

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

FRANK SIMMONS, Individually and on Behalf of
all Others Similarly Situated,

Plaintiff,

v.

CHRISTOPHER J. SPENCER, JOHN
BUSSHAUS, and FAB UNIVERSAL CORP.,

Defendants.

Case No.: 13-CV-8216 (RWS)

STIPULATION OF SETTLEMENT

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This stipulation of settlement dated as of July 10, 2015 (the “Settlement Stipulation”) is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the District Court, this Settlement Stipulation is entered into by Lead Plaintiffs Qingping Deng, Michael Schivo, Joseph Caizzo, Frank Chung, Yang Lu, and Feng Chang (“Lead Plaintiffs”), individually and on behalf of the proposed Class (defined herein), and by Defendants FAB Universal Corp. (“FAB”), Christopher J. Spencer, and John Busshaus (“Defendants”), in the above captioned action (Lead Plaintiffs and Defendants are collectively the “Settling Parties”), by and through their respective counsel.

This Settlement Stipulation is intended by the Settling Parties to fully and finally compromise, resolve, discharge and settle the Released Claims, as defined herein, subject to the terms and conditions set forth below and the final approval of the District Court (defined below).

WHEREAS:

A. On November 18, 2013, plaintiff Frank Simmons filed a securities class action complaint in the Southern District of New York (the “*Simmons* Action”) against FAB,

Christopher J. Spencer, and John Busshaus, alleging violations of the federal securities laws.

B. On November 27, 2013, plaintiff Joe Stubblefield filed a securities class action complaint in the Southern District of New York (the “*Stubblefield* Action”) against FAB, Christopher J. Spencer, and John Busshaus, alleging violations of the federal securities laws.

C. On December 9, 2013, plaintiff James Cox filed a securities class action complaint in the Southern District of New York (the “*Cox* Action”) against FAB, Christopher J. Spencer, and John Busshaus, alleging violations of federal securities laws.

D. By order dated April 25, 2014, the Southern District of New York: (i) consolidated the *Simmons* Action, *Stubblefield* Action, and *Cox* Action, collectively referred to as the “Litigation;” (ii) appointed Qingping Deng, Michael Schivo, Joseph Caizzo, Frank Chung, Yang Lu, and Feng Chang as Lead Plaintiffs; and (iii) appointed Faruqi & Faruqi, LLP and The Rosen Law Firm, P.A. as Lead Counsel in the consolidated Litigation.

E. On August 1, 2014, Lead Plaintiffs in the Litigation filed a consolidated complaint against FAB, Christopher J. Spencer, John Busshaus, and Zhang Hongcheng alleging violations of federal securities laws.

F. Lead Counsel in the Litigation have investigated the allegations of wrongdoing asserted and the alleged damages suffered by the Class. Lead Counsel has analyzed the facts and the applicable law with respect to the claims against the Defendants and the potential defenses thereto, which in Lead Plaintiffs’ judgment has provided an adequate and satisfactory basis for the Settlement described herein.

Settlement Negotiations

G. The Settling Parties engaged in an extensive mediation process using a nationally recognized mediator, Jed D. Melnick, Esq., including an all-day mediation session in-person on

October 16, 2014, and the Settling Parties and the mediator subsequently conducted discussions and arm's-length negotiations with each other with respect to a compromise and settlement of the Litigation.

Defendants' Denials of Wrongdoing and Liability

H. Defendants have denied, and continue to deny, each and every claim and contention alleged by Lead Plaintiffs in the Litigation. Defendants have expressly denied, and continue to deny, all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants believe that Lead Plaintiffs' allegations of fraud have no merit and that a class could not be certified under Rule 23. Defendants have also denied, and continue to deny, *inter alia*, the allegations that Lead Plaintiffs or the Class have suffered damage, that the price of FAB common stock and options contracts were artificially distorted by reasons of alleged misrepresentations, non-disclosures or otherwise, or that Lead Plaintiffs or the Class were harmed by the conduct alleged in the Litigation.

I. Nonetheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Stipulation. Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Litigation. Defendants, therefore, have determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Stipulation.

Benefits of the Settlement to the Class

J. Lead Plaintiffs and Lead Counsel believe that the Settlement provides an

excellent monetary recovery for the Class based on the claims asserted, the evidence developed and the damages that might be proven by the Class in the Litigation.

K. Lead Counsel, on behalf of Lead Plaintiffs, further recognizes and acknowledges the expense and length of continued proceedings necessary to prosecute the Litigation through trial and appeal, and Lead Counsel has considered issues that could materially affect the potential collectability of any judgment entered in this Litigation. In addition, Lead Counsel considered that Defendants' available insurance was being rapidly depleted by the cost of defending the Litigation, as well as related shareholder derivative litigation. Lead Counsel has also considered the uncertain outcome and the risk of any litigation, including the risk that plaintiffs might recover nothing, especially in a complex action such as this one, as well as the difficulties and delays inherent in any such litigation. Lead Counsel recognizes that this Litigation is further complicated by the fact that many of the witnesses and documents relevant to Plaintiffs' claims are located in China, which would make it difficult for Plaintiffs to gather the evidence needed to prove its case. Lead Counsel acknowledges that even if Plaintiff was successful at trial, Plaintiffs' ability to enforce a judgment against Defendants is uncertain, given that many of Defendants' assets are located in China. Lead Counsel is also mindful of the inherent problems of proof and possible defenses to class certification and to the federal securities law violations asserted in the Litigation against Defendants, and therefore believe that it is desirable that the Released Claims be fully and finally compromised, settled and resolved as set forth herein. Based upon their evaluation, Lead Counsel, on behalf of Lead Plaintiffs, has determined that the Settlement set forth in this Settlement Stipulation is fair, reasonable and adequate and in the best interests of Lead Plaintiffs and the Class.

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiffs

or Lead Counsel of any lack of merit of the Litigation, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses by Defendants, it is hereby STIPULATED AND AGREED, by and among the Settling Parties, through their respective attorneys, subject to approval of the District Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (“PSLRA”) and other conditions set forth herein, in consideration of the benefits flowing to the Settling Parties, that the Litigation and all Released Claims as against the Released Parties (as defined below) shall be finally and fully compromised, settled, released and dismissed, on the merits and with prejudice, in the manner and upon and subject to the terms and conditions set forth herein.

Certain Definitions

1. The following capitalized terms used in this Settlement Stipulation shall have the meanings specified below:

(a) “Alternative Judgment” means a form of final judgment that may be entered by the District Court herein but in a form other than the form of Order and Final Judgment (as defined below) provided for in this Settlement Stipulation and where none of the Settling Parties hereto elects to terminate this Settlement by reason of such variance.

(b) “Authorized Claimant” means any Class Member (as defined below) whose claim for recovery has been allowed pursuant to the terms of this Settlement Stipulation.

(c) “Claim” means the submission to be made by Class Members, on the Proof of Claim form attached hereto as Exhibit A-2, or as may be required by the District Court.

(d) “Claims Administrator” means Heffler Claims Group, the firm which Lead Counsel requests be appointed by the District Court to administer the Settlement and disseminate notice to the Class.

(e) “Class” means the class that is certified by the District Court for purposes of settlement of the Litigation. Included in such Class are all those who purchased the common stock, call options or sold put options of FAB between June 15, 2012 and November 21, 2013, both dates inclusive (the “Class Period”). Excluded from the Class are Defendants, any members of Defendants’ immediate families, any entity in which any Defendant has a controlling interest, directors and officers of FAB, and the affiliates, legal representatives, heirs, predecessors, successors and assigns of any such excluded party. Also excluded from the Class are Persons (as defined below) who suffered no compensable losses (such as Persons who purchased FAB common stock during the Class Period but sold prior to any partial corrective disclosure).

(f) “Class Members” means Persons who are members of the Class who do not timely and properly exclude themselves therefrom.

(g) “Class Period” means the period between June 15, 2012 and November 21, 2013, both dates inclusive.

(h) “Defendants” are FAB, Christopher J. Spencer, and John Busshaus.

(i) “Defendants’ Counsel” means the law firm of Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154, counsel for FAB, Christopher J. Spencer, and John Busshaus.

(j) “District Court” means the United States District Court for the Southern District of New York.

(k) “Effective Date” means the first day following the date on which the Settlement contemplated by this Settlement Stipulation shall become effective as set forth in ¶ 33 below.

(l) “Escrow Account” means the interest-bearing account established

pursuant to ¶ 4 herein.

(m) “Escrow Agent” shall mean Lead Counsel or their duly appointed agent(s). The Escrow Agent shall perform the duties set forth in this Settlement Stipulation.

(n) “Final Approval” means the date of the last of the following with respect to the Order and Final Judgment approving this Settlement Stipulation, substantially in the form of Exhibit B hereto, or with respect to an Alternative Judgment as defined in ¶1(a) herein: (i) the expiration of the time to file a motion to alter or amend the Final Judgment (or the Alternative Judgment) under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) the expiration of the time for the filing or noticing of any appeal from the Order and Final Judgment (or the Alternative Judgment) without any appeal having been filed or noticed (respectively); and (iii) if such motion to alter or amend is filed or if an appeal is filed or noticed, then immediately after the determination of that motion or appeal so that it is no longer subject to any further judicial review or appeal whatsoever, whether by reason of affirmance by court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise, and in such a manner as to permit consummation of the Settlement in accordance with the terms and conditions of this Settlement Stipulation. For purposes of this paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ that may be filed in connection with the approval or disapproval of this Settlement, or request for en banc review or reconsideration, and all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand, but shall not include any appeal that concerns only the issue of attorneys’ fees and expenses or the Plan of Allocation of the Settlement Fund.

(o) “Lead Counsel” means Faruqi and Faruqi, LLP, and The Rosen Law Firm, P.A., selected by Lead Plaintiffs and appointed by the District Court to represent the interests of

Lead Plaintiffs and the Class.

(p) “Lead Plaintiffs” mean Qingping Deng, Michael Schivo, Joseph Caizzo, Frank Chung, Yang Lu, and Feng Cheng, appointed by the District Court as Lead Plaintiffs for the Litigation.

(q) “Litigation” means the consolidated *Simmons* Action, *Stubblefield* Action, and *Cox* Action.

(r) “Net Settlement Fund” shall have the meaning set forth in ¶ 6 herein.

(s) “Order and Final Judgment” means the order(s) and final judgment(s) to be entered in the Litigation pursuant to ¶ 31 of this Settlement Stipulation and substantially in the form of Exhibit B hereto.

(t) “Person” and “Persons” means any individual, corporation, partnership, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity, any legal representative, and their spouses, heirs, predecessors, successors, representatives, agents, or assignees.

(u) “Plan of Allocation” means the plan for allocating the Net Settlement Fund (as set forth in the Settlement Notice, defined below) to Authorized Claimants after payment of expenses of notice and administration of the Settlement, Taxes and Tax Expenses and such attorneys’ fees, costs and expenses as may be awarded by the District Court.

(v) “Preliminary Order” means the Proposed Order Preliminarily Approving Settlement and Providing for Notice that Lead Counsel and Defendants will seek from the District Court, substantially in the form attached as Exhibit A and as described in ¶ 30 below.

(w) “Publication Notice” means the Summary Notice of Pendency and

Proposed Class Action Settlement and Hearing Thereon substantially in the form attached as Exhibit A-3.

(x) “Released Claims” means any and all claims, debts, demands, rights, liabilities and causes of action of every nature and description, known or Unknown (as defined in ¶ 1(ii)), contingent or absolute, mature or immature, discoverable or undiscoverable, whether concealed or hidden, suspected or unsuspected, whether arising under federal, state, common or foreign law, which now exist or heretofore have existed, arising from or relating in any manner to (i) the purchase or acquisition of FAB common stock or other FAB securities during the Class Period, and (ii) the allegations, transactions, facts, matters, occurrences, events, acts, disclosures, statements, representations or omissions alleged, asserted, set forth, or referred to in the Litigation or any pleadings or briefs filed therein, including, without limitation, all claims arising out of or relating to any disclosures, public filings or statements by any of the Defendants or Zhang Hongcheng during the Class Period, or relating to the Class Period and the allegations in this Action (including the disclosures set forth in FAB’s reports on Form 8-K dated August 12, 2014 and February 10, 2015).

(y) “Released Parties” means Defendants and Zhang Hongcheng and (i) members of their immediate families, including without limitation marital communities and spouses, and their respective heirs, executors, estates, and administrators; (ii) any of their current, former, or future parents, subsidiaries, affiliates, divisions, partners, joint venturers, officers, directors, principals, shareholders, members, employees, predecessors, successors, assigns and agents (acting in their capacity as agents); and (iii) attorneys, accountants, advisors, insurers (including but not limited to XL Specialty Insurance Company or its successors and assigns (“XL”)), reinsurers, agents (acting in their capacity as agents), associates; and (iv) any other

individual or entity in which any Defendant or Zhang Hongcheng has a controlling interest or which is related to or affiliated with any of the Defendants or their current, former, and future legal representatives, heirs, successors in interest or assigns.

(z) “Settlement” means the settlement as set forth in this Settlement Stipulation.

(aa) “Settlement Amount” means \$1.5 million, in cash.

(bb) “Settlement Fund” means the payment made pursuant to ¶ 4 herein and is also described herein as the “Common Fund.”

(cc) “Settlement Hearing” means the final hearing to be held by the District Court to determine: (1) whether the proposed Settlement should be approved as fair, reasonable and adequate; (2) whether all Released Claims should be dismissed with prejudice; (3) whether an order approving the Settlement should be entered thereon; and (4) whether the allocation of the Settlement Fund should be approved.

(dd) “Settlement Notice” means the Notice of Pendency and Settlement of Class Action which is to be sent to Class Members substantially in the form attached hereto as Exhibit A-1.

(ee) “Settling Parties” means Lead Plaintiffs and Defendants.

(ff) “Supplemental Agreement” means the agreement described in ¶ 32.

(gg) “Taxes” means any taxes due and payable with respect to the income earned by the Settlement Fund, including any interest or penalties thereon.

(hh) “Tax Expenses” means any expenses and costs incurred in connection with the payment of Taxes (including, without limitation, expenses of tax attorneys and/or accountants and expenses relating to the filing or failure to file all necessary or advisable tax

returns).

(ii) “Unknown Claims” means any and all Released Claims that Lead Plaintiffs or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by such party, might have affected such party’s decision(s) with respect to this Settlement. With respect to any and all Released Claims, the parties stipulate and agree that upon the Effective Date, Lead Plaintiffs shall expressly, and each Class Member shall be deemed to have, and by operation of the Order and Final Judgment or Alternative Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, 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.

Lead Plaintiff and the Class Members may hereafter discover facts in addition to or different from this which such party now knows or believes to be true with respect to the subject matter of the Released Claims, but the Lead Plaintiff and the Class Members, upon the Effective Date, by operation of the Order and Final Judgment, shall have fully, finally, and forever settled and released any and all Released Claims, known or Unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including but not limited to conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiffs and Defendants acknowledge, and

Class Members 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.

RELEASE OF CLAIMS

2. The obligations incurred pursuant to this Settlement Stipulation shall be in full and final disposition of the Litigation as against Defendants and Zhang Hongcheng, and shall fully and finally release any and all Released Claims as against all Released Parties.

3. (a) Upon the Effective Date of this Settlement, each of the Lead Plaintiffs and all other Class Members (including but not limited to any Class Member who is a party to any other action, arbitration or other proceeding who is asserting claims related to the Released Claims against any of the Defendants and/or any of the Released Parties that are pending on the day of Final Approval) on behalf of themselves and each of their predecessors, successors, assigns, personal representatives, heirs, joint tenants, tenants in common, beneficiaries, executors and administrators, successors, attorneys, insurers and assigns, and any person they represent or who purports to claim through them, shall release and shall be deemed by operation of law to have released, relinquished, dismissed and forever discharged the Released Claims against each and all of the Released Parties, with prejudice and on the merits, without costs to any party.

(b) As of the Effective Date, each of the Lead Plaintiffs and all other Class Members, and each of their predecessors, successors, assigns, personal representatives, heirs, joint tenants, tenants in common, beneficiaries, executors and administrators, successors, attorneys, insurers and assigns, and any person they represent or who purports to claim through them, are forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal,

administrative forum, or other forum of any kind, asserting against any of the Released Parties, and each of them, any of the Released Claims.

(c) Defendants, including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under any of them, and each of them, will be deemed by this Settlement to release and forever discharge Lead Plaintiffs, Class Members, and all plaintiffs' counsel in the Litigation from any and all claims, known or Unknown, arising out of or relating to their filing, prosecution or settlement of the Litigation, except for claims to enforce the Settlement. As of the Effective Date, Defendants are forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting against any such known or Unknown Claims arising out of or relating to their filing, prosecution or settlement of the Litigation, except for claims to enforce the Settlement, against Lead Plaintiffs, Class Members or any plaintiffs' counsel.

(d) In accordance with the Private Securities Litigation Reform Act as codified at 15 U.S.C. § 78u-4(f)(7)(A), the Order and Final Judgment shall provide that any and all claims for contribution arising out of any Released Claims (i) by any person or entity against any of the Released Parties, and (ii) by any of the Released Parties against any person or entity, other than as set out in 15 U.S.C. § 78u-4(f)(7)(A)(ii), are hereby permanently barred, extinguished, discharged, satisfied and unenforceable. Accordingly, without limitation to any of the above, (i) any person or entity is hereby permanently enjoined from commencing, prosecuting, or asserting against any of the Released Parties any such claim for contribution, and

(ii) the Released Parties are hereby permanently enjoined from commencing, prosecuting, or asserting against any person or entity, any such claim for contribution. In accordance with 15 U.S.C. §78u-4(f)(7)(B), any final verdict or judgment that might be obtained by or on behalf of the Class or a Class Member against any person or entity based upon or arising out of any Released Claim for which such person or entity and any Released Parties are found to be jointly liable shall be reduced by the greater of (i) an amount that corresponds to the percentage of responsibility of any such Released Party for common damages or (ii) the amount paid to the Class by or on behalf of each such Released Party for common damages.

THE SETTLEMENT CONSIDERATION

4. In full and complete settlement of the Released Claims, Defendants' insurer, XL, has agreed to pay the Settlement Amount. XL shall pay the Settlement Amount on or before thirty (30) calendar days following the date of the entry of the Preliminary Order, into the Escrow Account established for the Settlement Fund by Lead Counsel for the benefit of the Class Members, conditioned upon Lead Counsel providing at least twenty (20) days' notice of the Escrow Account name, address and custodian and an appropriate W-9 form prior to any payment. Upon payment of the Settlement Amount into the Escrow Account, the Settlement Amount shall constitute the "Settlement Fund," or "Common Fund." In the event that XL fails to pay the Settlement Amount, Defendants are not permitted to terminate the Settlement, and Lead Plaintiffs may reduce the amounts due to a judgment enforceable against XL.

5. The deposit of the Settlement Amount is the only payment to be made by or on behalf of Defendants or their insurer, XL, in connection with this Settlement. As set forth below, all fees, costs, and expenses incurred by or on behalf of Lead Plaintiff and the Class associated with the Settlement, including but not limited to Taxes, Tax Expenses, administrative costs and

costs of providing notice of the Settlement to Class Members, any award of attorneys' fees and expenses of Lead Counsel, shall be paid from the Settlement Fund, and in no event shall Defendants or their Related Parties bear any additional responsibility for any such fees, costs or expenses.

6. The Settlement Fund, net of any Taxes and Tax Expenses, shall be used to pay 1) the notice and administration costs referred to in ¶ 5 hereof, 2) the attorneys' fee and expense award referred to in ¶¶ 14-17 hereof, and 3) the remaining administration expenses referred to in ¶¶ 10, 19 hereof. The balance of the Settlement Fund after the above payments shall be the "Net Settlement Fund," which shall be distributed to the Authorized Claimants as provided in ¶¶ 18-29 hereof. All costs and expenses incurred by or on behalf of the Lead Plaintiffs and the Class associated with the Settlement and approved by the District Court shall be paid from the Settlement Fund and in no event shall any of the Released Parties bear any further or additional responsibility for any such costs or expenses beyond payment of the Settlement Amount.

7. As soon as the Preliminary Order is entered by the District Court, the Escrow Agent shall be permitted to pay up to \$100,000 of the Settlement Fund to the Claims Administrator for reasonable out-of-pocket costs in connection with providing notice of the Settlement to the Class ("Notice") and for other reasonable out-of-pocket administrative expenses (the "Notice and Administration Fund") without further order of the District Court.

8. Upon the direction of both Lead Counsel or order of the District Court, additional amounts may be transferred from the Settlement Fund to the Notice and Administration Fund. The Escrow Agent shall not disburse funds from the Notice and Administration Fund except as provided in this Settlement Stipulation, or by an order of the District Court, or upon the direction of both Lead Counsel. All funds held by the Escrow Agent shall be deemed to be in the custody

of the District Court and such funds shall remain subject to the jurisdiction of the District Court until such time as the funds shall be distributed or returned to the Defendants pursuant to this Settlement Stipulation and/or further order of the District Court. The Escrow Agent shall hold the funds in an interest-bearing bank account insured by the FDIC. Defendants and XL shall not be liable for the loss of any portion of the Settlement Fund.

9. Upon the payment of the Settlement Fund or any portion thereof, the Settling Parties agree to treat the Settlement Fund as a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and the Claims Administrator shall be responsible for timely making such elections as are necessary or advisable to carry out the provisions of this paragraph, including but not limited to the relation-back election (as defined in Treasury Reg. § 1.468B-1) to the earliest permitted date. Such elections shall comply with the procedures and requirements contained in such regulations. Additionally, it shall be the responsibility of the Claims Administrator to prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing(s) to occur. The Claims Administrator and Lead Counsel, as required, shall do all things that are necessary or advisable to carry out the provisions of this paragraph and Defendants shall reasonably cooperate with the Claims Administrator and Lead Counsel to carry out the provisions of this paragraph.

10. All Taxes (including any interest or penalties) arising with respect to the income earned by the Settlement Fund after the Settlement Amount is paid into a segregated account, including any Taxes or Tax detriments that may be imposed upon Defendants with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a Qualified Settlement Fund (limited by the amount of simple interest earned on the Settlement Fund at the LIBOR and not any higher interest rate that Defendants may earn on the

Settlement Fund) for federal or state income tax purposes and all Tax Expenses shall be considered to be a cost of administration of the Settlement and shall be paid out of the Settlement Fund. The Released Parties shall not have any liability or responsibility for any such Taxes or Tax Expenses. The Settlement Fund shall indemnify and hold each of the Released Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Lead Counsel, or their agents, 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 Treas. Reg. § 1.468B-2(k), and to the extent applicable, Treas. Reg. § 1.468B-2(l). Such returns shall be consistent with the terms hereof and in all events shall reflect that all such Taxes, including any interest or penalties, on the income earned by the Settlement Fund shall be paid out of the Settlement Fund, subject to the limitations set forth in this paragraph. Lead Counsel, or their agents, shall also timely pay Taxes and Tax Expenses, subject to the limitations set forth in this paragraph, out of the Settlement Fund, and are authorized to withdraw, without prior order of the District Court, from the Settlement Fund amounts necessary to pay Taxes and Tax Expenses. The parties hereto agree to cooperate with the Claims Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Settlement Stipulation. The Released Parties shall have no responsibility or liability for the acts or omissions of Lead Counsel or their agents, as described herein.

11. Eighteen months from final approval of the Settlement, 83.33% of any remaining coverage amounts in FAB's Management Liability and Company Reimbursement Policy No. ELU127284-12, which is insured by XL, will revert to the Class and 16.67% of any remaining amounts will revert to the settlement of the derivative action, *In re FAB Universal Corporation*

Shareholder Derivative Litigation, Civ. No. 14-cv-00687 (S.D.N.Y.).

12. This is not a claims-made settlement. As of the Effective Date, neither Defendants nor XL shall have any right to the return of the Settlement Fund or any portion thereof from Lead Plaintiffs or Lead Counsel irrespective of the number of Claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Settlement Fund. Any undistributed money from the Settlement Fund that cannot be distributed cost effectively to a Class Member shall be donated to one or more non-sectarian, not-for-profit 501(c)(3) organization(s) designated by Lead Counsel.

13. The finality of the Settlement shall not be conditioned on any ruling by the District Court concerning the Plan of Allocation or the award of attorneys' fees and expenses. Any order or proceeding relating to a request for approval of the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement or affect or delay the Effective Date or the effectiveness or finality of the Order and Final Judgment or Alternative Judgment and the release of the Released Claims. There shall be no distribution of any of the Settlement Fund to any Class Member until the Plan of Allocation is finally approved and such order of approval is affirmed on appeal and/or is no longer subject to review by appeal or certiorari, and the time for any petition for rehearing, appeal, or review, by certiorari or otherwise, has expired.

ATTORNEYS' FEES AND EXPENSES

14. Lead Counsel will apply to the District Court for an award of up to one-third of the Settlement Amount, plus interest therein, plus reimbursement of actual expenses, plus interest thereon. Such amounts as are awarded by the District Court shall be payable from the

Settlement Fund to Lead Counsel pursuant to ¶¶ 17, 19. Lead Counsel shall allocate the attorneys' fees and expense awards amongst plaintiffs' counsel in a manner in which Lead Counsel in good faith believes reflects the contributions of each such counsel to the prosecution and settlement of the action.

15. The Released Parties shall have no responsibility or liability for, and shall take no position with respect to, Lead Counsel's application for an award of attorneys' fees or expenses, or application for an award to Lead Plaintiffs, or the allocation of any award of fees and expenses that the District Court may make in this action to Lead Counsel or Lead Plaintiffs. In addition, the Released Parties shall take no position as to the proposed Plan of Allocation for the Settlement Fund.

16. The procedure for and amounts of any award of attorneys' fees and expenses or award to Lead Plaintiffs, and the allowance or disallowance by the District Court thereof, shall not be a condition of the Settlement. Lead Counsel shall request that their application for an award of attorneys' fees and expenses and any award to Lead Plaintiffs be considered by the District Court separately from the District Court's consideration of the fairness and adequacy of the Settlement. Any order or proceedings relating to such request, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement or affect or delay the Effective Date or the effectiveness or finality of the Order and Final Judgment or Alternative Judgment and the release of the Released Claims. The finality of the Settlement shall not be conditioned on any ruling by the District Court concerning Lead Counsel's application for attorneys' fees and expenses.

17. Except as otherwise provided in this paragraph, the attorneys' fees and expenses awarded by the District Court shall be paid to Lead Counsel from the Settlement Fund within

three (3) business days of the date the District Court enters an order awarding such fees and expenses, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the Settlement or any part thereof. If so ordered by the Court upon preliminary approval of the Settlement, Lead Counsel shall be entitled to provisional reimbursement of their attorneys' fees and out-of-pocket expenses, subject to Lead Counsel's obligations to make appropriate refunds and repayments as set forth in this paragraph. In the event that the Effective Date does not occur, or the Order and Final Judgment or Alternative Judgment is reversed or modified in any way that affects the award of attorney fees and expenses, or the Settlement Stipulation is terminated for any other reason, then each counsel receiving fees or expenses under this provision shall, within ten (10) business days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund (less any paid notice and administration expenses), either the full amount of the fees and expenses previously received by it pursuant to these provisions, plus interest at the same rate earned on the Common Fund, or an amount consistent with any modification of the Order and Final Judgment or Alternative Judgment with respect to the fee and expense award. Lead Counsel and any other plaintiffs' counsel's law firm that receives fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to jurisdiction of the District Court for the purpose of enforcing the provisions of this paragraph, and each shall be liable for repayment of any attorneys' fees and expenses received as a result of any award by the District Court. Furthermore, without limitation, Lead Counsel and any other plaintiffs' counsel's law firm that receives fees and expenses, and each such firm's partners and/or shareholders, agree that the District Court may, upon application of the Defendants, summarily issue orders, including, without limitation,

judgments and attachment orders and may make appropriate findings of or sanctions for contempt against that firm or any of its partners and/or shareholders should such law firm fail to repay fees and expenses timely pursuant to this paragraph.

**DISTRIBUTION TO AUTHORIZED CLAIMANTS
AND ADMINISTRATION OF SETTLEMENT**

18. Lead Counsel or the Claims Administrator, subject to the supervision, direction and approval of the District Court, shall administer and calculate the Claims submitted by Class Members, oversee distribution of the Settlement Fund and perform all claims administration procedures necessary or appropriate in connection therewith. The Released Parties shall have no liability, obligation or responsibility for Class notice, administration or processing of claims or disbursement of the Net Settlement Fund, including, without limitation, determinations as to the validity of any Proof of Claim, the amounts of claims, distributions of the Settlement Fund, or any loss incurred by the Escrow Agent or the Claims Administrator and neither Defendants nor XL shall take any position in regard to such matters. Defendants shall cooperate in the administration of the Settlement only to the extent reasonably necessary to effectuate its terms as requested by Lead Counsel.

19. The Settlement Amount and the Settlement Fund shall be applied as follows:

(a) To pay all costs and expenses incurred in connection with providing notice to the Class, locating Class Members, soliciting Claims, assisting with the filing of Claims, administering and distributing the Settlement Fund to the Class Members, processing Proofs of Claim, processing requests for exclusion and costs;

(b) To pay Taxes and Tax Expenses owed by the Settlement Fund;

(c) Subject to the approval and further order(s) of the District Court, for payment of all attorneys' fees and expense reimbursement as may be awarded by the District

Court to Lead Counsel, who may make payment therefrom to other plaintiffs' counsel as the former deems appropriate based upon the work done by such other plaintiffs' counsel and such other plaintiffs' counsel's relative contribution to the prosecution and settlement of the Litigation;

(d) Subject to the approval and further order(s) of the District Court, and upon the Effective Date, to distribute the Net Settlement Fund (as defined in ¶ 4) to Authorized Claimants as provided herein and in the manner set forth in the notice attached hereto as Exhibit A-1 (which notice shall include a Plan of Allocation of the Net Settlement Fund), or as otherwise ordered by the District Court in order to participate in such distribution of the Net Settlement Fund.

20. Except for those fees and expenses to be paid from the Settlement Fund as set forth in this Settlement Stipulation, each party shall bear their own fees and costs.

21. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an "Authorized Claimant," the following conditions shall apply:

(a) Each Class Member seeking to participate in distributions from the Net Settlement Fund shall be required to timely submit to the Claims Administrator a separate signed Proof of Claim (in the form attached hereto as Exhibit A-2), supported by such documents as are designated therein, including proof of all purchases and sales of FAB common stock and options listed during the Class Period, the claimant's loss, or such other documents or proof as Lead Counsel, in their discretion, may deem acceptable;

(b) All Proofs of Claim must be submitted by the date specified in the Settlement Notice unless such period is extended by order of the District Court. Any Class Member who fails to submit a Proof of Claim within such period shall be forever barred from

receiving any payment pursuant to this Settlement Stipulation (unless, by order of the District Court, a later submitted Proof of Claim by such Class Member is approved), but in all other respects shall be subject to and bound by the provisions of this Settlement Stipulation and the Settlement including the terms of the Order and Final Judgment or Alternative Judgment to be entered in the Litigation and the releases of the Released Claims provided for herein, and will be barred from bringing any action or proceeding against any of the Released Parties concerning the Released Claims. Provided that it is received before the motion is made to distribute the Settlement proceeds to the Class, a Proof of Claim shall be deemed to have been submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail, postage prepaid, and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this Settlement Stipulation the extent, if any, to which each Claim shall be allowed, subject to review by the District Court pursuant to subparagraph (e) below;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim filed in the interest of achieving substantial justice. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the claimant in order to afford the claimant opportunity to remedy any curable deficiencies in the Proof of Claims submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all claimants whose Proofs of Claim it proposes to reject in whole or in part, setting

forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the District Court if the claimant so desires and complies with the requirements of subparagraph (e) below;

(e) If any claimant whose claim has been rejected in whole or in part desires to contest the rejection, the claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the District Court. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall present the request for review to the District Court. If a claimant fails to serve upon the Claims Administrator the notice required in this paragraph, the claimant's Proof of Claim, to the extent rejected, will not be allowed; and

(f) The administrative determination of the Claims Administrator accepting and rejecting Claims shall be presented for approval to the District Court, on notice to Defendants' Counsel.

22. Each claimant shall be deemed to have submitted to the jurisdiction of the District Court with respect to his, her or its Claim, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the claimant's status as a Class Member and the validity and amount of the claimant's Claim. No discovery shall be allowed on the merits of the Litigation or Settlement in connection with processing of the Proofs of Claim.

23. No Class Member or Authorized Claimant shall have any claim against Lead Counsel, Lead Plaintiffs, any other plaintiff and plaintiffs' counsel in the Litigation, any of the

Released Parties or their counsel or insurers (including but not limited to XL), the Claims Administrator or any employees or agents of any of the foregoing, based on the distributions made substantially in accordance with this Settlement Stipulation or as otherwise approved or directed by the District Court. Payment pursuant to this Settlement Stipulation shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the District Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be subject to and bound by the provisions of this Settlement Stipulation and the Settlement, including the terms of the Order and Final Judgment or Alternative Judgment to be entered in the Litigation and the releases provided for herein, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

24. All proceedings with respect to the administration, processing and determination of Claims described by ¶ 21 of this Settlement Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the District Court.

25. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date and after: (i) all timely Proofs of Claim have been processed and all claimants whose Claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all objections with respect to all rejected or disallowed Claims have been resolved by the District Court, and all appeals therefrom have been resolved or the time therefor has expired; (iii) all matters with respect to attorneys' fees, costs and disbursements have been resolved by the District Court, all appeals therefrom have been resolved or the time therefor has

expired; and (iv) all costs of administration have been paid.

26. In the interests of achieving substantial justice, Lead Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what they deem to be formal or technical defects in any submitted Proofs of Claim.

27. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall be re-distributed, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution, to Class Members who have cashed their checks and who would receive at least \$10.00 from such re-distribution. If any funds shall remain in the Net Settlement Fund six (6) months after such re-distribution, then such balance shall be contributed to a non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Lead Counsel.

28. Following distribution of the Net Settlement Fund, the Claims Administrator shall maintain the completed Proofs of Claim on file for three (3) years after the Effective Date.

29. Each Class Member shall be bound by all determinations and judgments in the Litigation concerning the Settlement unless such Person shall mail, by first class mail, a written request for exclusion from the Class. In order to be valid, a request for exclusion must state: (1) the name, address, and telephone number of the person requesting exclusion; (2) written evidence of the person's purchases and sales of FAB common stock and options made during the Class Period (e.g., brokerage account statements and trade confirmations), including the dates, the number of securities purchased and prices paid or received per security for each such

purchase or sale; and (3) that the Person wishes to be excluded from the Class. All Persons who submit valid and timely requests for exclusion in the manner set forth in this paragraph shall have no rights under this Settlement Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement Stipulation or the Order and Final Judgment or Alternative Judgment. Each Person requesting exclusion shall be deemed to have submitted to the jurisdiction of the District Court with respect to his, her or its claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the Person's status as a Class Member and the validity and amount of the Person's claim. No discovery shall be allowed on the merits of the Litigation or Settlement in connection with processing of the requests for exclusion.

**TERMS OF PRELIMINARY ORDER IN CONNECTION WITH
SETTLEMENT PROCEEDINGS**

30. Promptly after execution of this Settlement Stipulation, Lead Counsel shall submit the Settlement Stipulation together with its exhibits to the District Court and shall apply for entry of a Preliminary Order in connection with settlement proceedings substantially in the form annexed hereto as Exhibit A, providing for, among other things, preliminary approval of the Settlement and notice to the Class of the Settlement Hearing. The Preliminary Order (Exhibit A) to be submitted to the Court shall contain exhibits substantially in the form set forth in (i) the Settlement Notice (Exhibit A-1 to Preliminary Order); (ii) the Proof of Claim and Release (Exhibit A-2 to Preliminary Order); and (iii) the Publication Notice (Exhibit A-3 to the Preliminary Order). Defendants are not liable or responsible for the method of, or representations made in, the Settlement Notice or Publication Notice.

TERMS OF ORDER AND FINAL JUDGMENT

31. If the Settlement contemplated by this Settlement Stipulation is approved by the District Court, Lead Counsel and Defendants' Counsel shall jointly request that the District Court enter an Order and Final Judgment substantially in the form annexed hereto as Exhibit B. The Settlement is expressly conditioned upon, among other things, the entry of an Order and Final Judgment substantially in the form annexed hereto as Exhibit B, or the entry of an Alternative Judgment.

SUPPLEMENTAL AGREEMENT

32. Simultaneously herewith, Lead Counsel and Defendants are executing a "Supplemental Agreement" setting forth certain conditions under which this Settlement Stipulation may be withdrawn or terminated at the discretion of Defendants if an amount of shares that are entitled for recovery in this Litigation representing a certain percentage of the shares held by the Class exclude themselves from the Class. The Supplemental Agreement shall not be filed with the District Court except that the substantive contents of the Supplemental Agreement may be brought to the attention of the District Court, in camera, if so requested by the District Court, or if a dispute arises among the Settling Parties concerning the Supplemental Agreement's interpretation or application. The Settling Parties will keep the terms of the Supplemental Agreement confidential, except if compelled by judicial process to disclose the Supplemental Agreement. In the event the Settlement and this Settlement Stipulation are terminated, the provisions of ¶¶ 7-10, 35, 36, 38, 41, 42 and 54 shall survive termination.

EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

33. The Effective Date of Settlement shall be the latest date when all the following shall have occurred:

- (a) entry of the Preliminary Order;
- (b) approval by the District Court of the Settlement and certification of the Class following notice to the Class and a hearing in accordance with Rule 23 of the Federal Rules of Civil Procedure;
- (c) Final Approval of the Order and Final Judgment (or Alternative Judgment, if applicable);
- (d) Payment by XL, on Defendants' behalf, of the Settlement Amount; and
- (e) The absence of termination of the Settlement by any of the parties hereto, pursuant to ¶¶ 34-36.

34. Defendants' Counsel or Lead Counsel shall have the right to terminate the Settlement and this Settlement Stipulation by providing written notice of their election to do so ("Termination Notice") to the other within thirty (30) days of the date on which: 1) the District Court declines to enter the Preliminary Order; 2) the District Court refuses to approve this Settlement Stipulation or any material part of it, provided, however, that the allowance or disallowance by the District Court of any application for an award of attorneys' fees and expenses shall not be material; 3) the District Court declines to enter the Order and Final Judgment; 4) the Order and Final Judgment is vacated, modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the United States Supreme Court; 5) an Alternative Judgment is vacated, modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the United States Supreme Court; or 6) the Effective Date of Settlement otherwise does not occur, except that if such Effective Date does not occur as a result of XL failing to pay the Settlement Amount.

Neither a modification nor a reversal on appeal of any award of fees, costs and expenses by the District Court to Lead Counsel (or any plaintiffs' counsel) shall be deemed a material modification of the Order and Final Judgment or Alternative Judgment or this Settlement Stipulation. Defendants may also terminate the Settlement and this Settlement Stipulation pursuant to ¶ 32, if the conditions set forth therein are met. The foregoing list is not intended to limit or impair the parties' rights under the law of contracts of the State of New York with respect to any breach of this Settlement Stipulation. In the event the Settlement and this Settlement Stipulation are terminated, the provisions of ¶¶ 7-10, 35, 36, 38, 41, 42 and 54 shall survive termination. Defendants may not terminate this Settlement if XL fails to pay the Settlement Amount in accordance with this Settlement Stipulation. If XL fails to pay the Settlement Amount pursuant to the terms of this Settlement Stipulation, Lead Plaintiffs, in their sole discretion, may elect (i) at any time prior to the District Court's entering the Order of Final Judgment or Alternative Judgment terminate the Settlement by providing written notice to Defendants' Counsel; or (ii) to enforce the terms of the Settlement against XL and seek a judgment effecting the terms herein.

35. In the event the Settlement and this Settlement Stipulation are terminated or if the Effective Date fails to occur for any reason, the Settling Parties shall be deemed to have reverted nunc pro tunc to their respective status in the Litigation as of the date and time immediately prior to the execution of this Settlement Stipulation and, except as otherwise expressly provided, the Settling Parties shall proceed in all respects as if this Settlement Stipulation and any related orders had not been entered and without any prejudice in any way from the negotiation, fact or terms of this Settlement.

36. In the event this Settlement Stipulation is terminated or if the Effective Date fails

to occur for any reason, then within ten (10) business days after written notice is sent by Lead Counsel or Defendants' Counsel, the balance of the Settlement Fund, less any expenses for notice or administration of the Settlement Fund paid or incurred but not yet paid, shall be refunded to Defendants' insurer, including interest accrued thereon. In such event, the parties to this Settlement Stipulation shall be deemed to have reverted *nunc pro tunc* to their respective status as of the date and time immediately before the execution of this Settlement Stipulation and, except as otherwise expressly provided, they shall proceed in all respects as if this Settlement Stipulation and related orders had not been entered and without prejudice in any way from the negotiation, fact or terms of the Settlement. In the event that the Settlement and this Settlement Stipulation are terminated, the provisions of ¶¶ 7-10, 35, 36, 38, 41, 42 and 54 shall survive termination.

CLASS CERTIFICATION

37. For purposes of this Stipulation and Settlement only, and subject to approval of the Court in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, the Settling Parties stipulate to certification of the Class, as defined herein, and the appointment of Lead Plaintiffs as class representatives of the Class. In the event that the Settlement upon the terms and conditions set forth in this Stipulation is not approved by the Court, is terminated, or the Effective Date (*see* ¶ 33 above) does not occur for any reason, the certification of the Class automatically shall be revoked without requiring any additional action by the Settling Parties or the Court, and the Settling Parties shall be restored *nunc pro tunc* to their respective positions in the Litigation as of the date and time immediately prior to the execution of this Settlement Stipulation. In such event, Defendants reserve their right to object for any and all reasons to the certification of any class, and this Stipulation shall not be used or considered in any way in

connection with class certification. Should the Class not be certified, or should any court attempt to amend the scope of the Class, each of the Settling Parties reserve the right to void this Stipulation in accordance with ¶ 34 hereof.

NO ADMISSION OF WRONGDOING

38. This Settlement Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

(a) shall not be offered or received against any Defendant, any other Released Party, Lead Plaintiffs or the Class as evidence of, or be deemed to be evidence of, any presumption, concession or admission by any of the Defendants or any of the other Released Parties or by any of the Lead Plaintiffs or the Class with respect to the truth of any fact alleged by Lead Plaintiffs or the validity, or lack thereof, of any claim that had been or could have been asserted in the Litigation or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any litigation, or of any liability, negligence, fault or wrongdoing of Defendants or other Released Parties;

(b) shall not be offered or received against any of the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Released Party, or against Lead Plaintiffs or the Class as evidence of any infirmity in the claims of Lead Plaintiffs and the Class;

(c) shall not be offered or received against any of the Released Parties, Lead Plaintiffs or the Class as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Settlement Stipulation, in any arbitration proceeding or other

civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Stipulation; provided, however, that if this Settlement Stipulation is approved by the District Court, the Released Parties may refer to it to effectuate the liability protection granted them hereunder;

(d) shall not be construed against any of the Released Parties, Lead Plaintiffs or the Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) shall not be construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or the Class or any of them that any of their claims are without merit or that damages recoverable by way of the Litigation would not have exceeded the Settlement Amount.

39. This Settlement Stipulation and the Settlement may be pleaded as a full and complete defense to any action, suit or other proceeding that may be instituted, prosecuted or attempted with respect to any of the Released Claims. The Released Parties may offer the Settlement Stipulation or Order and Final Judgment or Alternative Judgment from the Litigation in any other action that may be brought against them by any Class Member or other Released Party in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any similar defense or counterclaim. The Class Members and Defendants agree that any such proceeding would cause irreparable injury to the Released Party against whom it is brought and that the District Court or any court of competent jurisdiction may enter an injunction restraining the prosecution of such proceeding.

NOTICE AND ADMINISTRATION FUND

40. The Notice and Administration Fund shall be used by Lead Counsel or the Escrow Agent to pay the costs of notifying the Class, soliciting the filing of claims by Class Members, assisting them in making their claims, and otherwise administering the Settlement on behalf of the Class.

41. As of the Effective Date, any balance, including interest, then remaining in the Notice and Administration Fund, less expenses incurred but not yet paid, shall be returned to the Settlement Fund. Thereafter, Lead Counsel shall have the right to use such portions of the Settlement Fund as are, in their exercise of reasonable judgment, necessary to carry out the purposes set forth in ¶ 19 above. The Notice and Administration Fund need not be a separate account from the Escrow Account, but the term is used herein to identify those funds in the Escrow Account allotted for notice and administrative expenses described herein. At Defendants' request, such counsel shall provide Defendants with appropriate documentation of all out-of-pocket costs incurred in connection with providing notice to the Class and for other administrative expenses.

42. If the Effective Date does not occur, except for failure of XL to pay the Settlement Amount, the balance of the Notice and Administration Fund that has not been expended, including all interest accrued thereon, shall be returned to XL.

MISCELLANEOUS PROVISIONS

43. All of the Exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Settlement Stipulation and the terms of any exhibit hereto, the terms of this Settlement Stipulation shall prevail.

44. This Settlement Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all Settling Parties or their successors-in-interest.

45. Neither the Settlement Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Stipulation or the Settlement: (i) is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claim or of any wrongdoing or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission or evidence of any fault or omission of any of the Released Parties in any civil, criminal or administrative proceeding in any court, any arbitration proceeding or any administrative agency or other tribunal, other than in such proceedings as may be necessary to consummate or enforce the Settlement Stipulation, the Settlement, or the Order and Final Judgment or Alternative Judgment.

46. All proceedings in the Litigation, except for proceedings relating to the Settlement, including without limitation an application by Lead Plaintiffs' counsel for approval of the Settlement, shall be suspended until all proceedings related to the Settlement are concluded.

47. The parties to this Settlement Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against any of the Released Parties with respect to the Released Claims, and they intend the Settlement to be a final and complete release of any and all claims and rights. Accordingly, Lead Plaintiffs, Defendants, and their counsel agree that each has complied fully with Rule 11 of the Federal Rules of Civil Procedure and shall not make any applications for sanctions pursuant to Rule 11 or any similar law, rule or regulation, that the Litigation was brought or defended in bad

faith or without a reasonable basis and further agree not to make any public statements that contradict such position. The Settling Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the parties, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel.

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

49. This Settlement Stipulation, its exhibits and the Supplemental Agreement constitute the entire agreement among these parties, and no representations, warranties or inducements have been made to any party concerning this Settlement Stipulation, its exhibits or the Supplemental Agreement, other than the representations, warranties and covenants contained and memorialized in such documents.

50. This Settlement Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via e-mail. All executed counterparts and each of them shall be deemed to be one and the same instrument.

51. The Settling Parties and their respective counsel of record agree that they will use their best efforts to obtain all necessary approvals of the District Court required by this Settlement Stipulation.

52. Each counsel signing this Settlement Stipulation represents that such counsel has authority to sign this Settlement Stipulation on behalf of each of their respective clients.

53. This Settlement Stipulation shall be binding upon and shall inure to the benefit of

the successors and assigns of the Settling Parties, including any and all Released Parties and any corporation, partnership, or other entity into or with which any Settling Party hereto may merge, consolidate or reorganize. No assignment shall relieve any Settling Party hereto of obligations hereunder.

54. Notices required by this Settlement Stipulation shall be submitted either by any form of overnight mail or in person to:

Richard W. Gonnello
Faruqi & Faruqi, LLP
369 Lexington Avenue, 10th Floor
New York, New York 10017
Counsel for the Class

Phillip Kim
The Rosen Law Firm, P.A.
275 Madison Ave., 34th Floor
New York, New York 10016
Counsel for the Class

Eugene Licker
Loeb & Loeb LLP
345 Park Avenue
New York, NY 10154
Counsel for FAB, Christopher J. Spencer, and John Busshaus

Notice shall be deemed effective upon receipt.

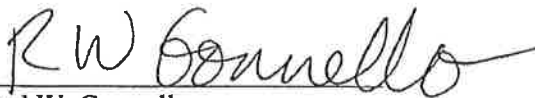
55. The administration, consummation and enforcement of the Settlement as embodied in this Settlement Stipulation shall be under the authority of the District Court, and the Settling Parties intend that the District Court retain jurisdiction for the purpose of entering orders, providing for awards of attorneys' fees and expenses to Lead Counsel, and enforcing the terms of this Settlement Stipulation and the Settlement.

56. The construction, interpretation, operation, effect and validity of this Settlement Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws

of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

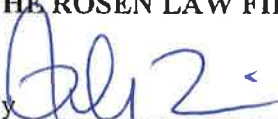
57. This Settlement Stipulation shall not be construed more strictly against one Settling Party than another Settling Party merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length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

FARUQI & FARUQI, LLP

By 
Richard W. Gonnello
369 Lexington Avenue, 10th Floor
New York, NY 10017
(212) 983-9330

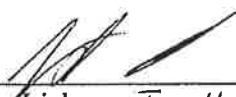
*Lead Counsel for Lead Plaintiffs and
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the Class*

LOEB & LOEB LLP

By 
Eugene Licker, *Jonathan Strauss*
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*Counsel for FAB, Christopher J. Spencer,
and John Busshaus*