



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

VIRTUS CAPITAL L.P., )

Petitioner, )

v. )

C.A. No. 6951-VCL

STERLING CHEMICALS, INC., )

Respondent. )

VIRTUS CAPITAL L.P., individually and on )  
behalf of all others similarly situated, )

Plaintiff, )

v. )

EASTMAN CHEMICAL COMPANY, JOHN L. )  
TEEGER, JOHN V. GENOVA, RICHARD K. )  
CRUMP, JOHN W. GILDEA, PHILIP M. SIVIN, )  
KARL W. SCHWARZFELD, DANIEL M. )  
FISHBANE, WALTER TREYBIG, MARTIN D. )  
SASS, M.D. SASS INVESTORS SERVICES, INC., )  
RESURGENCE ASSET MANAGEMENT, L.L.C., )  
RE/ENTERPRISE ASSET MANAGEMENT )  
L.L.C., RESURGENCE ASSET MANAGEMENT )  
INTERNATIONAL, L.L.C., CORPORATE )  
RESURGENCE PARTNERS, L.L.C., )  
CORPORATE RESURGENCE PARTNERS II, )  
L.L.C., M.D. SASS CORPORATE RESURGENCE )  
PARTNERS III, L.P., RESURGENCE ASSET )  
MANAGEMENT, L.L.C. EMPLOYEE )  
RETIREMENT PLAN, CORPORATE )  
RESURGENCE, LTD., TRUST "O" FOR A )  
PORTION OF THE ASSETS OF THE KODAK )  
RETIREMENT INCOME PLAN, KODAK )  
PENSION PLAN, M.D. SASS ASSOCIATES, INC. )  
EMPLOYEE PROFIT SHARING PLAN, M.D. )  
SASS RE/ENTERPRISE PORTFOLIO )  
COMPANY, L.P., M.D. SASS RE/ENTERPRISE )  
II, L.P., RESURGENCE PARALLEL FUND, )  
L.L.C., RESURGENCE PARALLEL FUND II, )  
L.L.C., RESURGENCE PARALLEL FUND III, )  
L.L.C., EASTMAN TC, INC., AND MOELIS & )  
COMPANY LLC, )

C.A. No. 9808-VCL

Defendants. )

**STIPULATION AND AGREEMENT OF  
COMPROMISE, SETTLEMENT AND RELEASE**

This Stipulation and Agreement of Compromise, Settlement and Release (together with the exhibits hereto, the “Stipulation”) is entered into as of September 2, 2016, by and among Eastman Chemical Texas City, Inc. f/k/a Sterling Chemicals, Inc. (“Sterling”), Eastman, John L. Teeger, John V. Genova, Richard K. Crump, John W. Gildea, Philip M. Sivin, Karl W. Schwarzfeld, Daniel M. Fishbane, Walter Treybig, Martin D. Sass, M.D. Sass Investors Services, Inc., Resurgence Asset Management, L.L.C., Re/Enterprise Asset Management L.L.C., M.D. Sass Associates, Inc. Employee Profit Sharing Plan, Eastman TC, Inc., Moelis, Plaintiff and Plaintiff’s Principal (collectively, the “Parties” and individually a “Party”) in connection with the above-captioned actions pending before the Court of Chancery of the State of Delaware (the “Court of Chancery” or the “Court”). This Stipulation states all of the terms of settlement and resolution of this matter and is intended by the Parties to fully and finally compromise, resolve, discharge and settle the Released Claims, as defined herein, subject to the approval of the Court. All terms herein with initial capitalization shall, unless defined elsewhere in this Stipulation have the meanings ascribed to them in Paragraph 1 below.

**WHEREAS:**

A. On June 22, 2011, Eastman Chemical Company (“Eastman”) announced that it had entered into a definitive merger agreement (the “Merger

Agreement”) to acquire Sterling Chemicals, Inc. through its wholly-owned subsidiary, Eastman TC, Inc. (the “Merger”).

B. Under the terms of the Merger Agreement, holders of Sterling common stock would receive \$2.50 per share. Resurgence Asset Management, LLC and its affiliates approved the Merger by written consent.

C. The Merger closed on August 9, 2011 (the “Closing Date”).

D. On October 19, 2011, Virtus Capital L.P. (“Virtus” or “Plaintiff”) commenced an appraisal action pursuant to 8 *Del. C.* § 262, captioned *Virtus Capital L.P. v. Sterling Chemicals, Inc.*, C.A. No. 6951-VCL (the “Appraisal Action”). Virtus filed a Petition for Appraisal seeking an award of fair value of the shares of Sterling common stock it held through the effective date of the Merger (other than shares for which Virtus received merger consideration), interest, an award of fees and costs and other relief deemed to be just and appropriate.

E. On June 20, 2014, Virtus filed a Verified Class Action Complaint for Breach of Fiduciary Duties and Aiding and Abetting (the “Class Action Complaint”) in an action captioned *Virtus Capital L.P. v. Eastman Chemical Company, et al.*, C.A. No. 9808-VCL (the “Class Action”). The Appraisal Action and the Class Action shall be collectively referred to herein as the “Actions.”

F. The Class Action Complaint sought certification of a class consisting of all former holders of Sterling stock (other than the defendants and any

person, firm, trust, corporation, or other entity related to or affiliated with any defendants), and alleged that M.D. Sass Investors Services, Inc., Resurgence Asset Management, L.L.C., Re/Enterprise Asset Management L.L.C., M.D. Sass Associates, Inc. Employee Profit Sharing Plan, Martin D. Sass, John L. Teeger, John V. Genova, Richard K. Crump, John W. Gildea, Philip M. Sivin, Karl W. Schwarzfeld, Daniel M. Fishbane, Walter Treybig and the Unserved Defendants breached their fiduciary duties in connection with the Merger, and that Eastman, Eastman TC, Inc. and Moelis & Company LLC (“Moelis”) aided and abetted breaches of fiduciary duty. The defendants listed in this Paragraph exclusive of the Unserved Defendants shall be collectively referred to herein as “Defendants” and individually as a “Defendant.”

G. On February 11, 2016, the Parties and/or their representatives attended a voluntary mediation session before former United States District Judge Layn Phillips to attempt to negotiate a global settlement of the Actions. After the February 11 mediation session, extensive settlement negotiations between the Parties and/or their representatives continued under the supervision of former Judge Phillips.

H. On March 9, 2016, a Mediation Term Sheet (the “Term Sheet”) incorporating the terms of an agreement to fully and finally settle the claims asserted

in the Actions was signed by counsel for Plaintiff and Defendants and filed with the Court.

I. This Stipulation is intended fully, finally and forever to resolve, discharge and settle the Released Plaintiff's Claims (as defined herein), the Released Defendants' Claims (as defined herein) and the Released Resurgence Claims (as defined herein) with prejudice. It is the intention of the Parties that the Settlement will release all Released Plaintiffs' Claims, Released Defendants' Claims and Released Resurgence Claims.

J. The entry by the Parties into this Stipulation is not, and shall not be construed as or deemed to be evidence of, an admission as to the merit or lack of merit of any claims or defenses asserted in the Actions.

K. Class Counsel has conducted an investigation and pursued discovery relating to the claims and the underlying events alleged in the Class Action. Class Counsel has analyzed the evidence adduced in its investigation and through discovery, and has researched the applicable law with respect to Plaintiff and the Class. In negotiating and evaluating the terms of this Stipulation, Class Counsel considered the legal and factual defenses to Plaintiff's claims. Class Counsel has received sufficient information to evaluate the merits of this Settlement. Based upon its evaluation, Class Counsel has determined that the Settlement set

forth in this Stipulation is fair, reasonable and adequate and in the best interests of all Class Members, and that it confers substantial benefits upon the Class Members.

L. Defendants and Sterling deny any and all allegations of their respective wrongdoing, fault, liability or damage whatsoever, and each of Sterling and the Defendants denies that he or it engaged in, committed or aided or abetted the commission of any breach of duty, wrongdoing or violation of law. Entry into the Stipulation does not constitute an admission by Defendants or Sterling that the consideration set forth herein represents or suggests the “fair value” (as defined in 8 *Del. C.* § 262 and the decisional law thereunder) of Sterling.

M. Defendants and Sterling enter into this Stipulation solely because they consider it desirable that the Actions be settled and dismissed with prejudice in order to, among other things, eliminate the uncertainties, burden and expense of further litigation. Nothing in this Stipulation shall be construed as any admission by any of the Defendants or Sterling of any kind, including admissions as to wrongdoing, fault, liability, or damages whatsoever, or as evidence as to any of the foregoing. Nothing in this Stipulation shall be construed as an allocation of fault or liability between or among any of the Defendants or Sterling.

**NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED,** by Plaintiff, for itself and on behalf of the Settlement Class, by Plaintiff’s Principal, by Defendants and by Sterling that,

subject to the approval of the Court and pursuant to Delaware Court of Chancery Rule 23 and 8 *Del. C.* § 262 and the other conditions set forth herein, for the good and valuable consideration set forth herein and conferred on Plaintiff and the Settlement Class, the Actions against Defendants and Sterling shall be finally and fully compromised, settled and dismissed with prejudice, and that the Released Claims shall be finally and fully compromised, settled, released and dismissed with prejudice as to the Released Parties, as defined herein, in the manner and upon the terms and conditions hereafter set forth.

**A. Definitions**

1. In addition to the terms defined above, the following capitalized terms, used in this Stipulation, shall have the meanings specified below:

a. “Account” means the bank account referred to below and maintained by the Escrow Agent into which the Settlement Amount shall be deposited. The funds deposited into the Account shall be invested in instruments backed by the full faith and credit of the United States Government or an agency thereof, or if the yield on such instruments is negative or the amount is less than \$250,000, in an account fully insured by the United States Government or an agency thereof.

b. “Appraisal Shares” means the 257,971 shares of Sterling Chemicals common stock for which Plaintiff did not receive merger consideration.

c. “Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, diminutions in value, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys’ fees, expert or consulting fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or heretofore or previously existed, or may hereafter exist, including known claims and Unknown Claims, whether direct, derivative, individual, class, representative, legal, equitable or of any other type, or in any other capacity, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including but not limited to any claims under state securities law, or under state disclosure law or any claims that could be asserted derivatively on behalf of Sterling.

d. “Class Counsel” means the law firm of Friedlander & Gorris, P.A.

e. “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed proportionately, pursuant to the Plan of Allocation in Paragraph 10 of this Stipulation.

- f. “Class Member” means a member of the Settlement Class.
- g. “Closing” means the consummation of the Merger on the Closing Date.
- h. “Effective Date” means the first business day following the date the Judgment becomes Final. The finality of the Judgment shall not be affected by any proceeding (including appeals) regarding solely an application for attorneys’ fees and expenses or any special award to Plaintiff from the Net Settlement Fund or approval of any Plan of Allocation of the Net Settlement Fund.
- i. “Eligible Shares” means shares of Sterling common stock owned by Class Members at the Closing, including the Appraisal Shares.
- j. “Escrow Agent” means the escrow agent or agents identified in the Escrow Agreement who shall be chosen by Class Counsel and approved by Defendants’ counsel, which approval shall not be unreasonably withheld.
- k. “Escrow Agreement” means the agreement governing the Account.
- l. “Final” means with respect to any judgment or order that the judgment or order is finally affirmed on appeal or is no longer subject to appeal and the time for any petition for reargument, appeal, or review, by certiorari or otherwise, has expired.

m. “Florida Action” means *Resurgence Asset Management, LLC, et al., v. Steven L. Gidumal*, Case No. 2015-CA-1278-0, in the Circuit of the Ninth Judicial Circuit in and for Orange County, Florida.

n. “Immediate Family” means an individual’s spouse, parents, siblings, children, grandparents, grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In this paragraph, “spouse” shall mean a husband or wife.

o. “Individual Defendants” means Richard K. Crump, Daniel M. Fishbane, John V. Genova, John W. Gildea, Martin D. Sass, Karl W. Schwarzfeld, Philip M. Sivin, John L. Teeger and Walter Treybig.

p. “Judgment” means the Final Order and Judgment to be entered in the Actions substantially in the form attached hereto as Exhibit E.

q. “Letter Agreement” means the letter agreement, dated September 28, 2008, involving Resurgence Asset Management, LLC, Re/Enterprise Asset Management, LLC, Resurgence Asset Management International, LLC, and Plaintiff’s Principal.

r. “Net Settlement Fund” means the Settlement Fund less any Taxes, and Tax Expenses (as defined below), attorneys’ fees, expert fees, notice and administration costs and any other expenses approved by the Court.

s. “New York Action” means *Resurgence Asset Management, LLC, et al., v. Steve Gidumal*, Index No. 651737/2012, in the Supreme Court of the State of New York, County of New York.

t. “Plaintiff’s Principal” means Steven Gidumal.

u. “Preserved Claims” means any respective claims and defenses between Plaintiff’s Principal, on the one hand, and Resurgence, on the other hand, or vice versa, relating to compensation for services and clawback collection.

v. “Proof of Claim” means the Proof of Claim, substantially in the form attached hereto as Exhibit D.

w. “Released Defendants’ Claims” means, subject to Paragraphs 21 and 22, any Claims (including “Unknown Claims”) that have been or could have been asserted in the Actions or any forum by Defendants or any of them or Sterling or their respective successors and assigns against Plaintiff, Plaintiff’s Principal, the Class Members, or any of their respective counsel, which arise out of or relate in any way to the institution, prosecution, settlement or dismissal of the Actions, including but not limited to alleged litigation misconduct, breaches of confidentiality orders, violations of court rules, and defamation; Claims (including “Unknown Claims”) against Plaintiff, Plaintiff’s Principal and their affiliates arising from or relating to the alleged conduct set forth in the underlying Defendants’

respective affirmative defenses; and any Claims (including “Unknown Claims”) of bad faith or abuse of process against Plaintiff, Plaintiff’s Principal or Class Counsel relating to their prosecution of the Actions; provided, however, that the Released Defendants’ Claims shall not include any claims relating to the enforcement of the Settlement. For the avoidance of doubt, the Released Defendants’ Claims do not include any Preserved Claims.

x. “Released Defendant Parties” means (i) Sterling, (ii) all Defendants, (iii) the members of each Individual Defendant’s Immediate Family, and (iv) the Unserved Defendants, and (v) any of the foregoing’s respective families, parent entities, controlling persons, associates, predecessors, successors, affiliates, or subsidiaries, and each and all of their past or present officers, directors, executives, shareholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, brokers, dealers, insurers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors, and assigns.

y. “Released Plaintiff’s Claims” means, subject to Paragraph 22, any and all manner of Claims (including “Unknown Claims”) that were asserted

by Plaintiff on its own behalf and/or on behalf of all other Class Members in either of the Actions, or could have been or in the future might be asserted by Plaintiff, Plaintiff's Principal, any Class Members or the Settlement Class (defined below) in the Class Action or in any other court, tribunal, forum or proceeding that are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, events, conduct, decisions, negotiations, fairness opinions, transactions, occurrences, statements, representations, misrepresentations, omissions, disclosures, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that relate in any way to or concern the Merger, the Merger Agreement, or the Information Statement, including, without limitation, those that were alleged, asserted, or claimed in the Class Action or which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, the events or conduct at issue in the Class Action, provided, however, that the Released Claims shall not include any claims for the enforcement of the Settlement. As to Plaintiff and Plaintiff's Principal, Released Plaintiff's Claims shall also include all Claims related to the prosecution, defense, settlement or dismissal of the Actions, including but not limited to alleged litigation misconduct, breaches of confidentiality orders, violations of court rules, and defamation. The Released Plaintiff's Claims do not include actual or potential federal securities law claims related to Sterling, except that the Released Plaintiff's Claims do include such

claims by Plaintiff, Plaintiff's Principal, and their affiliates. For the avoidance of doubt, the Released Plaintiff's Claims do not include any Preserved Claims.

z. "Released Plaintiff Parties" means (i) Plaintiff, (ii) all Class Members, (iii) Plaintiff's Principal, and (iv) any of the foregoing's respective families, parent entities, controlling persons, associates, predecessors, successors, affiliates, or subsidiaries, and each and all of their past or present officers, directors, executives, shareholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, brokers, dealers, insurers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors, and assigns.

aa. "Released Resurgence Claims" means all claims arising from or relating to alleged conduct set forth in or underlying the Third, Seventh and Eleventh Affirmative Defenses asserted in the Class Action by Resurgence, exclusive of references to clawback obligations. For the avoidance of doubt, the Released Resurgence Claims do not include any Preserved Claims.

bb. "Released Claims" means the Released Defendants' Claims, the Released Plaintiff's Claims, and the Released Resurgence Claims.

cc. “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

dd. “Resurgence” means Resurgence Asset Management, L.L.C., Re/Enterprise Asset Management L.L.C., and all of their affiliates. For clarity, the term Resurgence includes, but is not limited to, M.D. Sass Investors Services, Inc., Martin D. Sass, Hugh Lamle, M.D. Sass Associates, Inc., the Employee Profit Sharing Plan and any affiliates for whose interests Resurgence Asset Management, LLC has brought and pursued the New York Action.

ee. “Settlement” means the settlement contemplated by this Stipulation.

ff. “Settlement Amount” means a total amount of seventeen million five hundred thousand dollars in cash (\$17,500,000).

gg. “Settlement Class” means a class consisting of all holders of Sterling common stock at any time from June 22, 2011 through and including August 9, 2011, whether beneficial or of record, including their legal representatives, heirs, successors in interest, transferees and assignees of all such foregoing holders, but excluding the Defendants and their associates, affiliates, legal representatives, heirs, successors in interest, transferees and assignees.

hh. “Settlement Fund” means the fund consisting of the Settlement Amount deposited in the Account.

ii. “Settlement Hearing” means the hearing to be held by the Court to determine whether to certify the Settlement Class pursuant to Delaware Court of Chancery Rule 23, whether Plaintiff and Class Counsel have adequately represented the Settlement Class, whether the proposed Settlement should be approved as fair, reasonable and adequate, whether all Released Claims should be dismissed with prejudice as against the Released Parties, whether an Order and Judgment approving the Settlement should be entered, and whether and in what amount any Fee Reimbursement Award and/or Special Award should be paid to Plaintiff out of the Settlement Fund.

jj. “Settlement Payment Recipients” means all Class Members who were stockholders of record of Sterling common stock as of the Closing who submit a valid Proof of Claim to the Settlement Administrator by the deadline in the Notice.

kk. “Unknown Claims” means any and all claims that otherwise fall within the definition of Released Plaintiff’s Claim and that Plaintiff, Plaintiff’s Principal or any Class Member does not know or suspect exists in his, her or its favor at the time of the release of the Released Claims as against the Released Defendant Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement, and any and all claims that otherwise fall within the definition of Released Defendants’ Claims and that any

Defendant, Sterling or Resurgence does not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims as against the Released Plaintiff Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement. With respect to any of the Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiff, Plaintiff's Principal, Sterling, each Defendant and Resurgence (exclusive of Unserved Defendants) shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her 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.

The Parties acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Parties, and by operation of law the other Class

Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge, and the other Class Members and other Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for and was a key element of the Settlement and was relied upon by the Parties in entering into this Stipulation.

11. “Unserved Defendants” means Corporate Resurgence Partners, L.L.C., Corporate Resurgence Partners II, L.L.C., M.D. Sass Corporate Resurgence Partners III, L.P., Resurgence Asset Management, L.L.C. Employee Retirement Plan, Resurgence Asset Management International, L.L.C., Corporate Resurgence, Ltd., Trust “0” for a Portion of the Assets of the Kodak Retirement Income Plan, Kodak Pension Plan, M.D. Sass RE/Enterprise Portfolio Company, L.P., M.D. Sass RE/Enterprise II, L.P., Resurgence Parallel Fund, L.L.C., Resurgence Parallel Fund II, L.L.C., and Resurgence Parallel Fund III, L.L.C.

**B. Conditional Class Certification**

2. Solely for purposes of the Settlement and for no other purpose, the Parties stipulate and agree to: (a) certification of the Class Action as a non-opt out class action pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and

23(b)(2) on behalf of the Settlement Class; (b) certification of Plaintiff as Settlement Class representative; and (c) appointment of Class Counsel as Settlement Class counsel. The Parties agree that the number of shares in the Settlement Class as of Closing is 1,238,918.

3. The certification of the Settlement Class shall be binding only with respect to this Stipulation. In the event that: this Stipulation is terminated pursuant to its terms or is not approved in all material respects by the Delaware Court of Chancery; Defendants or Sterling withdraw from the Settlement pursuant to the terms hereof; the Effective Date does not occur; the Settlement does not otherwise become final for any reason; or any judgment or order entered pursuant hereto is reversed, vacated, or modified in any material respect by the Court or any other court, then the certification of the Settlement Class shall be deemed vacated, the Class Action shall proceed as though the Settlement Class had never been certified, and no reference to the certification of the Settlement Class shall be made by the Parties for any purpose, except as expressly authorized by the terms of this Stipulation. If any of the foregoing events occurs, Defendants and Sterling reserve the right to oppose certification of any plaintiff class in any proceeding.

**C. Settlement Consideration and Administration**

4. In consideration for the full and final settlement and dismissal with prejudice of, and the release of, any and all Released Claims, Defendants shall

cause to be paid a total of \$17,500,000 for the benefit of the Settlement Class. \$200,000 of the Settlement Amount shall be deposited into the Account, within five (5) business days of the Court granting the Scheduling Order attached hereto as Exhibit A, and shall be used in the first instance to administer the Settlement. The remainder of the Settlement Amount (i.e., \$17,300,000) shall be deposited into the Account on or before twenty (20) business days after the execution of this Stipulation (such date the “Settlement Funding Date”), provided that Class Counsel has timely provided complete wire transfer information and instructions. No Defendant nor any Released Party shall have any obligation to pay or bear any additional amounts, expenses, costs, damages, or fees to or for the benefit of Plaintiff (except as set forth in Paragraph 5 below) or any Class Members in connection with this Settlement, including but not limited to attorneys’ fees and expenses for any counsel to any Class Member, or any costs of notice or settlement administration or otherwise.

5. Within seven (7) business days of the execution of this Stipulation, for each of the Appraisal Shares, Virtus shall either deliver or cause to be delivered all stock certificates representing such shares by hand or overnight delivery to Eastman’s counsel, Thomas W. Briggs, Jr., Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Wilmington, DE 19801, along with a copy of Virtus’s Form W-9 (or other appropriate tax identification form). Within seven (7)

business days of the receipt by Eastman of the stock certificates and Virtus's Form W-9 (or other appropriate tax identification form), for each of the Appraisal Shares, Eastman or its transfer agent shall pay to Virtus by wire transfer, according to instructions provided by Virtus, \$2.50 in cash plus interest at 5.75% compounded quarterly from the Closing Date to the date of execution of this Stipulation, for a total sum of \$860,987.48 (the "Appraisal Shares Payment"), provided that Virtus has timely provided complete wire transfer information and instructions.

6. Plaintiff and Class Counsel shall retain a settlement administrator (the "Settlement Administrator"), which shall, subject to the supervision, direction and approval of the Court, oversee administration and distribution of the Settlement Fund. The Settlement Administrator shall discharge its duties under Class Counsel's supervision and subject to the jurisdiction of the Court. No Released Defendant Party shall have any responsibility whatsoever for the administration of the Settlement, and no Released Defendant Party shall have any liability whatsoever to any person, including, but not limited to, Plaintiff and the Class Members, for fees or expenses charged by the Settlement Administrator or otherwise in connection with any such administration.

7. Under the supervision of Class Counsel, the Settlement Administrator shall provide notice of the proposed Settlement and distribute the Settlement Fund on a pro rata basis as set forth in this Section C, as approved by the

Court of Chancery. Within seven (7) business days of the date of entry of the Scheduling Order, Eastman shall provide or cause to be provided to the Settlement Administrator and Class Counsel stockholder information from Sterling's transfer agent as appropriate for providing notice to the Class. The Settlement Administrator shall mail the Notice to record holders of the Settlement Class at the address of each such person as set forth in the records of the transfer agent(s), or who otherwise may be identified through further reasonable effort. The Notice shall request that brokerage firms, banks and other persons or entities who are members of the Settlement Class in their capacities as record holders, but not as beneficial owners, send the Notice promptly to beneficial owners.

8. Class Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all reasonable costs related to distribution of the Notice and other administrative costs actually and reasonably incurred. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Settlement Administrator in connection with providing Notice, the fees of Class Counsel in connection with administration of the Settlement, and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, any amounts

reasonably paid or reasonably incurred pursuant to this Paragraph (except for fees paid to Class Counsel, if any) shall not be returned or repaid to Defendants, or any other person who paid any portion of the Settlement Amount into the Account.

9. Subject to Paragraph 13 below, the Settlement Fund shall be applied as follows:

a. To pay all costs and expenses reasonably incurred in connection with providing notice to Class Members of this Settlement and locating Class Members and incurred in connection with administering and distributing the Settlement Fund, escrow fees and costs;

b. Subject to the approval and further order(s) of the Court, to pay to Plaintiff any Fee Reimbursement Award and any Special Award;

c. To pay any Taxes and/or Tax Expenses owed by the Settlement Fund; and

d. Subject to the approval and further order(s) of the Court, to distribute the balance of the Net Settlement Fund to the Class Members as provided in the Plan of Allocation (as defined below), or as otherwise ordered by the Court.

10. The Net Settlement Fund shall be allocated among all Class Members pursuant to the terms of this paragraph (the “Plan of Allocation”). Under the supervision of Class Counsel, the Settlement Administrator shall make

distributions from the Account to the Settlement Payment Recipients in the following manner and subject to the following conditions: Each Settlement Payment Recipient to receive a pro rata distribution from the Net Settlement Fund equal to the product of (a) the Net Settlement Fund and (b) a fraction, the numerator of which is the number of Eligible Shares for which the applicable Settlement Payment Recipient has submitted a valid Proof of Claim by the deadline provided in the Notice, and the denominator of which is the total number of Eligible Shares for which all Settlement Payment Recipients have submitted valid Proofs of Claim by the deadline provided in the Notice. Any Class Member who does not submit a valid Proof of Claim by the deadline provided in the Notice will not be entitled to receive any distribution from the Settlement Fund, but will otherwise be bound by all of the terms of this Stipulation and the Settlement, and the releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against the Released Parties with respect to the Released Claims.

11. Neither Defendants nor any other Released Defendant Party shall take any position on or have any involvement with the proposed Plan of Allocation so long as the proposed Plan of Allocation remains as reflected herein. Any modification of the proposed Plan of Allocation by the Court shall not affect the enforceability of the Stipulation, provide any of the Parties with the right to

terminate the Settlement, impose an obligation on any of the Defendants or the other Released Defendant Parties to increase the consideration paid in connection with the Settlement or affect or delay the binding effect, effectiveness, or finality of the Judgment and the release of the Released Claims. Finality of the Settlement shall not be conditioned on any ruling by the Court or any appellate court solely concerning any plan of allocation.

12. Prior to the distribution of the Net Settlement Fund, Class Counsel shall present for the approval of the Court a final accounting of the receipts and disbursements from the Settlement Fund and the proposed Class Distribution Order of the Net Settlement Fund.

13. The Net Settlement Fund shall be distributed to Class Members as set forth in Paragraph 9 only after the Effective Date and after: (i) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (ii) all costs of administration, Taxes and Tax Expenses have been paid or reserved; and (iii) the Court has approved the aforementioned accounting and Class Distribution Order.

14. At the time of distribution, Class Counsel shall direct the Settlement Administrator to make distributions from the Net Settlement Fund to each Class Member in accordance with the Class Distribution Order.

15. Payment from the Settlement Fund made pursuant to and in the manner set forth herein shall be deemed conclusive compliance with this Stipulation. No Class Member shall have any claim against Plaintiff, Class Counsel, Plaintiff's Principal, Defendants, Sterling, the Released Parties, the Settlement Administrator, or any of their counsel, based on the distributions made substantially in accordance with this Stipulation and/or orders of the Court. The Released Parties shall have no liability whatsoever for the investment of the Settlement Fund, notice to the Class, the administration of the Settlement Fund, the calculation of any distribution from the Settlement Fund, or the nonperformance of the Settlement Administrator, nor shall they have any liability whatsoever for the payment or withholding of Taxes (including interest and penalties) owed by the Class Members or any losses incurred in connection therewith.

16. This is not a claims-made settlement. Upon the occurrence of the Effective Date, none of the Defendants, nor any person or entity who or which paid any portion of the Settlement Fund on their behalf, shall have any right to the return of the Settlement Fund or any portion thereof.

17. If, after reasonable and diligent efforts have been made to distribute the Net Settlement Fund to Class Members, any balance remains in the Net Settlement Fund six (6) months after the distribution, that balance shall, if economically feasible, be proportionately reallocated to Class Members who have

cashed their distribution checks and who would receive at least \$10 in the re-distribution. Thereafter, any balance remaining in the Net Settlement Fund shall escheat to the State of Delaware.

**D. Scope of the Settlement**

18. Upon the Effective Date and the occurrence of all of the other events referenced in Paragraph 25 below, the Actions shall be dismissed with prejudice, with each Party to bear its own costs and expenses, except as otherwise expressly provided in this Stipulation. Notwithstanding the preceding sentence, nothing in this Stipulation shall modify, amend, change or otherwise reduce the scope, nature, right or entitlement to reimbursement or advancement of fees and expenses to any Defendant provided as a result of Sterling's Bylaws or other governing documents, the Merger Agreement, applicable law, any policy of insurance, or any other contract providing for similar reimbursement or advancement.

19. Subject to paragraph 22 below, upon the Effective Date and the occurrence of all of the other events referenced in Paragraph 25 below, Plaintiff, Plaintiff's Principal, and all Class Members and their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, in their capacities as such, and any person or entity acting for or on

behalf of, or claiming under, any of them, and each of them, shall be deemed by operation of law to have fully, finally and forever released, settled and discharged the Released Defendant Parties and all of their respective counsel from and with respect to the Released Plaintiff's Claims, and shall forever be barred and enjoined from commencing, instigating, instituting, maintaining, prosecuting, asserting, or participating in any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, or other forum of any kind, whether individual, class, derivative, representative, legal, equitable, or in any other capacity, asserting any of the Released Plaintiff's Claims against any of the Released Defendant Parties.

20. Subject to Paragraphs 21 and 22 below, upon the Effective Date and the occurrence of all of the other events referenced in Paragraph 25 below, Defendants, Sterling and their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, in their capacities as such, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, and any and all of the other Released Defendant Parties (other than the Unserved Defendants), shall be deemed by operation of law to have fully, finally and forever released, settled and discharged each and every one of the Released Defendants' Claims, and shall forever be barred and enjoined from commencing,

instituting or prosecuting any of the Released Defendants' Claims, against any of the Released Plaintiff Parties. Resurgence (other than the Unserved Defendants) agrees not to cause, encourage or voluntarily assist the Unserved Defendants to bring or pursue any claims related to the Released Defendants' Claims or Released Resurgence Claims. Resurgence (other than the Unserved Defendants) shall use their best efforts to prevent Trust "O" for a Portion of the Assets of the Kodak Retirement Income Plan and the Kodak Pension Plan, and shall prevent other Unserved Defendants from bringing or pursuing any claims related to the Released Defendants' Claims or Released Resurgence Claims. The foregoing two sentences shall not limit any party's rights to pursue Preserved Claims, to the extent they have any such rights. If any of the Unserved Defendants brings or pursues any Released Defendants' Claims or Released Resurgence Claims, then all releases in favor of such Unserved Defendants bringing or pursuing such claims shall be deemed null and void.

21. Subject to paragraph 22 below, upon the Effective Date and the occurrence of all of the other events referenced in Paragraph 25 below, Resurgence shall be deemed by operation of law to have fully, finally and forever released, settled and discharged each and every one of the Released Resurgence Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Resurgence Claims, against Plaintiff, Plaintiff's Principal and

all of their affiliates. For clarity, none of the releases in this Stipulation bars Resurgence from pursuing the claims it had earlier asserted against Plaintiff's Principal in the Amended Complaint, dated August 17, 2012, in the New York Action, the clawback aspect of which remains pending in the First Cause of Action in the Second Amended Complaint. For further clarity, Resurgence does release all claims for damages in any form or of any nature based on any alleged breach by Plaintiff, Plaintiff's Principal or any of their affiliates of confidentiality obligations or restrictive covenants in the Letter Agreement. Resurgence retains the right to raise facts concerning such alleged breaches in support of the Preserved Claims. Nothing herein limits the prospective applicability of Paragraph 41 to confidentiality agreements and orders. Nothing herein releases Plaintiff or Plaintiff's Principal from any restrictions on the future use of documents belonging to Resurgence.

22. Plaintiff's Principal and Resurgence agree that they retain any Preserved Claims. Plaintiff's Principal and Resurgence further agree that they do not intend this Settlement or the ensuing judgment to create *res judicata* on the Preserved Claims. Nothing in this Settlement invalidates, affects, or constitutes an acknowledgement of the effectiveness of any releases exchanged in connection with the Letter Agreement.

23. Plaintiff and Plaintiff's Principal agree and covenant not to acquire, pursue, or participate as a class member in, any federal securities law claims relating to Sterling, either directly or through affiliates.

**E. Submission of the Settlement to the Court for Approval**

24. As soon as practicable after this Stipulation has been executed, Plaintiff, Sterling and Defendants shall jointly apply to the Court for entry of an Order in the form attached hereto as Exhibit A (the "Scheduling Order"), among other things: (a) providing for the mailing to the Class Members of the Notice of Proposed Settlement of Class Action, Settlement Hearing and Right to Appear (the "Notice"), substantially in the form attached hereto as Exhibit B, (b) providing for the publication of the Summary Notice of Pendency and Proposed Settlement of Class Action (the "Summary Notice"), substantially in the form attached hereto as Exhibit C, (c) approving the Notice, the Summary Notice and the Proof of Claim form, substantially in the form attached hereto as Exhibits B-D, (d) scheduling the Settlement Hearing to consider: (i) the proposed Settlement, (ii) the joint request of the Parties that the Judgment be entered substantially in the form attached hereto as Exhibit E, (iii) certification of the Settlement Class for purposes of the Settlement only, (iv) Plaintiff's application for attorneys' fees and expenses and special award, and (v) any objections to the foregoing; and (e) staying the prosecution of the Actions pending further order of the Court. The Parties agree to take all reasonable

and appropriate steps to seek and obtain entry of the Scheduling Order. At the Settlement Hearing, the Parties shall jointly request that the Judgment be entered substantially in the form attached hereto as Exhibit E.

**F. Conditions of Settlement**

25. This Stipulation shall be subject to the following conditions and, except as provided in Section I, shall be canceled and terminated unless:

a. the Court enters the Scheduling Order substantially attached hereto as Exhibit A;

b. the full Settlement Amount is deposited in the Account by the Settlement Funding Date;

c. the Court enters the Judgment substantially in the form attached hereto as Exhibit E and dismisses the Class Action with prejudice;

d. the Settlement Class shall have been certified; and

e. the Effective Date shall have occurred.

**G. Attorneys' Fees and Expenses**

26. Plaintiff intends to petition the Court for reimbursement of attorneys' fees and litigation expenses in an amount no greater than \$3,150,000 that it incurred in creating the benefit of the Settlement Fund for the Class (the "Fee and Expense Application"), including the fees and expenses it incurred in connection with bringing and pursuing the Actions, presenting the Settlement to the Court, and

defending the Florida Action which Plaintiff contends are recoverable in this Action. The Florida Action involved issues that overlapped with issues in the Class Action and allegations in the Florida Action responded to developments in the Actions. Plaintiff also intends to petition the Court for a special award to Plaintiff in an amount no greater than \$350,000 for its services over and above the customary responsibilities of a class representative (the “Special Award Application”). The total amount sought by the Fee and Expense Application and the Special Award Application will be no more than 20% percent of the Settlement Amount.

27. The Parties acknowledge and agree that any amount awarded to Plaintiff by the Court pursuant to the Fee and Expense Application (the “Fee Reimbursement Award”) and any amount awarded to Plaintiff by the Court pursuant to the Special Award Application (the “Special Award”) shall be paid solely from the Settlement Fund and shall reduce the settlement consideration paid to the Class Members accordingly. Defendants agree not to object to the Fee and Expense Application and the Special Award Application, but nothing herein shall prohibit Resurgence from providing the Court with information related to any assertions made in the Fee and Expense Application or the Special Award Application concerning other litigations involving Resurgence. The Parties acknowledge and agree that any Fee Reimbursement Award and Special Award shall be paid solely from the Account to Plaintiff (wiring transfer information to be provided) within

three (3) business days after the date of entry by the Court of an order awarding such Fee Reimbursement Award and/or Special Award, notwithstanding the existence of any timely filed objections to the Fee Reimbursement Award and/or Special Award, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof; provided, however, that in the event that the Fee Reimbursement Award and/or Special Award is disapproved, reduced, reversed or otherwise modified, whether on appeal, further proceedings on remand, successful collateral attack or otherwise, then Plaintiff shall, within five (5) business days after Plaintiff receives notice of any such disapproval, reduction, reversal or other modification, return to the Settlement Fund the difference between the amount of the Fee Reimbursement Award and/or Special Award awarded by the Court and any attorneys' fees, litigation expenses and/or special award ultimately and finally awarded on appeal, further proceedings on remand or otherwise. The Parties acknowledge that the costs of administering the Settlement may include attorneys' fees and expenses and that such costs may be paid from the Settlement Fund. Any such attorneys' fees and expenses will be presented to the Court in connection with Court approval of the accounting and Class Distribution Order referred to in Paragraph 12. With the exception of the attorneys' fees and expenses referenced in the preceding two sentences, the Fee and Expense Application shall be the only petition for attorneys' fees and expenses filed by or on behalf of Plaintiff or Class Counsel in connection

with the Actions.<sup>1</sup> In no event shall any of the Released Defendant Parties be obligated to pay any of such attorneys' fees and expenses to Plaintiff or Class Counsel as it is expressly understood that all such payments will be made out of the Settlement Fund. It is not a condition of this Stipulation that the Fee Application and Expense Application or the Special Award Application be granted. The Fee and Expense Application and the Special Award Application may be considered separately from the proposed Settlement. Any disapproval or modification of the Fee and Expense Application or the Special Award Application by the Court or on appeal shall not affect or delay the enforceability of this Stipulation, provide any of the Parties with the right to terminate the Settlement, or affect or delay the binding effect or finality of the Judgment and the release of the Released Claims. Class Counsel warrants that no portion of any award of attorneys' fees or expenses shall be paid to Plaintiff or any Class Member, except as may be approved by the Court.

**H. Stay Pending Court Approval**

28. Pending Court approval of the Settlement, the Parties agree to stay any and all proceedings in the Actions other than those incident to the Settlement. The Parties' respective deadlines to respond to any filed or served

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<sup>1</sup> Notwithstanding any other provision of this Stipulation, nothing in this Stipulation prevents Plaintiff's Principal or Resurgence from seeking in the New York Action any costs or fees incurred in that action.

pleadings or discovery requests are extended indefinitely. The Parties also agree to use their best efforts to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any Class Member in any other litigation against any of the Released Parties which challenges the Settlement or otherwise involves, directly or indirectly, a Released Claim.

29. Except as necessary to pursue the Settlement, pending final determination of whether the Settlement should be approved, all Parties (including Plaintiff, Plaintiff's Principal, Defendants, and Sterling) agree not to institute, commence, prosecute, continue, or in any way participate in, whether directly or indirectly, representatively, individually, or in any other capacity, any action or other proceeding asserting any Released Claims.

30. Notwithstanding Paragraphs 28 and 29, nothing herein shall in any way impair or restrict the rights of any Party to defend this Settlement or to otherwise respond in the event any Person objects to the Settlement, the proposed Judgment to be entered, or, in the case of the Plaintiff solely, the Fee and Expense Application or Special Award Application.

**I. Effect of Disapproval, Cancellation or Termination**

31. If either (a) the Court does not enter the Judgment in substantially the form of Exhibit E, (b) the Court enters the Judgment but on or following appellate review the Judgment is modified or reversed in any material

respect, or (c) any of the other conditions of Paragraph 25 is not satisfied, this Stipulation shall be cancelled and terminated unless counsel for each of the Parties to this Stipulation, within ten (10) business days from receipt of such ruling or event, agrees in writing with counsel for the other Parties to proceed with this Stipulation and Settlement, including only with such modifications, if any, as to which all other Parties in their sole judgment and discretion may agree. For purposes of this Paragraph, an intent to proceed shall not be valid unless it is expressed in a signed writing. For purposes of this Section I, neither a modification nor a reversal on appeal of the amount awarded pursuant to the Fee and Expense Application and/or Special Award Application shall be deemed a material modification of the Judgment or this Stipulation.

32. If either: (i) this Stipulation is canceled or terminated pursuant to its terms, (ii) the conditions to the Settlement set forth in Paragraph 25 above are not satisfied, or (iii) the Settlement does not become final for any reason:

a. The Settlement Fund paid or due with respect to such amounts, less any cost or expenses of notice or administration actually incurred and paid or payable, and less any escrow fees or costs actually incurred and paid or payable, shall be refunded to Defendants within ten (10) business days after such cancellation or termination;

b. All of the Parties to this Stipulation shall be deemed to have reverted to their respective litigation status immediately prior to March 9, 2016, they shall negotiate a new scheduling order in good faith and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Actions shall be preserved without prejudice in any way;

c. Defendants and Sterling reserve the right to oppose certification of any plaintiff class in any future proceedings (including, but not limited to, in any proceedings in the Class Action), and Plaintiff and Plaintiff's Principal agree that this Stipulation, and any statements made in connection with the negotiation of this Stipulation, shall not be used to establish liability or the amount of any damages in the Actions, other than as otherwise expressly provided herein; and

d. Virtus shall cause the Appraisal Shares Payment to be repaid to Eastman within ten (10) business days after such cancellation or termination.

**J. Investment of the Settlement Fund**

33. The Settlement Fund shall be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court until such time as it is

distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in accordance with the requirements of the Escrow Agreement.

**K. Tax Treatment**

34. The Settlement Fund is intended to be a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, and the Parties shall so treat it, and the Settlement Administrator, as administrators of the Account within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing any required tax returns for the Account and paying from the Account any taxes, including any interest or penalties thereon (the “Taxes”), owed with respect to the Account. In addition, the Settlement Administrator and Class Counsel, and the Parties, as required, shall do all things that are necessary or advisable to carry out the provisions of this Paragraph.

35. All Taxes arising with respect to the Settlement Fund and any expenses and costs incurred in connection with the payment of Taxes pursuant to this Paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing, administration and distribution costs and expenses relating to the filing or the failure to file all necessary or advisable tax returns (the “Tax Expenses”)) shall be paid out of the Settlement Fund. None of the Defendants, the Released Parties or the Escrow Agent shall have any liability or responsibility for

the Taxes or the Tax Expenses. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund and the distributions and payments therefrom, including, without limitation, the tax returns described in Treasury Regulation § 1.468B-2(k), and to the extent applicable, Treasury Regulation § 1.468B-2(l). All tax returns shall be consistent with the terms herein and in all events shall reflect that all Taxes shall be paid out of the Settlement Fund. The Settlement Administrator shall also timely pay any required Taxes and Tax Expenses out of the Settlement Fund, and are authorized to withdraw, with the consent of Class Counsel but without prior consent of the Defendants or order of the Court, from the Account amounts necessary to pay Taxes and Tax Expenses. Defendants agree to timely provide to Class Counsel and the Settlement Administrator the statement described in Treasury Regulation § 1.468B-3(e).

**L. Miscellaneous Provisions**

36. Neither Defendants nor any Released Defendant Party shall have any responsibility or liability for the acts or omissions of Class Counsel or any of their agents, as described herein. Neither Defendants nor any Released Defendant Party shall be liable for any attorneys fees or costs for which Plaintiff or any Class Member petitions for reimbursement in the Actions, including but not limited to any request pursuant to Paragraphs 26 and 27 of this Stipulation. Any ensuing award of

fees or costs in the Actions shall be satisfied solely from the Settlement Fund. For the avoidance of doubt, the preceding two sentences shall not prevent Plaintiff's Principal or Resurgence from seeking in the New York Action any costs or fees incurred in that action.

37. All of the Exhibits referred to herein shall be incorporated by reference as though fully set forth herein.

38. This Stipulation may be amended or modified only by a written instrument signed by counsel for all Parties or their successors.

39. The Parties represent and agree that the terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel. Plaintiff, Plaintiff's Principal, Sterling and Defendants agree not to assert in any forum that the Actions were brought by Plaintiff or defended by Sterling or Defendants in bad faith or without a reasonable basis.

40. Each Released Party denies any and all allegations of its or his wrongdoing, fault, liability or damage in the Actions. Neither this Stipulation, nor the fact or any terms of the Settlement, is evidence, or an admission or concession by any Party in the Actions, any signatory hereto or any Released Party, of any matter (except as specifically set forth in this Stipulation), including any fault, liability or

wrongdoing whatsoever, as to any facts or claims alleged or asserted in the Actions, or any other actions or proceedings. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Actions or any wrongdoing by any of the Defendants or Sterling or any damages or injury to any Class Members. Nothing in this Stipulation constitutes an admission of any factual allegations, litigation misconduct or wrongdoing by any party.

41. To the extent permitted by law, all agreements made and orders entered during the course of the Actions relating to the confidentiality of documents or information shall survive this Stipulation.

42. The waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of any provision of this Stipulation by any other Party.

43. This Stipulation and the Exhibits constitute the entire settlement agreement between the Plaintiff and Plaintiff's Principal, on the one hand, and Sterling and the Defendants, on the other hand, and supersede any prior term sheets and agreements among Plaintiff or Plaintiff's Principal, on the one hand, and Sterling or Defendants, on the other hand with respect to the settlement of the Actions. Nothing herein supersedes or limits the right of Plaintiff's Principal or Resurgence from enforcing, or relying on as evidence, the Letter Agreement in support of any Preserved Claims without the need to introduce or rely upon this

Stipulation. No representations, warranties or inducements have been made to or relied upon by any Party concerning this Stipulation or its Exhibits, other than the representations, warranties and covenants expressly set forth in such documents.

44. This Stipulation may be executed in one or more counterparts, including by facsimile and electronic mail.

45. The Parties and their respective counsel of record agree that they will use their reasonable best efforts to obtain all necessary approvals of the Court required by this Stipulation (including, but not limited to, using their reasonable best efforts to resolve any objections raised to the Settlement).

46. Plaintiff represents and warrants that Plaintiff is a member of the Settlement Class and that none of Plaintiff's claims or causes of action referred to in this Stipulation have been assigned, encumbered, or otherwise transferred in any manner in whole or in part.

47. Where this Stipulation creates obligations for specified Parties, only those specified Parties are responsible for the obligations.

48. Each counsel signing this Stipulation represents and warrants that such counsel has been duly empowered and authorized to sign this Stipulation on behalf of his or her clients. Counsel for Resurgence makes no representation that it has been empowered or authorized to sign this Stipulation on behalf of Unserved Defendants.

49. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and the Settlement Class (and, in the case of the releases, all Released Parties) and the respective legal representatives, heirs, executors, administrators, transferees, successors and assigns of all such foregoing persons or entities and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate or reorganize.

50. This Stipulation, the Settlement, and any and all disputes arising out of this Stipulation or Settlement, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflicts of law principles. Any action or proceeding arising out of this Stipulation or the Settlement, or to enforce any of the terms of the Stipulation or Settlement, shall (i) be brought, heard and determined exclusively in the Court, which shall retain jurisdiction over the Parties and all such disputes (provided that, in the event that subject matter jurisdiction is unavailable in the Court, then any such action or proceeding shall be brought, heard and determined exclusively in any other state or federal court sitting in Wilmington, Delaware) and (ii) shall not be litigated or otherwise pursued in any forum or venue other than the Court (or, if subject matter jurisdiction is unavailable in the Court, then in any forum or venue other than any other state or federal court sitting in Wilmington, Delaware). Each Party hereto (1) consents to personal jurisdiction in any such action (but no other action) brought

in this Court or, if subject matter jurisdiction is unavailable in this Court, any such action brought in any other state or federal court sitting in Wilmington, Delaware; (2) consents to service of process by registered mail upon such Party and/or such Party's agent; (3) waives any objection to venue in this Court or Delaware and any claim that Delaware or this Court is an inconvenient forum; and (4) expressly waives any right to demand a jury trial as to any dispute described in this paragraph. Nothing in this paragraph shall affect the applicable law or available forum (i) with respect to any other agreements that survive this Stipulation and the Settlement, or (ii) for claims that are neither released nor created hereby.

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