

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

**SUPERIOR COURT DEPT.
OF THE TRIAL COURT**

IN RE: SEPRACOR INC. DERIVATIVE
LITIGATION

C.A. NO.: SUCV2006-04057-BLS

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE SEPRACOR INC. DERIVATIVE
LITIGATION

MASTER FILE NO. 06-CA-11759-RGS

STIPULATION OF COMPROMISE AND SETTLEMENT

This Stipulation of Compromise and Settlement is made and entered into as of this ___th day of October, 2007, subject to the approval of the Court, by and between (i) plaintiffs Bergen Investment Trust, Gerald Gribling, The City of Tallahassee Pension Plan, Dennis Giaquinto, Norman Goguen, and Marvin P. Meyer, each of whom has brought suit derivatively for and on behalf of nominal defendant Sepracor Inc. ("Sepracor" or the "Company"), (ii) defendants James G. Address, Timothy J. Barberich, David S. Barlow, Digby W. Barrios, Robert J. Cresci, James R. Hauske, Robert F. Johnston, Keith Mansford, James F. Mrazek, William J. O'Shea, Douglas E. Reedrich, Timothy J. Rink, Paul D. Rubin, Robert Scumaci, David P. Southwell, and Alan R. Steigrod, and (iii) nominal defendant Sepracor.

I. DEFINITIONS

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

"Actions" means the State Action and the Federal Action, collectively.

"Audit Committee" means the audit committee of Sepracor.

"Board" means the Board of Directors of Sepracor.

“Compensation Committee” means the compensation committee of Sepracor.

“Complaints” means the Consolidated Shareholder Derivative Complaint filed in the State Action and the Verified Consolidated Shareholder Derivative Complaint filed in the Federal Action, collectively.

“Court” means the Suffolk County Superior Court Business Litigation Session, Commonwealth of Massachusetts.

“Defendants” means the Individual Defendants and the Nominal Defendant, collectively.

“Defendants’ Counsel” means the law firms of Wilmer Cutler Pickering Hale and Dorr LLP and Foley Lardner LLP, collectively.

“Effective Date” means the date of completion of the following: (a) approval of the Stipulation by the Board; (b) Sepracor has adopted or agreed to adopt the corporate governance and internal control enhancements, described herein at Section 3.3 B., and has effectuated the repricing and cancellation of stock options, described herein at Section 3.3 A.; (c) the approval by the Court of the Notice in substantially the form of Exhibit ____; (d) the approval by the Court of the Stipulation; (e) the entry of judgment by the Court in the State Action approving the Settlement and dismissing with prejudice the claims asserted in the State Action and without awarding costs to any party, except as provided herein; and entry of an Order and Final Judgment approving in all material respects this Stipulation in substantially the form of Exhibit ____; (f) the judgment referred to in subparagraph (c) above shall have become final and no longer subject to review, either by the expiration of the time for appeals therefrom with no appeals having been taken or, if an appeal is taken and not dismissed, by the determination of the appeal by the highest court to which such appeal may be taken in such a manner as to permit the

consummation of the Settlement in accordance with the terms and conditions of this Stipulation; and (e) entry of an Order dismissing with prejudice the Federal Action.

“Federal Action” means *In re Sepracor, Inc. Derivative Litigation*, Master File No. 06-CA-11759-RGS, pending in the United States District Court for the District of Massachusetts.

“Final” means no longer subject to review upon appeal or review in connection with a Petition for Writ of Certiorari or other similar writ, whether by exhaustion of any possible appeal, lapse of time or otherwise.

“Individual Defendants” means James G. Andress, Timothy J. Barberich, David S. Barlow, Digby W. Barrios, Robert J. Cresci, James R. Hauske, Robert F. Johnston, Keith Mansford, James F. Mrazek, William J. O’Shea, Douglas E. Reedrich, Timothy J. Rink, Paul D. Rubin, Robert Scumaci, David P. Southwell, and Alan R. Steigrod.

“Nominal Defendant” means Sepracor Inc. and its past and present subsidiaries, parents, affiliates, successors and predecessors, and their respective officers, directors, agent, employees, attorneys, legal representatives, successors in interest or assigns.

“Notice” means the Notice of Pendency and Settlement of Derivative Actions and of Settlement Hearing, substantially in the form submitted contemporaneously herewith as Exhibit A.

“Order and Final Judgment” means an order and final judgment approving the Stipulation substantially in the form attached hereto as Exhibit ____.

“Parties” means Plaintiffs, Individual Defendants, and Nominal Defendant, collectively.

“Person” means a natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and any spouse, heir, agent, legatee, executor, attorney, administrator, predecessor, successor, representative or assign of any of the foregoing.

“Plaintiffs” means Bergen Investment Trust, Gerald Gribbling, The City of Tallahassee Pension Plan, Dennis Giaquinto, Norman Goguen, and Marvin P. Meyer and their heirs, executors, administrators, trustees, representatives, agents, successors, transferees and assigns, collectively.

“Plaintiffs’ Counsel” means Gilman and Pastor, LLP, Schiffrin Barroway Topaz & Kessler, LLP, Coughlin Stoia Geller Rudman & Robbins LLP, and the Law Office of Alan L. Kovacs.

“Preliminary Order” means an order preliminarily approving the Stipulation and the form of Notice.

“Related Persons” means, with respect to any Person, such Person’s present and former parent entities, subsidiaries (direct or indirect) and affiliates, and each of their respective present and former shareholders, general partners, limited partners, affiliates, divisions, joint ventures, partnerships, officers, directors, employees, agents, representatives, attorneys, insurers, excess insurers, experts, advisors, investment advisors, underwriters, fiduciaries, trustees, auditors, consultants, accountants, representatives, spouses and immediate family members, and the predecessors, heirs, legatees, successors, assigns, agents, executors, devisees, personal representatives, attorneys, advisors and administrators of any of them, and the predecessors,

successors, and assigns of each of the foregoing, and any other Person in which any such Person has or had a controlling interest or which is or was related to or affiliated with such Person, and any trust of which such Person is the settler or which is for the benefit of such Person or member(s) of his or her family.

“Released Claims” means any statutory or common law claims (including Unknown Claims, as defined below), rights, demands, suits, matters, issues or causes of action or liabilities whatsoever, based on federal, state, local, statutory, common, foreign or international law, or any other law, rule or regulation, whether known or unknown or suspected to exist, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, including both known claims and unknown claims that were, could have been, or might have been asserted against the Released Parties by Plaintiffs or any other holder of Sepracor securities, whether asserted directly individually or in a representative capacity, on behalf of Sepracor or any of Sepracor’s Related Persons, in any court of competent jurisdiction or any other adjudicatory tribunal, in connection with, arising out of, related to, based upon, in whole or in part, directly or indirectly, in any way, the facts, transactions, events, occurrences, acts, disclosures, oral or written statements, representations, filings, publications, disseminations, press releases, presentations, accounting practices or procedures, compensation practices or procedures, omissions or failures to act which were, could have been, or might have been alleged in these Actions by Plaintiffs or any other holder of Sepracor securities. The “Released Claims” include but are not limited to any and all claims related to or arising out of options backdating, forward-dating, spring-loading, bullet-dodging, or any other options dating practice, procedure or policy, and claims for breach of fiduciary duty or the aiding or abetting thereof, breach of contract, insider trading, misappropriation of information, failure to disclose,

abuse of control, breach of Sepracor's policies or procedures, waste, mismanagement, gross mismanagement, unjust enrichment, misrepresentation, fraud, constructive fraud, accounting, rescission, disgorgement, violations of Sections 10(b), 14(a), or 20(a) of the Securities Exchange Act of 1934, and rule 10b-5 promulgated thereunder, any other violations of law, money damages, injunctive relief, corrective disclosure, damages, penalties, disgorgement, restitution, interest, attorneys' fees, expert or consulting fees, and any and all other costs, expenses or liability whatsoever, whether based on federal, state, local, statutory, common, foreign or international law or any other law, rule or regulation, whether known or unknown or suspected to exist, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, including both known claims and unknown claims that were, could have been, or might have been alleged in the Actions. The Released Claims do not include the claims asserted in *In Re Sepracor Inc. Securities Litigation, The Debt Purchasers Action*, C.A. NO. 02-12235-MEL (D. Mass.) and *In Re Sepracor Inc. Securities Litigation, The Equity Purchasers Action*, C.A. NO. 02-12338-MEL (D. Mass.).

“Released Parties” means the Defendants and their Related Persons.

“Relevant Period” means from 1995 to 2003.

“Sepracor Shareholders” means all public shareholders of Sepracor common stock and entities who hold shares of Sepracor common stock through the date of this Settlement, and the representatives, trustees, executors, heirs, administrators, transferees, agents, successors, or assigns of all such holders.

“Settlement” means the settlement and compromise of the Derivative Actions as provided for herein.

“Settlement Hearing” means the hearing or hearings at which the Court will review the adequacy, fairness and reasonableness of the Settlement.

“Special Committee” means the committee appointed by the Board in June 2006 to oversee a review of the Company’s historical stock option grants.

“State Action” means *In re: Sepracor, Inc. Derivative Litigation*, C.A. No. SUCV2006-04057-BLS, pending in the Suffolk County Superior Court Business Litigation Session, Commonwealth of Massachusetts.

“Stipulation” means this Stipulation of Compromise and Settlement.

“Unknown Claims” means any and all Released Claims which the Plaintiffs do 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 decision(s) with respect to the Settlement. With respect to any and all Released Claims, the parties stipulate and agree that upon the Effective Date, the Plaintiffs and Defendants shall expressly, and each of the Released Parties shall be deemed to have, and by operation of the Order and Final Judgment 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 Cal. Civ. 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 settlement with the debtor.

II. FACTUAL AND PROCEDURAL HISTORY

2.1 By Order dated September 11, 2006, a state derivative action captioned *Bergen Investment Trust v. James G. Andress, et al.*, Middlesex County, Case Number 06-2025 (filed June 6, 2006), was consolidated with derivative suits captioned *Gerald Gribbling v. James G.*

Andress, et al., Case Number 06-2043 (filed June 7, 2006) and *The City of Tallahassee Pension Plan v. James G. Andress, et al.*, Case Number 06-2282 (filed June 26, 2006) under the caption *In Re: Sepracor Inc. Derivative Litigation*, C.A. No.: SUCV2006-04057-BLS.

2.2 By Order dated September 22, 2006, the State Action was transferred from Middlesex County Superior Court to the Court.

2.3 By Order dated December 1, 2006, a federal derivative action captioned *Marvin P. Meyer v. Timothy J. Barberich, et al.*, No. 06-CA-11759-RGS (D. Mass. filed September 28, 2006), was consolidated with federal derivative actions captioned *Norman Goguen v. Timothy J. Barberich, et al.*, No. 06-CA-11796-RGS (D. Mass. filed October 3, 2006), and *Dennis Giaquinto v. Timothy J. Barberich, et al.*, No. 06-CA-11872-RGS (D. Mass. filed October 13, 2006) under the consolidated caption *In Re Sepracor Inc. Derivative Litigation*, Master File No. 06-CA-11759-RGS.

2.4 The derivative Actions are brought by shareholders of Sepracor on behalf of the Company and allege that the Individual Defendants improperly engaged in, approved, and/or benefited from the “backdating” of stock options grants during the Relevant Period, filed false and/or misleading financial and proxy statements to conceal the improper backdating of stock options, and/or otherwise failed to exercise due care in overseeing the Company’s stock option grants to directors and employees of the Company.

2.5 On June 2, 2006, Sepracor issued a press release announcing it had “received a letter of inquiry from the Securities and Exchange Commission (the “SEC”) requesting documents related to the Company’s stock option grants and stock option practices,” and that the Company had “set up a special committee of the Board of Directors to oversee a review of the documentation relating to option grants.” The Special Committee is comprised of outside

directors Robert Cresci and Timothy Rink and has retained outside independent legal counsel and outside accounting specialists to assist it in its review of the Company's historical stock options granting practices and procedures.

2.6 In a report on Form 8-K filed with the SEC on June 13, 2006, Sepracor disclosed that "a shareholder derivative complaint was filed in the Superior Court, Middlesex County, Commonwealth of Massachusetts, on June 7, 2006, naming the Company as nominal defendant and also naming as defendants current members of the Company's Board of Directors and current and former employees of the Company."

2.7 In a report on Form 8-K filed with the SEC on July 21, 2006, Sepracor disclosed that Special Committee had preliminarily determined that "the measurement dates for accounting purposes for certain stock option grants to employees, officers and directors during prior periods may differ from the recorded grant dates for such awards," and that "the Company may need to record additional non-cash charges for stock-based compensation expenses and such charges could be material."

2.8 In a report on Form 8-K filed with the SEC on August 10, 2006, Sepracor disclosed that that the Special Committee determined that:

[T]he measurement dates for certain stock option grants to employees, officers and directors during prior periods differed from the recorded dates for such awards primarily due to the following circumstances: (i) stock option grants which specified effective dates that may have preceded the dates of receipt of all necessary signatures or approvals, finalization of lists specifying stock option grants or an employee's first date of employment; and (ii) stock option awards that were approved with exercise prices lower than fair market value on the effective date of grant. In addition, the Company has determined that (a) the modification of certain stock option grants in connection with an employee's termination of employment and (b) the exercise of certain stock options that had not vested prior to an employee's termination resulted in a new measurement date for such stock options. As a

result, the Company is required to record adjustments for additional non-cash charges relating to stock-based compensation expense in periods prior to July 1, 2006.

2.9 In a report on Form 8-K filed with the SEC on October 26, 2006, Sepracor announced that the Special Committee had completed its review of the Company's historical stock options practices and that in connection with the restatement of its past financial results, the aggregate amount of the additional stock-based compensation expense incurred by the Company would be approximately \$43.3 million:

As a result of the review, Sepracor restated its financial statements for the quarters ended March 31, June 30, September 30 and December 31, 2005, the quarter ended March 31, 2006 and the fiscal years ended December 31, 2005 and 2004 and 2003. The aggregate amount of the additional stock-based compensation expense Sepracor incurred as a result of the stock option review is approximately \$43.3 million. The impact of additional stock-based compensation expense is approximately \$1.0 million, \$1.3 million and \$2.0 million for the years ended December 31, 2005, 2004 and 2003, respectively.

2.10 On November 20, 2006, Defendants filed a motion to dismiss the Consolidated Shareholder Derivative Complaint in the State Action pursuant to Mass. R. Civ. P. 12 and 23.1, which Plaintiffs opposed.

2.11 On February 8, 2007, counsel for Sepracor met with counsel for Plaintiffs to discuss the allegations made in the Actions and a possible resolution of those claims, and during the course of this meeting, counsel for Defendants presented certain non-public information that had previously been provided to the Special Committee in furtherance of its investigation, and Plaintiffs' Counsel suggested that the Company should re-price and/or cancel certain historical options grants and make certain changes to its equity compensation policies.

2.12 The Parties later suspended their settlement negotiations and instead pursued the Defendants' motion to dismiss the State Action and, on March 20, 2007, the Court heard arguments on the Defendants' motion.

2.13 On or about April 9, 2007, Defendants filed a motion to stay or dismiss the Federal Action.

2.14 On April 16, 2007, the parties in the State Action met again to resume settlement discussions. Following the April 16, 2007 meeting, the parties in the State Action continued to pursue settlement discussions by way of numerous telephonic conferences, e-mail exchanges, and exchanges of additional non-public information.

2.15 After several months of extensive arms-length negotiations, Sepracor and the Individual Defendants and Plaintiffs in the State Action reached an agreement in principle in early June 2007, which the Parties reported to the Court.

2.16 On September 7, 2007, the Court entered an Order for Entry of Judgment or Dismissal Nisi (the "Nisi Order"), requiring the Parties to submit to the Court a brief description of the Settlement and further requiring that that an agreement for judgment be filed in the Clerk's Office of the Court within 30 days of the Nisi Order. Pursuant to the Nisi Order, the Parties submitted to the Court a brief description of the Settlement and, since that time, the Parties have finalized the terms of the Settlement as set forth and memorialized in this Stipulation.

2.17 Defendants do not admit and expressly deny all of Plaintiffs' claims in the Actions.

2.18 Plaintiffs acknowledge and agree that the execution of this Stipulation by the Defendants is not an admission on the part of any of the Defendants that they have in any way committed or attempted to commit any violation of law or breach of fiduciary duty, including a

breach of any duty to Sepracor or its shareholders, that they have unlawfully gained or benefited from the stock option grants that are the subject of the Actions, or that the Defendants otherwise acted in any improper manner.

2.19 The Parties believe that the proposed Settlement is in the best interests of Sepracor and Sepracor's shareholders.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel for the Parties herein that all claims and causes of action that have been, could have been or might have been set forth in the Complaints in these Actions or any amendment thereof, and all claims or causes of action in any way relating to or arising out of any of the acts, transactions and occurrences that were, could have been or might have been set forth therein, shall be and hereby are compromised, settled, discontinued and dismissed with prejudice and without costs (except as defined herein) as to all Released Parties upon the following terms and conditions.

III. SETTLEMENT OF DERIVATIVE ACTIONS

3.1 Defendants' Denial of Liability. Sepracor and each of the Individual Defendants have denied and continue to deny all of the claims in the Derivative Actions, and have denied and continue to deny having committed, aided, or attempted to commit any violations of law or breach of any duty of any kind or otherwise acted in any improper manner. Defendants are entering into the Stipulation because the proposed Settlement would eliminate the expenses, burdens and risks associated with further litigation of the Derivative Actions, and because Defendants therefore believe the proposed Settlement is in the best interests of Sepracor and all of its shareholders.

3.2 Reliance Upon Own Knowledge. Plaintiffs expressly represent and warrant that, in entering into the Settlement, they relied upon their own knowledge and investigation (including the knowledge of and investigation performed by Plaintiffs' Counsel), and not upon any promise, representation, warranty or other statement made by or on behalf of any of the Defendants or their Related Persons not expressly contained in this Stipulation.

3.3 Principal Terms of Settlement. The Derivative Actions were a material factor in Sepracor's decision to implement the monetary and therapeutic remedies set forth in subsections "A" and "B" below:

A. Monetary Remedies. Defendants confirm that a total of 2,206,112 unexercised stock options have been re-priced and 500,000 unexercised stock options have been cancelled, as follows:

1. 212,000 unexercised stock options granted to officers and/or Board members with an original measurement date of July 17, 1997 have been re-priced based on the revised measurement date of October 18, 1997, from \$12.12 per share to \$19.31 per share;

2. 991,334 unexercised stock options granted to officers and/or Board members with an original measurement date of June 4, 1998 have been re-priced based on the revised measurement date of July 16, 1998, from \$18.38 per share to \$24.31 per share;

3. 680,000 unexercised stock options granted to an officer with an original measurement date of October 21, 1999 have been re-priced from \$35.44 per share to \$35.75 per share;

4. 500,000 stock options granted to officers and/or Board members with an original measurement date of April 27, 2000 have been cancelled;

5. 322,778 unexercised stock options granted to officers and/or Board members with an original measurement date of May 3, 2001 have been re-priced based on the revised measurement date of May 8, 2001, from \$24.54 per share to \$27.00 per share.

B. Therapeutic Remedies. Defendants agree that the Board will, on or before the Effective Date of the Settlement, adopt the following corporate governance and internal control measures:

1. Stock options granted to all officers and directors, including newly hired employees, shall be granted only as set forth in Sepracor's stock option policy, the terms of which are attached hereto. The stock option policy may only be amended with the approval of the Compensation Committee of the Board (the "Compensation Committee"). The stock option policy requires, among other things, that:

- (a) Equity awards may only be approved at Board or Compensation Committee meetings and not by written action;
- (b) Stock options must be priced at the closing price of Sepracor common stock as reported on the Nasdaq Global Select Market on the date of approval;
- (c) Annual equity awards to executive officers may only be approved at the Compensation Committee meeting that coincides with the Company's annual meeting of stockholders;
- (d) Annual awards to members of the Board may only be granted in accordance with the current Director Stock Option Plan and priced at the Company's market closing price on the date of the annual meeting of stockholders;
- (e) Executive officer "new hire" awards may only be granted by the Compensation Committee at the first Board meeting following the executive officer's date of hire, with the date of hire being as defined in the records of the Company's Human Resources Department; and

(f) Employee (non-executive officer) “new hire” awards may only be granted by the Board at the meeting following the employee’s date of hire, with the date of hire being as defined in the records of the Company’s Human Resources department.

2. The exercise prices of all stock options shall be at least 100% of the closing price of Sepracor’s common stock on the date of grant.

3. Sepracor shall not, without stockholder approval, lower the exercise prices of any stock options after they are granted, nor exchange stock options for options with lower exercise prices.

4. For named officers and directors, the Compensation Committee shall determine the grantees, amounts, dates and prices of all stock options made to named officers and directors and shall not delegate these responsibilities. The Compensation Committee shall make determinations only at duly convened meetings.

5. For employees who are not named officers, the Board shall determine the grantees, amounts, dates and prices of all stock options.

6. Minutes of the Board and Compensation Committee meetings at which option grants or stock awards are considered shall be taken and prepared within thirty (30) days, and shall contain a schedule detailing by person and amount all grants or awards being approved. Any changes to approved grants or awards, even to correct inadvertent errors, shall be made at a subsequent meeting.

7. Management shall annually assess the adequacy of the Company’s internal controls with regard to stock option grants and will report in its annual report on Form 10-K any identified material weakness relating to its stock option practices.

8. The Company shall maintain all records relating to all stock option grants for the duration of the grant.

9. At least annually, the Audit Committee shall meet with the Company’s independent auditors to review and discuss the Company’s accounting for stock-based compensation, and shall perform a review of internal controls relating to such matters every three years.

10. Under the direction of an executive officer, the Company shall establish cross functional training for personnel in all areas associated with stock option granting and administration process covering: (i) stock option and other equity award programs and related improvements to equity compensation controls, processes and procedures; (ii) accounting implications of equity awards; and (iii) legal and tax implications of equity award grants.

11. The Board shall task the Company's General Counsel or another senior officer with the responsibility for (along with the full Board) reviewing and, to the extent necessary, updating the Company's insider trading policy compliance procedures and providing appropriate sanctions for noncompliance. The independent directors shall have regular access to such officer, including the opportunity to meet with him or her outside the presence of other members of management.

12. Directors shall participate in an initial orientation program upon election to the Board.

13. Each member of the Board shall be expected, when possible, to attend each annual stockholder meeting in person.

14. The Compensation Committee shall establish a comprehensive and responsible set of assumptions, policies and procedures for determining executive compensation (e.g., compensation levels should be compared to similar-sized businesses in similar industries or with similar profitability).

15. The Board or Compensation Committee shall designate or hire an employee who shall be responsible for assisting option grantees in complying with applicable laws and regulations (e.g., filing of SEC Forms 3, 4 and 5), and shall provide effective monitoring mechanisms to help ensure that such laws, and the Company's stock option plans, are followed.

16. The Company shall appoint a director of internal auditing, or the equivalent, who will report directly to the Chief Compliance Officer or another executive officer with direct access to the Audit Committee of the Board (the "Audit Committee"), who shall report to the Audit Committee and meet at least quarterly with the Audit Committee.

C. Defendants agree that on or before the Effective Date of this Settlement, the Board will adopt a resolution that it will not authorize any "make whole" payments to any officers and directors who have had any options re-priced or cancelled referenced in Section 3.3 A. 1.-5. hereto.

D. Defendants agree that the measures specified herein provide a substantial benefit to Sepracor and its shareholders.

3.4 Notice. Defendants shall be responsible for the cost of printing and mailing any Court-directed notice to the shareholders of Sepracor entitled to receive such notice, substantially in

the form of the Notice submitted contemporaneously herewith as Exhibit A, and also shall be responsible for the cost and administration of any other Court-directed notice to be made by publication.

3.5 Attorneys' Fees and Expenses. Subject to Court approval, Sepracor and/or its insurers and/or their respective successors-in-interest shall pay to Plaintiffs' Counsel attorneys' fees and reimbursement of expenses in the aggregate amount of \$1,625,000 (the "Fees and Expenses"). The Fees and Expenses shall be paid to Schiffrin Barroway Topaz & Kessler, LLP, as receiving agent for Plaintiffs' Counsel, within ten (10) business days after the date on which the Court enters the Order and Final Judgment approving the Fees and Expenses, provided that the payment shall be maintained in an interest bearing escrow account until such time as the Effective Date of the Settlement, and subject to Plaintiffs' Counsel's joint and several obligations to make appropriate refunds or repayments to the Company plus accrued interest if, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the amount of Fees and Expenses is reduced or reversed. Except as expressly provided herein, Plaintiffs and Plaintiffs' Counsel shall bear their own fees, costs and expenses and no Defendant shall assert any claim for expenses, costs and fees against any Plaintiff or Plaintiffs' Counsel.

3.6 Releases. Upon the Effective Date, Plaintiffs, on behalf of Sepracor and all other shareholders of Sepracor during the time of the events alleged in the Complaints, will release all Released Claims against the Released Parties. Plaintiffs will also release all claims against Defendants' Counsel related to the defense of the Derivative Actions. The Defendants shall also release any claims they may have against Plaintiffs and Plaintiffs' Counsel related to their bringing and prosecuting the Derivative Actions.

3.7 Dismissal of Federal Action. Within five (5) days after the Effective Date, the Parties to the Federal Action shall jointly apply to the United States District Court for the District of Massachusetts for a dismissal with prejudice of the Federal Action, and shall use their reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable laws, regulations and agreements, to secure such dismissal with prejudice.

3.8 Res Judicata/Estoppel. The Released Parties may file this Stipulation and/or the Order and Final Judgment in any action that may be brought against them 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 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

IV. PRELIMINARY ORDER AND SETTLEMENT HEARING

4.1 Application for Preliminary Order. The Parties shall, by October ____, 2007, jointly submit to the Court this Stipulation with its related documents and shall apply for the Preliminary Order:

- (a) Approving the form of the Notice substantially in the form of such submitted contemporaneously herewith;
- (b) Setting forth the method for providing Notice to Sepracor shareholders of the Settlement and Settlement Hearing;
- (c) Finding that the methods of providing Notice set forth in the Preliminary Order constitute the best Notice practicable under the circumstances and meet all requirements of Mass. R. Civ. P. 23.1 and due process; and
- (d) Setting a date for the Settlement Hearing to determine whether the Settlement should be approved as reasonable, adequate and in the best interests of Sepracor.

V. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

5.1 This Settlement shall become effective on the Effective Date.

5.2 If the conditions identified in paragraph 1.9 fail to occur, then any of the Parties may terminate the Stipulation and withdraw from the Settlement by providing written notice of such action to undersigned counsel for all of the Parties within thirty (30) days after the failure of such condition. In the event that the Settlement is not approved or is terminated, the proposed Settlement and any actions taken in connection therewith shall be vacated and terminated and shall become null and void for all purposes, and all negotiations, transactions, and proceedings connected with it: (i) shall be without prejudice to the rights of any Party hereto; (ii) shall not be deemed to be or construed as evidence of, or an admission by any Party of, any fact, matter, or thing; and (iii) shall not be admissible in evidence or be used for any purpose in any subsequent proceedings in the Actions or any other action or proceeding. The Parties to this Stipulation shall be deemed to have reverted to their respective status in the Actions as of the date and time immediately prior to the execution of this Stipulation, and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related Orders had not been entered.

5.3 Standstill Agreement. Pending entry of the Final Judgment and Order based on the Settlement provided for in the Stipulation, Plaintiffs are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims, either directly, representatively, derivatively, or in any other capacity, against any Released Party. Plaintiffs also agree to assent to any motion to dismiss any other proceedings to the extent any Released Claims are asserted or continue to be asserted in any court prior to or after the entry of a judgment based on the Settlement in the Actions.

VI. MISCELLANEOUS PROVISIONS

6.1 Cooperation of the Parties. The Parties (a) acknowledge that it is their intent to consummate this Settlement and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their reasonable efforts to accomplish the foregoing terms and conditions of this Stipulation. The Parties will seek the Court's approval of the Preliminary Order and, when appropriate, the Final Order and Judgment.

6.2 Acknowledgment of Adequate Consideration. The Parties acknowledge, represent and warrant to each other that the terms of this Settlement are such that each of the Parties is to receive adequate consideration for the consideration given.

6.3 Continuous Ownership. Plaintiffs and their counsel represent and warrant that Plaintiffs have continuously owned shares of Sepracor common stock throughout the Actions, and none of the claims or causes of action asserted in the Actions, including any Released Claims, have been assigned, encumbered or in any manner transferred in whole or part.

6.4 No Admissions. The provisions contained in this Stipulation and all negotiations, statements and proceedings leading up to and in connection therewith are not, shall not be argued to be, and shall not be deemed, a presumption, concession or admission by any of the Parties or Released Parties of any breach of duty, fault, liability or wrongdoing as to any fact or claim alleged or asserted in the Actions or any other civil, criminal, or administrative actions or proceedings and shall not be interpreted, construed, deemed, invoked, offered or received in evidence, or otherwise used by any person in these or any other action or proceeding, whether civil, criminal or administrative, except in a proceeding to enforce the terms or conditions of this Stipulation. The Parties may, however, file this Stipulation or any judgment or order relating

thereto in any action that may be brought against them to support a defense or a counterclaim based on 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. Nothing contained herein shall prevent the Defendants from complying with any disclosure obligation under federal, state or other law, or from otherwise referring to the Settlement or the releases contained in this Stipulation.

6.5 Confidentiality Agreements. All agreements made during the course of the negotiations relating to the confidentiality of information shall survive the Stipulation and the Settlement.

6.6 Costs. Except as otherwise expressly provided herein, the Parties shall bear their own costs.

6.7 Entire Agreement. This Stipulation and all documents executed pursuant hereto constitute the entire agreement between the Parties with respect to the settlement of the Actions and supersede any and all prior negotiations, discussions, agreements or undertakings, whether oral or written, with respect to the settlement of the Actions and no representations, warranties or inducements have been made by any party hereto concerning this Stipulation other than those contained and memorialized herein. Without intending to limit the scope of the foregoing, the Parties acknowledge that this Stipulation supersedes the Memorandum of Understanding executed by the Parties.

6.8 Counterparts. This Stipulation may be executed in one or more counterparts and all such counterparts together shall be deemed to be one and the same instrument.

6.9 Binding Effect. This Stipulation shall be binding upon, and inure to the benefit of all Parties and Released Parties. This Stipulation is not intended, and shall not be construed, to

create rights in or confer benefits on any other Persons, and there shall not be any third party beneficiaries hereto except as expressly provided hereby with respect to such aforementioned Persons who are not Parties hereto.

6.10 Judicial Enforcement. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Stipulation and the Settlement, and the Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the terms of the Stipulation and Settlement.

6.11 Choice of Law. This Stipulation shall be governed by the laws of the Commonwealth of Massachusetts, without regard to conflict of laws principles.

6.12 Warrant of Authority. Each counsel or person executing the Stipulation or any of the related documents on behalf of any Party hereto hereby warrants that such Person has the full authority to do so.

6.13 Waiver of Breach. The Parties may not waive or vary any right hereunder except by an express written waiver or variation. Any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right. The waiver by one Party of any breach of this Stipulation by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

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

6.15 No Assignment of Claims. Plaintiffs hereby represent and warrant, individually and collectively, that he/she/it/they have not assigned any rights, claims or causes of action that were asserted, could have been, or might have been asserted in connection with, under or arising out of any of the claims being settled or released herein.

6.16 Facsimile Signatures. Any signature to this Stipulation, to the extent signed and delivered by means of a facsimile machine, shall be treated in all manner and respects as an original signature and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of a Party to this Stipulation, any other Party to this Stipulation so executing and delivering this document by means of a facsimile machine shall re-execute original forms thereof and deliver them to the requesting Party. No Party to this Stipulation shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine as a defense to the formation or the enforceability of this Stipulation and each such Person forever waives any such defense.

6.17 Extensions of Time. Without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of this Stipulation.

The Parties have caused this Stipulation to be duly executed and delivered by their counsel of record:

DATED: October 18, 2007

GILMAN AND PASTOR, LLP



David Pastor (BBO #391000)
60 State Street, 37th Floor
Boston, MA 02109
Telephone: (617) 742-9700

Telephone: (617) 742-9700

**SCHIFFRIN BARROWAY TOPAZ
& KESSLER, LLP**

Eric L. Zagar
Lee D. Rudy
Eric Lechtzin
James A. Maro
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706

*Counsel for Lead Plaintiffs Bergen Investment Trust,
Gerald Gribling, The City of Tallahassee Pension Plan*

DATED: October __, 2007

**COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP**

Travis E. Downs III
Benny C. Goodman III
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-1058

**COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP**

Shawn A. Williams
Monique C. Winkler
Maria V. Morris
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: (415) 288-4545

THE WEISER LAW FIRM, P.C.

Robert B. Weiser
Brett D. Stecker
121 N. Wayne Avenue, Suite 100
Wayne, PA 19087
Telephone: 610/225-2616
610/225-2678 (fax)

*Co-Lead Counsel for Plaintiffs Marvin P. Meyer,
Norman Goguen and Dennis Giaquinto*

LAW OFFICE OF ALAN L. KOVACS

Alan L. Kovacs (BBO #278240)
2001 Beacon Street, Suite 106
Boston, MA 02135
Telephone: 617/964-1177
617/332-1223(fax)

*Liaison Counsel for Plaintiffs Marvin P. Meyer,
Norman Goguen and Dennis Giaquinto*

DATED: October __, 2007

**WILMER CUTLER PICKERING HALE AND
DORR LLP**

Jeffrey B. Rudman (BBO #433380)
Daniel W. Halston (BBO #548692)
Gregory M. Reiser (BBO #662284)
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000

*Counsel for Defendants Sepracor Inc., James G. Andress,
Timothy J. Barberich, Digby W. Barrios, Robert J. Cresci,
James R. Hauske, Robert F. Johnston, Keith Mansford,
James F. Mrazek, William J. O'Shea, Douglas E. Reedrich,
Timothy J. Rink, Paul D. Rubin, Robert Scumaci, David P.
Southwell, and Alan R. Steigrod*

DATED: October __, 2007

FOLEY LARDNER LLP

Russell Beck (BBO #561031)
Carrie Fletcher (BBO #632369)
Foley Lardner LLP
111 Huntington Avenue
Boston, MA 02199
Telephone: (617) 342-4000

Counsel for David S. Barlow

