

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re PAINCARE HOLDINGS, INC.
SECURITIES LITIGATION

Case No. 6:06-cv-362-Orl-28DAB

STIPULATION AND AGREEMENT OF SETTLEMENT

This stipulation and agreement of settlement (the “Stipulation”) is submitted pursuant to Rule 23(e) of the Federal Rules of Procedure. Subject to the approval of the Court, this Stipulation is entered into by and among lead plaintiff, the Employees’ Retirement System of the Government of the Virgin Islands (“Lead Plaintiff”), on behalf of itself and the Settlement Class (as defined herein), and defendants PainCare Holdings, Inc. (“PainCare” or the “Company”), Mark Szporoka and Randy Lubinsky (collectively, “Defendants”), by and through their respective counsel.

WHEREAS:

A. Beginning on March 21, 2006, the following eleven class actions alleging violations of federal securities laws by Defendants were filed in this Court: Roy Thomas Mould v. PainCare Holdings, Inc., et al., 06-cv-00362-JA-DAB; Stephen Hofmayer v. PainCare Holdings, Inc., et al., 6:06-cv-00363-JA-DAB; Milton Pfeiffer v. PainCare Holdings, Inc., et al., 6:06-cv-00373-JA-DAB; Michael Chopyk v. PainCare Holdings, Inc., et al., 6:06-cv-374-JA-DAB; Benjamin Atluri v. PainCare Holdings, Inc., et al., 6:06-cv-00379-JA-DAB; Mark J. Zausmer v. PainCare Holdings, Inc., et al., 6:06-cv-00396-JA-DAB; Margaret Hansen v. PainCare Holdings, Inc., et al., 6:06-cv-00417-JA-DAB; Donald G. Marks v. PainCare Holdings, Inc., et al., 6:06-cv-00490-JA-DAB; Conrad L. Hoover v. PainCare Holdings, Inc., et al., 6:06-

cv-00512-JA-DAB; Sheppard L. Masarek v. PainCare Holdings, Inc., et al., 6:06-cv-00587-JA-DAB; and Jeffrey A. Miller, et al. v. PainCare Holdings, Inc., et al., 6:06-cv-00676-JA-DAB. In an Order dated July 28, 2006, the Court consolidated all eleven cases under the above caption (collectively, the “Action”). On July 28, 2006, the Court also appointed the Employees’ Retirement System of the Government of the Virgin Islands (“VIGERS”) as “Lead Plaintiff,” approved Barrack Rodos & Bacine as Lead Counsel, and approved Williams, Schifino, Mangione & Steady, P.A. as Liaison Counsel. A Consolidated Class Action Complaint (“Consolidated Complaint”) was filed and served on September 11, 2006.

B. On October 20, 2006, Defendants moved to dismiss the Consolidated Complaint. On November 13, 2006, Lead Plaintiff opposed Defendants’ motion.

C. By Order dated April 25, 2007, the Court granted Defendants’ motion to dismiss.

D. On May 23, 2007, Lead Plaintiff filed and served an Amended Consolidated Class Action Complaint (the “Amended Complaint”). The Amended Complaint alleged, among other things, that Defendants issued material misstatements and statements which omitted to state material facts concerning PainCare’s financial results, including misstatements and omissions about PainCare’s accounting for the company’s stock option plans, certain acquisitions, and certain derivative financial instruments issued in connection with private placement transactions.

E. The Amended Complaint alleged that, as a result of Defendants’ misstatements and/or omission, Lead Plaintiff and other investors purchased PainCare common stock at artificially-inflated prices. The Amended Complaint also alleged that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder.

F. On June 7, 2007, Defendants moved to dismiss the Amended Complaint. On June 21, 2007, Lead Plaintiff opposed this motion to dismiss. By Order dated June 22, 2007, the Court authorized the filing of supplemental memoranda by all parties to address the United States Supreme Court's ruling in Tellabs, Inc. v. Makor Issues & Rights, Ltd. On June 29, 2007, Lead Plaintiff and Defendants each filed a supplemental memorandum.

G. By Order dated February 7, 2008, the Court denied Defendants' motion to dismiss the Amended Complaint.

H. The Court had scheduled a trial of the Action to commence on Monday, March 2, 2009, at 8:30 a.m.

I. Lead Counsel and Defendants' counsel have analyzed the evidence and have researched the law applicable to the claims against Defendants and Defendants' actual and potential defenses thereto.

J. During the pendency of the Action, Lead Counsel and Defendants' counsel engaged in discussions with a view to settling finally and forever this Action and all claims arising from the allegations in the Amended Complaint.

K. As a result of those arm's-length discussions, on March 25, 2008, Lead Plaintiff and Defendants entered into a memorandum of understanding ("MOU"), which sets forth the essential terms of the parties' agreement to settle the Action.

L. All parties in this Action believe that their positions were meritorious and well founded. However, Lead Plaintiff and Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against the Defendants through trial and appeal. Lead Plaintiff and Lead Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this

Action, and are mindful of the inherent problems of proof of and possible defenses to the violations asserted in the Action. Lead Plaintiff and Lead Counsel believe that the settlement set forth in this Stipulation confers considerable benefits upon the Settlement Class (as defined below) by obtaining a substantial settlement for the benefit of the Settlement Class and eliminating the risk of no recovery or a much smaller recovery. Lead Plaintiff and Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiff and the Settlement Class and in their best interests, and Lead Plaintiff has agreed to settle the claims brought against Defendants in this Action pursuant to the terms and provisions of this Stipulation. Nothing in this Stipulation or any other aspect of the Settlement (as defined below) is or shall be construed or deemed evidence of or an admission or concession on the part of Lead Plaintiff of any infirmity in the claims asserted in this Action.

M. Defendants deny any wrongdoing and deny that the restatement caused any damage, and nothing in this Stipulation or any other aspect of the Settlement is or shall be construed or deemed to be evidence of or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have asserted. Nonetheless, recognizing the cost, distraction and the attendant risks of litigation, and without conceding the merits of any of the claims asserted by Lead Plaintiff and the Settlement Class, the Defendants have agreed to settle the claims which were or could have been raised in the Action pursuant to the terms of this Stipulation.

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby

STIPULATED AND AGREED, by and among the parties to the Stipulation, through their respective attorneys, 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 parties hereto from the Settlement, that all Released Claims (as defined below) as against the Defendants and the Related Parties (as defined below) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions.

DEFINITIONS

1. In this Stipulation, including the above preamble and recitals, the following capitalized terms shall have the meanings set forth below:

(a) “Authorized Claimant” means any Class Member who files a Proof of Claim, as hereinafter defined, in such form, in such manner, and within such time limitations as are set forth in the Proof of Claim form.

(b) “Claims Administrator” means Heffler, Radetich and Saitta, LLP, an independent firm to be retained by Lead Counsel for Lead Plaintiff to process proofs of claim and to process payments.

(c) “Class Member” means any person or entity included in the Settlement Class, except for any person or entity that has filed a valid and timely Request for Exclusion.

(d) “Class Period” means the period of time beginning March 24, 2003 through and including March 15, 2006.

(e) “Costs of Administration” means all costs and expenses incurred by Lead Plaintiff or Lead Counsel in the Actions in connection with administering the Settlement, including, but not limited to, receiving, reviewing and processing Proofs of Claim and arranging for payment of approved Proofs of Claim, and includes the fees and expenses of the Claims Administrator.

(f) “Court” means the United States District Court for the Middle District of Florida.

(g) “Defendants” means PainCare Holdings, Inc., Randy Lubinsky and Mark Szporka.

(h) “Distribution Order” means an order of the Court authorizing a distribution in whole or in part of the Net Settlement Fund to Class Members.

(i) “Effective Date” means the first business day after the date by which all the following have occurred: (a) a Notice Order has been entered by the Court; (b) an Order and Final Judgment has been entered by the Court and has not been vacated, reversed, or modified in any material way, on appeal or otherwise; (c) the time for any appeal or other further review of the Order and Final Judgment has expired with the Order and Final Judgment not having been vacated, reversed or modified in any material way; and (4) the Settlement has not been voided pursuant to ¶10 herein.

(j) “Escrow Account” means the interest-bearing account to be established at Wachovia Bank, N.A. and maintained for the purpose of holding the Settlement Fund. At all times the Escrow Account shall be held in custodia legis, subject to the approval of the Court.

(k) “Escrow Agent” means the person or financial institution selected by Lead Counsel to hold the Escrow Account.

(l) “Expenses” means expenses (but not Fees) incurred by Lead Plaintiff and Lead Counsel in the Action in connection with the prosecution of the Action.

(m) “Fee and Expense Application” means application by Lead Counsel for an award of Fees and Expenses.

(n) “Fees” means the attorneys’ fees awarded by the Court to Lead Counsel pursuant to the Fee and Expense Application in connection with the prosecution of the Action.

(o) “PainCare” means PainCare Holdings, Inc. and includes all of its subsidiaries, predecessors, successors, affiliates, officers, directors, employees and agents.

(p) “Individual Defendants” means Randy Lubinsky and Mark Szporka.

(q) “Net Settlement Fund” means the Settlement Fund, less all Fees, Expenses, Costs of Notice, Costs of Administration, and taxes.

(r) “Notice” means the Notice of Pendency of Class Actions, Proposed Settlement and Settlement Hearing, substantially in the form attached hereto as Exhibit A.

(s) “Notice Order” means the Order to be entered by the court, substantially in the form set forth as Exhibit E hereto, *inter alia*, certifying the Class for purposes of settlement, preliminarily approving the terms and conditions of this Stipulation, directing that Notice be provided to the Class, and scheduling a Settlement Hearing concerning the final approval of the Settlement..

(t) “Opting Out Class Member” means a class Member who files a valid and timely Request for Exclusion.

(u) “Order and Final Judgment” means the Order and Final Judgment to be entered by the Court, which will be submitted to the Court along with the motion and memorandum of law in support of final approval of the settlement.

(v) “Plan of Allocation” means the terms and procedures for allocating the Net Settlement fund among, and distributing the Net Settlement Fund to, Authorized Claimants with approved Proofs of Claim.

(w) “Proof of Claim” means the Proof of Claim and Release and Substitute Form W-9 substantially in the form annexed hereto as Exhibit B, which, on approval of the Court, will be mailed to Class Members with the Notice.

(x) “Released Claims” means any and all manner of actions, causes of actions, suits, obligations, claims, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees whatsoever, whether in law or in equity and whether based on any federal law, state law, common law or foreign law, right of action or of any other type or form, foreseen or unforeseen, actual or potential, matured or unmatured, known or unknown, accrued or not accrued which Lead Plaintiff and each Class Member, or any of them, ever had, now have, or can have, or shall or may hereafter have, either individually, or as a member of a class, against any and all Released Persons for, based on, by reason of, or arising from or relating to the conduct alleged in the Action, including but not limited to: (i) claims that directly or indirectly arise out of any of the facts, transactions, events, occurrences, acts or omissions mentioned or referred to in the Complaint or Amended Complaint or other matters that are or could have been set forth, alleged, embraced or otherwise referred to Complaint or Amended Complaint or which could have been brought against Defendants relating to a Class Member’s purchase or other acquisition of PainCare common stock during the Class Period, including all matters encompassed within the releases and covenants not to sue set forth in ¶8 below, and (ii) claims arising out of the prosecution or defense of the Action, or either of them, including, but not limited to, claims for fraud in the inducement, negligent misrepresentation, or fraud; except that nothing in this Stipulation releases any claim arising out of the violation or breach of the terms of this Stipulation.

(y) “Released Persons” means any and all of the Defendants, and with respect to each of the Defendants, their past and present directors, officers, employees, partners, principals, agents, underwriters, issuers, insurers, co-insurers, reinsurers, shareholders, attorneys, accountants, auditors, banks and investment bankers, advisors, agents, personal and legal

representatives, predecessors, successors, indemnitors, indemnitees, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, estates, associates, related and affiliated entities, any entity in which any of them has a controlling interest, any members of their immediate families, any trust of which any of them is the settlor or which is for the benefit of any of them and/or member(s) of their families, and anyone claiming by, through or under any of the foregoing, whether by statute, rule, contract or otherwise.

(z) “Request for Exclusion” means a written request by a Class Member to opt out of the Class, which request has not been withdrawn in a manner deemed effective by the Court.

(aa) “Settled Defendants’ Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against the Lead Plaintiff, any Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action.

(bb) “Settlement” means, collectively, all of the terms and conditions of this Stipulation.

(cc) “Settlement Fund” means the sum of Two Million Dollars (\$2,000,000), which has been paid by Defendants as set forth in ¶9 of this Stipulation, including any interest thereon. Such amount, plus interest, is in full settlement of all the Released Claims.

(dd) “Settlement Hearing” means a hearing to be held by the Court, on notice to the Settlement Class, to consider approval of the Settlement, Plan of Allocation, and Fee and Expense Application.

(ee) "Stipulation" means this Stipulation of Settlement.

(ff) "Settlement Class" means all persons who purchased the common stock of PainCare during the period from March 24, 2003 through March 15, 2006. Excluded from the Settlement Class are PainCare and the Individual Defendants, any entity in which any of the foregoing have a controlling interest, the legal representatives, heirs, successors, or assigns of any of them, and all officers and directors of PainCare.

(gg) "Summary Notice" means the Summary Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing for publication in accordance with the terms of the Notice Order substantially in the form attached as Exhibit C.

CLASS CERTIFICATION

2. Solely for purposes of and in connection with this Settlement, Lead Plaintiff and Defendants consent to certification of the Settlement Class under Federal rules of Civil Procedure 23(a) and 23(b)(3), with Lead Plaintiff as Class Representative, and agree that: (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class; (d) in negotiating and entering into this Stipulation of Settlement, Lead Plaintiff and Lead Counsel have fairly and adequately represented and protected the interests of all the Settlement Class Members; (e) the questions of law or fact common to the members of the Settlement Class predominate over any questions affecting only individual members; and (f) certifying the Action as a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

PROCEDURES TO EFFECTUATE THE SETTLEMENT

3. As soon as is practicable following the execution of this Stipulation, Lead Counsel shall apply to the Court for entry of the Notice Order, substantially in the form attached hereto as Exhibit E:

- a. preliminarily approving the Settlement;
- b. setting the Settlement Hearing, upon notice to the Class Members, to consider: (i) whether the Settlement should be approved as fair, reasonable and adequate to the Class Members, and dismissing the claims of the Class Members against the Released Persons on the merits and with prejudice; (ii) whether the Plan of Allocation is fair and reasonable and should be approved; and (iii) Plaintiffs' Counsel's application for an award of attorneys' fees and payment of costs and expenses;
- c. setting the method of giving notice of the Settlement to the Class Members;
- d. approving the Notice attached hereto as Exhibit A, and the Summary Notice attached hereto as Exhibit C;
- e. setting a period of time during which Class Members may serve written objections to the Settlement, the Plan of Allocation, or the application for attorneys' fees and expenses;
- f. setting a period of time during which Class Members may, in writing, opt out of the Settlement Class; and
- g. setting a period of time during which Class Members must file Claims in order to participate in the distribution of the Net Settlement Fund.

4. At the Settlement Hearing, Lead Counsel shall move the Court for entry of an Order and Final Judgment, which will be submitted to the Court along with the motion and memorandum of law in support of final approval of the settlement:

- a. approving finally the Settlement as fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation pursuant to its terms;
- b. directing that the Action be dismissed without costs and with prejudice, and that Lead Plaintiff and Settlement Class Members release, as against each of the Released Persons, the Released Claims;
- c. finding that upon final adjudication of the action, the court shall include in the record specific findings confirming compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.
- d. permanently barring and enjoining the institution and prosecution, by the Lead Plaintiff and every member of the Settlement Class, of any other action against the Released Parties in any court asserting any claim which was or could have been alleged in any complaint in the Actions;
- e. dismissing the Action with prejudice as against the Defendants and barring assertion of the Released Claims by Lead Plaintiff and all Settlement Class Members;

- f. barring Defendants and their successors and assigns from instituting, commencing, or prosecuting any Settled Defendants' Claims against Lead Plaintiff, the members of the Settlement Class or their attorneys;
- g. reserving jurisdiction over the Action, including all further proceedings concerning the administration, consummation and enforcement of this Settlement;
- h. permanently barring, enjoining and finally discharging all claims for contribution (a) as set forth in 15 U.S.C. § 78u-4(f)(7)(A), and (b) as may be provided by applicable federal and state statutes or common law; and
- i. containing such other and further provisions consistent with the terms of this Settlement to which the parties hereto expressly consent in writing.

5. At the Settlement Hearing, Lead Counsel will submit a Fee and Expense Application to the Court for an award of Fees and, insofar as they may be unreimbursed, reimbursement of Expenses, Costs of Notice, Costs of Administration, and Lead Counsel's reasonable costs and expenses.

6. Notwithstanding any other provision of this Stipulation, any order of the Court awarding Fees or Expenses or regarding the Fee and Expense Application, and any appeal from any such order(s) is not material to the Settlement and shall not operate to terminate or cancel the Stipulation, or affect or delay the Effective Date or the finality of the Order and Judgment. Further, Lead Counsel shall request that their application for an award of attorneys' fees and expenses be considered by the Court separately from the Court's consideration of the fairness and adequacy of the Settlement. Any order or proceedings relating to such request, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate

the Settlement, or affect release of the Released Claims or constitute grounds for any party to cancel, terminate or withdraw from the Settlement.

7. At the Settlement Hearing, Lead Counsel shall also seek approval of the Plan of Allocation set forth in the Notice, attached hereto as Exhibit A. The Plan of Allocation shall be considered by the Court separately from the Court's consideration of the fairness and adequacy of the Settlement. 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 terminate the Settlement or affect release of the Released Claims. The finality of the Settlement shall not be conditioned on any ruling by the Court concerning the Plan of Allocation.

SETTLEMENT CONSIDERATION

8. In consideration for the Settlement, on the Effective Date:
- a. Lead Plaintiff and each Settlement Class Member on behalf of himself, herself or itself and (i) all of the heirs, executors, administrators, beneficiaries, spouses, predecessors, successors, assigns and each of them, and (ii) all of their former and present employees, directors, officers, accountants, agents, attorneys, representatives, affiliates, parents and subsidiaries, in their capacity as such, by operation of the Order and Final Judgment shall have, and shall be deemed to have, fully, finally, and forever released, remised, relinquished and discharged all Released Claims against all Released Persons and each of them. The Proof of Claim to be submitted by Class Members will also contain a release of the Released Claims. Distribution of Settlement Funds to Class Members shall be conditioned on such Class Members' execution and delivery of such

release to the Claims Administrator. Copies of such releases shall be provided to counsel for Defendants on request.

- b. Lead Plaintiff and each Settlement Class Member acknowledges that he, she or it may have sustained Released Claims which are presently unknown and not suspected and that such Released Claims may give rise to additional damages, expenses and losses in the future which are not now anticipated. Each Settlement Class Member also acknowledges that this Settlement and the releases in it have been negotiated and agreed on in light of this realization and, being fully advised, expressly waives any and all rights that it, he or she may have under statute, common law principle or in equity that would limit the effect of the foregoing releases to those claims actually known or suspected to exist at the time of the execution of this Stipulation. Lead Plaintiff and Settlement Class Members expressly waive any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including without limitation Section 1542 of the California Civil Code (and all similar statutes), 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 settlement with the debtor.

- c. Lead Plaintiff and each Settlement Class Member on behalf of himself, herself or itself and (i) all of the heirs, executors, administrators, beneficiaries, spouses, predecessors, successors, assigns and each of them, and (ii) all of their former and present employees, directors, officers,

accountants, agents, attorneys, representatives, affiliates, parents and subsidiaries, in their capacity as such, by operation of the Order and Final Judgment shall have, and shall be deemed to have, covenanted not to sue any of the Released Persons with respect to, or otherwise to assert, directly or indirectly, any of the Released Claims against any of the Released Persons, or otherwise to assist others in doing so, and agree to be forever barred and enjoined from doing so, in any court of law or equity, or in any other forum.

9. In full and complete settlement of the Released Claims:
 - a. Defendants shall fund or cause to fully fund the Settlement Fund by paying into it Two Million Dollars (\$2,000,000). This Settlement Fund has been deposited into the Escrow Account. The Escrow Agent has invested the funds deposited in the Escrow Account solely in obligations backed by the United States Government or in a money market account backed by such obligations. The Escrow Agent, as defined in ¶1, *supra*, controls the Escrow Account which funds shall be deemed in custodia legis of the Court and shall remain subject to the jurisdiction of the Court.
 - b. On the Effective Date, the Defendants, on behalf of themselves and the Released Persons, shall release and forever discharge each and every of the Settled Defendants' Claims, and shall forever be enjoined from prosecuting the Settled Defendants' Claims as against Lead Plaintiff, Settlement Class Members, or their attorneys.

10. If the Settlement is terminated for any reason permitted herein, then the Settlement Fund shall be immediately returned to Defendants, with all interest earned on it; except that the Settlement Fund shall be reduced by Costs of Notice and Costs of Administration actually incurred prior to that date. Lead Counsel shall immediately execute any documents necessary to effectuate the return of the Settlement Fund; and the parties hereto shall be deemed to have reverted to their respective status as of the date and time immediately prior to the date on which settlement negotiations commenced.

USE OF THE SETTLEMENT FUND

11. The Settlement Fund shall be used to pay all Costs of Notice, Costs of Administration, Fees, Expenses, applicable taxes, fees of the Escrow Agent and claims of Authorized Claimants. Defendants shall have no responsibility for or obligation with respect to any of these payments. After the Settlement Fund has been paid into the Escrow Account, Defendants will have no further obligation to make any payments for the benefit of the Settlement Class.

12. Prior to the Effective Date, the Settlement Fund may be used only to pay: (a) Fees; (b) Expenses; (c) Costs of Notice and Costs of Administration; and (d) any taxes with respect to interest earned by the Settlement Fund.

13. After the Effective Date, the Settlement Fund may be distributed to the Class Members or used to make payments specified in ¶16, below.

14. The Settlement Fund shall be treated as a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1. Lead Counsel shall designate the person or entity (other than one of the Defendants) to serve as the “administrator” for tax purposes. Such administrator shall be responsible for making all necessary or advisable elections to carry out the

intent of this provision, including a “relation-back election” and the Defendants shall, as necessary, join in such elections. Lead Counsel shall be responsible for timely and properly preparing and filing all informational and other tax returns required with respect to the Settlement Fund, and may hire accountants or tax advisors to prepare tax returns for the Settlement Fund and to otherwise assist with respect to the tax obligations of the Settlement Fund. Any fees or expenses of such accountants or tax advisors shall be paid from the Settlement Fund as a Cost of Administration. The Settlement Fund shall be solely responsible for, and shall pay, all taxes (including any interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or charges that may be imposed on the Defendants 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 and all other expenses and costs incurred in connection with the implementation of this provision (including, without limitation, expenses of attorneys and/or accountants incurred in connection with the preparation of required tax filings and returns). The Defendants shall not have any liability or responsibility for taxes or tax-related expenses of the Settlement Fund.

15. This is not a claims-made settlement. As of the Effective Date, Defendants shall not have any right to the return of the Settlement Fund or any portion thereof irrespective of the number of Proofs of Claim filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Settlement Fund.

ADMINISTRATION AND DISTRIBUTION OF THE SETTLEMENT FUND

16. Lead Counsel or their authorized agents, subject to the supervision, direction and approval of the Court, shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Settlement Fund.

17. Upon or after the Effective Date, except as provided in ¶12 herein, the Settlement Fund shall be applied as follows:

- a. To pay all Costs of Administration and Costs of Notice.
- b. To pay Fees and Expenses.
- c. To pay taxes owed by the Settlement Fund.
- d. To distribute the Net Settlement Fund to Authorized Claimants as provided in the Plan of Allocation, or as otherwise ordered by the Court.

In order to participate in such distribution of the Net Settlement Fund:

- (i) Each person claiming to be an Authorized Claimant shall be required to timely submit a separate signed Proof of Claim and Release substantially in the form of Exhibit B supported by proof of all purchases or acquisitions and sales of PainCare common stock during the Class Period.
- (ii) Unless otherwise ordered by this Court, any Settlement Class Member who fails to submit a Proof of Claim and Release within such period as may be established by this Court shall be forever barred from receiving any payments pursuant to this Stipulation, but in all other respects will be subject to and bound by the provisions of this Stipulation and the Final Judgment.

18. Before the distribution of the Net Settlement Fund, Lead Counsel shall present for the approval of the Court a final accounting of the receipts to and disbursements from the Settlement Fund and the proposed distribution of the Net Settlement Fund to Authorized Claimants. No such distribution shall be made in the absence of an order approving the accounting and the proposed distribution.

19. All proceedings with respect to the administration, processing and determination of claims of persons claiming to be Authorized Claimants and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

20. No Authorized Claimant shall have any claim against the Lead Plaintiff or Defendants, or any of their counsel, based on the distributions made substantially in accordance with this Stipulation.

21. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date and after: (i) all Claims have been processed, and all Claimants whose Claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iii) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court, all appeals therefrom have been resolved or the time therefor has expired; and (iv) all costs of administration have been paid.

22. Payment from the Net Settlement Fund made pursuant to and in the manner set forth above shall be deemed conclusive of compliance with this Stipulation as to all Authorized

Claimants. All Settlement Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims.

23. Defendants shall not have any role in or responsibility for: the form, method or manner of administration of the Settlement; review and decisions with respect to validity of Proofs of Claim; or distribution of the Net Settlement Fund to Settlement Class Members. All expenses related thereto, including, without limitation, the Costs of Administration, shall be paid from the Settlement Fund. Defendants shall have no responsibility or liability for the administration or processing of claims or the allocation of the Settlement Fund, including, without limitation, determinations as to the timeliness or validity of Proofs of Claim, the amounts of claims, distribution of the Net Settlement Fund, or any loss incurred in connection with the activities of the Claims Administrator.

24. Defendants shall have no responsibility for any payment of Fees or Expenses, or any amounts awarded in respect of the Fee and Expense Application.

25. In no event shall Defendants be liable for any attorney's fees or other costs incurred by any party in connection with any challenge to any request for or award of Fees or Expenses, including appeals.

CONDITIONS TO SETTLEMENT

26. Defendants have the option to terminate the Settlement if the number of shares associated with valid Requests for Exclusion from the Stock Class amount to more than 5% of the shares of PainCare common stock eligible to participate in this Settlement. If the condition

set forth in this paragraph occurs and Defendants determine to exercise this option to terminate, they must do so in writing, no later than seven (7) business days after the deadline set by the Court for filing Requests for Exclusion or this option to terminate is waived. Lead Counsel shall deliver copies of all Requests for Exclusion to Defendants' counsel promptly as such Requests for Exclusion are received. If the Settlement is terminated by Defendants, all deposits into the Escrow Account shall immediately be returned in accordance with the provisions of ¶10, above.

27. The Settlement and Stipulation shall be terminated and shall be null and void, except as to [¶¶10 and 28] of this Stipulation, in the event that any of the following occurs:

- a. The Court does not enter the Notice Order in substantially the form attached as Exhibit E preliminarily approving the Settlement, or modifies the Notice Order in a material way not consented to by Lead Plaintiff and Defendants;
- b. The Court does not enter the Order and Final Judgment or modifies the Order and Final Judgment in a material way not consented to by Lead Plaintiff and Defendants;
- c. The Defendants exercise their option to terminate the Settlement pursuant to ¶26, above; or
- d. The Order and Final Judgment is reversed, modified or vacated on appeal in any material respect. For purposes of this ¶27(d), any reversal, modification or vacatur of the Order and Final Judgment relating solely and exclusively to an award of Fees and Expenses to Lead Counsel, and/or to allocation or distribution of the Settlement Fund shall be deemed not material.

STIPULATION NOT AN ADMISSION

28. Neither this Stipulation, including all exhibits, orders or other documents referred to herein; nor any terms or provisions of the Stipulation, including the Plan of Distribution, nor any of the communications, negotiations, proceedings or documents produced to Lead Counsel in connection with or related to this Stipulation, shall be:

- a. Construed as or deemed to be evidence of, or a concession or an admission by any Defendant, or to give rise to any sort of inference or presumption of, (i) the truth of any fact alleged or the validity of any claim asserted in the Complaint or the Amended Complaint or the Action, (ii) the truth of any fact or claim that has been, or ever could have been, or ever could be asserted in any of the Action, or (iii) any liability, fault, wrongdoing or misconduct of any type by any Defendant with respect to the Complaint, the Amended Complaint or the Action; or
- b. Offered or received into evidence in any proceeding or otherwise submitted to, or referred to in, any court, administrative agency, tribunal or other forum as evidence or, or as a concession or admission by any Defendant of, or as giving rise to any sort of inference or presumption of, any fault, misrepresentation or omission in any oral or written statement or any document, report or financial statement issued, filed, proved, examined, reviewed, considered, reported on, or made by any Defendant; or
- c. Offered or received into evidence in any proceeding or otherwise submitted to, or referred to in, any court, administrative agency, tribunal

or other forum as evidence or, or as a concession or admission by any Defendant of, or as giving rise to any sort of inference or presumption of, any liability, fault, or wrongdoing by any Defendant in any civil, criminal, administrative, arbitral or other proceeding, but may be referred to in such a proceeding only as may be necessary to consummate or enforce this Stipulation; or

d. Construed by anyone for any purpose whatsoever as a concession by or an admission of or as giving rise to any inference or presumption of any liability, fault, wrongdoing or misconduct of any sort on the part of any Defendant; or

e. Construed as a concession by or an admission of anyone or as giving rise to any inference or presumption that the consideration to be given hereunder represents the amount that could be recovered after trial, or as a release of any person other than Defendants and other Released Persons; or;

f. Offered or received against Lead Plaintiff or the Settlement Class as evidence of any infirmity in the claims of Lead Plaintiff or the Settlement Class; or

g. Offered or received against Lead Plaintiff or the Settlement Class as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against them, in any other civil, criminal or administrative

action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

- h. Construed against Lead Plaintiff or the Settlement Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or
- i. Construed as or received in evidence as an admission, concession or presumption against Lead Plaintiff, or the Settlement Class or any of them that any of their claims are without merit or that damages recoverable under the Complaint or the Amended Complaint would not have exceeded the Settlement Fund.

MISCELLANEOUS PROVISIONS

29. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

30. This Stipulation may be amended or modified only by a written instrument signed by counsel for all parties or their successors-in-interest.

31. The parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by all Settlement Class Members against the Released Persons with respect to the Released Claims. Accordingly, Lead Plaintiff and Defendants agree not to assert in any forum that the Action was brought by Lead Plaintiff or defended by Defendants in bad faith or without a reasonable basis. The parties hereto acknowledge that they do not have, and that they shall not assert, any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Actions. The parties to the Stipulation agree that the amount paid and the other

terms of the Settlement were negotiated at arm's-length and in good faith by the parties to this Stipulation, and reflect a settlement that was reached voluntarily based upon adequate information.

32. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Stipulation.

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

34. This Stipulation and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties or inducements have been made to any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

35. 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 shall exchange among themselves original signed counterparts.

36. Lead Plaintiff and Defendants shall cooperate fully with one another in seeking approval of this Stipulation and use their best efforts to consummate the Settlement in accordance with and subject to its terms and conditions. Lead Plaintiff and Defendants will exert every reasonable effort, and will act reasonably and in good faith, to agree on and execute, at the earliest practicable time, such documentation as may be required in order to: (1) implement the matters enumerated herein; (2) obtain the Court's preliminary and final approval of the Settlement; and (3) secure dismissal of the Action with prejudice and without costs for any party as to each and every Defendant.

37. Neither Lead Plaintiff nor any Defendant shall seek to evade their good faith obligation to seek approval and implementation of this Settlement on the basis of any ruling, order, governmental report, change in the financial condition of any party, results of the Proof of Claim process or any other development, whether in the Action or in any other litigation, or otherwise, that might hereafter occur and might be seen as altering the relative strengths of the parties with respect to any claim or defense, or their relative bargaining power with respect to negotiating a settlement, other than as permitted in this Stipulation.

38. Each counsel signing this Stipulation represents that such counsel has authority to sign this Stipulation on behalf of his clients.

39. This Stipulation shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, including any and all Released Parties and any corporation, partnership, or other entity into or with which any party hereto may merge, consolidate or reorganize.

40. Notices required by this Stipulation shall be submitted either by any form of overnight mail or in person to:

BARRACK, RODOS & BACINE
Leonard Barrack
Mark R. Rosen
3300 Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19103

LEAD COUNSEL FOR LEAD PLAINTIFF AND THE SETTLEMENT CLASS

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McDERMOTT WILL & EMERY LLP
Bruce J. Berman
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Suite 2200, Miami Center
Miami, Florida 33131

COUNSEL FOR DEFENDANTS

41. All terms of this Stipulation and the exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of Florida and without regard to its choice of law rules, except to the extent that federal law requires that federal law governs.

42. Each Defendant warrants as to himself or itself that, as to the payments made by or on behalf of him or it, at the time of such payment that the Defendant made or caused to be made pursuant to ¶9(a) above, he or it was not insolvent nor will the payment required to be made by or on behalf of him, her or it render such Defendant insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This warranty is made by each such Defendant and not by such Defendant's Counsel.

43. If a case is commenced in respect of any Defendant under Title 11 of the United States Code (Bankruptcy), 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 Settlement Fund or any portion thereof by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Lead Counsel, the parties shall jointly move the Court to vacate and set aside the releases given and Final Judgment and Order entered in favor of the Defendants pursuant to this Stipulation, which releases and Final Judgment and Order shall be null and void, and the parties shall be restored to their respective positions in the

litigation as of March 25, 2008, and the Settlement Fund shall be returned to the persons paying the same as provided in ¶10 above.

44. All parties to this Stipulation shall be subject to the jurisdiction of the United States District Court for the Middle District of Florida for all purposes related to the Actions and this Stipulation.

Dated: May 7, 2008

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