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20  
21 **UNITED STATES DISTRICT COURT  
22 CENTRAL DISTRICT OF CALIFORNIA**

23 ARTHUR KAYE IRA FCC AS CUSTODIAN  
24 DTD 6-8-00 and HAYDEN LEASON,  
25 Individually and On Behalf of All Others  
Similarly Situated,  
Plaintiffs,

Case No. 2:17-cv-03250-FMO (SK)

CLASS ACTION

**STIPULATION OF  
SETTLEMENT**

Judge: Hon. Fernando M.  
Olguin

26 IMMUNOCCELLULAR THERAPEUTICS,  
27 LTD., DAVID FRACTOR, MANISH SINGH,  
28 LAVOS, LLC, LIDINGO HOLDINGS, LLC,  
BRIAN NICHOLS,

Defendants.

1           **THIS STIPULATION OF SETTLEMENT**, dated September 13, 2018, is  
 2 made and entered into by and among the following Settling Parties to this Litigation:  
 3 (i) Lead Plaintiffs Arthur Kaye IRA FCC as Custodian DTD 6-8-00 (“Kaye”) and  
 4 Hayden Leason (“Leason”; together with Kaye, “Plaintiffs”) (on behalf of themselves  
 5 and all Members of the Settlement Class), by and through counsel of record in the  
 6 Litigation; and (ii) ImmunoCellular Therapeutics, Ltd. (“IMUC”), David Fractor,  
 7 Manish Singh, Lavos, LLC, Lidingo Holdings, LLC, Kamilla BJORLIN, Andrew Hodge,  
 8 and Brian Nichols (collectively, “Settling Defendants”; together with Plaintiffs, the  
 9 “Settling Parties”). The Stipulation is intended by the Settling Parties to fully, finally,  
 10 and forever resolve, release, discharge, and settle the Released Claims, upon and subject  
 11 to the terms and conditions hereof.

12           **I. THE LITIGATION**

13           On May 1, 2017, Plaintiff Arthur Kaye IRA FCC as Custodian DTD 6-8-00  
 14 (“Plaintiff Kaye”) filed a putative class action complaint against Defendants IMUC,  
 15 David Fractor, John S. Yu, Andrew Gengos, Manish Singh, Lavos, LLC, Lidingo  
 16 Holdings, LLC, Kamilla BJORLIN, Andrew Hodge, Brian Nichols, and Vincent Cassano  
 17 (the “Initial Defendants”), alleging violations of Section 10(b) of the Securities  
 18 Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, as well as Section  
 19 20(a) of the Exchange Act. (ECF No. 1.)

20           On July 21, 2017, the Court appointed Plaintiffs Kaye and Leason as co-lead  
 21 plaintiffs for the proposed class. (ECF No. 35.)

22           On August 24, 2017, Plaintiffs filed a consolidated first amended complaint  
 23 (“FAC”), alleging violations of Sections 10(b) and 20(a) of the Exchange Act. (ECF  
 24 No. 43.)

25           On September 21, 2017, counsel for the Parties met and conferred regarding  
 26 Defendants’ anticipated motion to dismiss the FAC.

27  
 28

1       On September 25, 2017, the Parties filed a Joint Stipulation Regarding  
 2 Amendment to Consolidated First Amended Complaint and Briefing Schedule. (ECF  
 3 No. 48.)

4       On September 26, 2017, the Court issued an Order approving the September 25,  
 5 2017 Stipulation and setting a briefing schedule and hearing date of January 18, 2018  
 6 on Defendants' motion to dismiss. *Id.*

7       On October 13, 2017, Plaintiffs filed their Second Amended Complaint ("SAC"),  
 8 adding Christopher French and Stephen Ramey as defendants (collectively, with the  
 9 Initial Defendants, "Defendants"), and alleging violations of Sections 10(b) and 20(a)  
 10 of the Exchange Act. (ECF No. 53).

11      On November 10, 2017, all of the Initial Defendants save Brian Nichols and  
 12 Vincent Cassano filed a motion to dismiss the SAC. (ECF No. 58). Plaintiffs opposed  
 13 the motion on December 6, 2017 (ECF No. 67) and the Initial Defendants (save Brian  
 14 Nichols and Vincent Cassano) filed a reply on December 21, 2017 (ECF No. 75).

15      On May 29, 2018, the Court entered an order dismissing the SAC with leave to  
 16 amend and instructing Plaintiffs to file a Consolidated Third Amended Complaint  
 17 ("TAC") by June 15, 2018; Defendants to file any motion to dismiss the TAC by July  
 18 12, 2018; and that the Parties meet and confer with respect to any motion to dismiss the  
 19 TAC by June 19, 2018 (the "MTD Order"). (ECF No. 98.)

20      Following the Court's MTD Order, at the same time that Plaintiffs were preparing  
 21 to file the TAC, the Parties commenced settlement negotiations to resolve this Action.

22      On June 13, 2018, the Parties submitted a joint stipulation requesting an extension  
 23 of the deadline for Plaintiffs to file the TAC and a new briefing schedule for any motion  
 24 to dismiss. (ECF No. 100.)

25      On June 14, 2018, the Court so ordered the Parties' June 13, 2018 stipulation,  
 26 extending the time for Plaintiffs to file their TAC until June 29, 2018 and setting a  
 27 briefing schedule for any related motion to dismiss. (ECF No. 101.)

28      On June 27, 2018, the Parties submitted another joint stipulation requesting an

1 extension of the deadline for Plaintiffs to file the TAC and a new briefing schedule for  
2 any motion to dismiss. (ECF No. 104.) Absent an order of the Court approving the  
3 Parties' June 27, 2018 stipulation, Plaintiffs filed their TAC on June 29, 2018, removing  
4 John S. Yu, Andrew Gengos, Vincent Cassano, Christopher French, and Stephen  
5 Ramey as defendants. (ECF No. 105.)

6 On July 2, 2018, the Court entered the Parties' June 27, 2018 stipulation,  
7 extending all deadlines in the Court's June 14, 2018 Order by a period of fourteen (14)  
8 days and staying the case for those fourteen (14) days. (ECF No. 106.)

9 On July 11, 2018, Plaintiffs filed a Notice of Dismissal without prejudice, of  
10 claims against John S. Yu and Andrew Gengos. (ECF No. 107.)

11 The Parties continued thereafter to engage in settlement discussions. On or  
12 around July 17, 2018, the Parties agreed upon a settlement in principle. The following  
13 day, they promptly notified the Court of their tentative agreement and requested the  
14 Court to stay all pending deadlines to allow them time to negotiate and submit a written  
15 settlement agreement and motion for preliminary approval of a class action settlement.  
16 On July 25, 2018, the Court granted the request and vacated all deadlines pending  
17 finalization and submission of the settlement documents to the Court. (ECF No. 109.)

18 **II. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLEMENT**

19 Plaintiffs believe that the claims asserted in the Litigation have merit and that the  
20 evidence developed to date supports the claims. However, Plaintiffs and their counsel  
21 recognize and acknowledge the expense and length of continued proceedings necessary  
22 to prosecute the Litigation against Defendants through trial and through appeals.  
23 Plaintiffs and their counsel also have taken into account the uncertain outcome and the  
24 risk of any litigation, especially in complex actions such as this Action, as well as the  
25 difficulties and delays inherent in such litigation. Plaintiffs and their counsel also are  
26 mindful of the inherent problems of proof, and possible defenses to the securities law  
27 violations asserted in the Litigation. Plaintiffs and their counsel believe that the  
28 Settlement set forth in this Stipulation confers substantial benefits upon the Settlement

1 Class. Based on their evaluation, Plaintiffs and Co-Lead Counsel have determined that  
2 the Settlement set forth in this Stipulation is in the best interests of Plaintiffs and the  
3 Settlement Class.

4 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

5 Settling Defendants believe that the claims asserted in the Litigation are  
6 completely without merit. Settling Defendants have denied and continue to deny any  
7 and all wrongdoing whatsoever and maintain that their conduct was at all times proper  
8 and in compliance with applicable provisions of law. Settling Defendants have denied,  
9 and continue to deny each and all of the claims alleged by Plaintiffs in the Litigation  
10 and deny that they have committed any of the wrongful acts or violations of law alleged  
11 in any complaint filed by Plaintiffs, including that they made any material  
12 misrepresentations or omissions. Settling Defendants deny all charges of wrongdoing  
13 or liability against them arising out of any of the conduct, statements, acts, or omissions  
14 alleged, or that could have been alleged, in the Litigation. Settling Defendants also  
15 deny, among other things, the allegations that the Plaintiffs or the Settlement Class have  
16 suffered damages or were harmed in any way by the conduct alleged in the TAC or its  
17 predecessor complaints. In addition, Settling Defendants believe that they have  
18 meritorious defenses to all claims alleged in the Litigation. Nonetheless, Settling  
19 Defendants have agreed to enter into the Settlement to avoid the expense, distraction,  
20 and time associated with continuing the Litigation. Settling Defendants have concluded  
21 that further conduct of the Litigation would be protracted and expensive and that it is  
22 desirable that the Litigation be fully and finally settled in the manner and upon the terms  
23 and conditions set forth in this Stipulation. Nothing in this Stipulation shall be  
24 construed or deemed to be an admission or concession on the part of any Defendant  
25 with respect to any claim, fault, liability, wrongdoing, or damage whatsoever, or with  
26 respect to the validity of the defenses that any Defendant has asserted or may assert.

27 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

28

1           NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and  
2 among Plaintiffs, on behalf of themselves and all Settlement Class Members, and  
3 Settling Defendants, by and through their respective counsel of record, that, subject to  
4 the approval of the Court pursuant to Federal Rule of Civil Procedure 23(e), the  
5 Litigation, the Released Claims, and all matters encompassed within the scope of the  
6 releases set forth herein shall be finally, fully, and forever compromised, settled, and  
7 released, and the Litigation shall be dismissed with prejudice, upon and subject to the  
8 terms and conditions of the Stipulation, as follows:

9 **DEFINITIONS**

10         As used in this Stipulation, the following terms have the meanings specified  
11 below:

12         1.1    “Authorized Claimant” means any Settlement Class Member who files a  
13 Proof of Claim and Release in such form and manner, and within such time, as the Court  
14 shall prescribe and whose claim for recovery has been allowed pursuant to the terms of  
15 the Stipulation.

16         1.2    “Claims Administrator” means A.B. Data, Ltd.

17         1.3    “Co-Lead Counsel” means Levi & Korsinsky, LLP and Wolf Popper LLP.

18         1.4    “Court” means the United States District Court for the Central District of  
19 California.

20         1.5    “Defendants” means ImmunoCellular Therapeutics, Ltd. (“IMUC”),  
21 David Fractor, Manish Singh, Lavos, LLC, Lidingo Holdings, LLC, Kamilla Bjorlin,  
22 Andrew Hodge, Brian Nichols, John S. Yu, Andrew Gengos, Vincent Cassano,  
23 Christopher French and Stephen Ramey.

24         1.6    “Effective Date” means the first date by which all of the events and  
25 conditions specified in ¶ 9.1 of the Stipulation have been met and have occurred.

26         1.7    “Escrow Account” means the interest-bearing account deposited with the  
27 Escrow Agent.

1           1.8 “Escrow Agent” means Signature Bank, subject to the control of Wolf  
 2 Popper LLP.

3           1.9 “Fee and Expense Application” means the application or applications Co-  
 4 Lead Counsel may submit for an award of attorneys’ fees not to exceed 25% of the  
 5 Settlement Amount, plus expenses incurred in connection with prosecuting the  
 6 Litigation, plus any interest on such attorneys’ fees and expenses at the same rate and  
 7 for the same time periods as earned by the Settlement Fund (until paid), as may be  
 8 awarded by the Court. The Fee and Expense Application may also include a request on  
 9 behalf of Lead Plaintiffs of their reasonable costs incurred in the representation of the  
 10 Class, including lost wages, not to exceed \$2,500 per Plaintiff.

11          1.10 “Fee and Expense Award” means the order of the Court authorizing the  
 12 payment from the Settlement Fund of Co-Lead Counsel’s attorneys’ fees and expenses  
 13 if and to the extent allowed by the Court. The Fee and Expense Award may include an  
 14 award on behalf of Lead Plaintiffs of their reasonable costs incurred in the  
 15 representation of the Class, including lost wages, not to exceed \$2,500 per Plaintiff.

16          1.11 “Final” means the time when any judgment or order, including the  
 17 Judgment, has not been reversed, vacated, or modified in any way and is no longer  
 18 subject to appellate review, either because: (i) no appeal has been filed and the time has  
 19 passed for any notice of appeal to be timely filed in the Action; or (ii) an appeal has  
 20 been filed and the court of appeals has either affirmed the underlying order or judgment  
 21 in its entirety or dismissed that appeal, and the time for any reconsideration or further  
 22 appellate review has passed; or (iii) the Supreme Court has either denied review or  
 23 granted review and either affirmed the underlying order or judgment in its entirety, or  
 24 affirmed the court of appeals’ decision affirming the order or judgment in its entirety or  
 25 dismissing the appeal. For purposes of this paragraph, an “appeal” shall include any  
 26 petition for a writ of certiorari or other writ that may be filed in connection with approval  
 27 or disapproval of this Settlement, but shall not include any appeal that concerns only  
 28 the issue of attorneys’ fees and/or expenses, the Plan of Allocation of the Settlement

1 Fund, the procedures for determining Authorized Claimants' recognized claims, or  
 2 distribution of the Net Settlement Fund to Authorized Claimants. Any appeal or  
 3 proceeding relating solely to one or more of these excluded issues shall not in any way  
 4 delay or affect the time set forth above for the Judgment to become Final, or otherwise  
 5 preclude the Judgment from becoming Final.

6       1.12 "Final Approval Hearing" means the hearing to determine whether the  
 7 proposed Settlement embodied by this Stipulation is fair, reasonable, and adequate to  
 8 the Settlement Class, whether the Settlement Class should be certified for purposes of  
 9 effectuating the Settlement, and whether the Court should enter a Judgment approving  
 10 the proposed Settlement.

11       1.13 "IMUC" means ImmunoCellular Therapeutics, Ltd.

12       1.14 "Individual Defendants" means David Fractor, John S. Yu, Andrew  
 13 Gengos, Manish Singh, Kamilla Bjorlin, Andrew Hodge, Brian Nichols, Vincent  
 14 Cassano, Christopher French and Stephen Ramey.

15       1.15 "Judgment" means the Final Judgment and Order of Dismissal with  
 16 Prejudice to be rendered by the Court, in the form attached hereto as Exhibit B, or such  
 17 other substantially similar form agreed to by the Parties and approved by the Court.

18       1.16 "Lavos" means Lavos, LLC.

19       1.17 "Lidingo" means Lidingo Holdings, LLC.

20       1.18 "Litigation" and "Action" both mean and refer to this proceeding, *Kaye v.*  
 21 *ImmunoCellular Therapeutics, Ltd. et al.*, Case No. 2:17-cv-03250-FMO-SK, pending  
 22 in this Court.

23       1.19 "Net Settlement Fund" means the Settlement Fund less (i) any Fee and  
 24 Expense Award; (ii) Notice and Administration Costs; (iii) Taxes and Tax Expenses;  
 25 and (iv) other Court-approved deductions.

26       1.20 "Notice" means the Notice of Proposed Class Action Settlement, in the  
 27 form annexed hereto as Exhibit A-2 to the Preliminary Approval Order, or such other  
 28 || substantially similar form agreed to by the Settling Parties and approved by the Court.

1           1.21 “Notice and Administration Costs” means the reasonable costs and  
 2 expenses that are actually incurred in connection with (i) providing notice of the  
 3 Settlement to the Settlement Class; (ii) locating Settlement Class Members; (iii)  
 4 assisting with the filing of claims; (iv) processing Proof of Claim and Release forms;  
 5 (v) administering and distributing the Net Settlement Fund to Authorized Claimants;  
 6 and (vi) paying escrow fees and costs, if any.

7           1.22 “Party” or “Parties” means individually or collectively, as the context  
 8 requires, Plaintiffs and the Settling Defendants.

9           1.23 “Person” means a natural person, individual, corporation, partnership,  
 10 limited partnership, association, joint stock company, joint venture, limited liability  
 11 company, professional corporation, estate, legal representative, trust or trustee,  
 12 unincorporated association, government or any political subdivision or agency thereof,  
 13 and any other type of legal, business or political entity.

14           1.24 “Plaintiffs” means and includes Arthur Kaye IRA FCC as Custodian DTD  
 15 6-8-00 and Hayden Leason, appointed as Co-Lead Plaintiffs by Order of the Court dated  
 16 July 21, 2017 (ECF No. 35).

17           1.25 “Plan of Allocation” means a plan or formula for allocation of the Net  
 18 Settlement Fund to be approved by the Court, which plan or formula will govern the  
 19 distribution of the Net Settlement Fund to Authorized Claimants. Any Plan of  
 20 Allocation is not part of the Stipulation, and Released Persons shall have no  
 21 responsibility for the Plan of Allocation or its implementation and no liability with  
 22 respect thereto. Any order or proceedings relating to the Plan of Allocation shall not  
 23 operate to terminate or cancel this Stipulation or affect the finality of the Judgment or  
 24 any other orders entered by the Court pursuant to this Stipulation.

25           1.26 “Postcard Notice” means the “Postcard Notice of Proposed Class Action  
 26 Settlement, in the form annexed hereto as Exhibit A-1 to the Preliminary Order, or such  
 27 substantially similar form agreed to by the Settling Parties and approved by the Court.  
 28

1           1.27 “Preliminary Approval Order” means the [Proposed] Order Granting  
 2 Preliminary Approval of Settlement and Directing Dissemination of Notice to  
 3 Settlement Class, in the form annexed hereto as Exhibit A, or such other substantially  
 4 similar form agreed to by the Settling Parties, as entered by the Court.

5           1.28 “Proof of Claim and Release” means a completed Proof of Claim and  
 6 Release, substantially in the form of Exhibit A-4 attached hereto, signed under penalty  
 7 of perjury and supported by such documents as are specified in the Proof of Claim and  
 8 Release, submitted as required under ¶ 7.3 herein.

9           1.29 “Related Persons” shall mean: (1) with respect to IMUC, Lidingo, and  
 10 Lavos, each of their predecessors, successors, past, present or future parents,  
 11 subsidiaries, and affiliates, each of their respective past or present officers, directors,  
 12 agents, partners, principals, members, employees, attorneys, advisors, auditors and  
 13 accountants, insurers and reinsurers, and any firm, trust, corporation, or other entity in  
 14 which IMUC, Lidingo, or Lavos has or had a controlling interest; and (2) with respect  
 15 to the Individual Defendants, their respective spouses, immediate family members,  
 16 heirs, successors, executors, estates, administrators, attorneys, agents, accountants,  
 17 insurers or reinsurers, personal representatives, trusts, community property, and any  
 18 other entity in which any of them has a controlling interest, and as to such entities, each  
 19 and all of their predecessors, successors, past, present or future parents, subsidiaries,  
 20 affiliates, and each of their respective past or present officers, directors, shareholders,  
 21 agents, partners, principals, members, employees, attorneys, advisors, trustees, auditors  
 22 and accountants, insurers and reinsurers.

23           1.30 “Released Claims” means any and all claims (including Unknown Claims  
 24 as defined in ¶ 1.44 hereof), duties, debts, demands, rights, disputes, suits, matters,  
 25 damages, losses, obligations, proceedings, issues, judgments, liabilities, and causes of  
 26 action of every nature and description whatsoever (including, but not limited to, any  
 27 claims for damages, whether compensatory, consequential, special, punitive, exemplary  
 28 or otherwise; restitution; rescission; interest; attorneys’ fees; expert or consulting fees;

1 and any other costs, expenses, charges, or liability whatsoever), whether based on  
2 federal, state, local, statutory, common, administrative, or foreign law or any other law,  
3 rule or regulation, or at equity, whether known or unknown, discoverable or  
4 undiscoverable, concealed or hidden, suspected or unsuspected, liquidated or  
5 unliquidated, fixed or contingent, choate or inchoate, accrued or unaccrued, matured or  
6 unmatured, at law or in equity, whether class, derivative, or individual in nature, which  
7 now exist or heretofore have existed or have been or could have been asserted in any  
8 forum, whether foreign or domestic, by Plaintiffs or any Settlement Class Member, or  
9 any Person claiming through or on behalf of any of them, against any of the Released  
10 Persons based upon, arising out of, or relating in any way to the claims, allegations,  
11 acts, events, facts, matters, transactions, occurrences, statements, representations,  
12 misrepresentations or omissions that are, were, or could have been alleged in the  
13 Litigation, including, but not limited to, any claim arising out of any purchase or  
14 acquisition of IMUC securities on the open market during the Settlement Class Period.  
15 Expressly excluded from Released Claims are: (i) the matters set forth in ¶ 6.5 of this  
16 Stipulation; and (ii) the shareholder derivative claims asserted in *Wiener et al. v. Fractor*  
17 *et al.*, pending in the Superior Court of the State of California, County of Los Angeles.

18       1.31 “Released Persons” means each and all of the Defendants, and their  
19 respective Related Persons.

20       1.32 “Settlement” means the settlement between Plaintiffs, on behalf of  
21 themselves and all Settlement Class Members, and Settling Defendants on the terms set  
22 forth in this Stipulation.

23       1.33 “Settlement Amount” means One Million One Hundred and Fifty  
24 Thousand Dollars (\$1,150,000).

25       1.34 “Settlement Class” and “Settlement Class Members” mean and include,  
26 for purposes of this Settlement, and to be certified pursuant to Fed. R. Civ. P. 23 for the  
27 purpose of effectuating this Settlement only: all Persons who purchased or otherwise  
28 acquired IMUC common stock on the open market during the Settlement Class Period,

1 including Plaintiffs. Excluded from the Settlement Class are Defendants; members of  
 2 the Defendants' immediate families; officers, directors, and subsidiaries of IMUC; any  
 3 firm, entity, or corporation wholly owned by any Defendant and/or any member(s) of a  
 4 Defendant's immediate family; any trust of which a Defendant is the settlor or which is  
 5 for his benefit and/or that of any member of his immediate family (as defined by SEC  
 6 regulations); and the legal representatives, heirs, or successors-in-interest of the Settling  
 7 Defendants. Also excluded from the Settlement Class are those Persons who timely  
 8 and validly request exclusion from the Settlement Class in accordance with the  
 9 instructions provided in the Notice.

10       1.35 "Settlement Class Period" means the period between May 1, 2012 and May  
 11 30, 2014, inclusive.

12       1.36 "Settlement Fund" means the Settlement Amount, plus any accrued  
 13 interest earned thereon.

14       1.37 "Settling Defendants" has the meaning set forth in the introductory  
 15 paragraph of this Stipulation.

16       1.38 "Settling Parties" has the meaning set forth in the introductory paragraph  
 17 of this Stipulation.

18       1.39 "Stipulation" means this Stipulation of Settlement, including the recitals  
 19 and Exhibits hereto, each of which is incorporated by reference as though set forth in  
 20 the Stipulation itself.

21       1.40 "Summary Notice" means the summary notice describing the Settlement  
 22 of the Litigation and the Final Approval Hearing, in the form annexed hereto as Exhibit  
 23 A-3 to the Preliminary Approval Order, or such other substantially similar form agreed  
 24 to by the Settling Parties and approved by the Court.

25       1.41 "Supplemental Agreement" means the confidential agreement described in  
 26 ¶ 9.5 of this Stipulation.

27       1.42 "Taxes" means all federal, state and local taxes of any kind (including any  
 28 estimated taxes, interest or penalties) arising with respect to the income earned by the

1 Settlement Fund, including any taxes or tax detriments that may be imposed upon  
 2 Defendants or their counsel with respect to any income earned on the Settlement Fund  
 3 for any period during which the Settlement Fund does not qualify as a “Qualified  
 4 Settlement Fund” for federal or state income tax purposes.

5       1.43 “Tax Expenses” means any expenses and costs incurred in connection with  
 6 the calculation and payment of Taxes or the preparation of tax returns and related  
 7 documents including, without limitation, expenses of tax attorneys and/or accountants  
 8 and mailing and distribution costs and expenses relating to filing (or failing to file) the  
 9 returns described in ¶ 2.9.

10      1.44 “Unknown Claims” means any and all claims, debts, demands, obligations,  
 11 disputes, rights, issues, controversies, causes of action, suits, matters, damages, or  
 12 liabilities of every kind, nature, description and character whatsoever that Plaintiffs  
 13 and/or any Settlement Class Member does not know or suspect to exist in his, her, or its  
 14 favor at the time this Stipulation or the Judgment is entered which, if known by him,  
 15 her, or it, would or might have affected his, her, or its settlement with and release of the  
 16 Released Persons, or would or might have affected his, her, or its decision: (i) not to  
 17 object to this Settlement; (ii) not to exclude himself, herself, or itself from the  
 18 Settlement Class; or (iii) to release the Released Claims. Plaintiffs and Settlement Class  
 19 Members may hereafter discover facts in addition to or different from those which they  
 20 now know or believe to be true with respect to the subject matter of the Released Claims.  
 21 Nevertheless, upon the Effective Date, Plaintiffs shall expressly, fully, finally, and  
 22 forever settle and release, and each Settlement Class Member shall be deemed to have,  
 23 and by operation of the Judgment shall have, fully, finally, and forever settled and  
 24 released, any and all Released Claims, whether known or unknown, discoverable or  
 25 undiscoverable, concealed or hidden, suspected or unsuspected, liquidated or  
 26 unliquidated, fixed or contingent, choate or inchoate, accrued or unaccrued, matured or  
 27 unmatured, which now exist, or heretofore have existed, upon any theory of law or  
 28 equity now existing or coming into existence in the future, including, but not limited to,

1 conduct that is negligent, intentional, with or without malice, or a breach of any duty,  
 2 law or rule, without regard to the subsequent discovery or existence of such different or  
 3 additional facts. With respect to any and all Released Claims, the Settling Parties  
 4 stipulate and agree that, upon the Effective Date, Plaintiffs shall expressly waive and  
 5 relinquish, and each of the Settlement Class Members shall be deemed to have waived  
 6 and relinquished, and by operation of the Judgment shall have waived and relinquished,  
 7 any and all provisions, rights, and benefits conferred by any law of any state or territory  
 8 of the United States, or principle of common law, which is similar, comparable or  
 9 equivalent to California Civil Code Section 1542, which provides:

10           **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.**

14           Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by  
 15 operation of the Judgment to have acknowledged, that the inclusion of Unknown Claims  
 16 in the definition of Released Claims and the foregoing waiver were separately bargained  
 17 for and a key element of the Settlement of which this release is a material and essential  
 18 part.

## 19           THE SETTLEMENT

### 20           *The Settlement Fund*

21           2.1     In consideration of the terms of this Stipulation, and in full settlement of  
 22 all Released Claims against all Released Persons, IMUC shall pay or cause to be paid  
 23 the Settlement Amount to a separate, interest-bearing Escrow Account designated and  
 24 controlled by the Claims Administrator on behalf of Plaintiffs and the Settlement Class  
 25 no later than twenty-one (21) days after both of the following have taken place: (a) the  
 26 Court has entered the Preliminary Approval Order granting preliminary approval of the  
 27 Settlement; and (b) IMUC's counsel have received from Co-Lead Counsel a Form W-  
 28 9 providing the tax identification number for the Escrow Account. No other Defendant

1 or Released Person shall be responsible for any payments of any kind under this  
 2 Stipulation.

3       2.2 The payments described in ¶ 2.1 are the only payments to be made by or  
 4 on behalf of Defendants in connection with this Settlement. All fees, costs, and  
 5 expenses incurred by or on behalf of Plaintiffs and Settlement Class Members  
 6 associated with this Settlement, including, but not limited to, Taxes, Tax Expenses,  
 7 Notice and Administration Costs, and any Fee and Expense Award shall be paid from  
 8 the Settlement Fund, and in no event shall Released Persons bear any responsibility or  
 9 liability for any such fees, costs, or expenses.

10      2.3 This is not a claims-made settlement. Upon the occurrence of the Effective  
 11 Date, neither IMUC nor any other Person that paid any portion of the Settlement Fund  
 12 on Defendants' behalf shall have any right to the return of the Settlement Fund or any  
 13 portion thereof irrespective of the collective amount of losses of Authorized Claimants,  
 14 the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants  
 15 from the Net Settlement Fund. In no instance shall IMUC (or any other Defendant or  
 16 Released Person) be required to pay any amount in excess of the Settlement Amount.

17           ***The Escrow Agent***

18      2.4 The Escrow Agent shall invest the Settlement Amount(s) deposited  
 19 pursuant to ¶ 2.1 hereof in short-term United States agency or other Treasury securities  
 20 or other instruments backed by the full faith and credit of the United States Government  
 21 or fully insured by the United States Government or an agency thereof, and shall  
 22 reinvest the proceeds of these instruments as they mature in similar instruments at their  
 23 then-current market rates. All risks related to the investment of the Settlement Fund  
 24 shall be borne by the Escrow Agent, and the Released Persons shall have no  
 25 responsibility for, interest in, or liability whatsoever with respect to any investment  
 26 decisions or actions taken, or any transactions executed, by the Escrow Agent.

27      2.5 The Escrow Agent shall not disburse the Settlement Fund except as  
 28 || provided in the Stipulation or by an order of the Court.

1           2.6   Subject to further order and/or directions as may be made by the Court, or  
2 as provided in the Stipulation, the Escrow Agent is authorized to execute such  
3 transactions as are consistent with the terms of the Stipulation.

4           2.7   All funds held by the Escrow Agent shall be deemed and considered to be  
5 in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court,  
6 until such time as such funds shall be distributed or returned pursuant to this Stipulation  
7 and/or further order(s) of the Court.

8           2.8   Without further order of the Court, the Settlement Fund may be used by  
9 Co-Lead Counsel to pay Notice and Administration Costs actually incurred consistent  
10 with this Stipulation and ¶ 18 of the Preliminary Approval Order in a cumulative amount  
11 not to exceed \$50,000.

12           **Taxes**

13           2.9   (a)   The Settling Parties and the Escrow Agent agree to treat the  
14 Settlement Fund as being at all times a “Qualified Settlement Fund” within the meaning  
15 of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such  
16 elections as necessary or advisable to carry out the provisions of this ¶ 2.9, including  
17 the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest  
18 permitted date. Such elections shall be made in compliance with the procedures and  
19 requirements contained in such regulations. It shall be the responsibility of the Escrow  
20 Agent to timely and properly prepare and deliver the necessary documentation for  
21 signature by all necessary parties, and thereafter to cause the appropriate filing to timely  
22 occur.

23           (b)   For the purpose of § 1.468B of the Internal Revenue Code of 1986,  
24 as amended, and the regulations promulgated thereunder, the “administrator” shall be  
25 the Escrow Agent. The Escrow Agent shall timely and properly file all informational  
26 and other tax returns necessary or advisable with respect to the Settlement Fund  
27 (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)).  
28           Such returns (as well as the election described in ¶ 2.9(a) hereof) shall be consistent

1 with this ¶ 2.9 and in all events shall reflect that all Taxes (including any estimated  
 2 Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid  
 3 out of the Settlement Fund as provided in ¶ 2.9(c) hereof.

4                   (c) All Taxes and Tax Expenses shall be paid out of the Settlement  
 5 Fund; in no event shall any Released Person, their counsel, or their insurers have any  
 6 responsibility for, or liability whatsoever with respect to, the Taxes or the Tax Expenses.  
 7 The Escrow Agent, through the Settlement Fund, shall indemnify and hold each of the  
 8 Released Persons harmless for any Taxes and Tax Expenses (including, without  
 9 limitation, Taxes payable by reason of any such indemnification). Further, Taxes and  
 10 Tax Expenses shall be treated as, and considered to be, a cost of administration of the  
 11 Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement  
 12 Fund without prior order from the Court, and the Escrow Agent shall be authorized  
 13 (notwithstanding anything herein to the contrary) to withhold from distribution to  
 14 Authorized Claimants any funds necessary to pay such amounts, including the  
 15 establishment of adequate reserves for any Taxes and Tax Expenses (as well as any  
 16 amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). In  
 17 all events neither Defendants nor their counsel and insurers, nor any other Released  
 18 Person, shall have any responsibility for or liability whatsoever with respect to any  
 19 Taxes or Tax Expenses or the filing of any tax returns or other documents with the  
 20 Internal Revenue Service or any state or local taxing authority in connection with the  
 21 Settlement Fund. The Settling Parties agree to cooperate with the Escrow Agent, each  
 22 other, and their tax attorneys and accountants to the extent reasonably necessary to carry  
 23 out the provisions of this paragraph.

24                   ***Termination of the Settlement***

25                   2.10 In the event that the Stipulation is not approved, or is terminated, canceled,  
 26 or fails to become effective or Final for any reason, the Settlement Amount, including  
 27 accrued interest, less any Notice and Administration Costs, Taxes, and Tax Expenses

1 paid, incurred or due and owing shall be refunded to such Persons that paid the  
 2 Settlement Amount(s) in accordance with ¶¶ 8.3 and 9.6 herein.

3 **PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL HEARING**

4       3.1 Promptly after execution of the Stipulation, Co-Lead Counsel shall submit  
 5 the Stipulation together with its Exhibits to the Court, and Co-Lead Counsel shall apply  
 6 for entry of the Preliminary Approval Order, substantially in the form of Exhibit A  
 7 attached hereto, requesting, among other things, the preliminary approval of the  
 8 Settlement set forth in the Stipulation; approval for mailing the Postcard Notice in the  
 9 form of Exhibit A-1 attached hereto, or such other substantially similar form agreed to  
 10 by the Parties and approved by the Court; and publication of the Summary Notice, in  
 11 the form of Exhibit A-3 attached hereto, or such other substantially similar form agreed  
 12 to by the Settling Parties and approved by the Court.

13       3.2 Lead Counsel shall request that, after notice is given, the Court hold a Final  
 14 Approval Hearing to consider and determine, among other things, whether to approve  
 15 the Settlement pursuant to the terms of this Stipulation as fair, reasonable, and adequate,  
 16 and whether the Judgment, substantially in the form of Exhibit B attached hereto, should  
 17 be entered approving the Settlement and dismissing the Litigation with prejudice. At  
 18 or after the Final Approval Hearing, Co-Lead Counsel also will request that the Court  
 19 approve the proposed Plan of Allocation and the Fee and Expense Application.

20 **CERTIFICATION OF THE SETTLEMENT CLASS**

21       4.1 For purposes of this Settlement only, and subject to approval by the Court,  
 22 the Settling Parties stipulate to: (i) certification of the Settlement Class pursuant to Rules  
 23(a) and (b)(3) of the Federal Rules of Civil Procedure; (ii) appointment of Plaintiffs  
 24 as the class representatives for the Settlement Class; and (iii) appointment of Co-Lead  
 25 Counsel as counsel to the Settlement Class.

26       4.2 Nothing in this Stipulation shall serve in any fashion, either directly or  
 27 indirectly, as evidence of or support for certification of a class other than for purposes  
 28 of the Settlement. If this Stipulation is terminated, the Settlement is not approved by

1 the Court, or the Effective Date does not occur for any reason, any certification of the  
2 Settlement Class will be null and void and the Litigation shall proceed as if the  
3 Settlement Class had never been certified. Settling Defendants expressly reserve all  
4 rights and grounds to oppose class certification in the event the Settlement is terminated  
5 or the Effective Date does not occur for any reason.

6 **REQUESTS FOR EXCLUSION**

7       5.1 Settlement Class Members requesting exclusion from the Settlement Class  
8 shall be requested to provide certain information in the manner described in the  
9 Settlement Notice. Any request for exclusion must also be signed by the Person  
10 requesting exclusion.

11      5.2 All Persons who submit valid and timely requests for exclusion in the  
12 manner set forth in the Notice shall have no rights under the Stipulation, shall not share  
13 in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation  
14 or the Judgment. The deadline for submitting requests for exclusion shall be set by the  
15 Court, but shall be no later than twenty-one (21) calendar days before the Final  
16 Approval Hearing. Exclusion requests may not be submitted by e-mail, unless  
17 otherwise ordered by the Court.

18      5.3 Copies of all requests for exclusion received by the Claims Administrator,  
19 Co-Lead Counsel and counsel for Settling Defendants, together with copies of all  
20 written revocations of requests for exclusion, shall be delivered to counsel for all Parties  
21 within five (5) calendar days of receipt and in no event later than fourteen (14) calendar  
22 days before the Final Approval Hearing.

23 **RELEASES**

24      6.1 The satisfaction of the obligations incurred pursuant to this Stipulation  
25 shall be in full and final disposition of the Litigation and any and all Released Claims.

26      6.2 Upon the Effective Date, Plaintiffs and all other Settlement Class  
27 Members, each of their respective Related Persons, and all other Persons who have or  
28 claim the right, ability, standing, or capacity to assert, prosecute, or maintain on behalf

1 of any Settlement Class Member any of the Released Claims (or to obtain the proceeds  
2 of any recovery therefrom) shall be deemed to have, and by operation of the Judgment  
3 shall have, fully, finally, and forever released, relinquished, discharged, and dismissed  
4 all Released Claims (including Unknown Claims) against the Released Persons,  
5 whether or not such Settlement Class Member executes and delivers a Proof of Claim  
6 and Release form, seeks or obtains a distribution from the Net Settlement Fund, is  
7 entitled to receive a distribution under the Plan of Allocation approved by the Court, or  
8 has objected to any aspect of the Stipulation or the Settlement, the Plan of Allocation,  
9 or Co-Lead Counsel's Fee and Expense Application.

10       6.3 Upon the Effective Date, Plaintiffs, all Settlement Class Members and  
11 anyone claiming through or on behalf of any of them, shall be forever barred and  
12 enjoined from commencing, instituting, maintaining or continuing to prosecute any  
13 action or proceeding in any court of law or equity, arbitration tribunal, administrative  
14 forum, or other forum of any kind, asserting any of the Released Claims (including  
15 Unknown Claims) against any of the Released Persons; provided, however, that nothing  
16 herein shall in any way restrict or impair the rights of any Settling Party to enforce the  
17 terms of the Stipulation and Settlement.

18       6.4 Upon the Effective Date, Settling Defendants shall be deemed to have, and  
19 by operation of the Judgment shall have, fully, finally, and forever released,  
20 relinquished, and discharged Plaintiffs, Settlement Class Members, Co-Lead Counsel  
21 and their respective Related Persons from all claims (including Unknown Claims)  
22 arising out of, relating to, or in connection with the institution, prosecution, assertion,  
23 settlement, or resolution of the Litigation; provided, however, that nothing herein shall  
24 in any way restrict or impair the rights of any Defendant or other Released Person to  
25 enforce the terms of the Stipulation and Settlement.

26       6.5 Nothing in this Stipulation constitutes or reflects a waiver or release of any  
27 rights or claims of Defendants with respect to their insurers and/or the insurers' Related  
28 Persons, including, but not limited to, any rights or claims under any directors and

1 officers' liability insurance or other applicable insurance coverage maintained by  
 2 IMUC.

3 **ADMINISTRATION AND CALCULATION OF CLAIMS AND SUPERVISION**  
 4 **AND DISTRIBUTION OF SETTLEMENT FUND**

5       7.1 The Claims Administrator, subject to such supervision and direction of Co-  
 6 Lead Counsel and the Court as may be necessary under the circumstances, shall  
 7 administer and calculate the claims submitted by Settlement Class Members and shall  
 8 oversee distribution of the Net Settlement Fund to Authorized Claimants.

9       7.2 The Settlement Fund shall be applied as follows:

10           (a) To pay the Notice and Administrative Costs, including:

11              i.     Printing and mailing of the Postcard Notice, Notice and Proof  
 12 of Claim and Release to the Settlement Class;

13              ii.    Publication of the Summary Notice;

14              iii.   The Claims Administrator's costs and fees for services  
 15 performed in connection with the administration of the Settlement contemplated by this  
 16 Stipulation;

17              iv.    Costs to reimburse brokers or nominees in connection with  
 18 dissemination of the Postcard Notice and Notice to the Class;

19              v.     Fees and expenses reasonably and actually incurred in  
 20 locating members of the Settlement Class;

21           (b) To pay the fees and expenses reasonably and actually incurred in  
 22 connection with assisting with the filing of claims and processing of Proofs of Claim  
 23 and Releases;

24              (c) To pay escrow fees and costs, if any;

25              (d) To pay Taxes and Tax Expenses;

26              (e) After the Judgment is Final, to pay the Fee and Expense Award; and

(f) After the Effective Date, to distribute the balance of the Net Settlement Fund to Authorized Claimants as allowed by the Stipulation and Plan of Allocation, as approved by the Court.

7.3 After the Effective Date, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further orders of the Court as circumstances may warrant or require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following: Within one hundred ten (110) days after the mailing of the Postcard Notice or such other time as may be set by the Court, each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release, substantially in the form of Exhibit A-4 attached hereto, signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and Release. All Proof of Claim and Release forms must be submitted by the date specified in the Notice, unless such period is extended by the Court.

7.4 Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim and Release within such period described in ¶ 7.3 above, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments pursuant to the Stipulation and the Settlement set forth herein, but will in all other respects be subject to and bound by the provisions of the Stipulation, the releases contained herein, and the Judgment. Notwithstanding the foregoing, Co-Lead Counsel shall have the discretion to accept late-submitted claims so long as distribution of the Net Settlement Fund is not materially delayed thereby.

7.5 The Claims Administrator shall calculate the Claims of Authorized Claimants, determine the extent to which claims shall be allowed, and oversee distribution of the Net Settlement Fund 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 Fund after six (6) months from the date of initial distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Co-

1 Lead Counsel shall, if feasible, reallocate such balance among Authorized Claimants in  
 2 an equitable and economic fashion. Thereafter, any balance which still remains in the  
 3 Net Settlement Fund shall be, subject to the payment of any additional previously  
 4 unreimbursed Notice and Administration Costs, donated to an appropriate, non-profit  
 5 501(c)(3) charitable organization as determined by Co-Lead Counsel.

6       7.6 Settling Defendants, their counsel, and their insurers shall have no role in,  
 7 responsibility for, interest in, or liability with respect to any of the following: (i) any  
 8 act, omission, or determination of Co-Lead Counsel, the Escrow Agent, or the Claims  
 9 Administrator, or any of their respective designees or agents, in connection with  
 10 administering the Settlement; (ii) the management, investment, or distribution of the  
 11 Settlement Fund; (iii) the Plan of Allocation; (iv) the review, determination,  
 12 administration, calculation, or payment of any claims asserted against the Settlement  
 13 Fund; (v) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or  
 14 (vi) the payment or withholding of any Taxes, Tax Expenses, and/or costs incurred in  
 15 connection with the taxation of the Settlement Fund or filing of any returns. No Person  
 16 shall have any claim of any kind against any Released Person with respect to the  
 17 administration, investment, distribution, and/or supervision of the Settlement Fund, and  
 18 Lead Plaintiff, all Settlement Class Members, and Co-Lead Counsel release all Released  
 19 Persons from any and all liability arising from or with respect to the administration,  
 20 investment, distribution, and/or supervision of the Settlement Fund.

21       7.7 It is understood and agreed by the Settling Parties that any proposed Plan  
 22 of Allocation of the Net Settlement Fund including, but not limited to, any adjustments  
 23 to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and  
 24 is to be considered by the Court separately from the Court's consideration of the  
 25 fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. It  
 26 is further understood and agreed by the Settling Parties that any order or proceeding  
 27 relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation  
 28 or affect or delay the finality of the Court's Judgment approving this Stipulation and the

1 Settlement set forth herein (including the releases contained herein), or any other orders  
 2 entered pursuant to this Stipulation.

**CO-LEAD COUNSEL'S ATTORNEYS' FEES AND EXPENSES**

8.1 Co-Lead Counsel may submit the Fee and Expense Application for an  
 award of attorneys' fees not to exceed 25% of the Settlement Amount, plus expenses  
 incurred in connection with prosecuting the Litigation, plus any interest on such  
 attorneys' fees and expenses at the same rate and for the same time periods as earned  
 by the Settlement Fund (until paid), as may be awarded by the Court. Any Fee and  
 Expense Award shall be payable solely from the Settlement Fund. Aside from payment  
 of the Settlement Amount, no Defendant or any other Released Person shall have any  
 obligation to pay any portion of Co-Lead Counsel's attorneys' fees or Litigation  
 expenses or the Fee and Expense Award, and Settling Defendants take no position with  
 respect to Co-Lead Counsel's Fee and Expense Application.

8.2 The Fee and Expense Award, if and to the extent allowed by the Court,  
 shall be paid to Co-Lead Counsel from the Settlement Fund upon the Court's entry of  
 the Judgment, notwithstanding the existence of any timely filed objections thereto, or  
 any appeal or potential for appeal therefrom, or collateral attack on the Settlement or  
 any part thereof, subject to Co-Lead Counsel's obligation to make appropriate refunds  
 or repayments to the Settlement Fund as specified below in ¶ 8.3. An award of  
 attorneys' fees and/or expenses is not a necessary term of this Stipulation and is not a  
 condition of the Settlement embodied herein. Neither Plaintiffs nor Co-Lead Counsel  
 may cancel or terminate the Settlement based on this Court's or any appellate court's  
 ruling with respect to attorneys' fees and/or Litigation expenses.

8.3 If the Effective Date does not occur, or the Judgment is reversed or  
 modified, or the Fee and Expense Award is reduced or reversed, or the Stipulation is  
 canceled or terminated for any other reason, and in the event that the Fee and Expense  
 Award has been paid to any extent, then Co-Lead Counsel shall within seven (7) days  
 after (a) receiving notice of termination of the Settlement from Defendants' Counsel or

1       (b) any order reversing or modifying the Judgment or reducing or reversing the Fee and  
2 Expense Award has become Final, refund to the Settlement Fund the fees and expenses  
3 previously paid to Co-Lead Counsel from the Settlement Fund, plus interest thereon at  
4 the same rate as earned by the Settlement Fund, in an amount consistent with such  
5 termination, reversal or modification. Co-Lead Counsel receiving fees and expenses  
6 agree as a condition of receiving such fees and expenses that they are subject to the  
7 jurisdiction of the Court for the purpose of enforcing this paragraph. Each Co-Lead  
8 Counsel agrees that the Court may, upon application of Settling Defendants and notice  
9 to Co-Lead Counsel, summarily issue orders including, but not limited to, judgments  
10 and attachment orders and may make appropriate findings of or sanctions for contempt,  
11 should such law firm fail timely to repay fees and expenses pursuant to this ¶ 8.3.

12       8.4      The procedure for and the allowance or disallowance by the Court of any  
13 Fee and Expense Application or Award to be paid out of the Settlement Fund, are not  
14 part of the Settlement set forth in this Stipulation, and are to be considered by the Court  
15 separately from the Court's consideration of the fairness, reasonableness, and adequacy  
16 of the Settlement. Any order or proceeding relating to the Fee and Expense Application,  
17 or any appeal from any order relating thereto or reversal or modification thereof, shall  
18 not operate to terminate or cancel this Stipulation, or affect or delay the finality of the  
19 Judgment approving the Stipulation and the Settlement and releases set forth herein.

20       8.5      The Released Persons shall have no responsibility for, or liability with  
21 respect to any Fee and Expense Application or the payment of any Fee and Expense  
22 Award to Co-Lead Counsel out of the Settlement Fund. The Released Persons shall  
23 have no responsibility for, or liability with respect to, the allocation of any Fee and  
24 Expense Award among Co-Lead Counsel and/or any other Person who may assert some  
25 claim thereto, and the Released Persons take no position with respect thereto.

26  
27  
28

1           **CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**  
2           **CANCELLATION OR TERMINATION**

3           9.1     The Effective Date of this Stipulation shall be the date when all of the  
4     following shall have occurred and is conditioned on the occurrence of all of the  
5     following events:

6                 (a)    Lead Counsel and Settling Defendants' Counsel have executed this  
7     Stipulation and the Supplemental Agreement;

8                 (b)    The Court has entered the Preliminary Approval Order as described  
9     in ¶ 3.1 hereof;

10                 (c)    IMUC has paid or caused to be paid into the Escrow Account the  
11     Settlement Amount as set forth in ¶ 2.1;

12                 (d)    IMUC has not notified Co-Lead Counsel of its election to terminate  
13     the Settlement pursuant to ¶ 9.5 hereof or, if such election has been made, the resulting  
14     termination has been withdrawn pursuant to the terms of the Supplemental Agreement;

15                 (e)    The Court has entered the Judgment, substantially in the form of  
16     Exhibit B attached hereto, or such other substantially similar form agreed to by the  
17     Settling Parties;

18                 (f)    No Settling Party has given notice of its election to terminate the  
19     Settlement pursuant to ¶ 9.3, and the time for doing so has expired; and

20                 (g)    The Judgment has become Final, as defined in ¶ 1.11 hereof.

21           9.2     Upon the occurrence of all of the events referenced in ¶ 9.1 hereof, any and  
22     all remaining interest or right of Settling Defendants in or to the Settlement Fund, if  
23     any, shall be absolutely and forever extinguished. If any of the conditions specified in  
24     ¶ 9.1 hereof are not met, then the Stipulation shall be canceled and terminated subject  
25     to ¶ 9.7 hereof unless Co-Lead Counsel and counsel for Settling Defendants mutually  
26     agree in writing to otherwise proceed with the Stipulation.

27           9.3     Settling Defendants and Plaintiffs shall each have the right to terminate the  
28     Settlement and this Stipulation by providing written notice of their election to do so (a

1       “Termination Notice”) to all other Parties hereto within thirty (30) days of: (a) the  
 2       Court’s declining to enter the Preliminary Approval Order in any material respect;  
 3       (b) the Court’s refusal to approve this Stipulation or any material part of it; (c) the  
 4       Court’s declining to enter the Judgment in any material respect; or (d) the date upon  
 5       which the Judgment is modified or reversed in any material respect by the court of  
 6       appeals or the Supreme Court. However, no order of the Court or modification or  
 7       reversal on appeal of any order of the Court concerning the Plan of Allocation or the  
 8       amount of any attorneys’ fees, costs, expenses, and interest awarded by the Court to Co-  
 9       Lead Counsel shall constitute grounds for cancellation or termination of the Stipulation.

10       9.4      If the Settlement Fund payable pursuant to ¶ 2.1 of this Settlement  
 11       Stipulation is not paid, then Plaintiffs, in their sole discretion, may either: (i) terminate  
 12       the Settlement by providing written notice to all Parties; or (ii) enforce the terms of the  
 13       Stipulation and seek a judgment effecting the terms of the Settlement set forth herein.  
 14       Failure of IMUC to cause the Settlement Fund to be paid shall not serve as a basis for  
 15       any Settling Defendant to terminate the Settlement.

16       9.5      If, prior to the Final Approval Hearing, the aggregate number of shares of  
 17       IMUC Common Stock purchased by Persons who would otherwise be Settlement Class  
 18       Members, but who, in accordance with the provisions in the Notice, timely and validly  
 19       request exclusion from the Settlement Class, exceeds the sum specified in a separate  
 20       supplemental agreement between Plaintiffs and Defendants (the “Supplemental  
 21       Agreement”), IMUC shall have the option (which option shall be exercised on behalf  
 22       of all Defendants in its sole discretion) to terminate this Stipulation and the Settlement  
 23       in accordance with the procedures set forth in the Supplemental Agreement, without  
 24       providing any further reason for its decision to exercise its option to terminate. For  
 25       purposes of the Supplemental Agreement, any request for exclusion that results in the  
 26       exclusion of the Settlement Class Member from the Settlement Class, by order of the  
 27       Court or otherwise, shall be treated as timely and valid. The Supplemental Agreement  
 28       is confidential and will not be filed with the Court unless requested by the Court or a

1 dispute among the Settling Parties concerning its interpretation or application arises  
2 and, in that event, the Settling Parties shall request that the Supplemental Agreement be  
3 filed and maintained under seal. In the event of a termination of the Settlement pursuant  
4 to the Supplemental Agreement, this Stipulation shall become null and void and of no  
5 further force and effect.

6       9.6 Unless otherwise ordered by the Court, in the event the Stipulation is  
7 terminated or canceled, or the Effective Date fails to occur for any reason, then within  
8 seven (7) days after written notification of such event is sent by counsel for Defendants  
9 or Co-Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued  
10 interest), less any Notice and Administration Costs reasonably and actually incurred  
11 pursuant to ¶ 2.8 and Taxes and Tax Expenses that have been paid pursuant to ¶ 2.9  
12 hereof, shall be refunded to the entity or entities that provided the funds, based on their  
13 *pro rata* contribution to the Settlement Fund, as indicated in writing to Co-Lead Counsel  
14 and the Escrow Agent by IMUC's counsel. The Escrow Agent or its designee shall  
15 apply for any tax refund owed on the Settlement Fund and pay the proceeds, after  
16 deduction of any fees or expenses incurred in connection with such application(s) for  
17 refund, in a similar *pro rata* manner, pursuant to written instructions from Defendants'  
18 counsel.

19       9.7 In the event that the Stipulation is not approved by the Court or the  
20 Settlement set forth in the Stipulation is terminated or fails to become effective for any  
21 reason, the Settling Parties shall be deemed to have reverted to their respective status  
22 and positions in the Litigation as of the date and time immediately prior to the execution  
23 of this Stipulation. In such event, the terms and provisions of the Stipulation, with the  
24 exception of ¶¶ 2.5, 2.7–2.10, 4.2, 8.3, 9.6–9.8, 10.2–10.4, 11.3, 11.13–11.14 hereof,  
25 shall have no further force and effect with respect to the Settling Parties and shall not  
26 be used in this Litigation or in any other proceeding for any purpose, and any judgment  
27 or order entered by the Court in accordance with the terms of the Stipulation shall be  
28 treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on

1 appeal of any order of the Court concerning the Plan of Allocation or the amount of any  
2 Fee and Expense Award shall constitute grounds for cancellation or termination of the  
3 Stipulation.

4       9.8 Notwithstanding any provision herein to the contrary, if the Effective Date  
5 does not occur, or if the Stipulation is terminated pursuant to its terms, neither Plaintiffs  
6 nor Co-Lead Counsel shall have any obligation to repay any amounts actually and  
7 properly disbursed pursuant to ¶¶ 2.8–2.9 hereof. In addition, any Notice and  
8 Administrative Costs, Taxes and Tax Expenses already incurred and properly  
9 chargeable pursuant to ¶¶ 2.8–2.9 hereof at the time of such termination or cancellation,  
10 but which have not been paid, shall be paid by the Escrow Agent in accordance with  
11 the terms of the Stipulation prior to the balance being refunded in accordance with  
12 ¶¶ 2.10 and 9.6 hereof.

13 **NO ADMISSION OF WRONGDOING**

14       10.1 The Settling Parties intend this Settlement to be a final and complete  
15 resolution of all disputes between them with respect to the Litigation. The Settlement  
16 compromises claims that are contested and shall not be deemed an admission by any  
17 Settling Party as to the merits of any claim or defense. The Judgment will contain a  
18 finding that, during the course of the Litigation, the Parties and their respective counsel  
19 at all times complied with the requirements of Federal Rule of Civil Procedure 11. The  
20 Settling Parties agree that the terms of the Settlement were negotiated in good faith and  
21 reflect a settlement that was reached voluntarily after consultation with competent legal  
22 counsel.

23       10.2 Whether or not the Settlement is approved by the Court, and whether or  
24 not the Settlement is consummated, the fact and terms of this Stipulation, including its  
25 exhibits, all negotiations, discussions, drafts, and proceedings in connection with this  
26 Settlement, and any act performed or document signed in connection with the  
27 Settlement, shall not, in this or any other court, administrative agency, arbitration forum,  
28 or other tribunal, constitute an admission of, or evidence of, or be deemed to create any

1 inference of: (i) any acts of wrongdoing or lack thereof; (ii) any fault, misstatement,  
 2 omission or liability on the part of any of the Defendants or the Released Persons to  
 3 Plaintiffs, the Settlement Class, or anyone else; (iii) any deficiency of any claim or  
 4 defense that has been or could have been asserted in the Litigation; or (iv) any damages,  
 5 or lack of damages, suffered by Plaintiffs, the Settlement Class, or anyone else.

6       10.3 The Stipulation and the Settlement contained herein, and any act  
 7 performed or document executed pursuant to or in furtherance of the Stipulation or the  
 8 Settlement: (i) is not nor may be deemed to be or used as an admission of, or evidence  
 9 of, the validity of any Released Claim, or of any wrongdoing or liability of any  
 10 Defendant; and (ii) is not and may not be deemed to be or used as an admission of, or  
 11 evidence of, any fault or omission of any Defendant in any civil, criminal or  
 12 administrative proceeding in any court, administrative agency or other tribunal.

13       10.4 The Stipulation and the Settlement contained herein, and any act  
 14 performed or document executed pursuant to or in furtherance of the Stipulation or the  
 15 Settlement: (i) shall not be construed against any Released Parties, Plaintiffs, or any  
 16 other Settlement Class Member as an admission, concession, or presumption that the  
 17 consideration to be given hereunder represents the amount that could or would have  
 18 been recovered after trial; and (ii) shall not be construed as or admitted in evidence as  
 19 an admission, concession, or presumption against Plaintiffs or any other member of the  
 20 Settlement Class that any of their claims are without merit or that damages recoverable  
 21 under the Consolidated Complaint would not have exceeded the Settlement Amount.

## 22 **MISCELLANEOUS PROVISIONS**

23       11.1 The Settling Parties: (i) acknowledge that it is their intent to consummate  
 24 this Settlement; (ii) agree to cooperate to the extent reasonably necessary to effectuate  
 25 and implement all terms and conditions of the Stipulation; and (iii) agree to exercise  
 26 their reasonable best efforts to accomplish the foregoing terms and conditions of the  
 27 Stipulation.

28

1           11.2 Pending final determination of whether the Stipulation should be  
2 approved, Co-Lead Counsel, Plaintiffs, and all Settlement Class Members are barred  
3 and enjoined from commencing, maintaining or prosecuting any action asserting any  
4 Released Claims against any Released Persons in any forum.

5           11.3 All agreements made and orders entered during the course of the Litigation  
6 relating to the confidentiality of information shall survive this Stipulation.

7           11.4 All of the Exhibits to the Stipulation are material and integral parts hereof  
8 and are fully incorporated herein by this reference.

9           11.5 This Stipulation shall not be construed more strictly against one Settling  
10 Party than another merely by virtue of the fact that it, or any part of it, may have been  
11 prepared by counsel for one of the Settling Parties, it being recognized that it is the  
12 result of arm's-length negotiations between the Settling Parties and that all Settling  
13 Parties have contributed substantially and materially to the preparation of this  
14 Stipulation.

15          11.6 The Stipulation may be amended or modified only by a written instrument  
16 signed by or on behalf of all Settling Parties or their respective successors-in-interest.

17          11.7 The Stipulation and the Exhibits attached hereto and the Supplemental  
18 Agreement constitute the entire agreement among the Settling Parties, and no  
19 representations, warranties, or inducements have been made to any Settling Party  
20 concerning the Stipulation, its Exhibits, or the Supplemental Agreement other than the  
21 representations, warranties, and covenants contained and memorialized in such  
22 documents. Except as otherwise provided herein, each Settling Party shall bear its own  
23 costs.

24          11.8 Co-Lead Counsel, on behalf of the Settlement Class, are expressly  
25 authorized by Plaintiffs to take all appropriate actions required or permitted to be taken  
26 by the Settlement Class pursuant to the Stipulation to effectuate its terms and also are  
27 expressly authorized to enter into any modifications or amendments to the Stipulation  
28 on behalf of the Settlement Class that they deem appropriate.

1           11.9 Each counsel or other Person executing the Stipulation or any of its  
2 Exhibits on behalf of any Settling Party hereto hereby warrants that such Person has the  
3 full authority to do so.

4           11.10 The waiver by one Settling Party of any breach of this Stipulation by any  
5 other Settling Party shall not be deemed a waiver of any other prior or subsequent breach  
6 of this Stipulation.

7           11.11 The Stipulation may be executed in one or more counterparts, including by  
8 signature transmitted by email in pdf format. Each and all executed counterparts shall  
9 be deemed one and the same instrument. A complete set of executed counterparts shall  
10 be filed with the Court.

11          11.12 The Stipulation shall be binding upon, and inure to the benefit of, the  
12 successors and assigns of the Settling Parties hereto.

13          11.13 The Court shall retain jurisdiction with respect to implementation and  
14 enforcement of the terms of the Stipulation, and all Settling Parties submit to the  
15 jurisdiction of the Court for purposes of implementing and enforcing the Settlement  
16 embodied in the Stipulation.

17          11.14 The Stipulation and the Exhibits hereto shall be considered to have been  
18 negotiated, executed and delivered, and to be wholly performed, in the State of  
19 California, and the rights and obligations of the Parties to the Stipulation shall be  
20 construed and enforced in accordance with, and governed by, the internal, substantive  
21 laws of the State of California without giving effect to that State's choice-of-law  
22 principles, except to the extent that federal law requires that federal law govern.

23          11.15 Pending approval by the Court of the Settlement, all proceedings in the  
24 Litigation shall be stayed.

25          11.16 The Released Persons may file the Stipulation and/or the Judgment in any  
26 action or proceeding that may be brought against them in order to support a defense or  
27 counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith

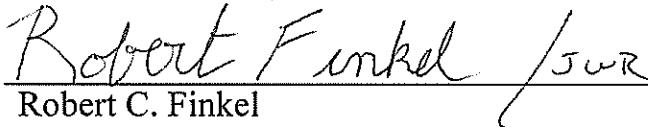
1 settlement, judgment bar or reduction, or any other theory of claim preclusion or issue  
2 preclusion or similar defense or counterclaim.

3 11.17 If any Party is required to give notice to the other Parties under this  
4 Stipulation, such notice shall be in writing and shall be deemed to have been duly given  
5 upon receipt by hand delivery, facsimile transmission, or electronic mail. Notice shall  
6 be provided to the counsel indicated on the signature block below.

7 11.18 Within twenty-one (21) days following the Parties' execution of the  
8 Stipulation, and without any charge to Plaintiffs or the Settlement Class, IMUC shall  
9 provide such shareholder lists as may be within its possession, custody, or control, as  
10 appropriate for providing notice to the Class.

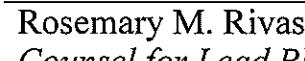
11 IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be  
12 executed, by their duly authorized attorneys, dated as of September 13, 2018.

13 AGREED TO AND ACCEPTED:

14 Dated: September 13, 2018      WOLF POPPER LLP  
15    ROBERT C. FINKEL  
16      
17    Robert C. Finkel

18    *Counsel for Lead Plaintiffs*

19  
20 Dated: September 13, 2018      LEVI & KORSINSKY LLP  
21    ROSEMARY M. RIVAS (209147)  
22    JAMES GROHSGAL (321587)

23      
24    *Rosemary M. Rivas*  
25    *Counsel for Lead Plaintiffs*

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7 11.18 Within twenty-one (21) days following the Parties' execution of the  
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9 provide such shareholder lists as may be within its possession, custody, or control, as  
10 appropriate for providing notice to the Class.

11 IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be  
12 executed, by their duly authorized attorneys, dated as of September 13, 2018.

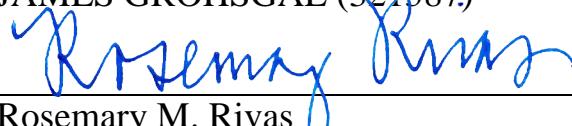
13 AGREED TO AND ACCEPTED:

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15    ROBERT C. FINKEL

16    Robert C. Finkel

17    *Counsel for Lead Plaintiffs*

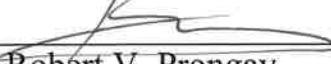
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20    JAMES GROHSGAL (321587.)

21      
22    Rosemary M. Rivas  
23    *Counsel for Lead Plaintiffs*

1 Dated: September 13, 2018

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2 GLANCY PRONGAY & MURRAY LLP  
3 LIONEL Z. GLANCY (134180)  
4 ROBERT V. PRONGAY (270796)  
5 LESLEY F. PORTNOY (304851)  
6 CHARLES H. LINEHAN (307439)

7   
8 Robert V. Prongay  
9 Counsel for Lead Plaintiffs

10 Dated: September 13, 2018

11 COOLEY LLP  
12 JOHN C. DWYER (136533)  
13 ANGELA L. DUNNING (212047)  
14 JEFFREY M. KABAN (235743)  
15 TIJANA M. BRIEN (286590)  
16 JESSIE A. R. SIMPSON LAGOY (305257)

17 

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18 Angela L. Dunning

19 *Counsel for Defendants ImmunoCellular  
20 Therapeutics, Ltd., David Fractor, John Y. Yu,  
21 and Andrew Gengos*

22 Dated: September 13, 2018

23 GARTENBERG GELFAND HAYTON LLP  
24 EDWARD GARTENBERG (102693)  
25 MILENA DOLUKHANYAN (303157)  
26 BRETT HEEGER (306245)

27 

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28 Edward Gartenberg

29 *Counsel for Defendants Lidingo Holdings, LLC,  
30 Kamilla Bjorlin, and Andrew Hodge*

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CHARLES H. LINEHAN (307439)

6 Robert V. Prongay  
7 *Counsel for Lead Plaintiffs*

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TIJANA M. BRIEN (286590)  
JESSIE A. R. SIMPSON LAGOY (305257)

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13 Angela L. Dunning

14 *Counsel for Defendants ImmunoCellular*  
15 *Therapeutics, Ltd., David Fractor, John Y. Yu,*  
16 *and Andrew Gengos*

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MILENA DOLUKHANYAN (303157)  
BRETT HEEGER (306245)

21 Edward Gartenberg

22 *Counsel for Defendants Lidingo Holdings, LLC,*  
23 *Kamilla Bjorlin, and Andrew Hodge*

1 Dated: September 13, 2018

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6 CHARLES H. LINEHAN (307439)

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7 Robert V. Prongay  
8 *Counsel for Lead Plaintiffs*

9 Dated: September 13, 2018

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16 Angela L. Dunning

17 *Counsel for Defendants ImmunoCellular*  
18 *Therapeutics, Ltd., David Fractor, John Y. Yu,*  
19 *and Andrew Gengos*

20 Dated: September 13, 2018

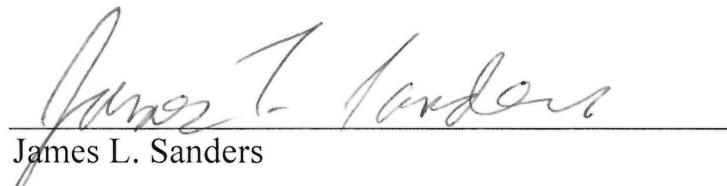
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26 Edward Gartenberg

27 *Counsel for Defendants Lidingo Holdings, LLC,*  
28 *Kamilla Bjorlin, and Andrew Hodge*

1 Dated: September 13, 2018

REED SMITH LLP  
JAMES L. SANDERS (126291)  
FRANCISCA M. MOK (206063)

3   
4 \_\_\_\_\_  
5 James L. Sanders  
6

7 *Counsel for Defendants Manish Singh and Lavos,  
LLC*

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1                   **PROOF OF SERVICE BY ELECTRONIC POSTING**

2                   I, the undersigned say:

3                   I am not a party to the above case, and am over eighteen years old. On  
4 September 13, 2018, I served true and correct copies of the foregoing document, by  
5 posting the document electronically to the ECF website of the United States District  
6 Court for the Central District of California, for receipt electronically by the parties  
7 listed on the Court's Service List.

8                   I affirm under penalty of perjury under the laws of the United States of America  
9 that the foregoing is true and correct. Executed on September 13, 2018, at Los  
10 Angeles, California.

11  
12                   s/ Lionel Z. Glancy  
13                   Lionel Z. Glancy

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## Mailing Information for a Case 2:17-cv-03250-FMO-SK Arthur Kaye IRA FCC as Custodian DTD 6-8-00 v. ImmunoCellular Therapeutics, Ltd. et al

### Electronic Mail Notice List

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- **Robert C Finkel**  
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- **Edward Gartenberg**  
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lrosen@rosenlegal.com
- **Joshua W Ruthizer**  
jruthizer@wolfpopper.com
- **James L Sanders**  
jsanders@reedsmith.com

### Manual Notice List

## Case 2:17-cv-03250-FMO-SK Document 121 Filed 09/13/18 Page 41 of 41 Page ID #:1828

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

**Brian Nichols**  
2819 Burnside Drive  
Burlington, KY 41005