

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PATRICK CREIGHTON and DAVID N.
COHEN, Individually and on Behalf of All
Others Similarly Situated,

Plaintiffs,

v.

OPPENHEIMER & CO., INC., CIBC
OPPENHEIMER CORP. A/K/A CIBC
WORLD MARKETS CORP., OPPENHEIMER
HOLDINGS, INC., JOHN DOES 1-50
(Fictitious Names of Unknown Individuals) and
XYZ CORPORATIONS 1-50 (Fictitious
Names of Unknown Liable Entities or
Partnerships),

Defendants.

)
) CASE NO. 06 CV 4607 (BSJ)
)
)

) CLASS ACTION
)

) **JOINT STIPULATION AND**
) **SETTLEMENT AGREEMENT**
)

IT IS HEREBY STIPULATED AND AGREED by and between Patrick Creighton (“Plaintiff Creighton” or “Class Representative Creighton”) and David N. Cohen (“Plaintiff Cohen” or “Class Representative Cohen”) (collectively “Plaintiffs” or the “Class Representatives”), individually and as representatives of the “Class” described herein, on the one hand, and Oppenheimer & Co., Inc. and Oppenheimer Holdings Inc. (“Defendants”), on the other hand, as set forth below:

I. THE CONDITIONAL NATURE OF THIS STIPULATION.

This Joint Stipulation and Settlement Agreement and all associated exhibits and attachments (herein “Stipulation”) is made for the sole purpose of settling the Litigation (as defined in Section 1.29 below) on a collective and class-wide basis. This Stipulation and the settlement it evidences is made in compromise of disputed claims. Because the Litigation was pled as a class and collective action, this settlement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis. In the event that the Court does not enter the Order Granting Final Approval of this Settlement, or in the event that the associated Judgment does not become a Final Judgment for any reason, this Stipulation (except for those provisions relating to the termination of the settlement set forth in Sections 2.1 and 2.12, and those provisions relating to the conditional nature and confidentiality of this settlement, non-admissibility and non-admission of wrongdoing or liability, the return of documents, and attorney fees and litigation costs set forth in Sections I, IV, 2.1.2, 2.12.4, 2.13.4, 2.13.5, 2.13.20, 2.13.21 and 2.13.22, and the last sentence of Section 2.13.15) shall be deemed null and void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose whatsoever, and the negotiation, terms and entry of the Stipulation shall remain subject to the Parties’ confidentiality and mediation agreements, and the provisions of Federal Rule of Evidence 408 and any similar or analogous state laws or rules.

Defendants deny all claims as to liability, damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief as well as the collective and class allegations asserted in the Litigation. Defendants have agreed to resolve the Litigation via this Stipulation, but to the extent this Stipulation is deemed void or the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge any and all claims and allegations asserted by Plaintiffs in the Litigation upon all procedural and factual grounds, including without limitation the ability to challenge class and collective action treatment on any grounds, to raise federal law preemption of the asserted claims, and to assert any and all other potential defenses or privileges. Plaintiffs and Class Counsel agree that Defendants retain and reserve these rights, and they agree not to take a position to the contrary; specifically Plaintiffs and Class Counsel agree that, if the Litigation was to proceed, they will not argue or present any argument, and hereby waive any argument that, based on the settlement or this Stipulation or any of the exhibits and attachments hereto, or any act performed or document executed pursuant to or in furtherance of the settlement or this Stipulation, Defendants should be barred from contesting class certification or collective action certification on any grounds, from raising federal law preemption of asserted claims, or from asserting any and all other potential defenses and privileges.

II. THE PARTIES TO THIS STIPULATION.

This Stipulation (with the associated exhibits and attachments) is made and entered into by and among the following Settling Parties: (i) the Class Representatives (on behalf of themselves and each of the Settlement Class Members, as defined below), with the assistance of Class Counsel; and (ii) Defendants, with the assistance of their counsel. The Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released State Law Claims and Released Federal Law Claims upon and subject to the terms and conditions hereof.

III. THE LITIGATION.

On May 4, 2006, Class Representative Patrick Creighton commenced a proposed class and collective action against Defendants in the Supreme Court of the State of New York, County of New York. On June 14, 2006, Defendants removed the case to the United States District Court for the Southern District of New York. On June 20, 2006, Class Representative Creighton filed the First Amended Complaint in the United States District Court for the Southern District of New York. *Creighton v. Oppenheimer & Co., Inc., et al.*, Case No. 1:06-CV-4607 (the “Creighton Litigation”).

On July 8, 2009, after months of discussions, informal exchange of information and negotiations through counsel experienced in these types of cases, Class Representative Creighton and Defendants participated in mediation before Michael Dickstein, a well-respected mediator. During that mediation, Class Representative Creighton and Defendants reached a proposed conditional settlement of the Creighton Litigation, which was memorialized in a term sheet (the “Term Sheet”).

On January 12, 2010, Class Representative David N. Cohen commenced a proposed class and collective action against Defendant Oppenheimer in the United States District Court for the Eastern District of New York. *Cohen v. Oppenheimer & Co., Inc.*, Case No. 2:10-CV-00117 (the “Cohen Litigation”). After discussion among Class Representative Creighton, Class Representative Cohen and Defendants (the “Parties”), an informal exchange of information and negotiations through counsel experienced in these types of cases, the Parties reached a proposed conditional settlement of the Creighton Litigation and the Cohen Litigation (the “Litigation”), which is memorialized in this Stipulation.

On February 2, 2011, in order to facilitate this settlement, Plaintiffs filed a Second Amended Complaint in the United States District Court for the Southern District of New York in which Class Representative Cohen was added as a plaintiff, and in which Plaintiffs allege, among other things, that (a) Class Members, as defined below: (i) were misclassified as exempt from federal and applicable state wage and hour laws and not paid the required compensation for

overtime and other hours they worked, and (ii) incurred business related expenses that Oppenheimer did not reimburse them for as required by law, and (b) Oppenheimer unlawfully made deductions from their compensation, *inter alia*, for errors, support staff compensation and business expenses. Plaintiffs assert, *inter alia*, claims for alleged unpaid overtime compensation, liquidated damages, attorneys' fees and litigation costs under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 et seq. ("FLSA"), the New York Minimum Wage and Hour Law, 12 N.Y.C.R.R. § 142-2.2 and § 142-2.14, and N.Y. Labor Law §§ 160, 191, 193, 198 and 650; claims and for alleged unpaid overtime and other compensation; claims for alleged failure to reimburse, indemnify, cover or pay for business costs; claims for alleged unlawful imposition, deduction or chargeback of business costs; claims for alleged failure to make, keep and provide accurate payroll records; claims for failure to provide rest and meal periods; and claims for premium pay, interest, liquidated damages, punitive damages, civil and statutory penalties (including late payment penalties, waiting time penalties, and penalties recoverable under the California Private Attorneys General Act, California Labor Code § 2698, *et seq.*), restitution, attorneys fees and litigation costs under the FLSA and applicable state wage and hour laws. Plaintiffs allege original federal court jurisdiction on the basis of federal question jurisdiction with respect to their Fair Labor Standards Act claims and Class Action Fairness Act ("CAFA") diversity jurisdiction and supplemental jurisdiction with respect to their state law claims. See 28 U.S.C. §§ 1331-32, 1367. A copy of the Second Amended Complaint is attached as Exhibit 1.

IV. DEFENDANTS' DENIAL OF WRONGDOING OR LIABILITY.

Defendants specifically and generally deny all of the claims asserted in the Litigation, deny any and all liability or wrongdoing of any kind whatsoever associated with any of the facts or claims alleged in the Litigation, and make no concessions or admissions of wrongdoing or liability of any kind whatsoever. Defendants maintain that all Class Members (i.e., all of its Financial Advisors and Registered Financial Advisor Trainees) are and always have been properly classified as exempt employees, that no unlawful deductions have been made, that no

reimbursement of any type is owed, and that, for any purpose other than settlement, the Litigation is not suitable or appropriate for class or collective action treatment pursuant to either Federal Rule of Civil Procedure 23 or 29 U.S.C. § 216(b). The Parties understand and agree that this settlement represents a compromise of disputed claims, and have agreed to enter into this Stipulation to avoid the risks, costs, and delays associated with further proceedings. Nothing contained in this Stipulation, nor the fact of the settlement or this Stipulation itself, nor the exhibits thereto, nor any act performed or document executed pursuant to or in furtherance of the settlement or this Stipulation may be construed or used as an admission or evidence of the validity of any claim or allegation, or of any act, omission, liability or wrongdoing on the part of Defendants in any action or proceeding of any kind whatsoever. Pursuant to Federal Rule of Evidence 408, and any other analogous rules of evidence that are applicable, this Stipulation, and the exhibits and attachments hereto, shall be inadmissible in any proceeding, except as necessary to effectuate or enforce the Parties' settlement.

V. CLAIMS OF THE CLASS REPRESENTATIVES AND BENEFITS OF SETTLEMENT.

The Class Representatives and Class Counsel believe that the claims asserted in the Litigation have merit and that evidence developed to date supports the claims. However, the Class Representatives and Class Counsel recognize and acknowledge the expense and length of time of the type of continued proceedings necessary to prosecute the Litigation against Defendants through trial and through appeals. The Class Representatives and Class Counsel have also taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in all litigation. Based upon their evaluation, the Class Representatives and Class Counsel have determined that the settlement set forth in the Stipulation is in the best interests of the Class Representatives and the Settlement Class.

VI. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT.

NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED by and between the Class Representatives (for themselves and all Settlement Class Members) and

Defendants, with the assistance of their respective counsel or attorneys of record, that, as among the Settling Parties, including all Settlement Class Members, the Litigation and the Released State Law Claims and Released Federal Law Claims, as defined below, shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Stipulation and the Judgment.

1. Definitions.

As used in all parts of this Stipulation, the following terms have the meanings specified below:

1.1 “Administration Costs” means, subject to Court approval: (a) the maximum amount of \$125,000 available to be paid to the Claims Administrator pursuant to Section 2.11; (b) the maximum amount of \$593,975.25 (25% of the Maximum Settlement Amount, without interest), plus 25 percent of the interest accrued pursuant to Section 1.30, available to be paid to Class Counsel for attorneys’ fees; (c) the maximum amount of \$30,000 available to be paid to Class Counsel for litigation costs; (d) the maximum amount of \$20,000 available to be paid as an individual Enhancement to each Class Representative; and (e) any and all other costs in connection with consummating the terms of this Stipulation, including the costs of all notices described in Section 2.6 and its subsections.

1.2 “Claim Certification Form Deadline” shall be the date sixty (60) days after the Class Notice is mailed to the Class Members by the Claims Administrator.

1.3 “Claims Administrator” means the third-party claims administration firm selected by the Parties and approved by the Court. The Parties have agreed to propose as the Claims Administrator, The Garden City Group, Inc., for the Court’s consideration and approval.

1.4 “Class” means the group of individuals employed by Oppenheimer in a Covered Position during the Class Period, or the estates of such individuals. The Class does not include any Persons who were never employed by Oppenheimer in a Covered Position during the Class Period.

1.5 “Class Counsel” means, collectively, the Thierman Law Firm, P.C., Leon Greenberg Attorney at Law, and Wolf Haldenstein Adler Freeman & Herz LLP.

1.6 “Class Member” or “Member of the Class” means a Person who is a member of the Class.

1.7 “Class Notice” means a notice (and associated response forms) entitled “Notice To Class Members Regarding Pendency of a Class and Collective Action and Notice of Hearing On Proposed Settlement” to be approved by the Court, substantially in the form attached hereto as Exhibit 2.

1.8 “Class Period” means the maximum applicable statute of limitations period for the jurisdiction in which the Class Member was employed by Oppenheimer (delineated for each state in Schedule 1) through the Preliminary Approval Date.

1.9 “Class Representatives” and “Collective Action Representatives” mean Patrick Creighton and David N. Cohen, the Plaintiffs in the Litigation.

1.10 “Class Representatives’ Released Claims” means any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against Oppenheimer Releasees within the meaning of the terms “Released State Law Claims” and “Released Federal Law Claims” as defined below, whether known or unknown, and whether anticipated or unanticipated, including Unknown Claims as defined in Section 1.58 hereof, by the Class Representatives, arising during the period ending on the date on which the Court enters the Order of Final Approval, as well as from and against any and all legally waivable rights and claims, grievances, injuries, controversies, agreements, covenants, promises, debts, accounts, sums of money, wages, actions, causes of action, suits, arbitrations, attorneys’ fees, costs, or any right to any monetary damages or any other form of personal relief, whether known or unknown, in law or in equity, by contract, tort, law of trust or pursuant to federal, state or local statute, regulation, ordinance or common law, which Class Representatives now have, ever have had, or may hereafter have, based upon or arising from any fact or set of facts, whether known or unknown to Class Representatives, by reason of any matter, cause, act or omission arising during the period

ending on the date on which the Court enters the Order of Final Approval, including, without limitation, those arising out of or in connection with Class Representatives' employment with or termination from Oppenheimer. This includes a release to the fullest extent permitted by law of all rights and claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Family and Medical Leave Act, the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, the Sarbanes-Oxley Act of 2002, the Worker Adjustment and Retraining Notification Act of 1989, the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") (including, but not limited to, claims for breach of fiduciary duty under ERISA), the New York Human Rights law, City of New York Administrative Code, as well as any amendments to such laws, and other applicable federal, state or local statute, regulation or common law regarding employment, employment discrimination, termination, retaliation, or equal opportunity.

1.11 "Consent to Join Settlement Form" means the form attached as Form D to the Class Notice, substantially in the form attached hereto, which a Class Member must submit in addition to a Settlement Claim Certification Form in order to become a Participating Claimant and recover a payment pursuant to this settlement.

1.12 "Compensable Months" means the calendar months a Class Member was actively employed by Oppenheimer in a Covered Position in the United States for sixteen (16) or more calendar days during the Class Period. For example, if a Class Member was employed by Oppenheimer as a Financial Advisor in New York from January 26, 2002 to April 16, 2002, that Class Member's Compensable Months for New York would be three. Notwithstanding the foregoing, in no event shall a Class Member's Compensable Months be less than one. Class Members will be deemed to have been employed only in the state of the branch at which the Class Member was registered, and in no event may a Class Member be considered to have been actively employed in more than one state during a single calendar month. Months in which a Class Member was not actively employed by Oppenheimer in a Covered Position for 16 or more

calendar days, was not registered, was not treated as exempt from overtime or was on a leave of absence for 16 or more days are excluded.

1.13 “Court” means the United States District Court for the Southern District of New York.

1.14 Employment in a “Covered Position” means employment by Oppenheimer in a retail branch in the United States during the Class Period as a Financial Advisor or as a Registered Financial Advisor Trainee who was both registered and classified as exempt from overtime.

1.15 “Effective Date” means the date on which the Judgment becomes a Final Judgment.

1.16 “Enhancement” or “Enhancements” means an amount approved by the Court to be paid to each Class Representative pursuant to Section 2.10.2, in addition to their award as Participating Claimants, in recognition of their efforts in coming forward as Class Representatives.

1.17 “Escrow Account” means an interest-bearing escrow account opened, administered and controlled by the Claims Administrator under and in accordance with this Stipulation and the Escrow Agreement at a federally-insured bank that is mutually acceptable to the Parties and the Claims Administrator.

1.18 “Escrow Agreement” means the Escrow Agreement executed by Class Counsel, Oppenheimer and the Claims Administrator on January 31, 2011, a copy of which is attached hereto as Exhibit 4. The parties stipulate and agree that the Escrow Agreement is specifically incorporated herein by reference.

1.19 “Estimated Monthly Tier 1 Payment” and “Estimated Monthly Tier 2 Payment” mean, respectively, the estimated payment amount each Participating Claimant will receive for each Compensable Month in a Tier 1 State and the estimated payment amount each Participating Claimant will receive for each Compensable Month in a Tier 2 State. The

Estimated Monthly Tier 1 Payment and Estimated Monthly Tier 2 Payment shall be disclosed to the Class in the Class Notice.

1.20 “Federal Law Release Period” for each Participating Claimant shall mean the period ending on the date the Participating Claimant executed the Settlement Claim Certification Form.

1.21 “Final Approval Date” means the date upon which the Judgment is entered.

1.22 “Final Approval Hearing,” “Settlement Hearing,” or “Fairness and Good Faith Determination Hearing” means a hearing set by the Court to take place on or about the date which is sixty (60) days after the Notice Response Deadline (or such date as the Court may otherwise establish) for the purpose of finally (i) determining the fairness, adequacy, and reasonableness of the Stipulation terms and associated settlement pursuant to class action procedures and requirements; (ii) determining the good faith of the Stipulation and associated settlement; and (iii) entering Judgment.

1.23 “Final Approval Order,” “Order of Final Approval,” or “Order Granting Final Approval of Settlement” shall mean an order to be entered and filed by the Court entitled “Order Determining Good Faith and Granting Final Approval of Settlement.”

1.24 “Final Judgment Date” means the later of the following dates upon which the Judgment shall become final (the “Final Judgment”): (1) the date the period for filing a notice of appeal of the Judgment expires; or (2) if a notice of appeal is filed, the date the appeal is dismissed or denied and the Judgment is no longer subject to appeal or other appellate review. Notwithstanding the foregoing, any proceeding or order, or any appeal or petition for a writ pertaining solely to the award of attorneys’ fees or litigation costs pursuant to Section 2.10.1 shall not, by itself, in any way delay or preclude the Judgment from becoming a Final Judgment, provided the total attorneys’ fees and litigation costs at issue do not exceed 25% of the Maximum Settlement Amount and \$30,000, respectively.”

1.25 “Final Monthly Tier 1 Payment” and “Final Monthly Tier 2 Payment” mean the final payment amount each Participating Claimant will receive for each Compensable Month in a Tier 1 State and the final payment amount each Participating Claimant will receive for each Compensable Month in a Tier 2 State, respectively, as determined in accordance with Section 2.32 below.

1.26 “Financial Advisor” or “Financial Advisors” means those Persons employed and coded by Oppenheimer as Financial Advisors, Associate Financial Advisors, Brokers and Registered Representatives, as those terms are or were during the Class Period commonly used by Oppenheimer to refer to Financial Advisors or Brokers who were both registered and classified as exempt.

1.27 “Judgment” means the judgment to be rendered by the Court pursuant to this Stipulation.

1.28 “Last Known Address” or “Last Known Addresses” means the most recently recorded mailing address for a Class Member as such information is contained in Oppenheimer’s HR databases.

1.29 The “Litigation” or the “Lawsuit” means *Creighton et al. v. Oppenheimer & Co., Inc., et al.*, Case No. 1:06-CV-4607 and *Cohen v. Oppenheimer & Co., Inc.*, Case No. 2:10-CV-00117.

1.30 “Maximum Settlement Amount” or “Settlement Consideration” means the maximum amount that Oppenheimer shall pay under the terms of this Stipulation, which is the gross sum of \$2,375,901, plus interest accruing on that amount (or such lesser amount as may be approved by the Court) at a rate equal to the 26 week Treasury Bill rate beginning on the date the Order Granting Final Approval of Settlement is entered, and continuing through the date those funds are wired to the Claims Administrator as provided in Section 2.3.3 below.

1.31 “Net Settlement Amount” means the Maximum Settlement Amount (including accrued interest as provided in Section 1.30) less the Administrative Costs (including

accrued interest as provided in Section 1.1) and the payment to the Labor and Workforce Development Agency as set forth in Section 2.10.4 below.

1.32 “Notice Regarding Pendency of Class Action,” or “Notice To Class Members Regarding Pendency of a Class Action and Notice of Hearing On Proposed Settlement” means the Class Notice (and associated response forms) entitled “Notice To Class Members Regarding Pendency of a Class and Collective Action and Notice of Hearing On Proposed Settlement” to be approved by the Court, substantially in the form attached hereto as Exhibit 2.

1.33 The “Notice Mailing Deadline” shall be the date thirty (30) days after the Preliminary Approval Date.

1.34 The “Notice Response Deadline” shall be the date sixty (60) days after the Class Notice is mailed to the Class Members by the Claims Administrator.

1.35 “Oppenheimer” means Oppenheimer & Co., Inc. and its successors and assigns.

1.36 “Oppenheimer Releasees” means Oppenheimer, Oppenheimer Holdings, Inc., and each of their respective past and present parents, subsidiaries (whether or not wholly-owned), affiliates (including each such affiliate’s parents and subsidiaries), divisions, joint ventures, related companies, predecessors, successors and assigns; and each of each such entities’ past and present directors, officers, employees, partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and personal or legal representatives.

1.37 “Opt Out” or “Opt Outs” or “Opt Out Form” means written and signed requests by Class Members to be excluded from the Settlement Class, which are submitted on the Form B to the Class Notice, substantially in the form attached hereto, which a Class Member must submit in the manner, and within the time set forth in the Class Notice.

1.38 “Order of Final Approval,” “Order Granting Final Approval of Settlement” or “Final Approval Order” means an order to be entered and filed by the Court entitled “Order Determining Good Faith and Granting Final Approval of Settlement.”

1.39 “Participating Claimant” or “Participating Claimants” means each Member of the Settlement Class who properly and timely submits both a Consent to Join Settlement Form and a Qualifying Settlement Claim Certification Form in response to the Notice Regarding Pendency of Class Action.

1.40 “Person” means a natural person.

1.41 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

1.42 “Preliminary Approval Order” or “Order Granting Preliminary Approval of Settlement” means an order to be executed and entered by the Court entitled “Order Granting Preliminary Approval of Settlement,” substantially in the form attached hereto as Exhibit 3, (a) preliminarily approving the settlement and this Stipulation; (b) conditionally certifying for settlement purposes only a class and collective action as provided in Section 2.1.1; (c) conditionally appointing for settlement purposes only the Class Representatives, Class Counsel and the Claims Administrator; (d) approving the form and content, and directing the mailing of the Class Notice and the attachments thereto, including the Settlement Claim Certification Form, the Consent to Join Settlement Form and the Opt Out Form; (e) approving the manner and method of distributing notice of the settlement and this Stipulation to the Class; and (f) scheduling the Settlement Hearing.

1.43 A “Qualifying Settlement Claim Certification Form” shall mean a Settlement Claim Certification Form that is properly completed and executed, and timely returned to the Claims Administrator in accordance with Section 2.7.4.

1.44 A “Reasonable Address Verification Measure” shall mean the utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address.

1.45 “Registered Financial Advisor Trainee” or “Registered Financial Advisor Trainees” means those Persons employed and coded by Oppenheimer as Registered Financial Advisor Trainees, Broker Trainees and Trainees, as those terms are or were during the Class

Period commonly used by Oppenheimer to refer to registered Financial Advisor Trainees or registered Broker Trainees, and who were both registered and classified as exempt.

1.46 “Released State Law Claims” shall collectively mean any and all applicable state and local law claims, obligations, demands, actions, rights, causes of action, and liabilities against Oppenheimer Releasees, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, statute, or other applicable law, whether known or unknown, and whether anticipated or unanticipated, including Unknown Claims as defined in Section 1.58 hereof, by a Class Member based on employment by Oppenheimer in a Covered Position during the State Law Release Period, for any type of relief under any and all applicable state or local statutes, laws (including common law) and regulations, including without limitation claims for wages, damages, premium pay, pension benefits and other benefits, unpaid costs, fines, civil and statutory penalties (including late payment penalties, waiting time penalties, and penalties recoverable under the California Private Attorneys General Act, California Labor Code § 2698, *et seq.*), liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, based on the following categories of allegations: (a) all claims, including derivative claims, asserted or which could have been asserted in the Litigation (as defined above and in the Class Notice) which arose under the facts alleged therein and/or under applicable state and local wage and hour laws and regulations; (b) all claims under applicable state and local laws and regulations for the failure to pay any type of overtime compensation or other compensation or wages to Class Members in Covered Positions including, without limitation, misclassification, overtime, premium pay, minimum wage, spread of hours, split shift, off-the-clock and assignment of wages claims, claims relating to advances or the recovery or recoupment, by deduction or otherwise, of advances or overpayments of wages or benefits, and claims for failure to pay wages due upon termination of employment, waiting time penalties and pay stub violations, and for failure to furnish accurate itemized wage statements or to keep accurate payroll records; (c) all claims under applicable state and local laws and regulations for the failure to provide or pay for meal, break, and/or rest periods for

Class Members in Covered Positions; (d) all claims under applicable state and local laws and regulations stemming from or based on the alleged misclassification of employees in Covered Positions as exempt employees, *i.e.*, employees who Oppenheimer classified as exempt under applicable state and local laws and regulations from the wage and hour requirements imposed on employers but who actually did not qualify for any exemption, including without limitation, the executive, administrative, or professional exemptions; (e) all claims under applicable state and local laws and regulations alleging the unlawful or improper imposition, deduction or chargeback of, or failure to reimburse, indemnify, cover or pay for costs or penalties for cancelled or broken trades or errors or mistakes of Class Members employed by Oppenheimer in Covered Positions, including without limitation, claims for improper chargebacks or deductions for cancelled or broken trades or errors or mistakes; (f) all claims under applicable state and local laws and regulations alleging the unlawful or improper imposition, deduction or chargeback of, or failure to reimburse, indemnify, cover or pay for business expenses, costs and deductions of or related to Class Members in Covered Positions, including without limitation, expenses, costs and deductions for support staff, marketing, advertising or promotional expenses, meal and entertainment expenses, transportation expenses, hotel and travel expenses, seminar costs, training costs, telephone charges, ticket charges, mailing costs, subscriptions, office supplies, office equipment, desk fees, license and registration fees, client fees, costs to settle disputes with customers, or account fees for delinquent customer accounts, claims for allegedly improper deductions from or chargebacks to compensation for such business expenses and costs under applicable state and local laws and regulations, and claims relating to fees or commissions charged for personal brokerage accounts; and (g) all claims, including derivative claims, under any applicable statute, law or regulation for penalties or additional damages, including pension benefits, which allegedly arise, in any manner, from the claims described in (a) through (f) above under any applicable statute, law or regulation. The Released State Law Claims are the claims meeting the above definition under any and all applicable statutes, regulations or common law, including without limitation, the following statutes and regulations: 12 N.Y.C.R.R. § 142-2.1 et

seq. (including, but not limited to, § 142-2.2 and § 142-2.14); 12 N.Y.C.R.R. § 195.1 et seq.; New York Labor Law (“N.Y. Lab. Law”) § 190 et seq. (including, but not limited to, § 191, § 193 and § 198), New York Minimum Wage and Hour Law, N.Y. Lab. Law § 650 et seq., and N.Y. Lab. Law § 160; California Labor Code §§ 96 through 98.2 et seq., California Labor Code § 200 et seq., including California Labor Code §§ 200 through 243, and §§ 201, 202, 203, 218, 218.5, 218.6, 221, 223, 224, 226, 226.3, and 226.7 in particular; California Labor Code § 300 et seq.; California Labor Code § 400 et seq.; California Labor Code § 450 et seq., California Working Hours Law, California Labor Code § 500 et seq., California Labor Code §§ 1171 through 1205, including §§ 1174, 1194, and 1198; California Labor Code §§ 2802 and 2804; the California Unfair Competition Act, and in particular, California Bus. & Prof. Code § 17200 et seq.; the California Labor Code Private Attorneys General Act of 2004, codified at California Labor Code §§ 2698 and 2699; California Code of Civil Procedure § 1021.5; any other provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, in all of their iterations (including, without limitation, Wage Order 4 and the wage, overtime, meal and rest period, record-keeping, and deductions provisions thereof); and all other statutes and regulations listed in the compendium of state specific wage and hour laws set forth in attached Schedule 2.

1.47 “Released Federal Law Claims” shall collectively mean any and all federal law claims, including derivative claims, obligations, demands, actions, rights, causes of action, and liabilities against Oppenheimer Releasees, of whatever kind and nature, character and description, whether known or unknown, and whether anticipated or unanticipated, including Unknown Claims as defined in Section 1.58 hereof, arising under or based, dependant or predicated upon the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, et seq. (“FLSA”), and/or its implementing regulations and interpretive guidelines, based on employment by Oppenheimer in a Covered Position during the Federal Law Release Period.

1.48 “Settlement Claim Certification Form” shall mean the form attached as Form C to the Notice Regarding Pendency of Class Action, substantially in the form attached

hereto, which a Class Member must submit in addition to a Consent To Join Settlement Form in order to become a Participating Claimant and recover a payment pursuant to Section 2.3.

1.49 “Settlement Class” means all of the Class Members who do not opt out of the settlement by timely submitting Opt Out forms pursuant to Section 2.7.2, and thus means all of the Class Members who will become bound by the Released State Law Claims portion of the Judgment if the Effective Date occurs.

1.50 “Settlement Class Member” or “Member of the Settlement Class” means any Person who is a member of the Settlement Class.

1.51 “Settlement Consideration” or “Maximum Settlement Amount” means the maximum amount that Oppenheimer shall pay under the terms of this Stipulation, which is the gross sum of \$2,375,901, plus interest accruing on that amount (or such lesser amount as may be approved by the Court) at a rate equal to the 26 week Treasury Bill rate beginning on the Final Approval Date, and continuing through the date those funds are wired to the Claims Administrator as provided in Section 2.3.3 below.

1.52 “Settlement Hearing,” “Fairness and Good Faith Determination Hearing” or “Final Approval Hearing” means a hearing set by the Court to take place on or about the date which is sixty (60) days after the Notice Response Deadline (or such date as the Court may otherwise establish) for the purpose of finally (i) determining the fairness, adequacy, and reasonableness of the Stipulation terms and associated settlement pursuant to class action procedures and requirements; (ii) determining the good faith of the Stipulation and associated settlement; and (iii) entering Judgment.

1.53 “Settling Parties” or “Parties” means Defendants and the Class Representatives on behalf of themselves and all Members of the Settlement Class.

1.54 “State Law Release Period” shall mean the period ending on the Final Approval Date or, in the case of Participating Claimants, the date the Class Member executes the Settlement Claim Certification Form.

1.55 “Stipulation” means this agreement, *i.e.*, this Joint Stipulation and Settlement Agreement together with all of its exhibits and attachments, which the Settling Parties understand and agree sets forth all material terms and conditions of the settlement between them, and which is subject to Court approval. It is understood and agreed that Defendants’ obligations under this Stipulation; including without limitation, its payment obligations, are conditioned on, *inter alia*, the occurrence of the Effective Date.

1.56 “Tier 1 States” mean the following states: California, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Washington.

1.57 “Tier 2 States” mean the following states: Arizona, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Kansas, Massachusetts, Minnesota, Missouri, Montana, Nevada, North Carolina, Ohio, Tennessee, Texas and Virginia.

1.58 “Unknown Claims” means (a) any Released State Law Claims which the Class Representatives or any Settlement Class Member (including all Participating Claimants) does not know or suspect to exist in his or her favor as of the Final Approval Date or, in the case of Class Members who complete, sign and mail both a Settlement Claim Certification Form and a Consent to Join Settlement Form, the date the Class Member executes the Settlement Claim Certification Form, and which, if known by him or her might have affected his or her decision to settle with and release Oppenheimer and the Oppenheimer Releasees, or might have affected his or her decision to opt out of the Class or to object to this settlement, and (b) any Released Federal Law Claims which the Class Representatives or any Participating Claimant does not know or suspect to exist in his or her favor at the time he or she executes and postmarks his or her Settlement Claim Certification Form and Consent to Join Settlement Form, and which, if known by him or her might have affected his or her decision to settle with and release Oppenheimer and the Oppenheimer Releasees, or might have affected his or her decision to opt out of the Class or to object to this settlement. With respect to any and all Released State Law Claims and Released Federal Law Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Class Representatives and each Participating Claimant shall have expressly,

knowingly, and intentionally waived all benefits, rights and protections under any statute, rule, doctrine, or common law principle of any jurisdiction whatsoever that restricts the release of unknown claims, including without limitation any applicable benefits or rights under California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, likewise waived all such benefits, rights and protections. The Class Representatives and each Settlement Class Member may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released State Law Claims and Released Federal Law Claims, but the Class Representatives and each Settlement Class Member (including all Participating Claimants), upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released State Law Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Likewise, the Class Representatives and each Participating Claimant, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Federal Law Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of

any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives acknowledge the significance and consequence of this waiver, and the Settlement Class Members (including Participating Claimants) shall be deemed by operation of the Judgment to have acknowledged the consequence and significance and assume full responsibility for any loss that may be incurred by reason of such waiver. The Class Representatives further acknowledge, and the Settlement Class Members (including Participating Claimants) shall be deemed by operation of the Judgment to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

1.59 “Updated Address” means a mailing address that was updated via a Reasonable Address Verification Measure or via an updated mailing address provided by the United States Postal Service or a Class Member, or any other source.

2. The Settlement.

2.1 *Certification of a Class and Collective Action for Settlement Purposes Only.*

2.1.1 The Parties stipulate, for settlement purposes only, to the certification by the Court of a class action as to all claims asserted in the Litigation pursuant to state law, and further stipulate, for settlement purposes only, to the certification by the Court of a collective action as to all claims asserted in the Litigation pursuant to the FLSA.

2.1.2 If for any reason the Court does not approve this Stipulation, fails to enter the Order of Final Approval, or fails to enter the Judgment, or if this Settlement Agreement and Stipulation is lawfully terminated for any other reason, the Parties’ stipulation to the certification of a class and collective action shall be deemed null and void *ab initio*, and Defendants shall retain the absolute right to dispute the propriety of class certification and collective action certification on all applicable grounds.

2.2 *Settlement Consideration.*

2.2.1 The maximum amount that Defendants shall pay under the terms

of this Stipulation, if all Class Members file valid and timely claims is the Maximum Settlement Amount, which is also referred to as the “Settlement Consideration.”

2.2.2 The Settlement Consideration will be used to pay:

2.2.2.1 The attorneys’ fees and litigation costs of Class Counsel, as approved by the Court;

2.2.2.2 The individual Enhancements of the Class Representatives, as approved by the Court;

2.2.2.3 The agreed upon fees and costs of the Claims Administrator, as approved by the Court;

2.2.2.4 Any other Administrative Costs;

2.2.2.5 The agreed upon payment to the Labor and Workforce Development Agency; and

2.2.2.6 The timely and valid claims of Participating Claimants, subject to the terms, conditions and procedures set forth herein.

2.2.3 The Parties understand and agree that any portion of the Maximum Settlement Amount not approved and awarded by the Court or claimed by Participating Claimants pursuant to this Stipulation (including a prorated share of the accrued interest provided for in Section 1.30) or paid either to the Labor and Workforce Development Agency (“LWDA”) or as a penalty assessed by the LWDA, as provided in Section 2.10.4 below, shall remain the exclusive property of Oppenheimer, except that any portion of the Maximum Settlement Amount allocated in this Stipulation to attorneys’ fees and litigation costs of Class Counsel or Enhancements of the Class Representatives not approved and awarded by the Court (including the prorated share of the accrued interest provided for in Section 1.30) shall be added to the Net Settlement Amount and distributed among the Participating Claimants.

2.3 *Consideration to Settlement Class Members*

2.3.1 Class Counsel, Oppenheimer and the Claims Administrator shall calculate each Class Members’s estimated gross settlement payment based upon his or her

Compensable Months in Tier 1 States and Tier 2 States and the “Estimated Monthly Tier 1 Payment” and “Estimated Monthly Tier 2 Payment” amounts. The estimated gross settlement payment for each Class Member shall be disclosed in his or her Settlement Claim Certification Form (Form C) which shall be mailed together with the Class Notice, as provided in Sections 2.64 and 2.67.

2.3.2 Each Participating Claimant will receive a settlement payment subject to and in accordance with the terms, conditions, and procedures of this Stipulation, in an amount determined pursuant to an allocation formula agreed upon by Class Counsel and Oppenheimer. The allocation formula takes into account (a) the total number of Compensable Months worked by all Class Members in each state; and (b) the relative value of the claims in each state, which in turn takes into account (i) the relative merits of the state law claims asserted on behalf of the Class Members working in different states and (ii) differences in the applicable wage and hour laws and statutes of limitations in each state. Thus, the allocation formula assigns different amounts to Compensable Months in Tier 1 States and Tier 2 States, and the value of the amount assigned to Tier 1 States shall be approximately 1.652 times the value of the amount assigned to Tier 2 States. The allocation formula is designed to result in the complete distribution of the Net Settlement Amount based on the assumption that all Class Members become Participating Claimants, and under no circumstances shall the allocation formula result in an increase in the Maximum Settlement Amount or the Net Settlement Amount. In addition, any portion of the Maximum Settlement Amount allocated to attorneys’ fees and litigation costs and Enhancements that is not approved and awarded by the Court pursuant to this Stipulation shall be added to the Net Settlement Amount and distributed among the Participating Claimants; and any additional portion of the Maximum Settlement Amount not approved and awarded by the Court or claimed by Participating Claimants pursuant to this Stipulation shall remain the exclusive property of Oppenheimer. No later than ten (10) calendar days following the Effective Date, Class Counsel, Oppenheimer and the Claims Administrator shall use this allocation formula to calculate the “Final Monthly Tier 1 Payment” amount and the “Final Monthly Tier 2

Payment” amount. The Parties understand and agree that the Final Monthly Tier 1 Payment and Final Monthly Tier 2 Payment amounts will be different from the Estimated Monthly Tier 1 Payment and Estimated Monthly Tier 2 Payment amounts.

2.3.3 No later than twenty (20) calendar days following the Effective Date, Oppenheimer shall wire to the Claims Administrator the amount specified in Section 2.8.4 below, which amount shall be deposited into an interest-bearing escrow account opened, administered and controlled by the Claims Administrator under and in accordance with this Stipulation and the Escrow Agreement at a federally-insured bank that is mutually acceptable to the Parties and the Claims Administrator (the “Escrow Account”). The funds in the Escrow Account shall be invested either in short-term U.S. Treasury securities with maturity dates of less than 90 days at the time of deposit, or in an SEC-registered money market fund investing exclusively in U.S. Treasury securities with average maturities of less than 90 days and rated AAAM by Standard & Poor’s. In no event shall the Claims Administrator withdraw, transfer, pledge, impair or otherwise make use of the funds in the Escrow Account except as expressly provided in this Stipulation and the Escrow Agreement. The Parties further agree that the Escrow Account is intended to be a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1, 26 CFR § 1.468B-1, et seq., and will be administered by the Claims Administrator as such. With respect to the Escrow Account, the Claims Administrator shall: (1) open and administer the Escrow Account in accordance with the Escrow Agreement and in such a manner as to qualify and maintain the qualification of the Escrow Account as a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg. § 1.468B-1; (2) calculate, withhold, remit and report Defendants’ and each Participating Claimant’s share of applicable payroll taxes (including, without limitation, federal, state and local income tax withholding, FICA Social Security, FUTA, Medicare and any state or local employment taxes); (3) satisfy all federal, state and local income and other tax reporting, return and filing requirements with respect to the Escrow Account and any interest or other income earned by the Escrow Account; and (4) satisfy out of the Escrow Account all (i) taxes (including

any estimated taxes, interest or penalties) with respect to the interest or other income earned by the Escrow Account, and (ii) fees, expenses and costs incurred in connection with the opening and administration of the Escrow Account and the performance of its duties and functions as described in this Stipulation and the Escrow Agreement. The aforementioned taxes, fees, costs and expenses shall be treated as and included in the costs of administering the Escrow Account and as Administration Costs under Sections 1.1 and 2.11 below. The Parties and the Claims Administrator shall elect to treat the Escrow Account as coming into existence as a Qualified Settlement Fund on the earliest date set forth in 26 CFR § 1.468B-1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by 26 CFR § 1.468B-1(j)(2)(ii). The Parties agree to cooperate with the Claims Administrator and one another to the extent reasonably necessary to carry out the provisions of this Section 2.3.3 and Section 2.4.2.

2.3.4 Each Participating Claimant will receive a settlement payment subject to and in accordance with the terms, conditions, and procedures of this Stipulation and the Escrow Agreement, in an amount equal to the Final Tier 1 Monthly Payment multiplied by his or her total number of Compensable Months in Tier 1 states plus the Final Tier 2 Monthly Payment multiplied by his or her total number of Compensable Months in Tier 2 states, less the employee's share of taxes and withholding. For example, if a Participating Claimant was employed by Oppenheimer in New York as a Financial Advisor for a total of ten (10) Compensable Months and the Final Tier 1 Monthly Payment was \$30, he or she would receive $(10 \times \$30) = \300 , less the employee's share of taxes and withholding.

2.3.5 To the extent administratively convenient, the payment to each Participating Claimant shall be made via a single check.

2.3.6 As further detailed in Section 2.4.1, and for each payment made pursuant to Sections 2.3, 2.8 and 2.10, the Claims Administrator will report each payment to government authorities including the Internal Revenue Service as required by law, and it shall make all required deductions, withholdings, and/or payroll tax payments.

2.3.7 In no event shall any amount paid to Participating Claimants or the

Class Representatives pursuant to this Stipulation create any credit or otherwise affect the calculation of any compensation, deferred compensation, or benefit under any compensation, deferred compensation, pension, bonus, equity, incentive, severance or other compensation or benefit plan, policy, program or arrangement provided by Oppenheimer or any Oppenheimer Releasee, nor shall any such payment made pursuant to this Settlement be considered as any form of compensation or earnings under any pension, retirement, profit sharing, incentive or deferred compensation plan, nor shall any such payment require any contribution or award under any such plan, or otherwise modify any benefits, contributions or coverage under any employee benefit plan or program.

2.4 *Taxes*

2.4.1 For income and payroll tax purposes, the Parties agree that 50% of each settlement payment shall be deemed payment in settlement of claims for unpaid wages (which shall be subject to required withholdings and deductions and reported as wage income as required by law), and that 50% of each settlement payment shall be deemed payment in settlement of claims for liquidated damages, penalties, interest and other non-wage recovery (which shall not be subject to required withholdings and deductions and shall be reported as non-wage income as required by law).

2.4.2 Those payments allocated to the settlement of claims for unpaid wages (a) shall be subject to required withholdings and deductions, and so the net amounts payable will be less than the gross amounts; and (b) shall be reported in the year of payment as wage income to Participating Claimants on a Form W-2 and such other state or local tax reporting forms as may be required by law. Those payments allocated to all other claims, including without limitation claims for liquidated damages, interest, and other non-wage recovery (a) shall not be subject to required withholdings and deductions, and so the net amounts payable will be equal to the gross amounts; and (b) shall be reported in the year of payment as non-wage income to the Participating Claimants on a Form 1099 and such other state or local tax reporting forms as may be required by law. Oppenheimer acknowledges that it will be

responsible for paying the employer's share of any applicable payroll taxes on settlement payments to Participating Claimants. The Claims Administrator shall determine the employer's share of such payroll taxes, and shall communicate such amount to Oppenheimer. Within ten (10) calendar days of the notification of such amount, Oppenheimer shall wire to the Claims Administrator an additional payment to the Escrow Account (the "Payroll Tax Payment"), which payment shall be separate and apart from, and in addition to, the Settlement Consideration. The Claims Administrator shall remit and report the applicable portions of the Payroll Tax Payment to the appropriate taxing authorities on a timely basis pursuant to its duties and undertakings under this Stipulation and the Escrow Agreement. Oppenheimer agrees to reasonably cooperate with the Claims Administrator to the extent necessary to determine the amount of the Payroll Tax Payment required under this Section. Other than as set forth above, no deductions, withholdings, or additional payments, including without limitation, for medical or other insurance payments or premiums, employee 401(k) contributions or matching employer contributions, wage garnishments, or charity withholdings, will be made from or with respect to the payments to Participating Claimants, and entry of the Order of Final Approval by the Court shall be deemed authority not to make any such deductions, withholdings, or additional payments.

2.4.3 Other than the withholding and reporting requirements set forth above, Participating Claimants shall be solely responsible for the reporting and payment of the employee's share of any federal, state and/or local income or other taxes, or any other withholdings, if any, on payments made pursuant to this Stipulation.

2.4.4 Defendants make no representations and it is understood and agreed that Defendants have made no representations as to the taxability of any payments pursuant to this Stipulation, including payments to Participating Claimants, payments to Class Counsel, and payments to the Class Representatives. The Notice Regarding Pendency of Class Action will advise each Class Member to seek his or her own personal tax advice prior to acting in response to that notice, and Defendants, the Class Representatives and Class Counsel agree

that each Class Member will have an adequate opportunity to seek tax advice prior to acting in response to the notice.

2.5 *Court Approval of Notice to the Class and Settlement Hearing.*

2.5.1 The Class Representatives and Defendants, through their counsel of record in the Litigation, shall file this Stipulation with the Court and jointly move for preliminary approval of this Stipulation. Via this submission, and a supporting motion, the Settling Parties, through their counsel of record, will request that the Court enter the Preliminary Approval Order substantially in the form attached hereto as Exhibit 3, (a) preliminarily approving the settlement and this Stipulation; (b) conditionally certifying for settlement purposes only a class and collective action as provided in Section 2.1.1; (c) conditionally appointing for settlement purposes only the Class Representatives, Class Counsel and the Claims Administrator; (d) approving the form and content, and directing the mailing of the Class Notice and the attachments thereto, including the Settlement Claim Certification Form, the Opt Out Form and the Consent to Join Settlement Form; (e) approving the manner and method of distributing notice of the settlement to the Class; and (f) scheduling the Settlement Hearing.

2.5.2 Subject to Court availability, the Class Representatives and Defendants shall endeavor to notice the joint motion for entry of the Preliminary Approval Order for a hearing before the Court on the earliest possible mutually convenient date. In the event the Court decides not to enter the Parties' proposed Preliminary Approval Order in its entirety, or to enter the Preliminary Approval Order with modifications (other than modifications reducing or concerning the amount of any attorneys' fees or costs to be paid to Class Counsel or the amount of any Enhancement to be paid to the Class Representatives) that either Defendants or the Class Representatives determines in their reasonable and good faith judgment to be material, Defendants or the Class Representatives, as the case may be, shall have the absolute discretionary right to terminate the settlement and this Stipulation by providing written notice to one another, the Court, Class Counsel and the Claims Administrator, provided such notice is given within twenty-one (21) days of receipt of the Court's decision, in which event the Party

exercising its right to terminate the settlement and this Stipulation under this Section 2.5.2 shall be solely responsible for paying Administrative Costs incurred by the Claims Administrator, and the other Party shall have no responsibility or obligation for the payment of such Administrative Costs. The above notwithstanding, the Parties agree that, should the Court modify the Preliminary Approval Order in such a way as would otherwise allow either party to terminate the Settlement, the Parties will, within the above-stated twenty-one (21) day period, meet and confer in good faith attempt to reach agreement and thereby preserve the settlement.

2.5.3 Once the Court enters the Preliminary Approval Order, Class Counsel and counsel for Defendants shall meet and confer to reach agreement on any necessary revisions of the deadlines and timetables set forth in this Stipulation, if necessary. In the event that the Settling Parties fail to reach such agreement, either of the Settling Parties may apply to the Court via a noticed motion for modification of the dates and deadlines in this Stipulation, provided that such a request to the Court may seek only reasonable modifications of the dates and deadlines contained in this Stipulation and no other changes.

2.5.4 If the Court enters the Preliminary Approval Order, then, at the resulting Settlement Hearing, the Class Representatives and Defendants, through their counsel of record, shall address any timely written objections from Class Members as well as any timely stated concerns of any state official who receives a CAFA notice, if any, and any concerns of the Court, if any, and shall and hereby do, unless provided otherwise in this Stipulation, stipulate to final approval of this Stipulation and entry of the Judgment by the Court.

2.6 *Notice to Class Members.*

2.6.1 If, by entering the Preliminary Approval Order, the Court provides authorization to send the Class Notice to Class Members, Oppenheimer, through the Claims Administrator, will facilitate the mailing of the Class Notice to all Class Members at their Last Known Addresses. The Class Notice shall be mailed via first class mail through the United States Postal Service, postage pre-paid.

2.6.2 The Class Notice and its envelope or covering shall be marked to

denote the return address of the Claims Administrator.

2.6.3 No later than twenty-one (21) calendar days following the Preliminary Approval Date, Oppenheimer shall provide the Claims Administrator with an electronic database (the "Database") containing the following information with respect to each Class Member so that the Claims Administrator can process and mail the Class Notice: (1) the Class Member's name and Last Known Address; (2) the dates the Class Member was employed in Covered Positions in each state during the Class Period; (3) the Class Member's Compensable Months in Tier 1 states; and (4) the Class Member's Compensable Months in Tier 2 states, according to Oppenheimer's records.

2.6.4 Unless the Parties agree otherwise in writing or the Court so orders, no later than the Notice Mailing Deadline, the Claims Administrator shall mail to each Class Member at his or her Last Known Address the Class Notice (attached hereto as Exhibit 2) together with the Change of Name and/or Address Information Form (Form A), Election to Opt Out of Settlement and Class Action Form (Form B), Settlement Claim Certification Form (Form C), and Consent to Join Settlement Form (Form D), all substantially in the form attached hereto. No other materials will be included in this mailing.

2.6.5 Prior to mailing the Class Notice to each Class Member, the Claims Administrator shall undertake a Reasonable Address Verification Measure to ascertain the current accuracy of the Last Known Address of each Class Member. To the extent this process yields an Updated Address, that Updated Address shall replace the Last Known Address and be treated as the new Last Known Address for purposes of this Stipulation and for subsequent mailings in particular.

2.6.6 Part of the fees paid to the Claims Administrator shall include all costs of the mailing described in this Section 2.6, which shall be the fees charged by the Claims Administrator, the cost of the envelopes in which the Class Notice will be mailed, the cost of reproducing the Class Notice and the attached Forms A-D, and the cost of postage to send the Class Notice.

2.6.7 Each Settlement Claim Certification Form (Form C) shall be pre-printed with the number of Compensable Months that the Class Member worked in a Covered Position in each state during the Class Period according to Oppenheimer's records as reflected in the Database as well as the Class Member's estimated gross settlement payment.

2.6.8 Unless the Claims Administrator receives a Class Notice returned from the United States Postal Service for reasons discussed below in this Section, that Class Notice shall be deemed mailed and received by the Class Member to whom it was sent five days (5) days after mailing. In the event that subsequent to the first mailing of a Class Notice and prior to the deadline for a response, that Notice is returned to the Claims Administrator by the United States Postal Service with a forwarding address for the recipient, the Claims Administrator shall re-mail the Notice to that address, the Notice will be deemed mailed as of that date, and the forwarding address shall be deemed the Updated Address for that Class Member. In the event that subsequent to the first mailing of a Class Notice, and at least fourteen (14) days prior to the Notice Response Deadline, that Notice is returned to the Claims Administrator by the United States Postal Service because the address of the recipient is no longer valid, *i.e.*, the envelope is marked "Return to Sender," the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Notice within fourteen (14) days of receiving such information; if no Updated Address is obtained for that Class Member, the Class Notice shall be sent again to the Last Known Address. In either event, the Class Notice shall be deemed received once it is mailed for the second time.

2.6.9 To the extent a Class Member, whose address has not been deemed unknown by the Claims Administrator, has not submitted to the Claims Administrator some form of written response to the Class Notice by the date that is thirty (30) days before the Notice Response Deadline, the Claims Administrator shall send that Class Member a postcard (a) referencing the name of the Litigation; (b) stating that the Class Member received a copy of the

Class Notice in this action; (c) providing the address for the Claims Administrator; (d) stating the Notice Response Deadline, *i.e.*, the deadline to respond to the Class Notice if the recipient desires to do so; and (e) stating that the Class Member can contact the Claims Administrator to receive an additional copy of the Class Notice. The postcard shall not contain any additional information or statements. Nothing in this Section 2.6.9 shall be construed to extend the Notice Response Deadline or the Claim Certification Form Deadline for any Class Member. The reasonable costs expended in association with the preparation and mailing of the postcards contemplated by this Section shall be included as part of the Administrative Costs and paid out of the Maximum Settlement Amount.

2.6.10 Within ten days following the filing of this Stipulation with the Court, Oppenheimer shall serve upon the Attorney General of the United States and the appropriate State official of each State in which any Class Member resides a notice of the proposed Settlement in compliance with the requirements of CAFA, 28 U.S.C. § 1715.

2.7 *Responses to the Class Notice.*

2.7.1 Class Members have the option to retain their own attorney(s) in connection with this Lawsuit at their own expense. Class Members who choose this option will be responsible for any attorneys' fees or costs incurred as a result of this election. The Class Notice will advise Class Members of this option.

2.7.2 Class Members may elect to "opt out" of the Settlement Class and thus exclude themselves from the Lawsuit, the settlement and the Settlement Class. Class Members who wish to exercise this option must fully complete and properly execute the "Opt Out Form" attached to the Class Notice as Form B, in accordance with the instructions set forth therein, and then mail the fully completed and properly executed Opt Out Form to the Court, Class Counsel, counsel for Defendants, and the Claims Administrator no later than the Notice Response Deadline. The Class Notice shall advise Class Members of this option. If a fully completed and properly executed Opt Out Form is not received by the Court from a Class Member postmarked on or before the Notice Response Deadline, then that Class Member will be

deemed to have forever waived his or her right to opt out of the Settlement Class. Class Members who do not timely submit fully completed and properly executed Opt Out Forms shall be deemed Members of the Settlement Class. Class Members who do timely submit fully completed and properly executed Opt Out Forms shall have no further role in the Litigation, and for all purposes they shall be regarded as if they never were either a party to the Litigation or a Class Member, and thus they shall not be entitled to any benefit as a result of the Litigation, this settlement or this Stipulation.

2.7.3 Class Members who do not opt out of the Settlement Class pursuant to Section 2.7.2 may object to the Stipulation by simultaneously filing written objections with to the Court and mailing copies of their written objections to Class Counsel, counsel for Defendants, and the Claims Administrator no later than the Notice Response Deadline. The Class Notice shall advise Class Members of this option. Any objections must be in writing and timely filed and mailed as required in this Section 2.7.3 or else they will be waived. The Claims Administrator shall immediately provide copies of any such objections to counsel of record.

2.7.4 Class Members who do not opt out of the Settlement Class pursuant to Section 2.7.2 may elect to become Participating Claimants. Class Members who wish to exercise this option and certify their entitlement to payment under the settlement must fully and timely complete, execute, and mail, per the instructions therein, both of the following forms: (a) the form entitled "Consent to Join Settlement Form" attached to the Class Notice as Form D and (b) the form entitled "Settlement Claim Certification Form" attached to the Class Notice as Form C. Both the Settlement Claim Certification Form and the Consent To Join Settlement Form must be postmarked no later than the Claim Certification Form Deadline, and the Claim Certification Settlement Form must be executed and submitted without redaction, deletion or revision of the release, waiver and covenant not to sue language on the pre-printed form. If a Participating Claimant disagrees with the number of Compensable Months as printed on his or her Settlement Claim Certification Form, the Participating Claimant must write his or

her correct dates of employment in a Covered Position in the State of New York during the Class Period on the Settlement Claim Certification Form and provide documents (*e.g.*, check stubs, cancelled checks, payroll documents, or registration records) evidencing his or her claim. The Compensable Months listed on the Settlement Claim Certification Form will be presumed to be accurate unless the Participating Claimant provides documents proving otherwise. If both a completed and properly executed Settlement Claim Certification Form and a completed and properly executed Consent To Join Settlement Form are not received by the Claims Administrator from a Class Member and timely postmarked on or before the Claim Certification Form Deadline, then that Class Member will be deemed to have forever waived his or her right to be a Participating Claimant and receive payment under this settlement. However, as long as they do not timely and properly submit Opt Out Forms, Class Members shall be deemed Members of the Settlement Class and shall be subject to the Judgment even if they do not submit a Qualifying Settlement Claim Certification Form or a Consent To Join Settlement Form in a timely and proper fashion. Any Class Members who submit either a Claim Certification Form or a Consent To Join Settlement Form, but not both, shall be promptly sent a cure letter by the Claims Administrator reminding them that they must submit both forms on a timely basis if they wish to be entitled to a payment pursuant to the settlement and this Stipulation. Only Class Members who timely and properly complete, execute and submit both a Qualifying Claim Certification Form and a Consent To Join Settlement Form shall be Participating Claimants entitled to payment pursuant to the settlement and this Stipulation. In the event of any dispute over a Participating Claimant's Compensable Months, or the timeliness or completion of a Class Member's Settlement Claim Certification Form or Consent To Join Settlement Form, the Claims Administrator shall promptly notify the Parties of the dispute, and the Parties shall meet and confer in good faith in an attempt to resolve that dispute. If the dispute cannot be resolved, it shall be submitted to the Claims Administrator for its final, non-appealable determination applying the definitions stated in Section 1 and elsewhere in this Stipulation, and the rules, presumptions and burdens of proof stated above in this Section 2.7.4, and any other applicable

provision of this Stipulation. In no event may the Claims Administrator disregard or vary the terms of this Stipulation.

2.7.5 Any Class Members who, before the Notice Response Deadline, submit both a fully completed and properly executed Opt Out Form and a Qualifying Settlement Claim Certification Form and/or a Consent To Join Settlement Form, shall be promptly sent a cure letter (in a form similar to that attached as Exhibit 5) by the Claims Administrator seeking clarification of whether they intend to opt out of the settlement and the Settlement Class or become a Participating Claimant. Absent a response to the contrary, such Class Members will be deemed to have opted out of the Settlement Class pursuant to Section 2.7.2.

2.7.6 Class Members who, for future reference and mailings from the Court or Claims Administrator, if any, wish to change the name or address listed on the envelope in which the Class Notice was first mailed to them, must fully complete, execute, and mail, per the instructions therein, the form entitled “Change of Name and/or Address Information” attached to the Class Notice as Form A. The address provided shall be the “Updated Address” for any such Class Member.

2.8 *Order of Final Approval and Calculation and Timing of Payments to Participating Claimants.*

2.8.1 Prior to the Settlement Hearing and consistent with the rules imposed by the Court, the Class Representatives and Defendants shall jointly move the Court for entry of the Order of Final Approval (and the associated entry of Judgment). The Settling Parties shall make all reasonable efforts to secure entry of the Order of Final Approval.

2.8.2 If the Effective Date occurs, then, not later than ten calendar days after the Effective Date, the Claims Administrator and the Parties shall calculate the Final Monthly Tier 1 Payment and the Final Monthly Tier 2 Payment in accordance with this Stipulation.

2.8.3 Not later than fourteen calendar days after the Effective Date, the Claims Administrator shall fax or email a report (the “Report”) to Class Counsel and

Defendants' counsel listing the following information for each Participating Claimant: (1) the Participating Claimant's name and last-known address (as updated through the claims administration process); (2) the Participating Claimant's total Compensable Months in Tier 1 states and total Compensable Months in Tier 2 states, as determined in accordance with this Stipulation; (3) the Participating Claimant's gross settlement payment before deduction of the employee's share of taxes and withholding, calculated by multiplying each Participating Claimant's total Compensable Months in Tier 1 states by the Final Monthly Tier 1 Payment and multiplying each Participating Claimant's total Compensable Months in Tier 2 states by the Final Monthly Tier 2 Payment, and then adding those amounts together; (4) the amount of the settlement payment attributable to wages; (5) the amount of the settlement payment attributable to interest, penalties and non-wage recovery; and (6) the net settlement payment to the Participating Claimant, after deduction of the employee's share of taxes and withholding.

2.8.4 If the Effective Date occurs, Oppenheimer shall satisfy its obligations under this Section 2.8 by wiring to the Claims Administrator an amount equal to the total of: (1) the total gross settlement payments to be made to all Participating Claimants (which amount shall be calculated by adding together the gross settlement payments for all Participating Claimants, as determined in accordance with this Stipulation), plus (2) the amount of attorneys fees and litigation costs approved by the Court and awarded to Class Counsel, plus (3) the amount of the Enhancement approved by the Court and awarded to the Class Representatives, which amount shall be deposited into the Escrow Account in accordance with this Stipulation and the Escrow Agreement no later than twenty-one (21) calendar days after the Effective Date.

2.8.5 Within thirty (30) calendar days of and only after the Effective Date the Claims Administrator shall mail to each Participating Claimant at his or her Last Known Address, or Updated Address if obtained, his or her individual payment, less tax deductions and withholdings, pursuant to and in accordance with the terms and conditions of this Stipulation and Escrow Agreement.

2.8.6 Checks issued to Participating Claimants pursuant to this

Agreement shall remain negotiable for a period of one hundred eighty (180) days from the date of mailing. The Claims Administrator will make reasonable efforts under the direction of the Parties to locate and contact Participating Claimants who have not negotiated checks issued to them pursuant to Section 2.8.5. The funds associated with any checks not properly or timely negotiated shall remain the property of Oppenheimer and shall not be paid to any Person other than Oppenheimer, except that if a Class Member demonstrates to the reasonable satisfaction of counsel for Oppenheimer and Class Counsel that he or she had a reasonable excuse for failing to negotiate the check within 180 days, the Claims Administrator shall reissue the check, which shall then become void if not negotiated within 30 days. The Settling Parties hereby agree that such funds represent settlement payments for matters disputed in good faith, not uncontested wage payments, and they shall not be subject to escheat rules, *cy pres*, or other distribution not provided for in this Stipulation. Participating Claimants who fail to negotiate their check(s) in a timely fashion shall, like all Settlement Class Members, remain subject to the terms of the Stipulation and Judgment.

2.8.7 Following the mailing of the payments to Participating Claimants discussed in Section 2.8.5, the Claims Administrator shall provide Class Counsel and Counsel for Defendants with a written confirmation of this mailing. Upon receipt of this confirmation, Class Counsel will file a notice or acknowledgement of satisfaction of judgment with the Court in the Litigation on behalf of the Settlement Class.

2.9 *Release of Claims.*

2.9.1 Upon the Effective Date, the Class Representatives and each of the Settlement Class Members, including all Participating Claimants, on behalf of themselves, and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed with prejudice, relinquished, and discharged all Released State Law Claims as defined in Section 1.46.

2.9.2 Upon the Effective Date, the Class Representatives and each of the

Participating Claimants, on behalf of themselves, and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed with prejudice, relinquished, and discharged all Released Federal Law Claims as defined in Section 1.47.

2.9.3 Upon the Effective Date, each Class Representative, on behalf of himself and each of his heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed with prejudice, relinquished, and discharged all of the Class Representatives' Released Claims as defined in Section 1.10.

2.10 *Payment of Costs and Attorneys' Fees to Class Counsel; and Payment of the Enhancements to the Class Representatives; Notification and Payment of Labor and Workforce Development Agency.*

2.10.1 Not more than twenty (20) days after the Effective Date, and only if the Effective Date occurs, subject to Court approval, the Claims Administrator will pay Class Counsel, from the Escrow Account, an amount approved by the Court, not to exceed 25% of the Settlement Consideration, including a prorated share of the interest accrued on such amount as provided in Sections 1.1, 1.24 and 2.2 as payment in full for all attorneys' fees, and up to \$30,000 as payment in full for all allowable litigation costs and expenses. Payments made per this Section shall constitute full satisfaction of any and all claims for attorneys' fees or costs, and the Class Representatives and Class Counsel, on behalf of themselves and all Settlement Class Members, agree that they shall not seek nor be entitled to any additional attorneys' fees or costs under any theory. The Class Representatives and Class Counsel agree that they shall be responsible for justifying the amount of this cost and fee payment to the Court, and they agree to submit, as appropriate, the necessary materials to justify this payment along with the Settling Parties' joint motion for entry of the Order of Final Approval (and the associated entry of Judgment) pursuant to Section 2.8.1. Provided it is consistent with this Stipulation, Defendants will not oppose the amount of fees or costs requested by Class Counsel. In the event that the

Court (or any appellate court) awards less than the amount requested for attorneys' fees and/or costs, or less than the amount requested for Enhancement payments for Class Representatives, only the awarded amounts shall be paid and such payment shall constitute satisfaction of the obligations of Section 2.10 and full payment thereunder, and, except as provided in Section 2.2.3, any remaining or unawarded portion of the requested attorney's fees, litigation costs, and/or Enhancements (together with a prorated share of the accrued interest provided for in Section 1.30) shall remain the property of Oppenheimer. If the Effective Date occurs, Oppenheimer shall satisfy its obligations under this Section 2.10.1 by wiring the Claims Administrator the full amount of attorneys' fees and litigation costs approved by the Court, as provided in Section 2.8.4. Class Counsel shall provide counsel for Oppenheimer and the Claims Administrator with their taxpayer identification numbers, Form W-9s, and wire transfer instructions. Other than the reporting of these payments as required by this Stipulation and applicable law, Class Counsel and the Class Representatives shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payments they receive pursuant to this Section 2.10. The effectiveness of this Settlement is not conditioned upon the Court awarding any specific amount as Attorneys' Fees, litigation costs, or Enhancements, provided the amounts awarded do not exceed the maximum amounts set forth above. In addition, the Class Representatives and Class Counsel, on behalf of themselves and all Settlement Class Members, agree that, in the event any other or additional attorneys' fees or costs are awarded by the Court (or any appellate court), such fees and costs shall be paid out of the Settlement Consideration.

2.10.2 Not more than thirty (30) calendar days after the Effective Date, and only in the event that the Effective Date occurs and the Class Representatives have timely signed and submitted their respective Settlement Claim Certification Forms, and full, general, and comprehensive releases of the Class Representatives' respective Released Claims set forth in Section 1.10 as required below, the Claims Administrator will mail two separate checks from the Escrow Account to each Class Representative, which checks shall be payable to the Class

Representatives in their personal capacity only and shall be sent to the Class Representatives via Class Counsel. The first said check for each Class Representative shall be his individual payment as a Participating Claimant, pursuant to Sections 2.3 and 2.8. The second said check for each Class Representative shall be compensation and consideration in an amount to be approved by the Court of up to \$20,000 each as an Enhancement payment for the efforts of the Class Representative in the Litigation. The Class Representatives shall be required to sign a full release of the Class Representatives' Released Claims set forth in Section 1.10 in exchange for receiving their Participating Claimant payments and Enhancement payments, and to send the same, together with fully completed and signed Settlement Claim Certification Forms, to the Claims Administrator so that they are postmarked on or before the Claim Certification Form Deadline. If a Class Representative's full release or Settlement Claim Certification Form as described above is not received by the Claims Administrator and timely postmarked on or before the Claim Certification Form Deadline, then the Class Representative will be deemed to have forever waived his right to be a Participating Claimant and to receive any payments whatsoever under this settlement, and will also be deemed a Member of the Settlement Class subject to the Judgment. Through this agreement, Patrick Creighton and David N. Cohen each agree to be a Member of the Settlement Class subject to the Judgment. The Settling Parties agree that the Enhancement payments shall be reported as non-wage income in the year of payment, and that the Class Representatives' individual settlement payments shall be subject to deductions and withholdings and paid and reported in accordance with Sections 2.3 and 2.8 and the terms of this Stipulation. Other than the deduction, withholding and reporting obligations referenced in this Section 2.10.2, and with the exception of the employer's share of any federal, state and local taxes, the Class Representatives shall be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made to them pursuant to this Section.

2.10.3 Defendants shall have no responsibility for, and no liability whatsoever with respect to the allocation of the Settlement Consideration among the Class

Representatives, Class Counsel, and/or any other Person or entity who may assert some claim thereto, of any award or payment of the Settlement Consideration issued or made in the Litigation or pursuant to this Stipulation, including, but not limited to, any award or payment pursuant to this Section 2.10.

2.10.4 Notification to Labor and Workforce Development Agency (“LWDA”).

2.10.4.1 The Parties expressly agree that \$25,000 from the Maximum Settlement Amount shall be reserved by Oppenheimer to be used in one of the following ways: (a) to be paid to the LWDA by Oppenheimer as part of this settlement; (b) as a payment of penalty assessed by the LWDA, if any; or (c) for Oppenheimer to keep as its own property should the LWDA conduct an investigation and fail to assess fines or penalties against Oppenheimer.

2.10.4.2 Within seven (7) calendar days from the full execution of this Stipulation, Class Counsel shall provide written notice to the LWDA of this Action and the claims alleged therein pursuant to Labor Code section 2699.3.

2.10.4.3 If the LWDA notifies the Parties that it does not intend to investigate the alleged violations pursuant to Labor Code section 2699.3(a)(2)(A), Oppenheimer shall pay to the LWDA the total of \$25,000 as part of this Class Action Settlement.

2.10.4.4 If the LWDA notifies the Parties that it intends to investigate the alleged violations pursuant to Labor Code section 2699.3(a)(2)(B), Oppenheimer shall retain the \$25,000 to be paid in whole or in part to the LWDA for assessment of penalties, if any. If the LWDA conducts an investigation and fails to assess fines or penalties against Oppenheimer, the \$25,000 amount provided for under this Section 2.10.4. remains the exclusive property of Oppenheimer.

2.11 *Claims Administrator.*

2.11.1 The Parties have agreed to propose as the Claims Administrator The Garden City Group, Inc., for this Court’s consideration and approval. The Claims

Administrator will be responsible for locating the Class Members, mailing the Class Notice to Class Members, collecting the claim forms, responding to Class Member inquiries, resolving disputes relating to Compensable Months worked by Participating Claimants subject to and in accordance with the terms and provisions of this Stipulation, distributing payments provided for herein, reporting taxes and withholdings relating to such payments, and performing such other duties as specified in this Stipulation or the Escrow Agreement or as the Parties may mutually direct.

2.11.2 Up to a maximum of \$125,000 of the Maximum Settlement Amount shall be allocated to the fees and expenses reasonably incurred by the Claims Administrator as a result of the procedures and processes expressly required by this Stipulation and the Escrow Agreement. In no event will the fees and expenses incurred by the Claims Administrator cause Oppenheimer's total payments to exceed the Maximum Settlement Amount.

2.11.3 The actions of the Claims Administrator shall be governed by the terms of this Stipulation and the Escrow Agreement. Oppenheimer may engage in communications with the Claims Administrator concerning routine administrative matters and make payment to the Claims Administrator for its services and engage in related communications with the Claims Administrator with copies to Class Counsel, but without notice or copies to any Class Members or the Court. Class Counsel and Oppenheimer may provide relevant information needed by the Claims Administrator per this Stipulation and engage in related communications with the Claims Administrator with notice and copies to one another.

2.11.4 In the event that either Oppenheimer or Class Counsel takes the position that the Claims Administrator is not acting in accordance with the terms of the Stipulation or the Escrow Agreement, such party shall meet and confer with opposing counsel prior to raising any such issue with the Claims Administrator or the Court. In the event that one or more Class Members inform Oppenheimer, the Claims Administrator or Class Counsel that they believe the Claims Administrator is not acting in accordance with the terms of the Stipulation or has any complaints about the Claims Administrator or any decision by the Claims

Administrator, the issue shall be promptly brought to the attention of the Parties, who shall meet and confer in a good faith effort to resolve the issue.

2.12 *Termination of the Settlement.*

2.12.1 In the event that the Stipulation is not approved in its entirety as is by the Court, excluding modifications that Defendants determine in their reasonable and good faith judgment to not be material modifications, or in the event that the settlement set forth in the Stipulation is terminated, cancelled, declared void, or fails to become effective in accordance with its terms, or if the Judgment does not become a Final Judgment, or if the Effective Date does not occur, (a) no payments shall be made by Defendants to anyone in accordance with the terms of this Stipulation; (b) the Settling Parties will bear their own costs and fees with regard to the efforts to obtain Court approval; (c) this Stipulation (except for those provisions relating to the termination of the settlement set forth in Sections 2.1 and 2.12, and those provisions relating to the conditional nature and confidentiality of this settlement, non-admissibility and non-admission of wrongdoing or liability, the return of documents, and attorney fees and litigation costs set forth in Sections I, IV, 2.1.2, 2.12.4, 2.13.4, 2.13.5, 2.13.20, 2.13.21 and 2.13.22) shall be deemed null and void *ab initio*, and its terms and provisions shall have no further force or effect and shall not be referred to or utilized in this Litigation or any other proceeding for any purpose whatsoever; (d) the negotiation, terms and entry of the Stipulation shall remain subject to the Parties' confidentiality and mediation agreements and the provisions of Federal Rule of Evidence 408 and any similar or analogous state laws or rules; (e) any Judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*; and (f) all other terms and provisions of Section 2.12.4 shall apply. Notwithstanding any other provision of this Stipulation, no order of the Court, or modification or reversal on appeal of any order of the Court, reducing the amount of any attorneys' fees or costs to be paid by Oppenheimer to Class Counsel or reducing the amount of the Enhancements to be paid to the Class Representatives shall constitute grounds for cancellation or termination of the Stipulation or grounds for limiting any other provision of the Judgment.

2.12.2 Defendants shall have the absolute discretionary right to terminate this Settlement Agreement and Stipulation through written notice to Class Counsel, the Claims Administrator and the Court within twenty-one (21) days of its receipt of notice that any of the following events have occurred:

2.12.2.1 In the event that either five percent (5%) or more of the Class Members opt out of the Settlement Class by submitting Opt Out Forms pursuant to Section 2.7.2.

2.12.2.2 In the event that the Stipulation is construed in such a fashion that would require Defendants to pay more than the Maximum Settlement Amount.

2.12.2.3 In the event that the Court does not certify, for settlement purposes only, a class action and collective action consistent with Section 2.1.1, or otherwise makes an order materially inconsistent with any of the terms of this Stipulation.

2.12.2.4 In the event the Court decides not to enter the Preliminary Approval Order in its entirety, or to enter the Preliminary Approval Order with modifications that Defendants determine in their reasonable and good faith judgment to be material.

2.12.2.5 In the event of any finding or ruling by this Court (or any appellate or other court) that directly or indirectly modifies or affects (a) the extent or scope of the Released State Law Claims or the Released Federal Law Claims provided for in this Stipulation; or (b) the Maximum Settlement Amount to be paid by Oppenheimer pursuant to the Settlement; or (c) Oppenheimer's right to retain any portion of the Maximum Settlement Amount not approved or awarded by the Court or claimed by Participating Claimants (*i.e.*, any finding or ruling that any portion of the Maximum Settlement Amount not approved or awarded by the Court or claimed by Participating Claimants does not remain the property of Oppenheimer).

2.12.2.6 In the event that any court, prior to the Court's Order of Final Approval, whether on a conditional basis or not, certifies a class or collective action that involves any claim included in the Released State Law Claims, the Released Federal Law Claims, or the Class Representatives' Released Claims set forth, respectively, in Sections 1.46,

1.47 and 1.10.

2.12.2.7 In the event that any pending litigation or other litigation that is filed prior to the Court's Order of Final Approval in any way prevents any of the claims covered by this settlement and Stipulation, including without limitation the Released State Law Claims, the Released Federal Law Claims, and the Class Representatives' Released Claims from being extinguished.

2.12.3 To the extent Defendants choose to exercise the option established in Section 2.12.2 and its subsections, they must do so through written notice to the Court, Class Counsel and the Claims Administrator.

2.12.4 In the event that the settlement set forth in the Stipulation is terminated, cancelled, declared void, or fails to become effective in accordance with its terms, or if the Judgment does not become a Final Judgment, or if the Effective Date does not occur, notwithstanding any of the provisions of this Section 2.12 and all its subsections:

2.12.4.1 The Stipulation, including without limitation the reservation of jurisdiction in Section 2.13.15 (except for those provisions relating to the termination of the settlement set forth in Sections 2.1 and 2.12, and those provisions relating to the conditional nature and confidentiality of this settlement, non-admissibility and non-admission of wrongdoing or liability, the return of documents, and attorney fees and litigation costs set forth in Sections I, IV, 2.1.2, 2.12.4, 2.13.4, 2.13.5, 2.13.20, 2.13.21 and 2.13.22, shall be deemed null and void *ab initio* and of no further force or effect.

2.12.4.2 The Stipulation and its terms and provisions shall have no further force and effect with respect to the Settling Parties and shall not be used, referred to or admissible in the Litigation or in any other action or proceeding for any purpose whatsoever, any Judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*, and the negotiation, terms and entry of the Parties' settlement and this Stipulation shall remain subject to the provisions of Federal Rule of Evidence 408.

2.12.4.3 No payments shall be made by Defendants to anyone

under or pursuant to the terms of this Stipulation, except as provided in Section 2.12.4.6, and the Settling Parties will bear their own costs and fees with regard to the efforts to obtain Court approval.

2.12.4.4 Both Parties would be free to assert any and all claims and defenses in the Litigation as if the Settlement and this Stipulation had never occurred. Thus, Defendants would be free to challenge any and all claims and allegations asserted by Plaintiffs in the Litigation upon all procedural and factual grounds, and to contest Plaintiffs' request for class treatment on any grounds, to assert any and all potential defenses and privileges. The Class Representatives and Class Counsel agree that Defendants retain and reserve these rights, and that they will not take a position to the contrary, and further agree that, if the Litigation were to proceed, they will not argue, and hereby waive any argument that, based upon the Parties' settlement or this Stipulation or the exhibits thereto, or any act performed or document executed pursuant to or in furtherance of the settlement or this Stipulation, Defendants should be barred from contesting class certification on any grounds or asserting any and all other potential defenses and privileges.

2.12.4.5 If the Class described in Section 1.6 has already been certified for settlement purposes, the Parties will jointly move, as soon as practicable, to decertify the Class.

2.12.4.6 The Parties shall each be responsible for one-half of the fees and costs of the Claims Administrator incurred through the date of the failure of the Stipulation, except that, in the event the Effective Date does not occur because Defendants exercised their right to terminate the settlement and the Stipulation under Section 2.12.2.1, then Oppenheimer shall be solely responsible for paying Administrative Costs incurred by the Claims Administrator and neither the Class Representatives nor Class Counsel shall have any responsibility or obligation for the payment of such fees and costs.

2.12.4.7 The Litigation may proceed without prejudice as if this settlement had not been entered into and Defendants will not raise delay in prosecution as a

defense to the prosecution of this case or the certification of a class or collective action therein insofar as it relates to the period between July 8, 2009 and the date that the settlement set forth in the Stipulation becomes void.

2.13 *Miscellaneous Provisions.*

2.13.1 The only Class Members, other than the Class Representatives, entitled to any payment under this Stipulation and the associated Judgment are Participating Claimants, and they shall be entitled to their individual payments pursuant to Section 2.3 only.

2.13.2 Defendants sole obligations to Class Counsel, the Class Representatives and the Claims Administrator are set forth in this Stipulation. Class Counsel and the Claims Administrator shall hold Defendant harmless for an award of fees or costs beyond those made in accordance with the Stipulation and shall not seek to recover any fees or costs awarded in excess of the terms in this Stipulation. Class Counsel and the Class Representatives, on behalf of themselves and all Settlement Class Members, agree that, in the event any fees or costs of any kind beyond those expressly provided for in this Stipulation are awarded by the Court (or any appellate court), such fees and costs shall be part of the Administrative Costs and paid out of the Maximum Settlement Amount and shall result in a corresponding reduction in the Net Settlement Amount.

2.13.3 The Settling Parties (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation, including but not limited to obtaining (i) the transfer to the Court or stay of any pending class or collective action lawsuit that alleges any of the Released State Law Claims and/or Released Federal Law Claims set forth in Sections 1.46 and 1.47, respectively, of this Stipulation, and (ii) the dismissal, transfer to the Court, or stay of any subsequently-filed class or collective action lawsuit that alleges any of the Released State Law Claims and/or Released Federal Law Claims set forth in Sections 1.46 and 1.47, respectively, of this Stipulation.

2.13.4 The Stipulation compromises claims which are contested in good faith, and it shall not be deemed an admission by any of the Settling Parties as to the merits of any claim or any potential defense. The Settling Parties agree that the amounts to be paid pursuant to this settlement and the other terms of the settlement and this Stipulation were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

2.13.5 Defendants specifically and generally deny all of the claims asserted in the Litigation, deny any and all liability or wrongdoing of any kind whatsoever associated with any of the facts or claims alleged in the Litigation, and make no concessions or admissions of wrongdoing or liability of any kind whatsoever. Neither the Stipulation nor the settlement, nor any act performed or document executed pursuant to, or in furtherance of, the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission or evidence of, the validity of any Released State Law Claim or any Released Federal Law Claim, or of any wrongdoing or liability of the Oppenheimer Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission or evidence of, any fault or omission of the Oppenheimer Releasees, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal. The Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Defendants could not contest (or are estopped from contesting) class or collective action treatment pursuant to either Federal Rule of Civil Procedure 23 or 29 U.S.C. § 216(b) on any grounds if the Court fails to enter the Order of Final Approval; this Stipulation shall not be deemed an admission by, or ground for estoppel against Defendants that class or collective action treatment pursuant to either Federal Rule of Civil Procedure 23 or 29 U.S.C. § 216(b) in the Litigation is proper or cannot be contested on any grounds.

2.13.6 All of the exhibits and attachments to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

2.13.7 The Stipulation may be amended or modified only by a written

instrument signed by authorized representatives of all Settling Parties or their respective successors-in-interest.

2.13.8 The Stipulation (including the exhibits and attachments hereto) constitutes the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any party concerning the Stipulation or the exhibits and attachments hereto other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs.

2.13.9 Class Counsel, on behalf of the Class Representatives and the Class, represent that, after consultation with and approval by the Class Representatives, they are expressly authorized by the Class Representatives to enter into this Stipulation, take all appropriate action required or permitted to be taken by the Class Representatives and the Class pursuant to the Stipulation to effect its terms, and enter into any modifications or amendments to the Stipulation on behalf of the Class Representatives and the Class which they deem appropriate. Similarly, Defendants' Counsel represents that it is expressly authorized to enter into this Stipulation, take all appropriate action required or permitted to be taken by Defendants pursuant to the Stipulation to effect its terms, and enter into any modifications or amendments to the Stipulation on behalf of Defendants which they deem appropriate.

2.13.10 Each counsel or other Person executing the Stipulation or any of the exhibits or attachments hereto on behalf of any party hereby warrants that such Person has the full authority to do so.

2.13.11 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

2.13.12 Whenever this Stipulation requires or contemplates that one party, the Court or the Claims Administrator shall or may give notice to another, notice shall be provided by facsimile and/or next-day (excluding Sundays and court holidays) express delivery

service as follows:

- (i) If to Oppenheimer, then to:

Andrew J. Schaffran
Morgan Lewis & Bockius LLP
101 Park Avenue
New York, New York 10178
Facsimile: (212) 309-6001

- (i) If to Class Representatives, then to:

Mark R. Thierman
The Thierman Law Firm, P.C.
7287 Lakeside Drive
Suite 101
Reno, Nevada 89511
Facsimile: (775) 703-5027

- and -

Leon Greenberg, Esq.
633 South 4th Street, Suite 4
Las Vegas, NV 89101
Facsimile: (702) 385-1827

- and -

Jeffrey G. Smith
Robert Abrams
Wolf Haldenstein Adler Freeman & Herz LLP
270 Madison Avenue
New York, New York 10016
Facsimile: (212) 545-4653

2.13.13 The Stipulation shall be binding upon, and inure to the benefit of, the heirs, executors, successors and assigns of the parties hereto; but this Stipulation is not designed to and does not create any third party beneficiaries either express or implied.

2.13.14 The Class Representatives and Defendants waive their right to

seek any form of appellate review of any order or judgment that approves the settlement as set forth in this Stipulation in its entirety as is, except for changes to formatting, corrections of typographical errors or other immaterial changes that do not affect a material provision of the Stipulation in a material way within the meaning of Section 2.12 above.

2.13.15 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Stipulation. Any action to enforce the settlement provided for in this Stipulation shall be commenced and maintained only in the Court. It is further expressly agreed and stipulated that the Court shall have exclusive jurisdiction and authority to consider, rule upon, and issue a final order with respect to any dispute involving any of the Settling Parties, including any suit or other action or proceeding, whether judicial, administrative or otherwise, which may be instituted by any person or entity, individually or derivatively, with respect to any matter relating to a subject matter of the settlement set forth in this Stipulation, and Defendants and Class Counsel and the Class Representatives, on behalf of themselves and all Settlement Class Members, hereby irrevocably submit to the exclusive jurisdiction and venue of the Court with respect thereto. In the event of any such dispute, Oppenheimer and Class Counsel and the Class Representatives, on behalf of themselves and all Settlement Class Members, waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is in any manner an improper venue or an inconvenient forum. This reservation of jurisdiction does not limit any other reservation of jurisdiction in this Stipulation nor do any other such reservations limit the reservation in this Section.

2.13.16 The parties agree and understand that there shall be no injunctive relief included as part of any Court order as to them.

2.13.17 The Stipulation shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of New York, and the

rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of New York without giving effect to that State's choice of law principles.

2.13.18 This Stipulation shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this Stipulation or any specific term or condition thereof. The parties acknowledge that the terms of the Stipulation are contractual and are the product of arms-length negotiations between the parties and their counsel. Each party and their counsel cooperated in the drafting and preparation of the Stipulation. In any construction to be made of the Stipulation, the Stipulation shall not be construed against any party and any statutory provision regarding contract interpretation to the contrary, including without limitation, California Civil Code § 1654, shall not be applied.

2.13.19 This Stipulation and the associated Judgment do not and will not create any unpaid residue or unpaid residual, and no distribution of such shall be required.

2.13.20 Other than necessary disclosures made to the Court, the fact of settlement, the contents of this Stipulation (including the exhibits and attachments hereto), the Parties' settlement negotiations and all related information shall be held strictly confidential by Class Counsel and the Class Representatives and shall not be disclosed to any third parties (including the media) until such time as the Court enters the Preliminary Approval Order. After entry of the Preliminary Approval Order, Class Counsel and the Class Representatives may communicate with Class Members for purposes of implementing, administering and enforcing the settlement as provided herein, and Class Counsel may respond to inquiries they receive from Class Members. Class Counsel and Oppenheimer shall not issue or cause to be issued any statements to the media regarding the settlement or any of its terms; provided, however, that, Class Counsel and Oppenheimer may respond to any inquiries they receive from the media after the issuance of the Preliminary Approval Order, or to any media reports on the settlement or its terms, by accurately describing the settlement and its terms. Class Counsel will not mention this

settlement or Stipulation on their websites, except that, after the Class Notice has been mailed by the Claims Administrator, Class Counsel may post on their websites a copy of the Stipulation together with the exhibits and attachments thereto, copies of any orders of the Court in the Litigation, and a brief description of the Litigation and the settlement that is either taken verbatim from the Stipulation or the exhibits and attachments thereto, or approved in writing by Oppenheimer or the Court. Nothing herein shall be construed to limit Class Counsel's legal right to communicate with the Class Representatives, or with Class Members who initiate communications with them.

2.13.21 Within thirty (30) days after the Effective Date, or the date that the settlement is terminated in accordance with this Stipulation, the Class Representatives and Class Counsel shall either destroy or return to Oppenheimer all originals and duplicate copies of documents and materials produced or obtained from Oppenheimer during the Litigation or in connection with the Parties' mediation or the settlement, including all documents and materials provided by Oppenheimer to the Class Representatives and/or Class Counsel by initial disclosures, formal discovery, or informal discovery including all settlement discussions, or pursuant to this Stipulation. This shall include, but not be limited to, business records, proprietary information, compensation information, or any other documents, materials, summaries, or notes dealing with or in any way related to the claims asserted, the settlement or this Stipulation. The Class Representatives and Class Counsel shall each certify in writing to Oppenheimer within ten (10) days after the end of such thirty (30) day period that he has returned or destroyed all such documents and materials and all copies thereof. No documents or materials described in this Section 2.13.21 shall be offered for sale or distributed to any person or entity by the Class Representatives or Class Counsel. All originals or reproductions of any such documents and materials given to any party, expert, consultant, or other Person or entity shall be retrieved by Class Counsel and then destroyed or returned to Oppenheimer, and all such Persons or entities who had been provided such documents or materials shall certify in writing to Oppenheimer within thirty (30) days of the Effective Date, or the date that the Settlement is

terminated in accordance with this Stipulation, that they have returned all such documents or materials and all copies thereof to Class Counsel, and Class Counsel shall certify in writing to Oppenheimer within ten (10) days after the end of such thirty (30) day period that it has returned or destroyed all such documents and materials and all copies thereof. This provision is not intended to cover work product produced by Class Counsel, but is intended to cover any documents or other materials described herein that are attached to any work product and all such documents or materials attached to work product shall be returned to Oppenheimer or destroyed. All such documents, information or materials incorporated into any work product shall be excised.

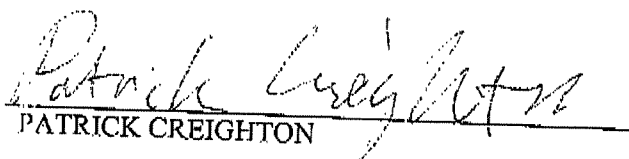
2.13.22 In the event that any legal action is necessary to enforce any of the terms or provisions of this Stipulation or to address a breach or alleged breach of this Stipulation, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the undersigned have executed this Stipulation, as of the dates indicated below:

Dated: 1/31, 2011

Dated: _____, 2011

Dated: _____, 2011


PATRICK CREIGHTON

DAVID N. COHEN

OPPENHEIMER & CO., INC.

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IN WITNESS WHEREOF, the undersigned have executed this Stipulation as of the dates indicated below:

Dated: _____, 2011

Dated: *Jan 26*, 2011

Dated: _____, 2011



PATRICK CREIGHTON

DAVID N. COHEN

OPPENHEIMER & CO., INC.

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Dated: _____, 2011

PATRICK CREIGHTON

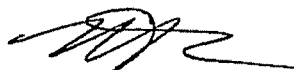
Dated: _____, 2011

DAVID N. COHEN

Dated: *January 31*, 2011


By: [Signature] _____ *EUP+GR*
OPPENHEIMER & CO., INC.

Dated: 1/31, 2011


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Attorneys for Plaintiffs

Dated: Jan 31, 2011


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Attorneys for Plaintiffs

Dated: _____, 2011

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Attorneys for Plaintiffs

Dated: _____, 2011

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Attorneys for Plaintiffs

Dated: _____, 2011

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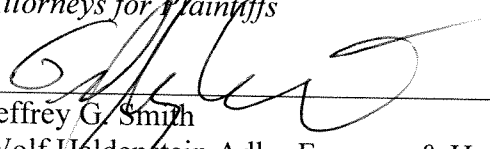
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Dated: _____, 2011

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Attorneys for Plaintiffs

Dated: Jan 24, 2011


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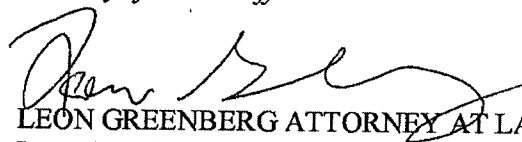
Attorneys for Plaintiffs

Dated: _____, 2011

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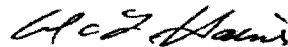
Dated: _____, 2011

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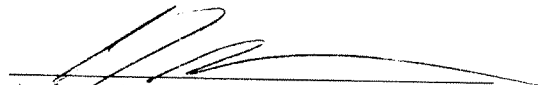
Attorneys for Plaintiffs

Dated: Feb 1, 2011


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Attorneys for Plaintiffs

Dated: Jan 26, 2011



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*Attorneys for Defendants OPPENHEIMER &
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