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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN “CLEAN DIESEL”
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

CLASS ACTION

**STIPULATION AND AGREEMENT
OF SETTLEMENT**

_____/
This Document Relates To: Securities Actions

*City of St. Clair Shores, 15-1228 (E.D. Va.)
Travalio, 15-7157 (D.N.J.)
George Leon Family Trust, 15-7283 (D.N.J.)
Charter Twp. of Clinton, 15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)*

_____/

This Stipulation and Agreement of Settlement, dated as of August 27, 2018 (the
“Stipulation”) is entered into between (a) Lead Plaintiff Arkansas State Highway Employees’

1 Retirement System (“ASHERS” or “Lead Plaintiff”) and named plaintiff Miami Police Relief and
2 Pension Fund (“Miami Police,” and together with ASHERS, “Plaintiffs”), on behalf of themselves
3 and the Settlement Class (defined below); and (b) defendants Volkswagen Aktiengesellschaft
4 (“VWAG”), Volkswagen Group of America, Inc. (“VWGoA”), Volkswagen Group of America,
5 Inc. d/b/a Volkswagen of America, Inc. (“VWoA”), Audi of America, Inc. (“AoA”), Martin
6 Winterkorn (“Winterkorn”), Michael Horn (“Horn”), and Herbert Diess (“Diess,” and together
7 with Winterkorn and Horn, the “Individual Defendants”), and embodies the terms and conditions
8 of the settlement of the Action.¹ Subject to the approval of the Court and the terms and conditions
9 expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise,
10 settle, release, resolve, and dismiss with prejudice the Action and all Released Plaintiffs’ Claims
11 (defined below) against Defendants and the Defendants’ Releasees (defined below).

12 WHEREAS:

13 A. On September 25, 2015, a class action complaint, styled *City of St. Clair Shores*
14 *Police and Fire Ret. Sys. v. Volkswagen AG, et al.*, Case No. 15-CV-1228-LMB-TCB, was filed
15 in the United States District Court for the Eastern District of Virginia alleging violations of the
16 federal securities laws on behalf of investors in VWAG ADRs against VWAG, VWGoA, VWoA,
17 AoA, the Individual Defendants, and certain other current or former VWGoA employees. Several
18 related securities class action complaints on behalf of investors in VWAG ADRs were filed in the
19 United States District Courts for the Eastern District of Virginia, the District of New Jersey, the
20 Eastern District of Michigan, and the Eastern District of Tennessee between September 25, 2015
21 and November 25, 2015.

22 B. In December 2015, the United States Judicial Panel on Multidistrict Litigation
23 ordered that the VWAG ADR class actions be transferred to the United States District Court for
24 the Northern District of California (the “Court”).

25 _____
26 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed
27 to them in ¶ 1 herein.

1 C. On January 5, 2016, the Court consolidated the VWAG ADR class actions,
2 appointed ASHERS as Lead Plaintiff for the Action, and approved ASHERS' selection of
3 Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the Action.

4 D. On May 16, 2016, Plaintiffs filed a Consolidated Securities Class Action Complaint
5 (the "First Consolidated Complaint"). The First Consolidated Complaint asserted securities fraud
6 claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and
7 Securities and Exchange Commission Rule 10b-5 against Defendants VWAG, VWGoA, VWoA,
8 AoA, Winterkorn, and Diess, as well as claims under Section 20(a) of the Exchange Act against
9 Defendants Winterkorn, Diess, Horn, and another former VWGoA employee.

10 E. On August 1, 2016, Defendants filed two motions to dismiss the First Consolidated
11 Complaint. On October 14, 2016, Plaintiffs filed their omnibus opposition to Defendants' motions
12 to dismiss, and on November 22, 2016, Defendants filed their replies in further support of their
13 motions to dismiss. On December 16, 2016, the Court heard oral argument on Defendants'
14 motions to dismiss the First Consolidated Complaint.

15 F. On January 4, 2017, the Court entered an Order granting in part and denying in part
16 Defendants' motions to dismiss the First Consolidated Complaint. The Court dismissed, without
17 prejudice, the claims with respect to VWAG's financial statements, the claims under Section 20(a)
18 of the Exchange Act against Defendants Diess and Horn, and the claims against the other former
19 VWGoA employee. In all other respects, the Court denied Defendants' motions to dismiss.

20 G. On February 3, 2017, Plaintiffs filed a First Amended Consolidated Securities Class
21 Action Complaint (the "Amended Complaint" or "Complaint"). The Amended Complaint asserts
22 claims under Section 10(b) of the Exchange Act and Rule 10b-5 against Defendants VWAG,
23 VWGoA, VWoA, AoA, Winterkorn, and Diess, and under Section 20(a) of the Exchange Act
24 against Defendants VWAG, Winterkorn, Diess, and Horn. The Amended Complaint alleges that,
25 during the Class Period, Defendants made repeated misrepresentations and omissions about a core
26 element of VW's business: its compliance with emissions regulations in the United States and
27

1 other countries. In particular, the Amended Complaint alleges that Defendants violated the U.S.
2 federal securities laws by failing to disclose that VW sold approximately 585,000 diesel vehicles
3 in the United States and hundreds of thousands of diesel vehicles in other countries that were
4 equipped with illegal “defeat devices,” and by representing to the public that VW diesel vehicles
5 complied with emissions regulations and were “environmentally friendly.” In connection with its
6 U.S. plea agreement, VWAG has admitted that the defeat devices caused the affected U.S. vehicles
7 to emit NOx, a regulated pollutant, at levels that complied with U.S. emissions regulations when
8 the vehicles were being tested for regulatory compliance, but caused such vehicles to emit NOx at
9 much higher levels that violated U.S. emissions regulations when the vehicles were being driven
10 in normal road conditions. The Amended Complaint also alleges that VWAG’s financial
11 statements failed to properly record contingent liabilities related to the emissions-cheating scheme.
12 The Amended Complaint further alleges that the prices of VWAG ADRs were artificially inflated
13 during the Class Period as a result of those misrepresentations and omissions, and that the prices
14 fell sharply when the truth began to be revealed in September 2015.

15 H. On March 21, 2017, Defendants filed motions to dismiss the Amended Complaint.
16 On May 8, 2017, Plaintiffs filed their omnibus opposition to Defendants’ motions to dismiss, and
17 on June 5, 2017, Defendants filed their replies in further support of their motions to dismiss. On
18 June 27, 2017, the Court heard oral argument on Defendants’ motions to dismiss the Amended
19 Complaint.

20 I. On June 28, 2017, the Court entered an Order granting in part and denying in part
21 Defendants’ motions to dismiss the Amended Complaint. The Court dismissed, with prejudice,
22 the claims with respect to VWAG’s financial statements issued before May 2014, the claims
23 against Defendant Diess with respect to VWAG’s third quarter 2015 financial statements, and the
24 claims against Diess under Section 20(a) of the Exchange Act. In all other respects, the Court
25 denied Defendants’ motions to dismiss.

1 J. On March 15, 2017, Plaintiffs filed a motion for partial summary judgment as to
2 falsity and scienter with respect to certain challenged statements allegedly made by VWAG. On
3 August 25, 2017, Defendants filed their opposition to Plaintiffs' motion for partial summary
4 judgment. On September 28, 2017, Plaintiffs filed their reply in support of the motion. On
5 December 6, 2017, the Court issued an Order granting Plaintiffs' motion for partial summary
6 judgment with respect to one of the statements and denying the motion with respect to the other
7 statements.

8 K. Discovery in the Action commenced in August 2017. The Parties served initial
9 disclosures under Fed. R. Civ. P. 26(a)(1), served and responded to interrogatories, served
10 document requests, and engaged in extensive correspondence and numerous meet and confers over
11 search terms and custodians for their respective document searches and productions. While most
12 discovery disputes were resolved by agreement of the Parties, a number of disputes were presented
13 to the Court, including Plaintiffs' request for access to the documents produced by Defendants in
14 the related multidistrict litigation ("MDL") cases, which the Court denied; Plaintiffs' motions to
15 compel the Volkswagen Defendants to produce certain documents concerning European Union
16 emissions standards and the "acoustic function" technology, which the Court granted; Plaintiffs'
17 motion to compel Defendants to produce the list of document custodians from the MDL and
18 documents from custodians in addition to those agreed by Defendants, which the Court granted in
19 part and denied in part; and Defendants' motion to compel Plaintiffs to search document custodians
20 in addition to those agreed by Plaintiffs, which the Court denied. Plaintiffs also filed an unopposed
21 motion to depose two former VWGoA employees who are in federal prison, which the Court
22 granted. In connection with discovery, approximately 50 custodians were negotiated by the Parties
23 and more than 4 million pages of documents were produced by Defendants, including documents
24 from approximately 50 custodians negotiated by the Parties. Review of the documents produced
25 in discovery was underway at the time the Settlement was reached.

1 L. Through the exchange of information concerning both damages and the merits of
2 the case, counsel for Plaintiffs and Defendants engaged in a series of arm's-length negotiations
3 pursuant to which the Parties reached an agreement in principle to settle and release all claims
4 against Defendants in the Action in return for a cash payment of \$48,000,000 to be paid by VWAG
5 on behalf of all Defendants for the benefit of the Settlement Class, subject to the execution of a
6 customary "long form" stipulation and agreement of settlement and related papers. This
7 Stipulation (together with the exhibits hereto) constitutes the final and binding agreement between
8 the Parties.

9 M. Based upon their investigation and prosecution of the case, Plaintiffs and Lead
10 Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and
11 adequate to Plaintiffs and the other members of the Settlement Class, and in their best interests.
12 Based on Plaintiffs' direct oversight of the prosecution of this matter and with the advice of their
13 counsel, Plaintiffs have agreed to settle and release the Released Plaintiffs' Claims pursuant to the
14 terms and provisions of this Stipulation, after considering, among other things: (a) the substantial
15 financial benefit that Plaintiffs and the other members of the Settlement Class will receive under
16 the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

17 N. This Stipulation constitutes a compromise of all matters that are in dispute between
18 the Parties. Defendants are entering into this Stipulation solely to eliminate the uncertainty,
19 burden, and expense of further protracted litigation. Each of the Defendants denies any
20 wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an
21 admission or concession on the part of any of the Defendants with respect to any claim or allegation
22 of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that
23 Defendants have, or could have, asserted. Defendants expressly deny that Plaintiffs have asserted
24 any valid claims as to any of them, and expressly deny any and all allegations of fault, liability,
25 wrongdoing, or damages whatsoever. Similarly, this Stipulation shall in no event be construed or
26 deemed to be evidence of or an admission or concession on the part of Plaintiffs of any infirmity
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1 in any of the claims asserted in the Action, or an admission or concession that any of the
2 Defendants' defenses to liability had any merit.

3 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Plaintiffs
4 (individually and on behalf of all other members of the Settlement Class) and Defendants, by and
5 through their respective undersigned attorneys and subject to the approval of the Court pursuant
6 to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing
7 to the Parties from the Settlement, all Released Plaintiffs' Claims as against Defendants and the
8 Defendants' Releasees and all Released Defendants' Claims as against Plaintiffs and the Plaintiffs'
9 Releasees shall be settled and released, upon and subject to the terms and conditions set forth
10 below.

11 **DEFINITIONS**

12 1. As used in this Stipulation and any exhibits attached hereto and made a part hereof,
13 the following capitalized terms shall have the following meanings:

14 (a) "Action" means the securities class actions styled *City of St. Clair Shores*
15 *Police and Fire Ret. Sys. v. Volkswagen AG, et al.*, 15-cv-1228 (E.D. Va.), *Travalio, et al. v.*
16 *Volkswagen AG, et al.*, 15-cv-7157 (D.N.J.), *The George Leon Family Trust v. Volkswagen AG, et*
17 *al.*, 15-cv-7283 (D.N.J.), *Charter Twp. of Clinton Police and Fire Ret. Sys. v. Volkswagen AG, et*
18 *al.*, 15-cv-13999 (E.D. Mich.), and *Wolfenbarger v. Volkswagen AG, et al.*, 15-cv-326 (E.D.
19 Tenn.), consolidated with and pending in *In re: Volkswagen "Clean Diesel" Marketing, Sales*
20 *Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC).

21 (b) "Alternate Judgment" means a form of final judgment that may be entered
22 by the Court herein but in a form other than the form of Judgment provided for in this Stipulation.

23 (c) "AoA" means Audi of America, Inc.

24 (d) "Authorized Claimant" means a Settlement Class Member who submits a
25 Claim to the Claims Administrator that is approved by the Court for payment from the Net
26 Settlement Fund.

1 (e) "Claim" means a paper claim submitted on a Proof of Claim Form or an
2 electronic claim that is submitted to the Claims Administrator.

3 (f) "Claim Form" or "Proof of Claim Form" means the form, substantially in
4 the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant must complete and submit
5 should that Claimant seek to share in a distribution of the Net Settlement Fund.

6 (g) "Claimant" means a person or entity who submits a Claim to the Claims
7 Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.

8 (h) "Claims Administrator" means the firm retained by Lead Counsel, subject
9 to approval of the Court, to provide all notices approved by the Court to potential Settlement Class
10 Members and to administer the Settlement.

11 (i) "Class Distribution Order" means an order entered by the Court authorizing
12 and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized
13 Claimants.

14 (j) "Class Period" means the period from November 19, 2010 through January
15 4, 2016, inclusive.

16 (k) "Complaint" or "Amended Complaint" means the First Amended
17 Consolidated Securities Class Action Complaint filed by Plaintiffs in the Action on February 3,
18 2017.

19 (l) "Court" means the United States District Court for the Northern District of
20 California.

21 (m) "Defendants" means VWAG, VWGoA, VWoA, AoA, and the Individual
22 Defendants.

23 (n) "Defendants' Counsel" means the law firms of Sullivan & Cromwell LLP,
24 counsel for Volkswagen and Diess; Schertler & Onorato, LLP, counsel for Horn; and Joseph Hage
25 Aaronson LLC, counsel for Winterkorn.

1 (o) “Defendants’ Releasees” means Defendants, together with their past,
2 present, or future affiliates, divisions, joint ventures, assigns, assignees, direct or indirect parents
3 or subsidiaries, controlling shareholders, successors, predecessors, and entities in which a
4 Defendant has a controlling interest, and each of their past, present, or future officers, directors,
5 agents, employees, partners, attorneys, controlling shareholders, advisors, investment advisors,
6 auditors, accountants, insurers (including reinsurers and co-insurers), and Immediate Family
7 Members, and the legal representatives, heirs, successors in interest, or assigns of any of the
8 foregoing.

9 (p) “Diess” means Herbert Diess.

10 (q) “Effective Date” with respect to the Settlement means the first date by
11 which all of the events and conditions specified in ¶ 33 of this Stipulation have been met and have
12 occurred or have been waived.

13 (r) “Escrow Account” means an account maintained at Valley National Bank
14 wherein the Settlement Amount shall be deposited and held in escrow under the control of Lead
15 Counsel.

16 (s) “Escrow Agent” means Valley National Bank.

17 (t) “Final,” with respect to the Judgment or, if applicable, the Alternate
18 Judgment, or any other court order, means: (i) the expiration of the time to alter or amend the
19 Judgment, Alternate Judgment, or other court order under Federal Rule of Civil Procedure 59(e)
20 without any such motion having been filed; (ii) if no appeal is filed, the expiration date of the time
21 provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure, *i.e.*,
22 thirty (30) days after entry of the judgment or order; or (iii) if there is an appeal from the Judgment,
23 Alternate Judgment, or other court order, including from the denial of a Rule 59(e) motion to alter
24 or amend the judgment or order, (a) the date of final dismissal of all such appeals, or the final
25 dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is
26 finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or
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1 other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari
2 or other form of review is granted, the date of final affirmance following review pursuant to that
3 grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to
4 an order issued with respect to (i) attorneys' fees, costs, or expenses, or (ii) the plan of allocation
5 of the Settlement proceeds (as submitted or subsequently modified), shall not in any way delay or
6 preclude a judgment from becoming Final.

7 (u) "Horn" means Michael Horn.

8 (v) "Immediate Family" means children, stepchildren, parents, stepparents,
9 spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law,
10 and sisters-in-law. As used in this paragraph, "spouse" shall mean a husband, a wife, or a partner
11 in a state-recognized domestic relationship or civil union.

12 (w) "Individual Defendants" means Winterkorn, Horn, and Diess.

13 (x) "Judgment" means the final judgment, substantially in the form attached
14 hereto as Exhibit B, to be entered by the Court approving the Settlement.

15 (y) "Lead Counsel" means the law firm of Bernstein Litowitz Berger &
16 Grossmann LLP.

17 (z) "Lead Plaintiff" or "ASHERS" means Arkansas State Highway Employees'
18 Retirement System.

19 (aa) "Litigation Expenses" means costs and expenses incurred in connection
20 with commencing, prosecuting, and settling the Action (which may include the costs and expenses
21 of Plaintiffs directly related to their representation of the Settlement Class), for which Lead
22 Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

23 (bb) "Miami Police" means Miami Police Relief and Pension Fund.

24 (cc) "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes;
25 (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court;

1 (iv) any attorneys' fees awarded by the Court; and (vi) any other costs or fees approved by the
2 Court.

3 (dd) "Notice" means the Notice of (I) Pendency of Class Action and Proposed
4 Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and
5 Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to
6 Exhibit A, which is to be mailed to Settlement Class Members.

7 (ee) "Notice and Administration Costs" means the costs, fees, and expenses that
8 are incurred by the Claims Administrator and/or Lead Counsel in connection with: (i) providing
9 notices to the Settlement Class; and (ii) administering the Settlement, including but not limited to
10 the Claims process, as well as the costs, fees, and expenses incurred in connection with the Escrow
11 Account.

12 (ff) "Officer" means any officer as that term is defined in Securities and
13 Exchange Act Rule 16a-1(f).

14 (gg) "Parties" means Defendants and Plaintiffs, on behalf of themselves and the
15 Settlement Class.

16 (hh) "Plaintiffs" means ASHERS and Miami Police.

17 (ii) "Plaintiffs' Counsel" means Lead Counsel; the law firm of Klausner,
18 Kaufman, Jensen & Levinson, counsel for Miami Police; and any other legal counsel who, at the
19 direction and under the supervision of Lead Counsel, performed services on behalf of the
20 Settlement Class in the Action.

21 (jj) "Plaintiffs' Releasees" means Plaintiffs, all other plaintiffs in the Action, all
22 other Settlement Class Members, and their respective attorneys, together with their past, present,
23 or future affiliates, divisions, joint ventures, assigns, assignees, direct or indirect parents or
24 subsidiaries, controlling shareholders, successors, predecessors, and entities in which a Settlement
25 Class Member has a controlling interest, and each of their past, present, or future officers, directors,
26 agents, employees, partners, attorneys, controlling shareholders, trusts, trustees, advisors,

1 investment advisors, auditors, accountants, insurers (including reinsurers and co-insurers), and
2 Immediate Family Members, and the legal representatives, heirs, successors in interest, or assigns
3 of any of the foregoing.

4 (kk) “Plan of Allocation” means the proposed plan of allocation of the Net
5 Settlement Fund set forth in the Notice.

6 (ll) “Preliminary Approval Order” means the order, substantially in the form
7 attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement
8 and directing that notice of the Settlement be provided to the Settlement Class.

9 (mm) “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15
10 U.S.C. § 78u-4, as amended.

11 (nn) “Released Claims” means all Released Defendants’ Claims and all Released
12 Plaintiffs’ Claims.

13 (oo) “Released Defendants’ Claims” means any and all claims, debts, demands,
14 rights, and causes of action of every nature and description (including, but not limited to, any
15 claims for damages, interest, attorney’s fees, expert, or consulting fees, and any other costs,
16 expenses, or liability whatsoever), whether known claims or Unknown Claims, whether arising
17 under federal, state, common, or foreign law or any other law, rule, or regulation, whether fixed or
18 contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or un-
19 matured, that arise out of or relate in any way to the institution, prosecution, or settlement of the
20 claims asserted in the Action against Defendants. Released Defendants’ Claims do not include:
21 (i) any claims relating to the enforcement of the Settlement; or (ii) any claims against any person
22 or entity who submits a request for exclusion from the Settlement Class that is accepted by the
23 Court (“Excluded Defendants’ Claims”).

24 (pp) “Released Plaintiffs’ Claims” means any and all claims, debts, demands,
25 rights, and causes of action of every nature and description (including, but not limited to, any
26 claims for damages, interest, attorney’s fees, expert, or consulting fees, and any other costs,
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1 expenses, or liability whatsoever), whether known claims or Unknown Claims, whether arising
 2 under federal, state, common, or foreign law or any other law, rule, or regulation, whether fixed or
 3 contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or un-
 4 matured, whether class or individual in nature, that Plaintiffs or any other member of the
 5 Settlement Class: (i) asserted in the Complaint, or (ii) could have asserted in any forum that
 6 concern, arise out of, relate to, involve, or are based upon any of the allegations, circumstances,
 7 events, transactions, facts, matters, representations, or omissions involved, set forth, or referred to
 8 in the Complaint and that relate to the purchase, acquisition, or ownership of VWAG ADRs during
 9 the Class Period. Released Plaintiffs' Claims do not include: (i) any claims relating to the
 10 enforcement of the Settlement; or (ii) any claims of any person or entity who submits a request for
 11 exclusion that is accepted by the Court ("Excluded Plaintiffs' Claims").

12 (qq) "Releasee(s)" means each and any of the Defendants' Releasees and each
 13 and any of the Plaintiffs' Releasees.

14 (rr) "Releases" means the releases set forth in ¶¶ 5-6 of this Stipulation.

15 (ss) "Settlement" means the settlement between Plaintiffs and Defendants on the
 16 terms and conditions set forth in this Stipulation.

17 (tt) "Settlement Amount" means Forty-Eight Million United States Dollars
 18 (\$48,000,000.00 USD) in cash.

19 (uu) "Settlement Class" means all persons and entities in the U.S. or elsewhere
 20 who purchased or otherwise acquired VWAG Ordinary American Depositary Receipts (CUSIP:
 21 928662303) and/or VWAG Preferred American Depositary Receipts (CUSIP: 928662402) from
 22 November 19, 2010 through January 4, 2016, inclusive (the "Class Period"), and who were
 23 allegedly damaged thereby. Excluded from the Settlement Class are: (i) Defendants; (ii) any
 24 person who was an Officer or director of VWAG, VWGoA, VWoA, or AoA during the Class
 25 Period; (iii) the Immediate Family Members of all individual persons excluded in (i) or (ii); (iv) the
 26 parents, subsidiaries, and affiliates of VWAG, VWGoA, VWoA, or AoA; (v) any entity in which
 27

1 any person or entity excluded in (i), (ii), (iii) or (iv) has, or had during the Class Period, a
2 controlling interest; and (vi) the legal representatives, heirs, affiliates, successors, or assigns of any
3 such excluded person or entity. Also excluded from the Settlement Class are any persons and
4 entities who exclude themselves by submitting a request for exclusion that is accepted by the Court.
5 For the avoidance of doubt, VWAG ordinary and preferred shares are not eligible Settlement Class
6 securities, and purchases or other acquisitions of those securities do not establish membership in
7 the Settlement Class.

8 (vv) “Settlement Class Member” means each person and entity who is a member
9 of the Settlement Class.

10 (ww) “Settlement Fund” means the Settlement Amount plus any and all interest
11 earned thereon.

12 (xx) “Settlement Hearing” means the hearing set by the Court under
13 Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

14 (yy) “Summary Notice” means the Summary Notice of (I) Pendency of Class
15 Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of
16 Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached
17 hereto as Exhibit 3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

18 (zz) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including
19 any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the
20 expenses and costs incurred by Lead Counsel in connection with determining the amount of, and
21 paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax
22 attorneys and accountants).

23 (aaa) “Unknown Claims” means any Released Plaintiffs’ Claims which Plaintiffs
24 or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at
25 the time of the release of such claims, and any Released Defendants’ Claims which any Defendant
26 does not know or suspect to exist in his or its favor at the time of the release of such claims. With
27

1 Plaintiffs as Class Representatives for the Settlement Class; and (c) appointment of Lead Counsel
2 as Class Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil
3 Procedure.

4 **PRELIMINARY APPROVAL OF SETTLEMENT**

5 3. Promptly upon execution of this Stipulation, Plaintiffs will move for preliminary
6 approval of the Settlement, certification of the Settlement Class for Settlement purposes only, and
7 the scheduling of a hearing for consideration of final approval of the Settlement, which motion
8 shall be unopposed by Defendants. Concurrently with the motion for preliminary approval,
9 Plaintiffs shall apply to the Court for, and Defendants shall agree to, entry of the Preliminary
10 Approval Order, substantially in the form attached hereto as Exhibit A.

11 **RELEASE OF CLAIMS**

12 4. The obligations incurred pursuant to this Stipulation are in consideration of: (a) the
13 full and final disposition of the Action as against Defendants; and (b) the Releases provided for
14 herein.

15 5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further
16 action by anyone, upon the Effective Date of the Settlement, Plaintiffs and each of the other
17 Settlement Class Members, on behalf of themselves, and their respective heirs, executors,
18 administrators, predecessors, successors, and assigns in their capacities as such only, and on behalf
19 of any other person or entity legally entitled to bring Released Plaintiffs' Claims on behalf of the
20 respective Settlement Class Member in such capacity only, shall be deemed to have, and by
21 operation of law and of the judgment shall have, fully, finally, and forever compromised, settled,
22 released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim
23 against Defendants and the Defendants' Releasees, and shall forever be barred and enjoined from
24 commencing, instituting, maintaining, prosecuting, or continuing to prosecute any or all of the
25 Released Plaintiffs' Claims against any of the Defendants or the Defendants' Releasees. This
26 Release shall not apply to any Excluded Plaintiffs' Claims.

1 or indirectly, any amount under ¶ 8 above, or otherwise, in connection with the Settlement.
2 Notwithstanding any of the foregoing, VWAG shall be responsible for (a) any and all costs
3 associated with providing the security holder records in accordance with ¶ 20 below, and (b) any
4 and all costs associated with disseminating notice of the Settlement required under the Class
5 Action Fairness Act, 28 U.S.C. § 1715 *et seq.*, as set forth in ¶ 21 below.

6 **USE OF SETTLEMENT FUND**

7 10. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and
8 Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any attorneys' fees
9 awarded by the Court; and (e) any other costs or fees approved by the Court. The balance
10 remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to
11 Authorized Claimants as provided in ¶¶ 19-31 below.

12 11. Except as provided herein or pursuant to orders of the Court, the Net Settlement
13 Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow
14 Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction
15 of the Court until such time as the funds shall be distributed or returned pursuant to the terms of
16 this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the
17 Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in
18 such instruments) and shall collect and reinvest all interest accrued thereon, except that any
19 residual cash balances up to the amount that is insured by the Federal Deposit Insurance
20 Corporation ("FDIC") may be deposited in any account that is fully insured by the FDIC. In the
21 event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury
22 Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account
23 that is fully insured by the FDIC or backed by the full faith and credit of the United States.
24 Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held
25 by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed
26 by the full faith and credit of the United States.

1 12. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement
2 Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as
3 administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3),
4 shall be solely responsible for filing or causing to be filed all informational and other tax returns
5 as may be necessary or appropriate (including, without limitation, the returns described in Treasury
6 Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for
7 causing payment to be made from the Settlement Fund of any Taxes owed with respect to the
8 Settlement Fund. Defendants and the Defendants' Releasees shall not have any liability or
9 responsibility for any such Taxes. Upon written request, VWAG will provide to Lead Counsel the
10 statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the
11 Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make
12 such elections as are necessary or advisable to carry out this paragraph, including, as necessary,
13 making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the
14 Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or
15 cause to be taken all actions as may be necessary or appropriate in connection therewith.

16 13. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or
17 caused to be paid, by Lead Counsel and without further order of the Court. Any tax returns
18 prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with
19 the previous paragraph and in all events shall reflect that all Taxes on the income earned by the
20 Settlement Fund shall be paid out of the Settlement Fund as provided herein. Defendants and the
21 Defendants' Releasees shall have no responsibility or liability for the acts or omissions of Lead
22 Counsel or its agents with respect to the payment of Taxes, as described herein.

23 14. The Settlement is not a claims-made settlement. Upon the occurrence of the
24 Effective Date, no Defendant, Defendants' Releasee, or any other person or entity who paid any
25 portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any
26 portion thereof for any reason whatsoever, including without limitation, the number of Claims
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1 submitted, the collective amount of Recognized Claims of Authorized Claimants, the percentage
2 of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement
3 Fund.

4 15. Notwithstanding the fact that the Effective Date of the Settlement has not yet
5 occurred, Lead Counsel may pay from the Settlement Fund, without further approval from
6 Defendants, all Notice and Administration Costs actually incurred and paid or payable; *provided*,
7 *however*, that any Notice and Administration Costs paid prior to the Settlement Hearing shall
8 require Court approval. Such costs and expenses shall include, without limitation, the actual costs
9 of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee
10 owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred
11 and fees charged by the Claims Administrator in connection with providing notice, administering
12 the Settlement (including processing the submitted Claims), and the fees, if any, of the Escrow
13 Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all
14 Notice and Administration Costs paid or incurred, including any related fees, shall not be returned
15 or repaid to Defendants, any of the Defendants' Releasees, or any other person or entity who paid
16 any portion of the Settlement Amount.

17 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

18 16. Lead Counsel will apply to the Court for a collective award of attorneys' fees to
19 Plaintiffs' Counsel to be paid solely from (and out of) the Settlement Fund. Lead Counsel also
20 will apply to the Court for reimbursement of Litigation Expenses, which may include a request for
21 reimbursement of Plaintiffs' costs and expenses directly related to their representation of the
22 Settlement Class, to be paid solely from (and out of) the Settlement Fund. Lead Counsel's
23 application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any
24 agreement between Defendants and Plaintiffs other than what is set forth in this Stipulation.

25 17. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be
26 paid to Lead Counsel immediately upon award, notwithstanding the existence of any timely filed

1 objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any
2 part thereof, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments
3 to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement
4 Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of
5 any appeal or further proceedings on remand, or successful collateral attack, the award of
6 attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or
7 reversing the award has become Final. Plaintiffs' Counsel shall make the appropriate refund or
8 repayment in full no later than thirty (30) days after: (a) receiving from Defendants' Counsel notice
9 of the termination of the Settlement; or (b) any order reducing or reversing the award of attorneys'
10 fees and/or Litigation Expenses has become Final. An award of attorneys' fees and/or Litigation
11 Expenses is not a necessary term of this Stipulation and is not a condition of the Settlement
12 embodied herein. Neither Plaintiffs nor Lead Counsel may cancel or terminate the Settlement
13 based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or
14 Litigation Expenses.

15 18. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs'
16 Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to
17 the institution, prosecution, and settlement of the Action. Defendants' Releasees shall have no
18 responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees
19 or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Plaintiffs'
20 Counsel shall be payable solely from the Escrow Account.

21 **NOTICE AND SETTLEMENT ADMINISTRATION**

22 19. As part of the Preliminary Approval Order, Lead Counsel shall seek appointment
23 of a Claims Administrator. The Claims Administrator shall administer the Settlement, including
24 but not limited to the process of receiving, reviewing, and approving or denying Claims, under
25 Lead Counsel's supervision and subject to the jurisdiction of the Court. Other than Defendants'
26 obligation to provide its securities holders records as provided in ¶ 20 below, none of the
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1 Defendants, nor any Defendants' Releasees shall have any involvement in or any responsibility,
2 authority, or liability whatsoever for the selection of the Claims Administrator, the Plan of
3 Allocation, the administration of the Settlement, the Claims process, or the disbursement of the
4 Net Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but
5 not limited to, Plaintiffs, any other Settlement Class Members, or Lead Counsel in connection with
6 the foregoing. Defendants' Counsel shall cooperate in the administration of the Settlement to the
7 extent reasonably necessary to effectuate its terms.

8 20. In accordance with the terms of the Preliminary Approval Order to be entered by
9 the Court, Lead Counsel shall cause the Claims Administrator to mail the Notice and Proof of
10 Claim Form to those members of the Settlement Class as may be identified through reasonable
11 effort. Lead Counsel shall also cause the Claims Administrator to have the Summary Notice
12 published in accordance with the terms of the Preliminary Approval Order to be entered by the
13 Court. For the purposes of identifying and providing notice to the Settlement Class, within five
14 (5) business days of the date of entry of the Preliminary Approval Order, VWAG shall provide or
15 cause to be provided to the Claims Administrator in electronic format (at no cost to the Settlement
16 Fund, Lead Counsel, or the Claims Administrator) a list (consisting of names and addresses) of
17 record holders who purchased VWAG ADRs during the Class Period to the extent that such
18 information is available.

19 21. No later than ten (10) calendar days following the filing of this Stipulation with the
20 Court, Defendants shall serve the notice required under the Class Action Fairness Act, 28 U.S.C.
21 § 1715 *et seq.* ("CAFA"). Defendants are solely responsible for the costs of the CAFA notice and
22 administering the CAFA notice. At least seven (7) calendar days before the Settlement Hearing,
23 Defendants shall cause to be served on Lead Counsel and filed with the Court proof, by affidavit
24 or declaration, regarding compliance with CAFA § 1715(b).

25 22. The Claims Administrator shall receive Claims and determine first, whether the
26 Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share
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1 of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared
2 to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation
3 set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation
4 as the Court approves).

5 23. The Plan of Allocation proposed in the Notice is not a necessary term of the
6 Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation
7 that any particular plan of allocation be approved by the Court. Plaintiffs and Lead Counsel may
8 not cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate
9 court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action.
10 Defendants and the Defendants' Releasees shall not object in any way to the Plan of Allocation or
11 any other plan of allocation in this Action. No Defendant, nor any Defendants' Releasees shall
12 have any involvement with or liability, obligation, or responsibility whatsoever for the application
13 of the Court-approved plan of allocation.

14 24. Any Settlement Class Member who does not submit a valid Claim will not be
15 entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by
16 all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or, the
17 Alternate Judgment, if applicable, to be entered in the Action and the Releases provided for herein
18 and therein, and will be permanently barred and enjoined from bringing, commencing, instituting,
19 maintaining, prosecuting, or continuing to prosecute any action, claim, or other proceeding of any
20 kind against any of the Defendants or the Defendants' Releasees with respect to the Released
21 Plaintiffs' Claims in the event that the Effective Date occurs with respect to the Settlement.

22 25. Lead Counsel shall be responsible for supervising the administration of the
23 Settlement and the disbursement of the Net Settlement Fund subject to Court approval. No
24 Defendant or any Defendants' Releasees, shall have any right under this Stipulation, or otherwise,
25 to review, contest, or object to any Claim, or any decision of the Claims Administrator or Lead
26 Counsel with respect to accepting or rejecting any Claim for payment. Lead Counsel shall have
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1 the right, but not the obligation, to waive what it deems to be formal or technical defects in any
2 Claims submitted in the interests of achieving substantial justice.

3 26. For purposes of determining the extent, if any, to which a Class Member shall be
4 entitled to be treated as an Authorized Claimant, the following conditions shall apply:

5 (a) Each Claimant shall be required to submit a Claim in paper form,
6 substantially in the form attached hereto as Exhibit 2 to Exhibit A, or in electronic form, in
7 accordance with the instructions for the submission of such Claims, and supported by such
8 documents as are designated therein, including proof of the Claimant's loss, or such other
9 documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem
10 acceptable;

11 (b) All Claims must be submitted by the date set by the Court in the Preliminary
12 Approval Order and specified in the Notice. Any Settlement Class Member who fails to submit a
13 Claim by such date shall be forever barred from receiving any distribution from the Net Settlement
14 Fund or payment pursuant to this Stipulation (unless by Order of the Court such Settlement Class
15 Member's Claim is accepted), but shall in all other respects be bound by all of the terms of this
16 Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if
17 applicable, and the Releases provided for herein and therein, and will be permanently barred and
18 enjoined from bringing, commencing, instituting, maintaining, prosecuting, or continuing to
19 prosecute any action, claim, or other proceeding of any kind against any of the Defendants or the
20 Defendants' Releasees with respect to any Released Plaintiffs' Claim. Provided that it is mailed
21 by the claim-submission deadline, a Claim Form shall be deemed to be submitted when
22 postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail
23 and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall
24 be deemed to have been submitted on the date when actually received by the Claims Administrator;

25 (c) Each Claim shall be submitted to and reviewed by the Claims Administrator
26 who shall determine in accordance with this Stipulation and the plan of allocation the extent, if

1 any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph
2 (e) below as necessary;

3 (d) Claims that do not meet the submission requirements may be rejected. Prior
4 to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the
5 Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the
6 Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all
7 Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting
8 forth the reasons therefor, and shall indicate in such notice that the Claimant whose Claim is to be
9 rejected has the right to a review by the Court if the Claimant so desires and complies with the
10 requirements of subparagraph (e) below; and

11 (e) If any Claimant whose Claim has been rejected in whole or in part desires to
12 contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the
13 notice required in subparagraph (d) above or a lesser time period if the Claim was untimely, serve
14 upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds
15 for contesting the rejection along with any supporting documentation, and requesting a review
16 thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Lead Counsel
17 shall thereafter present the request for review to the Court.

18 27. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court
19 with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery
20 under the Federal Rules of Civil Procedure, *provided, however*, that such investigation and
21 discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity
22 and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action
23 or of the Settlement in connection with the processing of Claims.

24 28. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class
25 Distribution Order: (a) approving the Claims Administrator's administrative determinations
26 concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any
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1 administration fees and expenses associated with the administration of the Settlement from the
2 Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net
3 Settlement Fund to Authorized Claimants from the Escrow Account.

4 29. Payment pursuant to the Class Distribution Order shall be final and conclusive
5 against all Claimants. All Settlement Class Members whose Claims are not approved by the Court
6 for payment shall be barred from participating in distributions from the Net Settlement Fund, but
7 otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the
8 terms of the Judgment or Alternate Judgment, if applicable, to be entered in this Action and the
9 Releases provided for herein and therein, and will be permanently barred and enjoined from
10 bringing, commencing, instituting, maintaining, prosecuting, or continuing to prosecute any
11 action, claim, or other proceeding of any kind against any of the Defendants or the Defendants'
12 Releasees with respect to any of the Released Plaintiffs' Claims.

13 30. No person or entity shall have any claim against Plaintiffs, Lead Counsel, the
14 Claims Administrator, or any other agent designated by Lead Counsel, or Defendants' Releasees
15 and/or their respective counsel, arising from distributions made substantially in accordance with
16 the Stipulation, the plan of allocation approved by the Court, or any order of the Court. Plaintiffs
17 and Defendants, and their respective counsel, and Plaintiffs' damages expert and all other
18 Releasees shall have no liability whatsoever for the investment or distribution of the Settlement
19 Fund or the Net Settlement Fund, the plan of allocation, or the determination, administration,
20 calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment
21 or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any
22 losses incurred in connection therewith.

23 31. All proceedings with respect to the administration, processing, and determination
24 of Claims and the determination of all controversies relating thereto, including disputed questions
25 of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the
26 Court. All Settlement Class Members, other Claimants, and parties to this Settlement expressly
27

1 waive trial by jury (to the extent any such right may exist) and any right of appeal or review with
2 respect to such determinations.

3 **TERMS OF THE JUDGMENT**

4 32. If the Settlement contemplated by this Stipulation is approved by the Court, Lead
5 Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in
6 the form attached hereto as Exhibit B.

7 **CONDITIONS OF SETTLEMENT AND EFFECT OF**
8 **DISAPPROVAL, CANCELLATION, OR TERMINATION**

9 33. The Effective Date of the Settlement shall be deemed to occur on the occurrence or
10 waiver of all of the following events:

11 (a) the Court has entered the Preliminary Approval Order, substantially in the
12 form set forth in Exhibit A attached hereto, as required by ¶ 3 above;

13 (b) the Settlement Amount has been deposited into the Escrow Account in
14 accordance with the provisions of ¶ 8 above;

15 (c) VWAG has not exercised its option to terminate the Settlement pursuant to
16 the provisions of this Stipulation;

17 (d) Plaintiffs have not exercised their option to terminate the Settlement pursuant
18 to the provisions of this Stipulation; and

19 (e) the Court has approved the Settlement as described herein, following notice
20 to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil
21 Procedure, and entered the Judgment and the Judgment has become Final, or the Court has entered
22 an Alternate Judgment with the consent of all Parties and the Alternate Judgment has become
23 Final.

24 34. Upon the occurrence of all of the events referenced in ¶ 33 above, any and all
25 remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely
26 and forever extinguished and the Releases herein shall be effective.

1 35. If (i) VWAG exercises its right to terminate the Settlement as provided in this
2 Stipulation; (ii) Plaintiffs exercise their right to terminate the Settlement as provided in this
3 Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the
4 Settlement otherwise fails to occur, then:

5 (a) The Settlement and the relevant portions of this Stipulation shall be canceled
6 and terminated.

7 (b) Plaintiffs and Defendants shall revert to their respective positions in the
8 Action as of July 19, 2018.

9 (c) The terms and provisions of this Stipulation, with the exception of this ¶ 35
10 and ¶¶ 15, 17, 39 and 59 herein, shall have no further force and effect with respect to the Parties
11 and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment,
12 or Alternate Judgment, if applicable, or order entered by the Court in accordance with the terms of
13 this Stipulation shall be treated as vacated, *nunc pro tunc*.

14 (d) Within five (5) business days after joint written notification of termination is
15 sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund
16 (including accrued interest thereon, and change in value as a result of the investment of the
17 Settlement Fund, and any funds received by Lead Counsel consistent with ¶ 17 above), less any
18 Notice and Administration Costs actually incurred, paid, or payable, and less any Taxes paid, due,
19 or owing, shall be refunded by the Escrow Agent to VWAG (or such other persons or entities as
20 VWAG may direct). In the event that the funds received by Lead Counsel consistent with ¶ 17
21 above have not been refunded to the Settlement Fund within the five (5) business days specified
22 in this paragraph, those funds shall be refunded by the Escrow Agent to VWAG (or such other
23 persons or entities as VWAG may direct) immediately upon their deposit into the Escrow Account
24 consistent with ¶ 17 above.

25 36. It is further stipulated and agreed that Plaintiffs and VWAG shall each have the
26 right to terminate the Settlement and this Stipulation, by providing written notice of their election
27

1 to do so (“Termination Notice”) to the other Parties to this Stipulation within thirty (30) days of:
2 (a) the Court’s final refusal to enter the Preliminary Approval Order in any material respect; (b) the
3 Court’s final refusal to approve the Settlement or any material part thereof; (c) the Court’s final
4 refusal to enter the Judgment in any material respect as to the Settlement; (d) the date upon which
5 the Judgment is modified or reversed in any material respect by the United States Court of Appeals
6 for the Ninth Circuit or the United States Supreme Court; or (e) the date upon which an Alternate
7 Judgment is modified or reversed in any material respect by the United States Court of Appeals
8 for the Ninth Circuit or the United States Supreme Court, and the provisions of ¶ 35 above shall
9 apply. However, any decision or proceeding, whether in this Court or any appellate court, with
10 respect to an application for attorneys’ fees or reimbursement of Litigation Expenses or with
11 respect to any plan of allocation shall not be considered material to the Settlement, shall not affect
12 the finality of any Judgment or Alternate Judgment, if applicable, and shall not be grounds for
13 termination of the Settlement.

14 37. In addition to the grounds set forth in ¶ 36 above, VWAG shall have the unilateral
15 right to terminate the Settlement in the event that Settlement Class Members timely and validly
16 requesting exclusion from the Settlement Class meet the conditions set forth in VWAG’s
17 confidential supplemental agreement with Plaintiffs (the “Supplemental Agreement”), in
18 accordance with the terms of that agreement. The Supplemental Agreement, which is being
19 executed concurrently herewith, shall not be filed with the Court and its terms shall not be
20 disclosed in any other manner (other than the statements herein and in the Notice, to the extent
21 necessary, or as otherwise provided in the Supplemental Agreement) unless the Court otherwise
22 directs or a dispute arises between Plaintiffs and VWAG concerning its interpretation or
23 application, in which event the Parties shall submit the Supplemental Agreement to the Court in
24 camera and request that the Court afford it confidential treatment.

1 or other civil, criminal, regulatory, administrative, or other action or proceeding, other than such
2 proceedings as may be necessary to effectuate the provisions of this Stipulation; or

3 (c) shall be construed against any of the Releasees as an admission, concession,
4 or presumption that the consideration to be given hereunder represents the amount that could be
5 or would have been recovered after trial; *provided, however*, that if this Stipulation is approved by
6 the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate
7 the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

8 **MISCELLANEOUS PROVISIONS**

9 40. All of the exhibits attached hereto are hereby incorporated by reference as though
10 fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or
11 inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto,
12 the terms of the Stipulation shall prevail.

13 41. VWAG warrants that, as to the payments made or to be made on behalf of it, at the
14 time of entering into this Stipulation and at the time of such payment it, or to the best of its
15 knowledge any persons or entities contributing to the payment of the Settlement Amount, were not
16 insolvent, nor will the payment required to be made by or on behalf of it render them insolvent,
17 within the meaning of and/or for the purposes of the United States Bankruptcy Code, including
18 §§ 101 and 547 thereof. This representation is made by VWAG and not by its counsel.

19 42. In the event of the entry of a final order of a court of competent jurisdiction
20 determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf
21 of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and
22 any portion thereof is required to be returned, and such amount is not promptly deposited into the
23 Settlement Fund by others, then, at the election of Plaintiffs, Plaintiffs and Defendants shall jointly
24 move the Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment,
25 if applicable, entered in favor of Defendants and the Defendants' Releasees pursuant to this
26 Stipulation, in which event the releases and Judgment, or Alternate Judgment, if applicable, shall

1 be null and void, and the Parties shall be restored to their respective positions in the litigation as
2 provided in ¶ 35 above, and any cash amounts in the Settlement Fund (less any Taxes paid, due,
3 or owing with respect to the Settlement Fund and less any Notice and Administration Costs
4 actually incurred, paid, or payable) and any attorneys' and Litigation Expenses received by Lead
5 Counsel consistent with ¶ 17 above shall be returned as provided in ¶ 35 above.

6 43. The Parties intend this Stipulation and the Settlement to be a final and complete
7 resolution of all disputes asserted or which could be asserted by Plaintiffs and any other Settlement
8 Class Members against the Defendants' Releasees with respect to the Released Plaintiffs' Claims.
9 No Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure
10 relating to the institution, prosecution, defense, or settlement of this Action. The Parties agree that
11 the amounts paid and the other terms of the Settlement were negotiated at arm's-length and in good
12 faith by the Parties, and reflect the Settlement that was reached voluntarily after extensive
13 negotiations and consultation with experienced legal counsel, who were fully competent to assess
14 the strengths and weaknesses of their respective clients' claims or defenses.

15 44. While retaining their right to deny that the claims asserted in the Action were
16 meritorious, Defendants and their counsel, in any statement made to any media representative
17 (whether or not for attribution) will not assert that the Action was commenced or prosecuted in
18 bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is
19 being settled voluntarily after consultation with competent legal counsel. In all events, Plaintiffs
20 and their counsel and Defendants and their counsel shall not make any accusations of wrongful or
21 actionable conduct by either Party concerning the prosecution, defense, and resolution of the
22 Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim
23 or defense alleged.

24 45. The terms of the Settlement, as reflected in this Stipulation, may not be modified
25 or amended, nor may any of its provisions be waived except by a writing signed on behalf of both
26 Plaintiffs and Defendants (or their successors-in-interest).

1 46. The headings herein are used for the purpose of convenience only and are not meant
2 to have legal effect.

3 47. The administration and consummation of the Settlement as embodied in this
4 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
5 purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to
6 Plaintiffs' Counsel and enforcing the terms of this Stipulation, including the Plan of Allocation (or
7 such other plan of allocation as may be approved by the Court) and the distribution of the Net
8 Settlement Fund to Settlement Class Members.

9 48. The waiver by one Party of any breach of this Stipulation by any other Party shall
10 not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

11 49. This Stipulation and its exhibits and the Supplemental Agreement constitute the
12 entire agreement among Plaintiffs and Defendants concerning the Settlement and this Stipulation
13 and its exhibits. All Parties acknowledge that no other agreements, representations, warranties, or
14 inducements have been made by any Party concerning this Stipulation, its exhibits, or the
15 Supplemental Agreement other than those contained and memorialized in such documents.

16 50. This Stipulation may be executed in one or more counterparts, including by
17 signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email.
18 All executed counterparts and each of them shall be deemed to be one and the same instrument.

19 51. This Stipulation shall be binding upon and inure to the benefit of the successors and
20 assigns of the Parties, including any and all Releasees and any corporation, partnership, or other
21 entity into or with which any Party may merge, consolidate, or reorganize.

22 52. The construction, interpretation, operation, effect, and validity of this Stipulation,
23 the Supplemental Agreement, and all documents necessary to effectuate it shall be governed by
24 the internal laws of the State of California without regard to conflicts of laws, except to the extent
25 that federal law requires that federal law govern.

1 53. Any action arising under or to enforce this Stipulation or any portion thereof, shall
2 be commenced and maintained only in the Court.

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

7 55. All counsel and any other person executing this Stipulation and any of the exhibits
8 hereto, or any related Settlement documents, warrant and represent that they have the full authority
9 to do so and that they have the authority to take appropriate action required or permitted to be
10 taken pursuant to the Stipulation to effectuate its terms.

11 56. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another
12 in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in
13 this Stipulation, and to use best efforts to promptly agree upon and execute all such other
14 documentation as may be reasonably required to obtain final approval by the Court of the
15 Settlement.

16 57. If any Party is required to give notice to another Party under this Stipulation, such
17 notice shall be in writing and shall be deemed to have been duly given upon receipt of hand
18 delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided
19 as follows:

20 If to Plaintiffs or Lead Counsel: Bernstein Litowitz Berger & Grossmann LLP
21 Attn: James A. Harrod, Esq.
22 1251 Avenue of the Americas
23 New York, NY 10020
24 Telephone: (212) 554-1400
25 Facsimile: (212) 554-1444
26 Email: jim.harrod@blbglaw.com

27 If to Defendants: Sullivan & Cromwell LLP
28 Attn: Suhana S. Han, Esq.
 125 Broad Street
 New York, NY 10004-2498
 Telephone: (212) 558-4000
 Facsimile: (212) 558-3588
 Email: hans@sullcrom.com

1 58. Except as otherwise provided herein, each Party shall bear its own costs.

2 59. Whether or not the Stipulation is approved by the Court and whether or not the
3 Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use
4 their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts,
5 documents signed, and proceedings in connection with the Stipulation confidential.

6 60. All agreements made and orders entered during the course of this Action relating
7 to the confidentiality of information shall survive this Settlement.

8 61. No opinion or advice concerning the tax consequences of the proposed Settlement
9 to individual Settlement Class Members is being given or will be given by the Parties or their
10 counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation.
11 Each Settlement Class Member's tax obligations, and the determination thereof, are the sole
12 responsibility of the Settlement Class Member, and it is understood that the tax consequences may
13 vary depending on the particular circumstances of each individual Settlement Class Member.

14 **IN WITNESS WHEREOF**, the Parties hereto have caused this Stipulation to be executed,
15 by their duly authorized attorneys, as of August 27, 2018.

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STIPULATION AND AGREEMENT OF SETTLEMENT
MDL No. 2672 CRB (JSC)

& TO, LLP

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STIPULATION AND AGREEMENT OF SETTLEMENT
MDL No. 2672 CRB (JSC)