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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SAMSON BROWN, et al.,

Plaintiffs,

vs.

**ESMOR CORRECTIONAL
SERVICES, INC.,**

Defendant.

Civil Action No. 98-1282

Hon. Dickinson R. Debevoise

**STIPULATION AND AGREEMENT
OF SETTLEMENT**

The Lead Plaintiffs¹ (on behalf of themselves and the Members), on the one hand, and Defendant Esmor Correctional Services, Inc. (“Esmor” or “Defendant”), on the other hand, by and through their undersigned attorneys, hereby enter into the following Stipulation and Agreement of Settlement (the “Settlement Agreement” or “Stipulation”), dated as of May 19, 2005, and subject to the approval of the Court.

RECITALS

WHEREAS, on March 6, 1996, an action was filed in the United States District Court for the Southern District of New York, entitled *Samson Brown et al. v. Esmor Correctional Services, et al.*, Case No. 98-1282 (the “Complaint”);

WHEREAS, the Complaint generally alleged that Defendant Esmor and Former Defendants Esmor, Inc., Esmor New York State Correctional Facilities, Inc., Esmor Management, Inc., Esmor Manhattan, Inc., Esmor (Brooklyn), Inc., Esmor New Jersey, Inc., James Slattery and Aaron Speisman violated the Members’ state and federal rights while the Members were detained at the Elizabeth Detention Facility, a facility operated by Esmor under contract with the INS;

WHEREAS, on March 30, 1998, this case was transferred from the United States District Court of the Southern District of New York to the United States Court

¹ All capitalized terms not otherwise defined shall carry the meaning set forth in

of the District of New Jersey (the “Court”) and was assigned to Judge Dickinson Debevoise;

WHEREAS, on June 19, 1998, Lead Plaintiffs filed an Amended Complaint;

WHEREAS, on August 24, 1998, the Court certified the case as a class action on behalf of approximately 1,600 former detainees at the Esmor facility in Elizabeth, New Jersey pursuant to Federal Rule of Civil Procedure 23(b)(3);

WHEREAS, on October 27, 2003, the Court dismissed Count VII of the Amended Complaint, all corporate entities other than Esmor, and James Slattery and Aaron Speisman. The Court also dismissed as Lead Plaintiffs Poobalasingam Bakkerthan, Adewale Adepoju, Nicolai Banae, Edwin Mutaru Bulus, Skender Djekovic and Jasmel Sing, without prejudice to their respective claims against Defendant as Members;

WHEREAS, by decision and order, dated September 9, 2004, the Court denied Defendant’s motion for summary judgment against the claim of negligent hiring, retention, training, or supervision, and granted Defendant’s motion dismissing all

Section 1 below.

Bivens constitutional claims, intentional tort claims and third party breach of contract claims;

WHEREAS, the Court has directed that the parties enter into settlement negotiations with respect to the surviving Class state law claims for (i) negligent hiring, retention, training, or supervision of its guards; and (ii) *respondeat superior* liability for the conduct of its employees;

WHEREAS, Class Counsel and Defendant's counsel have during the pendency of the Action engaged in arms'-length negotiations in an effort to resolve the Action, including conducting settlement conferences before the Court;

WHEREAS, the Defendant vigorously denies and disclaims any wrongdoing or liability whatsoever, including denying any and all claims of liability or wrongdoing and all charges and allegations that have been asserted against it, but has determined to enter into this Settlement on the terms and conditions set forth herein to halt the substantial expense that continues to be attendant to the litigation, as well as to eliminate uncertainty and risks from continued litigation;

WHEREAS, Lead Plaintiffs have agreed to settle their claims and those of the Class upon the terms and provisions set forth herein, after and as a result of extensive investigation, discovery, preparation for trial and thorough research of the law applicable to the claims underlying the Action; after balancing the substantial benefits that Members of the Class will receive from the Settlement against the uncertain outcome, risks, difficulties, and delays of litigation, in general, and in complex actions

such as this Action, in particular, and after concluding that the Settlement is in the best interests of the Class;

WHEREAS, on February 17, 2005, the Settling Parties, through their respective attorneys, and with the approval of their respective clients, discussed the essential terms of a settlement, which was subject to the preparation and execution of a definitive stipulation of settlement, which this Stipulation is intended to constitute;

WHEREAS, the Settling Parties and their counsel acknowledge that this Stipulation is a result of arms'-length negotiations between the Settling Parties; and

WHEREAS, the Settling Parties and their counsel acknowledge that this Settlement and Stipulation is not subject to a settlement or other resolution in the *Jama* Action and/or the *DaSilva* Action; provided, however, that the Defendant agrees that if it or any of the Released Parties should enter into a settlement of the *Jama* Action and/or the *DaSilva* Action, then the settlement amounts paid to the plaintiffs in those action shall be no more favorable than the settlement terms for Members of the Class under this Settlement.

NOW, THEREFORE, in consideration of the promises and agreements, covenants, representations, and warranties set forth herein, intending to be legally bound;

IT IS HEREBY STIPULATED AND AGREED, by and among the Settling Parties, that this Action and all Released Claims are finally and fully settled and compromised and that the Action shall be dismissed with prejudice and without costs,

except as otherwise provided for herein, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

1. Additional Definitions

The following additional definitions shall apply in this Stipulation:

1.1 “Esmor” or the “Company” means Esmor Correctional Services, Inc.

1.2 “Authorized Claimant” means a Member (or the representative of such Member including, without limitation, agents, administrators, executors, heirs, successors, and assigns) who submits a Proof of Claim and Release and who is entitled to a distribution from the Distribution Fund pursuant to the terms and conditions set forth in this Stipulation.

1.3 “Action” means the above-referenced class action, Civil Action No. 98-1282.

1.4 “Class” means all persons or entities who resided at the Elizabeth Detention Facility in Elizabeth, New Jersey, from on or about August 1, 1994 and June 18, 1995, inclusive of those dates. Excluded from the Class are those Members who submitted valid and timely requests for exclusion from the Class in accordance with the procedures set forth in the order dated March 9, 1999, as amended by order dated June 19, 2003, should the amending Order currently pending before the United States Court of Appeals for the Third Circuit (Nos. 03-3095, 03-3096, and 03-3348) be upheld on appeal in a final, non-appealable order.

1.5 “Class Counsel” means Ressler & Ressler.

1.6 “Class Period” means the period between early August 1994 and July 18, 1995, inclusive of those dates.

1.7 “*DaSilva* Action” means that action (Civ. No. 96-3755) dismissed by order of the Court dated September 8, 2003, as amended September 26, 2003, the appeal from which is currently pending before the United States Court of Appeals for the Third Circuit (No. 03-4435).

1.8 “Defendant” means Esmor.

1.9 “Final Judgment” means that judgment to be entered by the Court, identical in all material respects to that provided in the form of Exhibit 2 hereto, approving the Settlement, dismissing the Action with prejudice and without costs to any party, releasing all Released Claims, and enjoining Members from instituting, continuing, or prosecuting any action asserting one or more Released Claims.

1.10 “Former Defendants” means Esmor, Inc., Esmor New York State Correctional Facilities, Inc., Esmor Management, Inc., Esmor Manhattan, Inc., Esmor (Brooklyn), Inc., Esmor New Jersey, Inc., James Slattery and Aaron Speisman who were dismissed from the Action by Order dated on or about October 27, 2003.

1.11 “*Jama* Action” means that action (Civ. No. 97-3093) originally filed in this Court and currently pending before the United States Court of Appeals for the Third Circuit in two separate appeals (Nos. 03-3095, 03-3096, and 03-3348; and No. 05-1160).

1.12 “Lead Plaintiffs” means the remaining named plaintiffs in the Action, acting through Class Counsel.

1.13 “Member” means any person or entity who is a member of the Class, and including, without limitation, the Lead Plaintiffs, but excluding those persons or entities who may be determined, through a final, unappealable Order, to have submitted valid and timely requests for exclusion from the Class.

1.14 “Net Settlement Fund” or “Distribution Fund” means the Settlement Fund less all fees and expenses of Class Counsel allowed by the Court, any approved notice and administration expenses, and any taxes that may be payable from the Settlement Fund.

1.15 “Notice” means the notice to be provided to Members identical in all material respects to the form annexed to this Stipulation as Exhibit A-1.

1.16 “Plan of Allocation” means that plan or formula of allocation of the Distribution Fund approved by the Court, which plan or formula shall govern the distribution of the Distribution Fund. It is understood and agreed to by the parties hereto that, notwithstanding any other provision of this Stipulation, any proposed Plan of Allocation that is part of the Notice is not a part of this Stipulation or material hereto, being a matter solely internal to the Class and not affecting Defendant. Any revisions by the Court or otherwise relating solely to the Plan of Allocation shall not operate to terminate or cancel this Stipulation.

1.17 “Released Claims” means any and all claims, liabilities, demands, causes of action, or lawsuits, known or unknown (including Unknown Claims), whether legal, statutory, equitable or of any other type or form, whether under federal or state law, and whether brought in an individual, representative or any other capacity, that relate to or arise out of or in connection with the operation of the Elizabeth Facility during the Class Period, including, but not limited to, any event, act, statement or omission occurring during the Class Period that has been alleged or asserted in, or which could have been alleged or asserted in, the Action.

1.18 “Released Parties” means the Defendant and Former Defendants and each and all of their respective current and former officers, directors, employees, agents, accountants, auditors, attorneys, consultants, representatives, predecessors, successors, parents, subsidiaries, heirs, and assigns. “Released Parties” also means Northland Insurance Company and each and all of its respective current and former officers, directors, employees, agents, accountants, auditors, attorneys, consultants, representatives, predecessors, successors, parents, subsidiaries, heirs, and assigns. The Released Parties are intended as third party beneficiaries of this Stipulation.

1.19 “Settlement Administrator” means, subject to Court approval, Ressler & Ressler or such other or subsequent person or entity that the Court shall appoint.

1.20 “Settlement Effective Date” means the first business day that is thirty (30) days from the date on which the Court enters the Final Judgment approving the Settlement.

1.21 “Settlement Fund” means the amounts deposited in the Escrow Account pursuant to paragraph 3 of this Stipulation, including any interest earned thereon, as provided for herein.

1.22 “Settlement Hearing” means the hearing to be held by the Court to consider final approval of the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

1.23 “Settling Parties” means the Lead Plaintiffs, the Members, and the Defendant.

1.24 “Unknown Claims” means any Released Claims which any Lead Plaintiff and/or Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement.

1.25 The Lead Plaintiffs or Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but each Lead Plaintiff and each Member, upon the Settlement Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into

existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Lead Plaintiffs and Members shall be deemed by operation of the Final Judgment to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

2. Releases

2.1 The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Released Claims as against all Released Parties.

2.2 Upon the Settlement Effective Date, Lead Plaintiffs and Members of the Class, on behalf of themselves, their heirs, executors, administrators, successors and assigns, and any person they represent, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally and forever released, relinquished and discharged, and shall forever be enjoined from prosecution of, each and every Released Claim against any and all of the Released Parties; provided, however, that nothing herein is meant to bar any claims relating to performance or enforcement of this Stipulation or the Settlement. Class counsel and Members shall be precluded from recovering monetary damages, including attorneys' fees, in any enforcement action, other than the Settlement Amount, plus interest at the post-judgment rate pursuant to section 3.1 below.

2.3 Upon the Settlement Effective Date, the Defendant, the Former Defendants, and the Released Parties shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged the Lead Plaintiffs, Members of the Class and Class Counsel from all claims arising out of the institution, conduct, settlement or resolution of the Action, provided, however, that nothing herein is meant to bar any claims relating to performance or enforcement of this Stipulation or the Settlement.

2.4 Upon the Settlement Effective Date, in addition to the Released Claims with respect to the Released Parties, each of the Lead Plaintiffs and each Member of the Class shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged Defendant, Former Defendants and their counsel, together with Class Counsel, from all claims arising out of the defense, conduct, settlement or resolution of the Action; provided, however, that nothing herein is meant to bar any claims relating to performance or enforcement of this Stipulation or the Settlement or to supersede the provisions of paragraph 2.2.

2.5 By execution of this Stipulation, Former Defendants and all other Released Parties, fully, finally and forever release, relinquish and discharge the Lead Plaintiffs, all Members of the Class and Class Counsel from all claims arising out of the institution, conduct, settlement or resolution of the Action; provided, however, that nothing herein is meant to bar any claims relating to performance or enforcement of this Stipulation or the Settlement.

3. The Settlement Payment and Other Obligations

3.1 On the Settlement Effective Date, Esmor will pay or cause to be paid, on behalf of the Defendant, the amount of Two Million, Five Hundred Thousand (\$2,500,000) (the “Settlement Amount”) into an escrow fund (the “Escrow Account”) controlled by Ressler & Ressler as Escrow Agent (subject to Court oversight) or controlled by such other person or entity as the Court may approve or appoint. If any portion of the Settlement Amount is not paid on the Settlement Effective Date, at Lead Plaintiffs’ option the settlement may be terminated or, as liquidated damages Defendant agrees to entry of a consent judgment against it of the unpaid Settlement Amount, plus interest thereon at the post-judgment rate. Under no circumstance will Defendant be required to pay Class Counsel or Members of the Class more than the Settlement Amount, plus interest thereon at the post-judgment rate.

3.2 Upon transfer of the Settlement Amount into the Escrow Account as set forth in paragraph 3.1 above, the Escrow Agent, subject to the supervision and direction of the Court as may be necessary or as circumstances require, may cause to be paid out of the Escrow Account such amounts as are permitted herein or by Court order.

3.3 The Escrow Account, including any interest earned thereon net of any Taxes (as defined below) on the income thereof, shall be used to pay (i) the attorneys’ fee and expense award to Class Counsel referred to in paragraph 8.2 hereof, and (ii) permitted administration expenses. The balance of the Escrow Account shall be

the Distribution Fund and shall be distributed to the Authorized Claimants as provided in paragraphs 5.1 and 6.1-6.6 hereof and as set forth in the Plan of Allocation. Notwithstanding anything to the contrary in this Stipulation, no distribution of any portion of the Distribution Fund shall be made to Members unless and until (1) the Settlement Effective Date has occurred; and (2) there is a final non-appealable order in the *DaSilva* Action and the *Jama* Action regarding the challenges to the Court's opt-out orders, currently pending before the United States Court of Appeals for the Third Circuit, or any other challenge to opt-outs that may subsequently be filed. Lead Plaintiffs and Members shall look solely to the Distribution Fund for settlement and satisfaction of any and all Released Claims.

3.4 No funds held in the Escrow Account shall be distributed except in accordance with this Stipulation or by order of the Court. All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to this Stipulation and/or further order of the Court. Any Escrow Account fees (*e.g.*, bank account fees) may be paid directly out of the Escrow Account without any prior order of or approval from the Court. The Escrow Agent shall invest any funds in excess of \$100,000 in discrete and identifiable short term United States Agency or Treasury Securities, and shall collect and reinvest all interest accrued thereon. Any funds held in the Class Escrow Account in an amount of less than \$100,000 may be held in an interest bearing bank account insured by the FDIC. The

Escrow Agent shall maintain records identifying in detail and with specificity each instrument in which the Settlement Fund or any portion thereof has been invested, and identifying the precise location (including the safe deposit box number) of each such instrument, and up through the Settlement Effective Date shall make such records or copies thereof promptly available at the request of Esmor or its counsel. Neither the Settlement Fund nor any portion thereof shall be commingled with or invested together with any other monies or funds in any instruments.

3.5 The parties hereto agree that the Escrow Account is intended to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.48B-1 and that the Escrow Agent, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes owed (including, without limitation, expenses of tax attorneys and accountants) with respect to the Escrow Account. Counsel for the Defendant agrees to provide promptly to the Escrow Agent the statement described in Treasury Regulation § 1.468B-3(e). The Defendant shall have no liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account.

3.6 All (i) taxes on the income of the Escrow Account (“Taxes”), and (ii) expenses and costs incurred in connection with the taxation of the Escrow Account (including, without limitation, expenses of tax attorneys and accountants) (collectively, “Tax Expenses”) shall be paid out of the Escrow Account (which

payments of taxes shall be timely made by the Escrow Agent without the need for any other consent), shall be considered to be a cost of administration of the Settlement, and shall be timely paid by the Escrow Agent without the need for any additional prior approval or order of the Court.

3.7 The Defendant agrees that (i) if it or any of the Released Parties should enter into a settlement of the *Jama* Action and/or the *DaSilva* Action and/or any other individual claim by a former class member who opts out of the class action, then the net settlement amounts paid to the plaintiffs in those actions shall be paid on a basis no more favorable than the settlement amounts paid to Authorized Claimants from the Distribution Fund under this Settlement pursuant to the Plan of Allocation; and (ii) in connection with any such settlements, the Defendant shall obtain an Order of the Court finding that such settlements are no more favorable to the plaintiffs in these actions than the amounts paid to Authorized Claimants from the Distribution Fund under this Settlement pursuant to the Plan of Allocation (such an order shall be hereinafter referred to as the “Equitable Treatment Order”). Failure to obtain the Equitable Treatment Order in conformity with this paragraph shall not relieve Esmor of its obligations to pay the Settlement Amount pursuant to paragraph 3.1.

4. Preliminary Approval and Notice Order

4.1 As soon as practicable after execution of this Stipulation, the parties to this Stipulation shall move the Court for preliminary approval of the Settlement.

Counsel for the Settling Parties shall apply to the Court for an Order identical in all material respects to the form annexed as Exhibit 1 hereto:

(a) preliminarily approving the Settlement as fair, reasonable, and adequate;

(b) appointing a Settlement Administrator;

(c) determining, pursuant to Fed. R. Civ. P. Rule 23(e)(3), that no new opportunity for individual Members to request exclusion from the Class be permitted, and approving and directing Class Counsel as soon as practicable after entry of the Order contemplated by this paragraph, to mail or cause to be mailed to each Class Member who can be identified through reasonable effort:

(i) the Notice, substantially in the form annexed to this Stipulation as Exhibit A-1; and

(ii) the Proof of Claim and Release, substantially in the form annexed to this Stipulation as Exhibit A-2;

(d) directing Class Counsel, as soon as practicable after entry of the Order contemplated by this paragraph, to post on the Internet site of the Settlement Administrator a summary notice substantially in the form annexed to this Stipulation as Exhibit A-3; and the Proof of Claim and Release, substantially in the form annexed to this Stipulation as Exhibit A-2;

(e) approving, and directing Class Counsel to cause to be published once in the national edition of USA Today, and once in two ethnic newspapers a summary notice substantially in the form annexed to this Stipulation as Exhibit A-3.;

(f) scheduling a Settlement Hearing to be held before the Court, at a time and date to be set by the Court, as set forth in the Notice (or to direct the later determination without further notice of), to consider the reasonableness, adequacy, and fairness of the Settlement, to determine whether the Final Judgment should be entered pursuant to this Stipulation, and to consider the Plan of Allocation and the applications of Class Counsel for attorneys' fees and reimbursement of expenses;

(g) requiring any Member who objects to the approval of this Stipulation and the Settlement to file and serve in the manner provided in the Notice, notice of that Member's intention to appear and object, the grounds for such objection, and all papers he, she or it intends to present to the Court in opposition to this Stipulation and providing that any Member who does not follow the objection procedure in the Notice will be barred from making an objection or participating in the Settlement Hearing; and

(h) determining, pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, that the giving of notice as provided herein meets the requirements of applicable law and due process, constitutes the best notice practicable under the circumstances to all persons entitled thereto, and constitutes due and sufficient notice

of the Settlement Hearing and the rights of persons and entities in the Class with respect thereto.

5. Requirement of Proof of Claim and Release

5.1 Every Member entitled to participate in the Settlement shall be required to provide a sworn Proof of Claim and Release in accordance with the terms and conditions of, and including such supporting documentation as required by, the Proof of Claim and Release annexed hereto as Exhibit A-2.

6. Settlement Administration

6.1 The Settlement Administrator shall administer the Settlement subject to the supervision of Class Counsel and the Court as circumstances may require, including using funds provided by the Escrow Agent pursuant to paragraph 3.2 above.

6.2 For purposes of determining the extent, if any, to which a Member will be entitled to participate in the Distribution Fund, the following provisions shall apply:

(a) Each Member who wishes to participate in the Distribution Fund must, within the time ordered by the Court, which shall expire no earlier than ninety (90) days after the initial mailing of the Notice, submit a Proof of Claim and Release to the Settlement Administrator, sworn on oath or made subject to the penalties of perjury pursuant to 28 U.S.C. § 1746, and supported by such documents and other information as are called for in the Proof of Claim and Release.

(i) A Proof of Claim and Release will be deemed submitted (A) when posted, if it is mailed by first-class, registered, or certified mail, postage prepaid, addressed in accordance with the instruction given thereon, and actually received by the Settlement Administrator specified in the Proof of Claim and Release, or (B), if otherwise submitted, when it is actually received by the Settlement Administrator at the designated address;

(ii) The Proof of Claim and Release shall provide that, by submitting a Proof of Claim and Release, the Member expressly releases all Released Claims, as set forth in paragraph 2 above; consents to the jurisdiction of the Court; agrees to be subject to discovery with respect to the validity and/or amount of his, her, or its claim; consents to summary disposition, by the Court, with respect to the validity and/or amount of his, her, or its claim; and waives trial by jury (to the extent any such right may exist) with respect to the Court's summary disposition with respect to the validity or amount of his, her, or its claim;

(iii) The validity of each claim filed, together with the number of units allocated to each claim and the amount of distribution to which that claim is entitled under the Plan of Allocation, will be initially determined by the Settlement Administrator in accordance with the Plan of Allocation approved by the Court. The Plan Administrator shall then seek Court approval of the number of units allocated to each Authorized Claimant and the amount of distribution to which each Authorized Claimant is entitled before payments are made from the Distribution Fund. Upon

Court approval of the number of units allocated to each Authorized Claimant and the amount of distribution to which each Authorized Claimant is entitled, the Settlement Administrator shall cause to be paid to each Authorized Claimant from the Distribution Fund the amount so approved by the Court.

(b) All initial determinations as to the validity of a Proof of Claim and Release, the calculation of the extent to which each Authorized Claimant will participate in the Distribution Fund, the preparation and mailing of the payments to Authorized Claimants, the distribution of the Distribution Fund, and other duties of a similar nature to be performed in connection with the administration and distribution of the Distribution Fund shall be performed by the Settlement Administrator. The administration of the Settlement Fund and Distribution Fund, the number of units allocated to each Proof of Claim, the amount of distribution to which each Authorized Claimant is entitled and decisions on all disputed questions of law and fact with respect to the validity of any Proof of Claim and Release, or regarding rejection of claims, shall remain under the jurisdiction of the Court. The Members of the Class expressly waive trial by jury (to the extent any such right may exist) with respect to such determinations.

(c) The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation to be described in the Notice and approved by the Court. However, if there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net

Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), such balance shall be reallocated to Authorized Claimants in an equitable and economic manner, subject to the approved supervision and direction of the Court. Thereafter any remaining balance shall be donated to appropriate 501(c)(3) nonprofit organizations to be approved by the Court with the recommendation of Class Counsel and Defendant.

6.3 No person shall have any claim against the Lead Plaintiffs or Class Counsel, any claims administrator, any agent designated by Class Counsel, the Defendant or its respective counsel based on investments or distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation or further orders of the Court.

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

6.5 The Defendant and its counsel shall have no responsibility for, interest in, or liability whatsoever with respect to:

(a) any act, omission or determination of the Escrow Agent, Settlement Administrator, Class Counsel or designees or agents of Class Counsel, Escrow Agent or Settlement Administrator;

(b) any act, omission or determination of Class Counsel or their designees or agents in connection with the administration of the Settlement;

(c) the management, investment, or distribution of the Settlement Fund or the Distribution Fund;

(d) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund or the Distribution Fund; or

(e) the Plan of Allocation.

7. Final Judgment

7.1 Upon the final approval by the Court, after the Settlement Hearing discussed in paragraph 4.1(f), of the Settlement terms set forth in this Stipulation, a Final Judgment, identical in all material respects to that annexed as Exhibit 2 hereto, shall be entered, among other things:

(a) approving this Stipulation and adjudging its terms to be fair, reasonable, and adequate, directing consummation of the terms and provisions of this Stipulation, and retaining jurisdiction to effectuate the same; and

(b) completely discharging, settling, dismissing with prejudice, releasing, and permanently barring and enjoining the assertion, prosecution, or continuation by Members of any Released Claim, including any Unknown Claim,

against each and every Released Party; provided, however, that the Final Judgment shall not bar any action or claim to enforce the terms of the Settlement as approved by the Court or the Final Judgment.

(c) including a contribution bar order in accordance with 15 U.S.C. § 78u-4(f)(7)(A).

8. Attorneys' Fees and Disbursements

8.1 Class Counsel may apply to the Court for an award of attorneys' fees, for the reimbursement of all expenses (including expert fees and expenses and any advancement of the costs of Class notice or of claims administration expenses, including expenses to be incurred in connection with the administration of this settlement) incurred on behalf of the Class, as well as interest earned thereon, and reimbursements of the expenses (including lost wages) of the Lead Plaintiffs in prosecuting the Action. Such fees and expenses and interest shall be payable solely out of the Settlement Fund and shall be deducted to the extent approved by the Court from the Settlement Fund prior to the distribution to the Members.

8.2 Following entry of the Final Judgment, the Effective Settlement Date, and any order by the Court fixing and awarding fees and reimbursement of expenses to Class Counsel, the Escrow Agent may withdraw from the Escrow Account for distribution to Class Counsel the fees and expenses so awarded or otherwise authorized by Court order. Any such attorneys' fees and expense reimbursements awarded Class Counsel by the Court, or otherwise authorized by Court order, shall be

paid to Class Counsel from the Escrow Account as soon as possible after such an award.

8.3 It is understood and agreed by the Settling Parties that (a) the net amount of funds in the Distribution Fund that will be available to Authorized Claimants under this Settlement cannot be ascertained until the Court determines the amount of allowed attorneys' fees, costs, and expenses, including the fees of experts and consultants, to be paid out of the Settlement Fund; and (b) the fairness, reasonableness and adequacy of this Settlement cannot be ascertained and the Final Judgment approving this Settlement cannot be entered until the Court enters an order determining the allowed amount of such fees and expenses to be paid out of the Settlement Fund.

9. Contingencies, Effect of Disapproval or Termination of Settlement

9.1 This Settlement and the consideration therefore are given by the Defendant in return for, and are contingent upon, a full and complete release of all Released Claims (including Unknown Claims) by all Members against all Released Parties, which release no longer may be challenged by any Member.

9.2 This Settlement and the consideration therefore are given by the Lead Plaintiffs and all Members of the Class in return for, and are contingent upon, a full and complete release by the Released Parties, as provided for in paragraph 2.2, against

the Lead Plaintiffs, Members of the Class and Class Counsel, which release no longer may be challenged by any Released Party.

9.3 In the event that the Court or, in the event of an appeal, any appellate court having jurisdiction over the Action, refuses to approve, or modifies any material aspect of this Stipulation or any order entered or to be entered pursuant thereto, the Defendant or the Lead Plaintiffs may terminate this Stipulation and the Settlement Agreement as set forth below; provided, however, that the filing of an appeal shall not operate to delay the occurrence of the Settlement Effective Date or otherwise delay the transactions contemplated by this Stipulation and Settlement Agreement, including the payment of funds into the Settlement Account under section 3.1 and the distribution of funds from the Settlement Account under sections 6.2 and 8.2 , unless the appellant obtains a stay pending appeal from a court having jurisdiction over this Action

9.4 This Stipulation and the Settlement set forth herein shall terminate and be cancelled ten days after any of the following events set forth in this section 9.4, unless the Settling Parties mutually agree in writing before that time to proceed. For purposes of this Stipulation and this section, no order of the Court solely concerning the Plan of Allocation, the administration of the settlement or the persons performing such administrative functions, shall constitute grounds for cancellation or termination of the Stipulation.

(a) Full deposit of the Settlement Amount in accordance with paragraph 3.1 hereto is not made on or before the Settlement Effective Date, and Lead Plaintiffs notify Defendant that they are electing at their option to terminate;

(b) The Court declines to provide preliminary approval of this Stipulation and the Settlement set forth herein, or declines to enter or materially modifies the form of order preliminarily approving the Settlement attached hereto as Exhibit 1;

(c) The Court declines to provide final approval of the settlement set forth herein, or declines to enter or materially modifies the form or order entering Final Judgment attached hereto as Exhibit 2;

(d) The Court enters an order authorizing any Member to opt out of this Settlement;

(e) The Court's Final Judgment is stayed (without a bond being posted in an amount equal to the Settlement Amount prior to the Settlement Effective Date);
or

(f) the Settlement Effective Date does not occur for some other reason by May 20, 2006.

9.5 If for any reason this Stipulation is terminated or fails to become effective, then, in such event:

(a) (i) Within five (5) business days after written notification of such event is sent by counsel for Defendant or Plaintiffs' Lead Counsel to the Escrow

Agent and the other Settling Parties, Plaintiffs' Lead Counsel shall make or cause to be made all refunds or repayments to the Escrow Fund required pursuant to section 8.2 hereof; provided, however, that if payment from the Escrow Fund has previously been made, either directly or indirectly, for out-of-pocket costs of providing notice to the Class of this settlement, Plaintiffs' Lead Counsel shall reimburse the Escrow Fund only one-half of that amount. (ii) Within eight (8) business days after such written notification, the Escrow Agent shall pay to Esmor the entire remaining Escrow Fund, which should at that point consist of the full Settlement Amount plus interest earned thereon in the Escrow Account, minus Taxes and Tax Expenses, Escrow Account fees, and one-half of the out-of-pocket costs of providing notice to the Class of this settlement.

(b) The Settling Parties shall be deemed to have reverted to their respective status in the Action as of February 17, 2005, which shall then resume proceedings before the Honorable Judge Debevoise, in the United States District Court for the District Court of New Jersey, that Court having retained jurisdiction over the settlement and related matters, and, except as otherwise expressly provided in this Stipulation, the Settling Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered.

(c) In addition to this section 9.5 and its provisions, sections 10.1, and 11.10 through 11.12, together with the consent judgments provided for in sections 3.1 and 3.8(b), shall survive any termination of this Stipulation.

10. No Admission of Wrongdoing

10.1 The Defendant has vigorously denied, and continues to deny, that it has committed any violation of the federal or state laws, and has vigorously denied and continues to deny all allegations of wrongdoing or liability whatsoever with respect to the Released Claims, including any and all claims of wrongdoing or liability alleged or asserted in the Action. Defendant states that it is agreeing to this Settlement solely because it will eliminate the substantial burden, expense and uncertainties of further litigation and the concomitant distraction of resources and efforts from its businesses. This Stipulation, and any of its terms, any agreement or order relating thereto, and any payment or consideration provided for herein, is not and shall not be construed as an admission by the Defendant of any fault, wrongdoing, or liability whatsoever, or an admission by any of the Lead Plaintiffs or any member of the Class of any lack of merit of their claims against the Defendant. This Stipulation, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any Settling Party to be received in evidence in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of the Defendant; provided, however, that nothing contained in this paragraph shall prevent this Stipulation (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto) or the Final Judgment, or

in which the reasonableness, fairness, or good faith of the Defendant in participating in the Settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement, the Final Judgment, or the Proofs of Claim and Release as to the Defendant, Lead Plaintiffs, or the Members. This Stipulation may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this settlement, including but not limited to the Defendant filing the Stipulation and/or the Final Judgment in any other action that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.2 The Settling Parties agree that none of them will seek or support sanctions against any other present or former party or their counsel for the filing of any pleading or other conduct in connection with the Action.

11. Miscellaneous

11.1 All counsel who execute this Stipulation represent and warrant that they have authority to do so on behalf of their respective clients.

11.2 The Settling Parties and all signatories to this Stipulation agree to undertake and to use their best efforts, including all steps contemplated by this Stipulation, and any other steps and efforts that may become necessary by order of the

Court or otherwise, to effectuate this Stipulation and the Settlement contemplated hereunder.

11.3 Esmor warrants that it is not insolvent and that the payments of the amounts required by this settlement will not render it insolvent. In the event that Esmor is the subject of a bankruptcy petition or other insolvency proceeding prior to funding of this settlement, or in the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining that the transfer of the amounts required under this agreement or resulting Stipulation of Settlement, or any portion thereof, by or on behalf of Esmor to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the United States Code (Bankruptcy) or applicable state law, or any portion thereof is required to be refunded for any reason, then, at the election of Lead Plaintiffs, the releases given and the judgment entered in this case shall be null and void, and the parties shall be returned to their respective positions at the time of the settlement. This Stipulation and Settlement Agreement (including exhibits hereto, agreements referenced herein, and documents executed pursuant to the foregoing) contains the entire agreement among the Settling Parties with respect to the subject matter hereof and supersedes any prior written or oral agreements, representations, warranties, or statements. No representation, warranty, or inducement has been made to any party hereto concerning this Stipulation other than the representations, warranties, and covenants contained herein. This Stipulation may not be altered, modified or amended, or any of its

provisions waived, unless by a writing, executed by counsel for all the Settling Parties hereto.

11.4 This Stipulation and Settlement Agreement may be executed in counterparts, all of which shall be considered the same as if a single document shall have been executed, and shall become effective when such counterparts have been signed by each of the Settling Parties and delivered to each of the other Settling Parties.

11.5 Upon prior notice to the Court and after approval by the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation, as contemplated in the attached exhibits, incorporated herein by reference.

11.6 The failure of any Settling Party to enforce at any time any provision of this Stipulation and Settlement Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Stipulation or any part hereof or the right of any Settling Party thereafter to enforce each and every such provision. No waiver of any breach of this Stipulation shall be held to constitute a waiver of any other breach.

11.7 The Court shall retain jurisdiction with respect to the enforcement of the terms of this Stipulation and the Settlement embodied herein.

11.8 The section headings used throughout this Stipulation are for convenience only and shall not affect the interpretation or construction of this Stipulation.

11.9 In the event that the Court or any other court is called upon to interpret this Stipulation, no one party or group of parties shall be deemed to have drafted this Stipulation.

11.10 Nothing in this Stipulation, Settlement, or the negotiations or proceedings relating to the foregoing is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the accountants' privilege, the attorney-client privilege, the joint defense privilege, or work product immunity.

11.11 This Stipulation and the Settlement contemplated hereby shall be governed by, and construed in accordance with, the laws of the United States of America, to the extent applicable, or the State of New Jersey relating to contracts made and wholly to be performed in New Jersey and, to the extent required to obtain and enforce the complete release and injunction anticipated under paragraph 7.1(b), hereof, such foreign laws as may be applicable thereto.

11.12 This Stipulation and the Settlement contemplated hereby shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be executed by their duly authorized attorneys dated as of May 19, 2005.

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