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20 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
21
22 IN AND FOR THE COUNTY OF CLARK

23 DAN SCHMIDT, on Behalf of Himself and All)
24 Others Similarly Situated,)
25)
26 Plaintiff,)
27)
28 vs.)
29)
30 LIBERATOR MEDICAL HOLDINGS, INC.,)
31 et al.,)
32)
33 Defendants.)

34 Master File No. A-15-728234-B
35 Dept. No. XI

36 CLASS ACTION

37 STIPULATION OF SETTLEMENT

38 AND ALL CONSOLIDATED ACTIONS.
39
40

1 This Stipulation of Settlement, dated February 5, 2020 (the “Stipulation”) is made and
2 entered into by and among the following settling parties: (1) plaintiffs Peter K. Nagel, Dr. Sidney
3 Crain, and Dr. Lee Smith (“Plaintiffs” or “Class Representatives”), and (2) specially appearing JMP
4 Securities LLC (“JMP”; and with Plaintiffs, the “Settling Parties”). The Stipulation is intended by
5 the Settling Parties to fully, finally, and forever resolve, discharge, and settle JMP’s Released Claims
6 and the Plaintiffs’ Released Claims, upon and subject to the terms and conditions hereof and subject
7 to the approval of the Eighth Judicial District Court for the State of Nevada in and for the County of
8 Clark (the “Court”). Subject to and without waiving any defenses, including lack of personal
9 jurisdiction and any due process arguments, JMP agrees to specially appear in this Court solely in
10 connection with this Settlement.

11 **I. BACKGROUND**

12 The above-captioned action (the “Nevada Action”) was a certified class action, alleging
13 breach of fiduciary duties and seeking monetary damages from former defendant Mark A. Libratore
14 (“Libratore”), in connection with the acquisition of Liberator Medical Holdings, Inc. (“Liberator” or
15 “LMH” or the “Company”) by C.R. Bard, Inc. (“Bard”) (the “Acquisition”). The full background of
16 the Nevada Action is set forth in the April 17, 2019 Stipulation of Settlement between Plaintiffs and
17 Libratore, which was filed with this Court on April 19, 2019 (the “Libratore Stipulation”), and was
18 approved by this Court on September 30, 2019 (the “Libratore Settlement”).

19 This Court retained jurisdiction to review and approve the settlement that is the subject of
20 this Stipulation. The background of facts relevant to this Stipulation are summarized below.¹

21 Plaintiffs previously filed an amended complaint in the Nevada Action, seeking to add JMP
22 as a defendant for purportedly aiding and abetting the alleged breaches of fiduciary duty.

23 On December 16, 2016, JMP filed its motion to dismiss in the Nevada Action. On April 4,
24 2017, this Court heard oral argument on JMP’s motion to dismiss and advised that it was granting

25
26 ¹ Plaintiffs and JMP are parties to a related action, *Nagel v. JMP Securities LLC*, Case No.
27 567294, pending in the Superior Court of the State of California, County of San Francisco (the
28 “California Action”). Although many of the background facts of the California Action are
intertwined with the Libratore Settlement, for the sake of brevity, this Stipulation refers to but does
not repeat the facts set forth in the background section of the Libratore Stipulation.

1 dismissal of JMP without prejudice on jurisdictional grounds. On June 29, 2017, pursuant to a
2 stipulation between Plaintiffs and JMP, this Court entered an order voluntarily dismissing JMP
3 without prejudice.

4 On February 21, 2018, this Court entered an order granting class certification in the Nevada
5 Action. The Court certified the following class of LMH stockholders:

6 All holders of Liberator Medical Holdings, Inc. (“LMH”) common stock who
7 received consideration for their shares in the acquisition of LMH by C.R. Bard, Inc.
8 (“Bard”) for the price of \$3.35 per share, which closed on January [21], 2016 (the
9 “Acquisition”). Excluded from the Class are defendant Mark A. Libratoro, the LMH
10 board of directors at the time of the Acquisition, LMH, and Bard (collectively, the
11 “Excluded Parties”), as well as any person, firm, trust, corporation or other entity
12 related to or affiliated with any of the Excluded Parties.

13 On June 14, 2018, Plaintiffs filed a complaint against JMP for purportedly aiding and
14 abetting the Board’s alleged breaches of fiduciary duty in connection with the Acquisition in the
15 California Action. The California Action sought monetary damages on behalf of the same Class as
16 certified in the Nevada Action.

17 On October 18, 2018, Plaintiffs filed an amended complaint against JMP in the California
18 Action.

19 On January 15, 2019, JMP filed a demurrer in the California Action.

20 On or around April 17, 2019, Plaintiffs and Libratoro entered into the Libratoro Stipulation.
21 The Libratoro Stipulation provided a \$4.75 million all-cash recovery for the benefit of the Class, and
22 expressly did not release any of the Class’ claims against JMP which were being litigated in the
23 California Action.

24 On April 30, 2019, Plaintiffs filed their Unopposed Motion for Preliminary Approval of
25 Settlement with respect to the Libratoro Settlement.

26 On June 3, 2019, the Court signed the Order granting preliminary approval of the Libratoro
27 Settlement, and approved the form and content of the notice program for the Libratoro Settlement.

28 On June 24, 2019, the notice of the proposed Libratoro Settlement was mailed to the Class
and posted on website www.LiberatorSettlement.com.

1 On July 3, 2019, the Summary Notice of the proposed Libratoro Settlement was published in
2 the national edition of *The Wall Street Journal* and over *Business Wire*.

3 On or around September 26, 2019, Plaintiffs and JMP reached a settlement in principle with
4 respect to the California Action.

5 On September 30, 2019, the Court held a final approval hearing with respect to the Libratoro
6 Settlement.

7 On September 30, 2019, the Court granted final approval of the Libratoro Settlement, and
8 approved the plan of allocation for the settlement proceeds.

9 In the interests of efficiency and judicial economy, Plaintiffs requested, and this Court
10 agreed, to retain jurisdiction in order to evaluate the proposed settlement between Plaintiffs and
11 JMP, which was anticipated to confer benefits upon the same Class as in the Libratoro Settlement,
12 and which was anticipated to utilize the same notice and allocation procedure as the Libratoro
13 Settlement.

14 On December 16, 2019, Plaintiffs and JMP entered into the Settlement Term Sheet, agreeing
15 to the material terms of this Settlement (defined below).

16 **II. JMP'S DENIALS OF WRONGDOING AND LIABILITY**

17 JMP has denied, and continues to deny, that it has aided or abetted any violations of law or
18 breaches of duty to the Plaintiffs and the Class. JMP is entering into the Settlement solely because it
19 will eliminate the uncertainty, distraction, burden, and expense of further litigation. The provisions
20 contained in this Settlement shall not be deemed a presumption, concession, or admission by JMP of
21 any fault, liability, or wrongdoing as to any facts or claims that have been or might be alleged or
22 asserted in the California Action, or any other action or proceeding that has been, will be, or could be
23 brought, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence,
24 or otherwise used by any person in the California Action, or in any other action or proceeding,
25 whether civil, criminal, or administrative, for any purpose other than as provided expressly herein.

1 **III. CLAIMS OF CLASS REPRESENTATIVES AND BENEFITS OF**
2 **SETTLEMENT**

3 Class Representatives believe that the claims asserted in the California Action have merit and
4 that the evidence developed to date supports those claims. Class Representatives, however,
5 recognize and acknowledge the expense and length of continued proceedings necessary to prosecute
6 the California Action against JMP through trial, potential post-trial proceedings, and appeals. Class
7 Representatives also have taken into account the uncertain outcome and the risk of any litigation,
8 especially in complex actions such as the California Action, as well as the difficulties and delays
9 inherent in such litigation. Class Representatives also are mindful of the inherent problems of proof
10 and possible defenses to the violations asserted in the California Action. Class Counsel and Class
11 Representatives believe that the Settlement set forth in this Stipulation confers substantial benefits
12 upon the Class (in addition to the benefits from former Libratore Settlement). Based on their
13 evaluation, Class Representatives and Class Counsel have determined that the Settlement set forth in
14 this Stipulation is in the best interests of the Class, and that the Settlement provided for herein is fair,
15 reasonable and adequate, and made in good faith.

16 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

17 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
18 Plaintiffs (for themselves and on behalf of the Class Members) and JMP, by and through their
19 respective counsel of record, that, subject to the approval of the Court, pursuant to NRCP 23, the
20 California Action, JMP's Released Claims, and the Plaintiffs' Released Claims shall be finally and
21 fully compromised, settled, and released, and the California Action shall be dismissed with
22 prejudice, upon and subject to the terms and conditions of the Stipulation, as follows:

23 **1. Definitions**

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

25 1.1 The "Acquisition" is defined in ¶1.4 below.

26 1.2 "Authorized Claimant" means any Class Member whose claim for recovery has been
27 allowed pursuant to the terms of the Stipulation.

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1 1.3 “Claims Administrator” means the firm of Gilardi & Co. LLC.

2 1.4 “Class” means: All holders of Liberator Medical Holdings, Inc. (“LMH”) common
3 stock who received consideration for their shares in the acquisition of LMH by C.R. Bard, Inc.
4 (“Bard”) for the price of \$3.35 per share, which closed on January 21, 2016 (the “Acquisition”).
5 Excluded from the Class are defendant Mark A. Libratore, the LMH board of directors at the time of
6 the Acquisition, LMH, and Bard (the “Excluded Parties”), as well as any person, firm, trust,
7 corporation or other entity related to or affiliated with any of the Excluded Parties. For the purposes
8 of this Settlement, JMP agrees that it is one of the Excluded Parties.
9

10 1.5 “Class Counsel” means Robbins Geller Rudman & Dowd LLP or its successor(s).

11 1.6 “Class Member” or “Member of the Class” means any Person who falls within the
12 definition of the Class as set forth in ¶1.4 of the Stipulation.
13

14 1.7 “Class Representatives” means Peter K. Nagel, Dr. Sidney Crain, and Dr. Lee Smith.

15 1.8 “Class Representatives’ Counsel” means only Robbins Geller Rudman & Dowd LLP,
16 The O’Mara Law Firm, P.C., The Briscoe Law Firm, PLLC, Powers Taylor LLP, and Johnson
17 Fistel, LLP.

18 1.9 “Effective Date” means the first date by which all of the events and conditions
19 specified in ¶7.1 of the Stipulation have been met and have occurred.
20

21 1.10 “Escrow Agent” means Robbins Geller Rudman & Dowd LLP or its successor(s).

22 1.11 “Excluded Parties” is defined in ¶1.4 above.

23 1.12 “Final” means when the last of the following with respect to the Order and Final
24 Judgment, materially in the form of Exhibit B attached hereto, shall occur: (i) the expiration of three
25 (3) business days after the time for the filing of any motion to alter or amend the Order and Final
26 Judgment under NRCP 59(e) without any such motion having been filed; (ii) the expiration of the
27 time for the filing or noticing of any appeal from the Order and Final Judgment without any appeal
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1 having been filed; and (iii) if such motion to alter or amend is filed or if an appeal is filed or noticed,
2 then immediately after the determination of that motion or appeal so that the Order and Final
3 Judgment is no longer subject to any further judicial review or appeal whatsoever, whether by reason
4 of affirmance by court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise,
5 and in such a manner as to permit the consummation of the Settlement in accordance with the terms
6 and conditions of this Stipulation. For purposes of this paragraph, an appeal shall include any
7 petition for a writ that may be filed in connection with the approval or disapproval of this Settlement,
8 but shall not include any appeal that concerns only the issue of attorneys' fees and expenses or the
9 Plan of Allocation of the Settlement Fund. Any proceeding or order, or any appeal or petition for a
10 writ pertaining solely to any plan of distribution and/or application for attorneys' fees, costs, or
11 expenses shall not in any way delay or preclude the Order and Final Judgment from becoming Final.
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14 1.13 "Final Approval Hearing" means the hearing to determine whether the proposed
15 Settlement embodied by this Stipulation is fair, reasonable, and adequate to the Class, and whether
16 the Court should: (1) enter the Order and Final Judgment approving the proposed Settlement;
17 (2) approve the Plan of Allocation of Settlement proceeds; and (3) approve Class Counsel's petition
18 for attorneys' fees and expenses to Class Representatives' Counsel.

19 1.14 "JMP" refers to JMP Securities LLC.

20
21 1.15 "JMP's Released Claims" means any and all actions, claims, debts, demands,
22 liabilities, losses, matters, rights, suits and causes of action of any nature whatsoever, known or
23 unknown, contingent or absolute, mature or immature, discoverable or undiscoverable, whether
24 concealed or hidden, suspected or unsuspected, whether based in law or equity, arising under federal,
25 state, common or foreign law, or any other law, rule or regulation, which now exist or heretofore
26 have existed, that have been or could have been asserted in the California Action or any forum by the
27 Released JMP Parties or any of them against any of the Released Plaintiff Parties, that arise out of or
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1 relate in any way to the institution, prosecution, or settlement of the claims against the Released JMP
2 Parties, provided, however, that this release shall not include any claims to enforce the Settlement.

3 1.16 “Liaison Counsel” means The O’Mara Law Firm, P.C.

4 1.17 “Liberator,” “LMH,” or the “Company” means Liberator Medical Holdings, Inc.

5 1.18 “Order and Final Judgment” means the judgment to be rendered by the Court,
6 materially in the form attached hereto as Exhibit B.
7

8 1.19 “Person” means a natural person, individual, corporation, limited liability corporation,
9 professional corporation, limited liability partnership, partnership, limited partnership, limited
10 liability company, association, joint stock company, estate, legal representative, trust, unincorporated
11 association, government or any political subdivision or agency thereof, and any business or legal
12 entity and all of their respective spouses, heirs, beneficiaries, executors, administrators, predecessors,
13 successors, representatives, or assignees.
14

15 1.20 “Plaintiffs’ Released Claims” means all claims, demands, rights, actions or causes of
16 action, liabilities, debts, damages, losses, obligations, judgments, suits, fees, expenses, costs,
17 matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or
18 absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or
19 unmatured, whether based in law or equity, that have been, or could have been, asserted in the
20 California Action or in any court, tribunal, or proceedings (including, but not limited to, any claims
21 arising under federal, state, foreign, or common law relating to alleged fraud, breach of any duty,
22 negligence, the federal securities laws, and any state disclosure law) by or on behalf of any Member
23 of the Class, based on, arising out of, or relating to: (A) his, her, or its ownership of LMH stock
24 (whether individual, class, derivative, representative, legal, equitable, or any other type or in any
25 other capacity), against the Released JMP Parties, whether or not any such Released JMP Parties
26 were named, served with process, or appeared in the California Action; and (B) which have arisen,
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1 could have arisen, arise now or hereafter arise out of or relate in any manner to the allegations, facts,
2 events, acquisitions, matters, acts, occurrences, statements, representations, misrepresentations,
3 omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved
4 or set forth in, or referred to or otherwise related in any way to: (i) the Acquisition; (ii) the adequacy
5 of the consideration paid to LMH shareholders in connection with the Acquisition; (iii) the fiduciary
6 obligations, if any, of the Released JMP Parties in connection with the Acquisition; (iv) the
7 negotiations in connection with the Acquisition; (v) the processes, events, and analyses leading up to
8 the Acquisition, including, but not limited, to the process by which LMH and its advisors attempted
9 to locate parties to engage in an acquisition or other strategic transaction with LMH; (vi) the
10 disclosures or disclosure obligations of any of the Released JMP Parties in connection with the
11 Acquisition, including, but not limited to, the disclosures in the Proxy Statement; (vii) any events,
12 matters, acts, omissions, statements, or facts alleged or referred to in any complaint filed in any court
13 or tribunal related to any of the foregoing topics; or (viii) the settlement of the claims against the
14 Released JMP Parties; provided, however, that this release shall not include any claims to enforce
15 the Settlement. “Plaintiffs’ Released Claims” includes “Unknown Claims” as defined in ¶1.32
16 hereof.

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19 1.21 “Plan of Allocation” means a plan or formula of allocation of the Settlement Fund
20 whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses
21 of notice and administration of the Settlement, Taxes and Tax Expenses, and such attorneys’ fees,
22 costs, expenses, and interest as may be awarded by the Court. Any Plan of Allocation is not part of
23 the Stipulation, and JMP shall have no responsibility or liability with respect thereto.
24

25 1.22 “Preliminary Approval Order” means the order described in ¶3.1 hereof.
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1 1.23 “Released JMP Parties” means JMP and all of its predecessors, successors and
2 assigns, and each of their respective current and former officers, directors, employees, managers,
3 members, partners, agents, stockholders, attorneys, or legal representatives.

4 1.24 “Released Plaintiff Parties” means Class Representatives, all Class Members, and
5 Class Representatives’ Counsel.

6 1.25 “Settlement” means the settlement of the California Action as set forth in this
7 Stipulation.

8 1.26 “Settlement Amount” means the principal amount of Three Million Dollars
9 (\$3,000,000.00), to be paid pursuant to ¶2.1 of this Stipulation. JMP shall have no obligation to pay,
10 or to cause any other Person or entity to pay, any amount over and above the principal amount of
11 \$3,000,000.00, and such amount is paid as consideration for full and complete settlement of all the
12 Plaintiffs’ Released Claims.
13

14 1.27 “Settlement Fund” means the Settlement Amount plus all interest and accretions
15 thereto after being transferred to an account controlled by the Escrow Agent, and which may be
16 reduced by payments or deductions as provided for herein or by court order.
17

18 1.28 “Settling Parties” means, collectively: (i) JMP; and (ii) Class Representatives, on
19 behalf of themselves and each of the Class Members.
20

21 1.29 “Stipulation” means this Stipulation of Settlement, including the recitals and Exhibits
22 hereto.

23 1.30 “Tax Expenses” means expenses and costs incurred in connection with the calculation
24 and payment of taxes or the preparation of tax returns and related documents, including, without
25 limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs relating to
26 filing (or failing to file) the returns described in ¶2.8.
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1 1.31 “Taxes” means all taxes (including any estimated taxes, interest or penalties) arising
2 with respect to the income earned by the Settlement Fund as described in ¶2.8.

3 1.32 “Unknown Claims” means any of the Plaintiffs’ Released Claims which Class
4 Representatives or any Class Member does not know or suspect to exist in such party’s favor at the
5 time of the release of the Released JMP Parties, and any of the JMP’s Released Claims that the
6 Released JMP Parties do not know or suspect to exist in his, her or its favor at the time of the release
7 of the Released Plaintiff Parties, which, if known by such party, might have affected such party’s
8 decision to enter into the settlement with and release of the Released JMP Parties or the Released
9 Plaintiff Parties, or might have affected such party’s decision not to object to this Settlement.
10 Unknown Claims include those Plaintiffs’ Released Claims or JMP’s Released Claims in which
11 some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With
12 respect to any and all Plaintiffs’ Released Claims and JMP’s Released Claims, upon the Effective
13 Date, Class Representatives and JMP shall expressly, and each of Released Plaintiff Parties and
14 Released JMP Parties shall be deemed to have, and by operation of the Order and Final Judgment
15 shall have, waived to the fullest extent permitted by law, the provisions, rights, and benefits of
16 California Civil Code §1542, which provides:

17 *A general release does not extend to claims that the creditor or releasing*
18 *party does not know or suspect to exist in his or her favor at the time of executing*
19 *the release and that, if known by him or her, would have materially affected his or*
20 *her settlement with the debtor or released party.*

21 Class Representatives and JMP shall expressly, and each of Released Plaintiff Parties and Released
22 JMP Parties shall be deemed to have, and by operation of the Order and Final Judgment shall have,
23 waived any and all provisions, rights, and benefits conferred by any law of any state or territory of
24 the United States, or principle of common law, which is similar, comparable or equivalent to
25 California Civil Code §1542. The Released Plaintiff Parties and the Released JMP Parties may
26 hereafter discover facts in addition to or different from those which such party now knows or
27 believes to be true with respect to the subject matter of the Plaintiffs’ Released Claims and JMP’s
28

1 Released Claims, but Class Representatives and JMP shall expressly, and each of the Released
2 Plaintiff Parties and the Released JMP Parties, upon the Effective Date, shall be deemed to have, and
3 by operation of the Order and Final Judgment shall have, fully, finally, and forever settled and
4 released any and all Plaintiffs' Released Claims and JMP's Released Claims, as the case may be,
5 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not
6 concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity
7 now existing or coming into existence in the future, including, but not limited to, conduct that is
8 negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without
9 regard to the subsequent discovery or existence of such different or additional facts, whether or not
10 previously or currently asserted in any action. Class Representatives and JMP acknowledge, and the
11 Released Plaintiff Parties and the Released JMP Parties shall be deemed by operation of the Order
12 and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for
13 and a key element of the Settlement of which this release is a part.

14 **2. The Settlement**

15 **a. The Settlement Fund**

16 2.1 In consideration of the terms of this Stipulation, JMP shall cause the Settlement
17 Amount to be paid into the Escrow Account, no later than twenty-one (21) calendar days after the
18 later of: (i) entry of the Preliminary Approval Order, as defined in ¶3.1 herein; and (ii) the provision
19 to counsel for JMP of payment instructions and a W-9 providing the tax identification number for
20 the Escrow Agent. The Escrow Agent shall deposit the Settlement Amount, plus any accrued
21 interest, in a segregated escrow account ("Escrow Account") maintained by the Escrow Agent.
22

23 2.2 The deposit of the Settlement Amount is the only payment to be made by or on behalf
24 of JMP in connection with this Settlement. As set forth below, all fees, costs, and expenses incurred
25 by or on behalf of Class Representatives and the Class associated with the Settlement, including, but
26 not limited to, Taxes, Tax Expenses, administrative costs and costs of providing notice of the
27 Settlement to the Class Members, any award of attorneys' fees and expenses of Class Counsel,
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1 Liaison Counsel, or Class Representatives' Counsel shall be paid from the Settlement Fund, and in
2 no event shall JMP bear any additional responsibility for any such fees, costs or expenses.

3 **b. The Escrow Agent**

4 2.3 The Escrow Agent will invest the Settlement Fund created pursuant to ¶2.1 hereof
5 only in instruments backed by the full faith and credit of the United States Government or fully
6 insured by the United States Government or an agency thereof, and will reinvest the proceeds of
7 these instruments as they mature in similar instruments at their then-current market rates. All costs
8 and risks related to the investment of the Settlement Fund in accordance with the guidelines set forth
9 in this paragraph shall be borne by the Settlement Fund and the Released JMP Parties shall not have
10 any responsibility for, interest in, or liability whatsoever with respect to the funds held in the Escrow
11 Account, including with respect to investment decisions or the actions of the Escrow Agent, or any
12 transactions executed by the Escrow Agent.

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14
15 2.4 The Escrow Agent shall not disburse the Settlement Fund except as provided by:
16 (i) the Stipulation; (ii) an order of the Court; or (iii) prior written agreement of counsel for JMP.

17 2.5 Subject to further order(s) and/or directions as may be made by the Court, or as
18 provided in the Stipulation, the Escrow Agent is authorized to execute such transactions on behalf of
19 the Class Members as are consistent with the terms of the Stipulation. The Released JMP Parties
20 shall have no responsibility for, interest in, or liability whatsoever with respect to, the actions of the
21 Escrow Agent, or any transaction executed by the Escrow Agent.

22
23 2.6 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*
24 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such
25 funds shall be distributed or returned pursuant to the Stipulation and/or further order(s) of the Court.

26 2.7 The Escrow Agent may pay from the Settlement Fund the costs and expenses
27 reasonably and actually incurred in connection with providing notice to Members of the Class,
28

1 mailing the Notice and Proof of Claim and Release form and publishing notice (such amount shall
2 include, without limitation, the actual costs of publication, printing and mailing the Notice, and
3 reimbursement to nominee owners for forwarding notice to their beneficial owners), soliciting Class
4 claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund
5 (defined in ¶5.2 below) to Authorized Claimants, processing Proof of Claim and Release forms, and
6 paying escrow fees and costs, if any, and the administrative expenses incurred and fees charged by
7 the Claims Administrator in connection with providing notice and processing the submitted claims
8 (“Notice and Administration Costs”). In the event that the Settlement does not become final, any
9 money paid or incurred for the purposes in this ¶2.7, including any related fees, shall not be returned
10 or repaid to JMP.
11

12 **c. Taxes**

13 2.8 (a) The Settling Parties and the Escrow Agent agree that the Settlement Fund is
14 intended to be and should be treated as being at all times a “qualified settlement fund” within the
15 meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections
16 as necessary or advisable to carry out the provisions of this ¶2.8, including the “relation-back
17 election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest permitted date. Such
18 elections shall be made in compliance with the procedures and requirements contained in such
19 Treasury regulations promulgated under §1.468B of the Internal Revenue Code of 1986, as amended
20 (the “Code”). It shall be the responsibility of the Escrow Agent to timely and properly prepare and
21 deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the
22 appropriate filing to occur.
23

24 (b) For the purpose of §1.468B of the Code and the Treasury regulations
25 promulgated thereunder, the Escrow Agent shall be designated as the “administrator” of the
26 Settlement Fund. The Escrow Agent shall timely and properly file all informational and other tax
27 returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the
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1 returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in
2 ¶2.8(a) hereof) shall be consistent with this ¶2.8 and in all events shall reflect that all Taxes as
3 defined in ¶1.31 hereof (including any estimated Taxes, interest, or penalties) on the income earned
4 by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.8(c) hereof.

5 (c) All: (i) Taxes (including any estimated Taxes, interest, or penalties) arising
6 with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that
7 may be imposed upon the Released JMP Parties with respect to any income earned by the Settlement
8 Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement
9 fund” for federal or state income tax purposes; and (ii) Tax Expenses, and costs incurred in
10 connection with the operation and implementation of this ¶2.8 (including, without limitation,
11 expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating
12 to filing (or failing to file) the returns described in this ¶2.8), shall be paid out of the Settlement
13 Fund. In no event shall the Released JMP Parties have any responsibility for or liability with respect
14 to the Taxes or the Tax Expenses. The Escrow Agent shall indemnify and hold the Released JMP
15 Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason
16 of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered
17 to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent
18 out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be
19 obligated (notwithstanding anything herein to the contrary) to withhold from distribution to
20 Authorized Claimants any funds necessary to pay such amount, including the establishment of
21 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to
22 be withheld under Treas. Reg. §1.468B-2(1)(2)); the Released JMP Parties are not responsible
23 therefor and shall have no liability with respect thereto. The Settling Parties hereto agree to
24 cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent
25 reasonably necessary to carry out the provisions of this ¶2.8.

26 (d) None of the Released JMP Parties are responsible for Taxes, Tax Expenses, or
27 Notice and Administration Costs, nor shall they be liable for any claims with respect thereto.

28

1 (e) If the Stipulation is not approved, or is terminated, canceled, or fails to
2 become effective for any reason, or if the Effective Date does not occur for any reason, the Escrow
3 Agent, or its designee, shall apply for any tax refund owed on the Settlement Fund and shall pay the
4 proceeds, after deduction, of any fees or expenses incurred in connection with such application for
5 refund, to the Settlement Fund, to be refunded to JMP pursuant to the terms of ¶2.9 below.

6 **d. Termination of Settlement**

7 2.9 In the event that the Stipulation is not approved, or is terminated, canceled, or fails to
8 become effective for any reason, including, without limitation, in the event the Order and Final
9 Judgment is reversed or vacated following any appeal taken therefrom, or is successfully collaterally
10 attacked, the Settlement Fund (including accrued interest and income), less Notice and
11 Administration Costs, Taxes or Tax Expenses paid in connection with the Settlement provided for
12 herein, incurred or due and owing, shall be refunded in accordance with the instructions to be
13 provided by counsel for JMP no later than ten (10) business days from the termination event or as
14 otherwise agreed upon in writing by counsel for JMP.
15

16 **3. Preliminary Approval Order and Final Approval Hearing**

17 3.1 Promptly after execution of the Stipulation, Class Counsel shall submit the
18 Stipulation together with its Exhibits to the Court and shall apply for entry of an order, materially in
19 the form and content of Exhibit A attached hereto (the “Preliminary Approval Order”), requesting,
20 *inter alia*, the preliminary approval of the Settlement set forth in the Stipulation, approval for the
21 mailing of the Notice of Proposed Settlement of Class Action (the “Notice”) and the Proof of Claim
22 and Release form, materially in the forms of Exhibits A-1 and A-2 attached hereto, and approval of
23 the publication of a Summary Notice, materially in the form of Exhibit A-3 attached hereto, or such
24 other materially similar form agreed to by the Settling Parties.
25

26 3.2 Class Counsel will request that the Court hold the Final Approval Hearing and finally
27 approve the Settlement as set forth herein. At or after the Final Approval Hearing, Class Counsel
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1 also will request that the Court approve the proposed Plan of Allocation and the Fee and Expense
2 Application.

3 **4. Releases**

4 4.3 Upon the Effective Date, as defined in ¶1.9 hereof, Class Representatives, and each
5 and all of the Class Members and anyone claiming through or on behalf of any of them, including,
6 but not limited to, their predecessors, successors, agents, representatives, attorneys, affiliates, heirs,
7 executors, administrators, and assigns, shall be deemed to have, and by operation of the Order and
8 Final Judgment shall have, fully, finally, and forever waived, released, relinquished, and discharged
9 all Plaintiffs' Released Claims (including, without limitation, Unknown Claims), regardless of
10 whether such Class Member executes and delivers a Proof of Claim and Release form, except that
11 claims relating to the enforcement of the Settlement shall not be released.
12

13 4.4 Upon the Effective Date, as defined in ¶1.9 hereof, Class Representatives, each and
14 all of the Class Members and anyone claiming through or on behalf of any of them, including, but
15 not limited to, their predecessors, successors, agents, representatives, attorneys, affiliates, heirs,
16 executors, administrators, and assigns, are forever barred and enjoined from commencing,
17 instituting, asserting, maintaining, enforcing, prosecuting, or continuing to prosecute any action or
18 proceeding in any forum (including, but not limited to, any state or federal court of law or equity,
19 any arbitral forum, any tribunal, administrative forum, or the court of any foreign jurisdiction, or any
20 other forum of any kind), any of the Plaintiffs' Released Claims (including, without limitation,
21 Unknown Claims), against any or all of the Released JMP Parties, regardless of whether such Class
22 Member executes and delivers a Proof of Claim and Release form, except that claims relating to the
23 enforcement of the Settlement shall not be affected.
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1 4.5 The Proof of Claim and Release to be executed by Class Members shall release all
2 Plaintiffs' Released Claims against the Released JMP Parties and shall be materially in the form
3 contained in Exhibit A-2 attached hereto.

4 4.6 Upon the Effective Date, as defined in ¶1.9 hereof, each of the Released JMP Parties
5 shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally,
6 and forever released, relinquished, and discharged each of the Released Plaintiff Parties from all
7 JMP's Released Claims, and shall forever be enjoined from prosecuting such claims, except for
8 claims relating to the enforcement of the Settlement.

9 4.7 Pending approval of the Court of the Stipulation of Settlement, the Class
10 Representatives and all Class Members shall be barred and enjoined from prosecuting any of the
11 Plaintiffs' Released Claims against any of the Released JMP Parties. Pending the Effective Date, the
12 parties will take whatever actions are necessary to continue a stay of the proceedings in the
13 California Action.

14
15
16 **5. Administration and Calculation of Claims, Final Awards, and**
17 **Supervision and Distribution of the Settlement Fund**

18 5.1 The Claims Administrator, subject to such supervision and direction of the Court
19 and/or Class Counsel as may be necessary or as circumstances may require, shall administer and
20 calculate the claims submitted by Class Members and shall oversee distribution of the Net
21 Settlement Fund (defined below) to Authorized Claimants.

22 5.2 The Settlement Fund shall be applied as follows:

- 23 (a) to pay all Notice and Administration Costs;
- 24 (b) to pay the Taxes and Tax Expenses;
- 25 (c) to pay Class Representatives' Counsel's attorneys' fees and expenses with
26 interest thereon (the "Fee and Expense Award"); and
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1 (d) after the Effective Date, to distribute the balance of the Settlement Fund (the
2 “Net Settlement Fund”) to Authorized Claimants as allowed by the Stipulation, the Plan of
3 Allocation, or the Court.

4 5.3 Upon the Effective Date and thereafter, and in accordance with the terms of the
5 Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may
6 be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to
7 Authorized Claimants, subject to and in accordance with the following:

8 (a) Each Class Member shall be required to submit a Proof of Claim and Release
9 form, materially in a form approved by the Court, supported by such documents as are designated
10 therein, including proof of the transactions claimed, or such other documents or proof as the Claims
11 Administrator, in its discretion, may deem acceptable;

12 (b) All Proof of Claim and Release forms must be submitted by the date specified
13 in the Notice unless such period is extended by Court order. Any Class Member who fails to submit
14 a Proof of Claim and Release form by such date shall be forever barred from receiving any payment
15 pursuant to this Stipulation, but shall in all other respects be bound by all of the terms of this
16 Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered
17 and the releases provided for herein, and will be barred from bringing any action against the
18 Released JMP Parties concerning the Plaintiffs’ Released Claims. A Proof of Claim and Release
19 form shall be deemed to have been submitted when posted, if received with a postmark indicated on
20 the envelope and if mailed by first-class mail and addressed in accordance with the instructions
21 thereon. In all other cases, the Proof of Claim and Release form shall be deemed to have been
22 submitted when actually received by the Claims Administrator. Notwithstanding the foregoing,
23 Class Counsel shall have the discretion (but not the obligation) to accept for processing late-
24 submitted claims so long as the distribution of the Net Settlement Fund to Authorized Claimants is
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1 not materially delayed thereby. No Person shall have any claim against Class Representatives, Class
2 Counsel or the Claims Administrator by reason of the decision to exercise or not exercise such
3 discretion;

4 (c) Each Proof of Claim and Release form shall be submitted to and reviewed by
5 the Claims Administrator, who shall determine in accordance with this Stipulation and the approved
6 Plan of Allocation the extent, if any, to which each claim shall be allowed, subject to review by the
7 Court pursuant to subparagraph (e) below;

9 (d) Proof of Claim and Release forms that do not meet the submission
10 requirements may be rejected. Prior to rejection of a Proof of Claim and Release form, the Claims
11 Administrator shall communicate with the claimant in order to attempt to remedy the curable
12 deficiencies. The Claims Administrator shall notify, in a timely fashion and in writing, all claimants
13 whose Proof of Claim and Release forms it proposes to reject in whole or in part, setting forth the
14 reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has
15 the right to a review by the Court if the claimant so desires and complies with the requirements of
16 subparagraph (e) below;

18 (e) If any claimant whose claim has been rejected in whole or in part desires to
19 contest such rejection, the claimant must, within twenty (20) calendar days after the date of mailing
20 of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and
21 statement of reasons indicating the claimant's grounds for contesting the rejection, along with any
22 supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a
23 claim cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to
24 the Court;

26 (f) Each claimant who submits a Proof of Claim and Release shall be deemed to
27 have submitted to the jurisdiction of the Court with respect to the claimant's claim, including, but
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1 not limited to, all releases provided for herein and in the Order and Final Judgment, and the claim
2 will be subject to investigation and discovery under the NRCP, provided that such investigation and
3 discovery shall be limited to the claimant's status as a Class Member and the validity and amount of
4 the claimant's claim. In connection with processing the Proofs of Claim and Release, no discovery
5 shall be allowed on the merits of the California Action or the Settlement;

6
7 (g) The Claims Administrator shall calculate the claims of Authorized Claimants
8 in accordance with the Plan of Allocation. Following the Effective Date, the Claims Administrator
9 shall send to each Authorized Claimant his, her or its *pro rata* share of the Net Settlement Fund. No
10 distributions will be made to Authorized Claimants who would otherwise receive a distribution of
11 less than \$10.00; and

12
13 (h) Class Representatives will file papers seeking a dismissal with prejudice of the
14 California Action within ten (10) business days of the Effective Date, and will take whatever further
15 actions are necessary to effect such dismissal.

16 5.4 Except for the obligation to cause payment of the Settlement Amount as set forth
17 herein, the Released JMP Parties shall have no responsibility for, interest in, or liability whatsoever
18 with respect to reviewing or challenging Settlement claims, or the investment or distribution of the
19 Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims,
20 the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection
21 therewith.

22
23 5.5 No Person shall have any claim of any kind against the Released JMP Parties with
24 respect to the matters set forth in this Section 5.

25 5.6 No Person shall have any claim against Class Representatives, the Escrow Agent,
26 Class Representatives' Counsel, the Claims Administrator, or any Person designated by Class
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1 Counsel based on distributions made materially in accordance with this Stipulation and the
2 Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

3 5.7 JMP shall not have a reversionary interest in the Net Settlement Fund. The Net
4 Settlement Fund shall be distributed to the Authorized Claimants in accordance with the Plan of
5 Allocation set forth in the Notice and approved by the Court. The Claims Administrator will make
6 reasonable and diligent efforts to have Class Members who are entitled to participate in the
7 distribution of the Net Settlement Fund cash their distributions. If there is any balance remaining in
8 the Net Settlement Fund after a reasonable period of time after the initial distribution of the Net
9 Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Class Counsel,
10 shall, if feasible, reallocate on a *pro rata* basis among Authorized Claimants who negotiated the
11 checks sent to them in the initial distribution and who would receive a minimum of \$10.00. These
12 reallocations shall be repeated until the balance remaining in the Net Settlement Fund is *de minimis*
13 and any remainder shall thereafter be donated to an appropriate non-profit organization selected by
14 Class Counsel.
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17 5.8 It is understood and agreed by the Settling Parties that any proposed Plan of
18 Allocation of the Net Settlement Fund, including, but not limited to, any adjustments to an
19 Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered
20 by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy
21 of the Settlement set forth in the Stipulation, and any order or proceeding relating to the Plan of
22 Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's
23 Order and Final Judgment approving the Stipulation and the Settlement set forth therein, or any other
24 orders entered pursuant to the Stipulation.
25

26 5.9 Class Members and JMP shall be bound by the terms of this Stipulation, irrespective
27 of whether the Court disapproves or modifies the Plan of Allocation. The time to appeal from
28

1 approval of the Settlement shall commence upon the Court's entry of the Order and Final Judgment
2 regardless of whether a Plan of Allocation has been approved.

3 **6. Class Representatives' Counsel's Attorneys' Fees and Expenses**

4 6.1 Class Counsel may submit an application or applications (the "Fee and Expense
5 Application") for: (a) an award of attorneys' fees; and (b) payment of expenses in connection with
6 prosecuting the California Action; and (c) any interest on such attorneys' fees and expenses at the
7 same rate and for the same periods as earned by the Settlement Fund (until paid). Any and all such
8 fees, expenses, charges and costs awarded by the Court shall be payable solely out of the Settlement
9 Fund. Class Counsel reserve the right to make additional applications for fees and expenses
10 incurred.

11
12 6.2 The attorneys' fees and expenses, as awarded by the Court (the "Fee and Expense
13 Award"), shall be paid to Class Counsel from the Settlement Fund, as ordered, immediately upon
14 execution of an order awarding such fees and expenses, notwithstanding the existence of any timely
15 filed objection thereto, any appeal or potential for appeal therefrom, or collateral attack on the
16 Settlement or any part thereof. Class Counsel may thereafter allocate the attorneys' fees among
17 other Class Representatives' Counsel, if any, in a manner which they, in good faith, believe reflects
18 the contributions of such counsel to the initiation, prosecution, and resolution of the California
19 Action.
20

21 6.3 In the event that the Effective Date does not occur, or the Order and Final Judgment
22 or Fee and Expense Award is reversed or modified, or the Stipulation is canceled or terminated for
23 any other reason, and such reversal, modification, cancellation or termination becomes final and not
24 subject to review, and in the event that the Fee and Expense Award has been paid to any extent, then
25 such of Class Representatives' Counsel who have received any portion of the Fee and Expense
26 Award shall within ten (10) business days from receiving notice from JMP's counsel or from a court
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1 of appropriate jurisdiction, refund to the Settlement Fund such fees and expenses previously paid to
2 them from the Settlement Fund plus the interest earned thereon at the same rate as earned on the
3 Settlement Fund consistent with such reversal or modification. Any refunds required pursuant to this
4 ¶6.3 shall be the several obligations of Class Representatives' Counsel receiving fees or expenses to
5 make appropriate refunds or repayments to the Settlement Fund. Each such Class Representatives'
6 Counsel's law firm receiving fees and expenses, as a condition of receiving such fees and expenses,
7 on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners
8 and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the
9 provisions of this paragraph.
10

11 6.4 The procedure for and the allowance or disallowance by the Court of the Fee and
12 Expense Application are not part of the Settlement, and are to be considered by the Court separately
13 from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Any
14 order or proceeding relating to the Fee and Expense Application or any appeal from any order
15 relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the
16 Settlement, or affect or delay the finality of the Order and Final Judgment approving this Stipulation
17 and the Settlement.
18

19 6.5 Any fees and expenses awarded by the Court shall be paid solely from the Settlement
20 Fund. JMP has no obligation with respect to any payments apart from funding the Settlement
21 Amount pursuant to ¶2.1.
22

23 **7. Conditions of Settlement, Effect of Disapproval, Cancellation or**
24 **Termination**

25 7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of
26 the following events:

27 (a) Execution of this Stipulation and such other documents as may be required to
28 obtain final Court approval of the Stipulation in a form satisfactory to the Settling Parties;

1 (b) the Settlement Amount has been deposited in the Escrow Account, as required
2 by ¶2.1 above;

3 (c) the Court has entered the Preliminary Approval Order, as required by ¶3.1
4 hereof;

5 (d) the Court has approved this Stipulation, following notice to the Class
6 Members and the Final Approval Hearing, as prescribed by the NRCP;

7 (e) the Court has entered the Order and Final Judgment, materially in the form of
8 Exhibit B attached hereto; and

9 (f) the Order and Final Judgment has become Final, as defined in ¶1.12 hereof.

10 7.2 This is not a claims-made settlement. As of the Effective Date, JMP and/or any such
11 Persons or entities funding the Settlement on JMP's behalf, shall not have any right to the return of
12 the Settlement Fund or any portion thereof for any reason. Upon the occurrence of all of the events
13 referenced in ¶7.1 hereof, any and all remaining interest or right of JMP in or to the Settlement Fund,
14 if any, shall be absolutely and forever extinguished. If all of the conditions specified in ¶7.1 hereof
15 are not met, then this Stipulation shall be cancelled and terminated subject to ¶7.5 hereof unless
16 Class Counsel and counsel for JMP mutually agree in writing to proceed with the Settlement.
17

18 7.3 The Settling Parties shall have the right to terminate the Settlement and this
19 Stipulation by providing written notice of their election to do so ("Termination Notice") to all other
20 parties hereto within thirty (30) calendar days of: (a) the Court's declining to enter a Preliminary
21 Approval Order, materially in the form of the Preliminary Approval Order submitted by the Settling
22 Parties; (b) the Court's refusal to approve this Stipulation or a materially identical Stipulation; (c) the
23 Court's declining to enter the Order and Final Judgment, materially in the form of the Order and
24 Final Judgment submitted by the Settling Parties; (d) the Order and Final Judgment being modified
25 or reversed by the Court of Appeals or the Supreme Court in any manner that results in a document
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1 that materially deviates from the document submitted by the Settling Parties; or (e) the Effective
2 Date not otherwise occurring.

3 7.4 In the event that the Stipulation is not approved by the Court or the Settlement set
4 forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the
5 Settling Parties shall not forfeit or waive any factual or legal defense or contention in the California
6 Action and shall be restored to their respective positions in the California Action as of September 26,
7 2019. In such event, the terms and provisions of the Stipulation, with the exception of ¶¶2.6, 2.8(e),
8 2.9, 6.3, 7.4-7.5, and 9.6-9.7 hereof, shall have no further force and effect with respect to the Settling
9 Parties and shall not be used in the California Action or in any other proceeding for any purpose, and
10 any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be
11 treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any
12 order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs,
13 expenses, and interest awarded by the Court to Class Counsel, Liaison Counsel, or Class
14 Representatives' Counsel shall constitute grounds for cancellation or termination of the Stipulation.

15 7.5 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its
16 terms, neither Class Representatives nor Class Representatives' Counsel shall have any obligation to
17 repay any amounts actually and properly disbursed from the Settlement Fund for the Notice and
18 Administration Costs of the Settlement pursuant to ¶2.7 hereof. In addition, any expenses already
19 incurred and properly chargeable to the Settlement Fund for the Notice and Administration Costs of
20 the Settlement pursuant to ¶2.7 hereof at the time of such termination or cancellation, but which have
21 not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Stipulation
22 prior to the balance being refunded in accordance with ¶2.9 hereof.
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1 **8. No Admission of Wrongdoing**

2 8.1 JMP’s execution of this Stipulation does not constitute an admission by JMP: (i) of
3 any wrongdoing, violation of law, or liability whatsoever; or (ii) that recovery could be had in any
4 amount should the California Action not be settled. JMP denies any wrongdoing and liability and
5 maintains that its conduct at all times was legal and proper. Neither this Stipulation, nor any term
6 hereof, may be offered into evidence in any proceeding or used in any manner as an admission or
7 implication of liability or fault on the part of JMP.
8

9 8.2 Class Representatives’ execution of this Stipulation does not constitute an admission
10 by Class Representatives: (i) of the lack of any wrongdoing, violation of law, or liability on behalf of
11 JMP or any other Person; or (ii) that recovery could not be had should the California Action not be
12 settled. Neither this Stipulation, nor any term hereof, may be offered or received into evidence in
13 any proceeding or used in any manner as an admission or concession by Class Representatives that
14 JMP or any other Person or entity has not engaged in any wrongdoing or that the conduct of JMP or
15 any other Person or entity was at all times legal and proper.
16

17 **9. Miscellaneous Provisions**

18 9.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this
19 agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement
20 all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the
21 foregoing terms and conditions of the Stipulation expeditiously.
22

23 9.2 This Stipulation and the Exhibits attached hereto constitute the entire agreement
24 between the Settling Parties as to the subject matter hereof and supersede any prior or
25 contemporaneous written or oral agreements or understandings between the Settling Parties. No
26 representations, warranties, or inducements have been made to any party concerning the Stipulation
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1 or its Exhibits other than the representations, warranties, and covenants contained and memorialized
2 in such documents.

3 9.3 Except as otherwise provided for herein, each party shall bear his, her or its own
4 costs.

5 9.4 The Settling Parties intend this Settlement to be a final and complete resolution of all
6 disputes between them with respect to the California Action. The Settlement compromises all claims
7 that were contested and shall not be deemed an admission by any Settling Party as to the merits of
8 any claim or defense. The Settling Parties agree, and the Order and Final Judgment will contain a
9 statement, that during the course of the California Action, the Settling Parties and their respective
10 counsel at all times complied with the requirements of NRCP 11 and California Code of Civil
11 Procedure §128.7. The Settling Parties agree that the amount paid to the Settlement Fund and the
12 other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a
13 settlement that was reached voluntarily after consultation with competent legal counsel.
14

15 9.5 While retaining its right to deny liability, JMP will not dispute that, based upon the
16 publicly available information at the time, the California Action was filed in good faith and with an
17 adequate basis in fact, was not frivolous and is being settled voluntarily by JMP after consultation
18 with competent legal counsel.
19

20 9.6 This Stipulation, whether or not consummated, and any negotiations, discussions, or
21 proceedings in connection herewith shall not be:
22

23 (a) offered against the Released JMP Parties as evidence of or construed as or
24 deemed to be evidence of any presumption, concession, or admission by JMP of the truth of any fact
25 alleged by the Class Members, the validity of any claim that has been or could have been asserted in
26 the California Action, the deficiency of any defense that has been or could have been asserted in the
27 California Action, or of any liability, negligence, fault, or wrongdoing of JMP;
28

1 (b) offered against the Released JMP Parties as evidence of a presumption,
2 concession, admission of any fault, misrepresentation, or omission with respect to any statement or
3 written document approved or made by JMP;

4 (c) offered against the Released JMP Parties as evidence of a presumption,
5 concession, or admissibility of any liability, negligence, fault, or wrongdoing, or in any way referred
6 to for any other reason as against any of the parties to the Stipulation, in any other civil, criminal, or
7 administrative action or proceeding other than such proceedings as may be necessary to effectuate
8 the provisions of this Stipulation; provided, however, that JMP may file the Stipulation and/or the
9 Order and Final Judgment in any action that may be brought against it in order to support a defense
10 or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith
11 settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or
12 similar defense or counterclaim. In addition, nothing contained in this paragraph shall prevent this
13 Stipulation (or any agreement or order relating thereto) from being used, offered, or received in
14 evidence in any proceeding to approve, enforce, or otherwise effectuate the Stipulation (or any
15 agreement or order relating thereto) or the Order and Final Judgment, or to enforce or effectuate
16 provisions of this Settlement, the Order and Judgment, or the Proofs of Claim and Release as to the
17 Released JMP Parties; or

18 (d) construed against the Released JMP Parties as an admission or concession that
19 the consideration to be given hereunder represents the amount which could be or would have been
20 recovered after trial.

21 9.7 Except as otherwise provided for herein, all agreements made and orders entered
22 during the course of the California Action relating to the confidentiality of information shall survive
23 this Stipulation.

1 9.8 This Stipulation shall be construed and interpreted to effectuate the intent of the
2 Settling Parties, which is to resolve completely those claims and disputes, including in the California
3 Action, and as more fully described herein. If any provision of this Stipulation shall be determined
4 to be invalid, void, or illegal, such provision shall be construed and amended in a manner that would
5 permit its enforcement, but in no event shall such provision affect, impair, or invalidate any other
6 provision hereof.
7

8 9.9 All of the Exhibits to the Stipulation are material and integral parts hereof and are
9 fully incorporated herein by this reference.

10 9.10 The Stipulation may be amended or modified only by a written instrument signed by
11 or on behalf of all Settling Parties or their respective successors-in-interest.

12 9.11 Neither the Class Members nor JMP shall be bound by the Stipulation if the Court
13 modifies any terms thereof, provided, however, that it shall not be a basis to terminate the Settlement
14 if the Court modifies any proposed Plan of Allocation or criteria for allocation of the Net Settlement
15 Fund amongst Authorized Claimants, or if the Plan of Allocation is modified on appeal. Nor shall it
16 be a basis to terminate the Stipulation if the Court modifies the terms of this Stipulation with respect
17 to attorneys' fees or expenses. Notwithstanding any such modification of the terms or Plan of
18 Allocation or the Settlement with respect to attorneys' fees or expenses, the Released JMP Parties
19 shall be entitled to all benefits of the Settlement and shall not, under any circumstances, be called
20 upon to contribute additional funds to the Settlement Fund.
21

22 9.12 Class Representatives and Class Counsel represent and warrant that none of the Class
23 Representatives' claims or causes of action referred to in the California Action or this Stipulation has
24 been assigned, encumbered, or in any manner transferred in whole or in part.
25

26 9.13 Each counsel or other Person executing the Stipulation or any of its Exhibits on
27 behalf of any party hereto hereby warrants that such Person has the full authority to do so. The
28

1 Settling Parties expressly warrant that, in entering this Settlement, they did not rely on any promise,
2 representation, warranty, or other statement by the opposing Settling Party or its counsel, apart from
3 those which are expressly contained herein.

4 9.14 All notices, requests, demands, claims, and other communications hereunder shall be
5 in writing and shall be deemed duly given: (i) when delivered to the recipient; (ii) five (5) business
6 days after being sent to the recipient by reputable overnight courier service (charges prepaid); or
7 (iii) eight (8) business days after being mailed to the recipient by certified or registered mail, return
8 receipt requested, and postage prepaid, and addressed to the intended recipient as set forth below:
9

10 ***If to Class Representatives or to Class Counsel:***

11 David A. Knotts
12 Robbins Geller Rudman & Dowd LLP
13 655 West Broadway, Suite 1900
14 San Diego, CA 92101
15 Telephone: (619) 231-1058
16 dknotts@rgrdlaw.com

17 ***If to JMP or to JMP's counsel:***

18 Steven Guggenheim
19 Wilson Sonsini Goodrich & Rosati, P.C.
20 650 Page Mill Road
21 Palo Alto, CA 94304
22 Telephone: (650) 493-9300
23 sguggenheim@wsgr.com

24 9.15 The Stipulation may be executed in one or more counterparts. All executed
25 counterparts and each of them shall be deemed to be one and the same instrument. A complete set of
26 executed counterparts shall be filed with the Court. Signatures sent by facsimile or PDF via email
27 shall be deemed originals.

28 9.16 The Stipulation shall be binding upon, and inure to the benefit of, the heirs,
successors and assigns of the Settling Parties.

1 9.17 The Court shall retain jurisdiction with respect to implementation and enforcement of
2 the terms of the Stipulation, and the Settling Parties submit to the jurisdiction of the Court for
3 purposes of implementing and enforcing the Settlement embodied in the Stipulation.

4 9.18 The waiver by one party of any breach of this Stipulation by any other party shall not
5 be deemed a waiver by any other party or a waiver of any other prior or subsequent breach of this
6 Stipulation.

7 9.19 The Settling Parties and their respective counsel agree that they will use their best
8 efforts to obtain all necessary approvals of the Court required by the Stipulation of Settlement
9 (including, but not limited to, using their best efforts to resolve any objections raised to the
10 Settlement), and to promptly agree upon and execute all such other documentation as may be
11 reasonably required to obtain final approval by the Court of the Settlement.

12 9.20 If any future actions are filed in any court asserting claims that are related to the
13 subject matter of the California Action prior to final Court approval of the proposed Settlement,
14 Class Counsel, on behalf of Plaintiffs and/or the Class, shall cooperate with JMP and any of the
15 Released JMP Parties in obtaining the dismissal or withdrawal of such related litigation, including,
16 without limitation, joining in any motion to dismiss such litigation, where appropriate.

17 9.21 Upon entry of the final judgment, any party or parties who were or could have been
18 alleged to be joint tortfeasors, co-tortfeasors, co-conspirators, or co-obligors with any or all of the
19 Released JMP Parties respecting any or all of the Plaintiffs' Released Claims will be thereby, to the
20 maximum extent permitted by law, barred and permanently enjoined from making, instituting,
21 commencing, prosecuting, participating in or continuing any claim, claim-over, cross-claim, action,
22 or proceeding, however denominated, regardless of the allegations, facts, law, theories or principles
23 on which they are based, in this Court or in any other court, tribunal, or proceeding, against any or
24 all of the Released JMP Parties with respect to any or all of the Plaintiffs' Released Claims,
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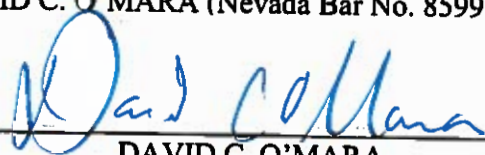
1 including, without limitation, equitable, partial, comparative, or complete contribution, set-off,
2 indemnity, or otherwise, whether by contract, common law or statute, arising out of or relating in
3 any way to the Plaintiffs' Released Claims. Upon entry of the final judgment, all such claims will be
4 thereby fully and finally barred, released, extinguished, discharged, satisfied and made
5 unenforceable to the maximum extent permitted by law, and no such claim may be commenced,
6 maintained, or prosecuted against any Released JMP Parties.
7

8 9.22 The headings herein are used for the purpose of convenience only and are not meant
9 to have legal effect.

10 9.23 This Stipulation shall not be construed more strictly against one party than another
11 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of
12 the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the
13 Settling Parties and the Settling Parties have contributed substantially and materially to the
14 preparation of this Stipulation.
15

16 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by
17 their duly authorized attorneys dated February 5, 2020.

18 THE O'MARA LAW FIRM, P.C.
19 DAVID C. O'MARA (Nevada Bar No. 8599)

20 

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/s/

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Attorneys for JMP Securities LLC

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of The O’Mara Law Firm, P.C., 311 E. Liberty
3 Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing
4 document on all parties to this action by:

5 _____ Depositing in a sealed envelope placed for collection and mailing in the United States
6 _____ Mail, at Reno, Nevada, following ordinary business practices

7 _____ Via Email

8 X Electronically through the Court’s Electronic Filing System

9 addressed as follows:

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20 *Attorneys for Mark A. Libratore*

21 DATED: February 5, 2020

22 /s/ Bryan Snyder
BRYAN SNYDER