

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

PRECISION ASSOCIATES, INC., et al., on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

PANALPINA WORLD TRANSPORT
(HOLDING) LTD., et al.,

Defendants.

Case No.: 08-CV-00042 (JG) (VVP)

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND GEODIS S.A. AND
GEODIS WILSON USA, INC.**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of the Effective Date, by and between Geodis S.A. and Geodis Wilson USA, Inc. (collectively referred to herein as “Settling Defendants”) and Plaintiffs Precision Associates, Inc., Anything Goes LLC d/b/a Mailboxes Etc., JCK Industries, Inc., RBX Industries, Inc., Mary Elle Fashions, Inc., Inter-Global, Inc., Zeta Pharmaceuticals, LLC., Kraft Chemical Company, Printing Technology, Inc., David Howell Product Design Inc., Innovation 714 Inc., Mika Overseas Corporation, and NORMA Pennsylvania Inc. (collectively, “Plaintiffs”), individually and on behalf of a class of direct purchasers of Freight Forwarding Services, as defined herein, subject to the approval of the Court (the “Settlement”).

RECITALS

A. Plaintiffs are prosecuting the above-captioned Action on their own behalf and on behalf of the Settlement Class.

B. Plaintiffs have alleged, among other things, that the Settling Defendants participated in unlawful conspiracies to restrain trade pursuant to which Settling Defendants and the alleged co-conspirators agreed to fix, raise, or maintain the prices of specified Freight Forwarding Services for shipments within, to, or from the United States or for purchases made within the United States during the Class Period, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

C. More specifically, Plaintiffs have alleged in their Corrected Third Amended Complaint (“CTAC”) that the Settling Defendants engaged in the following unlawful agreements:

1. The 2001 Security Surcharge Agreement;
 2. The 2005 Chinese Currency Adjustment Factor Agreement (“CAF”);
 3. The 2004 U.S. Customs Air Automated Manifest Surcharge Agreement (“Air AMS”);
 4. The U.S. Customs Ocean Automated Manifest Surcharge Agreement (“Ocean AMS”);
- and
5. The Global Conspiracy Agreement (Claim 10).¹

D. Settling Defendants have asserted numerous defenses to Plaintiffs’ claims and intend to assert a number of additional defenses to Plaintiffs’ claims if the Actions proceed further. Further, Settling Defendants vigorously deny all allegations of wrongdoing in the Actions.

¹ In his Report and Recommendation (ECF No. 878) at 31, 35-37, filed September 20, 2013, the Magistrate recommended that the Geodis Defendants be dismissed from the Global Conspiracy Claim (Claim 10). Plaintiffs did not object to the Magistrate’s recommendation. Settling Defendants filed objections (ECF No. 910) to the Report and Recommendation regarding all remaining claims. Upon notice of a Memorandum of Understanding between Plaintiffs and Settling Defendants to resolve the Actions, the District Court noted that any references to Settling Defendants or their claims in the Report and Recommendation are now moot. (ECF No. 992).

E. Plaintiffs and Settling Defendants agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, or regulation or of any liability or wrongdoing by the Settling Defendants or of the truth of any of Plaintiffs' Claims or allegations.

F. Settlement Class Counsel have conducted an investigation into the facts and law regarding the Actions, and the possible legal and factual defenses thereto, and have concluded that a settlement with Settling Defendants according to the terms set forth below is fair, reasonable, and adequate, and beneficial to, and in the best interests of, Plaintiffs and the Class, given the uncertainties, risks, and costs of litigation.

G. Despite their belief that they are not liable for and have strong defenses to the Claims asserted by Plaintiffs, Settling Defendants desire to settle the Actions solely to avoid the further expense, inconvenience, disruption, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation, avoid the risks inherent in uncertain complex litigation, and thereby put to rest this controversy. In particular, Settling Defendants recognize that the expenses of litigating the Actions cannot be recovered if Settling Defendants would prevail in the Actions.

H. Arm's-length settlement negotiations have taken place between Settlement Class Counsel and the Settling Defendants' Counsel, including with the assistance of a neutral third-party mediator, and this Agreement has been reached as a result of those negotiations.

I. The Parties to this Agreement desire to fully and finally settle all actual and potential Claims arising from or in connection with the Actions, the factual allegations underlying the Actions, and each of them, and avoid the costs and risks of protracted litigation.

IT IS HEREBY AGREED, by and among the Settling Parties, that these Actions and all Released Claims are finally and fully settled and compromised and that these Actions shall be dismissed in their entirety with prejudice as to the Released Parties and without costs, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

I. DEFINITIONS

A. Class Definition

“Settlement Class” means the class described in Section II(F)(2) below.

B. General Definitions

1. “Action” or “Actions” means the action captioned *Precision Associates, Inc., et al. v. Panalpina World Transport (Holding) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.) (“*Precision Associates*”), which is currently pending in the United States District Court for the Eastern District of New York, and any previously filed, subsequently filed, or transferred actions, whether brought in state or federal court, on behalf of persons or entities that purchased Freight Forwarding Services directly from any Defendant and alleging violations of any federal or state law, including but not limited to the antitrust laws, unfair competition laws, and conspiracy laws, arising from the same or similar conduct as alleged in *Precision Associates* or any amended complaint that may be filed in *Precision Associates*.

2. “*Air Cargo* Litigation” or “*Air Cargo*” means *In re Air Cargo Shipping Services Antitrust Litigation*, No. 06-MD-1775 (JG) (VVP) (E.D.N.Y.) (“*Air Cargo*”).

3. “*Air Cargo* Proceeds” means the proceeds in any form received by the Settling Defendants or their predecessors, successors, affiliates, parents, subsidiaries or assigns, (i) as distributions to class members in *Air Cargo*, or (ii) from any defendant in *Air Cargo* arising from the conduct alleged in *Air Cargo* relating to shipments to, from or within the United States or for payments made in the United States and received as a result of the Settling Defendants or

their predecessors, successors, affiliates, parents, subsidiaries or assigns, having opted out of a class in *Air Cargo* or agreeing to do so.

4. “Claims” means any and all actual or potential causes of action, claims, contentions, allegations, assertions of wrongdoing, damages, losses, or demands for recoveries, remedies, or fees complained of, or relating or referred to, in the Actions.

5. “Class Notice” means the notice to the Settlement Class that is approved by the Court, in accordance with Sections II(F)(4) and (5).

6. “Class Period” means the period from and including January 1, 2001 until and including January 4, 2011.

7. “Court” or “District Court” means the United States District Court for the Eastern District of New York and the Honorable Judge John Gleeson or his successor or any other Court in which an Action is proceeding.

8. “Date of Final Approval” means the date on which the Court enters an order granting final approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(F)(8).

9. “Date of Preliminary Approval” means the date on which the Court enters an order granting preliminary approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(F)(3).

10. “Defendants” means any or all of the parties listed as Defendants in the Corrected Third Amended Complaint and each of their corporate parents, subsidiaries, and affiliated companies.

11. “Documents” means: (a) all papers, electronically stored information (“ESI”) or other materials within the scope of Rule 34(a)(1)(a) of the Federal Rules of Civil Procedure; and (b) any copies or reproductions of the foregoing, including microfilm copies or computer images.

12. “Effective Date” means the date on which this Settlement Agreement is entered into and executed by all Parties.

13. “Escrow Account” means the account with the Escrow Agent that holds the Settlement Fund.

14. “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Section II(C) of this Agreement.

15. “Fairness Hearing” means a hearing on the settlement proposed in this Settlement Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

16. “Freight Forwarder” means any person or entity that engages in or has engaged in or provides or has provided Freight Forwarding Services.

17. “Freight Forwarding Services” includes services relating to the organization of transportation of items via air, ocean, and/or ancillary rail, and/or truck, both nationally and internationally, and can include related activities such as customs clearance, warehousing and ground services.

18. “Net Settlement Fund” means the Settlement Fund, less any award of attorneys’ fees or reimbursement of expenses and less applicable taxes, tax preparation expenses, and costs of notice and administration, that may be awarded or approved by the Court.

19. “Opt-Out Claim” means any claim, as set forth in Section II(F)(6), made by a Person, otherwise qualifying as a member of the Settlement Class, that has validly and timely excluded itself from the Settlement Class.

20. “Order and Final Judgment” means the order and final judgment of the Court approving the Settlement Agreement, as described in Sections II(F)(8) and (10).

21. “Other Defendant” means any Defendant named in the Actions other than the Settling Defendants named herein.

22. “Parties” or “Settling Parties” means Settling Defendants and Plaintiffs.

23. “Person(s)” means an individual or an entity.

24. “Plaintiffs” means Precision Associates, Inc., Anything Goes LLC d/b/a Mail Boxes Etc., JCK Industries, Inc., RBX Industries, Inc., Mary Elle Fashions, Inc., Inter-

Global, Inc., Zeta Pharmaceuticals, LLC., Kraft Chemical Company, Printing Technology, Inc., David Howell Product Design Inc., Innovation 714 Inc., Mika Overseas Corporation, NORMA Pennsylvania Inc. and any other plaintiffs designated by the Court as direct purchaser plaintiff class representatives, individually and on behalf of the Settlement Class.

25. “Released Claims” means any and all actual or potential causes of action, claims, damages, losses, injuries, expenses, demands, debts, liabilities, obligations, liens, judgments, remedies, and rights of action, of every nature and description, whether known or unknown (including unknown claims), suspected or unsuspected, asserted or unasserted, matured or unmatured, liquidated or unliquidated, absolute or contingent, accrued or unaccrued, whether or not concealed or hidden, direct or indirect, at law, equity, or otherwise, including monetary, injunctive or declaratory relief, arising from, in any way relating to, or in connection with any conduct, express, implied, or tacit agreement, or activity occurring during the Class Period (a) complained of, relating to, or referred to in the Actions; (b) concerning or relating in any way to any understanding, agreement, or coordinated activity between or among two or more Defendants and/or unnamed co-conspirators regarding Freight Forwarding Services; or (c) concerning the marketing, provision or arranging of, pricing of, charges for, or payments made for Freight Forwarding Services (i) for shipments within, to, or from the United States or (ii) purchased or sold in the United States regardless of the location or destination of shipment, whether such claims are based on federal, state, local, statutory, or common law, or any other law, code, rule, or regulation, including known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated claims, whether brought in an individual, representative, or any other capacity, that the Releasing Parties have asserted or in the future might assert against the Released Parties in any action or proceeding in any court or forum, in any country or other jurisdiction worldwide, regardless of the legal theory, or type or amount of relief or damages claimed. For the avoidance of doubt, “Released Claims” includes all claims that the Releasing Parties may have against the Released Parties for any portion of the Released Parties’ *Air Cargo* Proceeds. “Released Claims” do not

include (a) claims asserted against any Other Defendant (provided, however, that the Released Parties cannot be held liable for any such claims) nor (b) any claims not arising out of the allegations in the Actions based on: (1) product defect or breach of warranty; (2) breach of contract; or (3) indirect purchases of Freight Forwarding Services by persons or entities other than the Releasing Parties. The reservation of claims set forth in (a) and (b) of this paragraph does not impair or diminish the right of the Released Parties to assert any and all defenses to such claims. In the event the Releasing Parties grant a more comprehensive or inclusive release to any Other Defendant situated like Settling Defendants, the Settling Defendants shall have the option to receive such more comprehensive or inclusive release.

26. “Released Parties” means jointly and severally, individually and collectively, the Settling Defendants, their respective predecessors; successors; assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, affiliates, heirs, executors, devisees, administrators, officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees. Notwithstanding the foregoing, “Released Parties” does not include Other Defendants. The Released Parties who are not Settling Defendants are intended to be third-party beneficiaries of this Settlement Agreement with respect to the release of the Released Claims.

27. “Releasing Parties” means jointly and severally, individually and collectively, Plaintiffs and all Settlement Class Members, on behalf of themselves and any person or entity claiming by or through them as, including without limitation, their respective predecessors; successors; assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, affiliates, heirs, executors, devisees, administrators, officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees.

28. “Settlement Class Counsel” or “Class Counsel” means, collectively, the law firms of Lovell Stewart Halebian Jacobson LLP; Lockridge Grindal Nauen PLLP; Cotchett, Pitre & McCarthy, LLP; and Gustafson Gluek PLLC.

29. “Settlement Class Member” means each member of the Settlement Class that does not timely and properly elect to be excluded from the Settlement Class.

30. “Settling Defendants” means Geodis S.A. and Geodis Wilson USA, Inc.

31. “Settling Defendants’ Counsel” means the law firm Hausfeld LLP.

32. “Settlement Amount” means the payments described in Sections II(A)(1)(a) and II(A)(1)(b).

33. “Settlement Fund” means the funds deposited, plus accrued interest, in the separate Escrow Account for the settlement contemplated by this Settlement Agreement established in accordance Section II(C) below.

34. “U.S. Freight Forwarding Services” means: (a) Freight Forwarding Services purchased or sold in the United States regardless of the location of shipment or (b) Freight Forwarding Services with respect to shipments into, out of, or within the United States.

35. All references to days and dates in this Agreement and in any Supplemental Agreement are to calendar days, unless otherwise specified.

II. SETTLEMENT

A. Performance By Settling Defendants

1. Settlement Payments

a. Within fifteen (15) days of the Effective Date of this Settlement Agreement, Settling Defendants or their designee shall pay by wire transfer, pursuant to instructions from Settlement Class Counsel, two million (\$2,000,000) United States dollars to the Escrow Agent.

b. Within one year of the date on which Settling Defendants make the payment described in Section II(A)(1)(a), or upon final approval of this Settlement Agreement by the Court, whichever is later, Settling Defendants or their designee shall pay by wire transfer,

pursuant to instructions from Settlement Class Counsel, one million (\$1,000,000) United States dollars to the Escrow Agent.

c. The payments described in Sections II(A)(1)(a) and II(A)(1)(b) collectively shall constitute the total Settlement Amount.

2. Cooperation: The Settling Defendants shall provide reasonable good faith cooperation with Plaintiffs and Settlement Class Counsel in accordance with the terms and provisions of this Agreement regarding Plaintiffs' Claims. Such cooperation shall be as follows:

a. Within thirty (30) days of the Effective Date, or within such other time as the Parties shall agree, Settling Defendants shall produce to Settlement Class Counsel copies of Documents produced to any antitrust or competition authorities in any jurisdiction (collectively, "Investigative Authorities") by Settling Defendants (or their Counsel on Settling Defendants' behalf) as of the Effective Date, that were produced in response to investigations concerning the Freight Forwarding surcharges alleged in the Corrected Third Amended Complaint with respect to Freight Forwarding Services within, to, or from the United States, that are reasonably available and in the possession of Settling Defendants, produced in the same format as produced to the Investigative Authorities. If Settling Defendants did not retain copies of any such Documents produced to such Investigative Authorities, they shall request copies.

b. Within thirty (30) days of the Effective Date, or within such other time as the Parties shall agree, counsel for Settling Defendants and Settlement Class Counsel shall meet and confer to agree upon the format and scope of production to Plaintiffs from ESI, to the extent such records are in the possession of Settling Defendants and may be retrieved and compiled through reasonable efforts, of (i) transactional data sufficient to show Settling Defendants' annual revenues and volumes of Freight Forwarding Services to, from or within the United States during the Class Period, provided that Settling Defendants shall not be obligated to produce invoices or individual transaction records or Documents other than summaries or reports sufficient to break down and reflect the foregoing information; (ii) the shipping origin and destination by country; date of shipment; weight of shipment; amounts, by claim, of payments, if

any, and currency and applicable conversion rate, if any, made by customers of Settling Defendants' U.S. Freight Forwarding Services during the Class Period for the Security Surcharge, CAF Surcharge, Air AMS Surcharge, and Ocean AMS Surcharge; and (iii) to the extent not already produced as of the Effective Date, the reasonably available names and last known addresses of those customers. To the extent Settling Defendants' customers are assigned a unique identifier, such as an account number, Settling Defendants shall produce this information with the transactional data produced in response to Settling Defendants' obligations under this Paragraph II(A)(2)(b). Settling Defendants shall either provide a data dictionary or clearly identify all data fields produced.

c. Within sixty (60) days after the Effective Date, or within such other time period after the Effective Date on which the Parties shall agree, Settling Defendants shall produce to Settlement Class Counsel reasonably available publicly disseminated price announcements for U.S. Freight Forwarding Services during the Class Period, including surcharges related thereto.

d. Meetings with Counsel for Settling Defendants: Beginning forty-five (45) days after the Effective Date, at dates and times to be agreed upon by the Parties, one or more representatives of Settling Defendants' Counsel shall meet with Settlement Class Counsel at a location within the United States to be agreed upon by the Parties, and provide at that meeting or meetings a reasonably detailed description of the principal facts, if any, that are relevant to the conduct at issue in the Actions, and answer any non-privileged questions of Settlement Class Counsel with respect to the conduct and activities alleged in the Actions, including the times, places, and participants, if any, with respect to any communications or meetings relevant to the conduct at issue. At Settlement Class Counsel's request, counsel may meet on more than one occasion, but such meetings will not exceed fourteen (14) hours in total unless otherwise agreed. In addition, Settling Defendants' Counsel shall make themselves reasonably available to answer reasonable follow-up questions or requests for clarification from Settlement Class Counsel resulting from the aforementioned in-person meetings, and Settlement

Class Counsel agree they shall use reasonable best efforts to minimize the burden of any such follow-up questions or requests. Any statements made by Settling Defendants' Counsel under this Paragraph II(A)(2)(d) shall be deemed to be "conduct or statements made in compromise negotiations regarding the claim" and shall be inadmissible in evidence under Federal Rule of Evidence 408.

e. Interviews: Beginning sixty (60) days after the Effective Date, at dates, times and locations to be agreed upon by the Parties, Settling Defendants agree to make available up to three (3) current employees of Settling Defendants or other Released Parties, of Settlement Class Counsel's choice, at Settling Defendants' expense and upon reasonable notice, for interviews. In addition, to the extent that Settlement Class Counsel desire to interview former employees of Settling Defendants or other Released Parties, Settling Defendants shall use reasonable efforts to secure cooperation of such former employees. The failure of any former employee to make himself or herself available for the interviews shall not affect in any way the release of the Released Parties, provided that the Settling Defendants have used reasonable efforts.

f. Declarations or Affidavits. Settling Defendants agree to provide, at Settlement Class Counsel's request, up to three (3) sworn declarations or affidavits of Settling Defendants' current employees on topics relating to the claims asserted in Plaintiffs' Corrected Third Amended Complaint. Settlement Class Counsel agree to use reasonable efforts to minimize the burden to Settling Defendants of providing such declarations or affidavits.

g. Authentication of Documents. In addition to the provisions of Section II(A)(2)(f) above, Settling Defendants agree to provide written declarations pursuant to Federal Rules of Evidence 902(11) and (12) with respect to documents produced by Settling Defendants. Settlement Class Counsel agree to use reasonable efforts to minimize the burden to Settling Defendants of any such authentication testimony. In the event that such declarations are not sufficient to secure the admission of the documents, the Settling Defendants agree to, if

reasonably necessary, produce at trial and/or deposition, one or more representatives of their choice, as reasonably necessary to Plaintiffs' prosecution of the Claims alleged in the Actions, qualified to testify as to the facts related to authentication of any of Settling Defendants' Documents produced at any time pursuant to this Settlement Agreement or in the course of the litigation of the Actions.

h. Testimony at Trial. Settling Defendants agree to make available at Settling Defendants' expense and upon reasonable notice, for testimony at trial in the Actions: up to two (2) current employees of Settling Defendants of Settlement Class Counsel's choice whom Settlement Class Counsel reasonably believe have knowledge regarding Plaintiffs' Claims alleged in the Actions. To the extent that Settlement Class Counsel desire the testimony of former employees of Settling Defendants or other Released Parties, Settling Defendants shall use reasonable efforts to secure the appearance of such former employees. The failure of any former employee to make himself or herself available for testimony at trial shall not affect in any way the release of the Released Parties, provided that the Settling Defendants have used reasonable efforts.

i. Attorney Client Privilege, Work Product Doctrine. Notwithstanding any other provision in this Settlement Agreement, Settling Defendants may assert, where applicable, the work product doctrine and the attorney client privilege, the joint defense privilege, and the common interest privilege with respect to any Cooperation Materials (including Documents, statements, testimony, material, and/or information) requested under this Settlement Agreement. If any Documents protected by the attorney client privilege, the work product doctrine, the joint defense privilege, and/or the common interest privilege are accidentally or inadvertently produced, these Documents shall be promptly returned to Settling Defendants' Counsel immediately upon discovery of such production by Settlement Class Counsel or Plaintiffs, and their production shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents. No Document shall be withheld

under claim of privilege or work product if produced to or made available to the DOJ or Investigative Authorities, other than privileged Documents inadvertently produced thereto.

j. Discovery. None of the foregoing provisions shall be construed to prohibit Plaintiffs from seeking appropriate discovery from non-settling Defendants or any Person other than Released Parties. Subject to any applicable protective orders, Plaintiffs and Settlement Class Counsel hereby agree to provide Settling Defendants' Counsel, at Settling Defendants' expense and at Settling Defendants' request, with copies of any Documents, deposition testimony, or other evidence received by Plaintiffs or Settlement Class Counsel from any non-settling Defendants or third parties in the Action; provided, however, that Plaintiffs and Settlement Class Counsel are not obligated to provide Settling Defendants' Counsel any information or material subject to the attorney client privilege, the attorney work product doctrine, the common interest privileges, any right to privacy, or any other applicable privilege or privacy right. Absent the Parties' agreement, Plaintiffs are prohibited from seeking from Released Parties: (i) beyond the information specified herein, discovery of any kind whatsoever relating to the Action, whether pursuant to this Agreement or by formal requests or other means, from Released Parties; or (ii) any additional trial witnesses beyond those specified herein, whether pursuant to this Agreement or by subpoena or other means.

k. Confidentiality. All non-public data, Documents, information, testimony, or communications provided to Settlement Class Counsel pursuant to this Section II(A)(2) ("Cooperation Materials") shall be subject to the protective order entered on July 19, 2011 in the Action. Settling Defendants may make appropriate designations of the Cooperation Materials under the Protective Order, and Plaintiffs may object to Settling Defendants' confidentiality designations. Settlement Class Counsel shall use such non-public data, Documents, information, testimony, or communications solely for purposes of prosecuting Plaintiffs' Claims in the Actions, and for no other purpose. Other than as provided herein, Settlement Class Counsel shall not disclose such Cooperation Materials to any Person (other than experts retained by Plaintiffs or Settlement Counsel in connection with the Action), except

pursuant to legal compulsion or appropriate discovery requests from non-settling Defendants. The confidentiality requirements of this Paragraph shall continue to bind Plaintiffs and Settlement Class Counsel in the event that this Agreement is rescinded, terminated, not approved by the Court, or otherwise no longer in effect. Within thirty (30) days of the Actions having been finally resolved as to all Defendants, at their election Settlement Class Counsel either shall return or destroy (with a written certification of destruction) such non-public data, Documents, information, testimony, or communications.

I. Ongoing Duty to Cooperate. Settling Defendants' obligations to cooperate pursuant to Section II(A)(2) of this Agreement shall not be affected by the release set forth in Section II(B) of this Agreement. Unless this Agreement is not approved by the Court or terminated pursuant to Section II(F)(11) or otherwise, Settling Defendants' obligations to cooperate under this Settlement Agreement as provided in Section II(A)(2) shall continue until final judgment has been rendered in the Actions against all Defendants, and the time to appeal or to seek permission to appeal from the Court's entry of final judgment has expired or, if appealed, final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

B. Release of Claims.

1. **Release.** Upon the occurrence of the Date of Final Approval, and in consideration of the valuable consideration set forth in this Agreement, Plaintiffs shall be deemed to, and by operation of the Order and Final Judgment shall have, hereby fully, finally, and forever released, relinquished, and discharged the Released Parties of and from any and all Released Claims that any Settlement Class Member ever had, now has, or may have in the future.

2. **Covenant Not to Sue.** Plaintiffs covenant not to sue any Released Party for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of or related to the Actions or the Released Claims. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

3. **Full Release.** The Parties to this Agreement expressly agree and confirm that the Released Claims as set forth in Section I(B)(25) and the provisions of Section II(B), constitute a full and final release of the Released Parties by Plaintiffs with respect to the Released Claims.

4. **Waiver.** Upon the Date of Final Approval, Plaintiffs (which includes each Settlement Class Member) shall be deemed to have, and by operation of the Order and Final Judgment shall have, waived the provisions, rights, and benefits of Section 1542 of the California Civil Code and Section 20-7-11 of the South Dakota Codified Laws, each of which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Plaintiffs shall further be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived all provisions, rights, and benefits under comparable or similar present or future laws, provisions, statutes, regulations, rules, or principles of law or equity of any other state or applicable jurisdiction, or principles of common law. In connection with the waiver and relinquishment set forth in this Paragraph, Plaintiffs and each Settlement Class Member acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Released Claims, but that it is their intention to release fully, finally, and forever all Released Claims, and, upon the Date of Final Approval, shall be deemed to have, and by operation of the Order and Final Judgment, shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, notwithstanding the discovery or existence of any such additional or different facts. Plaintiffs

and Settlement Class Members intend and, by operation of the Order and Final Judgment, shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this waiver and release is a part.

5. Other Jurisdictions. The Parties intend this Agreement to effect a complete release of all Released Claims. Therefore, to the extent class actions or representative actions are permitted in countries and jurisdictions other than the United States, including but not limited to Canada (“Other Jurisdictions”), and in the event the release set forth above is determined by any court or tribunal of competent jurisdiction in such Other Jurisdictions not to constitute a full and final release of the Released Claims in such Other Jurisdictions, the Plaintiffs and Settlement Class Counsel shall cooperate in good faith with the Released Parties or other parties as necessary to reasonably assist the Released Parties in their effort to obtain a valid and enforceable release of claims against the Released Parties, comparable to the Released Claims, from Persons in such Other Jurisdictions who purchased Freight Forwarding Services in those Other Jurisdictions from any Released Party during the Class Period.

C. Settlement Fund Administration. The Settlement Fund shall be administered pursuant to the provisions of this Settlement Agreement and subject to the Court’s continuing supervision and control, until the funds in the Settlement Fund are fully distributed or returned to Settling Defendants, as follows:

1. The Settlement Fund shall be established within an Escrow Account and administered by an Escrow Agent at a bank agreed to by Settlement Class Counsel and Settling Defendants’ Counsel, which agreement shall not be unreasonably withheld. Counsel for the Parties agree to cooperate in good faith to form an appropriate escrow agreement in conformance with this Agreement.

2. Neither the Plaintiffs, nor Settlement Class Counsel, shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Class or obtaining approval of the settlement, or administering the Settlement.

3. The costs of providing Class Notice to Settlement Class Members shall be paid by the Escrow Agent from the Settlement Fund. With the object of reducing the costs of notice, Settlement Class Counsel will use their reasonable efforts to coordinate the provision of Class Notice with the provision of notice for any other settlements that have been or may be reached. Settlement Class Counsel may, without prior order of the Court, withdraw from the Settlement Fund up to \$250,000 to pay the costs for notice and for preliminary and final approval of this Settlement, and including for the services of experts on class publication or other issues relating to notice, preliminary approval, or final approval. In the event that Court-ordered notice and administration costs exceed \$250,000, Plaintiffs and Settlement Class Counsel may apply to the Court to pay such notice and administration costs from the Settlement Fund. Such costs of notice shall be non-refundable in the event that, for any reason, the Settlement is not finally approved.

4. Other than the monies referenced in Section II(C)(3) above, no monies shall be paid or disbursements made from the Settlement Fund without an order of the Court.

5. The Escrow Agent shall, to the extent practicable, invest the funds deposited in the Settlement Fund in discrete and identifiable instruments backed by the full faith and credit of the United States Government, or fully insured by the United States Government or any agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Paragraph shall be maintained by the Escrow Agent, and not commingled with any other funds or monies, in a federally insured bank account. Subsequent to payment into the Settlement Fund pursuant to Section II(A)(1), neither the Settling Defendants nor Settling Defendants' Counsel shall bear any responsibility or risk related to the Settlement Fund or the Net Settlement Fund.

6. The Parties agree that the Settlement Fund and the Net Settlement Fund are each intended to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agent, as administrator of the Qualified Settlement

Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes, as defined below, owed with respect to the Escrow Account. Neither the Settling Defendants nor the Settling Defendants' Counsel shall have any other liability or responsibility of any sort for filing any tax returns or paying any Taxes with respect to the Escrow Account.

7. All: (i) taxes on the income of the Settlement Fund ("Taxes"), and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) shall timely be paid by the Escrow Agent out of the Settlement Fund. The Settlement Class Members shall be responsible for paying any and all federal, state, and local income taxes due on any distribution made to them pursuant to the Settlement provided herein.

8. After the Date of Final Approval, the Net Settlement Fund shall be disbursed in accordance with a plan of distribution approved by the Court. The Settlement Class Members shall look solely to the Net Settlement Fund for settlement and satisfaction of any and all Released Claims from Released Parties. Subject to approval by the Court, each Settlement Class Member seeking to receive funds distributed pursuant to this Agreement must execute a written release in favor of the Released Parties of all Released Claims.

D. Option to Terminate Based on Exclusions.

Settling Defendants shall have the option to terminate this Settlement Agreement, and thus prevent the entry of the Order and Final Judgment, in accordance with the provisions set forth in a separate Supplemental Agreement, dated _____, 2014 (the "Supplemental Agreement"), the provisions of which are incorporated by reference as though fully set forth herein, if the criteria specified in the Supplemental Agreement are met. Absent an order or other direction from the Court, the Supplemental Agreement will not be filed with the Court unless and until either: (i) a dispute among the Parties concerning its interpretation or application arises, and in that event it shall be, to the greatest extent permitted by law and/or the Court, filed and

maintained with the Court under seal; or (ii) the Court otherwise orders the Supplemental Agreement to be filed.

E. No Reversion

Except as provided in the Supplemental Agreement, Settling Defendants shall have no rights to reversion in the event that Class members request exclusion or opt out of the Settlement Class, and any Opt-Out Claims shall have no effect on this Settlement Agreement.

F. Approval of Settlement Agreement and Dismissal of Claims.

Plaintiffs and Settling Defendants shall use their best efforts to effectuate this Settlement Agreement, including cooperating in promptly seeking the Court's approval of the Settlement Agreement, the giving of appropriate class notice under Federal Rules of Civil Procedure 23(c) and (e), securing certification of the Settlement Class, and the prompt, complete, and final dismissal with prejudice of the Actions as to the Settling Defendants only, as follows:

1. Within two (2) business days after the Effective Date, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against Settling Defendants in the Action pending approval of this Agreement.

2. **Settlement Class Certification.** Plaintiffs shall seek, and Settling Defendants shall not object to, appointment of Settlement Class Counsel as lead counsel for purposes of this Settlement, and certification in the Actions of a class for settlement purposes only, defined as follows:

All persons (excluding governmental entities, Defendants, their respective parents, subsidiaries and affiliates) who directly purchased U.S. Freight Forwarding Services

(a) for shipments within, to, or from the United States, or

(b) purchased or sold in the United States regardless of the location of shipment;

from any of the Defendants or any subsidiary or affiliate thereof, at any time during the period from January 1, 2001 to January 4, 2011.

3. Preliminary Approval. Plaintiffs shall submit to the District Court a motion, to be joined by Settling Defendants requesting entry of an order, substantially in the form of Exhibit A, attached hereto, preliminarily approving the settlement and certifying the Settlement Class for Settlement Purposes only (“Preliminary Order”). The Preliminary Order shall provide, *inter alia*:

- a.** that the settlement proposed in the Settlement Agreement has been negotiated at arm’s length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;
- b.** that the Class Notice meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances for settlement purposes;
- c.** that the Settlement Class defined herein be certified, designating Class Representatives and Settlement Class Counsel as defined herein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is terminated pursuant to its terms or is not approved by the Court or any appellate court;
- d.** for a schedule for the filing of a Motion to approve finally the Settlement Agreement;
- e.** for a hearing on the settlement proposed in this Settlement Agreement to be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court (the “Fairness Hearing”);
- f.** for the filing of a Motion for approval of the proposed form of, method for dissemination of Class Notice; and
- g.** in aid of the Court’s jurisdiction to implement and enforce the proposed settlement, Plaintiffs and all Settlement Class Members shall be preliminarily enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any of the Claims released in Section II(B) against any Released Parties, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any

local, state, or federal court, or in any agency or other authority or arbitral or other forum wherever located.

4. Class Notice. All materials and information provided to Settlement Class Counsel by Settling Defendants with respect to Class Members shall be treated as “Highly Confidential” under the terms of the Protective Order approved by the Court, and any Person involved in Class Notice shall agree in writing to comply with the terms of the Protective Order before receiving Class Member or Class Notice information, and shall agree in writing to be subject to the jurisdiction of the Court for any violation of any such Order.

5. The Class Notice shall provide for a right of exclusion, as set forth in Section II(F)(6), and shall provide that a request for exclusion must be postmarked (or mailed by overnight delivery) no later than forty-five (45) days prior to the date set for the Fairness Hearing by the Court. The Class Notice shall also provide for a right to object, as set forth in Section II(F)(7). Individual notice of the Settlement shall be mailed or emailed to Persons that are identified by Settling Defendants and/or any other Defendant, or will be provided to class members as otherwise ordered by the Court. Notice to other members of the Settlement Class shall be by publication or other means deemed necessary if approved or required by the Court. Within ten (10) days of filing of this Settlement Agreement in court, Settling Defendants will provide to the appropriate state officials and the appropriate federal official the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (“CAFA”).

6. Right of Exclusion.

a. Any Person seeking exclusion from the Settlement Class must file a timely written request for exclusion as provided in this Paragraph. Any Person that files such a request shall be excluded from the Settlement Class, and shall have no rights with respect to this

Settlement. A request for exclusion must be in writing and: (a) state the name, address, and phone number of the Settlement Class Member seeking exclusion; (b) all trade names or business names and addresses that the Settlement Class Member has used, as well as any parents, subsidiaries, or affiliates that have purchased Freight Forwarding Services; (c) the name of the Action (*Precision Associates, Inc., et al. v. Panalpina World Transport (Holdings) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.)); and (d) a signed statement that “I/we hereby request that I/we be excluded from the proposed settlement with Geodis in *Precision Associates, Inc., et al. v. Panalpina World Transport (Holdings) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.).” Further, each Person seeking exclusion from the Settlement Class shall identify all Freight Forwarding Services and an estimate of the total amount of direct purchases (by dollar volume) of Freight Forwarding Services (a) for shipments within, to, or from the United States, or (b) purchased or sold in the United States regardless of the location of shipment; by such person from all Defendants during the Class Period. The request must be mailed to Settlement Class Counsel at the address provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than forty-five (45) days prior to the date set for the Fairness Hearing or any other date set by the Court. A request for exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated in the Class Notice, or that is not sent within the time specified, shall be invalid, and the Person(s) serving such an invalid request shall be Settlement Class Member(s) and shall be bound by this Settlement Agreement, if approved. Settlement Class Counsel shall promptly forward complete copies of all requests for exclusion, as they are received, to Settling Defendants’ Counsel.

b. To the extent permitted by the Court, the Parties agree that any Person that has properly excluded itself from the Settlement Class (“Opt-Out Class Member”) shall be permitted to apply to the Court for good cause shown to re-enter the Settlement Class at the time of distribution of the Settlement Fund, with the same rights and obligations under this Settlement Agreement as the Settlement Class Members. Settlement Class Counsel shall, within five (5) days after the Court-ordered deadline for timely requests for exclusion from the Class, cause to be provided to Settling Defendants’ Counsel a list of those Class Members who have timely excluded themselves from the Class.

7. **Right to Object.** Any Person who has not requested exclusion from the Settlement Class and who objects to the settlement may appear in person or through counsel, at that Person’s own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant. However, no such Person shall be heard, and no papers, briefs, pleadings, or other Documents submitted by any such Person shall be received and considered by the Court, unless such Person properly submits a written objection that includes: (a) a notice of intention to appear; (b) proof of membership in the Settlement Class; and (c) the specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all Documents or writings that such Person desires the Court to consider. Such a written objection must be both filed with the Court no later than thirty (30) days prior to the date set for the Fairness Hearing and mailed to Settlement Class Counsel and Settling Defendants’ Counsel at the addresses provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than thirty (30) days prior to the date of the Fairness Hearing. Any Person who fails to object in the manner prescribed herein shall be deemed to have waived its objections and will

forever be barred from making any such objections in the Actions or in any other action or proceeding, unless otherwise excused for good cause shown as determined by the Court.

8. Final Approval. If this Settlement Agreement is preliminarily approved by the Court, Plaintiffs shall, in accordance with the schedule set forth in the Preliminary Order or other direction by the Court, seek entry of an Order and Final Judgment that, *inter alia*:

- a.** finally approves this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;
- b.** determines that the Class Notice constituted, under the circumstances, the most effective and best notice practicable of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- c.** reconfirms the appointment of Class Representatives and Settlement Class Counsel as defined herein;
- d.** directs that, as to the Settling Defendants, any and all then currently pending class action lawsuits directly related to the subject matter of the action captioned *Precision Associates, Inc., et al. v. Panalpina World Transport (Holding) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.), be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs;
- e.** orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any of the Released Claims released in Section II(B) against any Released Party, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any local, state, or federal court, or in any agency or other authority or arbitral or other forum wherever located;
- f.** reserves to the United States District Court for the Eastern District of New York exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this Agreement; and

- g.** determines under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to the Released Parties shall be final and entered forthwith.

Settling Defendants agree that they will not oppose Plaintiffs' motion for final approval, provided that Settling Defendants have a reasonable opportunity to review Plaintiff's motion in advance of filing and do not reasonably object to its contents.

9. Class Counsel Fees and Expenses; No Other Costs.

a. Except as otherwise expressly provided in this Settlement Agreement, Settling Defendants shall have no responsibility for any costs, including Settlement Class Counsel's attorneys' fees, costs, and expenses or the fees, costs, or expenses of any Plaintiff's or Settlement Class Member's respective attorneys, experts, advisors, or representatives, provided, however, that with respect to the Actions, including this Settlement Agreement, Settling Defendants shall bear their own costs and attorneys' fees.

b. Settlement Class Counsel may seek, after proper notice to the Settlement Class and opportunity to object, a court order awarding attorneys' fees and reimbursement of their expenses from the Settlement Fund.

c. The procedure for and the allowance or disallowance by the Court of any applications by Settlement Class Counsel for attorneys' fees and expenses, or the expenses of Plaintiffs, to be paid out of the Settlement Fund, are not part of or a condition to the Settlement set forth herein, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement, and any order or proceeding relating to an application for attorneys' fees or expenses shall not operate to terminate or cancel this Agreement or the releases set forth herein, or affect or delay the finality of the judgment approving this settlement.

d. Settling Defendants shall have no role in or responsibility for the allocation among Plaintiffs' counsel and/or any other Person who may assert some claim thereto, of any attorneys' fee and expense award that the Court may make.

e. The named Plaintiffs may seek reimbursement of their costs and compensation for their time donated in this action from the Settlement Fund.

10. When Settlement Becomes Final. The settlement contemplated by this Settlement Agreement shall become final on the date that: (a) the Court has entered the Order and Final Judgment approving this Settlement Agreement, and all of its material terms and conditions, in accordance with Section II(F)(8), above, under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Actions as against the Settling Defendants with prejudice as to all Settlement Class Members and without costs; and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement and entry of the order of Final Judgment, as described in Section II(F)(8)(a) above, has expired or, if appealed, approval of this Settlement Agreement and the Order and Final Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review. The Parties agree that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

11. Termination and Rescission.

a. Rejection or Alteration of Settlement Terms. If the Court declines to grant either preliminary or final approval to this Settlement Agreement or any material part hereof (as set forth in Sections II(F)(3) or (F)(8) above, respectively), or if the Court approves this Settlement Agreement in a materially modified form, or if, after the Court's approval, such approval is materially modified or set aside on appeal, or if the Court does not enter the Final Order and Judgment, or if the Court enters the Final Order and Judgment and appellate review is sought and, on such review, such Final Order and Judgment is not affirmed (collectively "Triggering Events"); then Settling Defendants and Plaintiffs shall each, in their

respective sole discretion, have the option to rescind this Settlement Agreement in its entirety by providing written notice of their election to do so (“Termination Notice”) to each other within thirty (30) days of such Triggering Event. For purposes of this Section II(F)(11), a material modification includes, but is not limited to, the scope of the Released Claims or the settlement payments pursuant to Section II(A)(1).

b. Termination of Settlement. In the event this Settlement Agreement is rescinded or terminated pursuant to this Section II(F)(11), then: (i) within fifteen (15) business days, the Settlement Fund (including accrued interest), less expenses and costs that have been disbursed pursuant to Section II(C)(3), shall be refunded by the Escrow Agent to the Settling Defendants pursuant to written instructions from Settling Defendant’s Counsel to Settlement Class Counsel; (ii) the Parties shall be deemed to have reverted to their respective status in the Action as of the day before the Effective Date, and without waiver of any positions asserted in the Action as of the day before the Effective Date, which shall then resume proceedings in the District Court, that Court having retained jurisdiction over the Settlement and related matters and, except as otherwise expressly provided in this Settlement Agreement, the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, and Plaintiffs shall return to Settling Defendants, or provide a written certification of destruction, all Documents and Cooperation Materials, and all copies or reproductions thereof, produced by Settling Defendants under this Settlement Agreement or otherwise, including any and all copies of Documents and Cooperation Materials shared by Settlement Class Counsel with Plaintiffs’ experts.

12. No Admission.

a. Nothing in this Settlement Agreement constitutes an admission by Settling Defendants as to the merits of the allegations made in the Actions, an admission by Plaintiffs of the validity of any defenses that could be asserted by Settling Defendants, or the appropriateness of certification of any class other than the Settlement Class under Rule 23 of the Federal Rules of Civil Procedure. This Settlement Agreement is without prejudice to the rights

of Settling Defendants to: (i) challenge the Court's class certification in the Actions should the Settlement Agreement not be approved or implemented for any reason; and/or (ii) oppose any certification or request for certification in any other proposed or certified class action.

b. This Settlement Agreement, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any of the Settling Parties to be received in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of any of the Settling Defendants or other Released Parties; provided, however, that nothing contained in this Section II(F)(12) shall prevent this Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto) or the Order and Final Judgment, or in which the reasonableness, fairness, or good faith of any Party participating in the Settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement Agreement or the Order and Final Judgment. This Settlement Agreement may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this Settlement, including but not limited to Settling Defendants filing the Settlement Agreement and/or the Order and Final Judgment in any other 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, waiver, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

III. MISCELLANEOUS

A. Entire Agreement. This Settlement Agreement (and the Supplemental Agreement referenced herein) shall constitute the entire agreement between Plaintiffs and Settling Defendants pertaining to the Settlement of the Actions against Settling Defendants and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Settling

Defendants in connection therewith. All terms of the Settlement Agreement are contractual and not mere recitals.

B. Inurement. The terms of the Settlement Agreement are and shall be binding upon, to the fullest extent possible, each of the Releasing Parties and the Released Parties, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties, Releasing Parties, or Released Parties, including any Settlement Class Members.

C. Modification. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Settling Defendants, subject (if after preliminary or final approval) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

D. Drafted Mutually. For the purpose of construing or interpreting this Settlement Agreement, Plaintiffs and Settling Defendants shall be deemed to have drafted it equally, and it shall not be construed strictly for or against any party.

E. Governing Law. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law or conflict-of-law principles.

F. Jurisdiction. This Settlement Agreement is subject to the continuing and exclusive jurisdiction of the United States District Court for the Eastern District of New York, for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. If for any reason this Settlement Agreement is rescinded, terminated or fails to become effective, then, in such event, nothing in this Settlement Agreement or with regard to any conduct of Settling Defendants or Settling Defendants' Counsel pursuant to any obligations Settling Defendants have pursuant to the Agreement shall constitute or are intended to be construed as any agreement to personal jurisdiction (general or specific) or subject matter jurisdiction so as to confer the jurisdiction of

the District Court over Settling Defendants, nor shall it constitute any waiver of any defenses based on personal or subject matter jurisdiction.

G. Counterparts. This Settlement Agreement may be executed in counterparts by Settlement Class Counsel and Settling Defendants' Counsel, each of which shall be deemed an original and all of which taken together shall constitute the same Settlement Agreement. A facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

H. Represented by Counsel. Plaintiffs and Settling Defendants acknowledge that each have been represented by counsel, and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so and are not relying on any representation or warranty by the other party other than as set forth herein. Therefore, Plaintiffs and Settling Defendants and their respective counsel agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake.

I. Authorization. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; the undersigned Settlement Class Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs; and the undersigned Settling Defendants' Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Settling Defendants.

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

K. Notice. Any notice required pursuant to or in connection with this Settlement shall be in writing and shall be given by: (1) hand delivery; (2) registered or certified mail, return receipt requested, postage prepaid; or (3) Federal Express or similar overnight courier, addressed, in the case of notice to any Plaintiff or Settlement Class Member, to Settlement Class

Counsel at their addresses set forth below, and, in the case of notice to Settling Defendants, to their representative at the address set forth below, or such other address as Settling Defendants or Settlement Class Counsel may designate, from time to time, by giving notice to all Parties in the manner described in this Paragraph.

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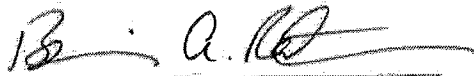
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For Settling Defendants:

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IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Effective Date.

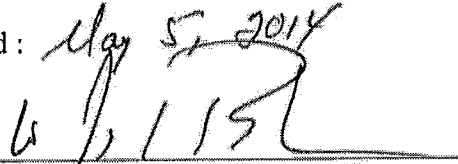
Dated: MAY 5, 2014



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Dated: May 5, 2014



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*Plaintiffs' Interim Co-Lead Counsel and
Settlement Class Counsel*

Dated :

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Dated : May 5, 2014



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