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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WILLIAM MONACHELLI and RANDALL
A. ARVIDSON, Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

HORTONWORKS, INC., ROBERT G.
BEARDEN, and SCOTT J. DAVIDSON,

Defendants.

Case No. 3:16-cv-00980-SI

Class Action

**STIPULATION AND AGREEMENT OF
SETTLEMENT**

The Hon. Susan Illston

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1 This Stipulation and Agreement of Settlement dated May 24, 2017 (“Stipulation”) is
2 submitted pursuant to Fed. R. Civ. P. 23 and Fed. R. Evid. 408. Subject to the Court’s approval,
3 this Stipulation is entered into between and among Lead Plaintiff Randall A. Arvidson
4 (“Arvidson”) and Plaintiff William Monachelli (“Monachelli”) (together with Arvidson, the
5 “Plaintiffs”), individually and on behalf of each member of the proposed Settlement Class (defined
6 below), and Defendants Hortonworks, Inc. (“Hortonworks”), Robert G. Bearden (“Bearden”), and
7 Scott J. Davidson (“Davidson”) (together, the “Settling Defendants”), by and through their
8 respective counsel, and sets forth a settlement (the “Settlement”) of the above-captioned action
9 (the “Action”).¹ The Settlement is intended to fully, finally, and forever resolve, discharge, and
10 settle the Action and the Settled Claims (including Unknown Claims, as defined below) upon and
11 subject to the terms and conditions set forth herein.

12 **I. THE LITIGATION**

13 Following the announcement by Defendant Hortonworks of a follow-on offering on
14 January 15, 2016, Plaintiff Monachelli filed this securities class action on February 29, 2016. The
15 initial complaint (Dkt. No. 1) asserted claims under Sections 10(b) and 20(a) of the Securities
16 Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b), and 78t(a), and Rule 10b-5
17 promulgated thereunder by the Securities and Exchange Commission (the “SEC”), 17 C.F.R. §
18 240.10b-5, alleging that Defendants made material misstatements and omissions between
19 November 4, 2015 and January 15, 2016 concerning Hortonworks’ operations and prospects,
20 particularly its need and/or intent to raise cash through an equity offering. Defendants deny the
21 allegations in that complaint.

22 On April 29, 2016, multiple movants, including Arvidson, filed motions and supporting
23 papers seeking appointment by the Court to serve as lead plaintiffs under the Private Securities
24 Litigation Reform Act, 15 U.S.C. § 78u-4. On June 1, 2016, the Court entered an Order appointing

25
26 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed
27 to them in ¶ 1 below.

1 Arvidson to serve as Lead Plaintiff and appointing his choice of counsel, Pomerantz LLP
2 (“Pomerantz”), also counsel for Monachelli, to serve as Lead Counsel.

3 On July 28, 2016, Plaintiffs filed their First Consolidated Amended Complaint for
4 Violation of the Federal Securities Laws (Dkt. No. 42). It included allegations by certain
5 confidential witnesses, asserted claims under Sections 10(b) and 20(a) of the Exchange Act and
6 Rule 10b-5, and alleged that Defendants made a broader set of material misstatements and
7 omissions between August 5, 2015 and January 15, 2016 concerning Hortonworks’ business
8 operations and prospects, particularly its need and/or intent to raise cash through an equity
9 offering. Defendants also deny the allegations in the First Consolidated Amended Complaint.

10 On September 12, 2016, Defendants filed a motion to dismiss the First Amended
11 Consolidated Complaint, supported by a memorandum of law, declaration, and various materials
12 for which they sought judicial notice (Dkt. Nos. 43-45). Plaintiffs opposed the motion to dismiss
13 and request for judicial notice (Dkt. Nos. 46-47). Defendants filed their reply, along with an
14 additional declaration and supplemental request for judicial notice on November 17, 2016 (Dkt.
15 Nos. 48-51). The motion was fully briefed by November 17, 2016.

16 By Order dated December 5, 2016 (Dkt. No. 52), the Court granted Defendants’ motion to
17 dismiss, without prejudice. Its Order gave Plaintiffs until January 6, 2017 to file a further amended
18 complaint.

19 Counsel for Plaintiffs and Defendants thereafter engaged in extensive settlement
20 negotiations, while Plaintiffs continued to investigate a potential amended pleading, including
21 through work done by their private investigator. An understanding in principle was reached on
22 December 29, 2016 to settle the Action as to all Defendants and to fully resolve all pending claims
23 of Plaintiffs and the proposed settlement class in this Action in exchange for creation of a one
24 million one hundred thousand dollar (\$1,100,000) Settlement Fund (defined below) and the giving
25 of mutual releases as described herein. Thereafter, Lead Counsel and counsel for Settling
26 Defendants negotiated a Memorandum of Understanding, executed on January 5, 2017.

1 Per a Stipulated Schedule between Plaintiffs and Settling Defendants, which they filed on
2 January 5, 2017 (Dkt. No. 53) and which the Court so ordered on January 9, 2017 (Dkt. No. 54),
3 the deadline for Lead Plaintiff to file a further amended complaint has been stayed pending the
4 outcome of the settlement approval process.

5 **II. PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLEMENT**

6 Lead Counsel have conducted a thorough investigation relating to the claims and the
7 underlying events and transactions alleged in the Action. Specifically, the investigation included,
8 among other things: (i) interviews with many former Hortonworks employees; (ii) extensive
9 consultation with, and analysis by, damages experts; (iii) detailed reviews of Hortonworks' public
10 filings, annual reports, press releases, and other publicly available information; (iv) review of
11 analysts' reports and articles relating to Hortonworks; and (v) research of the applicable law with
12 respect to the claims asserted in the complaints filed in the litigation and the potential defenses
13 thereto.

14 Plaintiffs and Lead Counsel believe that the claims asserted in the Action have merit.
15 However, Plaintiffs and Lead Counsel recognize and acknowledge the expense and length of
16 continued proceedings necessary to prosecute this Action against Settling Defendants, such as a
17 second motion to dismiss, and, potentially, a motion for class certification, a cross-motion for
18 summary judgment, trial, and appeals. Plaintiffs are entering into this Settlement in view of,
19 among other things, the significant funds the Settlement will provide to Settlement Class Members
20 and the avoidance of the uncertainties, burden, risk, and expense of further litigation against the
21 Settling Defendants. Plaintiffs and Lead Counsel are mindful of the inherent problems of proof
22 of, and possible defenses to, the federal securities law violations asserted in the Action, as already
23 highlighted by this Court's Order granting Defendants' first motion to dismiss. Based on the
24 foregoing, and in acknowledgement of this Court's rulings to this point, Plaintiffs and Lead
25 Counsel have concluded that the terms and conditions of this Stipulation confer substantial benefits
26 upon the Settlement Class; are fair, reasonable, and adequate to the Settlement Class; and that it is

1 in the best interests of the Settlement Class to settle the claims asserted in the Amended Complaint
2 against Defendants Hortonworks, Bearden, and Davidson now, pursuant to the terms and
3 provisions of this Stipulation.

4 As set forth in ¶60 below, and pursuant to the Federal Rules of Evidence, this Stipulation
5 shall in no event be construed as or deemed to be evidence of any admission or concession by the
6 Plaintiffs or any Settlement Class Member or Lead Counsel that any of the claims lack merit, that
7 any of the Settling Defendants' defenses to the claims have merit, or that damages recoverable in
8 the action would not have exceeded the Settlement Fund amount.

9 **III. SETTling DEFENDANTS' DENIALS OF LIABILITY**

10 The Settling Defendants have denied and continue to deny each and all of the claims,
11 contentions, and allegations made in the Action. They have expressly denied and continue to deny
12 that they have violated the federal securities laws or any other laws or have otherwise misled
13 investors as alleged in the Action. Each Settling Defendant has denied and continues to deny
14 specifically each and all of the claims alleged in the Action; all charges of wrongdoing or liability
15 against them arising out of any of the conduct, statements, acts, or omissions, alleged in the Action;
16 the allegations that any of the Settling Defendants made any material misstatements or omissions;
17 and that any member of the Settlement Class has suffered damages resulting from the conduct
18 alleged in the Action. In addition, the Settling Defendants maintain that they have meritorious
19 defenses to the claims alleged in the Action.

20 Nonetheless, the Settling Defendants have concluded that further conduct of the Action
21 could be protracted, burdensome, expensive, and distracting. The Settling Defendants also have
22 taken into account the uncertainty, risks, and costs inherent in any litigation, especially in complex
23 cases such as this Action. The Settling Defendants have, therefore, determined that it is desirable
24 and beneficial to them that the Action be fully, finally, and forever resolved, discharged, and settled
25 in the manner and upon the terms and conditions set forth in this Stipulation.

1 As set forth in ¶60 below, and pursuant to the Federal Rules of Evidence, this Stipulation
2 shall in no event be construed as or deemed to be evidence of any admission or concession by the
3 Settling Defendants with respect to any claim of any fault or liability or wrongdoing or damage
4 whatsoever.

5 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

6 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
7 Plaintiffs (for themselves and all Settlement Class Members), on the one hand, and the Settling
8 Defendants, on the other hand, by and through their respective counsel or attorneys of record, that,
9 subject to the approval of the Court, in consideration of the benefits flowing to them from the
10 Settlement set forth herein, the Action and the Settled Claims shall be finally and fully
11 compromised, settled, and released, and the Action shall be dismissed with prejudice, as to the
12 Settling Defendants, upon and subject to these terms and conditions set forth herein:

13 **DEFINITIONS**

14 1. In addition to the other defined terms herein, the following definitions shall apply
15 in this Stipulation:

16 (a) “Action” means *Monachelli v. Hortonworks, Inc.*, No. 3:16-cv-00980-SI
17 (N.D. Cal.).

18 (b) “Amended Complaint” means the First Consolidated Amended Complaint
19 (Dkt. No. 42) filed in the Action, which the Court dismissed. While the Court’s dismissal was
20 without prejudice, affording Plaintiffs the opportunity to file a further amended complaint, the
21 parties entered into this Settlement before the deadline for such further amendment, which
22 Plaintiffs never filed.

23 (c) “Authorized Claimant” means a Settlement Class Member who submits a
24 timely and valid Proof of Claim to the Settlement Administrator, in accordance with the
25 requirements established by the Court, which is approved for payment from the Settlement Fund.

1 (d) "Claimant" means a Settlement Class Member who submits a Proof of
2 Claim to the Settlement Administrator seeking to be eligible to share in the proceeds of the
3 Settlement Fund.

4 (e) "Class Period" means the period of August 5, 2015 through January 15,
5 2016 (both dates inclusive).

6 (f) "Defendant Claims" means any and all claims, rights, causes of action, and
7 liabilities of every nature and description, whether known or Unknown Claims, that arise out of or
8 relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action
9 against the Settling Defendants, which any of the Settling Defendants could pursue against the
10 Plaintiffs, Lead Counsel, or any Settlement Class Member or their attorneys, agents, experts, or
11 investigators. Defendant Claims do not include any claims relating to the enforcement of the
12 Settlement or any claims against any Person who submits a request for exclusion from the
13 Settlement Class that is accepted by the Court.

14 (g) "Effective Date" means the first date by which all of the events and
15 conditions specified in ¶53 below have been met and have occurred, at which time the Settlement
16 contemplated by this Stipulation shall become effective.

17 (h) "Escrow Account" means the escrow account or accounts to be established
18 by Lead Counsel at Huntington National Bank, into which the Settlement Consideration shall be
19 wired, transferred, or otherwise paid pursuant to ¶11 below.

20 (i) "Escrow Agent" means Huntington National Bank.

21 (j) "Final" means, with respect to any order of court, including, without
22 limitation, the Judgment, that such order represents a final and binding determination of all issues
23 within its scope and is not subject to further review on appeal or otherwise. Without limitation, an
24 order becomes "Final" when: (i) no appeal has been filed and the prescribed time for commencing
25 any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed
26 and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order

1 has been affirmed in all material respects and the prescribed time, if any for commencing any
2 further appeal has expired. For purposes of this definition of “Final,” an “appeal” includes any
3 motion to alter or amend under Rule 52(b) or Rule 59(e) of the Federal Rules of Civil Procedure,
4 any appeal as of right, discretionary appeal, interlocutory appeal, petition for writ of *certiorari*, or
5 other proceeding involving writs of *certiorari* or mandamus, and any other proceedings of like
6 kind. Any appeal or other proceeding pertaining solely to an order or the part of an order adopting
7 or approving a Plan of Allocation or solely to any order or the part of an order issued solely with
8 respect to an application for attorneys’ fees and expenses pursuant to ¶¶ 45-49 herein shall not in
9 any way delay or preclude the Judgment from becoming Final.

10 (k) “Individual Defendants” means Robert G. Bearden and Scott J. Davidson.

11 (l) “Judgment” means the Judgment and Order of Final Approval to be entered
12 by the Court following the settlement fairness hearing (“Settlement Hearing”) approving the
13 Settlement, substantially in the form attached hereto as Exhibit E.

14 (m) “MOU” means the Memorandum of Understanding executed by the parties
15 on January 5, 2017.

16 (n) “Net Settlement Fund” means the Settlement Fund, less (i) any taxes;
17 (ii) any Notice and Administration Costs; and (iii) any attorneys’ fees, litigation expenses, and
18 Plaintiff compensatory awards awarded by the Court.

19 (o) “Notice” means the Notice of Pendency and Proposed Settlement of Class
20 Action, Motion for Attorneys’ Fees and Expenses, and Settlement Fairness Hearing, in all material
21 respects in the form attached hereto as either Exhibit B1 (long form) or Exhibit B2 (short form),
22 whichever is approved by the Court in light of the circumstances present at the time of its
23 Preliminary Approval Order, which is to be sent to the Settlement Class.

24 (p) “Notice and Administration Costs” means the costs, fees, and expenses that
25 are incurred by the Settlement Administrator and/or the Escrow Agent in connection with
26 administering the Settlement, including but not limited to: (i) providing notices to the Settlement
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1 Class; (ii) administering the claims process, (iii) engaging in Settlement-related communications
2 with Settlement Class Members, and (iv) overseeing the administration of the Escrow Account.

3 (q) "Person" means an individual, corporation, limited liability company,
4 professional corporation, partnership, domestic partnership, limited partnership, limited liability
5 partnership, marital community, association, joint stock company, joint venture, joint venturer,
6 estate, legal representative, trust or trustee, unincorporated association, government or any political
7 subdivision or agency thereof, or any other business or legal entity.

8 (r) "Plan of Allocation" means the plan for allocating the Net Settlement Fund,
9 as set forth on page 16 of Exhibit B1, or such other plan of allocation as the Court may approve.

10 (s) "Preliminary Approval Order" means the order, substantially in the form
11 attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement
12 and directing that notice be provided to the Settlement Class.

13 (t) "Proof of Claim" means the Proof of Claim and Release Form, substantially
14 in the form attached hereto as Exhibit D, which a putative Settlement Class Member must complete
15 and timely submit to the Settlement Administrator if that Settlement Class Member seeks to be
16 eligible to share in a distribution of the Net Settlement Fund.

17 (u) "Publication Notice" means the Summary Notice of Pendency and
18 Proposed Settlement of Action and Settlement Hearing, substantially in the form attached as
19 Exhibit C, which is to be published in a national business publication or via a national business
20 newswire, as in the normal course of class action settlement notices, and be posted also on the
21 Claims Administrator's website.

22 (v) "Recognized Claim" means the amount of an Authorized Claimant's loss
23 that is determined by the Settlement Administrator to be compensable under the Plan of Allocation.

24 (w) "Released Persons" means, collectively, each and all of (i) the Settling
25 Defendants, the members of each Individual Defendant's immediate family, any entity in which
26 any Settling Defendant or member of any Individual Defendant's immediate family has, or had

1 during the Class Period, a controlling interest (directly or indirectly), any estate or trust of which
2 any Individual Defendant is a settlor or which is for the benefit of any Individual Defendant and/or
3 members of his family; and (ii) for each and every Person listed in part (i), their respective past,
4 present, and future heirs, executors, administrators, predecessors, successors, assigns, employees,
5 agents, affiliates, analysts, assignees, attorneys, auditors, co-insurers, commercial bank lenders,
6 controlling shareholders, directors, divisions, domestic partners, financial advisors, general or
7 limited partners, general or limited partnerships, insurers, investment advisors, investment
8 bankers, investment banks, joint ventures and joint venturers, managers, managing directors,
9 marital communities, members, officers, parents, legal representatives, principals, reinsurers,
10 shareholders, spouses, subsidiaries (foreign or domestic), trustees, underwriters and other retained
11 professionals, in their respective capacities as such.

12 (x) “Settlement” means this Stipulation and Agreement of Settlement and the
13 settlement contained herein.

14 (y) “Settlement Administrator” means the firm of Strategic Claims Services
15 which, subject to Court approval, shall administer the Settlement, including sending a mailed
16 Notice to Settlement Class Members in the form of either Exhibit B1 or Exhibit B2 hereto,
17 arranging for publication of the Notice in the form of Exhibit C hereto, processing claims, and
18 performing such other administrative functions as are required under this Stipulation.

19 (z) “Settlement Administration Account” means an interest-bearing account to
20 be maintained by Lead Counsel with the Escrow Agent for payment of the expenses incurred by
21 the Settlement Administrator in administering the Settlement.

22 (aa) “Settlement Amount” means one million one hundred thousand dollars
23 (\$1,100,000.00).

24 (bb) “Settlement Class” means all Persons who purchased or otherwise acquired
25 Hortonworks securities during the Class Period. Excluded from the Settlement Class are the
26 Settling Defendants and their immediate family members; any officer or director of Hortonworks
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1 during the Class Period; any entity in which any Settling Defendant has, or had during the Class
2 Period, a controlling interest; and the heirs, successors-in-interest, or assigns of any excluded
3 person.

4 (cc) “Settled Claims” means the Settlement Class Claims and the Defendant
5 Claims.

6 (dd) “Settlement Class Claims” means, collectively, any and all claims, rights,
7 liabilities, and causes of action of every nature and description whatsoever, whether known or
8 Unknown Claims, contingent or absolute, mature or unmature, discoverable or undiscoverable,
9 liquidated or unliquidated, accrued or unaccrued, including those that are concealed or hidden,
10 regardless of legal or equitable theory, that any of Plaintiffs or the Settlement Class Members: (i)
11 were actually asserted in the Amended Complaint; (ii) could have or might have asserted in the
12 Amended Complaint and/or in any other litigation, action, or forum, and which arise out of, are
13 based upon, or are related in any way, directly or indirectly, in whole or in part, to (a) both: (1) the
14 allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set
15 forth, or referred to in the Amended Complaint, and (2) any purchase, sale, acquisition of, or
16 decision to hold, Hortonworks common stock during the Settlement Class Period; and/or (b) the
17 Settling Defendants’ defense or settlement of the Action and/or the Settling Defendants’ defense
18 or settlement of the Settlement Class Claims; and/or (iii) could or might assert related to the
19 administration of the Settlement with respect to which the Released Persons’ obligations are
20 limited to the requirement that the Settling Defendants pay the Settlement Consideration and assist
21 with identifying Settlement Class Members and excluded persons as set forth below.
22 Notwithstanding the foregoing, “Settlement Class Claims” does not include claims relating to the
23 enforcement of the Settlement.

24 (ee) “Settlement Class Member” means a Person who is a member of the
25 Settlement Class that does not exclude himself, herself, or itself by filing a request for exclusion
26 in accordance with the requirements set forth in the Notice.

1 (ff) "Settlement Consideration" means the Settlement Amount that Settling
2 Defendants shall pay or cause to be paid into the Escrow Account within twenty-one (21) days
3 after the later of (i) execution of this Stipulation; or (ii) receipt by Settling Defendants' counsel
4 from Lead Counsel of complete and accurate wiring instructions, payment address, and a complete
5 and accurate W-9 form.

6 (gg) "Settlement Fund" means the Settlement Consideration plus any and all
7 interest accrued thereon in the Escrow Account.

8 (hh) "Settlement Fund Distribution Order" means an order entered by the Court
9 authorizing and directing distribution, in whole or in part, of the Net Settlement Fund to the
10 Authorized Claimants.

11 (ii) "Settling Defendants" means Defendants Hortonworks, Bearden, and
12 Davidson.

13 (jj) "Settling Parties" means Plaintiffs, on behalf of themselves and the
14 Settlement Class Members, and the Settling Defendants.

15 (kk) "Taxes" means: (i) all federal, state, and/or local taxes of any kind on any
16 income earned by the Settlement Fund; (ii) any taxes or tax detriments that may be imposed upon
17 the Settling Defendants or their counsel with respect to any income earned by the Settlement Fund
18 for any period during which the Settlement Fund does not qualify as a "qualified settlement fund"
19 for federal or state income tax purposes, provided that any such taxes or tax detriments are reported
20 to Lead Counsel and the Escrow Agent at least fourteen (14) days before distribution of the Net
21 Settlement Fund to the Settlement Class Members; and (iii) the reasonable and necessary costs and
22 expenses incurred in connection with determining the amount of, and paying, any taxes owed by
23 the Net Settlement Fund (including, without limitation, the reasonable and necessary costs and
24 expenses of tax attorneys and accountants).

25 (ll) "Unknown Claims" means collectively, any and all Settlement Class Claims
26 that any Plaintiff or any other Settlement Class Member does not know or suspect to exist in his,
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1 her, or its favor, and any Defendant Claims that any Settling Defendant does not know or suspect
2 to exist in his, her or its favor, which, if known by him, her, or it, might have affected his, her, or
3 its decision to enter into this Settlement, execute this Stipulation, and agree to all the various
4 releases set forth herein, or might have affected his, her, or its decision not to object to this
5 Settlement or not exclude himself, herself, or itself from the Settlement Class. Unknown Claims
6 include, without limitation, those claims in which some or all of the facts composing the claim
7 may be unsuspected, undisclosed, concealed, or hidden. The parties stipulate and agree that this
8 provision is to be interpreted to the broadest extent permitted by any applicable law, regulation, or
9 rule.

10 **CAFA NOTICE**

11 2. Pursuant to the Class Action Fairness Act (“CAFA”), no later than ten (10) calendar
12 days after this Stipulation is filed with the Court, the Settling Defendants shall complete service
13 on the appropriate federal and state government officials of all notices required under the Class
14 Action Fairness Act, 28 U.S.C. § 1715, and shall thereafter notify Lead Counsel as to completion
15 of such service.

16 **CLASS CERTIFICATION**

17 3. For the sole purpose of the Settlement and for no other purpose, the Settling Parties
18 stipulate, agree, and consent to: (a) certification of the Action as a class action pursuant to Fed. R.
19 Civ. P. 23(a) and 23(b)(3) on behalf of the Settlement Class; (b) appointment of Plaintiffs as class
20 representatives; and (c) appointment of Lead Counsel as class counsel for the Settlement Class
21 pursuant to Fed. R. Civ. P. 23(g). Following execution of this Stipulation, Plaintiffs, with the
22 consent of Settling Defendants, shall apply to the Court for entry of the Preliminary Approval
23 Order in the form attached as Exhibit A hereto, which will certify the Action to proceed as a class
24 action for settlement purposes only.

25 4. The certification of the Settlement Class shall be binding only with respect to the
26 Settlement of the Action and only if the Judgment contemplated by this Stipulation becomes Final
27 and the Effective Date occurs. Nothing in this Stipulation shall serve in any fashion, either directly

1 or indirectly, as evidence of or support for certification of a class other than for settlement
2 purposes, and the Settling Parties intend that the provisions herein concerning certification of the
3 Settlement Class shall have no effect whatsoever in the event the Settlement and Judgment do not
4 become Final. Settling Defendants expressly reserve the right to contest class certification in the
5 event the Settlement is terminated or the Effective Date does not occur for any other reason.

6 **RELEASES AND BAR ORDER**

7 5. The obligations incurred pursuant to this Stipulation shall be in full and final
8 disposition of the Action as to the Settling Defendants, and shall fully and finally release any and
9 all Settled Claims (including Unknown Claims) against the Settling Defendants and all Released
10 Persons.

11 6. Upon the Effective Date, Plaintiffs and each of the other Settlement Class
12 Members, on behalf of themselves and their respective spouses, heirs, executors, beneficiaries,
13 administrators, successors, assigns, and any Person(s) (claiming now or in the future) through or
14 on behalf of any of them directly or indirectly, regardless of whether such Plaintiff or Settlement
15 Class Member ever seeks or obtains by any means (including, without limitation, by submitting a
16 Claim to the Settlement Administrator) any distribution from the Net Settlement Fund: (a) shall be
17 deemed by this Settlement to have, and by operation of law and of the Judgment shall have, fully,
18 finally, and forever released, relinquished, waived, dismissed, and discharged each and all of the
19 Settlement Class Claims (including Unknown Claims), against each and all of the Released
20 Persons, and shall have covenanted not to sue any Released Person with respect to any Settlement
21 Class Claims (including any Unknown Claims) except to enforce the releases and other terms and
22 conditions contained in this Stipulation or the Judgment entered pursuant hereto and (b) shall be
23 forever permanently barred, enjoined and restrained from commencing, instituting, asserting,
24 maintaining, enforcing, prosecuting or otherwise pursuing, either directly or in any other capacity,
25 any of the Settlement Class Claims (including any Unknown Claims) against any Released Person
26 in the Action or in any other action or any proceeding, in any state, federal or foreign court of law
27

1 or equity, arbitration tribunal, administrative forum or other forum of any kind. The foregoing
2 provisions shall not apply to any Person who would be a member of the Settlement Class and
3 timely excludes himself, herself or itself.

4 7. By entering into this Stipulation, Plaintiffs represent and warrant that they have not
5 assigned, hypothecated, conveyed, transferred or otherwise granted or given any interest in the
6 Settlement Class Claims to any other Person, and the Settling Defendants represent and warrant
7 that they have not assigned, hypothecated, conveyed, transferred or otherwise granted or given any
8 interest in the Defendant Claims to any other Person.

9 8. The Proof of Claim form to be executed by Claimants shall release all Settlement
10 Class Claims (including Unknown Claims) against all Released Persons and shall be substantially
11 in the form attached hereto as Exhibit D.

12 9. Upon the Effective Date, Settling Defendants, for themselves and on behalf of each
13 of their respective spouses, heirs, executors, beneficiaries, administrators, successors, assigns and
14 any Person(s) (claiming now or in the future) through or on behalf of any of them directly or
15 indirectly: (a) shall be deemed to have, and by operation of law and of the Judgment shall have,
16 fully, finally and forever released, relinquished, waived, discharged, and dismissed each and all of
17 the Defendant Claims (including Unknown Claims) against Plaintiffs in the Action, Lead Counsel
18 and their attorneys, and all other Settlement Class Members, the members of each Settlement Class
19 Member's immediate family, any entity in which any member of any Settlement Class Member's
20 immediate family has or had a controlling interest (directly or indirectly), any estate or trust of
21 which any Settlement Class Member is the settlor or which is for the benefit of any Settlement
22 Class Member and/or members of his or her family and (b) shall be forever permanently barred,
23 enjoined and restrained from commencing, instituting, asserting, maintaining, enforcing,
24 prosecuting or otherwise pursuing, either directly or in any other capacity, any of the Defendant
25 Claims (including any Unknown Claims) against the Plaintiffs, Lead Counsel and their attorneys,
26 and all other Settlement Class Members in the Action or in any other action or any proceeding, in
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1 any state, federal or foreign court of law or equity, arbitration tribunal, administrative forum or
2 other forum of any kind.

3 10. It is understood that Plaintiffs and the other Settlement Class Members or Settling
4 Defendants, or any of them, may hereafter discover additional or different facts from those that he,
5 she, or it now knows or believes to be true with respect to the subject matter of the Settlement
6 Class Claims or Defendant Claims (including Unknown Claims), but each of the Plaintiffs and the
7 Settling Defendants shall, upon the Effective Date, expressly fully, finally and forever discharge,
8 settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed
9 to have, and by operation of law and of the Judgment shall have, expressly fully, finally, and
10 forever discharged, settled and released any and all Settled Claims. Plaintiffs and Settling
11 Defendants acknowledge, and the Settlement Class Members by operation of law and of the
12 Judgment shall be deemed to have acknowledged, that the foregoing waiver of Settled Claims that
13 are Unknown Claims (and the inclusion of “Unknown Claims” in the definition of Settlement Class
14 Claims and Defendant Claims) was separately bargained for and is a material element of the
15 Settlement.

16 **SETTLEMENT CONSIDERATION**

17 11. As full and complete consideration for the Settlement, Settling Defendants shall
18 pay or cause to be paid the Settlement Amount into the Escrow Account within twenty-one (21)
19 days after the later of (i) execution of this Stipulation; or (ii) receipt by Settling Defendants’
20 counsel from Lead Counsel of complete and accurate wiring instructions, payment address, and a
21 complete and accurate W-9 form.

22 12. Other than the obligation of the Settling Defendants to pay or cause to be paid the
23 Settlement Amount into the Escrow Account, under no circumstances will any Released Person
24 have any obligation to make any payment pursuant to this Settlement set forth herein, and no
25 responsibility for, or liability or obligation whatsoever, to anyone, with respect to the Settlement
26 Fund, the Net Settlement Fund, the Escrow Account, the Settlement Agent, the Settlement Agent’s

1 actions, any transaction executed or approved by the Escrow Agent, the maintenance,
2 administration, investment or distribution of the Settlement Fund or the Net Settlement Fund, the
3 establishment or administration of the Plan of Allocation, the determination, administration or
4 calculation of claims, the payment or withholding of Taxes, the administration of the Settlement,
5 or any losses incurred in connection with such matters. The Released Persons shall have no further
6 or other liability or obligations to Plaintiffs, Lead Counsel, or any Settlement Class Member with
7 respect to the Settlement Class Claims, except as expressly stated herein. Notwithstanding
8 anything herein to the contrary, the Escrow Agent shall be obligated to withhold from distribution
9 to Authorized Claimants all funds necessary to pay all Notice and Administration Costs and all
10 other fees, costs and expenses associated with administration of the Settlement and the Settlement
11 Fund; neither the Settling Defendants nor their counsel nor any other Released person is
12 responsible therefor, nor shall they have any liability whatsoever with respect thereto, above and
13 beyond the Settling Defendants' obligation to pay the Settlement Amount into the Escrow Account
14 as set forth above. The Settlement Fund shall indemnify and hold harmless all Released Persons
15 for any costs of administration of the Settlement and the Settlement Fund of any kind whatsoever
16 (including, without limitation, costs associated with any such indemnification).

17 13. The interest earned on the Settlement Fund pursuant to ¶15 below shall be for the
18 benefit of the Settlement Class if the Settlement and Judgment become Final. If the Judgment
19 does not become Final or the Settlement is terminated, the interest earned on the Settlement Fund
20 shall be returned to the Settling Defendants.

21 **USE OF SETTLEMENT FUND AND**
22 **ADMINISTRATION OF THE ESCROW ACCOUNT**

23 14. Prior to any distribution of the Net Settlement Fund, the Settlement Fund shall be
24 used to pay: (i) any Taxes; (ii) any Notice and Administration Costs; and (iii) any attorneys' fees,
25 litigation expenses, and Plaintiff compensatory awards awarded by the Court. Under no
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1 circumstances shall Plaintiffs or any Settlement Class Member or Lead Counsel have any
2 responsibility for payment of such costs.

3 15. Except as provided herein or pursuant to orders of the Court, the Net Settlement
4 Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow
5 Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction
6 of the Court until such time as the Net Settlement Fund is distributed pursuant to this Stipulation
7 and/or further order of the Court. Until such time as the Settlement and Judgment become Final,
8 the Escrow Agent shall invest the Settlement Consideration in United States Treasury Bills with a
9 maturity of 90 days or less in an account held at a nationally recognized financial institution and
10 shall collect and reinvest all interest accrued thereon. Additionally, if short-term placement of the
11 funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in
12 any account that is fully insured by the FDIC or backed by the full faith and credit of the United
13 States.

14 16. The Escrow Agent will bear all responsibility and liability for managing the
15 Settlement Fund for the benefit of the Settlement Class, and cannot assign or delegate its
16 responsibilities without approval of Lead Counsel. Statements of account will be provided to Lead
17 Counsel on a monthly basis until the Judgment becomes Final.

18 17. The Escrow Account will, to the extent possible, be a "Qualified Settlement Fund"
19 within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as
20 administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3),
21 shall be solely responsible for ensuring that the Escrow Account complies with the requirements
22 and regulations governing Qualified Settlement Funds, for filing all informational and other tax
23 returns (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k))
24 for the Settlement Fund, and for paying all Taxes owed with respect to the Settlement Fund. The
25 Released Persons shall not have any liability or responsibility for any such Taxes. Upon written
26 request, the Settling Defendants will provide to the Escrow Agent the statement described in
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1 Treasury Regulation § 1.468B-1(j). The Escrow Agent shall timely make such elections as may
2 be advisable to carry out this paragraph, including making a “relation back election” as described
3 in Treasury Regulation § 1.468B-2(k)(3), to cause the Qualified Settlement Fund to come into
4 existence at the earliest allowable date, and shall take or cause to be taken all such actions as may
5 be necessary or appropriate in connection therewith.

6 18. In the event the Judgment does not become Final or the Settlement is terminated as
7 provided herein, within ten (10) business days of entry of the order rendering the Settlement and
8 Judgment non-Final or notice of the Settlement being terminated, all monies then held in the
9 Escrow Account, including interest earned but less any costs or expenses properly incurred as set
10 forth herein, shall be returned to Settling Defendants. Plaintiffs and the Settlement Class Members
11 shall have no responsibility for the return of such consideration. Once the Settlement and
12 Judgment become Final, no monies shall revert to the Settling Defendants.

13 **USE AND ADMINISTRATION OF SETTLEMENT ADMINISTRATION ACCOUNT**

14 19. Upon entry of the Preliminary Approval Order, the Escrow Agent may transfer two
15 hundred thousand dollars (\$200,000.00) from the Escrow Account to the Settlement
16 Administration Account in order to pay reasonable, necessary, and actually incurred Notice and
17 Administration Costs related to the Settlement. No other disbursements from the Escrow Account
18 related to the Settlement will occur until the Judgment becomes Final, absent agreement of the
19 Settling Parties and approval from the Court.

20 20. After the Judgment becomes Final, any remaining monies in the Settlement
21 Administration Account shall be transferred back to the Escrow Account. In the event the
22 Judgment does not become Final or the Settlement is terminated as provided herein, within ten
23 (10) business days of entry of the order rendering the Settlement and Judgment non-Final or notice
24 of the Settlement being terminated, all monies then held in the Settlement Administration Account,
25 including interest earned, shall be returned to Settling Defendants except for any monies already
26 paid, or then due to be paid for work already performed, for administration costs, including notice

1 costs and Taxes. Plaintiffs and the Settlement Class shall have no responsibility for the return of
2 such consideration. Once the Settlement and Judgment become Final, no monies shall revert to
3 the Settling Defendants.

4 21. Without prior approval from the Court, Lead Counsel may pay the Settlement
5 Administrator from the Settlement Administration Account for the reasonable and necessary costs
6 and expenses associated with administering the Settlement, including without limitation
7 identifying and notifying members of the Settlement Class.

8 **PLAN OF ALLOCATION**

9 22. The Settlement Administrator shall administer the Settlement subject to the
10 jurisdiction of the Court and pursuant to this Stipulation and the Plan of Allocation. The Plaintiffs
11 and Lead Counsel are solely responsible for formulation of the Plan of Allocation, and have
12 designed it so as to base Recognized Claims on only purchases of Hortonworks stock that occurred
13 during the Settlement Class Period and to give more credit for purchases made between November
14 4, 2015 and January 15, 2016 than for purchases made between August 5, 2015 and November 3,
15 2015.

16 23. The Plan of Allocation proposed in the Notice, as set forth on page 16 of Exhibit
17 B1 hereto or as accessible via the information provided in Exhibit B2 hereto, and Plaintiffs’
18 proposed form of order approving the Plan of Allocation, attached hereto as Exhibit F, are not
19 necessary terms of this Stipulation or the Settlement, and any change, modification, or alteration
20 to the Plan of Allocation by the Court shall not be grounds for termination of the Settlement. The
21 Plan of Allocation is to be considered by the Court separately from its determination of the fairness,
22 reasonableness, and adequacy of the Settlement as set forth in this Stipulation.

23 **ADMINISTRATION OF THE SETTLEMENT**

24 24. As part of the Preliminary Approval Order, Plaintiffs shall seek appointment of the
25 Settlement Administrator. The Settlement Administrator shall administer the Settlement,
26 including but not limited to the process of receiving, reviewing, and approving or denying Proofs
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1 and determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon
2 each Authorized Claimant's Recognized Claim compared to the total Recognized Claims of all
3 Authorized Claimants (as set forth in the Plan of Allocation, or in such other plan of allocation as
4 the Court approves).

5 28. Any Settlement Class Member who does not submit a timely and valid Proof of
6 Claim will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will
7 otherwise be bound by all of the terms in this Stipulation and the Settlement, including the terms
8 of the Judgment to be entered in the Action and the releases provided for herein, and will be barred
9 from bringing any action against the Released Persons concerning the Settlement Class Claims.

10 29. For purposes of determining the extent, if any, to which a Settlement Class Member
11 shall be entitled to be treated as an Authorized Claimant, the following conditions (subject to Court
12 order) shall apply.

13 30. Each Settlement Class Member shall be required to submit a valid Proof of Claim,
14 supported by such documents as are designated therein, including proof of the transactions claimed
15 and the losses incurred thereon, or such other documents or proof as the Settlement Administrator,
16 in its discretion, may deem acceptable.

17 31. All Proofs of Claim must be submitted by the date specified in the Notice. Any
18 Settlement Class Member who fails to submit a Proof of Claim by such date shall be forever barred
19 from receiving any payment pursuant to the Settlement and this Stipulation, but shall in all other
20 respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of
21 the Judgment to be entered in the Action and the releases provided for herein, and will be barred
22 from bringing any action against the Released Persons with respect to any of the Settlement Class
23 Claims. Provided that it is received before the motion for the Settlement Fund Distribution Order
24 is filed, a Proof of Claim shall be deemed to have been submitted when posted, if received with a
25 postmark indicated on the envelope and if mailed by First-Class mail and addressed in accordance
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1 with the instructions provided in the Notice. In all other cases, the Proof of Claim shall be deemed
2 to have been submitted when actually received by the Settlement Administrator.

3 32. Each Proof of Claim shall be submitted to and reviewed by the Settlement
4 Administrator, who shall determine in accordance with this Stipulation and the Plan of Allocation
5 the extent, if any, to which each Claimant is an Authorized Claimant.

6 33. The administrative determinations of the Settlement Administrator accepting or
7 rejecting claims shall be presented to the Court on notice to the Settling Parties, for approval by
8 the Court in the Settlement Fund Distribution Order.

9 34. The Settling Parties submit to the jurisdiction of the Court for purposes of
10 implementing and enforcing the Settlement embodied in this Stipulation.

11 35. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court
12 with respect to the Claimant's claim, and the claim will be subject to investigation and discovery
13 under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall
14 be limited to that Claimant's status as a Settlement Class Member and the validity of the amount
15 of the Claimant's claim. No discovery shall be allowed on the merits of the Action or Settlement
16 in conjunction with the processing of the Proofs of Claim.

17 36. Payment pursuant to this Stipulation shall be deemed final and conclusive against
18 all Settlement Class Members. All Settlement Class Members whose claims are not approved by
19 the Court shall be barred from participating in the distribution from the Settlement Fund, but
20 otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the
21 terms of the Judgment to be entered in this Action and the releases provided for herein, and will
22 be barred from bringing any action against the Released Persons concerning the Settlement Class
23 Claims.

24 37. All proceedings with respect to the administration, processing, and determination
25 of claims and all controversies relating thereto, including disputed questions of law and fact with
26 respect to the validity of claims, shall be subject to the jurisdiction of this Court.

1 and Taxes shall be paid out of the Settlement Administration and Escrow Accounts without further
2 order of the Court. Under no circumstances shall Plaintiffs or any Settlement Class Member or
3 Lead Counsel have any responsibility for such costs or Taxes.

4 43. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the
5 Escrow Agent pursuant to the terms herein, and without prior Order of the Court. Any tax returns
6 prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with
7 the previous paragraph and in all events shall reflect that all Taxes (including any interest or
8 penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund
9 as provided herein. Further, Taxes and all related expenses shall be treated as, and considered to
10 be, a cost of administration of the Settlement Fund, and the Escrow Agent shall be obligated
11 (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized
12 Claimants any funds necessary to pay such amounts, including the establishment of adequate
13 reserves for any Taxes (as well as any amounts that may be required to be withheld under Treas.
14 Reg. § 1.468B-2(1)(2)); neither the Settling Defendants nor their counsel nor any other Released
15 Person is responsible therefor, nor shall they have any liability whatsoever with respect thereto,
16 nor shall they be liable for any reporting requirements that may relate thereto.

17 44. In all events, neither the Settling Defendants nor their counsel, nor any other
18 Released Person, shall have any responsibility for or liability whatsoever with respect to the Taxes
19 or the filing of any tax returns or other documents with the Internal Revenue Service or any state
20 or local taxing authority in connection with the Settlement Fund. The Settlement Fund shall
21 indemnify and hold all Released Persons harmless for any Taxes and related expenses on the
22 Settlement Fund after deposit into the Settlement Fund Account of any kind whatsoever (including,
23 without limitation, taxes payable by reason of any such indemnification). Defendants shall notify
24 the Escrow Agent promptly if Defendants receive any notice of any claim for Taxes relating to the
25 Settlement Fund.

1 (d) The Court has entered the Judgment, which has become Final, or in the
2 event that the Court enters an order of judgment not in all material respects in the form of the
3 Judgment and none of the Settling Parties elects to terminate the Settlement, the date that such
4 alternative judgment becomes Final;

5 (e) The Settling Defendants have not exercised their option to terminate the
6 Settlement pursuant to the provisions of this Stipulation (including the side agreement described
7 in ¶57 below); and

8 (f) Plaintiffs have not exercised their option to terminate the Settlement
9 pursuant to the provisions of this Stipulation.

10 54. Upon the occurrence of all of the events referenced in ¶53 herein, any and all
11 remaining interest or right of the Settling Defendants in or to the Settlement Fund shall be
12 absolutely and forever extinguished. Without limiting the foregoing, each Settling Defendant shall
13 have, in his or its sole and absolute discretion, the option to terminate the Settlement in its entirety
14 in the event that the Judgment, upon becoming Final, does not provide for the dismissal with
15 prejudice of the Action against him or it.

16 55. Each of the Settling Parties shall have the right to terminate his or its participation
17 in the Settlement by providing written notice of its election to do so (“Termination Notice”) to
18 counsel for the other Settling Parties hereto within thirty (30) days of any of the following:

19 (a) The Court enters an order expressly declining to enter the Preliminary
20 Approval Order in any material respect without reasonable leave to amend;

21 (b) The Court refuses to approve this Stipulation in any material respect without
22 reasonable leave to amend;

23 (c) The Court declines to enter the Judgment in any material respect; provided,
24 however, that this Settlement is expressly not conditioned on the Court’s approval of the proposed
25 Plan of Allocation, nor on the Court’s approval of Lead Counsel’s application for attorneys’ fees
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1 or expenses, nor on the Court’s approval of any compensatory award to Plaintiffs, and any change
2 in the Judgment relating to these items shall not be considered a material change; or

3 (d) The Judgment does not become Final.

4 56. In the event of a termination (whether under ¶55 or ¶57), this Stipulation and
5 releases provided for therein shall become null and void and of no further force and effect (except
6 for ¶¶ 4, 18, 20, 47, 56, 57, 58, 59, 60, 63, 71, 74, 75, 80, 82, 83, and 84, which shall survive the
7 termination), and the Settling Parties shall be deemed to have reverted to their respective positions
8 as they existed prior to the execution of the MOU, the execution of this Stipulation, and the entry
9 of any orders pursuant to this Stipulation. The Parties shall thereafter proceed in all respects as if
10 this Stipulation and any related orders had not been entered and shall work together to arrive at a
11 mutually agreeable schedule for resuming litigation of the Action in light of such developments,
12 with such schedule providing for twenty-one (21) days thereafter for Plaintiffs to file a further
13 amended complaint.

14 **OPT-OUT TERMINATION RIGHT, CONFIDENTIALITY**

15 57. The Settling Parties, by and through their respective counsel, are simultaneously
16 executing a side agreement, which sets forth certain conditions under which this Stipulation may
17 be withdrawn or terminated at the sole discretion of the Settling Defendants and which shall not
18 be filed with the Court, except that it may be brought to the attention of the Court, *in camera*, in
19 the event of a dispute between the Settling Parties or if so requested or as otherwise ordered by the
20 Court. If the Court requires that the side agreement be filed, the Settling Parties shall jointly
21 petition the Court to file it under seal and/or to redact the threshold set forth in its “blow provision”
22 for the termination contemplated by this paragraph, with such protections deemed to be important
23 by the Settling Parties, among other reasons, so as to not encourage or induce actions in opposition
24 to the Settlement by serial objectors or their counsel.

25 58. The Settling Parties will otherwise keep confidential the terms of the side
26 agreement.

1 Settlement Class Member, or their respective legal counsel, in any other civil, criminal, or
2 administrative action or proceeding, other than such actions or proceedings as may be necessary
3 to effectuate the provisions of this Stipulation, provided, however, that if this Stipulation is
4 approved by the Court, the Settling Defendants, the Plaintiffs, and any Settlement Class Member,
5 or their respective legal counsel, may refer to it to effectuate the liability protection and releases
6 granted them hereunder;

7 (d) Against any of the Settling Defendants as evidence of, or construed as
8 evidence of, any presumption, concession, or admission by any of them that the Settlement
9 Consideration represents the amount which could or would have been received after trial of the
10 Action against them;

11 (e) Against the Plaintiffs or any Settlement Class Member as evidence of, or
12 construed as evidence of, any presumption, concession, or admission by any of the Plaintiffs or
13 any Settlement Class Member that any of their claims are without merit, or that any defenses
14 asserted by the Settling Defendants have any merit, or that damages recoverable in the Action
15 would not have exceeded the Settlement Fund; and

16 (f) As evidence of, or construed as evidence of, any presumption, concession,
17 or admission that class certification is appropriate in this Action, except for purposes of this
18 Settlement.

19 **MISCELLANEOUS PROVISIONS**

20 61. All of the Exhibits attached hereto are hereby incorporated by reference as though
21 fully set forth herein. Notwithstanding the foregoing, in the event of a conflict or inconsistency
22 between the terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of
23 this Stipulation shall prevail.

24 62. The Settling Parties intend the Settlement to be a final and complete resolution of
25 all disputes which have been asserted, could have been asserted, or could be asserted by Plaintiffs
26 or the Settlement Class Members against the Settling Defendants and all Released Persons
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1 concerning the Settlement Class Claims and against the Plaintiffs and Settlement Class Members
2 by the Settling Defendants concerning the Defendant Claims. Accordingly, Settling Parties agree
3 not to assert in any forum that the litigation was brought by Plaintiffs or defended by the Settling
4 Defendants in bad faith or without a reasonable basis. The Settling Parties shall assert no claims
5 of any violation of Fed. R. Civ. P. 11 relating to the prosecution, defense, or settlement of this
6 Action. Moreover, none of the Settling Parties shall seek any cost-shifting claims against the
7 others. The Settling Parties agree that the Settlement Consideration and the other terms of the
8 Settlement were negotiated at arm's length in good faith by the Settling Parties, including during
9 numerous negotiating sessions, as described herein above, and reflect a settlement that was reached
10 voluntarily after consultation with experienced legal counsel.

11 63. This Stipulation may not be modified or amended except by a writing signed by all
12 signatories hereto or their successors-in-interest, nor may a Settling Party be deemed to have
13 waived any provision (including this provision) except by a writing signed by that Settling Party
14 or its successor-in-interest.

15 64. Neither the Settlement Class Members nor the Settling Defendants shall be bound
16 by this Stipulation if the Court modifies material terms hereof, provided, however, that it shall not
17 be a basis for Settlement Class Members to terminate the Settlement if the Court modifies any
18 proposed Plan of Allocation or criteria for allocation of the Net Settlement Fund amongst
19 Settlement Class Members, or the Plan of Allocation is modified on appeal. Nor shall it be a basis
20 to terminate this Stipulation if the Court disapproves of or modifies the terms of this Stipulation
21 with respect to the distribution of the Net Settlement Fund. Nor shall it be a basis to terminate this
22 Stipulation if the Court denies, in whole or in part, Lead Counsel's application for attorneys' fees
23 and expenses.

24 65. Lead Counsel, on behalf of the Settlement Class, is expressly authorized by
25 Plaintiffs to take all appropriate action required or permitted to be taken by the Settlement Class
26 pursuant to this Stipulation to effectuate its terms and also is expressly authorized to enter into any
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1 modifications or amendments to this Stipulation on behalf of the Settlement Class which Lead
2 Counsel deems appropriate.

3 66. Plaintiffs and Lead Counsel represent and warrant that none of Plaintiffs' claims or
4 causes of action referred to in this Action or this Stipulation has been assigned, encumbered, or in
5 any manner transferred in whole or in part.

6 67. Each counsel or other Person executing this Stipulation or any of its Exhibits on
7 behalf of any Settling Party hereby warrants and represents that such Person has the full authority
8 to do so and that he, she, or it has the authority to take appropriate action required or permitted to
9 be taken pursuant to this Stipulation to effectuate its terms.

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

12 69. The administration and consummation of the Settlement as embodied in this
13 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
14 purpose of, among other things, entering orders providing for the implementation and enforcement
15 of the terms of this Stipulation, including, without limitation, the releases provided for herein, and
16 any awards of attorneys' fees and expenses to Lead Counsel, and enforcing the terms of this
17 Stipulation.

18 70. The waiver by one Settling Party of any breach of this Stipulation by any other
19 Settling Party shall not be deemed a waiver by the waiving Settling Party of any other prior or
20 subsequent breach of this Stipulation or a waiver by any other Settling Party of any breach of this
21 Stipulation. Without further order of the Court, the Settling Parties may agree to reasonable
22 extensions of time to carry out any of the provisions of this Stipulation, unless such extensions
23 conflict with an Order of the Court, in which case the Settling Parties shall move the Court to
24 amend any such Order.

25 71. Other than the side agreement discussed in ¶57, this Stipulation and its Exhibits
26 constitute the entire agreement among the Settling Parties concerning this Settlement, and no
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1 representations, warranties, or inducements have been made by any Settling Party concerning this
2 Stipulation and its Exhibits other than those contained and memorialized in such documents.

3 72. This Stipulation may be executed in one or more counterparts, and the counterparts
4 when executed may be made into a composite which shall constitute one integrated original
5 agreement.

6 73. This Stipulation shall be binding upon, and inure to the benefit of, the Settling
7 Parties hereto and their successors, heirs, and assigns, including any corporation or other entity
8 into or with which any Settling Party or Released Person merges, consolidates, or reorganizes.

9 74. Any dispute regarding the interpretation or terms of this Stipulation shall be
10 submitted to a third party selected by agreement of the Settling Parties, who shall promptly mediate
11 the resolution of such dispute. If such mediation fails to produce an agreed resolution, or if the
12 Settling Parties cannot agree upon a mediator, the dispute shall be submitted to the Court.

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

18 76. The Settling Parties warrant that, in entering into this Settlement, they have relied
19 solely upon their own knowledge and investigation, and not upon any promise, representation,
20 warranty, or other statement by any other Settling Party, not expressly contained in this Stipulation
21 or any of the incorporated Settlement documents. It is understood by the Settling Parties that,
22 except for the matters expressly represented herein, the facts or law with respect to which this
23 Stipulation is entered into may turn out to be other than or different from the facts and law now
24 known to each Settling Party or believed by such party to be true; each Settling Party therefore
25 expressly assumes the risk of the facts or law turning out to be so different, and agrees that this
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1 Stipulation shall be in all respects effective and not subject to termination by reason of any such
2 different facts or law.

3 77. Lead Counsel and the Settling Defendants' counsel agree to cooperate fully with
4 one another in seeking Court approval of the Preliminary Approval Order, this Stipulation and the
5 Settlement, and to use best efforts to promptly agree upon and execute all such other
6 documentation as may be reasonably required to obtain final approval by the Court of the
7 Settlement.

8 78. Pending preliminary and final approval of the Court of the Settlement, as set forth
9 in this Stipulation and its attached Exhibits, all proceedings in the Action shall be stayed.

10 79. No part of the Settlement Consideration shall be allocated to the settlement of any
11 other action arising from the facts and circumstances at issue in the Action.

12 80. No Person shall have any claim against Plaintiffs, Lead Counsel, the Settlement
13 Administrator, the Escrow Agent, or any other agent designated by Lead Counsel based on
14 distribution determinations or claim rejections made substantially in accordance with this
15 Stipulation and the Settlement, the Plan of Allocation, or further orders of the Court, except in the
16 case of fraud or willful misconduct. No person shall have any claim under any circumstances
17 against the Settling Defendants or the Released Persons, based on any distributions,
18 determinations, claim rejections, or the design, terms, or implementation of the Plan of Allocation.

19 81. All dollar amounts in this Stipulation are in U.S. dollars.

20 82. The construction, interpretation, operation, effect, and validity of this Stipulation
21 and any ancillary documents necessary to effectuate it shall be governed by, construed, and
22 enforced in accordance with the internal, substantive laws of the State of California without giving
23 effect to that State's choice-of-law or conflicts-of-laws principles, except to the extent that federal
24 law requires that federal law governs. Subject to the provisions of ¶74, any dispute relating to this
25 Stipulation shall be brought exclusively in the United States District Court for the Northern District
26 of California, and each of the Settling Parties agrees not to contest subject matter jurisdiction or
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1 personal jurisdiction, or assert that such forum is inconvenient for any such dispute brought in this
2 Court.

3 83. Whether or not this Stipulation is approved by the Court and whether or not this
4 Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their counsel
5 shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts,
6 documents signed, and proceedings in connection with this Stipulation confidential.

7 84. All agreements made and Court Orders entered during the course of this Action
8 relating to the confidentiality of information shall survive this Settlement.

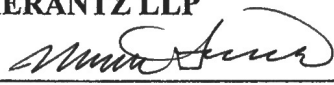
9 85. No opinion or advice concerning the tax consequences of the Settlement to
10 individual Settlement Class Members is being given or will be given by the Settling Parties or their
11 counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation.
12 Each Settlement Class Member's tax obligations, and the determination thereof, are the sole
13 responsibility of the Settlement Class Member, and it is understood that the tax consequences may
14 vary depending on the particular circumstances of each individual Settlement Class Member.

15 86. If any Settling Party is required to give notice to any other Settling Party under this
16 Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon
17 receipt of hand-delivery, overnight courier, email, or facsimile transmission with confirmation of
18 receipt. Notice shall be provided as follows:

19 If to Lead Counsel:	20 Matthew L. Tuccillo 21 POMERANTZ LLP 22 600 Third Avenue, 20th Floor 23 New York, NY 10016 24 Tel: (212)-661-1100 25 Fax: (917)-463-1044 26 mltuccillo@pomlaw.com
23 If to Counsel for Settling Defendants:	24 Jordan Eth (SBN 121617) 25 MORRISON & FOERSTER LLP 26 425 Market Street 27 San Francisco, California 94105-2482 28 Telephone: (415) 268-7000 Facsimile: (415) 268-7522 jeth@mofo.com

1 Dated: May 24, 2017

POMERANTZ LLP

2 By: 
Matthew L. Tuccillo

3 Jennifer Pafiti (SBN 282790)
4 468 North Camden Drive
5 Beverly Hills, California 90210
6 Telephone: (818) 532-6499
7 E-mail: jpafiti@pomlaw.com

8 Jeremy A. Lieberman
9 Matthew L. Tuccillo
10 600 Third Avenue, 20th Floor
11 New York, New York 10016
12 Telephone: (212) 661-1100
13 Facsimile: (917) 463-1044
14 Email: jalieberman@pomlaw.com
15 mltuccillo@pomlaw.com

*Counsel for Plaintiffs and Proposed Lead
Counsel for the Class*

12 Dated: May 24, 2017

MORRISON & FOERSTER LLP

13 By: 
14 Jordan Eth (SBN 121617)

15 Anna Erickson White (SBN 161385)
16 Ryan M. Keats (SBN 296463)
17 425 Market Street
18 San Francisco, California 94105-2482
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