14 substantially in the form attached hereto as Exhibit A-3.

15 1.37 “Taxes” means all (i) federal, state, or local taxes of any kind on any income earned
16 by the Settlement Fund and the expenses and costs incurred in connection with the taxation of the
17 Settlement Fund (including, without limitation, interest, penalties and the reasonable expenses of tax
18 attorneys and accountants); (ii) any taxes or tax detriments that may be imposed upon the Defendants
19 or their counsel with respect to any income earned by the Settlement Fund for any period during
20 which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state
21 income tax purposes; and (iii) the reasonable and necessary costs and expenses incurred in
22 connection with determining the amount of, and paying, any taxes owed by the Net Settlement Fund.

23 1.38 “Unknown Claims” means any and all Released Claims that Lead Plaintiff or any
24 other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time
25 of the release of the Released Defendant Parties, and any and all Released Defendants’ Claims that
26 any Defendant does not know or suspect to exist in his or its favor, which if known by him or it,
27 might have affected his or its decision to enter into this Settlement, execute this Stipulation, and
28 agree to all the various releases set forth herein, or might have affected his or its decision not to

1 object to this Settlement or not exclude himself or itself from the Settlement Class. Unknown
2 Claims include, without limitation, those claims in which some or all of the facts composing the
3 claim may be unsuspected, undisclosed, concealed, or hidden. With respect to any and all Released
4 Claims and Released Defendants' Claims, the Released Parties stipulate and agree that, upon the
5 Effective Date, Lead Plaintiff and Settlement Class Members (as regards the Released Claims) and
6 the Defendants (as regards the Released Defendants' Claims) shall expressly waive and relinquish,
7 and each Settlement Class Member shall be deemed to have and by operation of law and of the
8 Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, any
9 and all provisions, rights and benefits conferred by California Civil Code §1542, or any law of any
10 state or territory of the United States, or principle of common law or of international or foreign law,
11 which is similar, comparable, or equivalent to Cal. Civ. Code §1542, which provides:

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

16 **2. Scope and Effect of Settlement**

17 2.1 The obligations incurred pursuant to the Stipulation are: (i) subject to approval by the
18 Court and the Judgment, or Alternative Judgment, reflecting such approval becoming Final; and (ii)
19 in full and final disposition of the Action with respect to the Released Parties and any and all
20 Released Claims and Released Defendants' Claims.

21 2.2 For the sole purpose of this Settlement only and for no other purpose, the Parties
22 agree to: (i) certification of the Action as a class action, pursuant to Fed. R. Civ. P. 23(a) and
23 23(b)(3), on behalf of the Settlement Class as defined in ¶1.32; (ii) the appointment of Lead Plaintiff
24 as Class Representative for the Settlement Class; and (iii) the appointment of Lead Counsel as Class
25 Counsel for the Settlement Class pursuant to Fed. R. Civ. P. 23(g). Following execution of this
26 Stipulation, Lead Plaintiff, with the consent of Defendants, shall apply to the Court for entry of the
27 Preliminary Approval Order, in the form attached as Exhibit A hereto, which will certify the Action
28 to proceed as a class action for settlement purposes only. The certification of the Settlement Class
shall be binding only with respect to the Settlement of the Action and only if the Judgment

1 contemplated by this Stipulation becomes Final and the Effective Date occurs. Nothing in this
2 Stipulation shall serve in any fashion, either directly or indirectly, as evidence of or support for
3 certification of a class other than for settlement purposes, and the Parties intend that the provisions
4 herein concerning certification of the Settlement Class shall have no effect whatsoever in the event
5 the Settlement and Judgment do not become Final. Defendants expressly reserve the right to contest
6 class certification in the event the Settlement is terminated or the Effective Date does not occur for
7 any other reason.

8 2.3 By operation of the Judgment or Alternative Judgment, as of the Effective Date,
9 Lead Plaintiff and each and every other Settlement Class Member, regardless of whether each ever
10 seeks or obtains by any means any distribution from the Net Settlement Fund, on behalf of
11 themselves and each of their respective spouses, heirs, executors, beneficiaries, trustees,
12 administrators, predecessors, successors, and assigns, and any Person(s) claiming now or in the
13 future to be acting on behalf of any of them directly or indirectly: (i) shall be deemed by this
14 Settlement to have, and by operation of law and of the Judgment shall have, fully, finally, and
15 forever waived, released, relinquished, discharged, and dismissed each and all of the Released
16 Claims (including Unknown Claims) against each and all of the Released Defendant Parties, and
17 shall have covenanted not to sue any Released Defendant Parties with respect to any Released
18 Claims except to enforce the releases and other terms and conditions in this Stipulation or the
19 Judgment entered pursuant hereto; and (ii) shall forever be permanently barred, restrained, and
20 enjoined from commencing, instituting, asserting, prosecuting, maintaining, or otherwise pursuing,
21 either directly or in any other capacity, any and all of the Released Claims (including Unknown
22 Claims) against any and all of the Released Defendant Parties in the Action or in any other action or
23 any proceeding, in any state, federal or foreign court of law or equity, arbitration tribunal,
24 administrative forum or other forum of any kind. The foregoing provisions in this paragraph shall
25 not apply to any Person who would be a member of the Settlement Class and timely excludes
26 himself, herself or itself.

27 2.4 By operation of the Judgment or Alternative Judgment, as of the Effective Date, the
28 Released Defendant Parties, on behalf of themselves and each of their respective spouses, heirs,

1 executors, beneficiaries, trustees, administrators, predecessors, successors, and assigns, and any
2 Person(s) claiming now or in the future to be acting on behalf of any of them directly or indirectly:
3 (i) shall be deemed by this Settlement to have, and by operation of law and the Judgment shall have,
4 fully, finally, and forever waived, released, relinquished, discharged, and dismissed each and all of
5 the Released Defendants' Claims (including Unknown Claims) against each and every one of the
6 Released Plaintiff Parties; and (ii) shall forever be permanently barred, restrained, and enjoined from
7 commencing, instituting, asserting, prosecuting, maintaining, or otherwise pursuing, either directly
8 or in any other capacity, any and all of the Released Defendants' Claims (including Unknown
9 Claims) against any and all of the Released Plaintiff Parties in the Action or in any other action or
10 any proceeding, in any state, federal or foreign court of law or equity, arbitration tribunal,
11 administrative forum or other forum of any kind.

12 2.5 It is understood that Lead Plaintiff and the other Settlement Class Members or
13 Defendants, or any of them, may hereafter discover additional or different facts from those that he,
14 she, or it now knows or believes to be true with respect to the subject matter of the Released Claims
15 or Released Defendants' Claims, but Lead Plaintiff and Defendants shall, upon the Effective Date,
16 expressly fully, finally and forever discharge, settle and release any and all Released Defendants'
17 Claims, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and
18 by operation of law and of the Judgment shall have, expressly fully, finally, and forever discharged,
19 settled and released any and all Released Claims. Lead Plaintiff and Defendants acknowledge, and
20 the Settlement Class Members by operation of law and of the Judgment shall be deemed to have
21 acknowledged, that the foregoing waiver of Released Claims and Released Defendants' Claims that
22 are Unknown Claims (and the inclusion of "Unknown Claims" in the definition of Released Claims
23 and Released Defendants' Claims) was separately bargained for and is a material element of the
24 Settlement.

25 **3. The Settlement Consideration**

26 3.1 In full settlement of the claims asserted in the Action against Defendants and in
27 consideration of the releases specified in ¶¶2.3 and 2.4, above, all of which the Parties agree are
28 good and valuable consideration, LeapFrog shall pay or cause to be paid the Settlement Amount into

1 the Escrow Account within fifteen (15) business days after both: (i) entry of the Preliminary
2 Approval Order; and (ii) Lead Counsel provides to Defendants' Counsel information necessary to
3 effectuate a transfer of funds to the Escrow Account, including, but not limited to, wire transfer
4 instructions, payment address, and a complete and executed Form W-9 for the Settlement Fund that
5 reflects a valid tax identification number. If the Settlement Amount is not timely paid, the unpaid
6 balance shall earn interest at the rate of 8% per annum until paid.

7 3.2 With the sole exceptions of LeapFrog's obligation to secure payment of the
8 Settlement Amount into the Escrow Account as provided for in ¶3.1 and LeapFrog's obligation
9 pursuant to ¶8.3, Defendants and Defendants' Counsel shall have no responsibility for, interest in, or
10 liability or obligation whatsoever, to anyone, with respect to the Settlement Fund, the Net Settlement
11 Fund, the Escrow Account, the Claims Administrator, the Claims Administrator's actions, any
12 transaction executed or approved by the Escrow Agent, the maintenance, administration, investment
13 or distribution of the Settlement Fund or the Net Settlement Fund, the establishment or
14 administration of the Plan of Allocation, the determination, administration or calculation of claims,
15 the payment or withholding of Taxes, expenses, and/or costs incurred in connection with the taxation
16 of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of
17 any federal, state, or local returns, the administration of the Settlement, or any losses incurred in
18 connection with such matters. The Released Defendant Parties shall have no further or other liability
19 or obligations to Lead Plaintiff, Lead Counsel, or any Settlement Class Member with respect to the
20 Released Claims, except as expressly stated herein. Notwithstanding anything herein to the contrary,
21 the Escrow Agent shall be obligated to withhold from distribution to Authorized Claimants all funds
22 necessary to pay all Notice and Administration Expenses, Taxes, and all other fees, costs and
23 expenses associated with administration of the Settlement and the Settlement Fund; neither the
24 Defendants nor their counsel nor any other Released Defendant Party is responsible therefor, nor
25 shall they have any liability whatsoever with respect thereto, above and beyond the Defendants'
26 obligation to pay the Settlement Amount into the Escrow Account as set forth above. The
27 Settlement Fund shall indemnify and hold harmless all Released Defendant Parties for any costs of
28

1 administration of the Settlement and the Settlement Fund of any kind whatsoever (including, without
2 limitation, costs associated with any such indemnification).

3 3.3 Other than the obligation of Defendants to cause the payment of the Settlement
4 Amount pursuant to ¶3.1, Defendants shall have no obligation to make any other payments into the
5 Escrow Account or to any Settlement Class Member pursuant to this Stipulation.

6 **4. Use and Tax Treatment of Settlement Fund**

7 4.1 Prior to any distribution of the Net Settlement Fund, the Settlement Fund shall be
8 used: (i) to pay any Taxes; (ii) to pay Notice and Administration Expenses; (iii) to pay any
9 attorneys' fees and expenses awarded by the Court; (iv) to pay any costs and expenses allowed by
10 the PSLRA and awarded to Lead Plaintiff by the Court; and (v) to pay any other fees and expenses
11 awarded by the Court.

12 4.2 The Net Settlement Fund shall be distributed to Authorized Claimants as provided in
13 ¶¶7.1-7.13 hereof. The Net Settlement Fund shall remain in the Escrow Account prior to the
14 Effective Date. All funds held in the Escrow Account, and all earnings thereon, shall be deemed to
15 be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time
16 as the funds shall have been disbursed or returned, pursuant to the terms of this Stipulation, and/or
17 further order of the Court. The Escrow Agent shall invest funds in the Escrow Account in
18 instruments backed by the full faith and credit of the United States Government (or a mutual fund
19 invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except
20 that any residual cash balances up to the amount that is insured by the Federal Deposit Insurance
21 Corporation ("FDIC") may be deposited into any account that is fully insured by the FDIC in
22 amounts that are up to the limit of FDIC insurance. In the event that the yield on United States
23 Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds
24 held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or
25 backed by the full faith and credit of the United States.

26 4.3 The Escrow Agent will bear all responsibility for managing the Settlement Fund for
27 the benefit of the Settlement Class. Defendants and Defendants' Counsel shall have no
28 responsibility for, interest in, or liability whatsoever with respect to investment decisions executed

1 by the Escrow Agent. All risks related to the investment of the Settlement Fund shall be borne
2 solely by the Settlement Fund.

3 4.4 After the Settlement Amount has been paid into the Escrow Account, the Parties
4 agree to treat the Settlement Fund as a “qualified settlement fund” within the meaning of Treas. Reg.
5 §1.468B-1. In addition, Lead Counsel shall timely make, or cause to be made, such elections as
6 necessary or advisable to carry out the provisions of this ¶4.4, including the “relation-back election”
7 (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be
8 made in compliance with the procedures and requirements contained in such regulations. It shall be
9 the responsibility of Lead Counsel to timely and properly prepare and deliver, or cause to be
10 prepared and delivered, the necessary documentation for signature by all necessary parties, and
11 thereafter take all such actions as may be necessary or appropriate to cause the appropriate filing(s)
12 to occur. Consistent with the foregoing:

13 (a) For the purposes of Section 468B of the Internal Revenue Code of 1986, as
14 amended, and Treas. Reg. §1.468B promulgated thereunder, the “administrator” shall be Lead
15 Counsel or their successors, who shall timely and properly file, or cause to be filed, all federal, state,
16 or local tax returns and information returns (together, “Tax Returns”) necessary or advisable with
17 respect to the earnings on the funds deposited in the Escrow Account (including, without limitation,
18 the returns described in Treas. Reg. §1.468B-2(k)). Such Tax Returns (as well as the election
19 described above) shall be consistent with this subparagraph and in all events shall reflect that all
20 Taxes (including any estimated taxes, earnings, or penalties) on the income earned on the funds
21 deposited in the Escrow Account shall be paid out of such funds as provided in subparagraph (c) of
22 this ¶4.4.

23 (b) All Taxes shall be paid out of the Settlement Fund. In all events, Defendants
24 and Defendants’ Counsel shall have no liability or responsibility whatsoever for the Taxes or the
25 filing of any tax return or other document with the Internal Revenue Service or any other state or
26 local taxing authority. In the event any Taxes are owed by any of the Defendants on any earnings on
27 the funds on deposit in the Escrow Account, such amounts shall also be paid out of the Settlement
28

1 Fund. Any Taxes or Tax expenses owed on any earnings on the Settlement Amount prior to its
2 transfer to the Escrow Account shall be the sole responsibility of the entities that make the deposit.

3 (c) Taxes shall be treated as, and considered to be, a cost of administration of the
4 Settlement and shall be timely paid, or caused to be paid, by Lead Counsel out of the Settlement
5 Fund without prior order from the Court or approval by Defendants, and Lead Counsel shall be
6 obligated (notwithstanding anything herein to the contrary) to withhold from distribution to
7 Authorized Claimants any funds necessary to pay such amounts (as well as any amounts that may be
8 required to be withheld under Treas. Reg. §1.468B-2(l)(2)). The Parties agree to cooperate with
9 Lead Counsel, each other, and their tax attorneys and accountants to the extent reasonably necessary
10 to carry out the provisions of this ¶4.4.

11 4.5 This is not a claims-made settlement. As of the Effective Date, Defendants, and/or
12 any other Person funding the Settlement on a Defendant's behalf, shall not have any right to the
13 return of the Settlement Fund or any portion thereof for any reason.

14 **5. Attorneys' Fees and Expenses**

15 5.1 Lead Counsel may apply to the Court for an award from the Settlement Fund of
16 attorneys' fees and payment of litigation expenses incurred in prosecuting the Action, including any
17 earnings on such amounts at the same rate and for the same periods as earned by the Settlement
18 Fund. Lead Counsel reserve the right to make additional applications for fees and expenses incurred.

19 5.2 The amount of attorneys' fees and expenses awarded by the Court is within the sole
20 discretion of the Court. Any attorneys' fees and expenses awarded by the Court shall be paid from
21 the Settlement Fund to Lead Counsel within one (1) business day after entry of the Order awarding
22 such attorneys' fees and expenses, notwithstanding the existence of any timely filed objections
23 thereto or to the Settlement, or potential for appeal therefrom, or collateral attack on the awarded
24 fees and expenses, the Settlement, or any part thereof. Lead Counsel shall allocate any Court-
25 awarded attorneys' fees and expenses among Lead Plaintiff's counsel.

26 5.3 Any payment of attorneys' fees and expenses pursuant to ¶¶5.1-5.2 above shall be
27 subject to Lead Counsel's obligation to make refunds or repayments to the Settlement Fund of any
28 paid amounts, plus accrued earnings at the same net rate as is earned by the Settlement Fund, if the

1 Settlement is terminated pursuant to the terms of this Stipulation or fails to become effective for any
2 reason, or if, as a result of any appeal or further proceedings on remand or successful collateral
3 attack, the award of attorneys' fees and/or expenses is reduced or reversed by Final non-appealable
4 court order. Lead Counsel shall make the appropriate refund or repayment in full no later than
5 fifteen (15) business days after receiving notice of the termination of the Settlement pursuant to this
6 Stipulation, notice from a court of appropriate jurisdiction of the disapproval of the Settlement by
7 Final non-appealable court order, or notice of any reduction or reversal of the award of attorneys'
8 fees and/or expenses by Final non-appealable court order.

9 5.4 With the sole exception of Defendants' obligation to pay the Settlement Amount into
10 the Escrow Account as provided for in ¶3.1, Defendants shall have no responsibility for, and no
11 liability whatsoever with respect to, any payment whatsoever to Lead Plaintiff's counsel in the
12 Action that may occur at any time.

13 5.5 Defendants shall have no responsibility for, and no liability whatsoever with respect
14 to, any allocation of any attorneys' fees or expenses among Lead Plaintiff's counsel in the Action, or
15 to any other Person who may assert some claim thereto, or any fee or expense awards the Court may
16 make in the Action.

17 5.6 Defendants shall have no responsibility for, and no liability whatsoever with respect
18 to, any attorneys' fees, costs, or expenses incurred by or on behalf of Settlement Class Members,
19 whether or not paid from the Escrow Account. The Settlement Fund will be the sole source of
20 payment from Defendants for any award of attorneys' fees and expenses ordered by the Court.

21 5.7 The procedure for and the allowance or disallowance by the Court of any Fee and
22 Expense Application are not part of the Settlement set forth in this Stipulation, and are separate from
23 the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in
24 this Stipulation, and any order or proceeding relating to any Fee and Expense Application, including
25 an award of attorneys' fees or expenses in an amount less than the amount requested by Lead
26 Counsel, or any appeal from any order or part of any order relating thereto or reversal or
27 modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the
28 finality of the Judgment or Alternative Judgment approving the Stipulation and the Settlement set

1 forth herein. Lead Plaintiff and Lead Counsel may not cancel or terminate the Stipulation or the
2 Settlement in accordance with ¶11.1 or otherwise based on the Court's or any appellate court's
3 ruling with respect to fees and expenses in the Action.

4 **6. Administration Expenses**

5 6.1 Prior to the Effective Date, without further approval from Defendants or further order
6 of the Court, Lead Counsel may expend up to \$350,000 from the Settlement Fund to pay Notice and
7 Administration Expenses actually incurred. Taxes and fees related to the Escrow Account and
8 investment of the Settlement Fund may be paid as incurred, without further approval of Defendants
9 or further order of the Court. No other disbursements from the Escrow Account or the Settlement
10 Fund are to be made until the Judgment becomes Final, absent agreement of the Parties and approval
11 from the Court. After the Effective Date, without approval of Defendants or further order of the
12 Court, Notice and Administration Expenses may be paid as incurred.

13 **7. Distribution to Authorized Claimants**

14 7.1 The Claims Administrator, subject to such supervision and direction of Lead Counsel
15 and/or the Court as may be necessary or as circumstances may require, shall administer and calculate
16 the claims submitted by Settlement Class Members subject to the jurisdiction of the Court and shall
17 oversee distribution of the Net Settlement Fund to Authorized Claimants. Defendants and
18 Defendants' Counsel shall have no responsibility for, interest in, or liability whatsoever with respect
19 to the administration of the Settlement or the actions or decisions of the Claims Administrator, and
20 shall have no liability to the Settlement Class in connection with such administration.

21 7.2 The Claims Administrator shall determine each Authorized Claimant's *pro rata* share
22 of the Net Settlement Fund based upon each Authorized Claimant's recognized loss, as defined in
23 the Plan of Allocation included in the Notice, or in such other plan of allocation as the Court may
24 approve.

25 7.3 Defendants have no role in the development of the Plan of Allocation. The Plan of
26 Allocation is a matter separate and apart from the Settlement, and any decision by the Court
27 concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement.
28 The Plan of Allocation is not a necessary term of the Stipulation and it is not a condition of the

1 Stipulation that any particular plan of allocation be approved by the Court. The Plan of Allocation is
2 to be considered by the Court separately from its determination of the fairness, reasonableness, and
3 adequacy of the Settlement set forth in this Stipulation. Lead Plaintiff and Lead Counsel may not
4 cancel or terminate the Stipulation or the Settlement in accordance with ¶11.1 or otherwise based on
5 the Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of
6 allocation in the Action. Defendants and Defendants' Counsel shall have no responsibility or
7 liability for reviewing or challenging claims, the allocation of the Net Settlement Fund, or the
8 distribution of the Net Settlement Fund.

9 7.4 Upon the Effective Date and thereafter, and in accordance with the terms of the
10 Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may
11 be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to
12 Authorized Claimants.

13 7.5 Any Settlement Class Member who fails to timely submit a valid Proof of Claim
14 (substantially in the form of Exhibit A-2 hereto) will not be entitled to receive any of the proceeds
15 from the Net Settlement Fund, except as otherwise ordered by the Court, but will otherwise be bound
16 by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or
17 Alternative Judgment to be entered in the Action and all releases provided for herein, and will be
18 barred from bringing any action against the Released Defendant Parties concerning any of the
19 Released Claims.

20 7.6 Lead Counsel shall be responsible for supervising the administration of the Settlement
21 and disbursement of the Net Settlement Fund by the Claims Administrator. Lead Counsel shall have
22 the right, but not the obligation, to advise the Claims Administrator to waive what Lead Counsel
23 deem to be *de minimis* or formal or technical defects in any Proof of Claim submitted. Defendants
24 and Defendants' Counsel shall have no liability, obligation or responsibility for the administration of
25 the Settlement, the allocation of the Net Settlement Fund, or the reviewing or challenging of claims
26 of Settlement Class Members.

27 7.7 For purposes of determining the extent, if any, to which a claimant shall be entitled to
28 be treated as an Authorized Claimant, the following conditions shall apply:

1 (a) Each claimant shall be required to submit a Proof of Claim, substantially in
2 the form attached hereto as Exhibit A-2, supported by such documents as are designated therein,
3 including proof of the claimant's loss, or such other documents or proof as the Claims Administrator
4 or Lead Counsel, in their discretion, may deem acceptable;

5 (b) All Proofs of Claim must be submitted by the date set by the Court in the
6 Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Lead
7 Counsel in their discretion or by Order of the Court. Any Settlement Class Member who fails to
8 submit a Proof of Claim by such date shall be barred from receiving any distribution from the Net
9 Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court or the
10 discretion of Lead Counsel, late-filed Proofs of Claim are accepted), but shall in all other respects be
11 bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment
12 or Alternative Judgment and all releases provided for herein, and will be permanently barred and
13 enjoined from bringing any action, claim or other proceeding of any kind against any Released
14 Defendant Party. A Proof of Claim shall be deemed to be submitted when mailed, if received with a
15 postmark on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in
16 accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to
17 have been submitted when actually received by the Claims Administrator. Notwithstanding the
18 foregoing, Lead Counsel shall have the discretion (but not the obligation) to accept for processing
19 late-submitted claims so long as the distribution of the Net Settlement Fund to Authorized Claimants
20 is not materially delayed. Lead Counsel shall have no liability for their discretion in accepting late
21 claims;

22 (c) Each Proof of Claim shall be submitted to and reviewed by the Claims
23 Administrator, under such supervision of Lead Counsel as necessary, who shall determine in
24 accordance with this Stipulation the extent, if any, to which each claim shall be allowed;

25 (d) Proofs of Claim that do not meet the submission requirements may be
26 rejected. Prior to rejecting a Proof of Claim in whole or in part, the Claims Administrator shall
27 communicate with the claimant in writing to give the claimant the chance to remedy any curable
28 deficiencies in the Proof of Claim submitted. The Claims Administrator, under such supervision of

1 Lead Counsel, as necessary, shall notify, in a timely fashion and in writing, all claimants whose
2 claims the Claims Administrator proposes to reject in whole or in part for curable deficiencies,
3 setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to
4 be rejected has the right to a review by the Court if the claimant so desires and complies with the
5 requirements of subparagraph (e) below; and

6 (e) If any claimant whose timely claim has been rejected in whole or in part for
7 curable deficiency desires to contest such rejection, the claimant must, within twenty (20) calendar
8 days after the date of mailing of the notice required in subparagraph (d) above, or a lesser period of
9 time if the claim was untimely, serve upon the Claims Administrator a notice and statement of
10 reasons indicating the claimant's grounds for contesting the rejection along with any supporting
11 documentation, and requesting a review thereof by the Court.

12 7.8 Each claimant who submits a Proof of Claim shall be deemed to have submitted to the
13 jurisdiction of the Court with respect to the claimant's claim, including, but not limited to, all
14 releases provided for herein and in the Judgment or Alternative Judgment, and the claim will be
15 subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such
16 investigation and discovery shall be limited to the claimant's status as a Settlement Class Member
17 and the validity and amount of the claimant's claim. In connection with processing the Proofs of
18 Claim, no discovery shall be allowed on the merits of the Action or the Settlement.

19 7.9 Payment pursuant to the Stipulation and Plan of Allocation shall be deemed final and
20 conclusive against any and all Settlement Class Members. All Settlement Class Members whose
21 claims are not approved shall be barred from participating in distributions from the Net Settlement
22 Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement,
23 including the terms of the Judgment or Alternative Judgment to be entered in the Action and the
24 releases provided for herein and therein, and will be barred from bringing any action against the
25 Released Defendant Parties concerning the Released Claims.

26 7.10 If there is any balance remaining in the Net Settlement Fund (whether by reason of
27 tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial
28 distribution of the Net Settlement Fund, Lead Counsel shall, if feasible and economical, redistribute

1 such balance among Authorized Claimants who have cashed their checks in an equitable and
2 economic fashion. These redistributions shall be repeated until it is no longer economically feasible
3 to distribute the balance to Settlement Class Members. Any balance that still remains in the Net
4 Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after
5 payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, shall be
6 donated in equal parts to Bay Area Legal Aid and the Consumer Federation of America.

7 7.11 All proceedings with respect to the administration, processing and determination of
8 claims described by this Stipulation and the determination of all controversies relating thereto,
9 including disputed questions of law and fact with respect to the validity of claims, shall be subject to
10 the jurisdiction of the Court, but shall not in any event delay or affect the finality of the Judgment or
11 Alternative Judgment.

12 7.12 No Person shall have any claim of any kind against the Released Defendant Parties or
13 Defendants' Counsel with respect to the matters set forth in this section or any of its subsections, or
14 otherwise related in any way to the administration of the Settlement, including, without limitation,
15 the processing of claims and distributions.

16 7.13 No Person shall have any claim against Lead Plaintiff, Lead Counsel, or the Claims
17 Administrator, or other Person designated by Lead Counsel, based on the distributions made
18 substantially in accordance with the Stipulation and the Settlement contained herein, the Plan of
19 Allocation, or further order(s) of the Court.

20 **8. Terms of the Preliminary Approval Order**

21 8.1 Concurrently with their application for preliminary approval by the Court of the
22 Settlement contemplated by this Stipulation and promptly upon execution of this Stipulation, and no
23 later than ten (10) business days after the execution of the Stipulation, Lead Counsel shall apply to
24 the Court for entry of the Preliminary Approval Order, which shall be substantially in the form
25 annexed hereto as Exhibit A. The Preliminary Approval Order will, *inter alia*, preliminarily approve
26 the Settlement, set the date for the Settlement Hearing, approve the form of notice, and prescribe the
27 method for giving notice of the Settlement to the Settlement Class.

28

1 8.2 Any Settlement Class Member who fails to comply with any of the provisions of ¶7.7
2 of this Stipulation shall waive and forfeit any and all rights he, she, or it may otherwise have to
3 appear separately at the Settlement Hearing and/or to object to the Settlement or to this Stipulation,
4 and shall be bound by all the terms of the Settlement and this Stipulation, and by all proceedings,
5 orders, and judgments in the Action.

6 8.3 Within ten (10) business days of entry of the Preliminary Approval Order, LeapFrog
7 shall provide to Lead Counsel, at no cost to Lead Counsel, Lead Plaintiff or the Settlement Class, the
8 names and addresses of Persons who purchased or acquired the common stock of LeapFrog during
9 the Class Period, as listed on LeapFrog's shareholder transfer records, in electronic searchable form,
10 such as Excel.

11 **9. Terms of the Judgment**

12 9.1 If the Settlement contemplated by this Stipulation is approved by the Court, counsel
13 for the Parties shall request that the Court enter a Judgment substantially in the form annexed hereto
14 as Exhibit B.

15 **10. Effective Date of Settlement**

16 10.1 The Effective Date of this Settlement shall be the first business day on which all of
17 the following shall have occurred or been waived:

18 (a) execution of this Stipulation, and such other documents as may be required to
19 obtain final Court approval of this Stipulation in a form satisfactory to the Parties;

20 (b) entry of the Preliminary Approval Order, which shall be in all material
21 respects substantially in the form set forth in Exhibit A annexed hereto;

22 (c) payment of the Settlement Amount into the Escrow Account pursuant to ¶3.1;

23 (d) approval by the Court of the Settlement, following notice to the Settlement
24 Class and the Settlement Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;

25 (e) Defendants have not exercised their option to terminate the Settlement
26 pursuant to the terms of this Stipulation or the Supplemental Agreement described in ¶11.3 below;

27 and

28

1 (f) a Judgment, which shall be in all material respects substantially in the form set
2 forth in Exhibit B annexed hereto, will have been entered by the Court and will have become Final;
3 or in the event that an Alternative Judgment will have been entered, the Alternative Judgment will
4 have become Final.

5 **11. Waiver or Termination**

6 11.1 Defendants and Lead Plaintiff shall have the right to terminate the Settlement and the
7 Stipulation by providing written notice of their election to do so (“Termination Notice”), through
8 counsel, to all other Parties hereto within fourteen (14) calendar days of: (i) the Court’s Final refusal
9 to enter the Preliminary Approval Order in any material respect; (ii) the Court’s Final refusal to
10 approve this Stipulation or any material part of it; (iii) the Court’s Final refusal to enter the Judgment
11 in any material respect or an Alternative Judgment; or (iv) the date upon which the Judgment or
12 Alternative Judgment is modified or reversed in any material respect by a Final order of the Court,
13 the United States Court of Appeals, or the Supreme Court of the United States. For the avoidance of
14 doubt, this Settlement is expressly not conditioned on the Court’s approval of the Plan of Allocation,
15 nor on the Court’s approval of Lead Counsel’s application for attorneys’ fees or expenses, nor on the
16 Court’s approval of any award of expenses to Lead Plaintiff, and Lead Plaintiff shall not have the
17 right to terminate the Settlement due to any decision, ruling, or order respecting the Fee and Expense
18 Application or any plan of allocation, or any award or failure to award expenses to Lead Plaintiff.

19 11.2 In addition to the foregoing, Defendants shall also have the right to withdraw from the
20 Settlement in the event the Termination Threshold (defined below) has been reached.

21 11.3 Simultaneously herewith, the Parties, through their respective counsel, are executing a
22 confidential Supplemental Agreement Regarding Requests for Exclusion (“Supplemental
23 Agreement”). The Supplemental Agreement sets forth certain conditions under which LeapFrog
24 shall have the option to terminate the Settlement and render the Stipulation null and void in the event
25 that requests for exclusion from the Settlement Class exceed certain agreed-upon criteria (the
26 “Termination Threshold”). The Parties agree to maintain the confidentiality of the Supplemental
27 Agreement, which shall not be filed with the Court unless a dispute arises as to its terms, or as
28 otherwise ordered by the Court, nor shall the Supplemental Agreement otherwise be disclosed unless

1 ordered by the Court. If submission of the Supplemental Agreement is required for resolution of a
2 dispute or is otherwise ordered by the Court, the Parties will use their best reasonable efforts to have
3 the Supplemental Agreement submitted to the Court *in camera* or under seal. In the event of a
4 termination of the Settlement pursuant to the Supplemental Agreement, the Stipulation shall become
5 null and void and of no further force and effect, with the exception of the provisions of ¶¶6-8 which
6 shall continue to apply.

7 11.4 The Preliminary Approval Order, attached hereto as Exhibit A, shall provide that
8 requests for exclusion shall be received no later than twenty-one (21) calendar days prior to the
9 Settlement Hearing. Upon receiving any request for exclusion pursuant to the Notice, the Claims
10 Administrator shall within five (5) business days of receipt, and no later than fifteen (15) calendar
11 days prior to the Settlement Hearing, notify Lead Counsel and Defendants' Counsel of such request
12 for exclusion and provide copies of such request for exclusion and any documentation accompanying
13 it by facsimile or electronic mail.

14 11.5 In addition to all of the rights and remedies that Lead Plaintiff has under the terms of
15 this Stipulation, Lead Plaintiff shall also have the right to terminate the Settlement in the event that
16 the Settlement Amount has not been paid in the time period provided for in ¶3.1 above, by providing
17 written notice of the election to terminate to all other Parties' counsel and, thereafter, there is a
18 failure to pay the Settlement Amount within fourteen (14) calendar days of such written notice.

19 11.6 If, before the Settlement becomes Final, any Defendant files for protection under the
20 Bankruptcy Code or any similar law or a trustee, receiver, conservator, or other fiduciary is
21 appointed under Bankruptcy, or any similar law, and in the event of the entry of a final order of a
22 court of competent jurisdiction determining the transfer of money or any portion thereof to the
23 Settlement Fund by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent
24 transfer or similar transaction and any portion thereof is required to be returned, and such amount is
25 not promptly redeposited into the Settlement Fund by others, then, at the election of Lead Plaintiff,
26 the Parties shall jointly move the Court to vacate and set aside the release given and the Judgment or
27 Alternative Judgment entered in favor of that Defendant and that Defendant and Lead Plaintiff and
28 the members of the Settlement Class shall be restored to their litigation positions immediately prior

1 to November 29, 2017. All releases and the Judgment or Alternative Judgment as to other
2 Defendants shall remain unaffected.

3 11.7 Defendants each warrant, as to themselves and the payments made on their respective
4 behalves, that, at the time of such payment, each will not be insolvent, nor will payment render each
5 insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code,
6 including Sections 101 and 547 thereof.

7 11.8 If an option to withdraw from and terminate this Stipulation and Settlement arises
8 under any of ¶¶11.1, 11.3 or 11.5 above: (i) neither Defendants nor Lead Plaintiff (as the case may
9 be) will be required for any reason or under any circumstance to exercise that option; and (ii) any
10 exercise of that option shall be made in good faith, but in the sole and unfettered discretion of
11 Defendants or Lead Plaintiff, as applicable.

12 11.9 With the exception of the provisions of ¶¶2.2, 5.3, 11.3, 11.10, 12, 13.11 and 13.18,
13 which shall continue to apply, in the event the Settlement is terminated as set forth herein or cannot
14 become effective for any reason, then the Settlement shall be without prejudice, and none of its
15 terms shall be effective or enforceable except as specifically provided herein; the Parties shall be
16 deemed to have reverted to their respective litigation positions in the Action immediately prior to
17 November 29, 2017; and, except as specifically provided herein, the Parties shall proceed in all
18 respects as if this Stipulation and any related order had not been entered and shall work together to
19 arrive at a mutually agreeable schedule for resuming litigation of the Action in light of such
20 developments. In such event, this Stipulation, and any aspect of the discussions or negotiations
21 leading to this Stipulation shall not be admissible in this Action and shall not be used against or to
22 the prejudice of Defendants or against or to the prejudice of Lead Plaintiff, in any court filing,
23 deposition, at trial, or otherwise.

24 11.10 In the event the Settlement is terminated or fails to become effective for any reason,
25 any portion of the Settlement Amount previously deposited into the Escrow Account, together with
26 any earnings thereon, less any Taxes paid or due, less Notice and Administration Expenses actually
27 incurred and paid or payable from the Settlement Amount, shall be returned to the Person(s) that
28 made the deposit(s) within fifteen (15) business days after written notification of such event in

1 accordance with instructions provided by Defendants' Counsel to Lead Counsel. At the request of
2 Defendants' Counsel, the Escrow Agent or their designees shall apply for any tax refund owed on
3 the amounts in the Escrow Account and pay the proceeds, after any deduction of any fees or
4 expenses incurred in connection with such application(s), of such refund to the Person(s) that made
5 the deposits or as otherwise directed.

6 **12. No Admission**

7 12.1 This Settlement compromises claims that are contested and, as such, shall not be
8 deemed an admission by any Party as to the merits of any claim or defense. Lead Plaintiff
9 acknowledges that the Defendants have denied and continue to deny each and all claims of alleged
10 wrongdoing, while the Defendants acknowledge that Lead Plaintiff continues to maintain the validity
11 of its lawsuit and the merits of its claims. The Parties acknowledge that Defendants make no
12 admission of liability or wrongdoing.

13 12.2 Except as set forth in ¶12.3 below, this Stipulation, whether or not consummated, and
14 whether or not approved by the Court, and any and all discussions, negotiations, drafts, agreements,
15 and proceedings made or taken pursuant to, in connection with, or relating to the Stipulation, the
16 Settlement, and any matter arising in connection with settlement discussions or negotiations,
17 proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties
18 or their respective counsel, and in particular:

19 (a) do not constitute, and shall not be offered or received against or to the
20 prejudice of the Released Defendant Parties as evidence of, or construed as, or deemed to be
21 evidence of any presumption, concession, or admission by any of the Released Defendant Parties
22 with respect to the truth of any allegation by Lead Plaintiff or the Settlement Class, or the validity of
23 any claim that has been or could have been asserted in the Action or in any litigation, including, but
24 not limited to, the Released Claims, or of any deficiency of any defense that has been or could have
25 been asserted in the Action, or of any liability, damages, negligence, fault or wrongdoing of the
26 Released Defendant Parties or any person or entity whatsoever;

27 (b) do not constitute, and shall not be offered or received against or to the
28 prejudice of any of the Defendants as evidence of a presumption, concession, or admission of any

1 fault, misrepresentation, or omission with respect to any statement or written document approved or
2 made by Defendants, or against or to the prejudice of Lead Plaintiff, or any other member of the
3 Settlement Class as evidence of any infirmity in the claims of Lead Plaintiff, or the other members of
4 the Settlement Class;

5 (c) do not constitute, and shall not be offered or received against or to the
6 prejudice of Defendants, Lead Plaintiff, any other member of the Settlement Class, or their
7 respective counsel, as evidence of, or construed as evidence of, any presumption, concession, or
8 admission with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in
9 any way referred to for any other reason against or to the prejudice of any of the Defendants, Lead
10 Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil,
11 criminal, or administrative action or proceeding, other than such proceedings as may be necessary to
12 effectuate the provisions of this Stipulation;

13 (d) do not constitute, and shall not be construed against any of the Defendants,
14 Lead Plaintiff, or any other member of the Settlement Class, as an admission or concession that the
15 consideration to be given hereunder represents the amount that could be or would have been
16 recovered after trial; and

17 (e) do not constitute, and shall not be construed as or received in evidence as an
18 admission, concession, or presumption against Lead Plaintiff, or any other member of the Settlement
19 Class that any of their claims are without merit or infirm or that damages recoverable under the SAC
20 would not have exceeded the Settlement Amount.

21 12.3 Notwithstanding ¶12.2 above, the Parties, and their respective counsel, may file this
22 Stipulation and/or the Judgment or Alternative Judgment in any action that may be brought against
23 them in order to support a defense or counterclaim based on principles of *res judicata*, collateral
24 estoppel, release, statute of limitations, statute of repose, good-faith settlement, judgment bar or
25 reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim,
26 or to effectuate any liability protection granted them under any applicable insurance policy. The
27 Parties may file this Stipulation and/or the Judgment or Alternative Judgment in any action that may
28 be brought to enforce the terms of this Stipulation and/or the Judgment or Alternative Judgment. All

1 Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the
2 Settlement.

3 **13. Miscellaneous Provisions**

4 13.1 All of the exhibits to the Stipulation and the Supplemental Agreement are material
5 and integral parts hereof and are fully incorporated herein by this reference as though fully set forth
6 herein. Notwithstanding the foregoing, in the event of a conflict or inconsistency between the terms
7 of this Stipulation and the terms of any Exhibit attached hereto, the terms of this Stipulation shall
8 control.

9 13.2 The Parties intend the Settlement to be the full, final, and complete resolution of all
10 claims asserted or that could have been asserted by the Parties with respect to the Released Claims
11 and Released Defendants' Claims. Accordingly, the Parties agree not to assert in any forum that the
12 Action was brought, prosecuted, or defended in bad faith or without a reasonable basis. The Parties
13 shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to
14 the prosecution, defense, or settlement of this Action. Moreover, none of the Parties shall seek any
15 cost-shifting claims against the others. The Judgment shall contain a finding that the Parties and
16 their counsel at all times complied with Rule 11 of the Federal Rules of Civil Procedure. The Parties
17 agree that the Settlement Amount paid and the other terms of the Settlement were negotiated at
18 arm's-length and in good faith by the Parties and their respective counsel, including during two
19 mediation sessions, as described above, and reflect a settlement that was reached voluntarily based
20 upon adequate information and after consultation with experienced legal counsel.

21 13.3 This Stipulation, along with its exhibits and the Supplemental Agreement, may not be
22 modified or amended, nor may any of its provisions be waived, except by a writing signed by
23 counsel for the Parties hereto, or their successors, that are materially and adversely affected by the
24 modification, amendment, or waiver.

25 13.4 Neither the Settlement Class Members nor the Defendants shall be bound by this
26 Stipulation if the Court modifies material terms hereof, provided, however, that it shall not be a basis
27 to terminate the Settlement if the Court modifies any proposed Plan of Allocation or criteria for
28 allocation of the Net Settlement Fund amongst Settlement Class Members, or the Plan of Allocation

1 is modified on appeal. Nor shall it be a basis to terminate the Settlement or this Stipulation if the
2 Court denies, in whole or in part, Lead Counsel's application for attorneys' fees and expenses or any
3 application by Lead Plaintiff for an award of costs and expenses.

4 13.5 Defendants shall be responsible for and pay for, at no cost to the Settlement Class,
5 timely service of any notice that might be required pursuant to the Class Action Fairness Act, 28
6 U.S.C. §1715.

7 13.6 The headings herein are used for the purpose of convenience only and are not meant
8 to have legal effect.

9 13.7 The administration and consummation of the Settlement as embodied in this
10 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
11 purpose of, among other things, entering orders providing for awards of attorneys' fees and any
12 expenses, and implementing and enforcing the terms of this Stipulation, including, without
13 limitation, the releases provided for herein.

14 13.8 The waiver by one Party of any breach of this Stipulation by any other Party shall not
15 be deemed a waiver of any other prior or subsequent breach of this Stipulation or a waiver by any
16 other Party of any breach of this Stipulation or a waiver by any other Party of any breach of this
17 Stipulation.

18 13.9 This Stipulation, its exhibits, and the Supplemental Agreement constitute the entire
19 agreement among the Parties concerning the Settlement, and no representation, warranty, or
20 inducement has been made by any Party concerning this Stipulation and its exhibits other than those
21 contained and memorialized in such documents.

22 13.10 The Parties agree that, in entering into this Settlement, they have relied solely upon
23 their own knowledge and investigation, and not upon any promise, representation, warranty, or other
24 statement by any other Party, not expressly contained in this Stipulation or any of the incorporated
25 Settlement documents. It is understood by the Parties that, except for the matters expressly
26 represented herein, the facts or law with respect to which this Stipulation is entered into may turn out
27 to be other than or different from the facts and law now known to each Party or believed by such
28 Party to be true; each Party therefore expressly assumes the risk of the facts or law turning out to be

1 so different, and agrees that this Stipulation shall be in all respects effective and not subject to
2 termination by reason of any such different facts or law.

3 13.11 Nothing in the Stipulation, or the negotiations relating thereto, is intended to or shall
4 be deemed to constitute a waiver of any applicable privilege or immunity, including, without
5 limitation, attorney-client privilege, joint defense privilege, or work product protection.

6 13.12 Without further order of the Court, the Parties may agree to reasonable extensions of
7 time to carry out any of the provisions of this Stipulation, unless such extensions conflict with an
8 Order of the Court, in which case the Parties shall move the Court to amend any such order.

9 13.13 Pending preliminary and final approval of the Settlement by the Court, as set forth in
10 this Stipulation and its attached Exhibits, all proceedings in this Action, other than those related to
11 the Settlement, shall be stayed.

12 13.14 All designations and agreements made, or orders entered during the course of the
13 Action relating to the confidentiality of documents or information shall survive this Stipulation.

14 13.15 This Stipulation may be executed in one or more counterparts. All executed
15 counterparts and each of them shall be deemed to be one and the same instrument. Signatures sent
16 by facsimile or via e-mail in pdf format shall be deemed originals.

17 13.16 This Stipulation shall be binding when signed, but the Settlement shall be effective
18 upon the entry of the Judgment or Alternative Judgment and the payment in full of the Settlement
19 Amount, subject only to the condition that the Effective Date will have occurred.

20 13.17 This Stipulation shall be binding upon, and inure to the benefit of, the successors and
21 assigns of the Parties, including any corporation or other entity into or with which any Party has
22 merged, consolidated, or reorganized, or does merge, consolidate, or reorganize.

23 13.18 Whether or not this Stipulation is approved by the Court and whether or not this
24 Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their
25 best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents
26 signed, and proceedings in connection with this Stipulation confidential.

27 13.19 The construction, interpretation, operation, effect, and validity of this Stipulation, and
28 all documents necessary to effectuate it, shall be governed by the laws of the State of California

1 without regard to that State's choice of law or conflicts of laws principles, except to the extent that
2 federal law requires that federal law govern. Any dispute relating to this Stipulation shall be brought
3 exclusively in this Court, and each of the Parties agrees not to contest subject matter jurisdiction or
4 personal jurisdiction, or assert that such forum is inconvenient for any such dispute brought in this
5 Court.

6 13.20 This Stipulation shall not be construed more strictly against one Party than another
7 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of
8 the Parties, it being recognized that it is the result of arm's-length negotiations among the Parties,
9 and all Parties have contributed substantially and materially to the preparation of this Stipulation.

10 13.21 All counsel and any other person executing this Stipulation and any of the exhibits
11 hereto, or any related Settlement document, warrant and represent that they have the full authority to
12 do so, and that they have the authority to take appropriate action required or permitted to be taken
13 pursuant to the Stipulation to effectuate its terms.

14 13.22 Lead Counsel, on behalf of the Settlement Class, are expressly authorized by Lead
15 Plaintiff to take all appropriate action required or permitted to be taken by the Settlement Class
16 pursuant to this Stipulation to effectuate its terms and also are expressly authorized to enter into any
17 modifications or amendments to this Stipulation on behalf of the Settlement Class which Lead
18 Counsel deem appropriate.

19 13.23 By entering into this Stipulation, Lead Plaintiff represents and warrants that it has not
20 assigned, hypothecated, conveyed, transferred or otherwise granted or given any interest in the
21 Released Claims to any other Person, and the Defendants represent and warrant that they have not
22 assigned, hypothecated, conveyed, transferred or otherwise granted or given any interest in the
23 Released Defendants' Claims to any other Person.

24 13.24 The Parties and their respective counsel agree to cooperate fully with one another in
25 promptly applying for preliminary approval by the Court of the Settlement and for the scheduling of
26 a hearing for consideration of Final approval of the Settlement, the Plan of Allocation, and Lead
27 Counsel's Fee and Expense Application, and to agree promptly upon and execute all such other
28

1 documentation as reasonably may be required to obtain Final approval by the Court of the
2 Settlement.

3 13.25 No opinion or advice concerning the tax consequences of the Settlement to any
4 Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any
5 representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class
6 Member’s tax obligations, and the determination thereof, are the sole responsibility of the Settlement
7 Class Member, and it is understood that the tax consequences may vary depending on the particular
8 circumstances of each individual Settlement Class Member.

9 13.26 All dollar amounts in this Stipulation are in U.S. dollars.

10 13.27 Except as otherwise provided herein, each Party shall bear its own costs.

11 13.28 If any Party is required to give notice to any other Party under this Stipulation, such
12 notice shall be in writing and shall be deemed to have been duly given upon receipt of hand-delivery,
13 overnight courier, email or facsimile transmission with confirmation of receipt. Notice shall be
14 provided as follows:

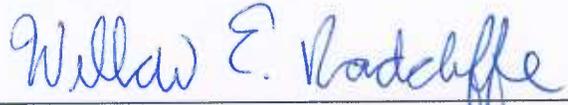
<p>15 If to Lead Counsel:</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>ROBBINS GELLER RUDMAN & DOWD LLP Shawn A. Williams Willow E. Radcliffe Matthew S. Melamed Post Montgomery Center One Montgomery Street, Suite 1800 San Francisco, CA 94104 Telephone: (415) 288-4545 Facsimile: (415) 288-4534 Email: willowr@rgrdlaw.com</p> <p>MOTLEY RICE LLC James M. Hughes William S. Norton Christopher F. Moriarty 28 Bridgeside Blvd. Mount Pleasant, SC 29464 Telephone: (843) 216-9000 Facsimile: (843) 216-9450 Email: jhughes@motleyrice.com</p>
---	--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If to Defendants' Counsel:	MORRISON & FOERSTER LLP Jordan Eth Mark R.S. Foster Ryan M. Keats 425 Market Street San Francisco, CA 94105-2482 Telephone: (415) 268-7000 Facsimile: (415) 268-7522 Email: mfooster@mofo.com
----------------------------	--

IN WITNESS WHEREOF, the Parties have caused this Stipulation to be executed, by their
duly authorized attorneys, as of February 22, 2018.

**ROBBINS GELLER RUDMAN
& DOWD LLP
SHAWN A. WILLIAMS
WILLOW E. RADCLIFFE
MATTHEW S. MELAMED**



WILLOW E. RADCLIFFE

Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)

**ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MOTLEY RICE LLC
JAMES M. HUGHES
WILLIAM S. NORTON
CHRISTOPHER F. MORIARTY



JAMES M. HUGHES

28 Bridgeside Blvd.
Mount Pleasant, SC 29464
Telephone: 843/216-9000
843/216-9450 (fax)

Co-Lead Counsel for Plaintiffs

MORRISON & FOERSTER LLP
JORDAN ETH
MARK R.S. FOSTER
RYAN M. KEATS



MARK R.S. FOSTER

2/22/18

425 Market Street
San Francisco, CA 94105-2482
Telephone: 415/268-7000
415/268-7522 (fax)

Counsel for Defendants

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re LEAPFROG ENTERPRISES, INC.
SECURITIES LITIGATION

) Master File No. 3:15-cv-00347-EMC

) CLASS ACTION

This Document Relates To:

ALL ACTIONS.

) [PROPOSED] ORDER GRANTING
) PRELIMINARY APPROVAL OF CLASS
) ACTION SETTLEMENT, APPROVING
) FORM AND MANNER OF NOTICE, AND
) SETTING DATE FOR HEARING ON
) FINAL APPROVAL OF SETTLEMENT

EXHIBIT A

1 On February 22, 2018, Lead Plaintiff KBC Asset Management NV (“Lead Plaintiff” or
2 “KBC”), on behalf of itself and the proposed Settlement Class (defined below), on the one hand, and
3 LeapFrog Enterprises, Inc. (“LeapFrog” or the “Company”), John Barbour and Raymond L. Arthur
4 (the “Individual Defendants” and with LeapFrog, the “Defendants”), on the other hand, entered into
5 a Stipulation of Settlement (the “Stipulation”) in the Action, which is subject to review under Rule
6 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth
7 the terms and conditions of the proposed Settlement of the claims alleged in KBC’s Second
8 Amended Consolidated Class Action Complaint for Violation of the Securities Laws (ECF No. 97)
9 on the merits and with prejudice (the “Settlement”); and

10 WHEREAS, the Court has reviewed and considered the Stipulation and the accompanying
11 exhibits to determine, among other things, whether the Settlement is sufficiently fair, reasonable, and
12 adequate to warrant the issuance of notice of the proposed Settlement to the Settlement Class; and

13 WHEREAS, the Parties to the Stipulation have consented to the entry of this Order; and

14 WHEREAS, all capitalized terms used in this Order that are not otherwise defined herein
15 have the meanings defined in the Stipulation;

16 NOW, THEREFORE, IT IS HEREBY ORDERED, this _____ day of _____,
17 2018 that:

18 1. This Court has jurisdiction over the subject matter of this Action and over all parties
19 to this Action, including Settlement Class Members.

20 2. ***Preliminary Findings Concerning the Proposed Settlement:*** The Court has
21 reviewed the Stipulation and preliminarily finds the Settlement set forth therein to: (i) be fair,
22 reasonable and adequate, subject to further consideration at the Settlement Hearing described below;
23 (ii) be the result of serious, extensive arm’s-length and non-collusive negotiations; (iii) fall within a
24 range of reasonableness warranting final approval; (iv) have no obvious deficiencies; (v) not
25 improperly grant preferential treatment to the Lead Plaintiff or segments of the Settlement Class; and
26 (vi) warrant notice of the proposed Settlement to the Settlement Class Members and further
27 consideration of the Settlement at the fairness hearing described below.

28

1 3. **Settlement Class.** Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil
2 Procedure, the Court hereby certifies, for the purposes of the Settlement only, the Settlement Class
3 of: all Persons that purchased or acquired LeapFrog common stock between May 5, 2014 and June
4 11, 2015, inclusive (the “Class Period”). Excluded from the Settlement Class are: (i) Defendants;
5 (ii) members of the immediate families of the Individual Defendants; (iii) LeapFrog’s subsidiaries;
6 (iv) the officers and directors of LeapFrog during the Class Period; (v) any entity in which any
7 Defendant has a controlling interest; and (vi) the legal representatives, heirs, successors and assigns
8 of any such excluded person or entity. Also excluded from the Settlement Class will be any Person
9 who timely and validly seeks exclusion from the Settlement Class.

10 4. The Court finds and concludes that the prerequisites of class action certification under
11 Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedures have been satisfied for the
12 Settlement Class defined herein and for the purposes of the Settlement only, in that:

13 (a) the members of the Settlement Class are so numerous that joinder of all
14 Settlement Class Members is impracticable;

15 (b) there are questions of law and fact common to the Settlement Class Members;

16 (c) the claims of Lead Plaintiff are typical of the Settlement Class’s claims;

17 (d) Lead Plaintiff and Lead Counsel have fairly and adequately represented and
18 protected the interests of the Settlement Class;

19 (e) the questions of law and fact common to Settlement Class Members
20 predominate over any individual questions; and

21 (f) a class action is superior to other available methods for the fair and efficient
22 adjudication of the controversy.

23 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of
24 the Settlement only, Lead Plaintiff is certified as Class Representative for the Settlement Class. The
25 law firms of Motley Rice LLC and Robbins Geller Rudman & Dowd LLP are appointed Class
26 Counsel for the Settlement Class.

27 6. If the Stipulation is terminated or is not consummated for any reason, the foregoing
28 certification of the Settlement Class shall be void and of no further effect, and the Parties to the

1 Stipulation shall be returned to the status each occupied before entry of this Order and before
2 execution of the Stipulation without prejudice to any legal argument that any of the Parties to the
3 Stipulation might have asserted in the Action.

4 7. **Settlement Hearing.** A hearing (the “Settlement Hearing”) pursuant to Rule 23(e) of
5 the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on
6 _____, 2018, at __:____.m. before the Honorable Edward M. Chen in Courtroom 5
7 of the United States District Court for the Northern District of California, 450 Golden Gate Avenue,
8 San Francisco, CA 94102 for the following purposes:

9 (a) to determine whether the proposed Settlement is fair, reasonable and adequate,
10 and should be approved by the Court;

11 (b) to determine whether the Final Order and Judgment (“Judgment”) as provided
12 under the Stipulation should be entered in its entirety and with prejudice;

13 (c) to determine, for purposes of the Settlement only, whether the Settlement
14 Class should be certified; whether Lead Plaintiff should be finally certified as Class Representative
15 for the Settlement Class; whether the law firms of Motley Rice LLC and Robbins Geller Rudman &
16 Dowd LLP should be finally appointed as Class Counsel for the Settlement Class;

17 (d) to determine whether the Plan of Allocation of the settlement proceeds is fair,
18 reasonable and adequate, and should be approved by the Court;

19 (e) to consider Lead Counsel’s motion for an award of attorneys’ fees and
20 expenses (which may include an application for an award to Lead Plaintiff for reimbursement of its
21 reasonable costs and expenses directly related to its representation of the Settlement Class pursuant
22 to the Private Securities Litigation Reform Act of 1995 (“PSLRA”)); and

23 (f) to rule upon such other matters as the Court may deem appropriate.

24 8. The Plan of Allocation, Lead Counsel’s application for an award of attorneys’ fees
25 and litigation expenses, and Lead Plaintiff’s award of reasonable costs and expenses will be
26 considered separately from the fairness, reasonableness, and adequacy of the Settlement. Any
27 appeal relating solely to the Plan of Allocation, solely to Lead Counsel’s application for an award of
28 attorneys’ fees and litigation expenses, or solely to Lead Plaintiff’s application for an award of

1 reasonable costs and expenses shall not operate to terminate or cancel the Settlement, or affect or
2 delay the finality of the Judgment approving the Stipulation and the Settlement of the Action.

3 9. The Court reserves the right to approve the Settlement with or without modification
4 and with or without further notice to the Settlement Class of any kind. The Court further reserves
5 the right to enter the Judgment approving the Settlement regardless of whether it has approved the
6 Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may also adjourn the
7 Settlement Hearing or modify any of the dates herein without further notice to members of the
8 Settlement Class.

9 10. All papers in support of the Settlement, Plan of Allocation, and Lead Counsel's
10 request for an award of attorneys' fees and expenses shall be filed with the Court and served on or
11 before fourteen (14) calendar days prior to the date set for objections in ¶26. Any reply papers are to
12 be filed with the Court and served no later than fourteen (14) calendar days prior to the Settlement
13 Hearing.

14 11. Neither Defendants nor their counsel shall have any responsibility for the Plan of
15 Allocation or any application for attorney's fees or expenses submitted by Lead Counsel or Lead
16 Plaintiff, and such matters shall be considered separately from the fairness, reasonableness, and
17 adequacy of the Settlement.

18 12. At or after the Settlement Hearing, the Court shall determine whether the Plan of
19 Allocation proposed by Lead Counsel and any application for attorneys' fees or expenses shall be
20 approved. Any appeal from any orders relating to any plan of allocation or Lead Counsel's
21 application for an award of attorneys' fees and expenses and Lead Plaintiff's reimbursement, or any
22 reversal or modification thereof, shall not operate to terminate or cancel the Settlement, or affect or
23 delay the finality of the Judgment approving the Stipulation and the Settlement of the Action as set
24 forth therein.

25 13. **Notice.** The Court approves the form, substance, and requirements of the Notice of
26 Proposed Settlement of Class Action (the "Notice") and the Proof of Claim and Release form
27 ("Proof of Claim"), substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively.

28

1 14. The Court approves the retention of Gilardi & Co. LLC as the Claims Administrator.
2 The Claims Administrator shall cause the Notice and the Proof of Claim, substantially in the forms
3 annexed hereto, to be mailed, by first-class mail, postage prepaid, on or before fifteen (15) business
4 days after entry of this Order (“Notice Date”), to all Settlement Class Members who can be
5 identified with reasonable effort. Per the terms of the Stipulation, LeapFrog, to the extent it has not
6 already done so, shall use its best efforts to obtain and provide to Lead Counsel, or the Claims
7 Administrator, transfer records obtained from its transfer agent in electronic searchable form
8 containing the names and addresses of purchasers or acquirers of LeapFrog common stock during
9 the Class Period, to the extent that information is available to its transfer agent, no later than ten (10)
10 business days after entry of this Order. Except for the obligation to cooperate in the production of
11 reasonably available information with respect to the identification of Settlement Class Members
12 from LeapFrog’s shareholder transfer records, in no event shall the Defendants or any of the
13 Released Defendant Parties have any responsibility for the administration of the Settlement, and
14 neither the Defendants nor any of the Released Defendant Parties shall have any obligation or
15 liability to the Lead Plaintiff, Lead Counsel, or the Settlement Class in connection with such
16 administration.

17 15. The Claims Administrator shall use reasonable efforts to give notice to nominees such
18 as brokerage firms and other persons or entities who purchased or otherwise acquired LeapFrog
19 common stock during the Class Period as record owners but not as beneficial owners. Such
20 nominees SHALL EITHER: (a) WITHIN SEVEN (7) CALENDAR DAYS of receipt of the Notice,
21 request from the Claims Administrator sufficient copies of the Notice to forward to all such
22 beneficial owners and WITHIN SEVEN (7) CALENDAR DAYS of receipt of those Notices from
23 the Claims Administrator forward them to all such beneficial owners; or (b) WITHIN SEVEN (7)
24 CALENDAR DAYS of receipt of the Notice, provide a list of the names and addresses of all such
25 beneficial owners to the Claims Administrator and the Claims Administrator is ordered to send the
26 Notice promptly to such identified beneficial owners. Nominees who elect to send the Notice to
27 their beneficial owners SHALL ALSO send a statement to the Claims Administrator confirming that
28 the mailing was made and shall retain their mailing records for use in connection with any further

1 notices that may be provided in the Action. Upon full and timely compliance with these directions,
2 such nominees may seek reimbursement of their reasonable expenses actually incurred by providing
3 the Claims Administrator with proper documentation supporting the expenses for which
4 reimbursement is sought.

5 16. Lead Counsel shall, at least fourteen (14) calendar days before the Settlement
6 Hearing, file with the Court proof of mailing of the Notice and Proof of Claim.

7 17. The Court approves the form of the Summary Notice substantially in the form
8 annexed hereto as Exhibit A-3, and directs that Lead Counsel shall cause the Summary Notice to be
9 published in *The Wall Street Journal* and be transmitted over the *Business Wire* within fourteen (14)
10 calendar days of the Notice Date. Lead Counsel shall, at least fourteen (14) calendar days before the
11 Settlement Hearing, file with the Court proof of publication of the Summary Notice.

12 18. Lead Counsel may make non-material edits to the Notice, Proof of Claim, and
13 Summary Notice without Court approval.

14 19. The form and content of the notice program described herein, and the methods set
15 forth herein of notifying the Settlement Class of the Settlement and its terms and conditions:
16 (a) constitute the best notice to Settlement Class Members practicable under the circumstances; (b)
17 are reasonably calculated, under the circumstances, to describe the terms and effect of the Stipulation
18 and of the Settlement and to apprise Settlement Class Members of their right to object to the
19 proposed Settlement or to exclude themselves from the Settlement Class; (c) are reasonable and
20 constitute due, adequate, and sufficient notice to all persons entitled to receive such notice; and (d)
21 meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, Section 21D
22 of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the PSLRA, the
23 rules of this Court, and any other applicable law.

24 20. ***Submission of Proof of Claim Forms.*** In order to be eligible to receive a distribution
25 from the Net Settlement Fund, in the event the Settlement is effected in accordance with the terms
26 and conditions set forth in the Stipulation, each claimant shall take the following actions and be
27 subject to the following conditions:
28

1 (a) A properly executed Proof of Claim, substantially in the form annexed hereto
2 as Exhibit A-2, must be submitted to the Claims Administrator, at the address indicated in the
3 Notice, postmarked or electronically submitted no later than 120 calendar days after the Notice Date.
4 Such deadline may be further extended by Court order or by Lead Counsel in their discretion. Each
5 Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and
6 mailed by first-class or overnight mail, postage prepaid). Any Proof of Claim submitted in any other
7 manner shall be deemed to have been submitted when it was actually received at the address
8 designated in the Notice. Any Settlement Class Member who does not timely submit a Proof of
9 Claim within the time provided for shall be barred from sharing in the distribution of the Net
10 Settlement Fund, unless otherwise ordered by the Court or allowed by Lead Counsel, but shall
11 remain bound by all determinations and judgments in this Action concerning the Settlement, whether
12 favorable or unfavorable to the Settlement Class. Notwithstanding the foregoing, Lead Counsel shall
13 have the discretion (but not the obligation) to accept for processing late-submitted claims so long as
14 the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed. Lead
15 Counsel shall have no liability for their discretion in accepting late claims.

16 (b) The Proof of Claim submitted by each claimant must satisfy the following
17 conditions, unless otherwise allowed pursuant to the Stipulation: (i) it must be properly completed,
18 signed and submitted in a timely manner in accordance with the provisions of the preceding
19 subparagraph; (ii) it must be accompanied by adequate supporting documentation for the
20 transactions reported therein, in the form of broker confirmation slips, broker account statements, an
21 authorized statement from the broker containing the transactional information found in a broker
22 confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator
23 with such supervision by Lead Counsel as necessary; (iii) if the person executing the Proof of Claim
24 is acting in a representative capacity, a certification of his or her current authority to act on behalf of
25 the Settlement Class Member must be included in the Proof of Claim; and (iv) the Proof of Claim
26 must be complete and contain no material deletions or modifications of any of the printed matter
27 contained therein and must be signed under penalty of perjury.

28

1 (c) As part of the Proof of Claim, each claimant shall submit to the jurisdiction of
2 the Court with respect to the claim submitted.

3 21. Any Settlement Class Member may enter an appearance in this Action, at his, her or
4 its own expense, individually or through counsel of his, her or its own choice. If any Settlement
5 Class Member does not enter an appearance, he, she or it will be represented by Lead Counsel.

6 22. ***Exclusions from the Settlement Class.*** Settlement Class Members shall be bound by
7 all orders, determinations, and judgments in this Action concerning the Settlement, whether
8 favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a
9 timely and proper manner, as hereinafter provided. If the Settlement is approved, all Settlement
10 Class Members will be bound by the terms of the Settlement as set forth in the Stipulation, and by
11 any judgment or determination of the Court affecting the Settlement Class, regardless of whether or
12 not a Settlement Class Member submits a Proof of Claim. Any member of the Settlement Class who
13 fails to opt out of the Settlement Class or who fails to object in the manner prescribed in the Notice
14 shall be deemed to have waived, and shall be foreclosed forever from raising objections or asserting
15 any claims arising out of, related to, or based in whole or in part on any of the facts or matters
16 alleged in the Action, or which could have been alleged, or which otherwise were at issue in the
17 Action.

18 23. A putative Settlement Class Member wishing to make such an exclusion request shall
19 mail the request in written form by first-class mail to the address designated in the Notice for such
20 exclusions, such that it is received no later than twenty-one (21) calendar days prior to the Settlement
21 Hearing. Such request for exclusion must state the name, address, and telephone number of the
22 Person seeking exclusion, must state that the sender requests to be “excluded from the Settlement
23 Class in *In re LeapFrog Enterprises, Inc. Securities Litigation*, Master File No. 3:15-cv-00347-EMC
24 (N.D. Cal.)” and must be signed by such Person. Such Persons requesting exclusion are also
25 directed to state the information requested in the Notice, including, but not limited to: the date(s),
26 price(s), and number(s) of shares of all purchases and acquisitions and/or sales of LeapFrog common
27 stock during the period from May 5, 2014 through June 11, 2015, inclusive. The request for
28

1 exclusion shall not be effective unless it provides the required information and is made within the
2 time stated above, or the exclusion is otherwise accepted by the Court or the Parties.

3 24. Putative Settlement Class Members requesting exclusion from the Settlement Class
4 shall not be eligible to receive any payment out of the Net Settlement Fund as described in the
5 Stipulation and Notice.

6 25. Upon receiving any request for exclusion, Lead Counsel or the Claims Administrator
7 shall within five (5) business days of receipt, and no later than fifteen (15) calendar days prior to the
8 Settlement Hearing, notify Lead Counsel and Defendants' Counsel of such request for exclusion and
9 provide copies of such request for exclusion and any documentation accompanying it by facsimile or
10 electronic mail.

11 26. ***Objections to the Settlement.*** The Court will consider any Settlement Class
12 Member's objection to the Settlement, the Plan of Allocation, and/or the application for an award of
13 attorneys' fees or expenses only if such Settlement Class Member has filed by hand or by mail his,
14 her, or its written objection and supporting papers, such that they are received on or before twenty-
15 one (21) calendar days before the Settlement Hearing by the Clerk of the Court, United States
16 District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA.
17 The written objection must: (a) clearly indicate the objector's name, mailing address, daytime
18 telephone number, and e-mail address; (b) state that the objector is objecting to the proposed
19 Settlement, Plan of Allocation, and/or Fee and Expenses Application in *In re LeapFrog Enterprises,*
20 *Inc. Securities Litigation*, Master File No. 3:15-cv-00347-EMC (N.D. Cal.); (c) specify the reason(s),
21 if any, for the objection, including any legal support and/or evidence, including witnesses, that such
22 objector wishes to bring to the Court's attention or introduce in support of such objection; and (d) list
23 the date(s), price(s), and number(s) of all purchases, acquisitions, and/or sales of LeapFrog common
24 stock during the Class Period. Any Settlement Class Member who does not make his, her, or its
25 objection in the manner provided for in the Notice shall be deemed to have waived such objection
26 and shall forever be foreclosed from making any objection to any aspect of the Settlement, to the
27 Plan of Allocation, or to the request for attorneys' fees and expenses, unless otherwise ordered by
28 the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given.

1 The Court will consider all proper objections even if a Settlement Class Member does not attend the
2 Settlement Hearing. However, Persons wishing to be heard orally in opposition to the approval of
3 the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and
4 other expenses are required to indicate in their written objection their intention to appear at the
5 Settlement Hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or
6 the application for an award of attorneys' fees and expenses and desire to present evidence at the
7 Settlement Hearing must include in their written objections the identity of any witnesses they may
8 call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.
9 Settlement Class Members do not need to appear at the hearing or take any other action to indicate
10 their approval.

11 27. As provided in the Stipulation, prior to the Effective Date, and without further
12 approval from Defendants or without further order of the Court, Lead Counsel may expend up to
13 \$350,000 from the Settlement Fund to pay Notice and Administration Expenses actually incurred.

14 28. The passage of title and ownership of the Settlement Fund to the Escrow Agent in
15 accordance with the terms and obligations of the Stipulation is approved. No person who is not a
16 Settlement Class Member or Lead Counsel shall have any right to any portion of, or to any
17 distribution of, the Settlement Fund unless otherwise ordered by the Court or otherwise provided in
18 the Stipulation. Pursuant to ¶7.10 of the Stipulation, the Court hereby approves Bay Area Legal Aid
19 and the Consumer Federation of American as the *cy pres* beneficiaries should there be any balance in
20 the Net Settlement Fund that is not feasible or economical to reallocate to Authorized Claimants,
21 after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses.

22 29. All funds held in escrow shall be deemed and considered to be in *custodia legis* of the
23 Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be
24 disbursed pursuant to the Stipulation and/or further order of the Court.

25 30. ***Bar on Litigating Released Claims.*** Pending final determination of whether the
26 Settlement should be approved, Lead Plaintiff, all Settlement Class Members, and each of them, and
27 anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any
28 action which asserts any Released Claims against any of the Released Defendant Parties.

1 31. **Termination of Settlement.** If the Settlement fails to become effective as defined in
2 the Stipulation or is terminated, then, in any such event, the Stipulation, including any amendment(s)
3 thereof except as expressly provided in the Stipulation, and this Order, shall be null and void, of no
4 further force or effect, and without prejudice to any Party, and may not be introduced as evidence or
5 used in any actions or proceedings by any person or entity against the Parties, and the Parties shall be
6 deemed to have reverted to their respective litigation positions in the Action as of November 29,
7 2017.

8 32. **No Admission.** Neither the Stipulation, nor any of its terms or provisions, nor any of
9 the negotiations or proceedings connected with it, shall be construed as an admission or concession
10 by the Released Defendant Parties of the truth of any of the allegations in the Action, or of any
11 liability, fault, or wrongdoing of any kind and shall not be construed as, or deemed to be evidence of
12 or an admission or concession that Lead Plaintiff or any Settlement Class Members have suffered
13 any damages, harm, or loss.

14 33. This Order shall not be construed or used as an admission, concession, or
15 presumption by or against any of the Released Defendant Parties of any fault, wrongdoing, breach,
16 or liability or as a waiver by any Party of any arguments, defense, or claims he, she, or it may have
17 in the event that the Stipulation is terminated, nor shall it be used in any manner prohibited by
18 ¶¶12.1-12.2 of the Stipulation. In the event this Order becomes of no force or effect, it shall not be
19 construed or used as an admission, concession, or presumption by or against the Released Defendant
20 Parties, the Released Plaintiff Parties, or the Settlement Class. The Defendants have denied and
21 continue to deny, any and all allegations and claims asserted in the Action and have entered into the
22 Stipulation solely in order to eliminate the burden, expense, and uncertainties of further litigation.

23 34. **Stay.** Pending further order of the Court, all litigation activity, except that
24 contemplated herein, in the Stipulation, in the Notice, in the Summary Notice, or in the Judgment, is
25 hereby stayed and all hearings, deadlines and other proceedings in this Action, except the Settlement
26 Hearing and any deadlines set forth in this Order, are hereby taken off calendar.

27
28

1 35. The Court retains exclusive jurisdiction over the Action to consider all further matters
2 arising out of or connected with the Settlement.

3
4 DATED: _____, 2018

HONORABLE EDWARD M. CHEN
UNITED STATES DISTRICT JUDGE

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28