IN AND FOR THE DISTRICT OF DELAWARE

ROBERT HURWITZ, on Behalf of Himself and All Others Similarly Situated,	Case No.: 1:15-cv-00711-MAK
Plaintiff, v.	CLASS ACTION
ERIC MULLINS, CHARLES W. ADCOCK, JONATHAN C. FARBER, TOWNES G. PRESSLER, JR., JOHN A. BAILEY, JONATHAN P. CARROLL, SCOTT W. SMITH, RICHARD A. ROBERT, W. RICHARD ANDERSON, BRUCE W. MCCULLOUGH, and LOREN SINGLETARY,	
Defendants.)))

NOTICE OF MOTION AND CLASS REPRESENTATIVE'S MOTION FOR (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE'S SERVICE AWARD

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 14, 2018, at 12:30 p.m., before the Honorable Mark A. Kearney, Class Representative¹ will, and hereby does, move for judgments and orders: (1) approving the Settlement set forth in the Stipulation of Settlement [D.I. 174], the Addendum to the Stipulation of Settlement [D.I. 182], and the Second Addendum to the Stipulation of Settlement [D.I. 188] (collectively, the "Stipulation") and dismissing this Action with prejudice and approving the Plan of Allocation; and (2) awarding Class Counsel's fees and expenses and Class Representative's Service Award.

This motion is based upon this Motion, the accompanying Opening Brief in Support of Class Representative's Motion for Final Approval of Class Action Settlement and Plan of

¹ All capitalized terms that are not defined herein shall have the same meanings as set forth in the Stipulation.

Allocation, the Opening Brief in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and Class Representative's Service Award, the declaration of Class Representative in support thereof, the declarations of Class Counsel submitted in support thereof, the Stipulation and supporting exhibits, the papers and filings on record in this matter, and such additional evidence or argument as may be presented at the hearing.

Pursuant to Local Rule 7.1.1, Lead Class Counsel has conferred with counsel for Defendants prior to filing this Motion. Defendants' counsel indicated that Defendants support the final approval of the Settlement.

Dated: November 2, 2018

Respectfully submitted,

COOCH AND TAYLOR, P.A.

/s/ Blake A. Bennett

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Lead Counsel for Plaintiff

1294347

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2018, I electronically filed the Notice of Motion and

Class Representative's Motion for (1) Final Approval of Class Action Settlement and Plan of

Allocation; and (2) an Award of Attorneys' Fees and Expenses and Class Representative's

Service Award with the Clerk of Court using CM/ECF which will send notification of such filing

to those registered as CM/ECF participants.

/s/ Blake A. Bennett

Blake A. Bennett (#5133)

Attorneys for Plaintiff

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IN AND FOR THE DISTRICT OF DELAWARE

ROBERT HURWITZ, on Behalf of Himself and All Others Similarly Situated,) Case No.: 1:15-cv-00711-MAK
Plaintiff, v.) CLASS ACTION
ERIC MULLINS, CHARLES W. ADCOCK, JONATHAN C. FARBER, TOWNES G. PRESSLER, JR., JOHN A. BAILEY, JONATHAN P. CARROLL, SCOTT W. SMITH, RICHARD A. ROBERT, W. RICHARD ANDERSON, BRUCE W. MCCULLOUGH, and LOREN SINGLETARY,	
Defendants.)))

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court pursuant to the Order Preliminarily Approving Settlement and Providing for Notice ("Order") dated July 27, 2018 [D.I. 191], on the application of the parties for approval of the Settlement set forth in the Stipulation of Settlement [D.I. 174], the Addendum to the Stipulation of Settlement [D.I. 182], and the Second Addendum to the Stipulation of Settlement [D.I. 188] (collectively, the "Stipulation"). Due and adequate notice having been given to the Class as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Approval Order incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

- 2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including the Class Members.
- 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby approves the Settlement set forth in the Stipulation and finds that:
- (a) said Stipulation and the Settlement contained therein, are, in all respects, fair, reasonable, and adequate and in the best interest of the Class;
 - (b) there was no collusion in connection with the Stipulation;
- (c) the Stipulation was the product of informed, arm's-length negotiations among competent, able counsel; and
- (d) the record is sufficiently developed and complete to have enabled Class Representative and Defendants to have adequately evaluated and considered their positions.
- 4. Accordingly, the Court authorizes and directs implementation and performance of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto) who have validly and timely requested exclusion from the Class, the Court hereby dismisses the Action and all claims asserted therein with prejudice. The Settling Parties are to bear their own costs, except as and to the extent provided in the Stipulation.
- 5. As of the Effective Date, Class Representative and all Class Members, on behalf of themselves, and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any Person or entity acting for or on behalf of, or claiming under, any of them, and each of them, agree to and by operation of

this Final Approval Order do hereby forever release and discharge all Released Claims as against all Released Parties.

- 6. As of the Effective Date, Defendants agree to fully, completely, finally, and forever release, relinquish, and discharge Class Representative and Class Counsel from all claims, including Unknown Claims, arising out of or relating to the institution, prosecution, settlement, or resolution of the Action (provided, however, that this release, relinquishment, and discharge shall not include claims by the Settling Parties hereto to enforce the terms of the Settlement or the Stipulation).
- 7. As of the Effective Date, the Released Parties shall be deemed to be forever released and discharged from all of the Released Claims.
- 8. As of the Effective Date, Class Representative, all Class Members, Class Counsel, and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any Person or entity acting for or on behalf of, or claiming under, any of them, and each of them, will be forever barred and enjoined from commencing, instituting, maintaining, prosecuting, or asserting, either directly or in any other capacity, in any forum, any Released Claims against any of the Released Parties.
- 9. The Notice and Summary Notice given to the Class were the best notices practicable under the circumstances, including the individual notice to all Class Members who could be identified through reasonable effort. Said notices provided the best notice practicable under the circumstances of those proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation, to all Persons entitled to such notice, and said

notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

- 10. All Persons whose names appear on Exhibit 1 hereto are hereby excluded as a Class Member, are not bound by this Final Approval Order, and may not make any claim with respect to or receive any benefit from the Settlement.
- 11. Any Plan of Allocation submitted by Lead Class Counsel or any order entered regarding any attorneys' fee and expense application shall in no way disturb or affect this Final Approval Order and shall be considered separate from this Final Approval Order.
- 12. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants or their respective Related Parties, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants or their respective Related Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Defendants and/or their respective Related Parties may file the Stipulation and/or this Final Approval Order in any other action that may be brought against any or all of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.
- 13. Without affecting the finality of this Final Approval Order in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the

Settlement Fund; (c) hearing and determining applications for attorneys' fees and expenses in the

Action; and (d) all parties herein for the purpose of construing, enforcing, and administering the

Stipulation.

14. The Court finds that during the course of the Action, the Settling Parties and their

respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of

Civil

15. In the event that the Stipulation is validly terminated by any Settling Party, then

this Final Approval Order shall be rendered null and void to the extent provided by and in

accordance with the Stipulation and shall be vacated and, in such event, all orders entered and

releases delivered in connection herewith shall be null and void to the extent provided by and in

accordance with the Stipulation, and the Settling Parties shall revert to their respective litigation

status immediately prior to the execution of the Stipulation.

16. Without further order of the Court, the Settling Parties may agree to reasonable

extensions of time to carry out any of the provisions of the Stipulation.

17. The Court directs immediate entry of this Final Approval Order by the Clerk of

the Court.

IT IS SO ORDERED.

DATED:

THE HONORABLE MARK A. KEARNEY UNITED STATES DISTRICT JUDGE

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

ROBERT HURWITZ, on Behalf of Himself and All Others Similarly Situated,) Case No.: 1:15-cv-00711-MAK)
Plaintiff, v.) <u>CLASS ACTION</u>)
ERIC MULLINS, CHARLES W. ADCOCK, JONATHAN C. FARBER, TOWNES G. PRESSLER, JR., JOHN A. BAILEY, JONATHAN P. CARROLL, SCOTT W. SMITH, RICHARD A. ROBERT, W. RICHARD ANDERSON, BRUCE W. MCCULLOUGH, and LOREN SINGLETARY,))))))
Defendants.)))

CLASS MEMBERS REQUESTING EXCLUSION

The following Class Members requested exclusion from the Class:

	Date Received by	Name
	Claims Administrator	
1.	April 27, 2018	Michael A. Colletti
		Muriel J. Colletti
2.	April 30, 2018	James A. Lange
		Grace E. Lange
3.	April 30, 2018	Sydney P. Ponti
		Nan Dee Ponti
4.	April 30, 2018	Ronald H. Rayner
5.	May 7, 2018	Kenneth E. Paith
6.	May 2, 2018	Vernon D. Eason
		Reola Eason
7.	May 10, 2018	Elmer Cruz
8.	May 8, 2018	Robert M. Winship
		Jo Ann M. Winship
9.	May 10, 2018	Jeanne Bonn-Nazzal
10.	May 10, 2018	Paul Woolstenhulme
		Kay Woolstenhulme
11.	May 8, 2018	Adam Laird

12. May 14, 2018	Paul D. Cox
13. May 14, 2018	Glenn Carl Hoaglund
14. May 21, 2018	Norman L. Bond
	Barbara A. Bond
15. May 21, 2018	Thomas A. Washall
16. May 22, 2018	Roman Dufrene
17. May 22, 2018	Vito J. Celia
18. May 22, 2018	Yongqiang Li
19. May 25, 2018	Donald E. Cowan
20. May 29, 2018	John David Shelburne
21. May 29, 2018	Richard M. Horner
22. May 30, 2018	Norswing Family Trust
	Robert S. Norswing Jr.
	Victoria Z. Norswing

IN AND FOR THE DISTRICT OF DELAWARE

[PROPOSED] ORDER AWARDING CLASS COUNSEL'S FEES AND EXPENSES AND CLASS REPRESENTATIVE'S SERVICE AWARD

This matter came before the Court for hearing on December 14, 2018, to consider approval of the proposed Settlement (the "Settlement") set forth in the Stipulation of Settlement [D.I. 174], the Addendum to the Stipulation of Settlement [D.I. 182], and the Second Addendum to the Stipulation of Settlement [D.I. 188] (collectively, the "Stipulation"). The Court has reviewed and considered all documents, evidence, objections (if any), and arguments presented in support of or against the Settlement and the application of Class Counsel for an award of the agreed upon attorneys' fees and expenses incurred in this Action and, having found the Settlement of this litigation to be fair, reasonable, and adequate, and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

of the	Stipulat	ion.								
	4.	The	Court	approves	Class	Representative	Robert	Hurwitz's	requested	Service

Award in the amount of \$_____ finding such amount to be fair and reasonable for his efforts on behalf of the Class Members with respect to the litigation of this Action.

	IT.	IS SC	OR	DEF	RED.		
DATI	ED:						

THE HONORABLE MARK A. KEARNEY UNITED STATES DISTRICT JUDGE

IN AND FOR THE DISTRICT OF DELAWARE

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Defendants.)	

[PROPOSED] ORDER APPROVING PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS

This matter having come before the Court on December 14, 2018, on the Opening Brief in Support of Class Representative's Motion for Final Approval of Class Action Settlement and Plan of Allocation in the above-captioned Action; the Court having considered all papers filed and proceedings had herein; and otherwise being fully informed in the premises;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- 1. For purposes of the Order, the terms used herein shall have the same meanings as set forth in the Stipulation of Settlement [D.I. 174], the Addendum to the Stipulation of Settlement [D.I. 182], and the Second Addendum to the Stipulation of Settlement [D.I. 188] (collectively, the "Stipulation"). This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settling Parties.
- 2. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finds and concludes that due and adequate notice was directed to all

Persons and entities who are members of the Class and who could be identified with reasonable

effort, advising them of the Plan of Allocation and of their right to object thereto, and a full and

fair opportunity was accorded to all Persons and entities who are members of the Class Members

to be heard with respect to the Plan of Allocation.

3. The Court hereby finds and concludes that manner in which the Settlement Fund

will be disbursed, as set forth in the Court-approved Notice of Proposed Settlement of Class

Action and Settlement Hearing (the "Notice") sent to Class Members, is fair and provides a

reasonable basis upon which to allocate the proceeds among Class Members, with due

consideration having been given to administrative convenience and necessity.

4. This Court hereby finds and concludes that the Plan of Allocation set forth in the

Notice is, in all respects, fair, reasonable, and adequate and the Court hereby approves the Plan

of Allocation.

IT IS SO ORDERED.

DATED:

THE HONORABLE MARK A. KEARNEY UNITED STATES DISTRICT JUDGE

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