

1 **SAXENA WHITE P.A.**  
2 Maya Saxena  
3 Joseph E. White, III  
4 Lester R. Hooker (Bar No. 241590)  
5 Brandon T. Grzandziel  
6 Dianne M. Anderson (Bar No. 286199)  
7 2424 N. Federal Highway, Suite 257  
8 Boca Raton, FL 33431  
9 Tel: (561) 394-3399  
10 Fax: (561) 394-3382

11 *Lead Counsel for Lead Plaintiff*

12 **BERNSTEIN LITOWITZ BERGER**  
13 **& GROSSMANN LLP**  
14 Blair A. Nicholas (Bar No. 178428)  
15 Benjamin Galdston (Bar No. 211114)  
16 12481 High Bluff Drive, Suite 300  
17 San Diego, CA 92130  
18 Tel: (858) 793-0070  
19 Fax: (858) 793-0323

20 *Liaison Counsel for Lead Plaintiff*

21 *Additional Counsel on Signature Page*

22  
23  
24  
25  
26  
27  
28  
**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

IN RE MAXWELL TECHNOLOGIES  
INC., SECURITIES LITIGATION

) Case No.: 3:13-cv-00580-BEN-RBB

) **STIPULATION OF**  
) **SETTLEMENT**

1 This Stipulation of Settlement (the “Stipulation”) is made pursuant to Rule  
2 23(e) of the Federal Rules of Civil Procedure. Subject to the approval of the United  
3 States District Court for the Southern District of California (the “Court”), this  
4 Stipulation is entered into by and among the following parties to the above-captioned  
5 action (the “Litigation”) by and through their counsel of record in the Litigation: (i)  
6 The Employees’ Pension Plan of the City of Clearwater, as court-appointed lead  
7 plaintiff (“Lead Plaintiff”), on behalf of itself and all members of the putative class, on  
8 the one hand, and (ii) Maxwell Technologies, Inc. (“Maxwell”), David J. Schramm  
9 (“Schramm”), Kevin S. Royal (“Royal”), and Van M. Andrews (“Andrews”)  
10 (collectively, “Defendants”), on the other hand. This Stipulation is intended by the  
11 parties hereto to fully, finally and forever resolve, discharge and settle the Released  
12 Claims (as defined herein) upon and subject to the terms and conditions hereof.

### 13 **I. THE LITIGATION**

14 The original purported securities class action complaint in the Litigation was  
15 filed in this District on March 13, 2013, alleging violations of Sections 10(b) and  
16 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5  
17 promulgated thereunder. On October 24, 2013, the Court appointed the Lead Plaintiff  
18 pursuant to the requirements of the Private Securities Litigation Reform Act of 1995  
19 and approved Lead Plaintiff’s selection of lead and liaison counsel. On January 16,  
20 2014, Lead Plaintiff filed its Consolidated Complaint For Violations of the Federal  
21 Securities Laws (the “Complaint”) alleging violations of Sections 10(b) and 20(a) and  
22 Rule 10b-5 under the Exchange Act. On May 5, 2014, the Court entered an Order  
23 granting Defendants’ motion to dismiss and providing Lead Plaintiff leave to amend  
24 the Complaint within 30 days. On June 4, 2014, Lead Plaintiff filed its Amended  
25 Consolidated Complaint for Violations of the Federal Securities Laws (the “ACC”).  
26 Defendants filed their motions to dismiss the ACC on July 10, 2014, and Lead  
27 Plaintiff filed its omnibus brief in opposition to Defendants’ motions on August 18,  
28 2014.

1 After extensive good-faith settlement discussions during the course of the  
2 Litigation, counsel for Lead Plaintiff and for Defendants participated in a mediation  
3 session with JAMS mediator Jed Melnick on August 21, 2014. Prior to the mediation,  
4 each side submitted comprehensive mediation statements setting forth their respective  
5 positions. As a result of negotiations that occurred during and after the mediation, the  
6 parties reached agreement on the settlement terms set forth herein.

7 **II. DEFENDANTS' DENIALS OF WRONGDOING AND**  
8 **LIABILITY**

9 Defendants deny each and all of the claims and contentions alleged by Lead  
10 Plaintiff in the Litigation. Defendants deny all charges of wrongdoing or liability or  
11 any violation of law arising out of any of the conduct, statements, acts or omissions  
12 alleged, or that could have been alleged, in the Litigation; have denied, and continue  
13 to deny, the allegations that Lead Plaintiff or any Settlement Class Member (as  
14 defined herein) has suffered damage or was harmed by any of the conduct alleged in  
15 the Litigation; continue to believe the claims asserted against them in the Litigation  
16 are without merit; and have agreed to enter into the settlement set forth in this  
17 Stipulation solely to avoid the expense, distraction, time and uncertainty associated  
18 with continuing the Litigation.

19 Defendants have concluded that further conduct of the Litigation would be  
20 protracted and expensive and that it is desirable that the Litigation be fully and finally  
21 settled in the manner and upon the terms and conditions set forth in this Stipulation.  
22 Defendants also have taken into account the risks inherent in any litigation, especially  
23 in complex cases such as this Litigation. Defendants have therefore determined that it  
24 is desirable and beneficial to them that the Litigation be settled in the manner and  
25 upon the terms and conditions set forth in this Stipulation.

1 **III. CLAIMS OF LEAD PLAINTIFFS AND BENEFITS OF**  
2 **SETTLEMENT**

3 Lead Plaintiff believes that the claims asserted in the Litigation have merit and  
4 that the evidence developed to date supports those claims. The Stipulation shall not  
5 be construed as or received in evidence as an admission, concession or presumption  
6 against Lead Plaintiff or any of the Settlement Class Members that any of their claims  
7 are without merit, or that any defenses asserted by Defendants have merit, or that the  
8 damages recoverable in the Litigation would not have exceeded the Settlement Fund  
9 (as defined herein). However, Lead Plaintiff recognizes and acknowledges the  
10 potential expense and length of continued proceedings necessary to prosecute the  
11 Litigation against Defendants through trial and through appeals.

12 Lead Plaintiff also has taken into account the uncertain outcome and risk of any  
13 litigation, especially in complex actions such as this Litigation, as well as the  
14 difficulties and delays inherent in such litigation. Lead Plaintiff is also mindful of the  
15 inherent difficulties of proof associated with, and possible defenses to, the securities  
16 law violations asserted in the Litigation. Lead Plaintiff believes that the terms set  
17 forth in this Stipulation confer substantial benefits upon the Settlement Class (as  
18 defined herein). Based on Lead Plaintiff's evaluation, Lead Plaintiff and its counsel  
19 have determined that the terms set forth in this Stipulation are fair, reasonable,  
20 adequate, and in the best interests of the Settlement Class.

21 **IV. SETTLEMENT TERMS**

22 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and  
23 among Lead Plaintiff, on behalf of itself and each Settlement Class Member, and  
24 Defendants, by and through their respective counsel or attorneys of record, that,  
25 subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of  
26 Civil Procedure, the Litigation and the Released Claims shall be finally and fully  
27 compromised, settled and released, and the Litigation shall be dismissed with  
28

1 prejudice as to all Settling Parties (as defined herein) upon and subject to the terms  
2 and conditions of this Stipulation.

3 **1. Definitions**

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

6 1.1 “Authorized Claimant” means any Settlement Class Member who  
7 submits to the Claims Administrator a timely and valid Proof of Claim and Release  
8 Form that is approved by the Claims Administrator in whole or in part.

9 1.2 “Claims Administrator” means the firm of Epiq Systems, Inc., which  
10 shall administer the Settlement subject to approval and appointment by the Court.

11 1.3 “Effective Date” means the first date by which all of the conditions  
12 specified in paragraph 8.1 below have occurred.

13 1.4 “Escrow Agent” means Lead Plaintiff’s Counsel or its successor(s).

14 1.5 “Final” means the time when either of the following has occurred: (a) if  
15 an appeal or review of the Judgment is not sought, the date following the expiration of  
16 the time within which to appeal or otherwise seek review of the Judgment; or (b) if an  
17 appeal or review of the Judgment is sought, the day after the Judgment is affirmed on  
18 appeal or the request for review is dismissed or denied and the Judgment is no longer  
19 subject to further judicial review. For purposes of this paragraph, an “appeal” shall  
20 not include any appeal that concerns only the issue of attorneys’ fees and expenses or  
21 the Plan of Allocation of the Settlement Fund. Any proceeding or order, or any appeal  
22 or petition for a writ of certiorari, pertaining solely to any plan of distribution and/or  
23 application for attorneys’ fees, costs, or expenses shall not in any way delay or  
24 preclude the Judgment from becoming Final.

25 1.6 “Immediate Family” means children, stepchildren, parents, stepparents,  
26 spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law,  
27 brothers-in-law, and sisters-in-law. As used in this paragraph, “spouse” shall mean a  
28 husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

1           1.7 “Judgment” means the judgment to be rendered by the Court  
2 substantially in the form of Exhibit B attached hereto.

3           1.8 “Lead Plaintiff’s Counsel” means Saxena White P.A., 5200 Town Center  
4 Circle, Suite 601, Boca Raton, FL 33486.

5           1.9 “Lead Plaintiff’s Liaison Counsel” means Bernstein Litowitz Berger &  
6 Grossmann LLP.

7           1.10 “Notice and Administration Expenses” means all expenses incurred  
8 (whether or not paid) in connection with the preparation, printing, mailing and  
9 publication of the Notice and Summary Notice to the Settlement Class Members of  
10 the proposed settlement, including expenses associated with identifying the names and  
11 addresses of Settlement Class Members, and all expenses of Settlement  
12 administration, including expenses associated with distributing the Settlement Fund to  
13 Authorized Claimants, processing Proof of Claim and Release Forms, and paying  
14 escrow fees and costs, if any; provided, however, that attorneys’ fees and expenses  
15 shall not be considered part of the Notice and Administration Expenses. All Notice  
16 and Administration Expenses shall be paid from the Settlement Fund.

17           1.11 “Person” means an individual, corporation, partnership, limited  
18 partnership, limited liability company, association, joint stock company, estate, legal  
19 representative, trust, unincorporated association, government or any political  
20 subdivision or agency thereof, and any business or legal entity and their spouses,  
21 heirs, predecessors, successors, representatives, or assignees.

22           1.12 “Plaintiff” means any plaintiff who appeared in the Litigation.

23           1.13 “Plaintiff’s Counsel” means any counsel who has appeared in the  
24 Litigation on behalf of any Plaintiff.

25           1.14 “Plan of Allocation” means a plan or formula of allocation of the  
26 Settlement Fund whereby the Settlement Fund shall be distributed to Authorized  
27 Claimants after payment of the Notice and Administration Expenses, Taxes and Tax  
28 Expenses, and such attorneys’ fees, costs and expenses as may be awarded by the

1 Court. Any Plan of Allocation is not part of this Stipulation and the Released Persons  
2 shall have no responsibility therefor nor liability with respect thereto.

3 1.15 “Preliminary Approval Order” means the order described in paragraph  
4 3.1 below.

5 1.16 “Proof of Claim and Release Form” means the proof of claim form  
6 substantially in the form of Exhibit A-2 attached hereto.

7 1.17 “Released Claims” means any and all claims, debts, demands, liabilities,  
8 rights, and causes of action of every nature and description whatsoever (including, but  
9 not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting  
10 fees, and any other costs, expenses, or liabilities whatsoever), whether based on  
11 federal, state, local, statutory, common, or foreign law, or any other law, rule, or  
12 regulation, whether fixed or contingent, accrued or unaccrued, liquidated or  
13 unliquidated, at law or in equity, matured or unmatured, whether class or individual in  
14 nature, whether asserted directly, indirectly, or derivatively, including both known  
15 claims and Unknown Claims: (i) that have been or could have been asserted in the  
16 Litigation by the Lead Plaintiff and/or Settlement Class Members or any of them  
17 against any of the Released Persons, including, without limitation, those concerning  
18 any statements made by any Defendant that Lead Plaintiff allege in the Litigation  
19 were false or misleading, or any of the alleged acts, omissions, representations, facts,  
20 events, matters, transactions, or occurrences asserted in or relating to the Litigation, or  
21 otherwise alleged, asserted, or contended in the Litigation; or (ii) that relate to the  
22 purchase, acquisition, or sale of Maxwell common stock during the Settlement Class  
23 Period by Lead Plaintiff or any Settlement Class Member that were or might have  
24 been asserted on behalf of themselves, their heirs, executors, administrators,  
25 successors, and assigns against the Released Persons or any of them. Released Claims  
26 do not include any claims relating to the enforcement of the Settlement or any claims  
27 against any person or entity who or which submits a request for exclusion from the  
28 Settlement Class that is accepted by the Court.

1           1.18 “Released Persons” means Defendants, collectively and each of them,  
2 and each of Defendant’s respective Immediate Family members and current, former,  
3 or future parents, subsidiaries, associates, affiliates, partners, joint venturers, officers,  
4 directors, principals, shareholders, members, agents, representatives, employees,  
5 attorneys, financial or investment advisors, consultants, accountants, investment  
6 bankers, commercial bankers, trustees, engineers, insurers, co-insurers, reinsurers,  
7 heirs, assigns, executors, general or limited partners or partnerships, personal or legal  
8 representatives, estates, administrators, predecessors, successors, advisors, and/or any  
9 other individual or entity in which any Defendant has or had a controlling interest or  
10 which is or was related to or affiliated with any Defendant.

11           1.19 “Representative Reimbursement” means the payment that may be  
12 awarded by the Court to be paid solely from the Settlement Fund to Lead Plaintiff for  
13 reimbursement of its reasonable time, costs and expenses directly relating to Lead  
14 Plaintiff’s representation of the Settlement Class.

15           1.20 “Settlement” means the settlement of the Litigation contemplated by this  
16 Stipulation.

17           1.21 “Settlement Class” and “Settlement Class Members” mean all persons or  
18 entities who purchased or otherwise acquired shares of Maxwell common stock from  
19 April 29, 2011 through March 19, 2013, inclusive, and who were allegedly damaged  
20 thereby. Excluded from the Settlement Class are Defendants and all officers and  
21 directors of Maxwell, and all such excluded persons’ Immediate Family members,  
22 legal representatives, heirs, predecessors, successors and assigns, and any entity in  
23 which any excluded person has or had a controlling interest. Also excluded from the  
24 Settlement Class are those persons who file valid and timely requests for exclusion in  
25 accordance with the Preliminary Approval Order.

26           1.22 “Settlement Class Period” means the time period between April 29, 2011  
27 and March 19, 2013, inclusive.

1           1.23 “Settlement Fund” means the funds to be paid pursuant to paragraph 2.1  
2 below, plus all interest earned thereon after the date such payment is made.

3           1.24 “Settling Parties” means, collectively, Defendants and Lead Plaintiff, on  
4 behalf of themselves and each Settlement Class Member.

5           1.25 “Unknown Claims” means any Released Claim that Lead Plaintiff or any  
6 Settlement Class Member does not know or suspect to exist in his, her, or its favor at  
7 the time of the release of the Released Persons, which if known by him, her, or it,  
8 might have affected his, her, or its decision(s) with respect to the Settlement,  
9 including, but not limited to, the decision not to object to the Settlement, provided that  
10 such claim arises out of or relates to the purchase or sale of Maxwell common stock,  
11 or the decision not to request exclusion from the Settlement Class.

## 12           **2. The Settlement**

### 13                   **a. The Settlement Fund**

14           2.1 Subject to the terms of this Stipulation, Maxwell shall cause its insurers  
15 to pay the sum of \$3,300,000 (Three Million and Three Hundred Thousand Dollars)  
16 into the escrow account designated by the Escrow Agent on or before the date that is  
17 sixty (60) calendar days after this Stipulation is fully executed or fifteen (15) calendar  
18 days after entry of the Preliminary Approval Order, whichever is later, provided that  
19 Lead Plaintiff shall have provided Defendants’ counsel with an appropriate W-9 form  
20 and other necessary payee information for the escrow account at least fifteen (15)  
21 calendar days prior to any payment. Neither Defendants nor Defendants’ insurers  
22 shall have any obligation under this Stipulation for payment of any amounts beyond  
23 the Settlement Fund.

### 24                   **b. The Escrow Agent**

25           2.2 The Escrow Agent may, at its discretion, invest the Settlement Fund  
26 deposited pursuant to paragraph 2.1 above in instruments backed by the full faith and  
27 credit of the United States Government, a money market account backed by such  
28 obligations or accounts fully insured by the United States Government or an agency

1 thereof, and may reinvest the proceeds of these instruments as they mature in similar  
2 instruments at their then-current market rates. The Settlement Fund shall bear all risks  
3 related to investment of the Settlement Fund.

4 2.3 The Escrow Agent shall not disburse the Settlement Fund except as  
5 provided in this Stipulation, by an order of the Court, or with the written agreement of  
6 counsel for Defendants.

7 2.4 Subject to further order and/or direction as may be made by the Court,  
8 the Escrow Agent is authorized to execute such transactions on behalf of the  
9 Settlement Class as are consistent with the terms of this Stipulation.

10 2.5 All funds held by the Escrow Agent shall be deemed and considered to be  
11 *in custodia legis*, and shall remain subject to the jurisdiction of the Court, until such  
12 time as such funds shall be distributed pursuant to this Stipulation and/or further  
13 order(s) of the Court.

14 2.6 Without further order of the Court, the Settlement Fund may be used by  
15 Lead Plaintiff's Counsel to pay Notice and Administration Expenses.

16 **c. Taxes**

17 2.7 (a) The Settling Parties and the Escrow Agent agree to treat the  
18 Settlement Fund as being at all times a "qualified settlement fund" within the meaning  
19 of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such  
20 elections as necessary or advisable to carry out the provisions of this paragraph 2.7,  
21 including, if necessary, the "relation-back election" (as defined in Treas. Reg.  
22 §1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in  
23 compliance with the procedures and requirements contained in such Treasury  
24 regulations promulgated under §1.468B of the Internal Revenue Code of 1986, as  
25 amended (the "Code"). It shall be the responsibility of the Escrow Agent to timely  
26 and properly prepare and deliver the necessary documentation for signature by all  
27 necessary parties, and thereafter to cause the appropriate filing to occur.

1 (b) For the purpose of §1.468B of the Code and the Treasury  
2 regulations thereunder, the Escrow Agent shall be designated as the “administrator”  
3 of the Settlement Fund. The Escrow Agent shall timely and properly file all  
4 informational and other tax returns necessary or advisable with respect to the  
5 Settlement Fund (including, without limitation, the returns described in Treas. Reg.  
6 §1.468B-2(k)). Such returns (as well as the election described in paragraph 2.7(a)  
7 above) shall be consistent with this paragraph 2.7 and in all events shall reflect that  
8 all Taxes (defined below), including any estimated taxes, interest, or penalties, on the  
9 income earned by the Settlement Fund shall be paid out of the Settlement Fund as  
10 provided in paragraph 2.7(c) below.

11 (c) All (a) taxes (including any estimated taxes, interest, or penalties)  
12 arising with respect to the income earned by the Settlement Fund, including any  
13 Taxes or tax detriments that may be imposed upon Defendants or their counsel with  
14 respect to any income earned by the Settlement Fund for any period during which the  
15 Settlement Fund does not qualify as a “qualified settlement fund” for federal or state  
16 income tax purposes (“Taxes”); and (b) all expenses and costs incurred in connection  
17 with the operation and implementation of this paragraph 2.7 (including, without  
18 limitation, expenses of tax attorneys and/or accountants and mailing and distribution  
19 costs and expenses relating to filing (or failing to file) the returns described in this  
20 paragraph 2.7) (“Tax Expenses”) shall be paid out of the Settlement Fund. In no  
21 event shall any of Defendants, Defendants’ counsel or Defendants’ insurers have any  
22 responsibility for or liability with respect to any Taxes or Tax Expenses. The  
23 Settlement Fund shall indemnify and hold each of the Defendants, Defendants’  
24 counsel and Defendants’ insurers harmless for any and all Taxes and Tax Expenses  
25 (including, without limitation, Taxes payable by reason of any such indemnification).  
26 Further, any and all Taxes and Tax Expenses shall be treated as, and considered to be,  
27 part of the Notice and Administration Expenses and shall be timely paid by the  
28 Escrow Agent out of the Settlement Fund without further consent of Defendants or

1 prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding  
2 anything herein to the contrary) to withhold from distribution to Authorized  
3 Claimants any funds necessary to pay such amount, including the establishment of  
4 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may  
5 be required to be withheld under Treas. Reg. §1.468B-2(1)(2)). None of Defendants,  
6 Defendants' counsel, or Defendants' insurers are responsible therefor nor shall they  
7 have any liability with respect thereto. The parties hereto agree to cooperate with the  
8 Escrow Agent, each other, and their tax attorneys and accountants to the extent  
9 reasonably necessary to carry out the provisions of this paragraph 2.7.

10 **d. Termination of Settlement**

11 2.8 In the event that this Stipulation is not approved, or is terminated,  
12 canceled, or fails to become effective for any reason, the Settlement Fund shall be  
13 refunded as specified in paragraph 9.3 below.

14 **3. Preliminary Approval Order, Notice, and Settlement**  
15 **Hearing**

16 3.1 As soon as practicable after execution of the Stipulation, Lead Plaintiff's  
17 Counsel shall submit the Stipulation together with its exhibits (the "Exhibits") to the  
18 Court and shall file a motion seeking entry of the Preliminary Approval Order,  
19 substantially in the form of Exhibit A attached hereto, requesting, *inter alia*, the  
20 preliminary approval of the Settlement set forth in this Stipulation, approval for  
21 mailing the Notice of Proposed Settlement of Class Action ("Notice") substantially in  
22 the form of Exhibit A-1 attached hereto, and for publication of a summary notice  
23 ("Summary Notice") substantially in the form of Exhibit A-3 attached hereto.

24 3.2 For the purposes of identifying and providing notice to the Settlement  
25 Class, within five (5) business days of the date of entry of the Preliminary Approval  
26 Order, Maxwell shall provide or cause to be provided to the Claims Administrator (at  
27 no cost to the Settlement Fund, Lead Plaintiff's Counsel or the Claims Administrator)

1 its list of names and addresses of shareholders of Maxwell common stock during the  
2 Settlement Class Period, in electronic form.

3 3.3 In addition, Lead Plaintiff's motion shall request that the Court hold a  
4 hearing (the "Settlement Hearing") to determine whether to grant final approval to the  
5 Settlement of the Litigation as set forth herein. At or after the Settlement Hearing,  
6 Lead Plaintiff's Counsel will request that the Court approve the proposed Plan of  
7 Allocation and any of Plaintiff's Counsel's fees and expenses.

#### 8 **4. Releases**

9 4.1 Upon the Effective Date, Lead Plaintiff and the Settlement Class  
10 Members, on behalf of themselves, their current and future heirs, executors,  
11 administrators, successors, attorneys, insurers, agents, representatives, and assigns,  
12 and any person they represent, shall have fully, finally and forever released,  
13 relinquished and discharged any and all Released Claims against any and all Released  
14 Persons, whether or not such Lead Plaintiff or Settlement Class Member executes the  
15 Proof of Claim and Release.

16 4.2 The Settling Parties stipulate and agree that, upon the Effective Date,  
17 Lead Plaintiff shall expressly waive, and each of the Settlement Class Members shall  
18 be deemed to have waived, and by operation of the Judgment shall have waived and  
19 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits  
20 of California Civil Code §1542, which provides:

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

25 Upon the Effective Date, Lead Plaintiff shall expressly waive and each of the  
26 Settlement Class Members shall be deemed to have waived, and by operation of the  
27 Judgment shall have expressly waived, any and all provisions, rights, and benefits  
28 conferred by any law of any state or territory of the United States, or principle of

1 common law or international or foreign law, which is similar, comparable, or  
2 equivalent to California Civil Code §1542. Lead Plaintiff and the Settlement Class  
3 Members may hereafter discover facts in addition to or different from those which he,  
4 she or it now knows or believes to be true with respect to the subject matter of the  
5 Released Claims, but Lead Plaintiff shall expressly fully, finally, and forever settle  
6 and release, and each Settlement Class Member, upon the Effective Date, shall be  
7 deemed to have, and by operation of the Judgment shall have, fully, finally, and  
8 forever settled and released, any and all Released Claims, known or unknown,  
9 suspected or unsuspected, contingent or non-contingent, whether or not concealed or  
10 hidden, which now exist, or heretofore have existed, upon any theory of law or equity  
11 now existing or coming into existence in the future, including, but not limited to,  
12 conduct which is negligent, intentional, with or without malice, or a breach of any  
13 duty, law or rule, without regard to the subsequent discovery or existence of such  
14 different or additional facts. Lead Plaintiff acknowledges, and the Settlement Class  
15 Members shall be deemed by operation of the Judgment to have acknowledged, that  
16 the foregoing waiver was separately bargained for and a key element of the Settlement  
17 of which this release is a part.

18       4.3 Upon the Effective Date, each of the Released Persons shall be deemed to  
19 have, and by operation of the Judgment shall have, fully, finally, and forever released,  
20 relinquished, and discharged Lead Plaintiff and each and all of the Settlement Class  
21 Members and Plaintiff's Counsel from all claims arising out of, relating to, or in  
22 connection with, the institution, prosecution, assertion, settlement, or resolution of the  
23 Litigation or the Released Claims.

24       4.4 Lead Plaintiff and the Settlement Class Members, on behalf of  
25 themselves, their current and future heirs, executors, administrators, successors,  
26 attorneys, insurers, agents, representatives, and assigns, and any person they represent,  
27 expressly covenant not to assert, and shall be forever barred and enjoined from  
28 commencing, instituting, prosecuting or continuing to prosecute any action or other

1 proceeding in any court of law or equity, arbitration tribunal, or administrative forum  
2 asserting, any and all Released Claims against any and all Released Persons, whether  
3 or not such Lead Plaintiff or Settlement Class Member executes the Proof of Claim  
4 and Release.

5 **5. Administration and Calculation of Claims, Final Awards,**  
6 **and Supervision and Distribution of Settlement Fund**

7 5.1 The Claims Administrator shall administer and calculate the claims  
8 submitted by Settlement Class Members.

9 5.2 The Settlement Fund shall be applied as follows:

10 (a) to pay all Notice and Administration Expenses (including Taxes  
11 and Tax Expenses described in paragraph 2.7 above);

12 (b) to pay Plaintiffs' Counsel's attorneys' fees and expenses with  
13 interest thereon (the "Fee and Expense Award"), as may be awarded by the Court;  
14 and

15 (c) after the Effective Date, to distribute the balance of the Settlement  
16 Fund (the "Net Settlement Fund") to Authorized Claimants as allowed by this  
17 Stipulation, the Plan of Allocation, or the Court.

18 5.3 Within ninety (90) days from the date set by the Court to mail the Notice,  
19 each Settlement Class Member wishing to participate in the Settlement shall be  
20 required to submit to the Claims Administrator a completed Proof of Claim and  
21 Release Form signed under penalty of perjury and supported by such documents as are  
22 specified in the Proof of Claim and Release Form and as are reasonably available to  
23 the Authorized Claimant.

24 5.4 Except as otherwise ordered by the Court, all Settlement Class Members  
25 who fail to timely submit a Proof of Claim and Release Form within such period, or  
26 such other period as may be ordered by the Court, shall be forever barred from  
27 receiving any payments pursuant to this Stipulation and the Settlement set forth  
28 herein, but will in all other respects be subject to and bound by the provisions of this

1 Stipulation, the releases contained herein, and the Judgment. Notwithstanding the  
2 foregoing, Lead Plaintiff's Counsel may, in its discretion, accept for processing late  
3 submitted claims as long as the distribution of the Net Settlement Fund to Authorized  
4 Claimants is not materially delayed. Lead Plaintiff's Counsel also shall have the right,  
5 but not the obligation, to waive what it deems to be formal or technical defects in any  
6 Claim Forms submitted in the interests of achieving substantial justice.

7       5.5 The Net Settlement Fund shall be distributed to Authorized Claimants  
8 substantially in accordance with a Plan of Allocation to be described in the Notice and  
9 approved by the Court; however, no Authorized Claimant will have a vested interest  
10 in the Settlement Fund until such Authorized Claimant has cashed his, her or its  
11 check. If there is any balance remaining in the Net Settlement Fund after six (6)  
12 months from the date of distribution of the Net Settlement Fund (whether by reason of  
13 tax refunds, uncashed checks, or otherwise), Lead Plaintiff's Counsel shall, if feasible,  
14 reallocate such balance among Authorized Claimants in an equitable and economic  
15 fashion. Thereafter, any balance which still remains in the Net Settlement Fund shall  
16 be donated to an appropriate non-profit organization designated by Lead Plaintiff's  
17 Counsel.

18       5.6 This is not a claims-made settlement. Accordingly, once all conditions of  
19 this Stipulation are satisfied and the settlement becomes Final, no portion of the  
20 Settlement Fund will be returned to Defendants or Defendants' insurers.

21       5.7 No Person shall have any claim against Lead Plaintiff, the Escrow Agent,  
22 Lead Plaintiff's Counsel, Lead Plaintiff's Liaison Counsel, the Claims Administrator,  
23 or other Person designated by Lead Plaintiff's Counsel based on distributions made  
24 substantially in accordance with this Stipulation and the Settlement contained herein, a  
25 Court-approved Plan of Allocation, and/or further order(s) of the Court.

26       5.8 None of the Defendants or other Defendants' Releasees shall have any  
27 involvement in or any responsibility, authority or liability whatsoever for the selection  
28 of the Claims Administrator, the Plan of Allocation, the administration of the

1 Settlement, the claims process, or disbursement of the Settlement Fund, and shall have  
2 no liability whatsoever to any person or entity, including, but not limited to, Lead  
3 Plaintiff, any other Settlement Class Members or Lead Counsel in connection with the  
4 foregoing. Counsel for the Parties shall cooperate in the administration of the  
5 Settlement to the extent reasonably necessary to effectuate its terms. Without limiting  
6 the foregoing, Defendants and their counsel shall have no responsibility for, interest  
7 in, or liability with respect to:

8 (a) any act, omission or determination of the Escrow Agent, Claims  
9 Administrator or their designees or agents;

10 (b) the administration, investment, management, or distribution of  
11 the Settlement Fund or the Net Settlement Fund;

12 (c) payment of Notice and Administration Expenses;

13 (d) the administration, calculation, or payment of any claims;

14 (e) the solicitation or review of Proof of Claim and Release Forms;

15 (f) the determination, administration, calculation, payment or  
16 withholding of any Taxes or Tax Expenses;

17 (g) the Plan of Allocation; or

18 (h) any losses incurred in connection with any of the foregoing.

19 5.9 No Person shall have any claim against the Released Persons based on, or  
20 in any way relating to, the distributions from the Settlement Fund.

21 5.10 It is understood and agreed by the Settling Parties that any proposed Plan  
22 of Allocation of the Net Settlement Fund including, but not limited to, any  
23 adjustments to an Authorized Claimant's claim set forth therein, is not a part of this  
24 Stipulation and is to be considered by the Court separately from the Court's  
25 consideration of the fairness, reasonableness, and adequacy of the settlement set forth  
26 in this Stipulation, and any order or proceeding relating to the Plan of Allocation shall  
27 not operate to terminate or cancel this Stipulation or affect the finality of the Court's  
28

1 Judgment approving this Stipulation and the Settlement set forth herein, or any other  
2 orders entered by the Court.

3 **6. Lead Plaintiff's Counsel's Attorneys' Fees and Expenses**

4 6.1 Lead Plaintiff's Counsel may submit an application or applications (the  
5 "Fee and Expense Application") for distributions to them from the Settlement Fund of  
6 (a) an award of reasonable attorneys' fees from the Settlement Fund; plus (b)  
7 reimbursement of Lead Plaintiff's Counsel's expenses, including the fees of any  
8 experts or consultants, incurred in connection with prosecuting the Litigation, plus any  
9 interest on such expenses at the same rate and for the same periods as earned by the  
10 Settlement Fund (until paid); and (c) payment of Lead Plaintiff's expenses pursuant to  
11 15 U.S.C. §78u-4(a)(4) and 15 U.S.C §77z-1(a)(4). Lead Plaintiff's Counsel may  
12 make additional applications for fees and expenses incurred. Lead Plaintiff's Counsel  
13 may also seek a Representative Reimbursement to be exclusively paid from the  
14 Settlement Fund.

15 6.2 Any attorneys' fees and expenses awarded by the Court shall be paid to  
16 Lead Plaintiff's Counsel from the Settlement Fund within ten (10) business days after  
17 the Effective Date. Lead Plaintiff's Counsel may thereafter allocate the attorneys'  
18 fees in a manner in which they in good faith believe reflects the contributions of  
19 Plaintiff's Counsel to the prosecution and settlement of the Litigation.

20 6.3 Any order or proceeding relating to the Fee and Expense Application, or  
21 any appeal from any order relating thereto or reversal or modification thereof, shall  
22 not operate to terminate or cancel this Stipulation, or affect or delay the finality of the  
23 Judgment approving this Stipulation and the settlement of the Litigation set forth  
24 therein.

25 6.4 The Released Persons shall have no responsibility for, and no liability  
26 whatsoever with respect to, any payment of attorneys' fees and expenses to Lead  
27 Plaintiff's Counsel or any other Plaintiff's Counsel, and any such fees or expenses  
28 shall be paid solely from the Settlement Fund.

1           6.5    The Released Persons shall have no responsibility for, and no liability  
2 whatsoever with respect to, the allocation among Plaintiffs' Counsel, and/or any other  
3 Person who may assert some claim thereto, of any Fee and Expense Award that the  
4 Court may make in the Litigation.

5           **7.    Final Approval Motion and Judgment Approving the**  
6           **Settlement**

7           7.1    At least twenty-one (21) calendar days prior to the Settlement Hearing,  
8 Lead Plaintiff shall file its Fee and Expense Application and a motion with the Court  
9 seeking final approval of the Settlement and entry of the Judgment substantially in the  
10 form of Exhibit B attached hereto. In connection with Lead Plaintiff's final approval  
11 motion, Lead Plaintiff shall submit an affidavit from the Claims Administrator  
12 describing the efforts taken to effect the notice provisions described in paragraphs 3.1-  
13 3.2. Reply papers, if any, shall be filed and served at least seven (7) calendar days  
14 before the Settlement Hearing.

15           **8.    Conditions of Settlement**

16           8.1    The Effective Date of this Stipulation shall be conditioned on the  
17 occurrence of all of the following events:

18                   (a)    payment of the Settlement Fund in accordance with paragraph 2.1  
19 above;

20                   (b)    entry of the Preliminary Approval Order in accordance with  
21 paragraph 3.1 above;

22                   (c)    the Defendants have not exercised their option to terminate the  
23 Settlement pursuant to the provisions of this Stipulation (including the Supplemental  
24 Agreement described in paragraph 9.2 below)

25                   (d)    entry of the Judgment in accordance with by paragraph 7.1 above;  
26 and

27                   (e)    the Judgment becoming Final, as defined in paragraph 1.6 above.  
28

1           8.2    Upon the occurrence of all of the events listed in paragraph 8.1 above,  
2 any and all remaining interest or right of Defendants in or to the Settlement Fund, if  
3 any, shall be absolutely and forever extinguished. If all of the conditions specified in  
4 paragraph 8.1 above are not met, then this Stipulation shall be canceled and  
5 terminated subject to paragraph 9.3 below unless Lead Plaintiff and Defendants  
6 mutually agree in writing to proceed with this Stipulation.

7           **9.    Rights of Termination and Effects Thereof**

8           9.1    Maxwell and Lead Plaintiff shall each have the right to terminate the  
9 Settlement and this Stipulation by providing written notice of their election to do so  
10 (“Termination Notice”) to counsel for the other party within thirty (30) days after the  
11 date on which any of the following occurs:

12                   (a)    the Court declines to enter the Preliminary Approval Order in all  
13 material respects;

14                   (b)    the Court declines to approve this Stipulation or any material part  
15 of it;

16                   (c)    the Court declines to enter the Judgment in all material respects;

17                   (d)    the Judgment is modified or reversed in any material respect on  
18 appeal;

19                   (e)    in the event that the Court enters a judgment other than the one  
20 substantially in the form of Exhibit B attached hereto (“Alternative Judgment”) and  
21 neither of the Settling Parties elects to terminate the Settlement, the date that such  
22 Alternative Judgment is modified or reversed in any material respect on appeal.

23           9.2    Unless otherwise ordered by the Court, in the event this Stipulation shall  
24 terminate, or be canceled, or shall not become effective for any reason, within five (5)  
25 business days after written notification of such event is sent by counsel for Defendants  
26 or Lead Plaintiff’s Counsel to the Escrow Agent, the Escrow Agent for the Settlement  
27 Fund shall, in accordance with the written instructions from counsel for Maxwell,  
28 cause the Settlement Fund, including any attorneys’ fees and costs paid from the

1 Settlement Fund pursuant to paragraph 6 above, to revert back to the entity that made  
2 the deposit into the Settlement Fund, together with any interest earned thereon, less  
3 any deductions for: (1) any Taxes or Tax Expenses pursuant to paragraph 2.7 above  
4 due with respect to any interest earned by the Settlement Fund; and (2) any amounts  
5 reasonably and actually paid, incurred or due and owing pursuant to paragraph 2.6  
6 above in connection with notice and administration of the Settlement provided for  
7 herein. If this Stipulation is terminated pursuant to its terms, the Escrow Agent, at the  
8 request of Maxwell or Lead Plaintiff, shall apply for any tax refund owed to the  
9 Settlement Fund and pay the proceeds of the tax refund, after deduction of any fees  
10 and expenses incurred in connection with such application(s) for refund, to Maxwell  
11 (or its designate).

12 9.3 To the extent that any sums that become due and returnable pursuant to  
13 the terms of paragraph 9.3 are not returned and refunded to the party that made the  
14 deposit into the Settlement Fund within the time specified in paragraph 9.3, all  
15 Plaintiffs' counsel shall be jointly and severally liable for the repayment of such  
16 amounts within ten (10) business days after written notification of such outstanding  
17 sums is sent by counsel for Defendants.

18 9.4 If this Stipulation is terminated pursuant to its terms, each of the Settling  
19 Parties shall be deemed to have reverted to his, her or its status prior to the execution  
20 of this Stipulation, and they shall proceed in all respects as if this Stipulation had not  
21 been executed and the related orders had not been entered, shall retain all of their  
22 respective claims and defenses in the Litigation, and shall revert to their respective  
23 positions in the Litigation, except that the provisions of paragraphs 2.7, 9.2-4, 10.1,  
24 11.1-23 shall survive termination.

25 9.5 No order of the Court or modification or reversal of any order of the  
26 Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs,  
27 and expenses awarded by the Court shall constitute grounds for termination of the  
28 Stipulation.

1           **10. No Admission of Wrongdoing**

2           10.1 Neither this Stipulation nor the Settlement set forth herein, whether or not  
3 consummated, nor any negotiations, discussions, proceedings, acts performed or  
4 documents executed pursuant to or in furtherance of this Stipulation or the Settlement,  
5 is or may be:

6                   (a) deemed to be, or used as, an admission of, or evidence of, the  
7 validity or lack thereof of any Released Claim, or of any wrongdoing or liability of  
8 any Defendant;

9                   (b) offered or received against any Defendant as evidence of a  
10 presumption, concession, admission of any fault, misrepresentation, or omission with  
11 respect to any statement or written document approved or made by any Defendant, or  
12 against the Lead Plaintiff or any Settlement Class Member as evidence of any  
13 infirmity in the claims of Lead Plaintiff and the Settlement Class;

14                   (c) deemed to be, or used as, an admission of, or evidence of, any  
15 fault or omission of any Defendant in any civil, criminal, or administrative action or  
16 proceeding in any court, administrative agency, or other tribunal, other than such  
17 proceedings as may be necessary to effectuate the provisions of this Stipulation;  
18 provided, however, that if this Stipulation is approved by the Court, Defendants and  
19 any Released Person may refer to it to effectuate the releases granted them hereunder;

20                   (d) construed against Defendants, Lead Plaintiff, or the Settlement  
21 Class as an admission or concession that the consideration to be given hereunder  
22 represents the amount which could be or would have been recovered after trial.

23           10.2 If this Stipulation is approved by the Court, the Parties and the Releasees  
24 and their respective counsel may refer to it to effectuate the protections from liability  
25 granted hereunder or otherwise to enforce the terms of the Settlement.

26           **11. Miscellaneous Provisions**

27           11.1 Solely for purposes of the Settlement and for no other purpose,  
28 Defendants stipulate and agree to: (a) certification of the Action as a class action

1 pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf  
2 of the Settlement Class; (b) certification of Lead Plaintiff as Class Representative for  
3 the Settlement Class; and (c) appointment of Lead Counsel as Class Counsel for the  
4 Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.  
5 Defendants' conditional stipulation to a Settlement Class is for settlement purposes  
6 only and contingent upon consummation of the Settlement and the Judgment  
7 becoming Final. If the Settlement does not become effective, Defendants reserve their  
8 rights to assert objections and defenses to certification of any class, and Lead Plaintiff  
9 and Lead Plaintiff's Counsel agree that they will not offer Defendants' conditional  
10 stipulation to a Settlement Class as support for a motion to certify a class, or argue  
11 that Defendants are equitably or judicially estopped from contesting certification of a  
12 class in the Litigation.

13       11.2 The Settling Parties: (a) acknowledge that it is their intent to consummate  
14 this agreement; and (b) agree to cooperate to the extent reasonably necessary to  
15 effectuate and implement all terms and conditions of this Stipulation and to exercise  
16 their reasonable best efforts to accomplish the foregoing terms and conditions of this  
17 Stipulation.

18       11.3 This Stipulation and the Exhibits attached hereto constitute the entire  
19 agreement between the Settling Parties with regard to the subject matter hereof and  
20 supersede any prior or contemporaneous written or oral agreements or understandings  
21 between the Settling Parties.

22       11.4 No modification or amendment of this Stipulation shall be valid unless  
23 made in writing and signed by or on behalf of each party hereto, or their respective  
24 successors-in-interest. No representations, warranties, or inducements have been  
25 made to any party concerning this Stipulation or its Exhibits, other than the  
26 representations and warranties contained and memorialized in such documents.  
27 Except as otherwise provided for herein, each party shall bear his, her, or its own  
28 attorneys' fees and costs and expenses.

1           11.5 The Settling Parties intend the Settlement to be a final and complete  
2 resolution of all disputes between them with respect to the Litigation. The Settlement  
3 compromises claims that are contested and shall not be deemed an admission by any  
4 Settling Party as to the merits of any claim or defense. Lead Plaintiff, Defendants and  
5 their respective counsel agree that each has complied fully with the Federal Rules of  
6 Civil Procedure. The Judgment will contain a statement that during the course of the  
7 Litigation, the parties and their respective counsel at all times complied with the  
8 requirements of Federal Rule of Civil Procedure 11. The Settling Parties agree that  
9 the amount paid to the Settlement Fund and the other terms of the Settlement were  
10 negotiated in good faith by the Settling Parties and reflect a settlement that was  
11 reached voluntarily after consultation with competent legal counsel.

12           11.6 While retaining their right to deny that the claims asserted in the Action  
13 were meritorious, Defendants and their counsel, in any statement made to any media  
14 representative (whether or not for attribution) will not assert that the Action was  
15 commenced or prosecuted in bad faith nor will they deny that the Action is being  
16 settled voluntarily after consultation with competent legal counsel. In all events, Lead  
17 Plaintiff and their counsel and Defendants and their counsel shall not make any  
18 accusations of wrongful or actionable conduct by any Party concerning the  
19 prosecution, defense, and resolution of the Action, and shall not otherwise suggest that  
20 the Settlement constitutes an admission of any claim or defense alleged. The Settling  
21 Parties reserve their right to rebut, in a manner that such party determines to be  
22 appropriate, any contention made in any public forum that the Litigation was brought  
23 or defended in bad faith or without a reasonable basis.

24           11.7 Defendants and any Released Person may file the Stipulation and/or the  
25 Judgment in any action that may be brought against them in order to support a  
26 defense, claim, or counterclaim based on principles of *res judicata*, collateral estoppel,  
27 release, good faith settlement, judgment bar or reduction, or any other theory of claim  
28 preclusion or issue preclusion or similar defense or counterclaim.

1           11.8 All agreements made and orders entered during the course of the  
2 Litigation relating to the confidentiality of information shall survive this Stipulation.

3           11.9 All of the Exhibits to this Stipulation are material and integral parts  
4 hereof and are fully incorporated herein by this reference. Notwithstanding the  
5 foregoing, in the event that there exists a conflict or inconsistency between the terms  
6 of this Stipulation and the terms of any exhibit attached hereto, the terms of the  
7 Stipulation shall prevail.

8           11.10 Lead Plaintiff's Counsel, on behalf of the Settlement Class, is expressly  
9 authorized to take all appropriate action required or permitted to be taken by the  
10 Settlement Class pursuant to this Stipulation to effectuate its terms and also are  
11 expressly authorized to enter into any modifications or amendments to this Stipulation  
12 on behalf of the Settlement Class which they deem appropriate.

13           11.11 Each counsel or other Person executing this Stipulation or any of its  
14 Exhibits on behalf of any party hereto hereby warrants that such Person has the full  
15 authority to do so.

16           11.12 This Stipulation may be executed in one or more counterparts, including  
17 by signature transmitted by facsimile or email, or by a .pdf/.tif image of the signature  
18 transmitted via email.

19           11.13 All executed counterparts and each of them shall be deemed to be one  
20 and the same instrument.

21           11.14 This Stipulation shall be binding upon, and inure to the benefit of, the  
22 successors and assigns of the Settling Parties.

23           11.15 None of the Settling Parties shall be considered to be the drafter of this  
24 Settlement Agreement or any provision hereof for the purpose of any statute, case law  
25 or rule of interpretation or construction that would or might cause any provision to be  
26 construed against the drafter. The Settling Parties agree that this Settlement  
27 Agreement was drafted at arm's-length, and that no other evidence may be offered to  
28 explain, construe, contradict or clarify its terms, the intent of the Settling Parties or

1 their counsel, or the circumstances under which this Stipulation or Settlement was  
2 made or executed.

3 11.16 All time periods set forth herein shall be computed in calendar days  
4 unless otherwise expressly provided. In computing any period of time prescribed or  
5 allowed by the terms of this Stipulation or by order of Court, the day of the act, event,  
6 or default from which the designated period of time begins to run shall not be  
7 included. The last day of the period so computed shall be included, unless it is a  
8 Saturday, a Sunday or a legal holiday, in which case the period shall run until the end  
9 of the next day that is not one of the aforementioned days. As used in the preceding  
10 sentence, “legal holiday” includes New Year’s Day, Martin Luther King, Jr. Day,  
11 Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day,  
12 Veterans’ Day, Thanksgiving Day, Christmas Day and any other appointed as a  
13 federal holiday.

14 11.17 The Court shall retain jurisdiction with respect to implementation and  
15 enforcement of the terms of the Stipulation, and the Settling Parties submit to the  
16 jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

17 11.18 The waiver by one party of any breach of this Stipulation by any other  
18 party shall not be deemed a waiver by any other party or a waiver of any other prior or  
19 subsequent breach of this Stipulation.

20 11.19 Any action arising under or to enforce this Stipulation or any portion  
21 thereof, shall be commenced and maintained only in this Court.

22 11.20 If a case is commenced with respect to any Defendant under Title 11 of  
23 the United States Code (Bankruptcy), or a trustee, receiver, or conservator is  
24 appointed under any similar law, and in the event of the entry of a final order of a  
25 court of competent jurisdiction determining the transfer of money to the Settlement  
26 Fund or any portion thereof by or on behalf of any Defendant to be a preference,  
27 voidable transfer, fraudulent transfer, or similar transaction, and any portion thereof is  
28 required to be returned, and such amount is not promptly deposited to the Settlement

1 Fund by others, then, at the election of Lead Plaintiff's Counsel, the parties shall  
2 jointly move the Court to vacate and set aside the releases given and the Judgment  
3 entered in favor of such Defendant pursuant to this Stipulation, which releases and the  
4 Judgment shall be null and void, and any other cash amounts in the Settlement Fund  
5 paid by or on behalf of such affected Defendant shall be returned as provided herein.

6 11.21 This Stipulation and the Exhibits hereto shall be considered to have been  
7 negotiated, executed, and delivered, and to be wholly performed, in the State of  
8 California, and the construction, interpretation, operation, effect and validity of this  
9 Stipulation, the Supplemental Agreement and all documents necessary to effectuate it  
10 shall be governed by the internal laws of the State of California without regard to  
11 conflicts of laws, except to the extent that federal law requires that federal law govern.

12 11.22 If any Party is required to give notice to another Party under this  
13 Stipulation, such notice shall be in writing and shall be deemed to have been duly  
14 given upon receipt of hand delivery or facsimile or email transmission, with  
15 confirmation of receipt. Any written notice required pursuant to or in connection with  
16 this Stipulation shall be addressed to counsel as follows:

17  
18 For Lead Plaintiff:

19 Lester R. Hooker  
20 Saxena White P.A.  
21 5200 Town Center Circle, Suite 601  
22 Boca Raton, FL 33486  
23 Office: (561) 206-6708  
24 Fax: (866) 290-1291  
25 Email: lhooker@saxenawhite.com

26 For Defendants Maxwell, Schramm  
27 and Royal:

28 Jerome F. Birn, Jr.  
Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
Telephone: (650) 493-9300  
Facsimile: (650) 493-6811  
Email: jbirn@wsgr.com



1 *Lead Counsel for Lead Plaintiff*

2 **BERNSTEIN LITOWITZ BERGER &**  
3 **GROSSMANN LLP**

4 BLAIR A. NICHOLAS (Bar No. 178428)  
5 BENJAMIN GALDSTON (Bar No. 211114)  
6 12481 High Bluff Drive, Suite 300  
7 San Diego, CA 92130  
8 Tel: (858) 793-0070  
9 Fax: (858) 793-0323

10 *Liaison Counsel for Lead Plaintiff*

11 **WILMER CUTLER PICKERING HALE**  
12 **AND DORR LLP**

13 

---

JEROME F. BIRN, JR., State Bar No. 128561

14 *Attorneys for Defendants Maxwell Global*  
15 *Solutions, Inc., David J. Schramm and Kevin S.*  
16 *Royal*

17 **DLA PIPER LLP (US)**

18 

---

ROY K. MCDONALD  
19 555 Mission Street, Suite 2400  
20 San Francisco, CA 94105-2933  
21 Telephone: (415) 836 -2500  
22 Facsimile: (415) 836-2501

23 *Attorneys for Defendant Van M. Andrews*