

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HARTIG DRUG COMPANY INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 14-719-JFB-SRF
)	
SENJU PHARMACEUTICAL CO. LTD.,)	
KYORIN PHARMACEUTICAL CO., LTD.,)	
AND ALLERGAN, INC.,)	
)	
Defendants.)	
)	

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFF HARTIG DRUG CO. INC. AND
DEFENDANTS SENJU PHARMACEUTICAL CO. LTD., KYORIN
PHARMACEUTICAL CO., LTD., AND ALLERGAN, INC.**

This Settlement Agreement (“Agreement”) is made and entered into this 17th day of January, 2018 (the “Execution Date”), by and between Senju Pharmaceutical Co. Ltd. (“Senju”), Kyorin Pharmaceutical Co. Ltd. (“Kyorin”), and Allergan Inc. (“Allergan,” and with Senju and Kyorin, “Defendants”) and Plaintiff Hartig Drug Company Inc. (“Hartig” or “Plaintiff”), both individually and on behalf of a class as described herein at Paragraph 12.

WHEREAS, Hartig is prosecuting the above-captioned action currently pending in the District of Delaware, on its own behalf and on behalf of the class, against Defendants (“Action”);

WHEREAS, Hartig alleges that Defendants engaged in an unlawful scheme to exclude or delay generic competition for gatifloxacin ophthalmic solution (generic versions of their branded drugs Zymar and Zymaxid), a drug approved to treat eye infections such as bacterial conjunctivitis, in violation of the Sherman Act;

WHEREAS, Defendants deny the allegations made in the Action;

WHEREAS, Hartig and Defendants, through their respective counsel, engaged in extensive, good faith, and arm's-length settlement negotiations relating to the claims and defenses in the Action, including through the use of Mediator David A. Rotman ("Mediator"), with the settlement evidenced by this Agreement being the product and result of those negotiations ("Settlement");

WHEREAS, Hartig has conducted an investigation into the facts and the law regarding the Action, including having access to all discovery materials and records produced to them by Defendants from prior private plaintiff antitrust litigation in this Court against the same Defendants and involving the same issues, and has concluded that a Settlement with Defendants according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of Hartig and the Settlement Class (as defined in Paragraph 12 of this Agreement);

WHEREAS, Defendants, despite their belief that they have good defenses to the claims alleged in the Action and without admitting any liability or fault, desire to settle the Action, and thus avoid the expense, inconvenience, distraction of continued litigation and potential risk of the Action, or any action or proceeding relating to the matters being fully settled in this Agreement; and

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to Defendants and the Releasees (as defined herein), without costs as to Hartig, the Settlement Class, and Defendants, and subject to the approval of the Court, on the following terms and conditions:

A. Definitions

The following terms, as used in this Agreement, have the following meanings:

1. “Action” means and refers to the action pending in the United States District Court for the District of Delaware captioned *Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd, Kyorin Pharmaceutical Co., Ltd., and Allergan, Inc.*, 14-cv-719-JFB-SRF.

2. “Class Notice” means the notice of this Agreement and of the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of this Agreement to be provided to the Settlement Class (as defined in Paragraph 12 of this Agreement) pursuant to Paragraph 38 below.

3. “Class Period” means the period from and including June 15, 2010 through and including December 31, 2017.

4. “Defendants” refers to Senju Pharmaceutical Co. Ltd. (“Senju”), Kyorin Pharmaceutical Co., Ltd. (“Kyorin”), and Allergan, Inc. (“Allergan”).

5. “Effective Date” means the first date by which all of the following have occurred: (a) the Court has entered a final judgment approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure; (b) the Court has entered a final judgment dismissing the Action as against the Releasees with prejudice as to all Settlement Class Members; and (c) the time for appeal or to seek permission to appeal from the Court’s approval of this Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this Agreement and the final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. Neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

6. “Escrow Agent” shall have the meaning ascribed to it in Paragraph 18 of this Agreement.

7. “Plaintiff” means Hartig Drug Company Inc.

8. “Parties” means Plaintiff and Defendants.

9. “Released Claims” shall have the meaning ascribed to it in Paragraph 30 of this Agreement.

10. “Releasees” shall refer, jointly and severally, and individually and collectively, to Defendants, any affiliated companies, their parents and subsidiaries, and their past and present officers, Managers of any manager-run entities, directors, employees, agents, insurers, attorneys, shareholders or other equity interest holders, partners, associates, members, volunteers, independent contract bidders, and representatives, as well as the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

11. “Releasers” shall refer jointly and severally, and individually and collectively, to Hartig, the Settlement Class Members and to each of their respective past and present officers, directors, managers, parents, subsidiaries, affiliates, partners, shareholders or other equity interest holders, and insurers, and to the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, for, under or through them, including, but not limited to, anyone claiming for or through them in any representative action or class action.

12. “Settlement Class” means all persons or entities in the United States who purchased branded Zymar or Zymaxid directly from any of the Defendants at any time during the Class Period. The Settlement Class does not include Defendants, government entities or any person or entity in which any Defendant holds a controlling interest, the officers, directors,

employees, affiliates, subsidiaries, legal representatives, heirs, successors and assigns of any such person or entity, as well as any immediate family member of any officer, director or employees of any named Defendant that is not a natural person, and any judge or magistrate involved in this matter, as well as members of their immediate family.

13. “Settlement Class Counsel” shall refer to the law firms of Hausfeld LLP; Prickett, Jones & Elliott PA; and Frank LLP.

14. “Settlement Class Member” means each member of the Settlement Class, as defined in Paragraph 12 of this Agreement, who does not timely elect in accordance with the provisions of the Notice to the Settlement Class to be excluded from the Settlement Class.

15. “Settling Parties” shall mean, collectively, Senju, Kyorin, and Allergan, and Hartig, individually, and on behalf of the Settlement Class.

16. “Settlement Proceeds” shall have the meaning ascribed to it in Paragraph 18 of this Agreement. Solely for the purposes of Settlement, providing Class Notice, and for implementing this Agreement, the Settling Parties agree to certification of the Settlement Class defined in Paragraph 12 above. At the appropriate time, the Settling Parties agree to cooperate in good faith in seeking the Court’s approval to certify the aforementioned Settlement Class for purposes of effectuating this Settlement.

B. Settlement Consideration

17. In exchange for the mutual promises and covenants in this Agreement, including without limitation, the Releases set forth in Paragraphs 30-32 below and dismissal with prejudice of the Action as against Defendants by the Court, Defendants agree as follows:

18. Within forty-five (45) days of the Court’s entry of an order granting preliminary approval of the Settlement, Defendants shall pay the sum of Nine Million U.S. Dollars (USD **\$9,000,000**) (the “Settlement Proceeds”) into an escrow account, which Settlement Class

Counsel shall identify to Defendants by name and account number, managed by Huntington Bank (the “Escrow Agent”) and to be held in escrow by the Escrow Agent pursuant to an escrow agreement. The plan of distribution of the Settlement Proceeds to Settlement Class Members and as otherwise authorized herein shall be the sole responsibility of Settlement Class Counsel and will be decided upon at a later date by Settlement Class Counsel as authorized by order of the Court, and notice of such plan of distribution shall be provided to members of the Settlement Class, and shall be authorized by order of the Court. The Settlement Proceeds shall only be disbursed to Settlement Class Members and as otherwise authorized herein pursuant to, and as directed by, an order of the Court authorizing the plan of distribution.

a. The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or any agency thereof, or money market funds invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds from these instruments as they mature in similar instruments at their then current market rates.

b. All funds held in the Escrow Account shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

19. Except as otherwise provided for herein, the Parties agree that the Settlement Proceeds shall be the sole and exclusive source of any settlement and satisfaction against the Releasees for all Released Claims, and Releasors shall have no other recovery against Defendants or any recovery against any of the other Releasees. Use of the Settlement Proceeds

shall be limited to payments to Settlement Class Members in relation to their claims in this Action, as well as attorneys' fees, expenses, costs, and notice and administration costs, all of which must be approved by the Court or for any other use specifically authorized by order of the Court. Defendants are jointly and severally liable for the payment of the Settlement Proceeds. For clarity, then, Plaintiff and the Settlement Class shall be entitled to seek recovery from any one of the three Defendants should the Settlement Proceeds not be fully deposited in accordance with this Settlement Agreement.

C. Administrative Costs and Taxes

20. All costs associated with the Settlement Class notification process, all fees related to administration of this Settlement or management of the Settlement Proceeds, any attorneys' fees and costs the Court awards to Settlement Class Counsel and/or liaison counsel, and any incentive payment awarded to the Plaintiff shall be paid out of the Settlement Proceeds. Defendants shall have no further financial responsibility to the Settlement Class or to Settlement Class Counsel with respect to those, or any other, fees or costs beyond payment of the Settlement Proceeds.

21. Plaintiff and Releasees agree to treat the Settlement Proceeds as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of Paragraphs 22 through 23 of the Agreement, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

22. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall cause to be filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the election described in Paragraph 21) shall be consistent with Paragraph 20 and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest, or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 20 hereof.

23. All (i) taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or any other Releasee 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” for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 20 through 22 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph), shall be paid out of the Settlement Fund.

D. Approval of this Agreement, Certification of the Settlement Class, and Dismissal of Claims

24. Plaintiff shall use its best efforts to effectuate this Agreement, including, at the appropriate time, seeking Preliminary Approval of the Settlement and securing both the Court’s certification of the Settlement Class and the Court’s approval of procedures (including providing notice of the Settlement to the Settlement Class) to secure the prompt, complete, and final dismissal with prejudice of the Action as to Defendants.

25. Upon the Execution Date, Plaintiff shall not pursue the Action against Defendants and shall not require that they answer or respond to any pleading and shall hold the litigation in abeyance against Defendants. During the period of time between the Execution Date and the date an order of dismissal is entered as provided for in Paragraph 27 below, any statutes of limitations concerning the claims of Hartig and Settlement Class Members asserted against Defendants in the Action shall be tolled.

26. Within thirty (30) days following the Execution Date, or such later date agreed to by the Parties, Settlement Class Counsel shall submit to the Court, and Defendants shall not oppose, a motion requesting entry of the Preliminary Approval Order. That motion shall:

- i. seek certification of the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);
- ii. request preliminary approval of the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate;
- iii. seek the appointment of Hartig as representative of the Settlement Class, and Hausfeld LLP; Prickett, Jones & Elliott PA; and Frank LLP as Settlement Class Counsel under Fed. R. Civ. P. 23(g);
- iv. seek approval, or explain that Plaintiff will submit a separate application seeking approval, of the form, and method of dissemination, of: (1) the Mail Notice, to be mailed via first-class mail; and, if deemed necessary, (2) the Publication Notice, which the Parties intend to be the best notice practicable under the circumstances and which shall be given in such manner and scope as is reasonable, and consistent with the requirements of Fed. R. Civ. P. 23;
- v. seek appointment of a qualified Settlement Administrator;
- vi. seek appointment of Huntington Bank as a qualified Escrow Agent;
- vii. stay all proceedings in the Action against Defendants until the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement; and
- viii. attach a proposed form of order, which includes such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing, and (2) a provision that, if final approval of the Settlement is not obtained, the Settlement is null and void, and the Settling Parties will revert to their

positions *ex ante* without prejudice to their rights, claims, or defenses.

The text of the items referred to immediately above shall be proposed by Hartig subject to the agreement of Defendants, which agreement shall not be unreasonably withheld.

27. If the Court preliminarily approves this Agreement, Plaintiff shall seek entry of an order and final judgment, the text of which the Settling Parties shall agree upon:

- (a) As to the Action, approving finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- (b) Directing that, as to Defendants, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- (c) Reserving exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Settlement;
- (d) Enjoining Settlement Class Members, and any person, entity, or official acting on behalf of a Settlement Class Member, from re-asserting Released Claims or seeking an additional recovery payable to a Settlement Class Member based on the facts or transactions alleged in the Complaint;
- (e) Determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the final judgment of dismissal as to Defendants shall be entered; and
- (f) Requiring Settlement Class Counsel to file with the Clerk of the Court a record of potential Settlement Class Members who timely excluded themselves from the class, and to provide a copy of the record to counsel for Defendants.

28. This Agreement shall become final only upon the occurrence of the Effective Date. On the Execution Date, Plaintiff and Defendants shall be bound by the terms of this

Agreement, and this Agreement shall not be rescinded except in accordance with Paragraphs 33-35.

29. Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to any Plan of Distribution and/or Fee and Expense Application, shall not in any way delay or preclude the Effective Date.

E. Release and Discharge

30. In addition to and not in lieu of the effect of any final judgment entered in accordance with this Agreement, upon the Effective Date, and for other valuable consideration as described herein, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, judgments, joinders (whether for sole liability, contribution, indemnity, or otherwise), rights, defenses, damages, penalties, punitive damages, costs, expenses, attorney's fees, compensation, debts, dues, accounts, bonds, covenants, agreements, and liability of any nature whatsoever, in law or in equity or otherwise, whether class, individual or otherwise in nature, that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of conduct or allegations concerning the alleged unlawful scheme to exclude or delay generic competition for gatifloxacin ophthalmic solution (generic versions of their branded drugs Zymar and Zymaxid), including, but not limited to, any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, whether or not concealed or hidden, in the complaint filed in the Action (the "Complaint"), and/or claims that could have been alleged or asserted, whether or not concealed or hidden, in any other actions by any Releasor against Defendants or any Releasee, which arise from the factual predicate of the Action under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud,

RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, from the beginning of time through the end of the Class Period (the “Released Claims”). It is expressly understood and agreed that this Release and Settlement is intended to cover and does cover not only all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries, losses and damages, and the consequences thereof, but also any further injuries, losses and damages which arise from, or are related to, the claims set forth in the Complaint. The Releasors shall not, after the Execution Date of this Agreement, seek to recover against any of the Releasees for any of the Released Claims. In addition to the provisions above, each Releasor hereby expressly and irrevocably waives and releases, upon the Effective Date, any and all defenses, rights, and benefits that each Releasor may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in this Paragraph. Each Releasor also expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the Release.

31. In addition, each Releasor hereby expressly waives and releases any and all provisions, rights, benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release--Claims Extinguished. 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.

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this

Paragraph, but each Releasor hereby expressly waives and fully, finally and forever settles and releases any known or unknown, suspected or unsuspected, accrued or unaccrued, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. For the avoidance of doubt, each Releasor also hereby expressly waives and fully, finally and forever settles and releases any and all claims that would otherwise fall within the definition of Released Claims it may have against any Releasee under § 17200, *et seq.* of the California Business and Professions Code or any similar, comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are hereby expressly incorporated into the definition of Released Claims.

32. The release and discharge set forth in Paragraphs 30 and 31 herein do not include: (a) claims relating to disputes against Defendants unrelated to the Released Claims; and (b) claims of Settlement Class Members outside of the Class Period against Defendants.

F. Rescission if the Agreement is Not Approved

33. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraphs 5 and 27 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, then Defendants and Plaintiff shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) days of the action giving rise to such option.

34. Within ten (10) days after the end of the opt-out period established by the Court and set forth in the Class Notice, Settlement Class Counsel shall provide Defendants a written list of all potential Settlement Class Members who have exercised their right to request exclusion from the class (the “Opt-Out List”).

35. In the event that Settlement Class Members whose collective purchases of Zymar and Zymaxid exceed the percentage set forth in a separate letter agreement between Settlement Class Counsel and Defendants exercise their rights to opt out of the Settlement, then Defendants shall have the right to elect, in their sole and absolute discretion, whether to proceed with the Settlement pursuant to this provision. If Defendants furnish written notice to Settlement Class Counsel that they are exercising their right to terminate this Agreement pursuant to this Paragraph within fifteen (15) days of receiving the Opt-Out List, then this Agreement will be of no further force or effect and whatever Settlement Proceeds remain after payment of settlement administration costs incurred up through the date of such election shall be returned immediately to Defendants. In the event that a dispute should arise between the Settling Parties regarding whether the threshold has been reached, that dispute will be submitted promptly to the Mediator for final, non-appealable resolution. The Mediator's costs shall be split equally between Plaintiff and Defendants. All three Defendants must choose to exercise this right to elect to terminate the Settlement for it to be effective.

36. In the event of rescission, if final approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraphs 5 and 27 of this Agreement, Settlement Class Counsel agree that this Agreement, including its exhibits, and any and all negotiations, documents, information and discussions associated with it shall be without prejudice to the rights of Defendants and shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth of any of the claims or allegations made in this Action in any pleading.

37. In the event that Plaintiff or Defendants elect to rescind this Agreement pursuant to Paragraphs 33-36 of this Agreement, or if final approval of the Settlement provided for in the

Agreement is not granted by the Court, unless otherwise specified in this Agreement, the Parties shall be restored to the position they occupied in this Action immediately prior to entering into this Agreement and any monies paid by Defendants shall be returned to them within ten (10) days of both the notice of rescission and Defendants written instructions to the Escrow Agent, except for those monies that had been expended on costs related to Taxes or to notice and administration of this Agreement prior to the date of termination of the Agreement up to a maximum of \$300,000.

G. Notice of Settlement to Class Members

38. Class Notice shall apprise each member of the Settlement Class of his, her, or its right to exclude themselves from, object to, or participate in, the Settlement and shall notify each member of the Settlement Class of the manner and means members shall be required to follow to give notice of the member's objection to the settlement and of the member's election to opt out from the Settlement Class.

39. When Plaintiff is prepared to issue a Class Notice as contemplated by Paragraph 38, the Plaintiff shall seek from the Court an order (i) approving the form of notice to be provided to the Settlement Class submitted in connection either with the motion for Preliminary Approval or a separate motion to disseminate notice, and finding that the form, manner and timing of notice constitutes the best notice practicable under the circumstances, and is due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and of Rule 23 of the Federal Rules of Civil Procedure; (ii) directing that notice be provided to the Settlement Class; (iii) establishing a procedure for Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class and set a date, not later than 60 days following the date Class Notice is initially provided, after which no Settlement Class Member shall be allowed to object to the Settlement or exclude himself, herself or itself from the

Settlement Class or seek to intervene in the Action; (iv) pending final determination of whether the Settlement should be approved, bar all Settlement Class Members, directly, on a representative basis, or in any other capacity, from commencing or prosecuting against any of the Releasees any action, arbitration, or proceeding in any court, arbitration forum, or tribunal asserting any of the Released Claims.

40. The proposed method of notice of the Settlement shall be determined in consultation with a class action administrator and shall be approved by the Court. Within thirty (30) days after the Execution Date, Defendants shall supply to Settlement Class Counsel, at Defendants' expense and in such form as kept in the regular course of business (electronic format if available), such names and addresses of potential Settlement Class Members as they have.

41. Settlement Class Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement and the date of the Fairness Hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of this Settlement Agreement ("Class Notice") is provided in accordance with the Federal Rules of Civil Procedure and Court order. Notice of this Settlement will be issued in accordance with the dates ordered by the Court.

H. Fee and Expense Application

42. Settlement Class Counsel will submit an application or applications (the "Fee and Expense Application") to the Court for an award from the Settlement Fund of: (i) attorneys' fees not to exceed 33-1/3% of the Settlement Proceeds; (ii) reimbursement of litigation expenses incurred in connection with the prosecution of the Action, including any costs associated with notice; and/or (iii) incentive awards for Hartig in conjunction with its representation of the Settlement Class. Defendants will take no position on the Fee and Expense Application.

43. Attorneys' fees, expenses, and interest as are awarded by the Court ("Fee and Expense Award") to Settlement Class Counsel shall be paid from the Settlement Proceeds to Settlement Class Counsel immediately upon entry by the Court of an order awarding such amounts, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, provided however that if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed, or return of the Settlement Fund is required consistent with the provisions of Paragraphs 33-35 hereof, Settlement Class Counsel shall be obligated to repay those amounts to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund. In such event, Settlement Class Counsel shall, within twenty-one (21) business days from the event which requires repayment of the Fee and Expense Award, refund to the Settlement Fund the Fee and Expense Award paid to them, along with interest at the same net rate as that earned by the Settlement Fund.

44. Notwithstanding any other provision of this Settlement Agreement to the contrary, the Parties shall not object to the Court considering the Fee and Expense Application separately and apart from its consideration of the fairness, reasonableness, and adequacy of the Settlement. Nor shall Defendants argue that any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, terminates or cancels this Settlement Agreement or the Settlement of the Action, or affects the finality or binding nature of any of the releases granted hereunder.

I. Administration of the Settlement

45. The Settlement Administrator shall process this Settlement based upon information provided by the Parties in connection with the Settlement, and, after entry of a distribution order, distribute the "Net Settlement Fund" (the Settlement Fund less any expenses

paid for attorneys' fees, expenses, notice and administration costs, taxes, an incentive award and any other costs approved by the Court) in accordance with that distribution order. Except for their obligation to fund the Settlement or cause it to be funded as detailed in this Settlement Agreement, Defendants shall have no liability, obligation, or responsibility for the administration of the Settlement or disbursement of the Settlement Fund.

46. All proceedings with respect to the administration, processing, and determination of payment to Settlement Class Members and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court.

47. The Net Settlement Fund shall be distributed by the Settlement Administrator to Settlement Class Members, only after the Effective Date and after: (i) all matters with respect to the Fee and Expense Application have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (ii) all fees and costs of administration have been paid.

48. Settlement Class Counsel will apply to the Court for an order approving the Settlement Administrator's determinations concerning the payments to Settlement Class Members and approving any fees and expenses not previously applied for, including the fees and expenses of the Settlement Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Settlement Class Members.

49. Defendants shall not have a reversionary interest in the Net Settlement Fund unless this Settlement Agreement is rescinded pursuant to Paragraph 35. If there is a balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), or reasonably soon thereafter, the Settlement Administrator shall, if logistically feasible and economically

justifiable, reallocate such balances among Settlement Class Members in an equitable fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is *de minimis* and such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Settlement Class Counsel and approved by the Court.

J. Miscellaneous

50. The parties hereto are entering into this Agreement solely to receive the benefits provided hereunder and to avoid the costs and burdens of potential litigation. This Agreement shall not constitute or be construed or considered as an admission by Defendants for any purpose or as evidence of liability.

51. The United States District Court for the Delaware shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Hartig and Defendants. Hartig and Defendants submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement. This Agreement shall be governed by and interpreted according to the substantive laws of the State of Delaware without regard to its choice of law or conflict of laws principles.

52. This Agreement constitutes the entire agreement among Hartig (and the other Releasers) and Defendants (and the other Releasees) pertaining to the settlement of the Action against Defendants only and supersedes any and all prior and contemporaneous undertakings of Hartig and Defendants in connection therewith (including, but not limited to, the Memorandum of Understanding Concerning Settlement executed by the Parties on October 18, 2017). . This Agreement may be modified or amended only by a writing executed by Hartig and Defendants, and approved by the Court.

53. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Releasees. Without limiting the generality of the foregoing:

(a) each and every covenant and agreement made herein by Hartig or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasors; and (b) each and every covenant and agreement made herein by Releasees or Defendants shall be binding upon all Releasees.

54. This Agreement may be executed in counterparts by Hartig and each Defendant, and a facsimile signature or signature sent through email of an Adobe PDF will be considered as an original signature for purposes of execution of this Agreement.

55. The headings in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

56. In the event this Agreement is not approved or is terminated, or in the event that the Order and Final Judgment approving the Settlement is entered but is reversed or vacated on appeal, the pre-settlement status of the litigation shall be restored and the Agreement shall have no effect on the rights of the Parties to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to class certification, or to raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by Defendants.

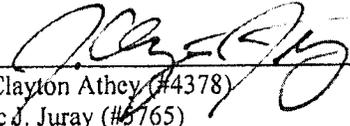
57. Neither Defendants nor Hartig, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

58. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Hartig, Class Members, Releasors, Defendants, and Releasees any right or remedy under or by reason of this Agreement.

59. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval. Each of the undersigned attorneys shall use their best efforts to effectuate this Settlement Agreement.

Dated: January 17, 2018

PRICKETT, JONES & ELLIOTT, P.A.

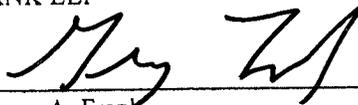
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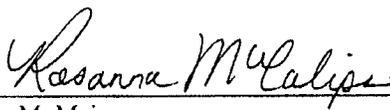
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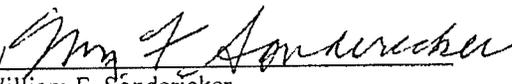
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