

I. THE LITIGATION

A. Procedural History Of The Litigation

The initial complaint in the Litigation was filed on September 14, 2007, as a class action alleging violations of §§10(b) and 20(a) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder on behalf of a class of purchasers of Hovnanian securities. After being appointed Lead Plaintiff, Herbert Mankofsky filed his first Amended Class Action Complaint for Violation of the Federal Securities Laws (the "Amended Complaint") on March 10, 2008. The Amended Complaint was allegedly brought on behalf of a class of all purchasers of the publicly-traded securities of Hovnanian between August 8, 2005 and December 19, 2007.

Defendant Hovnanian and defendants Ara Hovnanian and Larry Sorsby filed their motion to dismiss the Amended Complaint on July 14, 2008. On July 28, 2008, defendant Bruce Robb filed his motion to dismiss the Amended Complaint. On September 11, 2008, Lead Plaintiff filed his opposition briefs to Defendants' motions to dismiss as well as a cross-motion to strike evidence offered in support of Defendants' motions to dismiss and a request for judicial notice in support of Lead Plaintiff's opposition to Defendants' motions to dismiss. On October 28, 2008, Defendants filed their reply briefs in support of the motions to dismiss as well as an opposition to Lead Plaintiff's cross-motion to strike. On November 14, 2008, Lead Plaintiff filed his reply brief in support of his cross-motion to strike.

On February 19, 2009, Lead Plaintiff filed a supplemental request for judicial notice in support of his opposition to Defendants' motions to dismiss. On February 27, 2009, Defendants filed a response to Lead Plaintiff's supplemental request for judicial notice.

On March 19, 2009, Lead Plaintiff filed a request to partially lift the PSLRA discovery

stay and on March 27, 2009, Defendants filed a response to Lead Plaintiff's request.

On March 30, 2009, the Settling Parties entered into a stipulation withdrawing Lead Plaintiff's motion to partially lift the PSLRA discovery stay as well as Defendants' pending motions to dismiss and agreed to enter into settlement negotiations. Additionally, the Settling Parties stipulated that Lead Plaintiff would file a Second Amended Complaint.

On May 27, 2009 the Settling Parties engaged in an intensive mediation held in New York, New York under the aegis of a professional mediator, Hon. Nicholas Politan (Ret.), attended by counsel for Plaintiffs and counsel for and representatives of Defendants. As a result of the mediation, Plaintiffs' Counsel (as defined herein) and Defendants' Counsel (as defined herein) agreed in principle to settle the Litigation for the sum of \$4,000,000 as to the Settlement Class (as defined further in § II.B hereof). As part of the Settlement, the Settling Parties agreed that Plaintiffs would file a Second Amended Complaint that would include additional claims on behalf of purchasers of Hovnanian's 7.625% Non-cumulative Preferred Depository Shares issued in or around June 2005, and also would modify the beginning of the Class period from August 8, 2005 to June 30, 2005.¹

The Settling Parties will request the Court to certify the Settlement Class for purposes of this settlement only. The parties, by their counsel, have conducted extensive discussions and arm's-length negotiations concerning the terms and conditions of this Settlement.

Plaintiffs and their counsel believe that they have conducted a thorough investigation of the claims asserted in the Litigation. This investigation included, *inter alia*: (1) detailed reviews of Hovnanian's public filings, annual reports, press releases, conference call transcripts, and other public statements; (2) extensive review of related court filings; (3) review of analyst reports

¹ Plaintiffs' Second Amended Complaint was filed on June 12, 2009.

and articles in the financial press relating to Hovnanian; (4) interviewing former employees and non-parties with purported knowledge of the claims asserted in the Litigation; (5) filing a FOIA request with the National Credit Union Association and (6) research of the applicable law with respect to the claims asserted in the complaints filed in the Litigation, and the potential defenses thereto. Defendants and their counsel also believe they have undertaken a thorough investigation into the claims asserted by Plaintiffs and the defenses thereto.

The Settling Parties, and each of them, and their counsel agree that the Settlement has been reached in good faith following arm's-length bargaining, confers substantial benefits upon the Settlement Class and, based upon their evaluation, is in the best interests of the Defendants as well as Plaintiffs. The Settling Parties, and each of them, agree that they shall not assert or pursue any action, claim or rights that any party hereto violated any provision of Rule 11 of the Federal Rules of Civil Procedure. Further, the Settling Parties, and each of them, will not deny in any statement made to any media representative that the Litigation is being settled voluntarily after consultation with competent counsel.

B. Defendants' Denials Of Wrongdoing And Liability

Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Litigation. Defendants have denied and continue to deny that they have committed any wrongdoing, violations of law, or breaches of any duty. Defendants have denied and continue to deny all charges of wrongdoing or liability against them arising out of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also have denied and continue to deny, *inter alia*, the allegations that Plaintiffs have suffered damages; that the price of Hovnanian's securities was artificially inflated by reason of the alleged misrepresentations, omissions, or otherwise; that Plaintiffs were harmed by the

conduct alleged in the Litigation; or that Defendants knew of or were reckless with respect to the alleged misconduct. In addition, Defendants maintain that they have meritorious defenses to all claims alleged in the Litigation.

Nonetheless, taking into account the uncertainty and risks inherent in any litigation, especially in complex cases, Defendants have concluded that further conduct of the Litigation would be protracted, burdensome, and expensive, and that it is desirable and beneficial to them that the Litigation be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Stipulation.

This Stipulation, and all related documents, shall not be construed as or deemed to be evidence of or an admission or concession on the part of any of the Defendants, or any of the Defendants' Corresponding Released Parties (as defined in § II.B hereof), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

C. Plaintiffs' Claims And The Benefits Of Settlement

Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence of the underlying events and transactions alleged in the Second Amended Complaint, developed through their investigation to date, supports the claims. Additionally, Plaintiffs' Counsel have researched the applicable law with respect to Plaintiffs' claims and believe they could successfully refute any defenses to their claims raised by Defendants. Nonetheless, Plaintiffs and their counsel recognize and acknowledge the expense and length of continued prosecution of the Litigation against Defendants. Plaintiffs and their counsel also have taken into account the uncertain outcome and risks of any litigation and appeals thereof, especially in complex actions, as well as the difficulties and delays inherent in such litigation. Plaintiffs and their Counsel are mindful of the inherent problems of proof of, and possible defenses to, the

federal securities law violations asserted in the Litigation, including, but not limited to, proof of damages and proof of Defendants' state of mind under the requirements of the securities laws. Plaintiffs believe that it is desirable that the Released Claims be fully and finally compromised, settled and resolved with prejudice, and barred pursuant to the terms set forth herein. Therefore, Plaintiffs believe that the Settlement set forth in this Stipulation confers substantial benefits upon the Settlement Class. Based on their evaluation, Plaintiffs and their counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Litigation pursuant to the terms and provisions of this Stipulation.

II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

A. Introduction

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs, and each of them, and Defendants, and each of them, by and through their respective undersigned counsel or attorneys of record that, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, the Litigation and the Released Claims shall be finally and fully compromised, settled and released, and the Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of this Stipulation, as follows.

B. Definitions

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

1.1 "Authorized Claimant" means any member of the Settlement Class who is a

Claimant (as defined below) and whose claim for recovery has been allowed pursuant to the terms of this Stipulation.

1.2 “Claimant” means any Settlement Class Member (as defined below) who files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.3 “Claims Administrator” means the Garden City Group, Inc. (“Garden City Group”), which shall administer the Settlement.

1.4 “Court” means the United States District Court for the District of New Jersey.

1.5 “Defendants” means Ara Hovnanian, J. Larry Sorsby, Bruce Robb, and Hovnanian Enterprises, Inc.

1.6 “Defendants’ Counsel” means the law firms of Simpson Thacher & Bartlett LLP and Morrison & Foerster LLP.

1.7 “Effective Date of Settlement” or “Effective Date” means the first date by which all of the events and conditions specified in ¶8.1 of this Stipulation have been met and have occurred.

1.8 “Escrow Agent” means Garden City Group, or its successor.

1.9 “Final” means one business day following the later of: (i) the date upon which the time expires to file and/or notice any appeal of the Court’s Final Judgment and Order of Dismissal With Prejudice approving the Settlement substantially in the form of Exhibit B hereto – *i.e.*, thirty (30) days after entry of the Final Judgment and Order of Dismissal With Prejudice – without any appeal having been taken, other than an appeal solely with respect to attorneys’ fees and reimbursement of expenses or any Plan of Allocation of the Settlement Fund (as defined below); or (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect

to attorneys' fees and reimbursement of expenses or any Plan of Allocation of the Settlement Fund, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment and Order of Dismissal With Prejudice without any material modification, of all proceedings arising out of or related to the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration of, or alteration or amendment of, the Final Judgment and Order of Dismissal with Prejudice, or petitions for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of this Settlement, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

1.10 "Final Judgment and Order of Dismissal With Prejudice" means the proposed final order and judgment to be entered by the Court approving the Settlement, substantially in the form attached hereto as Exhibit B.

1.11 "Plaintiffs" means Herbert Mankofsky, the Buffoni Trust and the Settlement Class (as defined below).

1.12 "Plaintiffs' Counsel" or "Lead Counsel" means the law firm of Glancy Binkow & Goldberg LLP.

1.13 "Notice" means the Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing Thereon, which is to be sent to members of the Settlement Class substantially in the form attached hereto as Exhibit 1 to Exhibit A.

1.14 "Order for Notice and Hearing" means the proposed order preliminarily approving the Settlement and directing notice thereof to the Settlement Class substantially in the form attached hereto as Exhibit A.

1.15 “Person” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

1.16 “Plan of Allocation” means a plan or formula for allocating the Settlement Fund (as defined below) to Authorized Claimants after payment of expenses of notice and administration of the Settlement, Taxes and Tax Expenses, and such attorneys’ fees, costs, expenses and interest as may be awarded by the Court. Any Plan of Allocation is not part of this Stipulation, and Defendants shall have no responsibility or liability with respect thereto.

1.17 “Proof of Claim” means the Proof of Claim to be submitted by Claimants, substantially in the form attached as Exhibit 2 to Exhibit A.

1.18 “Publication Notice” means the Summary Notice of Pendency and Proposed Settlement of Action and Settlement Hearing Thereon to be published in *Investor’s Business Daily* and on the website of Plaintiffs’ Counsel or a website maintained by Plaintiffs’ Counsel, substantially in the form attached as Exhibit 3 to Exhibit A.

1.19 “Released Parties” means Defendants, Plaintiffs, and each of the Defendants’ and Plaintiffs’ respective Corresponding Released Parties. “Defendants’ Corresponding Released Parties” shall mean Defendants and, whether or not identified in any complaint filed in the Litigation, each and all of Defendants’ families, parent entities, associates, affiliates or subsidiaries and each and all of their respective past, present, or future officers, directors, stockholders, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, insurers, co-insurers and reinsurers, engineers, advisors

or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, representatives, estates, administrators, and each of their respective predecessors, successors, and assigns or other Persons or other entities in which any Defendant has a controlling interest or which is related to or affiliated with any Defendant, and any other representatives of any of these Persons or other entities, whether or not any such Released Parties were named, served with process or appeared in the Litigation. "Plaintiffs' Corresponding Released Parties" shall mean any and all of Plaintiffs' respective families, parent entities, associates, affiliates or subsidiaries, and each and all of their respective past and present officers, directors, stockholders, agents, representatives, employees, attorneys, financial or investment advisors, advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, agents, insurers, co-insurers and reinsurers, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, estates, administrators, predecessors, successors and assigns, or other Persons or other entities in which any Plaintiff has a controlling interest or which is related to or affiliated with Plaintiffs, and any other representatives of any of these Persons or other entities, whether or not any such Released Parties were named, served with process or appeared in the Litigation.

1.20 "Released Plaintiffs' Claims" means any and all claims (including "Unknown Claims" as defined herein), demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever, whether known or unknown, that have been or that could have been alleged in the Litigation or in any court, tribunal, forum or proceeding (including, but not limited to, any claims arising under federal, state or foreign law, common law, statute, rule, or regulation relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws, or otherwise, and including all claims within the exclusive jurisdiction of the federal courts),

whether fixed or absolute or contingent, suspected or unsuspected, disclosed or undisclosed, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or un-matured, whether individual, class, direct, derivative, representative, legal, equitable or any other type or in any other capacity, against Defendants and Defendants' Corresponding Released Parties which Plaintiffs or any member of the Class ever had, now has, or hereafter can, shall, could, or may have by reason of, arising out of, relating to or in connection with the allegations, conduct, facts, events, transactions, acts, occurrences, statements, representations, alleged misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, or set forth or otherwise related, directly or indirectly, to the Litigation or the purchase and/or sale of Hovnanian shares and/or options during the Settlement Class Period (as hereinafter defined), including without limitation, any disclosures made or not made related to the foregoing, except claims to enforce the Settlement.

1.21 "Released Defendants' Claims" means all claims (including "Unknown Claims" as defined below), demands, rights, liabilities or causes of action, in law or in equity, accrued or unaccrued, fixed or contingent, direct, individual or representative, of every nature and description whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, against Plaintiffs and their Corresponding Released Parties, arising out of the instituting, prosecution, settlement or resolution of the Litigation; provided however, that Defendants and Defendants' Corresponding Released Parties shall retain the right to enforce in the Court the terms of the Stipulation belonging to Defendants and their present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents, consultants, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these

Persons or other entities (including, without limitation, any claims, whether direct, derivative, representative or in any other capacity, arising under federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside of the United States).

1.22 “Released Claims” means all of the Released Plaintiffs’ Claims against Defendants and Defendants’ Corresponding Released Parties and Released Defendants’ Claims against the Plaintiffs and Plaintiffs’ Corresponding Released Parties.

1.23 “Settlement” means the settlement contemplated by this Stipulation.

1.24 “Settlement Class” means a) all Persons who purchased or otherwise acquired Hovnanian securities during the period from June 30, 2005 through December 19, 2007, inclusive; b) all Persons who purchased or otherwise acquired call options on Hovnanian securities during the period from June 30, 2005 through December 19, 2007, inclusive; and c) all Persons who sold or otherwise disposed of put options on Hovnanian securities during the period from June 30, 2005 through December 19, 2007, inclusive. Excluded from the Settlement Class are Defendants; the members of Individual Defendants’ immediate families; all individuals who are either current officers and/or directors, or who served as officers and/or directors of Hovnanian or its parents or subsidiaries at any time during the Settlement Class Period; any Person, firm, or other entity in which any Defendant has a controlling interest, or any entity which is related to or affiliated with any Defendant; and the legal representatives, agents, affiliates, heirs, successors and assigns of any such excluded Persons. Also excluded from the Settlement Class are those Persons who timely and validly request exclusion from the Settlement Class pursuant to the Notice.

1.25 “Settlement Class Member” means a Person who falls within the definition of the

Settlement Class as set forth in ¶1.24 hereof.

1.26 “Settlement Class Period” means the period from June 30, 2005 through December 19, 2007, inclusive.

1.27 “Settlement Fund” means the Principal Amount of Four Million U.S. dollars (\$4,000,000.00) in cash deposited, or to be deposited into an account to be designated by the Escrow Agent, in accordance with the terms of this Stipulation.

1.28 “Settling Parties” means, collectively, the Defendants and Plaintiffs.

1.29 “Unknown Claims” shall collectively mean all claims, demands, rights, liabilities, and causes of action of every nature and description which any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs Mankofsky and the Buffoni Trust shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Judgment and Order of Dismissal With Prejudice shall have waived, the provisions, rights and benefits of California Civil Code §1542, which provides:

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

Plaintiffs Mankofsky and the Buffoni Trust shall expressly waive and each of the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal With Prejudice shall have, expressly waived any and all provisions, rights and benefits

conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Settlement Class 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 Plaintiffs Mankofsky and the Buffoni Trust shall expressly fully, finally and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal With Prejudice 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. Plaintiffs Mankofsky and the Buffoni Trust acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Judgment and Order of Dismissal With Prejudice 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.

C. The Settlement

The Settlement Consideration

2.1 In consideration of the full and final settlement of all claims asserted or which could have been asserted in the Litigation, Defendants shall cause \$4,000,000.00 (the "Settlement Fund") to be deposited into an interest-bearing escrow account at a financial institution designated by Plaintiffs' Counsel, under the control of the Escrow Agent (the "Escrow

Account”). The Settlement Amount will be paid on or before 21 calendar days after the Court signs the Order for Notice and Hearing. The Settlement Fund shall be utilized to pay all legal fees and costs to be awarded to Lead Counsel, as well as all other fees, costs and other expenses, and shall represent the total amount of all settlement payments to be made by Defendants. The Settlement Fund and any interest earned thereon are referred to collectively herein as the “Gross Settlement Fund.”

Handling And Disbursement Of Funds By The Escrow Agent

2.2 No monies will be disbursed from the Settlement Fund until after the Effective Date except:

- (i) As provided in ¶2.7 below;
- (ii) To pay Taxes and Tax Expenses (as defined in ¶2.8 below) on the income earned by the Settlement Fund. Taxes and Tax Expenses shall be paid out of the Settlement Fund, shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent without prior Order of Court; or
- (iii) To pay attorneys fees/expenses as ordered by the Court and pursuant to ¶5.2(iii) and ¶¶6.1-6.2 below.

2.3 The Escrow Agent shall invest any funds deposited in the Escrow Account in excess of \$100,000.00 in short term United States Agency or Treasury Securities, backed by the full faith and credit of the United States Government or fully insured by the United States Government or agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Any funds held in escrow in an amount of \$100,000.00 or less may be held in an interest-bearing account insured by the FDIC. The Escrow Agent shall bear all risks related to the investment of the Settlement Fund.

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

2.5 Subject to further order and/or direction as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class as are consistent with the terms of this Stipulation.

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

2.7 Immediately after entry of the Court's order preliminarily approving the Settlement, the Escrow Agent may, without further approval from Defendants or the Court, disburse at the direction of Plaintiffs' Counsel up to \$100,000.00 from the Gross Settlement Fund to pay the reasonable costs and expenses associated with the administration and notice of the Settlement (the "Class Notice and Administration Fund"), including, without limitation: the cost of identifying and locating members of the Settlement Class; mailing the Notice and Proof of Claim and publishing the Publication Notice (such amounts shall include, without limitation, the actual costs of publication, printing and mailing the Notice, reimbursement to nominee owners for forwarding notice to their beneficial owners); soliciting Settlement Class claims; assisting with the filing of claims, administering and distributing the Net Settlement Fund (as defined below) to Authorized Claimants, processing Proof of Claim forms, and paying escrow fees and costs, if any; and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims.

Defendants shall have no responsibility or liability for the allocation of the Settlement Fund among the Settlement Class Members or the allocation of any awards of Plaintiffs' attorneys fees, costs and expenses. Any such awards shall be paid solely by the Settlement Fund.

Taxes

2.8 (i) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treasury Regulation §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.8, including the "relation-back election" (as defined in Treasury Regulation §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(ii) For purposes of §468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation §1.468B-2(k)(3) promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treasury Regulation §1.468B-2(k)). Such returns (as well as the election described in 2.8(i)) shall be consistent with this ¶2.8 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.8(iii) hereof.

(iii) All Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments

that may be imposed upon Defendants or Defendants' Counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes ("Taxes"), and expenses and costs incurred in connection with the operation and implementation of this ¶2.8 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses or penalties relating to filing (or failing to file) the returns described in this ¶2.8) ("Tax Expenses"), shall be paid out of the Settlement Fund. Defendants and Defendants' Counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be treated as, and considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court. The Escrow Agent shall indemnify and hold each of the Defendants, and Defendants' Counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any indemnification payment). The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation §1.468B-2(1)(2)). Neither Defendants, Defendants' Directors & Officers Insurer (the "Insurer") nor Defendants' Counsel are responsible therefor nor shall they have any liability with respect thereto. The parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.8. The applicable Defendants agree to promptly provide the Escrow Agent with the statement described in Treasury Regulation §1.468B-3(e).

(iv) For the purpose of this ¶2.8, references to the Settlement Fund shall include both the Settlement Fund and Class Notice and Administration Fund, and shall also

include any earnings thereon.

Termination of Settlement

2.9 Plaintiffs Mankofsky or the Buffoni Trust, on behalf of the Settlement Class, or Defendants, and any of them, shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other Settling Parties hereto within thirty (30) days of: (i) the Court’s declining to enter the Order for Notice and Hearing in any material respect; (ii) the Court’s refusal to approve this Stipulation or any material part of it; (iii) the Court’s declining to enter the Final Judgment and Order of Dismissal with Prejudice in any material respect; (iv) the date upon which the Final Judgment and Order of Dismissal with Prejudice is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternative Judgment (defined in ¶8.1(iv) below) is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

2.10 If a case is commenced in respect of any Defendant under Title 11 of the United States Code or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Escrow Account or any portion thereof on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is thus required to be returned, and such amount is not promptly deposited to the Gross Settlement Fund by other Defendants, then, at the election of Plaintiffs’ Counsel, the Settling Parties shall jointly move the Court to vacate and set aside the Releases given and Final Judgment and Order of Dismissal with Prejudice dismissing the Litigation entered pursuant to this Stipulation and Settlement, which Releases and Final Judgment Order of Dismissal with Prejudice shall be null

and void, and the Settling Parties shall be restored to their respective positions in the Litigation as of August 28, 2009, and any cash amounts in the Escrow Account shall be returned in the manner set forth in ¶8.5 below.

D. Order For Notice Of Settlement Hearing

3.1 Promptly after execution of this Stipulation, Plaintiffs' Counsel and Defendants' Counsel shall jointly submit this Stipulation together with its Exhibits to the Court and shall apply for preliminary approval of the Settlement set forth in this Stipulation, entry of an Order for Notice and Hearing, approval for the mailing and publication of the Notice and Publication Notice, substantially in the form of Exhibits A-1 and A-3 hereto, which shall include the general terms of the Settlement set forth in this Stipulation, the proposed Plan of Allocation, the general terms of the Fee and Expense Application as defined in ¶6.1 below and the date of the Settlement Hearing as defined below.

3.2 At the time of the joint submission described in ¶3.1 hereof, Plaintiffs' Counsel and Defendants' Counsel shall also jointly request that, after Notice is given, the Court hold a hearing (the "Settlement Hearing") and approve the Settlement of the Litigation as set forth herein. At or after the Settlement Hearing, Plaintiffs' Counsel also will request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application.

E. Releases

4.1 As between Plaintiffs Mankofsky and the Buffoni Trust, the Settlement Class and the Defendants, the obligations incurred pursuant to this Stipulation shall be a full and final disposition of the Litigation, any and all Released Plaintiffs' Claims, and any and all Released Defendants' Claims, as against all of the respective Released Parties.

4.2 Upon the Effective Date, as defined in ¶1.7 hereof, Plaintiffs, and each of them,

on behalf of themselves and Plaintiffs' Corresponding Released Parties, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal with Prejudice shall have, fully, finally, and forever released, relinquished and discharged all Released Plaintiffs' Claims against the Defendants, and each of them, and any and all of their Corresponding Released Parties including, but not limited to, Defendants' Counsel, whether or not any individual Settlement Class Member executes and delivers the Proof of Claim.

4.3 Upon the Effective Date, as defined in ¶1.7 hereof, Defendants, and each of them, on behalf of themselves and Defendants' Corresponding Released Parties shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal with Prejudice shall have, fully, finally, and forever released, relinquished and discharged all Released Defendants' Claims against Plaintiffs, and each of them, and any and all of Plaintiffs' Corresponding Released Parties, including, but not limited to, Plaintiffs' Counsel.

4.4 Only those Settlement Class Members filing valid and timely Proofs of Claim shall be entitled to participate in the Settlement and receive a distribution from the Settlement Fund. The Proof of Claim to be executed by Settlement Class Members shall be substantially in the form contained in Exhibit A-2 attached hereto. All Settlement Class Members shall be bound by the Releases set forth in this Section E, whether or not they submit a valid and timely Proof of Claim.

F. Administration And Calculation Of Claims, Final Awards And Supervision And Distribution Of The Settlement Fund

5.1 Under the supervision of Plaintiffs' Counsel, acting on behalf of the Settlement Class, and subject to such supervision and direction of the Court as may be necessary or as circumstances may require, the Claims Administrator shall administer and calculate the claims

submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund (as defined below) to Authorized Claimants.

5.2 The Gross Settlement Fund shall be applied as follows:

- (i) To pay the Taxes and Tax Expenses described in ¶2.8 above;
- (ii) To pay all the costs and expenses reasonably and actually incurred in connection with settlement administration, including, but not limited to, locating members of the Settlement Class, providing Notice, soliciting Settlement Class claims, assisting with the filing of claims, processing Proof of Claim forms, making administrative determinations concerning the acceptance or rejection of submitted claims, administering and distributing the Settlement Fund to Authorized Claimants, paying escrow fees and costs, if any, and paying the fees and expenses of the Claims Administrator;
- (iii) To pay Plaintiffs' Counsel's attorneys' fees, and expenses with interest thereon, as provided in ¶¶6.1-6.2 hereof (the "Fee and Expense Award"), to the extent allowed by the Court; and
- (iv) To distribute the balance of the Settlement Fund, that is, the Gross Settlement fund less the items set forth in ¶5.2(i), (ii), and (iii) hereof (the "Net Settlement Fund"), and, thereafter, to the Authorized Claimants as allowed by this Stipulation, the Plan of Allocation, or the Court.

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

(i) Any Person falling within the definition of the Settlement Class may be excluded from the Settlement Class by submitting to the Claims Administrator a request for exclusion (“Request for Exclusion”), which complies with the requirements set forth in ¶13 of the Order for Notice and Hearing, Exhibit A hereto, and is postmarked no later than twenty-one (21) days prior to the date of the Settlement Hearing. All Persons who submit valid and timely Requests for Exclusion shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Final Judgment and Order of Dismissal with Prejudice. However, a Settlement Class Member may submit a written revocation of a Request for Exclusion up until the Bar Date (defined below) and receive payments pursuant to this Stipulation and Settlement provided the Settlement Class Member also submits a valid Proof of Claim, as set forth in ¶5.3(ii) below, prior to the Bar Date;

(ii) Each Settlement Class Member claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim postmarked by no later than one hundred and twenty (120) days after the Court signs the Order for Notice and Hearing, or such other time as may be set by the Court (the “Bar Date”), and substantially in the form of Exhibit A-2 hereto, signed under penalty of perjury and supported by such documents as specified in the Proof of Claim or such other documents or proof, as are reasonably available to the Authorized Claimant, as Plaintiffs’ Counsel, in their discretion, may deem acceptable;

(iii) Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim by the Bar Date, or such other period as may be ordered by the Court, or otherwise allowed, or who file a Proof of Claim that is rejected, shall be forever barred from receiving any payments pursuant to this Stipulation and Settlement, but will in all other respects be subject to and bound by the provisions of this Stipulation, the releases

contained herein, and the Final Judgment and Order of Dismissal with Prejudice and will be barred and enjoined from bringing any action against the Released Parties concerning the Settled Claims.

5.4 No Person shall have any claim against Plaintiffs' Counsel, the Claims Administrator or any other agent designated by Plaintiffs' Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court. 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, 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) shall, if feasible, be reallocated by Lead Counsel among Authorized Claimants in an equitable and economic fashion. Thereafter, any balance which still remains in the Net Settlement Fund shall be donated to a legal charity of Hovnanian's choosing. This is not a claims-made settlement and, if all conditions of the Stipulation are satisfied and the Settlement becomes final, no portion of the Settlement Fund will be returned to the Defendants or the Insurer. Defendants and their Corresponding Related Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith.

5.5 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be

considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation. Any order or proceedings relating to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Final Judgment and Order of Dismissal with Prejudice approving this Stipulation and the Settlement of the Litigation, or any other orders entered pursuant to this Stipulation.

5.6 After notice is given, Plaintiffs' Counsel will request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application, and the Settling Parties shall request and obtain from the Court a Final Judgment and Order of Dismissal with Prejudice substantially in the form attached to this Stipulation as Exhibit B.

G. Plaintiffs' Counsel's Attorneys' Fees And Reimbursement Of Expenses

6.1 Lead Counsel may submit an application or applications (the "Fee and Expense Application") for distributions to Plaintiffs' Counsel from the Gross Settlement Fund for: (a) an award of attorneys' fees not to exceed 30% of the Gross Settlement Fund; plus (b) reimbursement of actual costs and expenses, including experts or consultants, incurred in connection with prosecuting the Litigation (including costs of notice and settlement administration), plus any interest on such attorneys' fees, costs and expenses at the same rate and for the same periods as earned by the Gross Settlement Fund (until paid) as may be awarded by the Court. Plaintiffs' Counsel reserves the right to make additional applications for fees and expenses incurred, if necessary.

6.2 The attorneys' fees and expenses, including the fees and expenses of experts and consultants, as awarded by the Court, shall be paid to Lead Counsel from the Settlement Fund, as

ordered, two (2) days after the Court executes an order awarding such fees and expenses. If such payment is to occur prior to the Settlement becoming Final, then prior to receiving any such fees and expenses, and as a condition precedent to the payment to Lead Counsel thereof, Lead Counsel shall provide to the Escrow Agent a surety bond in the amount of such attorneys' fees and expenses, plus accrued interest, and in form and substance approved by Defendants (the "Surety Bond"), to be held until the Settlement becomes Final. In the event that the Effective Date does not occur, Lead Counsel, and/or Plaintiffs, shall within ten (10) business days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund any fees and expenses previously paid to either or both of them from the Settlement Fund plus interest thereon at the same rate as earned on the cash portion of the Settlement Fund in an amount consistent with such reversal or modification, but less any taxes, expenses and any costs which have either been disbursed pursuant to ¶¶2.7 or 2.8 hereof or are determined to be chargeable to the Class Notice and Administration Fund (but in no event exceeding the sum of \$150,000). If Lead Counsel fails to redeposit the attorneys' fees and expenses, and interest thereon, as required herein, the Escrow Agent shall immediately order the Surety Bond forfeited and shall deposit the forfeited amount in the Settlement Fund. Lead Counsel shall remain obligated for any shortfall in the amount of attorneys' fees and expenses, and interest thereon, after the proceeds from the Surety Bond have been applied.

6.3 The procedure for and allowance or disallowance by the Court of any application by Plaintiffs' Counsel for attorneys' fees and expenses, including the fees and expenses of experts and consultants, to be paid out of the Settlement Fund, are not part of the Settlement set forth in this Stipulation and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation. Any order or proceedings relating to the Fee and Expense Application, or any

appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Final Judgment and Order of Dismissal with Prejudice approving this Stipulation and the Settlement of the Litigation, or any other orders entered pursuant to this Stipulation.

6.4 Except as set forth in ¶2.1 herein, Defendants and their Corresponding Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment to Plaintiffs' Counsel or any other plaintiffs' counsel and/or any other Person who receives payment from the Settlement Fund.

H. Class Certification

7.1 In the Final Judgment and Order of Dismissal With Prejudice, the Class shall be certified for purposes of this Settlement only, but in the event that the Settlement is not finally approved by the Court, all Settling Parties reserve all their rights on all issues, including whether a class should be certified. For settlement purposes only, in connection with the Final Order and Judgment, the Defendants shall consent to (i) certification of this Litigation as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of the Settlement Class as defined herein, and (ii) certification of Mankofsky and the Buffoni Trust as the class representatives and Lead Counsel as class counsel.

I. Conditions Of Settlement, Effect Of Disapproval, Cancellation Or Termination

8.1 The Effective Date of this Stipulation shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

- (i) Plaintiffs or Defendants have not exercised the right to terminate the

Settlement as provided in ¶2.9 above;

(ii) The Court has entered the Order for Notice and Hearing, substantially in the form attached hereto as Exhibit A;

(iii) The Court has approved the Settlement, following notice to the Class and a hearing, as provided in Rule 23 of the Federal Rules of Civil Procedure, and has entered the Final Judgment and Order of Dismissal with Prejudice, or judgments substantially in the form of Exhibit B; and

(iv) The Final Judgment and Order of Dismissal with Prejudice has become Final, as defined in ¶1.9 above, or, in the event that the Court enters orders and final judgments in a form other than that provided above (“Alternative Judgment”) and which has the consent of the Settling Parties, such Alternative Judgment becomes Final.

8.2 Upon the occurrence of all of the events referenced in ¶8.1 above, any and all interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation. At that time, *i.e.*, the occurrence of the Effective Date, the Escrow Agent shall transfer the Gross Settlement Fund to the Claims Administrator to be distributed in accordance with ¶5.2 hereof.

8.3 If prior to the Settlement Hearing, any Persons who otherwise would be Members of the Settlement Class have timely requested exclusion from the Settlement Class in accordance with the provisions of the Order for Notice and Hearing and the notice given pursuant thereto, and such Persons in the aggregate purchased a number of Hovnanian securities during the Settlement Class Period in an amount greater than the sum specified in a separate “Supplemental Agreement” between the Settling Parties, Defendants shall have, in their sole and absolute discretion, the option to terminate this Stipulation in accordance with the procedures set forth in

the Supplemental Agreement. The Supplemental Agreement will not be filed with the Court unless and until a dispute among the Settling Parties concerning its interpretation or application arises. Copies of all Requests for Exclusion received, together with copies of all written revocations of Requests for Exclusion, shall be delivered to Defendants' Counsel within three (3) business days of receipt by Plaintiffs' Counsel but in no event later than one (1) business day before the Settlement Hearing. Defendants may terminate the Stipulation by serving written notice of termination on the Court and Plaintiffs' Counsel postmarked on or before five (5) business days after the receipt of all of the copies of the Requests for Exclusion, on or before five (5) business days after the Court grants additional exclusion for any reason, or on or before three (3) business days before the Settlement Hearing, whichever occurs last. In the event that any of the Defendants serve a written notice of termination, such Defendant(s) may withdraw its written notice of termination by providing written notice of such withdrawal to Plaintiffs' Counsel and to the Court no later than 5:00 P.M. Eastern Daylight Time on the day prior to the Settlement Hearing, or by such later date as shall be agreed upon in writing as between Plaintiffs' Counsel and counsel for Defendants.

8.4 If some or all of the conditions specified in ¶8.1 above are not met, or in the event that this Stipulation is not approved by the Court, or the Settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, then this Stipulation shall be canceled and terminated subject to ¶8.6 below, unless those contributing to the Settlement Fund, Plaintiffs' Counsel, and Defendants' Counsel mutually agree in writing to proceed with this Stipulation. None of the Settling Parties, or any of them, shall have any obligation whatsoever to proceed under any terms other than provided for and agreed herein. If any Settling Party engages in a material breach of the terms hereof, any other Settling Party, provided that it is in substantial compliance with the terms of this Stipulation, may terminate this Stipulation on

notice to all of the Settling Parties.

8.5 If this Stipulation is terminated or fails to become effective for the reasons set forth in ¶8.1 and ¶8.4 above, the Settling Parties and those contributing to the Settlement Fund shall be restored to their respective positions in the Litigation as of August 28, 2009. Unless otherwise ordered by the Court, in the event the Stipulation shall terminate, or be canceled, or shall not become effective for any reason, within forty-five (45) calendar days after the occurrence of such event, the Settlement Fund (including accrued interest), plus any amount then remaining in the Class Notice and Administration Fund (including accrued interest), less taxes, expenses and any costs which have either been disbursed pursuant to ¶¶2.7 or 2.8 hereof or are determined to be chargeable to the Class Notice and Administration Fund (but in no event exceeding the sum of \$150,000), shall be refunded by the Escrow Agent to the Defendants and the Insurer, pursuant to written instructions from Hovnanian or its successor-in-interest. At the request of counsel for Hovnanian, the Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, pursuant to written direction from Hovnanian or its successor-in-interest. In the event that the Stipulation is not approved by the Court or the Settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the terms and provisions of this Stipulation, with the exception of ¶¶1.1-1.29, 2.7, 2.8, 8.4-8.6, and 9.3 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses and interest awarded by the Court to Plaintiffs' Counsel shall

constitute grounds for cancellation or termination of the Stipulation.

8.6 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither Plaintiffs nor Plaintiffs' Counsel shall have any obligation to repay any amounts actually and properly disbursed from the Class Notice and Administration Fund. In addition, any expenses already incurred and properly chargeable to the Class Notice and Administration Fund pursuant to ¶2.7 hereof at the time of such termination or cancellation, but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Stipulation prior to the balance being refunded in accordance with ¶8.5 hereof.

J. Miscellaneous Provisions

9.1 The Settling Parties (a) acknowledge that it is their intent to consummate this agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Stipulation. Plaintiffs' Counsel and Defendants' Counsel agree to cooperate with one another in seeking Court approval of the Order for Notice of Hearing, the Stipulation, and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

9.2 The Settling Parties intend this Stipulation to be a final and complete resolution of all disputes between them with respect to the Litigation as well as any disputes which could have been raised in the Litigation by Plaintiffs Mankofsky or the Buffoni Trust, the Settlement Class, and Plaintiffs' Corresponding Released Parties, and each or any of them, against Defendants and Defendants' Corresponding Released Parties, Defendants' Counsel, and each or any of them, on the one hand, and by Defendants and Defendants' Corresponding Released

Parties, and each or any of them, against Plaintiffs Mankofsky or the Buffoni Trust, the Settlement Class, Plaintiffs' Corresponding Released Parties, or other Plaintiffs' counsel, and each or any of them, on the other hand. Additionally, the Settling Parties agree not to assert in any forum that the Litigation was brought by Plaintiffs Mankofsky and the Buffoni Trust, or each or any of them, or defended by any the Defendants, or each or any of them, in bad faith or without a reasonable basis. The Final Judgment and Order of Dismissal with Prejudice will contain a statement that during the course of the Litigation, the parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure. The Settling Parties further agree that the amount paid to the Settlement Fund and the other terms of the Settlement were negotiated at arm's length and in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

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

(i) may be deemed, or shall be used, offered or received against Defendants or Defendants' Corresponding Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the litigation, or of any alleged wrongdoing, liability, negligence, or fault of the Defendants and/or Defendants' Corresponding Released Parties, or any of them;

(ii) may be deemed, or shall be used, offered or received against Defendants, Defendants' Corresponding Released Parties, or each or any of them, as an admission,

concession or evidence of, any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant and/or Defendants' Corresponding Released Parties, or any of them;

(iii) may be deemed, or shall be used, offered or received against Plaintiffs Mankofsky and the Buffoni Trust, the Settlement Class, Plaintiffs' Corresponding Released Parties, or each or any of them, as an admission, concession or evidence of, the validity or invalidity of any of Released Defendants' Claims, the infirmity or strength of any claims raised in the Litigation, the truth or falsity of any fact alleged by Defendants, or the availability or lack of availability of meritorious defenses to the claims raised in the Litigation;

(iv) may be deemed, or shall be used, offered or received against Plaintiffs Mankofsky and the Buffoni Trust, the Settlement Class, and Plaintiffs' Corresponding Released Parties, or each or any of them, or against Defendants, Defendants' Corresponding Released Parties, or each or any of them, as an admission or concession with respect to any liability, fault or wrongdoing as against any Settling Parties to the Stipulation, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Stipulation, and any acts performed and/or documents executed in furtherance of or pursuant to this Stipulation and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Stipulation. However, if this Stipulation is approved by the Court, any Settling Party or any of their Corresponding Released Parties may file this Stipulation and/or the Final Order and Judgment in any action that may be brought against such party or parties in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(v) may be deemed, or shall be construed against Plaintiffs Mankofsky and the Buffoni Trust, the Settlement Class, and Plaintiffs' Corresponding Released Parties, or each or any of them, or against Defendants, Defendants' Corresponding Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount which could have or would have been recovered after trial; and

(vi) may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs Mankofsky and the Buffoni Trust, the Settlement Class, and Plaintiffs' Corresponding Released Parties, or each and any of them, or against Defendants, Defendants' Corresponding Released Parties, or each or any of them, that any of their claims are with or without merit or that damages recoverable under the Second Amended Complaint would have exceeded or would have been less than the Settlement Fund.

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

9.5 Plaintiffs and their counsel represent and warrant that none of Plaintiffs Mankofsky's and Buffoni Trust's claims or causes of action in the Litigation have been assigned, encumbered, or in any manner transferred in whole or in part.

9.6 Any failure by any of the Settling Parties to insist upon the strict performance by any other party to this Stipulation of any of the provisions shall not be deemed to be a waiver of any of the provisions hereof, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other party to this Stipulation.

9.7 The waiver, express or implied, by any party to this Stipulation of any breach or

default by any other party to this Stipulation in the performance of such other party of its obligations hereunder shall not be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

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

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

9.10 This Stipulation and the Exhibits attached hereto constitute the entire agreement among the parties hereto and no representations, warranties or inducements have been made to any party concerning this Stipulation or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided herein, each Settling Party shall bear its own costs.

9.11 Each counsel or other Person executing this Stipulation, any of its Exhibits, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such Person has the full authority to do so and such Person has the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

9.12 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the parties to this Stipulation all exchange original signed counterparts. A complete set of original executed counterparts shall be filed with the Court.

9.13 This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto and their Corresponding Released Parties.

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

9.15 This Stipulation and the Exhibits attached hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York and the rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles.

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

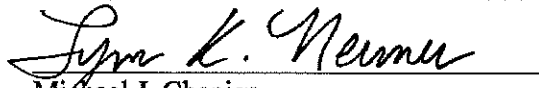
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