

EXHIBIT B

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

IN RE HERALD, PRIMEO, AND THEMA
FUNDS SECURITIES LITIGATION

ECF Case

Case No. 09 Civ. 0289 (RMB)

This Document Relates to:

Case No. 09 Civ. 2558 (RMB)

NEVILLE SEYMOUR DAVIS,

Plaintiff,

**[Proposed] Preliminary
Approval Order for Notice
and Hearing on Settlement
of Class Action**

vs.

ALBERTO BENBASSAT, STÉPHANE
BENBASSAT, GENEVALOR, BENBASSAT &
CIE, GERALD J.P. BRADY, JOHN
HOLLIWELL, SONJA KOHN, DANIEL
MORRISSEY, PETER SCHEITHAUER, DAVID
T. SMITH, WERNER TRIPOLT, BANK MEDICI
AG, UNICREDIT SPA, HSBC INSTITUTIONAL
TRUST SERVICES (IRELAND) LTD., HSBC
SECURITIES SERVICES (IRELAND) LTD.,
HSBC BANK USA, N.A., HSBC HOLDINGS
PLC, PRICEWATERHOUSECOOPERS
INTERNATIONAL LTD.,
PRICEWATERHOUSECOOPERS (DUBLIN),
PRICEWATERHOUSECOOPERS LLP,
PRICEWATERHOUSECOOPERS BERMUDA,
THEMA ASSET MANAGEMENT LIMITED,
THEMA INTERNATIONAL FUND PLC, BA
WORLDWIDE FUND MANAGEMENT
LIMITED, PETER MADOFF, ANDREW
MADOFF, THE ESTATE OF MARK MADOFF,
WILLIAM FRY, JP MORGAN CHASE & CO.,
and THE BANK OF NEW YORK MELLON,

Defendants.

**[PROPOSED] PRELIMINARY APPROVAL ORDER
FOR NOTICE AND HEARING ON SETTLEMENT OF CLASS ACTION**

WHEREAS, consolidated class actions are pending before the Court in *In re Herald, Primeo, and Thema Funds Securities Litigation*, Case No. 09 Civ. 0289, which includes, among others, the matter entitled *Davis v. Benbassat et al.*, Case No. 09 Civ. 2558 (the “Action”);

WHEREAS, the court-appointed lead plaintiff in the Action, Neville Seymour Davis (the “Lead Plaintiff”), on behalf of himself and all others similarly situated, and defendants HSBC Securities Services (Ireland), HSBC Institutional Trust Services (Ireland), HSBC Holdings plc, and proposed defendant HSBC Bank USA, N.A. (the “Settling Defendants”) have entered into a Second Amended and Restated Stipulation and Agreement, dated November 27, 2011 (the “Second Amended Stipulation”);

WHEREAS, the Second Amended Stipulation, together with the exhibits annexed thereto, sets forth the terms of the proposed settlement (the “Settlement”) of the claims that were or could have been alleged in the complaint and amended complaints filed in the Action (the “Complaints”);

WHEREAS, the Settlement agreed to by the Lead Plaintiff and the Settling Defendants (collectively, the “Settling Parties”) contemplates the dismissal of the Action as regards the Settling Defendants on the merits and with prejudice;

WHEREAS, the Settling Parties having moved, pursuant to Rule 23 and Rule 23.1 of the Federal Rules of Civil Procedure for an order preliminarily approving the Settlement as sufficiently fair, reasonable and adequate to warrant directing notice of the proposed Settlement to members of the Settlement Class (as defined below) and providing for a hearing to

determine with finality the fairness, reasonableness and adequacy of the Settlement (the “Fairness Hearing”); and

WHEREAS, this matter came before the Court at a hearing held _____, 2011 and upon consent of the Settling Parties, after review and due consideration of the Second Amended Stipulation filed with the Court and the exhibits thereto,

IT IS HEREBY ORDERED, this ___ day of _____, 2011, that:

1. The Court, for purposes of this order (the “Preliminary Settlement Approval Order” or “Order”), adopts all defined terms as set forth in the Second Amended Stipulation.
2. The Court hereby decrees that neither the Second Amended Stipulation, nor this Order, nor the fact of the Settlement, constitutes any admission or concession by the Settling Defendants of any liability or wrongdoing whatsoever.
3. The Court hereby preliminarily finds and concludes that the proposed Settlement set forth in the Second Amended Stipulation is sufficiently fair, reasonable, and adequate to warrant notice to the Settlement Class and to schedule the Fairness Hearing.
4. With respect to the Action, the Court preliminarily finds and concludes, for purposes of the Settlement only, in satisfaction of the requirements of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure that: (a) the members of the Settlement Class are so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class; (d) Lead Plaintiff will fairly and adequately represent the interests of the Settlement Class; (e) questions of law or fact common the Settlement Class predominate over

individualized questions or issues; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. Accordingly, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby preliminarily certifies, for purposes of the Settlement only, a Settlement Class consisting of all persons and entities (other than persons or entities who timely and validly request exclusion from the Settlement Class) who owned shares of Thema International Fund plc, or its sub-fund Thema Fund (collectively, the “Fund”), either directly or beneficially, on December 10, 2008, and suffered damages thereby due to the wrongful conduct alleged in the Complaints.

6. Excluded from the Settlement Class are Defendants and each of their officers and directors, as well as their families and affiliates, provided however that any affiliate of the Settling Defendants acting as agent or nominee for a beneficial owner of shares of the Fund who is not a person or entity described above shall be deemed to be a Settlement Class Member.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for the purposes of the Settlement only, Lead Plaintiff Neville Seymour Davis is preliminarily certified as class representative for the Settlement Class and the law firm of Chapin Fitzgerald Sullivan & Bottini LLP is appointed as lead counsel to the Settlement Class (“Plaintiff’s Lead Counsel”).

8. Plaintiff’s Lead Counsel is hereby authorized to act on behalf of the Settlement Class with respect to all acts required by, or which may be undertaken pursuant to, the Second Amended Stipulation or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Second Amended Stipulation.

9. Pursuant to Rule 23(e) and Rule 23.1(c) of the Federal Rules of Civil Procedure, the Fairness Hearing is hereby scheduled to be held before the Honorable Richard M. Berman, United States District Judge, at the United States District Court, Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21-B, New York, NY 10007 on _____, [2012] at __:____ a.m./p.m., for the following purposes:

(a) to make final determination whether the Settlement terms and conditions provided in the Second Amended Stipulation are fair, reasonable, and adequate, and should receive the final approval of the Court.

(b) to determine whether, upon satisfaction of all conditions to the Settlement forth in the Second Amended Stipulation, the final settlement approval order and judgment (the “Judgment”), in substantially the form annexed to the Second Amended Stipulation as Exhibit C, should be entered, thereby (i) dismissing the Complaints on the merits as against the Settling Defendants; (ii) extinguishing and releasing all Released Claims; and (iii) barring claims of contribution and indemnification by or against the Settling Defendants.

(c) to make final determination, for purposes of the Settlement only, whether the Settlement Class should be certified, the Lead Plaintiff should be appointed as class representative, and Plaintiff’s Lead Counsel should be appointed as class counsel;

(d) to determine whether the proposed Plan of Allocation for the Net Settlement Fund, in substantially the form annexed to the Second Amended Stipulation as Exhibit A-2, is fair and reasonable and should be approved by the Court;

(e) to consider Plaintiff’s Lead Counsel’s application for attorneys’ fees and expenses and Lead Plaintiff’s application for an expense/service award; and

(f) to rule upon such other matters as the Court may deem appropriate.

10. The Fairness Hearing is scheduled to follow the expected issuance of an Order by the Irish High Court on the application by HTIE in litigation captioned *Thema Int'l Fund plc v. HSBC Institutional Trust Services (Ireland) Ltd.*, Record No. 2008/10983P, 2009/565TP and 2009/566TP (H. Ct.) regarding the enforceability and effect of the Settlement in Ireland (the "Irish High Court Order"). The Court directs the Settlement Administrator to post the Irish High Court Order once issued on its website.

11. The Court reserves the right to adjourn or continue the Fairness Hearing, including the consideration of the application for attorneys' fees and expenses by Plaintiff's Lead Counsel and the application for an expense/service award by Lead Plaintiff, without further notice of any kind to Settlement Class Members other than by an announcement of the adjournment at the scheduled time of the Fairness Hearing. The Court directs that the Settlement Administrator post any such announcement on its website.

12. The Court reserves the right to modify any date established herein without further notice to Settlement Class Members.

13. The Court reserves the right to approve the Settlement at or after the Fairness Hearing with or without modifications to the Second Amended Stipulation consented to by the Settling Parties and without further notice to the Settlement Class.

14. The Court further reserves the right to approve the Settlement and enter the Judgment provided for under the Second Amended Stipulation regardless of whether it has approved the proposed Plan of Allocation or awarded attorneys' fees or expenses or a Lead Plaintiff service award. None of the Settling Defendants, nor any other Released Party, shall have any responsibility whatsoever for the Plan of Allocation, for the application for attorneys'

fees and reimbursement of expenses submitted by Plaintiff's Lead Counsel, or for Lead Plaintiff's application for an expense/service award, and such matters will be considered separate from the fairness, reasonableness, and adequacy of the Settlement.

15. The Settling Parties having submitted for the Court's approval a proposed long form Notice of Pendency and Partial Settlement of Class Action (the "Notice") and a short form Publication Notice of Partial Settlement (the "Publication Notice," and collectively with the Notice, the "Settlement Notices"), the Court, upon review and due deliberation, finds and concludes that the form and content of the Settlement Notices, and the methods set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

16. Accordingly, the Court approves the Notice, in substantially the form annexed hereto as Exhibit A-1, as well as the Publication Notice, in substantially the form annexed hereto as Exhibit A-3.

17. The Court appoints Gilardi & Co. as "Settlement Administrator" to supervise and administer the notice procedures with respect to the Settlement Notices, as well as to supervise and administer the receipt and processing of claims and the disbursement of the Net Settlement Fund. The Settlement Administrator shall designate an entity in Europe for receiving and processing requests for exclusion.

18. The Settlement Administrator or HSSI shall cause the Notice to be mailed by first class mail, postage prepaid, not later than fifteen (15) calendar days after entry of this

Order by the Court to all members of the Settlement Class who can be identified with reasonable effort.

19. To assist in dissemination of the Notice, the Settling Parties shall use reasonable best efforts to facilitate the provision to the Settlement Administrator of the name and last known address of each Settlement Class Member who is a shareholder registered on the books of the Fund in a searchable database or other format agreed to by the Settling Parties for the purpose of mailing the Notice to such registered shareholders. Alternatively, HSSI may mail the Notice to registered shareholders and provide confirmation of the mailing to the Settlement Administrator without providing the names and last known addresses of such registered shareholders. In such event, HSSI shall (a) use best efforts, in compliance with EU data protection legislation, to disclose such names and last known addresses on a confidential basis to the Settlement Administrator for the purposes of administering the Settlement or (b) assist the Settlement Administrator or its designee in determining whether persons or entities submitting Proofs of Claims, objections, or requests for exclusions are entitled to do so.

20. The Settlement Administrator or HSSI shall use reasonable best efforts to give notice to banks, brokerage firms, and other persons or entities that purchased or hold shares in the Fund as nominee for beneficial owners by mailing the Notice to such nominee purchasers. Within seven (7) calendar days of their receipt of the Notice, such nominees are directed either to (a) request additional copies of the Notice to send to any beneficial owners on whose behalf they purchased or hold shares, and mail such copies within seven (7) calendar days of receipt by first class mail, or to (b) provide the Settlement Administrator with lists of the names and addresses of such beneficial owners. The Settlement Administrator is ordered to send the Notice by first class mail promptly to any beneficial owners identified in this manner. Additional copies of the

Notice shall be made available to any nominee or owner of record requesting copies for the purpose of distribution to beneficial owners, and such nominees or owners of record may be reimbursed for their reasonable expenses incurred providing the Notice to their beneficial owners, after receipt by the Settlement Administrator of appropriate documentation.

21. The Settlement Administrator shall also publish the Publication Notice weekly for two weeks in two financial publications of general world-wide circulation and in at least one paper of general national circulation in each of Ireland, the United Kingdom, Italy, Switzerland, France, Austria, Germany, Russia, Israel, Mexico, Argentina and Brazil, with initial publication made within fifteen (15) calendar days after entry of this Order by the Court. The Settlement Administrator shall cause the Publication Notice to be translated into the common languages of each country of general national publication.

22. The Settlement Administrator shall also post the Second Amended Stipulation, Notice, Publication Notice, Plan of Allocation, all motion papers in support of the Settlement, this Order of Preliminary Approval, and all further orders of this Court on a website to be maintained by the Settlement Administrator.

23. Plaintiff's Lead Counsel shall make the Second Amended Stipulation, Notice, Publication Notice, Plan of Allocation, all motion papers in support of the Settlement, this Order of Preliminary Approval, and all further orders of this Court available for inspection at their offices by Settlement Class Members during regular business hours.

24. Plaintiff's Lead Counsel is further directed to file with the Court within seven (7) days of the Fairness Hearing an affidavit or declaration of the person or persons under whose general direction the mailing of the Notice to Settlement Class Members, the publishing of the Publication Notice, and the posting of the Settlement papers to the Settlement website

were made, proving that such mailing, publication and posting were made in accordance with this Order.

25. No later than ten (10) days after the filing of the Settlement with the Court, the Settling Defendants shall have provided notice of the proposed Settlement to appropriate Federal and State officials as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. The Settling Defendants are directed to file with the Court no later than seven (7) days before the Fairness Hearing an affidavit or declaration showing timely compliance with the notice requirements of the Class Action Fairness Act.

26. Any Settlement Class Member who is a beneficial owner of shares in the Fund or a legal representative acting on behalf of a beneficial owner (such as an executor, administrator, guardian, conservator, trustee or other similar fiduciary) and wishes to participate in the Net Settlement Fund must personally sign and return a fully completed Proof of Claim and Release Form (“Proof of Claim”) in accordance with the instructions contained therein and in the Notice. The Proof of Claim form shall be substantially in the form attached to the Notice as Exhibit A-4. Registered shareholders may not submit a Proof of Claim unless they are beneficial owners or the legal representative of a beneficial owner. Any legal representative submitting a Proof of Claim on behalf of a beneficial owner must also submit written proof of the legal representative’s authority to so act. Registered shareholders who acted only in a nominee or similar capacity may not submit a Proof of Claim but should take care that those for whom they acted are afforded an opportunity to do so.

27. All Proofs of Claim must disclose all of the information required therein, including all requested documentation, and be submitted by first class mail to the address indicated in the Notice and the Publication Notice no later than [●][●], 2012. Such deadline may

be further extended by Court order. If a Settlement Class Member chooses to return his, her, or its Proof of Claim in a manner other than by first class mail (including electronic submission), then the Proof of Claim must be actually received by the Settlement Administrator no later than [●][●], 2012 or such other date as may be set by the Court. As part of the Proof of Claim, each Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted and releases granted, and shall (subject to the effectuation of the Settlement as reflected in the Second Amended Stipulation) agree and enter into the releases provided for in the Second Amended Stipulation. Unless otherwise ordered by the Court, any Settlement Class Member who does not sign and return a fully completed and valid Proof of Claim within the time prescribed shall forever be barred from sharing in the distribution of the Net Settlement Fund, but shall nonetheless be bound by the Judgment and Orders, and the releases therein, unless such persons or entities request exclusion from the Settlement Class in a timely and proper manner, as provided hereinafter.

28. Settlement Class Members shall be bound by all orders, determinations and judgments in the Action. Any beneficial owner of shares or a legal representative acting on behalf of a beneficial owner (such as an executor, administrator, guardian, conservator, trustee or other similar fiduciary) may, upon request, be excluded from the Settlement Class per the procedures set forth herein and in the Notice. Any legal representative submitting an exclusion request on behalf of a beneficial owner must also submit written proof of the legal representative's authority to so act. The request for exclusion must be submitted by first class mail to the designee of the Settlement Administrator as set forth in the Notice, postmarked no later than [●][●], 2012, twenty-one (21) days before the Fairness Hearing, to the address designated in the Notice and Publication Notice for such exclusions. Registered shareholders

may not submit requests for exclusion unless they are beneficial owners or the legal representative of a beneficial owner. Registered shareholders who acted only in a nominee or similar capacity may not submit requests for exclusion but should take care that those for whom they acted are afforded an opportunity to submit such a request.

29. To be valid, a request for exclusion shall clearly indicate the name, address and telephone number of the beneficial owner seeking exclusion and that the beneficial owner requests exclusion from the Settlement Class. If submitted by a legal representative for a beneficial owner, the request shall also state the capacity of such legal representative, enclose written proof that such representative has authority to submit the request for exclusion on the beneficial owner's behalf, and affirm that no other request has been submitted by the beneficial owner or on the beneficial owner's behalf. Persons or entities requesting exclusion must in their request for exclusion affirm the following: (a) the aggregate amount invested per share class; (b) the aggregate amount of any redemptions or sales per share class; (c) the number of shares held in each class as of December 10, 2008, and as of the present date; and (d) the name of any nominee or agent through which the shares were held.

30. The submission of a request for exclusion will not be deemed an appearance and will not subject the person or entity submitting the request to the jurisdiction of any U.S. Court.

31. In order not to inhibit the submitting of Proofs of Claims or requests for exclusion, all documents and data submitted in connection therewith that reveal the identity or contact information or any direct or beneficial owners of shares of the Fund is hereby designated as "Confidential Protected Information." Such Confidential Protected Information shall be maintained in confidence by the Settling Parties and the Settlement Administrator or its designee,

who shall use the same degree of care and exercise the same reasonable efforts to protect the Confidential Protected Information as such parties use and exercise to protect their own similar confidential or proprietary data. Absent further order of this Court based on a showing of necessity, Confidential Protected Information shall be revealed by the Settlement Administrator or its designee only to counsel for the Settling Parties or filed under seal by the Settling Parties to effectuate the terms and requirements of the Settlement.

32. A request for exclusion shall not be effective unless it provides all of the information and documentation described above and in the Notice and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Any Member of the Settlement Class may submit a written revocation of a request for exclusion to the designee of the Settlement Administrator as set forth in the Notice, provided that it is received no later than seven (7) calendar days before the Fairness Hearing.

33. Any Settlement Class Member who is excluded from the Settlement Class shall not be entitled to participate in the Net Settlement Fund, as described in the Second Amended Stipulation and Notice, and may not object to the Settlement or appear at the Fairness Hearing.

34. Within five (5) business days after the deadline for exclusion, the designee of the Settlement Administrator shall provide the Settling Defendants with a report that, at minimum, will identify all persons purporting to exclude themselves from the Class and will attach the requests for exclusion submitted by each. Within five (5) business days after the deadline for Proofs of Claim, the Settlement Administrator shall provide the Settling Defendants with a report that, at a minimum, will identify all persons who have purported to submit a Proof of Claim and will attach the Proof of Claim submitted by each.

35. Any Member of the Settlement Class who does not request exclusion may object to the fairness, reasonableness, or adequacy of the Settlement, the Plan of Allocation, Plaintiff's Lead Counsel's requests for awards of attorneys' fees and reimbursement of expenses, and Lead Plaintiff's request for an expense/service award by filing a written objection no later than [●][●], 2012, twenty-one (21) days before the Fairness Hearing. An objector must file with the Court a statement of his, her, or its objection(s) that: (a) clearly indicates the objector's name, mailing address, telephone number, and e-mail address; (b) states that the objector is objecting to the fairness, reasonableness, or adequacy of the Settlement, the Plan of Allocation, the request for awards of attorneys' fees, the request for reimbursement of expenses, or the request for an expense/service award to Lead Plaintiff; and (c) specifies the ground(s), if any, for each such objection made, including any legal support and/or evidence (see below) the objector wishes to bring to the Court's attention or introduce in support of such objection.

36. Objectors are further directed to provide documentation evidencing: (a) the aggregate amount invested per share class; (b) the aggregate amount of any redemptions per share class; (c) the number of shares held in each class as of December 10, 2008, and as of the present date; and (d) the name of any nominee or agent through which the shares were held.

37. The objector must mail the objection(s) and any supporting papers/documentation to:

Clerk of the Court
United States District Court
for the Southern District of New York
500 Pearl Street
New York, New York 10007

and deliver or send by first class mail copies of all such papers to the following counsel for the Settling Parties:

CHAPIN FITZGERALD SULLIVAN &

MURRAY FRANK LLP

BOTTINI LLP
Francis A. Bottini, Jr.
Albert Y. Chang
550 West C Street, Suite 2000
San Diego, CA 92101

Plaintiff's Lead Counsel

ROBBINS GELLER RUDMAN & DOWD
LLP
Darren J. Robbins
James I. Jaconette
655 West Broadway, Suite 1900
San Diego, CA 92101

Plaintiff's Counsel

Brian P. Murray
275 Madison Avenue, Suite 801
New York, NY 10016

Plaintiff's Counsel

CLEARY GOTTLIEB STEEN &
HAMILTON LLP
Evan A. Davis
David E. Brodsky
One Liberty Plaza
New York, NY 10006

Settling Defendants' Counsel

38. Any Settlement Class Member who does not object in the manner prescribed above shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement, as well as the final Judgment to be entered approving the Settlement and all Orders, and releases therein, or from otherwise being heard concerning these subjects in this or any other proceeding, except for good cause shown. Objections raised at the Settlement Hearing will be limited to those previously submitted in writing.

39. Any objector who files and serves a timely written objection in accordance with the instructions above may also appear at the Fairness Hearing, either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service of a notice of intention to appear, setting forth, among other things, the name, mailing address, telephone number, and e-mail address of the objector (and, if applicable, the name, mailing address, telephone number, and e-mail address of the objector's attorney) on Plaintiff's Lead Counsel and Settling Defendants' counsel (at the addresses set out above). Moreover, objectors who intend to present evidence at the Fairness Hearing must

include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Fairness Hearing. Finally, the objector must serve counsel identified above and file the notice of intention to appear with the Court no later than [●][●], 2012, twenty-one (21) days before the Fairness Hearing. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

40. Settlement Class Members do not need to appear at the Fairness Hearing or take any other action to indicate their approval of the Settlement, the Plan of Allocation, the application for attorneys' fees and expenses, or the application for an expense/service award to Lead Plaintiff.

41. The passage of title and ownership of the Escrowed Funds, including the portion thereof determined to be the Gross Settlement Fund, to the Escrow Agent in accordance with the terms of the Second Amended Stipulation is approved. No person or entity who is not a Settlement Class Member or Plaintiffs' Counsel shall have any right to any portion of, or distribution from, the Gross Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Second Amended Stipulation.

42. The contents of the Escrowed Funds held by the Escrow Agent 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 the contents of those funds shall be distributed pursuant to the Second Amended Stipulation and/or further order(s) of the Court.

43. As provided in the Second Amended Stipulation, Plaintiff's Lead Counsel may pay the Settlement Administrator the reasonable fees and costs associated with giving notice to the Class and incurred in the review of claims and administration of the Settlement

(“Administrative Expenses”) out of the Gross Settlement Fund without further order of the Court.

44. Plaintiff’s Lead Counsel or its agents are authorized and directed to prepare any tax returns and any other tax reporting for or in respect of the Gross Settlement Fund, pay from the Gross Settlement Fund any Taxes owed with respect to the Gross Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof as contemplated by the Second Amended Stipulation, without further order of the Court.

45. In the event the Second Amended Stipulation is terminated or becomes or is declared invalid or unenforceable for any reason, or is ineffective in accordance with the provisions of ¶8.1 of the Second Amended Stipulation, then within ten (10) business days after written notice is sent by Plaintiff’s Lead Counsel or counsel for the Settling Defendants to all parties to the respective Settlement, the balance of any cash deposited by the Settling Defendants into the Escrow Account established pursuant to the Second Amended Stipulation shall be refunded to the Settling Defendants, including interest accrued, less any Taxes due and payable with respect to such income, and any Administrative Expenses and notice expenses actually paid or incurred. In such event, the Settling Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of the date and time immediately before the execution of the Second Amended Stipulation and they shall proceed in all respects as if the Second Amended Stipulation, this Order, and any related orders had not been executed and without prejudice in any way from the negotiation, fact or terms of the Settlement.

46. All papers in support of the Settlement, the Plan of Allocation, Plaintiff’s Lead Counsel’s application for attorneys’ fees and expenses, and Lead Plaintiff’s application for

an expense/service award to be made at the Fairness Hearing shall be served and filed with the Court no later than forty-five (45) days before the Fairness Hearing. Reply papers in further support of the Settlement, the Plan of Allocation, Plaintiff's Lead Counsel's application for attorneys' fees and expenses, and Lead Plaintiff's application for an expense/service award, or in response to objections shall be served and filed no later than seven (7) calendar days before the Fairness Hearing. Service of all papers shall be made by overnight mail, hand delivery, or email.

47. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement for a period of six years.

48. Pending final determination as to whether the Settlement as set forth in the Second Amended Stipulation should be approved, no Settlement Class Member shall commence, prosecute, pursue or litigate any Released Claim against any Released Party, whether directly, representatively or in any other capacity, and regardless of whether or not any such Settlement Class Member has appeared in the Action.

Dated: _____, 2011

RICHARD M. BERMAN, U.S.D.J.