

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

ROBERT HURWITZ, on Behalf of Himself	)	Case No.: 1:15-cv-00711-MAK
and All Others Similarly Situated,	)	
	)	
Plaintiff,	)	<u>CLASS ACTION</u>
v.	)	
	)	
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	)	
SINGLETERY,	)	
	)	
Defendants.	)	
	)	

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**SECOND ADDENDUM TO STIPULATION OF SETTLEMENT**

This Second Addendum to the Stipulation of Settlement ("Second Addendum") is entered into between and among the following parties, by and through their respective counsel, in the above-captioned securities class action: (i) Class Representative Robert Hurwitz ("Hurwitz") (on his own behalf and on behalf of the Class<sup>1</sup>); (ii) defendants Eric Mullins, Charles W. Adcock, Jonathan C. Farber, Townes G. Pressler, Jr., John A. Bailey, and Jonathan P. Carroll (the "LRE Defendants"); and (iii) Scott W. Smith, Richard A. Robert, W. Richard Anderson, Bruce W. McCullough, and Loren Singletary (the "VNR Defendants" and collectively with the LRE Defendants, the "Defendants").

WHEREAS, on June 27, 2018, the Settling Parties submitted their Stipulation to the Court;

WHEREAS, on July 11, 2018, the Settling Parties submitted to the Court the Addendum;

WHEREAS, on July 18, 2018, the Court held a hearing on Class Representative's Amended Unopposed Motion for Preliminary Approval of Settlement [D.I. 183] (the "Preliminary Approval Hearing");

WHEREAS, this Second Addendum to the Stipulation is intended to address issues that the Court raised at the Preliminary Approval Hearing; and

NOW THEREFORE, the Settling Parties further STIPULATE AND AGREE as follows, notwithstanding anything in the Stipulation or Addendum to the contrary:

1. After the Final Approval Order becomes Final, except for Administration Costs or Tax Expenses that may then be due, the first payments made from the Settlement Fund shall be an initial settlement payment of \$5.00 (five dollars, payable via check—each an "Initial

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<sup>1</sup> All capitalized terms that are not defined herein have the same meanings as set forth in the Stipulation of Settlement (the "Stipulation") [D.I. 174] as modified in the Addendum to the Stipulation (the "Addendum") [D.I. 182].

Settlement Payment" and together the "Initial Settlement Payments") to each Person who: (i) is a Class Member; (ii) received notice of class pendency pursuant to the Court's January 17, 2018 Order [D.I. 126], received the Settlement Notice or otherwise provides a valid Proof of Claim identifying him, her, or itself as a valid Class Member; and (iii) did not validly request exclusion from the Class.<sup>2</sup> The Defendants and the Released Parties shall have no responsibility for or liability whatsoever relating to the Initial Settlement Payments (including a determination of entitlement to or distribution of an Initial Settlement Payment).

2. Immediately after the Effective Date, the Claims Administrator shall instruct the Paying Agent to, and the Paying Agent shall, set aside and reserve an amount of the Settlement Fund needed to pay the anticipated Initial Settlement Payments that will be due for distribution upon the Final Approval Order becoming Final (the "Reserved Amount"). In no event may the Reserved Amount be used to pay a Fee and Expense Amount or Service Award.

3. No payment from the Settlement Fund, including a Service Award, may be made to a Class Member until the Final Approval Order is Final.

4. The Paying Agent shall distribute the Initial Settlement Payments after the Final Approval Order becomes Final and is no longer subject to appeal. Thereafter, the Net Settlement Amount remaining after distribution of the Initial Settlement Payments shall then be available for further payments to eligible Class Members in accordance with the Stipulation, as modified in this Second Addendum, or as allowed by the Court.

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<sup>2</sup> For avoidance of doubt, submission of a Proof of Claim is not required for a Class Member to be entitled to receive an Initial Settlement Payment, and the term "Net Settlement Amount" as defined in paragraph 1.17 of the Stipulation is also less the Initial Settlement Payments.

5. Paragraph 6.10 of the Stipulation is hereby superseded and replaced by the following amended paragraph 6.10 (with new text emphasized for convenience and removed text struck through):

The Net Settlement Amount shall be distributed to the Settlement Amount Recipients substantially in accordance with the Plan of Allocation set forth in the Notice and approved by the Court. If there is any balance remaining in the Net Settlement Amount after *at least one hundred and twenty (120) days* ~~a reasonable period of time~~ after the date of the initial distribution of the Net Settlement Amount, Lead Class Counsel shall, if feasible and economical, reallocate (which reallocation may occur on multiple occasions) such balance among Settlement Amount Recipients in an equitable and economical fashion *to claimants who cashed their checks from the initial distribution and who would receive at least \$10.00, after payment of the estimated costs, expenses, or fees to be incurred in administering the Net Settlement Amount and in making this additional distribution.* Any de minimis balance that still remains in the Net Settlement Amount after such reallocation(s) and payments, which is not feasible or economical to reallocate, shall be donated to the United Way of Greater Houston's Disaster Recovery Fund.

6. Before the reallocation process set forth in paragraph 6.10 of the Stipulation (as superseded and replaced by this Second Addendum) proceeds, to the extent the Claims Administrator and Lead Class Counsel determine that a Class Member mistakenly did not receive an Initial Settlement Payment, the Paying Agent shall pay such Class Member his, her, or its Initial Settlement Payment to the extent funds in the Net Settlement Amount are available to do so.

7. Each distributed but uncashed Initial Settlement Payment shall be voided one hundred and twenty (120) days after date of issuance. Each uncashed and voided Initial Settlement Payment shall be reallocated and included back in the Net Settlement Amount.

8. The Preliminary Approval Order, Notice, Proof of Claim, Summary Notice, and Final Approval Order shall be further revised as set forth, respectively, in Exhibits A, A-1, A-2, A-3, and B of the Unopposed Supplement to Class Representative's Amended Unopposed Motion for Preliminary Approval of Settlement, to be filed herewith, to be consistent with this

Second Addendum, the Stipulation, and the issues raised by the Court at the Preliminary Approval Hearing.

9. This Second Addendum modifies the Stipulation and to the extent of an inconsistency, this Second Addendum controls.

IN WITNESS WHEREOF, the Settling Parties have caused this Second Addendum to be executed, by themselves and/or by their duly authorized attorneys, dated July 25, 2018.

/s/ Blake A. Bennett

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2018, I electronically filed *Second Addendum to Stipulation of Settlement* 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*

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Blake A. Bennett (#5133)

*Attorneys for Class Representative*