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## STIPULATION OF SETTLEMENT

Subject to approval of the Court and to the other terms and conditions set forth herein, this Settlement Stipulation<sup>1</sup> is made and entered by and among (i) Plaintiffs Anthony Massa and the Utility Consumers Action Network, on behalf of themselves and each of the Persons in the Settlement Class, as applicable, and (ii) Defendants Sprint Spectrum L.P. and Sprint Spectrum Holding Company L.P. (“Defendants”), by and through their respective counsel as set forth below. This Settlement Stipulation is intended by the Parties fully, finally and forever to resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

### 1. THE LITIGATION

This is a consumer class and private Attorney General action arising from alleged violations of consumer protection statutes. The Complaint alleges in late 1996 and early 1997 Sprint through its agents offered its earliest customers in the San Diego area the “Pioneer Program” that promised rates of 35 cents a minute on local calls and “no monthly access fee for the life of your account,” but that defendants imposed certain surcharges beginning in early 2003, and effective July 2003 Defendants began to impose a \$1.50 per month fee, to recoup certain costs claimed to be associated with number portability and pooling and federal 911 charges. Plaintiffs allege this fee – imposed whether or not customers use the phone – is not a government imposed assessment or tax, and thus either is or operates as a monthly access fee, directly in contravention of defendants’ earlier representations that Class members would be free of such fees for the life of their account.

Plaintiffs commenced this action on July 23, 2003 by filing an individual complaint alleging Mr. Massa was damaged by Defendants’ actions, and on behalf of a class and the general public.

Defendants deny that the surcharges at issue are or have been “monthly access fees” and allege that their conduct was lawful and, therefore, their practices are not actionable by Plaintiffs and all members of the Settlement Class and that neither plaintiff nor any member of the class or the general public suffered any damage.

Plaintiff’s Complaint (“Complaint”) contains claims based upon allegations of: (i) violation of the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*; (ii) unlawful, unfair and fraudulent business practices under California Business and Professions Code § 17200 *et seq.*; and (iii) Declaratory Relief. The Complaint seeks damages, restitution, and injunctive relief.

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<sup>1</sup> As used herein, unless the context otherwise requires, capitalized terms have the meanings ascribed to them in Section 5.1 hereof.

## **2. THE SETTLEMENT NEGOTIATIONS**

The parties did not agree to informally resolve this matter until May 28, 2004. Prior to the execution of this Settlement Stipulation, Plaintiffs' Counsel engaged in arm's-length settlement negotiations with Defendants' Counsel concerning key liability and damage issues underlying Plaintiffs' claims. This Settlement Stipulation reflects the product of this process.

## **3. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLEMENT**

Plaintiffs and Plaintiffs' Counsel believe that the claims asserted in the Litigation have merit and that the information obtained by Plaintiffs' Counsel supports the claims asserted. Plaintiffs and Plaintiffs' Counsel, however, recognize that there are significant risks, uncertainty, and expense in proceeding with the Litigation through trial and through any appeals. Plaintiffs and Plaintiffs' Counsel believe that, under the present circumstances of the Litigation, the settlement set forth in this Settlement Stipulation confers substantial benefits upon the Settlement Class and each of the Persons in the Settlement Class.

Plaintiffs and Plaintiffs' Counsel have considered the benefits to the Settlement Class that will be received as a result of this settlement, and the potential benefits, costs, uncertainties and risks of further litigating this matter, and have concluded that this settlement is fair, reasonable, adequate, and in the best interests of both Plaintiffs and the Settlement Class, subject to the terms and conditions set forth herein.

## **4. DEFENDANTS' DENIAL OF WRONGDOING AND LIABILITY**

Defendants have denied and continue to deny each and every claim and contention alleged by Plaintiffs on behalf of the Settlement Class and the general public, including all claims concerning Defendants' conduct, as well as the contention that such conduct constitutes wrongdoing or gives rise to legal liability. Defendants also have denied and continue to deny, *inter alia*, the allegations that Plaintiffs or Members of the Settlement Class have suffered any damage as a result of the alleged conduct. The Parties agree that neither this Settlement Stipulation nor any document referred to herein, nor any action taken to carry out this Settlement Stipulation is, or may be construed as, or may be used as evidence of, an admission or concession on the part of Defendants with respect to any claims or potential claims or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have asserted or intended to assert in this Litigation. Moreover, there has been no determination by any court or other tribunal as to the factual allegations made against Defendants. Nonetheless, Defendants wish to settle and compromise the Litigation to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendants also have taken into account the uncertainty

and risks inherent in this Litigation, and without conceding any infirmity in the defenses that they have asserted or could assert in this Litigation, have determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Stipulation.

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

IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs (for themselves and Members of the Settlement Class and the general public, as applicable) and Defendants that, subject to the approval of the Court and other conditions set forth herein, the Released Claims shall be finally and fully compromised, settled and released, and the Litigation shall be dismissed with prejudice and without costs as to any settling Party, upon and subject to the terms and conditions of this Settlement Stipulation, as follows:

### **5.1. Definitions**

As used in this Settlement Stipulation, and any related documents attached hereto as exhibits, which are incorporated by reference herein, the following terms shall have the meanings specified below:

5.1.1 “Action” or “Litigation” means this action and all of the claims and defenses asserted herein.

5.1.2 “Class Notice” means the “Notice of Proposed Class Action Settlement and Settlement Hearing” (substantially in the form attached hereto as Exhibit 2) to be sent to the Settlement Class.

5.1.3 “Costs of Notice and Administration” means costs and expenses reasonably and actually incurred in connection with disseminating the Class Notice and distributing any payments to Members of the Settlement Class.

5.1.4 “Court” means the Superior Court for the State of California, County of San Diego, the Honorable Jay M. Bloom presiding, or any other San Diego Superior Court to which the Litigation may be assigned.

5.1.5 “Defendants’ Counsel” means Mark D. Hinderks, Esq. of Stinson Morrison Hecker LLP, and Daniel E. Eaton, Esq. of Seltzer Caplan McMahon Vitek.

5.1.6 “Effective Date” means the first business day after all of the events and conditions specified in Section 5.9 of this Settlement Stipulation have been met and have occurred.

5.1.7 “Fee and Expense Award” means the attorneys’ fees, expenses and

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costs, as awarded by the Court in accordance with Section 5.8 of this Settlement Stipulation.

5.1.8. "Fees" means the "Federal Telephone Number Pooling," "Federal Telephone Number Pooling and Portability", "Federal E911" surcharges, or other similar flat rate per month surcharge or fee, imposed by Sprint on customer invoices that is or was assessed for the purpose of recovering Sprint's costs of complying with or contributing to government programs, but does not include a tax or other charge that Sprint is or was required to collect from customers.

5.1.9 "Final" means (i) sixty-one (61) days after the date of mailing of the notice of entry of Judgment, if no notice of appeal has been filed and no other review or challenge has been sought (including, but not limited to a motion for reconsideration or a motion for intervention); or (ii) if any appeal is taken, or any reargument or other form of review is sought, the date on which the Judgment shall have been affirmed in all respects and the time for any further appeal, reargument or other form of review shall have expired.

5.1.10 "Judgment" means the judgment to be rendered by the San Diego County Superior Court in this litigation, substantially in the form attached hereto as Exhibit 3.

5.1.11 "Notice Date" means the date on which the Court approves the form of the Class Notice.

5.1.12 "Parties" means, collectively, Defendants and Plaintiffs (on behalf of themselves and the Members of the Settlement Class or the general public as appropriate) (individually, a "Party").

5.1.13 "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government entity or any political subdivision or agency thereof, or any business or legal entity, and their spouses, heirs, predecessors, successors, representatives or assignees.

5.1.14 "Plaintiffs' Counsel" means Rosner, Law & Mansfield, 10085 Carroll Canyon Road, First Floor, San Diego, California 92131, attention Alan M. Mansfield, Esq.

5.1.15 "Preliminary Approval" means the entry of the Notice Order more particularly described in Section 5.4 of this Settlement Stipulation.

5.1.16 "Related Parties" means each Defendant's present or former parent

entities, subsidiaries, affiliates, officers, directors, attorneys, accountants, insurers, agents, employees, representatives, divisions, joint ventures, and any entity in which Defendant has or had a controlling interest, administrators, insurers, partners, and shareholders, and each of them, and their successors, assigns, and any member of their immediate families, or any past or present officers, directors, attorneys, accountants, insurers, agents, employees or representatives of each of the foregoing entities and their respective heirs, executors, spouses, representatives, administrators, or assigns.

5.1.17 “Released Claims” means all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, choate or inchoate, asserted in the Complaint, including but not limited to claims based upon alleged breach of contract, negligence, gross negligence, recklessness, misrepresentation, fraud, contribution, indemnification, unfair business practices, or violations of any federal, state, local, statutory, or common law or any other law, rule, regulation, or tariff, including both known and unknown claims, that have been or could have been asserted against Defendant and/or its Related Parties in any forum by Plaintiff or any Member of the Settlement Class or any of them, or the heirs, successors, and assigns of any of them, arising out of all facts, claims, rights, or causes of action asserted in the Complaint, including all “Unknown Claims” as defined in Section 5.1.22 hereof.

5.1.18 “Released Persons” means Defendant and their respective Related Parties, as set forth in Section 5.1.16 hereof.

5.1.19 “Settlement Class Member” or “Member of the Settlement Class” means a Person who falls within the definition of the Settlement Class as set forth herein and who has not timely requested exclusion from the Settlement Class.

5.1.20 “Settlement Stipulation” means this Stipulation of Settlement.

5.1.21 “Settlement Class” means the class of Persons to be certified by the Court pursuant to the Preliminary Approval Order substantially in the form of Exhibit 1 attached hereto (“Notice Order”), consisting of all Persons who are current customers of Defendants under the Sprint PCS “Pioneer Program” and who, at any time since January 2003, have either been billed for or paid the Fees to defendants.

5.1.22 “Unknown Claims” means all claims arising out of facts relating to any matter covered by the Released Claims, which in the future are or may be found to be other than or different from the facts now believed to be true, so that each person or entity so affected shall be deemed to have expressly waived all of the rights and benefits of Section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or

suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Plaintiffs and each Member of the Settlement Class shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any foreign country, or any principle of common law which is similar, comparable, or equivalent in substance or intent to Section 1542 of the California Civil Code.

## 5.2 Investigation and Discovery

Plaintiffs' Counsel asserts that it has conducted sufficient discovery and investigation of this matter to fully evaluate the merits of the claims asserted by Plaintiffs in this Litigation. Plaintiffs and Plaintiffs' Counsel hereby waive any rights they may otherwise have to conduct additional discovery regarding the issues raised in this Litigation. Plaintiffs and Plaintiffs' Counsel additionally waive the right to pursue any additional claims that may have been discovered in the process of additional discovery and investigation of the claims asserted in this Litigation.

## 5.3 Filing Of Settlement Stipulation

This Settlement Stipulation shall be filed with the Court promptly following its execution.

## 5.4 Notice Order And Settlement Hearing

5.4.1 Upon execution of this Settlement Stipulation and its filing with the Court, the Parties shall jointly apply to the Court for entry of the Notice Order (substantially in the form of Exhibit 1), which shall include:

(i) Preliminary approval of the settlement set forth in this Settlement Stipulation and provisional certification of the Settlement Class;

(ii) an order setting deadlines for completion of mailing the Class Notice, for objecting to the Settlement, and a date for the hearing on final approval of the Settlement;

(iii) approval of the mailing of the Class Notice (substantially in the form attached hereto as Exhibit 2);

(iv) direction that Defendants or, with approval of the Court, any other designee of Defendants, mail or cause to be mailed by United States Postal Service First Class Mail, postage prepaid, on or before the date specified in the Notice Order, the Class Notice to all members of the Class for whom Defendants then have mailing

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addresses within the United States, which addresses will be reasonably updated by either Defendants or a claims administrator if necessary.

(v) determination that the notice given constitutes the best notice practicable under the circumstances, including individual notice to all Persons in the Settlement Class for whom Defendants then have mailing addresses within the United States, and constitutes valid, due, and sufficient notice to all Persons in the Settlement Class, complying fully with California Code of Civil Procedure § 382, Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable law; and

(vi) determination that, pending final determination of whether the settlement contained in the Settlement Stipulation should be approved, neither Plaintiff nor any Member of the Settlement Class, either directly, representatively, or in any other capacity, shall commence or prosecute, nor cause to be commenced or prosecuted, any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants, or any of them, unless such Person shall have sought and received leave from this Court on such terms as are just, including, without limitation, being required to opt out of the Settlement Class.

#### 5.5 Administration Of The Settlement Relief

5.5.1 Defendants shall be solely responsible for administering, either directly or through its claims administrator or other authorized designee, the dissemination of the Class Notice to each Member of the Settlement Class in accordance with the terms of this Settlement Stipulation.

5.5.2 Defendants shall be solely responsible for administering, either directly or through its claims administrator or other authorized designee, distribution of the settlement consideration to each Member of the Settlement Class, in accordance with the terms of this Settlement Stipulation.

5.5.3 Defendants shall be solely responsible for paying all Costs of Notice and Administration.

#### 5.6 Additional Settlement Benefits to be Provided by Defendants

5.6.1 For acting as a class representative, Defendants shall pay Plaintiff Anthony Massa the sum of \$1,000.

5.6.2 Within 45 days of the Effective Date, Defendants shall, at their sole option, either (i) issue a bill credit of \$10.00 on the Pioneer Plan accounts for each of the Settlement Class Members; or (ii) provide Settlement Class Members with a credit for 50 total free minutes of wireless service usage, usable over a consecutive 3-month

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period commencing within 45 days of the Effective Date. Defendants' Counsel shall advise Plaintiffs' Counsel of this election no later than 30 days prior to when either option will be disseminated.

5.6.3 Defendants shall re-program their internal billing systems to ensure that the Settlement Class Members are no longer billed the Fees for their Pioneer Program accounts, so long as they remain Sprint customers under the Pioneer Program, beginning with the later of their November 2004 billing cycle or the beginning of the first full billing cycle more than 15 days after the Effective Date.

#### 5.7 Releases and Dismissals

5.7.1 Upon the Effective Date, except as otherwise provided in this Settlement Stipulation, Plaintiffs and each of the Members of the Settlement Class, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against each and all of the Released Persons.

5.7.2 Defendants agree to release all claims they may have against Plaintiffs or Plaintiff's Counsel arising out of the notification, publication, prosecution, or resolution of the Action and the claims asserted herein, including, but not limited to, any claims of professional negligence, defamation, abuse of process, or malicious prosecution.

#### 5.8 Payment of UCAN's Investigative Costs and Plaintiffs' Counsel's Attorneys' Fees And Expenses

5.8.1 As an integrated term of the Settlement, Plaintiff's counsel shall receive payment from Defendants of \$51,500. Defendants shall also pay UCAN's investigative costs in the amount of \$1,000.

5.8.2 Defendant shall pay the amounts set forth in Sections 5.6.1 and 5.8.1 to Plaintiffs' Counsel within ten (10) days of the execution of the Judgment by the Court. If not paid by that date, interest shall run on that amount at the rate of 1.5% interest per month until paid.

#### 5.9 Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

5.9.1 The Effective Date of this Settlement Stipulation shall be conditioned upon the occurrence of all of the following events:

(i) The Court shall have entered the Notice Order substantially in the form of Exhibit 1;

(ii) The Court shall have entered the Judgment substantially in the form of Exhibit 3; and

(iii) The Judgment shall have become Final.

5.9.2 If any of the conditions specified in Section 5.9.1 are not met, then this Settlement Stipulation shall be canceled and terminated unless Plaintiffs' Counsel and Defendants' Counsel mutually agree in writing to proceed with this Settlement Stipulation.

5.9.3 In the event that this Settlement Stipulation is not approved by the Court or is otherwise canceled in accordance with its terms, or the settlement set forth in this Settlement Stipulation is otherwise canceled or terminated or fails to become effective in accordance with its terms, it shall become null and void and shall have no further force and effect and neither this Settlement Stipulation (including any and all of its provisions and the exhibits hereto), nor any drafts hereof, nor any of the negotiations and proceedings relating hereto: (i) shall be offered, received in evidence or otherwise used in the Litigation or in any other action or proceedings for any purpose, or (ii) shall prejudice the rights of any of the Parties hereto, who shall be restored to their respective positions immediately prior to the execution of this Settlement Stipulation, and any monies previously paid or requests for dismissals entered shall be either returned or withdrawn, as appropriate.

#### 5.11. Miscellaneous Provisions

5.11.1 The Parties (i) acknowledge that it is their intent to consummate this Settlement Stipulation and (ii) agree to cooperate to the extent necessary to effect and implement all terms and conditions of this Settlement Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of this Settlement Stipulation. Each Party shall use its respective best efforts to cause the conditions to the obligations of each other Party herein to be satisfied, to the extent that the satisfaction is within the control of such Party. Nothing in this Section shall be considered a limitation on the covenants and obligations of the Parties set forth elsewhere in this Settlement Stipulation.

5.11.2 Defendants agree with Plaintiffs that the amount of the settlement, as well as the other terms of this Settlement Stipulation, reflect a good faith settlement of Plaintiffs' and the Settlement Class' claims, reached voluntarily after consultation with legal counsel. Neither this Settlement Stipulation nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Settlement Stipulation or the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the

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Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Settlement Stipulation nor any of its provisions nor any of the exhibits hereto nor any of the documents, negotiations, or proceedings related hereto, shall be offered or received in evidence in any action or proceeding of any nature or otherwise referred to or used in any manner in any court or other tribunal, except to enforce or to implement the terms of this Settlement Stipulation; provided, however, that the Released Persons or any of them may file this Settlement Stipulation and/or the Judgment from this Litigation in any other action that may be brought against them or any of them by any of the Members of the Settlement Class or any other Released Party, to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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

5.11.4 This Settlement Stipulation and the exhibits attached hereto constitute the entire agreement among the Parties hereto and no representations, warranties, or inducements have been made to any Party concerning this Settlement Stipulation or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents, except as expressly herein provided. Except as otherwise provided herein, each Party shall bear its own costs. This is a fully integrated agreement and may be amended or modified only by a written instrument signed by or on behalf of all Parties or their successors-in-interest.

5.11.5 Plaintiffs' Counsel, on behalf of the Settlement Class, hereby warrant that they are expressly authorized by Plaintiffs to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Settlement Stipulation to effect its terms and also are expressly authorized to enter into any modifications or amendments to this Settlement Stipulation on behalf of the Settlement Class which they deem appropriate.

5.11.6 Each counsel or other Person executing this Settlement Stipulation or any of its exhibits on behalf of any Party hereto hereby warrants that such Person has the full authority to do so.

5.11.7 By operation of the Judgment, Plaintiffs and Members of the Settlement Class shall be deemed to expressly waive any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of Unknown Claims.

5.11.8 This Settlement Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one

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and the same instrument. Counsel for the Parties to this Settlement Stipulation shall exchange among themselves original signed counterparts and a complete set of original executed counterparts shall be filed with the Court.

5.11.9 This Settlement Stipulation shall be binding upon, and inure to the benefit of, the Parties hereto, all Settlement Class Members, and their respective heirs, executors, administrators, successor and assigns, and upon any corporation or other entity into or with which any Party hereto may merge, consolidate, or have an interest in.

5.11.10 The Parties acknowledge that they each participated in drafting this Settlement Stipulation, and there shall be no presumption against any Party on the ground that such Party was responsible for drafting or preparing this Settlement Stipulation or any part hereof.

5.11.11 Where necessary within this Settlement Stipulation, in order to give full effect to the provisions herein, and unless the contrary is stated, the masculine form of a pronoun includes the feminine, and vice versa, and the singular form of a noun includes the plural, and vice versa.

5.11.12 The waiver by one Party of any breach of this Settlement Stipulation by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Stipulation.

5.11.13 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Stipulation pursuant to Code of Civil Procedure section 664.6. All disputes arising under this Settlement Stipulation shall be resolved under the following dispute resolution procedure:

(i) The parties to the dispute shall negotiate informally and in good faith to seek an informal resolution of the dispute.

(ii) In the event the parties to the dispute are unable to resolve the dispute informally, any party to the dispute may seek to have the dispute adjudicated by the Court or a court-appointed designee under the Court's usual *ex parte* or noticed motion procedures. Pursuant to this Section, the Court shall retain jurisdiction over the Litigation for resolution of such disputes and shall have discretion to order the non-prevailing party or parties to the dispute to pay all or a portion of the prevailing party's or parties' reasonable attorneys' fees and/or costs incurred in the dispute.

5.11.14 This Settlement Stipulation and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the Parties to this Settlement

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Stipulation shall be construed and enforced in accordance with the laws of the State of California, without giving effect to that State's choice of law principles.

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IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Stipulation to be executed this \_\_\_ day of \_\_\_\_\_, 2004.

Anthony Massa

\_\_\_\_\_

Utility Consumers Action Network

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Sprint Spectrum LLP and Sprint Spectrum Holding Company L.P.

By: \_\_\_\_\_

Its: \_\_\_\_\_

REVIEWED AND APPROVED AS TO FORM AND RECOMMENDED AS TO SUBSTANCE:

ROSNER, LAW & MANSFIELD

\_\_\_\_\_

Alan M. Mansfield, Esq.  
Attorneys for Plaintiff  
and Members of the Settlement Class

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STINSON MORRISON HECKER  
LLP

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Mark D. Hinderks, Esq.

-and-

SELTZER CAPLAN McMAHON  
VITEK LLP

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Daniel Eaton, Esq.

Attorneys for Defendants

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