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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RYAN RODRIGUEZ, REENA B.
FRAILICH, LOREDANA NESCI,
JENNIFER BRAZIL, and LISA
GINTZ, on behalf of themselves and all
others similarly situated,

Plaintiff,

vs.

WEST PUBLISHING
CORPORATION, a Minnesota
Corporation d/b/a BAR/BRI, and
KAPLAN, INC., a Delaware
Corporation,

Defendants.

CASE NO. CV-05-3222 R (MCx)
STIPULATION AND SETTLEMENT
AGREEMENT

AND CONSOLIDATED ACTION

1 **WHEREAS**, as set forth in their Answers, Defendants denied, and continue
2 to deny, Plaintiffs' allegations, including that they committed any violation of law
3 or any wrongdoing, and further deny they have any liability with respect to the
4 claims asserted in the Action and deny any and all liability;

5 **WHEREAS**, on March 13, 2006, a motion for class certification was filed on
6 behalf of Plaintiffs seeking to certify a class of persons who purchased a bar review
7 course from BAR/BRI in the United States from August 1997 to the present (the
8 "Class");

9 **WHEREAS**, Defendants vigorously opposed the motion for class
10 certification;

11 **WHEREAS**, the Court entered an order granting the motion for class
12 certification on May 15, 2006, and appointing Ryan Rodriguez, Reena B. Frailich,
13 Loredana Nesci, Jennifer Brazeal, Lisa Gintz, Kari Brewer, and Lorraine Rimson as
14 class representatives (the "Class Representatives") and the law firm of
15 McGuireWoods LLP as lead class counsel to represent the Class;

16 **WHEREAS**, notice to the Class was published during a period through and
17 including July 31, 2006;

18 **WHEREAS**, those identified on Exhibit A hereto elected to exclude
19 themselves from the Class by the August 14, 2006 deadline (the "Opt-Outs");

20 **WHEREAS**, the Settling Parties have engaged in extensive analysis of the
21 pertinent facts. Class Counsel (defined below) have conducted an extensive
22 investigation relating to the claims and underlying events alleged in the Action,
23 including (i) analysis of documents produced in discovery; (ii) analysis of
24 deposition testimony; and (iii) extensive legal research. Class Counsel have also
25 retained and consulted with economists and other experts with respect to damages
26 they claim the Class sustained as a result of the wrongful conduct alleged in the
27 Action. As a result, Class Counsel are thoroughly familiar with the issues of
28 liability and damages with respect to the claims asserted;

1 **WHEREAS**, the Settling Parties engaged in extensive arm's-length
2 settlement negotiations and have also engaged in mediation before the Hon. Daniel
3 Weinstein (Ret.) of JAMS;

4 **WHEREAS**, over the course of the Settling Parties' extensive arm's-length
5 negotiations, Class Counsel have concluded that the Settlement is fair, reasonable
6 and adequate, and in the best interests of the Class. Among other factors
7 considered in this Action are: (1) the sharply contested legal and factual issues
8 involved in the Action as they relate to Defendants; (2) the risks attendant upon
9 further prosecution of this Action; and (3) the substantial benefits to be conferred
10 on the Class because of this Settlement Agreement;

11 **WHEREAS**, Defendants, recognizing the costs and uncertainties attendant
12 upon further litigation of the claims in this Action, and while continuing to
13 vigorously deny Plaintiffs' allegations and any liability with respect to any and all
14 claims asserted in the Action, have concluded that it is desirable that all of the
15 claims in this Action that have been or could have been asserted against Defendants
16 be compromised and settled. The resolution of the claims asserted in the Action
17 will terminate the costly process of litigation and put to rest forever the controversy
18 surrounding matters at issue in this Action as they relate to Defendants; and which
19 culminated in an agreement to settle the Action;

20 **NOW, THEREFORE**, in consideration of the mutual promises contained
21 herein and other good and valuable consideration, the sufficiency of which is
22 hereby acknowledged, and pursuant to Federal Rule of Civil Procedure 23,

23 **IT IS HEREBY STIPULATED AND AGREED**, by and between the
24 Settling Parties by and through their respective undersigned counsel that the Action
25 shall be fully, finally and forever resolved, discharged, settled, compromised and
26 dismissed with prejudice, subject to the approval of the Court, in the manner and
27 upon the terms and conditions hereafter set forth.

28

1 **I. ADDITIONAL DEFINITIONS**

2 When used in this Stipulation, the following terms have the meanings
3 specified below:

4 1. "Authorized Claimant" means any Class Member who submits a
5 Claim Form in such form and manner, and in such time, as the Court shall
6 prescribe.

7 2. "Claim Deadline" means the date set forth in the Notice by
8 which Class Members must submit the Claim Form.

9 3. "Claim Form" means documents substantially in the form of
10 Exhibit B hereto, or as otherwise approved by the Court, which must be signed by
11 the Class Member or his, her or its authorized representative and submitted to the
12 Claims Administrator in order to obtain the benefits under the Settlement, as
13 described below.

14 4. "Claims Administrator" means Complete Claim Solutions, LLC
15 ("CCS"), or such similar third party as is designated by the Settling Parties and
16 retained to disseminate the Notice and administer the claims process as set forth
17 below, including but not limited to, receiving and processing Claim Forms,
18 determining which Claim Forms are valid, and advising Class Counsel of which
19 claims are valid.

20 5. "Class" means all Persons who purchased a bar review course
21 from BAR/BRI in the United States from August 1, 1997 through and including
22 July 31, 2006, exclusive of the Opt-Outs as listed in Exhibit A.

23 6. "Class Counsel" means Lead Counsel and Zwerling, Schachter
24 & Zwerling, LLP and Finkelstein Thompson LLP.

25 7. "Class Member" means any Person who is a member of the
26 Class.

27 8. "Court" means the United States District Court for the Central
28 District of California.

1 9. “Effective Date” means the first date by which all of the events
2 and conditions specified in Paragraph 61 of this Stipulation have occurred or have
3 been met.

4 10. “Escrow Agent” means such escrow agent as Defendants and
5 Class Counsel mutually designate in writing.

6 11. “Expense Award” has the meaning described in Paragraph 50 of
7 this Stipulation.

8 12. “Fee Award” has the meaning described in Paragraph 50 of this
9 Stipulation.

10 13. “Final Settlement Hearing” means the final hearing to be held
11 by the Court to determine, among other things, if the Settlement and Plan of
12 Allocation should be finally approved as fair, reasonable and adequate, whether an
13 order approving the Settlement and dismissing the Action should be entered,
14 whether Incentive Awards should be awarded to the Class Representatives, and
15 whether an award of attorneys’ fees and reasonable expenses and in what amount
16 should be made to Class Counsel.

17 14. “Gross Settlement Fund” means the Settlement Amount and any
18 interest or income thereafter earned thereon.

19 15. “Incentive Award” means any award ordered by the Court to be
20 paid to the Class Representatives from the Gross Settlement Fund for their service
21 in representing the Class.

22 16. “Judgment” means the Order and Final Judgment, substantially
23 in the form of Exhibit C hereto, or in such other form as is acceptable to counsel to
24 the Settling Parties and entered by the Court.

25 17. “Lead Counsel” means McGuireWoods LLP.

26 18. “Net Settlement Fund” means the remainder of the Gross
27 Settlement Fund after the payment of the amounts listed in Paragraph 34 of this
28 Stipulation.

1 19. “Notice” means the “Notice of Proposed Settlement of Class
2 Action and Hearing Regarding Settlement,” as approved by the Court, informing
3 Class Members of, among other things, the material terms of the proposed
4 Settlement and their options with respect thereto. The agreed proposal for the form
5 of the Notice is attached hereto as Exhibit D.

6 20. “Person” means any individual, corporation, partnership,
7 association, joint stock company, trust, estate, unincorporated association,
8 government and any political subdivision thereof and any other type of legal or
9 political entity.

10 21. “Plan of Allocation” means the plan for distributing the Net
11 Settlement Fund to the Authorized Claimants, as approved by the Court. The
12 agreed proposal for the Plan of Allocation is attached hereto as Exhibit E.

13 22. “Preliminary Approval Order” means an order substantially in
14 the form of Exhibit F hereto, or in such other form as is acceptable to counsel to the
15 Settling Parties and entered by the Court, providing for, among other things,
16 preliminary approval of the Settlement and dissemination of the Notice to the Class.

17 23. “Release” means the release set forth in Section V below.

18 24. “Released Claim” or “Released Claims” has the meaning
19 specified in Paragraph 56.

20 25. “Released Party” or “Released Parties” means and includes the
21 Defendants and each of them, and their respective current and prior parent
22 corporations, owners, affiliates, subsidiaries, predecessors, officers, directors,
23 employees, agents, licensees, successors, assigns, creditors, insurers,
24 administrators, heirs, executors and legal or personal representatives, and their
25 respective attorneys, accountants, consultants and advisors.

26 26. “Releasing Person” or “Releasing Persons” means the
27 Representative Plaintiffs and each Class Member, and, with respect to natural
28 persons who are Class Members, their present and past heirs, executors,

1 administrators, successors and assigns, and, with respect to legal entities other than
2 natural persons, their predecessors, successors and assigns.

3 27. "Settlement Amount" means \$49,000,000 in U.S. dollars.

4 28. "Settlement Fund" means the fund created and maintained for
5 the benefit of the Class as provided for in, and subject to, the provisions of this
6 Settlement and encompasses both the Gross Settlement Fund and the Net
7 Settlement Fund.

8 29. "Summary Notice" means the "Summary Notice of Pendency of
9 Class Action, Proposed Settlement and Settlement Hearing," as approved by the
10 Court. The parties shall agree on the form of the proposed Summary Notice.

11 30. "Tax" or "Taxes" means any and all taxes, fees, levies, duties,
12 tariffs, imposts and other charges of any kind (together with any and all interest,
13 penalties, additions to tax and additional amounts imposed with respect thereto)
14 imposed by any governmental authority, including income tax and other taxes and
15 charges on or regarding franchises, windfall or other profits, gross receipts,
16 property, sales, use, capital stock, payroll, employment, social security, workers'
17 compensation, unemployment compensation or net worth; taxes or other charges in
18 the nature of excise, withholding, ad valorem, stamp, transfer, value added or gains
19 taxes; license, registration and documentation fees; and customs' duties, tariffs and
20 similar charges.

21 **II. SETTLEMENT CONSIDERATION**

22 **A. Establishment of Settlement Fund.**

23 31. Within ten (10) business days of the entry of an order by the
24 Court preliminarily approving the Settlement, Defendants will cause the Settlement
25 Amount to be deposited (in such proportion as separately agreed upon by them) in
26 an interest-bearing account held by the Escrow Agent, pursuant to the terms of the
27 Escrow Agreement. Class Counsel retains the option to terminate the Settlement if
28 the Settlement Amount is not paid in full in accordance with the prior sentence. All

1 funds held by the Escrow Agent shall be deemed to be in the custody of the Court
2 and shall remain subject to the jurisdiction of the Court until such time as the funds
3 shall be distributed or returned to Defendants pursuant to this Stipulation and/or
4 further order of the Court. The Escrow Agent shall invest any funds in excess of
5 \$100,000 in United States Treasury Bills of a maturity length of six months or less
6 or other debt obligations, and shall collect and reinvest all interest accrued thereon.
7 The Escrow Agent may hold an amount of \$100,000 or less in an interest-bearing
8 bank account insured by the FDIC.

9 32. The Settling Parties agree that the Settlement Fund is intended
10 to be a qualified settlement fund within the meaning of Treasury Regulation
11 § 1.468B-1 and that the Escrow Agent shall be the “administrator” of the
12 Settlement Fund within the meaning of Treasury Regulation §1.468B-2(k)(3). The
13 Escrow Agent shall timely and properly file all informational and other Tax returns
14 necessary with respect to the Settlement Fund (including without limitation the
15 returns described in Treasury Regulation §§ 1.468B-2(k) and 1.468B-2(l)), and
16 make all required Tax payments out of the Settlement Fund, including deposits of
17 estimated Tax payments in accordance with Treasury Regulation § 1.6302-1 and
18 corresponding provisions, if any, of state and local Tax laws. Such returns shall be
19 consistent with this paragraph, and in all events shall reflect that all Taxes on the
20 Settlement Fund or the income earned by the Settlement Fund shall be paid out of
21 the Settlement Fund. The Settling Parties agree that the Settlement Fund shall be
22 treated as a qualified settlement fund from the earliest date possible, and agree to
23 any relation-back election required to treat the Settlement Fund as a qualified
24 settlement fund from the earliest date possible. Defendants agree to provide
25 promptly to the Escrow Agent the statement described in Treasury Regulation §
26 1.468B-3(e).

27 33. The Escrow Agent shall release funds upon five (5) business
28 days written notice from the Claims Administrator or Class Counsel at the request

1 of the Claims Administrator (which notice shall also be sent by facsimile or first
2 class mail to Defendants' respective counsel of record in the Action) for the
3 purpose of paying for the costs of notifying Class Members, assisting them in
4 making their claims, and otherwise administering, on behalf of the Class, the
5 Settlement.

6 34. The Gross Settlement Fund, net of any Taxes thereon or on the
7 income thereof, shall be used to pay (i) any Fee Award and any Expense Award;
8 (ii) any Incentive Awards to the Class Representatives, (iii) all fees and expenses
9 properly incurred by the Claims Administrator, (iv) all costs specified in the prior
10 paragraph, and (v) any fees and expenses properly incurred by the Escrow Agent,
11 all as approved by the Court. The remainder of the Gross Settlement Fund after the
12 payment of the above amounts and net of any Taxes shall constitute the "Net
13 Settlement Fund," which shall be distributed to the Authorized Claimants as
14 ordered by the Court.

15 35. The Settlement Amount is the total amount that Defendants will
16 pay under this Settlement for any purpose, including without limitation, to satisfy
17 claims by Class Members, attorneys' fees and costs, Incentive Awards to the Class
18 Representatives, any other payments approved by the Court, and payment of any
19 and all administrative and notice expenses associated with the Action or this
20 Settlement. Defendants shall not be liable for any costs, fees, awards or expenses
21 of any Class Members or the Class Representative, or of any Class Members' or
22 attorneys, experts, consultants, advisors, agents and representatives acting on behalf
23 of any Class Representative or Class Member. Any such costs, fees, awards and
24 expenses as approved by the Court shall be paid out of the Settlement Fund. Class
25 Members shall look solely to the Settlement Fund for settlement and satisfaction
26 against Defendants of all claims that are released hereunder. Except as expressly
27 provided by order of the Court, no Class Member shall have any interest in the
28 Settlement Fund or any portion thereof.

1 36. This is not a “claims-made” settlement. As of the Effective
2 Date, Defendants shall have no right to the return of the Settlement Fund or any
3 portion thereof irrespective of the number of Claim Forms filed, the collective
4 amounts of losses of Authorized Claimants, the percentage of recovery of losses, or
5 the amounts paid to Authorized Claimants from the Settlement Fund. The amount
6 of the payment that any Class Member shall receive from the Net Settlement Fund
7 shall not exceed the maximum amount set forth in the Plan of Allocation (the
8 “Maximum Payment”).

9 37. Should there be any funds remaining in the Net Settlement Fund
10 after distributing the Maximum Payment to all Authorized Claimants, Class
11 Counsel shall make an application to the Court, upon fourteen (14) days advance
12 written notice to Defendants’ counsel, for a suitable *cy pres* distribution of the
13 residual amount of the Net Settlement Fund; Defendants may object to the
14 application and reserve the right, if any, to make an alternative proposal for the *cy*
15 *pres* distribution.

16 **B. Non-monetary Consideration.**

17 38. For purposes of Settlement, the Settling Parties agree as follows:

18 (a) The BAR/BRI – Kaplan marketing agreement shall be
19 terminated forthwith with neither side bearing any penalties or future obligations;

20 (b) For a period of five (5) years from the Effective Date,
21 BAR/BRI shall include the following statement on its student enrollment form:
22 “NOTE: By signing this Enrollment Form and making an initial enrollment
23 payment to BAR/BRI, you are not committing yourself to taking the BAR/BRI Bar
24 Review course or making full payment to BAR/BRI for such course.” BAR/BRI
25 may, on five (5) business days notice to Lead Counsel, petition the Court to shorten
26 the time period referred to in the first sentence of this Paragraph 38(b) for good
27 cause shown.

28

1 **C. Further Statement By BAR/BRI.**

2 39. BAR/BRI states that it is committed to accurate advertising as
3 required by the Lanham Act, the Federal Trade Commission Act and similar laws,
4 regulations and rules, subject to and only to the remedies provided thereunder.
5 Nothing in this Paragraph 39 confers any right on any Class Member to assert a
6 claim against BAR/BRI (i) pursuant to the Lanham Act, the Federal Trade
7 Commission Act or similar laws, regulations and rules; (ii) or for breach of this
8 Stipulation or the Settlement based on BAR/BRI's advertising.

9 **III. NOTICE; OBJECTIONS TO SETTLEMENT; ADMINISTRATION**
10 **AND CALCULATION OF CLAIMS; APPLICATION FOR FEE AND**
11 **EXPENSE AWARD AND DISTRIBUTION OF THE SETTLEMENT**
12 **FUND**

12 **A. Notice.**

13 40. The Settling Parties agree to and will request approval by the
14 Court of the following forms and methods of notice to the Class Members:

15 (a) A copy of the Notice and Claim Form shall be mailed by
16 first-class mail by the Claims Administrator to the last known postal address of
17 each Class Member.

18 (b) A copy of the Summary Notice shall be published in *The*
19 *National Law Journal* (2 insertions), *Lawyers Weekly USA* (2 insertions), and *USA*
20 *Today* (1 insertion). The Summary Notice shall also be published on the internet by
21 distribution through Business Wire or PR Newswire. The Summary Notice shall
22 also be mailed by first-class mail to the Office Manager of each law firm listed in
23 the American Lawyer's most recent list of the 200 largest law firms and to any law
24 firm to which notice of class certification was mailed but is not currently listed in
25 the American Lawyer's most recent list of the 200 largest law firms. The Summary
26 Notice shall contain a toll-free number and website address that Class Members
27 may use to obtain a copy of the full Notice and Claim Form.

28

1 (c) Class Counsel shall maintain the BAR/BRI class action
2 website (“class action website”) until the Effective Date. The class action website
3 shall be modified to include a copy of this Stipulation, the Notice, the Claim Form,
4 contact information for the Claims Administrator, and answers to frequently asked
5 questions (such questions and answers to be written neutrally and agreed upon in
6 advance by Class Counsel and Defendants’ counsel).

7 (d) Class Counsel shall maintain a prominent hyperlink to the
8 class action website on their firm homepages until the Effective Date.

9 (e) Defendant BAR/BRI shall maintain a hyperlink to the
10 class action website on the homepage of www.barbri.com until the Effective Date.
11 The hyperlink shall be of the same prominence as the hyperlink that BAR/BRI
12 maintained in conjunction with providing notice of the Action to Class Members.

13 (f) The Notice shall describe the procedure whereby Class
14 Members may comment in support of or in objection to the proposed Settlement,
15 the Fee Award and Expense Award to Class Counsel, any Incentive Award to the
16 Class Representatives; and shall inform Class Members that they may elect to be
17 represented by counsel of their choice at their own expense, subject to Paragraphs
18 41-45.

19 **B. Objections to Settlement.**

20 41. Any Class Member who wishes to object to the fairness,
21 reasonableness or adequacy of the Settlement, to the Plan of Allocation, to any
22 term(s) of this Stipulation or to the proposed Attorneys’ Fees Award, Expense
23 Award or Incentive Awards must (a) serve on Lead Counsel and Defendants’
24 counsel *and* (b) file with the Court a statement of his, her or its statement of
25 objection(s). To be effective, any such statement must be received by Lead
26 Counsel, by Defendants’ Counsel, and filed with the Court no later than twenty-one
27 (21) days before the Final Settlement Hearing or as the Court may otherwise direct.
28

1 42. The Class Member's statement of objection shall provide
2 evidence of the objector's membership in the Class and shall state the specific
3 reason(s), if any, for each objection made by the Class Member, including any legal
4 support the Class Member wishes to bring to the Court's attention and any evidence
5 the Class Member wishes to introduce in support of such objection.

6 43. Any Class Member may file an objection on his, her or its own,
7 or through an attorney hired at his, her or its own expense. If a Class Member hires
8 an attorney in connection with filing an objection, the attorney must (a) serve on
9 Lead Counsel and Defendants' counsel *and* (b) file with the Court a notice of
10 appearance. To be effective, any such notice of appearance must be received by
11 Lead Counsel, by Defendants' counsel, and filed with the Court no later than
12 twenty-one (21) days before the Final Settlement Hearing, or as the Court may
13 otherwise direct.

14 44. Any Class Member who timely files and serves a written
15 objection and any other required materials pursuant to Paragraphs 41 through 43 –
16 and only such Class Members – may appear at the Final Settlement Hearing, either
17 in person or through counsel hired at the Class Member's expense, to object to
18 (i) the fairness, reasonableness or adequacy of this Settlement, (ii) the Plan of
19 Allocation, or (iii) any term(s) of this Stipulation (including, without limitation, the
20 proposed Attorneys' Fees Award, Expenses Award or Incentive Awards), provided
21 however that Class Members or their attorneys intending to make an appearance at
22 the Final Settlement Hearing must also (a) serve on Lead Counsel and Defendants'
23 counsel *and* (b) file with the Court a notice of intention to appear. Any such notice
24 of intention to appear must be received by Lead Counsel, by Defendants' counsel,
25 and filed with the Court no later than twenty-one (21) days before the Final
26 Settlement Hearing, or as the Court may otherwise direct.

27 45. Any Class Member who fails timely to comply with any of the
28 provisions of this Section shall waive and forfeit any and all rights he, she or it may

1 otherwise have to appear separately at the Final Settlement Hearing and/or to object
2 to the Settlement, and shall be bound by all the terms of this Stipulation and the
3 Settlement and by all proceedings, orders and judgments in this Action.

4 **C. Administration and Calculation of Claims.**

5 46. The Claims Administrator shall administer the Net Settlement
6 Fund in accordance with the Plan of Allocation and subject to the jurisdiction of the
7 Court. Each Defendant shall cooperate with the Claims Administrator to provide
8 information in its possession and reasonably necessary to assist him in
9 determination of the proposed distribution of the monetary benefit under the Plan of
10 Allocation. BAR/BRI shall also use its best efforts to provide the Claims
11 Administrator, without cost to the Plaintiffs or Class Counsel, with records and
12 other information maintained by it or its agent(s) concerning the names and last
13 known addresses of Class Members and their transactions with BAR/BRI if the
14 Claims Administrator cannot ascertain such information from the data already
15 provided to Class Counsel.

16 47. Class Counsel will apply to the Court, on notice to Defendants,
17 for an order (the "Class Distribution Order") approving the Claims Administrator's
18 determinations concerning the acceptance and rejection of the Claim Forms, and, if
19 the Effective Date has occurred, directing payment of the Net Settlement Fund to
20 Authorized Claimants. The Claims Administrator shall make such distribution as
21 approved by the Court to the Authorized Claimants pursuant to the Plan of
22 Allocation.

23 48. The Claims Administrator shall process the Claim Forms and,
24 after entry of the Class Distribution Order, distribute the Net Settlement Fund to the
25 Authorized Claimants. Except for the obligations of Defendants to pay the
26 Settlement Amount and to perform under Paragraph 46 of this Stipulation, and
27 except as provided in paragraph 37, Defendants shall have no obligation or
28 responsibility for, or involvement in, the administration of the Settlement, the

1 disbursement of the Gross Settlement Fund or the Net Settlement Fund, or the
2 determination, calculation and payment of claims to Class Members.

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

6 (a) Each Class Member shall be required to submit a Claim
7 Form;

8 (b) All Claim Forms must be submitted by the date specified
9 in the Notice unless such period is extended by Order of the Court. Any Class
10 Member who fails to submit a Claim Form by such date shall be forever barred
11 from receiving any payment pursuant to this Stipulation or the Settlement (unless,
12 by order of the Court, a later submitted Claim Form by such Class Member is
13 approved before the Effective Date), but shall in all other respects be bound by the
14 terms of this Stipulation and the Settlement, including the terms of the Judgment to
15 be entered in the Action and the releases provided for herein, and will be barred
16 from bringing any action against the Released Parties concerning the Released
17 Claims. Provided that it is received before the motion for the Class Distribution
18 Order is filed, a Claim Form shall be deemed to have been submitted when posted,
19 if received with a postmark indicated on the envelope and if mailed by first-class
20 mail and addressed in accordance with the instructions thereon. In all other cases, a
21 Claim Form shall be deemed to have been submitted when actually received by the
22 Claims Administrator;

23 (c) Each Claim Form shall be submitted to and reviewed by
24 the Claims Administrator, who shall determine in accordance with this Stipulation
25 and the approved Plan of Allocation the extent, if any, to which each claim shall be
26 allowed, subject to review by the Court pursuant to subparagraph (e) below;

27 (d) Claim Forms that do not meet the submission
28 requirements may be rejected. Prior to rejection of a Claim Form, the Claims

1 Administrator shall communicate with the claimant in order to remedy curable
2 deficiencies in the Claim Form submitted. The Claims Administrator shall notify,
3 in a timely fashion and in writing, all claimants whose Claim Forms it proposes to
4 reject in whole or in part, setting forth the reasons therefor, and shall indicate in
5 such notice that the claimant whose claim is to be rejected has the right to a review
6 by the Court if the claimant so desires and complies with the requirements of
7 subparagraph (e) below;

8 (e) If any claimant whose claim has been rejected in whole or
9 in part desires to contest such rejection, the claimant must, within twenty (20) days
10 after the date of mailing of the notice required in subparagraph (d) above, serve
11 upon the Claims Administrator a notice and statement of reasons indicating the
12 claimant's grounds for contesting the rejection along with any supporting
13 documentation, and requesting a review thereof by the Court. If a dispute
14 concerning a claim cannot be otherwise resolved, Class Counsel shall thereafter
15 present the request for review to the Court;

16 (f) The administrative determinations of the Claims
17 Administrator accepting and rejecting claims shall be presented to the Court, on
18 written notice to Defendants, for approval by the Court in the Class Distribution
19 Order.

20 (g) Each claimant shall be deemed to have submitted to the
21 jurisdiction of the Court with respect to the claimant's claim, and the claim will be
22 subject to investigation and discovery under the Federal Rules of Civil Procedure,
23 provided that such investigation and discovery shall be limited to that claimant's
24 status as a Class Member and the validity and amount of the claimant's claim. No
25 discovery shall be allowed on the merits of the Action or Settlement in connection
26 with processing of the Claim Forms.

27 (h) Payment pursuant to this Stipulation shall be deemed final
28 and conclusive against all Class Members. All Class Members whose claims are

1 not approved by the Court shall be barred from participating in distributions from
2 the Net Settlement Fund, but otherwise shall be bound by all of the terms of this
3 Stipulation and the Settlement, including the terms of the Judgment to be entered in
4 the Action and the releases provided for herein, and will be barred from bringing
5 any action against the Released Parties.

6 (i) All proceedings with respect to the administration,
7 processing and determination of claims made pursuant to this Settlement and the
8 determination of all controversies relating thereto, including disputed questions of
9 law and fact with respect to the validity of claims, shall be subject to the exclusive
10 jurisdiction of the Court.

11 (j) The Net Settlement Fund shall be distributed to
12 Authorized Claimants by the Claims Administrator only after the Effective Date
13 and after: (i) all Claim Forms have been processed, and all claimants whose Claim
14 Forms have been rejected, in whole or in part, have been notified and provided the
15 opportunity to be heard concerning such rejection; (ii) all objections with respect to
16 all rejected claims have been resolved by the Court and all appeals therefrom have
17 been resolved or the time therefor has expired; (iii) all matters with respect to
18 attorneys' fees, costs and disbursements have been resolved by the Court and all
19 appeals therefrom have been resolved or the time therefor has expired; and (iv) all
20 costs of administration have been paid.

21 (k) No Class Member shall have any claim against the Class
22 Representatives, Class Counsel or the Claims Administrator based on any
23 distributions made substantially in accordance with this Stipulation and the Notice
24 or as authorized by the Court.

25 **D. Attorneys' Fees and Expenses and Class Representatives'**
26 **Incentive Awards.**

27 50. Class Counsel will apply to the Court for an award from the
28 Gross Settlement Fund of (i) attorneys' fees (the "Fee Award") in an amount not to

1 exceed twenty-five percent (25%) of the Gross Settlement Fund; and (ii)
2 reimbursement of litigation expenses (the "Expense Award"). Defendants agree not
3 to oppose, directly or indirectly, the application for the Fee and Expense Awards set
4 forth herein.

5 51. Within five (5) business days of the Effective Date, Escrow
6 Agent shall pay or cause to be paid to Lead Counsel, on behalf of Class Counsel,
7 the Fee Award and the Expense Award, as approved by the Court, from the Gross
8 Settlement, subject to the terms set forth below.

9 52. No Released Party nor any of his, her or its predecessors,
10 successors, parents, subsidiaries, partners, principals, affiliates (as defined in 17
11 C.F.R. Part 210.1-02. b), heirs, administrators, executors, attorneys, successors in
12 interest or assigns shall be liable or obligated to pay any fees, expenses, costs or
13 disbursements to, or incur any expense on behalf of, any person or entity
14 (including, without limitation, Plaintiffs), directly or indirectly, in connection with
15 the Action or this Settlement Agreement, except as expressly provided for in this
16 Stipulation.

17 53. Class Counsel will also submit an application for an Incentive
18 Award to each Class Representative to be paid from the Gross Settlement Fund.
19 Defendants agree not to oppose, directly or indirectly, any Incentive Award
20 application seeking no more than \$25,000.

21 54. Class Counsel's application to the Court for an award of
22 attorneys' fees, for reimbursement of expenses reasonable incurred by Class
23 Counsel, or for Incentive Awards to the Class Representatives are to be considered
24 by the Court separately from the Court's consideration of the fairness,
25 reasonableness, and adequacy of the Settlement, and any order or proceedings
26 relating to the application for attorneys' fees, reimbursement of expenses and costs
27 and/or the Incentive Award, or any appeal from any order relating thereto or
28

1 reversal or modification thereof, will not operate to cancel, or provide a right of
2 cancellation of, this Stipulation or the Settlement.

3 **IV. PRELIMINARY APPROVAL ORDER**

4 55. Promptly after execution of this Stipulation, Class Counsel, shall
5 move the Court for entry of the Preliminary Approval Order, substantially in the
6 form of Exhibit F hereto, providing for, among other things, preliminary approval
7 of the Settlement and notice to the Class of the Final Settlement Hearing.

8 **V. RELEASES**

9 56. In addition to the preclusive effect of any final judgment entered
10 in accordance with this Settlement, upon this Settlement becoming final, the
11 Released Parties shall be released and forever discharged from all manner of
12 claims, demands, actions, suits, causes of action, whether class, individual, or
13 otherwise in nature, damages whenever incurred, liabilities of any nature
14 whatsoever, including costs, expenses, penalties and attorneys' fees, known or
15 unknown, suspected or unsuspected, in law or equity, that any member of the Class
16 (including any of their past, present or future officers, directors, agents, employees,
17 legal representatives, trustees, parents, associates, affiliates, licensees, subsidiaries,
18 partners, heirs, executors, administrators, purchasers, predecessors, successors and
19 assigns), whether or not he, she or it objects to the settlement and whether or not he,
20 she or it makes a claim upon or participates in the Settlement Fund, whether
21 directly, representatively, derivatively or in any other capacity, ever had, now has
22 or hereafter can, shall or may have concerning or relating to any conduct alleged in
23 the Complaint in this Action, and including without limitation all claims that have
24 been asserted or could have been asserted in any litigation against the Released
25 Parties or any of them for any conduct alleged in the Complaint in this Action
26 (collectively with all claims referenced in the next paragraph, the "Released
27 Claims").

28 57. In addition to the release of claims as specified in the preceding

1 paragraph, upon this Settlement becoming final, each member of the Class, will be
2 deemed to have waived and released any and all provisions, rights and benefits
3 conferred by § 1542 of the California Civil Code, which states:

4 **Section 1542. Certain Claims not Affected by General Release. A**
5 **general release does not extend to claims which the creditor does**
6 **not know or suspect to exist in his favor at the time of executing**
7 **the release, which if known by him must have materially affected**
8 **his settlement with the debtor;**

9 or by any law of any state or territory of the United States, or principle of common
10 law, which is similar, comparable or equivalent to § 1542 of the California Civil
11 Code. Each member of the Class may hereafter discover facts other than or
12 different from those which he, she or it knows or believes to be true with respect to
13 the claims which are the subject matter of the provisions of the preceding
14 paragraph, but each member of the Class waives and fully, finally and forever
15 settles and releases, upon this Settlement Agreement becoming final, any known or
16 unknown, suspected or unsuspected, contingent or non-contingent claim with
17 respect to the subject matter of the provisions of the preceding Paragraph, whether
18 or not concealed or hidden, without regard to the subsequent discovery or existence
19 of such different or additional facts. The Claim Form shall contain a copy of the
20 release set forth in this Paragraph and in the preceding Paragraph, which shall be
21 signed by each member of the Class or his/her/its authorized representative as a
22 precondition to receiving any portion of the Settlement Fund.

23 58. Notwithstanding the prior two paragraphs, the Released Claims
24 shall not include claims asserted as of the date of this Settlement Agreement against
25 the currently named defendants in the putative class actions entitled *Park v.*
26 *Thomson Corp., et al.*, Case No. 05 Civ. 2931 (WHP) and *Arendas v. Thomson*
27 *Corp., et al.*, Case No. 6:06-cv-1113-Orl-28JGG, currently pending in the United
28 States District Court, Southern District of New York.

59. Nothing in the Judgment shall bar any action or claim by the
Settling Parties to enforce the terms of the Stipulation or the Judgment.

1 **VI. ORDER AND FINAL JUDGMENT OF DISMISSAL TO BE ENTERED**
2 **BY THE COURT FOLLOWING APPROVAL OF THE**
3 **SETTLEMENT**

4 60. Following the Final Settlement Hearing, upon approval by the
5 Court of the Settlement contemplated by this Stipulation, the Settling Parties shall
6 petition the Court to enter the Judgment, substantially in the form of Exhibit C
7 attached hereto.

8 **VII. CONDITIONS OF SETTLEMENT**

9 61. The Effective Date of this Settlement shall not occur unless and
10 until each of the following events occurs and shall be the date on which the last (in
11 time) of the following events occurs:

- 12 (a) The Court has entered the Preliminary Approval Order;
- 13 (b) The Court has entered the Judgment; and
- 14 (c) The Judgment has become Final (as set forth in the next
15 paragraph).
- 16 (d) The Judgment shall be considered "Final" one business
17 day following the latest to occur of the following events:
- 18 (e) the date upon which the time expires for filing or noticing
19 any appeal from the Judgment (including any appeal from the Fee Award, the
20 Expense Award, the Incentive Awards, the Plan of Allocation and the procedures
21 for determining Authorized Claimants' claims); and/or
- 22 (f) if there is an appeal or appeals from the entry of the
23 Judgment (in whole or in part, including any appeal from the Fee Award, the
24 Expense Award, the Incentive Awards, the Plan of Allocation and the procedures
25 for determining Authorized Claimants' claims), the completion, in a manner that
26 affirms and leaves in place the Judgment without any material modification (except
27 with respect to the Fee Award, the Expense Award, the Incentive Awards, the Plan
28 of Allocation or the procedures for determining Authorized Claimants' claims), of
all proceedings arising out of the appeal or appeals (including, but not limited to,

1 the expiration of all deadlines for motions for reconsideration or petitions for
2 certiorari, all proceedings ordered on remand, and all proceedings arising out of any
3 subsequent appeal or appeals following decisions on remand).

4 62. It is understood and agreed by the Settling Parties that any Court
5 order relating to the application for approval of, and any modification or reversal on
6 appeal of, the Fee Award, the Expense Award, the Incentive Awards, the Plan of
7 Allocation or the procedures for determining Authorized Claimants' claims, shall
8 not operate to terminate or cancel this Stipulation or affect the finality of the
9 Judgment or any other orders entered pursuant to this Stipulation, although the
10 Court's ruling upon the application for approval of, and completion of all appeals
11 from, the Fee Award, the Expense Award, the Incentive Awards, the Plan of
12 Allocation or the procedures for determining Authorized Claimants' claims are a
13 prerequisite to the occurrence of the Effective Date.

14 63. Upon the Effective Date, any and all remaining interest or right
15 of Defendants in or to the Settlement Fund shall be absolutely and forever
16 extinguished, and Representative Plaintiffs and all Releasing Persons shall be
17 deemed to have, and by operation of the Judgment shall have, fully, finally and
18 forever released, relinquished and discharged all Settled Claims and any existing
19 judgment against any of the Released Parties.

20 64. Lead Counsel shall provide written notice to Defendants'
21 counsel when the Judgment becomes Final.

22 **VIII. EFFECT OF DISAPPROVAL, MODIFICATION, CANCELLATION**
23 **OR TERMINATION**

24 65. If the Court refuses or declines to fulfill any of the conditions
25 specified in Paragraph 61, or if an appeal is taken and the Judgment fails to become
26 Final pursuant to Paragraph 62, then any of the Defendants or Class Counsel shall
27 have the right to terminate the Settlement by providing written notice of their
28 election to do so ("Termination Notice") to all Settling Parties to this Stipulation

1 within thirty (30) days of the failure of any of the conditions specified in Paragraph
2 61 or failure of the Judgment to become final pursuant to Paragraph 62.

3 66. Neither a modification nor an appellate reversal of the Plan of
4 Allocation or the procedures for determining Authorized Claimants' claims, nor a
5 determination by the Court to require a plan for notice to the Class of this
6 Settlement different from that proposed by the Settling Parties, nor the Court's or
7 any appellate court's decision concerning attorneys' fees, reimbursement of
8 expenses or Incentive Awards and interest requested by Class Counsel or any Class
9 Representative shall constitute grounds for termination of this Stipulation or
10 preclude the Judgment from becoming Final pursuant to Paragraph 62.

11 67. In the event that the Settlement is terminated for any reason,
12 then the Settlement Fund including interest earned, less expenses actually incurred
13 or due and owing in connection with the Settlement provided for herein including
14 the expenses described in Paragraph 33 and expenses associated with the Escrow
15 Agreement, shall be returned to Defendants within ten (10) business days. Except
16 as otherwise provided herein, in the event that the Settlement is terminated, then the
17 Settling Parties to this Stipulation shall be deemed to have reverted to their
18 respective status in the Action as of January 12, 2007.

19 **IX. MISCELLANEOUS PROVISIONS**

20 68. The Settling Parties (a) acknowledge that it is their intent to
21 consummate this Settlement and (b) agree to use their best efforts and to act in good
22 faith to cooperate to the extent necessary to effectuate and implement all terms and
23 conditions of this Stipulation and to accomplish the terms and conditions of the
24 Stipulation. Class Counsel and Defendants' counsel agree to cooperate with one
25 another in seeking entry of the Preliminary Approval Order and final approval of
26 this Settlement of the Action. The Parties also agree to execute this Stipulation
27 promptly and to provide such documentation as may be required to obtain
28 preliminary and final approval of this Settlement, it being understood that Class

1 Counsel will take the laboring oar in preparing and filing all such papers.

2 69. All of the exhibits attached hereto and identified herein are
3 hereby incorporated by reference as though fully set forth herein and are material to
4 this Stipulation.

5 70. This Stipulation may be amended or modified only by a written
6 instrument signed by, or on behalf of, all Settling Parties or their successors in
7 interest.

8 71. This Stipulation, the exhibits attached hereto constitute the
9 entire agreement among the Settling Parties and no representations, warranties,
10 covenants or inducements have been made to any party concerning this Stipulation
11 or its exhibits, other than the representations, warranties, covenants and
12 inducements contained and memorialized in such documents.

13 72. Except as otherwise provided herein, each party shall bear its
14 own costs. Class Counsel's attorneys' fees and litigation expenses, subject to Court
15 approval, shall be paid only out of the Gross Settlement Fund.

16 73. Class Counsel represents that it is authorized to sign this
17 Stipulation on behalf of the Representative Plaintiffs; and each of Defendant's
18 respective counsel signing below represents that he is authorized to sign this
19 Stipulation on behalf of the respective Defendant.

20 74. This Stipulation may be executed in one or more original,
21 photocopied or facsimile counterparts. All executed counterparts and each of them
22 shall be deemed to be one and the same instrument. Class Counsel and Defendants'
23 counsel shall exchange original signed counterparts and a complete copy of the
24 original executed counterparts shall be filed with the Court.

25 75. This Stipulation shall be binding upon, and inure to the benefit
26 of, the successors, assigns, executors, administrators, heirs and legal representatives
27 of the Settling Parties, provided, however that no assignment by any Settling Party
28 shall operate to relieve such party of its obligations hereunder.

1 76. All terms of this Stipulation and the exhibits hereto shall be
2 governed by and interpreted consistent with Fed. R. Civ. P. 23 and the cases
3 construing and interpreting such rule and, where necessary, according to the laws of
4 the State of California, without regard to its rules of conflicts of law.

5 77. The headings in this Stipulation are used for purposes of
6 convenience and ease of reference only and are not meant to have any legal effect,
7 nor are they intended to influence the construction of this Stipulation in any way.

8 78. The waiver of one party of any breach of this Stipulation by any
9 other party shall not be deemed a waiver of any other breach of this Stipulation.
10 The provisions of this Stipulation may not be waived except by a writing signed by
11 the affected party or counsel for that Settling Party.

12 79. The Court shall retain jurisdiction with respect to
13 implementation and enforcement of the terms of this Stipulation, and all Settling
14 Parties hereto submit to the jurisdiction of the Court for purposes of implementing
15 and enforcing the Settlement embodied in this Stipulation.

16 80. This Stipulation is deemed to have been drafted by all Settling
17 Parties hereto, as a result of arm's-length negotiations among the Settling Parties.
18 Whereas all Settling Parties have contributed substantially and materially to the
19 preparation of this Stipulation, it shall not be construed more strictly against one
20 party than another.

21 81. Neither this Stipulation nor the Settlement, nor any negotiation,
22 nor act performed, nor document executed nor proceedings held pursuant to or in
23 furtherance of this Stipulation or the Settlement (i) is, may be deemed to be, or may
24 be used as an admission of, or evidence of the validity of, any Released Claim, or of
25 any wrongdoing, negligence, misrepresentation, violation or liability of the
26 Defendants, any other Released Party, or of any fact alleged by Plaintiffs; (ii) is,
27 may be deemed to be, or may be used as an admission of, or evidence of any
28 infirmity in the claims asserted by the Representative Plaintiffs and Class Members;

1 or (iii) is, may be deemed to be, or may be used as an admission of, or evidence of,
2 any fault or omission of any of Defendants or any other Released Party in any civil,
3 criminal or administrative proceeding in any court, administrative agency or other
4 tribunal, including in this Action. However, this Stipulation and Settlement may be
5 used in such proceedings as may be necessary to consummate or enforce this
6 Stipulation, the Settlement or the Judgment; and any Released Party may file this
7 Stipulation or the Judgment in any action that may be brought against it in order to
8 support a defense or counterclaim based on principles of *res judicata*, collateral
9 estoppel, release, good faith settlement, judgment bar or reduction or any other
10 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11 82. The Settling Parties intend this Stipulation to achieve a final and
12 complete resolution of all disputes between them with respect to the Action. The
13 Settling Parties agree that the amount paid to the Settlement Fund and the other
14 terms of the Stipulation and Settlement were negotiated in good faith at arm's-
15 length by the Settling Parties, and reflect a settlement that was reached voluntarily
16 after consultation with competent legal counsel.

17 83. Until either (a) a motion for Preliminary Approval has been
18 filed; or (b) this Stipulation and Settlement Agreement has been filed, this
19 Settlement shall be considered "Confidential" pursuant to the terms of the
20 Stipulation and Protective Order entered into by the parties in this Action, and so-
21 ordered by the Court on January 13, 2006.

22 84. Neither Plaintiffs nor Defendants nor any counsel or other agent
23 for or representative of Plaintiffs or a Defendant will make or cause to be made any
24 public statement or comment regarding the Settlement or Action — other than: (1)
25 straightforward statements (without elaboration) in substantially the form "the
26 action has settled," (2) neutral or positive statements regarding the terms and
27 benefits of the Settlement, or (3) statements repeating or paraphrasing, in a non-
28 misleading form, all or a portion of any Court-approved notice to the Class of the

1 Settlement or the proposal for the form of Notice attached hereto as Exhibit D;
2 provided that (a) each Defendant shall be entitled to make such disclosures as are
3 required under the securities laws, and (b) Class Counsel and Defendants' counsel
4 may make available copies of pleadings filed in the public Court file (not under
5 seal) in the Action. Nothing in this Paragraph shall restrict statements made in
6 papers filed with the Court or any other court of competent jurisdiction in
7 connection with the Settlement of this Action.

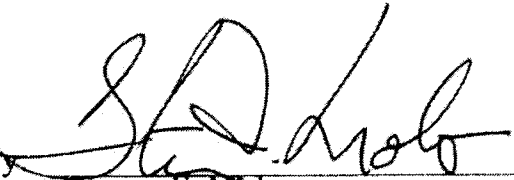
8 85. Except as provided for in this Stipulation with regard to Class
9 Counsel, Class Members, Defendants and the Released Parties, no provision of this
10 Stipulation provides any rights, intended, incidental or otherwise, to any person or
11 entity that is not a Class Member.

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On Behalf of Defendants:

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On Behalf of Defendants:

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