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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 ARTHUR KAYE IRA FCC AS CUSTODIAN
DTD 6-8-00 and HAYDEN LEASON,
17 Individually and On Behalf of All Others
18 Similarly Situated,
19 Plaintiffs,

20 v.
21

22 IMMUNOCELLULAR THERAPEUTICS,
LTD., DAVID FRACTOR, MANISH SINGH,
23 LAVOS, LLC, LIDINGO HOLDINGS, LLC,
24 KAMILLA BJORLIN, ANDREW HODGE, and
25 BRIAN NICHOLS,
26 Defendants.

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

CLASS ACTION

**AMENDED STIPULATION
OF SETTLEMENT**

Judge: Hon. Fernando M.
Olguin

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.

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

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

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

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

19 On September 13, 2018, the Settling Parties executed a stipulation of settlement.
20 On that same day, Plaintiffs filed the stipulation of settlement (ECF No. 121) and an
21 Unopposed Motion for an Order Granting Preliminary Approval of Class Action
22 Settlement and Directing Dissemination of Notice to the Class (ECF No. 120), as well
23 as supporting documents thereto.

24 On November 1, 2018, the Court held a hearing to consider the stipulation of
25 settlement and Plaintiffs' motion for preliminary approval. At that hearing, the Court
26 requested certain changes to the stipulation of settlement, including revisions to the
27 proposed releases, as well as greater particularity on the maximum fees to be incurred
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1 by the Claims Administrator and costs to be recovered by Co-Lead Counsel from the
2 Settlement Fund. (ECF No. 129.)

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

4 Plaintiffs believe that the claims asserted in the Litigation have merit and that the
5 evidence developed to date supports the claims. However, Plaintiffs and their counsel
6 recognize and acknowledge the expense and length of continued proceedings necessary
7 to prosecute the Litigation against Defendants through trial and through appeals.
8 Plaintiffs and their counsel also have taken into account the uncertain outcome and the
9 risk of any litigation, especially in complex actions such as this Action, as well as the
10 difficulties and delays inherent in such litigation. Plaintiffs and their counsel also are
11 mindful of the inherent problems of proof, and possible defenses to the securities law
12 violations asserted in the Litigation. Plaintiffs and their counsel believe that the
13 Settlement set forth in this Stipulation confers substantial benefits upon the Settlement
14 Class. Based on their evaluation, Plaintiffs and Co-Lead Counsel have determined that
15 the Settlement set forth in this Stipulation is in the best interests of Plaintiffs and the
16 Settlement Class.

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

18 Settling Defendants believe that the claims asserted in the Litigation are
19 completely without merit. Settling Defendants have denied and continue to deny any
20 and all wrongdoing whatsoever and maintain that their conduct was at all times proper
21 and in compliance with applicable provisions of law. Settling Defendants have denied,
22 and continue to deny each and all of the claims alleged by Plaintiffs in the Litigation
23 and deny that they have committed any of the wrongful acts or violations of law alleged
24 in any Complaint filed by Plaintiffs, including that they made any material
25 misrepresentations or omissions. Settling Defendants deny all charges of wrongdoing
26 or liability against them arising out of any of the conduct, statements, acts, or omissions
27 alleged, or that could have been alleged, in the Litigation. Settling Defendants also
28 deny, among other things, the allegations that the Plaintiffs or the Settlement Class have

1 suffered damages or were harmed in any way by the conduct alleged in any Complaint.
2 In addition, Settling Defendants believe that they have meritorious defenses to all claims
3 alleged in the Litigation. Nonetheless, Settling Defendants have agreed to enter into
4 the Settlement to avoid the expense, distraction, and time associated with continuing
5 the Litigation. Settling Defendants have concluded that further conduct of the Litigation
6 would be protracted and expensive and that it is desirable that the Litigation be fully
7 and finally settled in the manner and upon the terms and conditions set forth in this
8 Stipulation. Nothing in this Stipulation shall be construed or deemed to be an admission
9 or concession on the part of any Defendant with respect to any claim, fault, liability,
10 wrongdoing, or damage whatsoever, or with respect to the validity of the defenses that
11 any Defendant has asserted or may assert.

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

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

21 **DEFINITIONS**

22 As used in this Stipulation, the following terms have the meanings specified
23 below:

24 1.1 “Authorized Claimant” means any Settlement Class Member who files a
25 Proof of Claim and Release in such form and manner, and within such time, as the Court
26 shall prescribe and whose claim for recovery has been allowed pursuant to the terms of
27 the Stipulation.

28 1.2 “Claims Administrator” means A.B. Data, Ltd.

1 1.3 “Co-Lead Counsel” means Levi & Korsinsky, LLP and Wolf Popper LLP.

2 1.4 “Complaint” means and includes the original class action complaint filed
3 on May 1, 2017, as well as each subsequent version of that pleading, including the FAC
4 (filed August 24, 2017), the SAC (filed October 13, 2017), and the TAC (filed June 29,
5 2018).

6 1.5 “Court” means the United States District Court for the Central District of
7 California.

8 1.6 “Defendants” means ImmunoCellular Therapeutics, Ltd. (“IMUC”),
9 David Fractor, Manish Singh, Lavos, LLC, Lidingo Holdings, LLC, Kamilla Bjorlin,
10 Andrew Hodge, Brian Nichols, John S. Yu, Andrew Gengos, Vincent Cassano,
11 Christopher French and Stephen Ramey.

12 1.7 “Effective Date” means the first date by which all of the events and
13 conditions specified in ¶ 9.1 of the Stipulation have been met and have occurred.

14 1.8 “Escrow Account” means the interest-bearing account deposited with the
15 Escrow Agent.

16 1.9 “Escrow Agent” means Signature Bank, subject to the control of Wolf
17 Popper LLP.

18 1.10 “Fee and Expense Application” means the application or applications Co-
19 Lead Counsel may submit for an award of attorneys’ fees not to exceed 25% of the
20 Settlement Amount, plus up to \$80,000 in expenses incurred in connection with
21 prosecuting the Litigation, plus any interest on such attorneys’ fees and expenses at the
22 same rate and for the same time periods as earned by the Settlement Fund (until paid),
23 as may be awarded by the Court. The Fee and Expense Application may also include a
24 request on behalf of Lead Plaintiffs of their reasonable costs incurred in the
25 representation of the Class, including lost wages, not to exceed \$2,500 per Plaintiff.

26 1.11 “Fee and Expense Award” means the order of the Court authorizing the
27 payment from the Settlement Fund of Co-Lead Counsel’s attorneys’ fees and expenses
28 if and to the extent allowed by the Court. The Fee and Expense Award may include an

1 award on behalf of Lead Plaintiffs of their reasonable costs incurred in the
2 representation of the Class, including lost wages, not to exceed \$2,500 per Plaintiff.

3 1.12 “Final” means the time when any judgment or order, including the
4 Judgment, has not been reversed, vacated, or modified in any way and is no longer
5 subject to appellate review, either because: (i) no appeal has been filed and the time has
6 passed for any notice of appeal to be timely filed in the Action; or (ii) an appeal has
7 been filed and the court of appeals has either affirmed the underlying order or judgment
8 in its entirety or dismissed that appeal, and the time for any reconsideration or further
9 appellate review has passed; or (iii) the Supreme Court has either denied review or
10 granted review and either affirmed the underlying order or judgment in its entirety, or
11 affirmed the court of appeals’ decision affirming the order or judgment in its entirety or
12 dismissing the appeal. For purposes of this paragraph, an “appeal” shall include any
13 petition for a writ of certiorari or other writ that may be filed in connection with approval
14 or disapproval of this Settlement, but shall not include any appeal that concerns only
15 the issue of attorneys’ fees and/or expenses, the Plan of Allocation of the Settlement
16 Fund, the procedures for determining Authorized Claimants’ recognized claims, or
17 distribution of the Net Settlement Fund to Authorized Claimants. Any appeal or
18 proceeding relating solely to one or more of these excluded issues shall not in any way
19 delay or affect the time set forth above for the Judgment to become Final, or otherwise
20 preclude the Judgment from becoming Final.

21 1.13 “Final Approval Hearing” means the hearing to determine whether the
22 proposed Settlement embodied by this Stipulation is fair, reasonable, and adequate to
23 the Settlement Class, whether the Settlement Class should be certified for purposes of
24 effectuating the Settlement, and whether the Court should enter a Judgment approving
25 the proposed Settlement.

26 1.14 “IMUC” means ImmunoCellular Therapeutics, Ltd.
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1 1.15 “Individual Defendants” means David Fractor, John S. Yu, Andrew
2 Gengos, Manish Singh, Kamilla Bjorlin, Andrew Hodge, Brian Nichols, Vincent
3 Cassano, Christopher French and Stephen Ramey.

4 1.16 “Judgment” means the Final Judgment and Order of Dismissal with
5 Prejudice to be rendered by the Court, in the form attached hereto as Exhibit B, or such
6 other substantially similar form agreed to by the Parties and approved by the Court.

7 1.17 “Lavos” means Lavos, LLC.

8 1.18 “Lidingo” means Lidingo Holdings, LLC.

9 1.19 “Litigation” and “Action” both mean and refer to this proceeding, *Kaye v.*
10 *ImmunoCellular Therapeutics, Ltd. et al.*, Case No. 2:17-cv-03250-FMO-SK, pending
11 in this Court.

12 1.20 “Net Settlement Fund” means the Settlement Fund less (i) any Fee and
13 Expense Award; (ii) Notice and Administration Costs; (iii) Taxes and Tax Expenses;
14 and (iv) other Court-approved deductions.

15 1.21 “Notice” means the Notice of Proposed Class Action Settlement, in the
16 form annexed hereto as Exhibit A-2 to the Preliminary Approval Order, or such other
17 substantially similar form agreed to by the Settling Parties and approved by the Court.

18 1.22 “Notice and Administration Costs” means the reasonable costs and
19 expenses that are actually incurred in connection with (i) providing notice of the
20 Settlement to the Settlement Class; (ii) locating Settlement Class Members; (iii)
21 assisting with the filing of claims; (iv) processing Proof of Claim and Release forms;
22 (v) administering and distributing the Net Settlement Fund to Authorized Claimants;
23 and (vi) paying escrow fees and costs, if any.

24 1.23 “Party” or “Parties” means individually or collectively, as the context
25 requires, Plaintiffs and the Settling Defendants.

26 1.24 “Person” means a natural person, individual, corporation, partnership,
27 limited partnership, association, joint stock company, joint venture, limited liability
28 company, professional corporation, estate, legal representative, trust or trustee,

1 unincorporated association, government or any political subdivision or agency thereof,
2 and any other type of legal, business or political entity.

3 1.25 “Plaintiffs” means and includes Arthur Kaye IRA FCC as Custodian DTD
4 6-8-00 and Hayden Leason, appointed as Co-Lead Plaintiffs by Order of the Court dated
5 July 21, 2017 (ECF No. 35).

6 1.26 “Plan of Allocation” means a plan or formula for allocation of the Net
7 Settlement Fund to be approved by the Court, which plan or formula will govern the
8 distribution of the Net Settlement Fund to Authorized Claimants. Any Plan of
9 Allocation is not part of the Stipulation, and Released Persons shall have no
10 responsibility for the Plan of Allocation or its implementation and no liability with
11 respect thereto. Any order or proceedings relating to the Plan of Allocation shall not
12 operate to terminate or cancel this Stipulation or affect the finality of the Judgment or
13 any other orders entered by the Court pursuant to this Stipulation.

14 1.27 “Postcard Notice” means the “Postcard Notice of Proposed Class Action
15 Settlement, in the form annexed hereto as Exhibit A-1 to the Preliminary Order, or such
16 substantially similar form agreed to by the Settling Parties and approved by the Court.

17 1.28 “Preliminary Approval Order” means the [Proposed] Order Granting
18 Preliminary Approval of Settlement and Directing Dissemination of Notice to
19 Settlement Class, in the form annexed hereto as Exhibit A, or such other substantially
20 similar form agreed to by the Settling Parties, as entered by the Court.

21 1.29 “Proof of Claim and Release” means a completed Proof of Claim and
22 Release, substantially in the form of Exhibit A-4 attached hereto, signed under penalty
23 of perjury and supported by such documents as are specified in the Proof of Claim and
24 Release, submitted as required under ¶ 7.3 herein.

25 1.30 “Related Persons” shall mean: (1) with respect to IMUC, Lidingo, and
26 Lavos, each of their predecessors, successors, past, present or future parents,
27 subsidiaries, and affiliates, each of their respective past or present officers, directors,
28 agents, partners, principals, members, employees, attorneys, advisors, auditors and

1 accountants, insurers and reinsurers, and any firm, trust, corporation, or other entity in
2 which IMUC, Lidingo, or Lavos has or had a controlling interest; and (2) with respect
3 to the Individual Defendants, their respective spouses, immediate family members,
4 heirs, successors, executors, estates, administrators, attorneys, agents, accountants,
5 insurers or reinsurers, personal representatives, trusts, community property, and any
6 other entity in which any of them has a controlling interest, and as to such entities, each
7 and all of their predecessors, successors, past, present or future parents, subsidiaries,
8 affiliates, and each of their respective past or present officers, directors, shareholders,
9 agents, partners, principals, members, employees, attorneys, advisors, trustees, auditors
10 and accountants, insurers and reinsurers.

11 1.31 “Released Claims” means any and all claims, demands, and causes of
12 action of every nature and description (including, but not limited to, any claims for
13 damages, restitution, rescission, interest, attorneys’ fees, expert or consulting fees, and
14 any other costs, expenses, charges, or liability whatsoever), whether known or unknown
15 or discoverable or undiscoverable, whether class, derivative, or individual in nature,
16 which now exist or have existed or have been or could have been asserted in any forum
17 by Plaintiffs or any Settlement Class Member, or any Person claiming through or on
18 behalf of any of them, against any of the Released Persons arising out of or relating to
19 the facts and allegations in the Complaint. Expressly excluded from Released Claims
20 are: (i) the matters set forth in ¶ 6.5 of this Stipulation; and (ii) the shareholder derivative
21 claims asserted in *Wiener et al. v. Fractor et al.*, pending in the Superior Court of the
22 State of California, County of Los Angeles.

23 1.32 “Released Persons” means each and all of the Defendants, and their
24 respective Related Persons.

25 1.33 “Settlement” means the settlement between Plaintiffs, on behalf of
26 themselves and all Settlement Class Members, and Settling Defendants on the terms set
27 forth in this Stipulation.
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1 1.34 “Settlement Amount” means One Million One Hundred and Fifty
2 Thousand Dollars (\$1,150,000).

3 1.35 “Settlement Class” and “Settlement Class Members” mean and include,
4 for purposes of this Settlement, and to be certified pursuant to Fed. R. Civ. P. 23 for the
5 purpose of effectuating this Settlement only: all Persons who purchased or otherwise
6 acquired IMUC common stock on the open market during the Settlement Class Period,
7 including Plaintiffs. Excluded from the Settlement Class are Defendants; members of
8 the Defendants’ immediate families; officers, directors, and subsidiaries of IMUC; any
9 firm, entity, or corporation wholly owned by any Defendant and/or any member(s) of a
10 Defendant’s immediate family; any trust of which a Defendant is the settlor or which is
11 for his benefit and/or that of any member of his immediate family (as defined by SEC
12 regulations); and the legal representatives, heirs, or successors-in-interest of the Settling
13 Defendants. Also excluded from the Settlement Class are those Persons who timely
14 and validly request exclusion from the Settlement Class in accordance with the
15 instructions provided in the Notice.

16 1.36 “Settlement Class Period” means the period between May 1, 2012 and May
17 30, 2014, inclusive.

18 1.37 “Settlement Fund” means the Settlement Amount, plus any accrued
19 interest earned thereon.

20 1.38 “Settling Defendants” has the meaning set forth in the introductory
21 paragraph of this Stipulation.

22 1.39 “Settling Parties” has the meaning set forth in the introductory paragraph
23 of this Stipulation.

24 1.40 “Stipulation” means this Amended Stipulation of Settlement, including the
25 recitals and Exhibits hereto, each of which is incorporated by reference as though set
26 forth in the Stipulation itself.

27 1.41 “Summary Notice” means the summary notice describing the Settlement
28 of the Litigation and the Final Approval Hearing, in the form annexed hereto as Exhibit

1 A-3 to the Preliminary Approval Order, or such other substantially similar form agreed
2 to by the Settling Parties and approved by the Court.

3 1.42 “Supplemental Agreement” means the confidential agreement described in
4 ¶ 9.5 of this Stipulation.

5 1.43 “Taxes” means all federal, state and local taxes of any kind (including any
6 estimated taxes, interest or penalties) arising with respect to the income earned by the
7 Settlement Fund, including any taxes or tax detriments that may be imposed upon
8 Defendants or their counsel with respect to any income earned on the Settlement Fund
9 for any period during which the Settlement Fund does not qualify as a “Qualified
10 Settlement Fund” for federal or state income tax purposes.

11 1.44 “Tax Expenses” means any expenses and costs incurred in connection with
12 the calculation and payment of Taxes or the preparation of tax returns and related
13 documents including, without limitation, expenses of tax attorneys and/or accountants
14 and mailing and distribution costs and expenses relating to filing (or failing to file) the
15 returns described in ¶ 2.9.

16 **THE SETTLEMENT**

17 *The Settlement Fund*

18 2.1 In consideration of the terms of this Stipulation, and in full settlement of
19 all Released Claims against all Released Persons, IMUC shall pay or cause to be paid
20 the Settlement Amount to a separate, interest-bearing Escrow Account designated and
21 controlled by the Claims Administrator on behalf of Plaintiffs and the Settlement Class
22 no later than twenty-one (21) days after both of the following have taken place: (a) the
23 Court has entered the Preliminary Approval Order granting preliminary approval of the
24 Settlement; and (b) IMUC’s counsel have received from Co-Lead Counsel a Form W-
25 9 providing the tax identification number for the Escrow Account. No other Defendant
26 or Released Person shall be responsible for any payments of any kind under this
27 Stipulation.
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1 2.2 The payments described in ¶ 2.1 are the only payments to be made by or
2 on behalf of Defendants in connection with this Settlement. All fees, costs, and
3 expenses incurred by or on behalf of Plaintiffs and Settlement Class Members
4 associated with this Settlement, including, but not limited to, Taxes, Tax Expenses,
5 Notice and Administration Costs, and any Fee and Expense Award shall be paid from
6 the Settlement Fund, and in no event shall Released Persons bear any responsibility or
7 liability for any such fees, costs, or expenses.

8 2.3 This is not a claims-made settlement. Upon the occurrence of the Effective
9 Date, neither IMUC nor any other Person that paid any portion of the Settlement Fund
10 on Defendants' behalf shall have any right to the return of the Settlement Fund or any
11 portion thereof irrespective of the collective amount of losses of Authorized Claimants,
12 the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants
13 from the Net Settlement Fund. In no instance shall IMUC (or any other Defendant or
14 Released Person) be required to pay any amount in excess of the Settlement Amount.

15 ***The Escrow Agent***

16 2.4 The Escrow Agent shall invest the Settlement Amount(s) deposited
17 pursuant to ¶ 2.1 hereof in short-term United States agency or other Treasury securities
18 or other instruments backed by the full faith and credit of the United States Government
19 or fully insured by the United States Government or an agency thereof, and shall
20 reinvest the proceeds of these instruments as they mature in similar instruments at their
21 then-current market rates. All risks related to the investment of the Settlement Fund
22 shall be borne by the Escrow Agent, and the Released Persons shall have no
23 responsibility for, interest in, or liability whatsoever with respect to any investment
24 decisions or actions taken, or any transactions executed, by the Escrow Agent.

25 2.5 The Escrow Agent shall not disburse the Settlement Fund except as
26 provided in the Stipulation or by an order of the Court.

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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
28

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 in accordance with the Court's
6 instructions at the November 1, 2018 Preliminary Approval of Settlement Hearing (ECF
7 No. 129).

8 3.2 Lead Counsel shall request that, after notice is given, the Court hold a Final
9 Approval Hearing to consider and determine, among other things, whether to approve
10 the Settlement pursuant to the terms of this Stipulation as fair, reasonable, and adequate,
11 and whether the Judgment, substantially in the form of Exhibit B attached hereto, should
12 be entered approving the Settlement and dismissing the Litigation with prejudice. At
13 or after the Final Approval Hearing, Co-Lead Counsel also will request that the Court
14 approve the proposed Plan of Allocation and the Fee and Expense Application.

15 **CERTIFICATION OF THE SETTLEMENT CLASS**

16 4.1 For purposes of this Settlement only, and subject to approval by the Court,
17 the Settling Parties stipulate to: (i) certification of the Settlement Class pursuant to Rules
18 23(a) and (b)(3) of the Federal Rules of Civil Procedure; (ii) appointment of Plaintiffs
19 as the class representatives for the Settlement Class; and (iii) appointment of Co-Lead
20 Counsel as counsel to the Settlement Class.

21 4.2 Nothing in this Stipulation shall serve in any fashion, either directly or
22 indirectly, as evidence of or support for certification of a class other than for purposes
23 of the Settlement. If this Stipulation is terminated, the Settlement is not approved by
24 the Court, or the Effective Date does not occur for any reason, any certification of the
25 Settlement Class will be null and void and the Litigation shall proceed as if the
26 Settlement Class had never been certified. Settling Defendants expressly reserve all
27 rights and grounds to oppose class certification in the event the Settlement is terminated
28 or the Effective Date does not occur for any reason.

1 **REQUESTS FOR EXCLUSION**

2 5.1 Settlement Class Members requesting exclusion from the Settlement Class
3 shall be requested to provide certain information in the manner described in the
4 Settlement Notice. Any request for exclusion must also be signed by the Person
5 requesting exclusion.

6 5.2 All Persons who submit valid and timely requests for exclusion in the
7 manner set forth in the Notice shall have no rights under the Stipulation, shall not share
8 in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation
9 or the Judgment. The deadline for submitting requests for exclusion shall be set by the
10 Court, but shall be no later than twenty-one (21) calendar days before the Final
11 Approval Hearing. Exclusion requests may not be submitted by e-mail, unless
12 otherwise ordered by the Court.

13 5.3 Copies of all requests for exclusion received by the Claims Administrator,
14 Co-Lead Counsel and counsel for Settling Defendants, together with copies of all
15 written revocations of requests for exclusion, shall be delivered to counsel for all Parties
16 within five (5) calendar days of receipt and in no event later than fourteen (14) calendar
17 days before the Final Approval Hearing.

18 **RELEASES**

19 6.1 The satisfaction of the obligations incurred pursuant to this Stipulation
20 shall be in full and final disposition of the Litigation and any and all Released Claims.

21 6.2 Upon the Effective Date, Plaintiffs and all other Settlement Class
22 Members, each of their respective Related Persons, and all other Persons claiming
23 through or on behalf of any of them, shall be deemed to have, and by operation of the
24 Judgment shall have, fully, finally, and forever released, relinquished, discharged, and
25 dismissed all Released Claims against the Released Persons, whether or not such
26 Settlement Class Member executes and delivers a Proof of Claim and Release form,
27 seeks or obtains a distribution from the Net Settlement Fund, is entitled to receive a
28 distribution under the Plan of Allocation approved by the Court, or has objected to any

1 aspect of the Stipulation or the Settlement, the Plan of Allocation, or Co-Lead Counsel's
2 Fee and Expense Application.

3 6.3 Upon the Effective Date, Plaintiffs, all Settlement Class Members and
4 anyone claiming through or on behalf of any of them, shall be forever barred and
5 enjoined from commencing, instituting, maintaining or continuing to prosecute any
6 action or proceeding in any court of law or equity, arbitration tribunal, administrative
7 forum, or other forum of any kind, asserting any of the Released Claims against any of
8 the Released Persons; provided, however, that nothing herein shall in any way restrict
9 or impair the rights of any Settling Party to enforce the terms of the Stipulation and
10 Settlement.

11 6.4 Upon the Effective Date, Settling Defendants shall be deemed to have, and
12 by operation of the Judgment shall have, fully, finally, and forever released,
13 relinquished, and discharged Plaintiffs, Settlement Class Members, Co-Lead Counsel
14 and their respective Related Persons from all claims arising out of or relating to the
15 institution, prosecution, assertion, settlement, or resolution of the Litigation or the
16 Released Claims; provided, however, that nothing herein shall in any way restrict or
17 impair the rights of any Defendant or other Released Person to enforce the terms of the
18 Stipulation and Settlement.

19 6.5 Plaintiffs and Settlement Class Members may hereafter discover facts in
20 addition to or different from those which they now know or believe to be true with
21 respect to the subject matter of the Released Claims. Nevertheless, upon the Effective
22 Date, Plaintiffs shall expressly, fully, finally, and forever settle and release, and each
23 Settlement Class Member shall be deemed to have, and by operation of the Judgment
24 shall have, fully, finally, and forever settled and released, any and all Released Claims.
25 With respect to any and all Released Claims, the Settling Parties stipulate and agree
26 that, upon the Effective Date, Plaintiffs shall expressly waive and relinquish, and each
27 of the Settlement Class Members shall be deemed to have waived and relinquished, and
28 by operation of the Judgment shall have waived and relinquished, any and all

1 provisions, rights, and benefits conferred by any law of any state or territory of the
2 United States, or principle of common law, which is similar, comparable or equivalent
3 to California Civil Code Section 1542, which provides:

4 **A GENERAL RELEASE DOES NOT EXTEND TO**
5 **CLAIMS WHICH THE CREDITOR DOES NOT**
6 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
7 **FAVOR AT THE TIME OF EXECUTING THE**
8 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
9 **MUST HAVE MATERIALLY AFFECTED HIS OR**
10 **HER SETTLEMENT WITH THE DEBTOR.**

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

16 6.6 Nothing in this Stipulation constitutes or reflects a waiver or release of any
17 rights or claims of Defendants with respect to their insurers and/or the insurers' Related
18 Persons, including, but not limited to, any rights or claims under any directors and
19 officers' liability insurance or other applicable insurance coverage maintained by
20 IMUC.

21 **ADMINISTRATION AND CALCULATION OF CLAIMS AND SUPERVISION**
22 **AND DISTRIBUTION OF SETTLEMENT FUND**

23 7.1 The Claims Administrator, subject to such supervision and direction of Co-
24 Lead Counsel and the Court as may be necessary under the circumstances, shall
25 administer and calculate the claims submitted by Settlement Class Members and shall
26 oversee distribution of the Net Settlement Fund to Authorized Claimants.

27 7.2 The Settlement Fund shall be applied as follows:
28 (a) To pay the Notice and Administrative Costs, including:
i. Printing and mailing of the Postcard Notice, Notice and Proof
of Claim and Release to the Settlement Class;
ii. Publication of the Summary Notice;

1 iii. The Claims Administrator’s costs and fees for services
2 performed in connection with the administration of the Settlement contemplated by this
3 Stipulation;

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

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

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

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

12 (d) To pay Taxes and Tax Expenses;

13 (e) To pay the Claims Administrator’s fees in connection with the
14 administration of the settlement, which will not exceed \$59,169.16, not including
15 Notice and Administrative Costs;

16 (f) After the Judgment is Final, to pay the Fee and Expense Award; and

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

20 7.3 After the Effective Date, and in accordance with the terms of the
21 Stipulation, the Plan of Allocation, or such further orders of the Court as circumstances
22 may warrant or require, the Net Settlement Fund shall be distributed to Authorized
23 Claimants, subject to and in accordance with the following: Within one hundred ten
24 (110) days after the mailing of the Postcard Notice or such other time as may be set by
25 the Court, each Person claiming to be an Authorized Claimant shall be required to
26 submit to the Claims Administrator a completed Proof of Claim and Release,
27 substantially in the form of Exhibit A-4 attached hereto, signed under penalty of perjury
28 and supported by such documents as are specified in the Proof of Claim and Release.

1 All Proof of Claim and Release forms must be submitted by the date specified in the
2 Notice, unless such period is extended by the Court.

3 7.4 Except as otherwise ordered by the Court, all Settlement Class Members
4 who fail to timely submit a Proof of Claim and Release within such period described in
5 ¶ 7.3 above, or such other period as may be ordered by the Court, shall be forever barred
6 from receiving any payments pursuant to the Stipulation and the Settlement set forth
7 herein, but will in all other respects be subject to and bound by the provisions of the
8 Stipulation, the releases contained herein, and the Judgment. Notwithstanding the
9 foregoing, Co-Lead Counsel shall have the discretion to accept late-submitted claims
10 so long as distribution of the Net Settlement Fund is not materially delayed thereby.

11 7.5 The Claims Administrator shall calculate the Claims of Authorized
12 Claimants, determine the extent to which claims shall be allowed, and oversee
13 distribution of the Net Settlement Fund in accordance with the Plan of Allocation set
14 forth in the Notice and approved by the Court. If there is any balance remaining in the
15 Net Settlement Fund after six (6) months from the date of initial distribution of the Net
16 Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Co-
17 Lead Counsel shall, if feasible, reallocate such balance among Authorized Claimants in
18 an equitable and economic fashion. Thereafter, any balance which still remains in the
19 Net Settlement Fund shall be, subject to the payment of any additional previously
20 unreimbursed Notice and Administration Costs, donated to an appropriate, non-profit
21 501(c)(3) charitable organization as determined by Co-Lead Counsel.

22 7.6 Settling Defendants, their counsel, and their insurers shall have no role in,
23 responsibility for, interest in, or liability with respect to any of the following: (i) any
24 act, omission, or determination of Co-Lead Counsel, the Escrow Agent, or the Claims
25 Administrator, or any of their respective designees or agents, in connection with
26 administering the Settlement; (ii) the management, investment, or distribution of the
27 Settlement Fund; (iii) the Plan of Allocation; (iv) the review, determination,
28 administration, calculation, or payment of any claims asserted against the Settlement

1 Fund; (v) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or
2 (vi) the payment or withholding of any Taxes, Tax Expenses, and/or costs incurred in
3 connection with the taxation of the Settlement Fund or filing of any returns. No Person
4 shall have any claim of any kind against any Released Person with respect to the
5 administration, investment, distribution, and/or supervision of the Settlement Fund, and
6 Lead Plaintiff, all Settlement Class Members, and Co-Lead Counsel release all Released
7 Persons from any and all liability arising from or with respect to the administration,
8 investment, distribution, and/or supervision of the Settlement Fund.

9 7.7 It is understood and agreed by the Settling Parties that any proposed Plan
10 of Allocation of the Net Settlement Fund including, but not limited to, any adjustments
11 to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and
12 is to be considered by the Court separately from the Court's consideration of the
13 fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. It
14 is further understood and agreed by the Settling Parties that any order or proceeding
15 relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation
16 or affect or delay the finality of the Court's Judgment approving this Stipulation and the
17 Settlement set forth herein (including the releases contained herein), or any other orders
18 entered pursuant to this Stipulation.

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

20 8.1 Co-Lead Counsel may submit the Fee and Expense Application for an
21 award of attorneys' fees not to exceed 25% of the Settlement Amount, plus up to
22 \$80,000 in expenses incurred in connection with prosecuting the Litigation, plus any
23 interest on such attorneys' fees and expenses at the same rate and for the same time
24 periods as earned by the Settlement Fund (until paid), as may be awarded by the Court.
25 Any Fee and Expense Award shall be payable solely from the Settlement Fund. Aside
26 from payment of the Settlement Amount, no Defendant or any other Released Person
27 shall have any obligation to pay any portion of Co-Lead Counsel's attorneys' fees or
28

1 Litigation expenses or the Fee and Expense Award, and Settling Defendants take no
2 position with respect to Co-Lead Counsel's Fee and Expense Application.

3 8.2 The Fee and Expense Award, if and to the extent allowed by the Court,
4 shall be paid to Co-Lead Counsel from the Settlement Fund upon the Court's entry of
5 the Judgment, notwithstanding the existence of any timely filed objections thereto, or
6 any appeal or potential for appeal therefrom, or collateral attack on the Settlement or
7 any part thereof, subject to Co-Lead Counsel's obligation to make appropriate refunds
8 or repayments to the Settlement Fund as specified below in ¶ 8.3. An award of
9 attorneys' fees and/or expenses is not a necessary term of this Stipulation and is not a
10 condition of the Settlement embodied herein. Neither Plaintiffs nor Co-Lead Counsel
11 may cancel or terminate the Settlement based on this Court's or any appellate court's
12 ruling with respect to attorneys' fees and/or Litigation expenses.

13 8.3 If the Effective Date does not occur, or the Judgment is reversed or
14 modified, or the Fee and Expense Award is reduced or reversed, or the Stipulation is
15 canceled or terminated for any other reason, and in the event that the Fee and Expense
16 Award has been paid to any extent, then Co-Lead Counsel shall within seven (7) days
17 after (a) receiving notice of termination of the Settlement from Defendants' Counsel or
18 (b) any order reversing or modifying the Judgment or reducing or reversing the Fee and
19 Expense Award has become Final, refund to the Settlement Fund the fees and expenses
20 previously paid to Co-Lead Counsel from the Settlement Fund, plus interest thereon at
21 the same rate as earned by the Settlement Fund, in an amount consistent with such
22 termination, reversal or modification. Co-Lead Counsel receiving fees and expenses
23 agree as a condition of receiving such fees and expenses that they are subject to the
24 jurisdiction of the Court for the purpose of enforcing this paragraph. Each Co-Lead
25 Counsel agrees that the Court may, upon application of Settling Defendants and notice
26 to Co-Lead Counsel, summarily issue orders including, but not limited to, judgments
27 and attachment orders and may make appropriate findings of or sanctions for contempt,
28 should such law firm fail timely to repay fees and expenses pursuant to this ¶ 8.3.

1 8.4 The procedure for and the allowance or disallowance by the Court of any
2 Fee and Expense Application or Award to be paid out of the Settlement Fund, are not
3 part of the Settlement set forth in this Stipulation, and are to be considered by the Court
4 separately from the Court's consideration of the fairness, reasonableness, and adequacy
5 of the Settlement. Any order or proceeding relating to the Fee and Expense Application,
6 or any appeal from any order relating thereto or reversal or modification thereof, shall
7 not operate to terminate or cancel this Stipulation, or affect or delay the finality of the
8 Judgment approving the Stipulation and the Settlement and releases set forth herein.

9 8.5 The Released Persons shall have no responsibility for, or liability with
10 respect to any Fee and Expense Application or the payment of any Fee and Expense
11 Award to Co-Lead Counsel out of the Settlement Fund. The Released Persons shall
12 have no responsibility for, or liability with respect to, the allocation of any Fee and
13 Expense Award among Co-Lead Counsel and/or any other Person who may assert some
14 claim thereto, and the Released Persons take no position with respect thereto.

15 **CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
16 **CANCELLATION OR TERMINATION**

17 9.1 The Effective Date of this Stipulation shall be the date when all of the
18 following shall have occurred and is conditioned on the occurrence of all of the
19 following events:

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

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

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

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

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

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

6 (g) The Judgment has become Final, as defined in ¶ 1.12 hereof.

7 9.2 Upon the occurrence of all of the events referenced in ¶ 9.1 hereof, any and
8 all remaining interest or right of Settling Defendants in or to the Settlement Fund, if
9 any, shall be absolutely and forever extinguished. If any of the conditions specified in
10 ¶ 9.1 hereof are not met, then the Stipulation shall be canceled and terminated subject
11 to ¶ 9.7 hereof unless Co-Lead Counsel and counsel for Settling Defendants mutually
12 agree in writing to otherwise proceed with the Stipulation.

13 9.3 Settling Defendants and Plaintiffs shall each have the right to terminate the
14 Settlement and this Stipulation by providing written notice of their election to do so (a
15 “Termination Notice”) to all other Parties hereto within thirty (30) days of: (a) the
16 Court’s declining to enter the Preliminary Approval Order in any material respect;
17 (b) the Court’s refusal to approve this Stipulation or any material part of it; (c) the
18 Court’s declining to enter the Judgment in any material respect; or (d) the date upon
19 which the Judgment is modified or reversed in any material respect by the court of
20 appeals or the Supreme Court. However, no order of the Court or modification or
21 reversal on appeal of any order of the Court concerning the Plan of Allocation or the
22 amount of any attorneys’ fees, costs, expenses, and interest awarded by the Court to Co-
23 Lead Counsel shall constitute grounds for cancellation or termination of the Stipulation.

24 9.4 If the Settlement Fund payable pursuant to ¶ 2.1 of this Settlement
25 Stipulation is not paid, then Plaintiffs, in their sole discretion, may either: (i) terminate
26 the Settlement by providing written notice to all Parties; or (ii) enforce the terms of the
27 Stipulation and seek a judgment effecting the terms of the Settlement set forth herein.
28

1 Failure of IMUC to cause the Settlement Fund to be paid shall not serve as a basis for
2 any Settling Defendant to terminate the Settlement.

3 9.5 If, prior to the Final Approval Hearing, the aggregate number of shares of
4 IMUC Common Stock purchased by Persons who would otherwise be Settlement Class
5 Members, but who, in accordance with the provisions in the Notice, timely and validly
6 request exclusion from the Settlement Class, exceeds the sum specified in a separate
7 supplemental agreement between Plaintiffs and Defendants (the “Supplemental
8 Agreement”), IMUC shall have the option (which option shall be exercised on behalf
9 of all Defendants in its sole discretion) to terminate this Stipulation and the Settlement
10 in accordance with the procedures set forth in the Supplemental Agreement, without
11 providing any further reason for its decision to exercise its option to terminate. For
12 purposes of the Supplemental Agreement, any request for exclusion that results in the
13 exclusion of the Settlement Class Member from the Settlement Class, by order of the
14 Court or otherwise, shall be treated as timely and valid. The Supplemental Agreement
15 is confidential and will not be filed with the Court unless requested by the Court or a
16 dispute among the Settling Parties concerning its interpretation or application arises
17 and, in that event, the Settling Parties shall request that the Supplemental Agreement be
18 filed and maintained under seal. In the event of a termination of the Settlement pursuant
19 to the Supplemental Agreement, this Stipulation shall become null and void and of no
20 further force and effect.

21 9.6 Unless otherwise ordered by the Court, in the event the Stipulation is
22 terminated or canceled, or the Effective Date fails to occur for any reason, then within
23 seven (7) days after written notification of such event is sent by counsel for Defendants
24 or Co-Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued
25 interest), less any Notice and Administration Costs reasonably and actually incurred
26 pursuant to ¶ 2.8 and Taxes and Tax Expenses that have been paid pursuant to ¶ 2.9
27 hereof, shall be refunded to the entity or entities that provided the funds, based on their
28 *pro rata* contribution to the Settlement Fund, as indicated in writing to Co-Lead Counsel

1 and the Escrow Agent by IMUC's counsel. The Escrow Agent or its designee shall
2 apply for any tax refund owed on the Settlement Fund and pay the proceeds, after
3 deduction of any fees or expenses incurred in connection with such application(s) for
4 refund, in a similar *pro rata* manner, pursuant to written instructions from Defendants'
5 counsel.

6 9.7 In the event that the Stipulation is not approved by the Court or the
7 Settlement set forth in the Stipulation is terminated or fails to become effective for any
8 reason, the Settling Parties shall be deemed to have reverted to their respective status
9 and positions in the Litigation as of the date and time immediately prior to the execution
10 of this Stipulation. In such event, the terms and provisions of the Stipulation, with the
11 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,
12 shall have no further force and effect with respect to the Settling Parties and shall not
13 be used in this Litigation or in any other proceeding for any purpose, and any judgment
14 or order entered by the Court in accordance with the terms of the Stipulation shall be
15 treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on
16 appeal of any order of the Court concerning the Plan of Allocation or the amount of any
17 Fee and Expense Award shall constitute grounds for cancellation or termination of the
18 Stipulation.

19 9.8 Notwithstanding any provision herein to the contrary, if the Effective Date
20 does not occur, or if the Stipulation is terminated pursuant to its terms, neither Plaintiffs
21 nor Co-Lead Counsel shall have any obligation to repay any amounts actually and
22 properly disbursed pursuant to ¶¶ 2.8–2.9 hereof. In addition, any Notice and
23 Administrative Costs, Taxes and Tax Expenses already incurred and properly
24 chargeable pursuant to ¶¶ 2.8–2.9 hereof at the time of such termination or cancellation,
25 but which have not been paid, shall be paid by the Escrow Agent in accordance with
26 the terms of the Stipulation prior to the balance being refunded in accordance with
27 ¶¶ 2.10 and 9.6 hereof.

28 **NO ADMISSION OF WRONGDOING**

1 10.1 The Settling Parties intend this Settlement to be a final and complete
2 resolution of all disputes between them with respect to the Litigation. The Settlement
3 compromises claims that are contested and shall not be deemed an admission by any
4 Settling Party as to the merits of any claim or defense. The Judgment will contain a
5 finding that, during the course of the Litigation, the Parties and their respective counsel
6 at all times complied with the requirements of Federal Rule of Civil Procedure 11. The
7 Settling Parties agree that the terms of the Settlement were negotiated in good faith and
8 reflect a settlement that was reached voluntarily after consultation with competent legal
9 counsel.

10 10.2 Whether or not the Settlement is approved by the Court, and whether or
11 not the Settlement is consummated, the fact and terms of this Stipulation, including its
12 exhibits, all negotiations, discussions, drafts, and proceedings in connection with this
13 Settlement, and any act performed or document signed in connection with the
14 Settlement, shall not, in this or any other court, administrative agency, arbitration forum,
15 or other tribunal, constitute an admission of, or evidence of, or be deemed to create any
16 inference of: (i) any acts of wrongdoing or lack thereof; (ii) any fault, misstatement,
17 omission or liability on the part of any of the Defendants or the Released Persons to
18 Plaintiffs, the Settlement Class, or anyone else; (iii) any deficiency of any claim or
19 defense that has been or could have been asserted in the Litigation; or (iv) any damages,
20 or lack of damages, suffered by Plaintiffs, the Settlement Class, or anyone else.

21 10.3 The Stipulation and the Settlement contained herein, and any act
22 performed or document executed pursuant to or in furtherance of the Stipulation or the
23 Settlement: (i) is not nor may be deemed to be or used as an admission of, or evidence
24 of, the validity of any Released Claim, or of any wrongdoing or liability of any
25 Defendant; and (ii) is not and may not be deemed to be or used as an admission of, or
26 evidence of, any fault or omission of any Defendant in any civil, criminal or
27 administrative proceeding in any court, administrative agency or other tribunal.
28

1 10.4 The Stipulation and the Settlement contained herein, and any act
2 performed or document executed pursuant to or in furtherance of the Stipulation or the
3 Settlement: (i) shall not be construed against any Released Parties, Plaintiffs, or any
4 other Settlement Class Member as an admission, concession, or presumption that the
5 consideration to be given hereunder represents the amount that could or would have
6 been recovered after trial; and (ii) shall not be construed as or admitted in evidence as
7 an admission, concession, or presumption against Plaintiffs or any other member of the
8 Settlement Class that any of their claims are without merit or that damages recoverable
9 under the Consolidated Complaint would not have exceeded the Settlement Amount.

10 **MISCELLANEOUS PROVISIONS**

11 11.1 The Settling Parties: (i) acknowledge that it is their intent to consummate
12 this Settlement; (ii) agree to cooperate to the extent reasonably necessary to effectuate
13 and implement all terms and conditions of the Stipulation; and (iii) agree to exercise
14 their reasonable best efforts to accomplish the foregoing terms and conditions of the
15 Stipulation.

16 11.2 Pending final determination of whether the Stipulation should be
17 approved, Co-Lead Counsel, Plaintiffs, and all Settlement Class Members are barred
18 and enjoined from commencing, maintaining or prosecuting any action asserting any
19 Released Claims against any Released Persons in any forum.

20 11.3 All agreements made and orders entered during the course of the Litigation
21 relating to the confidentiality of information shall survive this Stipulation.

22 11.4 All of the Exhibits to the Stipulation are material and integral parts hereof
23 and are fully incorporated herein by this reference.

24 11.5 This Stipulation shall not be construed more strictly against one Settling
25 Party than another merely by virtue of the fact that it, or any part of it, may have been
26 prepared by counsel for one of the Settling Parties, it being recognized that it is the
27 result of arm's-length negotiations between the Settling Parties and that all Settling
28

1 Parties have contributed substantially and materially to the preparation of this
2 Stipulation.

3 11.6 The Stipulation may be amended or modified only by a written instrument
4 signed by or on behalf of all Settling Parties or their respective successors-in-interest.

5 11.7 The Stipulation and the Exhibits attached hereto and the Supplemental
6 Agreement constitute the entire agreement among the Settling Parties, and no
7 representations, warranties, or inducements have been made to any Settling Party
8 concerning the Stipulation, its Exhibits, or the Supplemental Agreement other than the
9 representations, warranties, and covenants contained and memorialized in such
10 documents. Except as otherwise provided herein, each Settling Party shall bear its own
11 costs.

12 11.8 Co-Lead Counsel, on behalf of the Settlement Class, are expressly
13 authorized by Plaintiffs to take all appropriate actions required or permitted to be taken
14 by the Settlement Class pursuant to the Stipulation to effectuate its terms and also are
15 expressly authorized to enter into any modifications or amendments to the Stipulation
16 on behalf of the Settlement Class that they deem appropriate.

17 11.9 Each counsel or other Person executing the Stipulation or any of its
18 Exhibits on behalf of any Settling Party hereto hereby warrants that such Person has the
19 full authority to do so.

20 11.10 The waiver by one Settling Party of any breach of this Stipulation by any
21 other Settling Party shall not be deemed a waiver of any other prior or subsequent breach
22 of this Stipulation.

23 11.11 The Stipulation may be executed in one or more counterparts, including by
24 signature transmitted by email in pdf format. Each and all executed counterparts shall
25 be deemed one and the same instrument. A complete set of executed counterparts shall
26 be filed with the Court.

27 11.12 The Stipulation shall be binding upon, and inure to the benefit of, the
28 successors and assigns of the Settling Parties hereto.

1 11.13 The Court shall retain jurisdiction with respect to implementation and
2 enforcement of the terms of the Stipulation, and all Settling Parties submit to the
3 jurisdiction of the Court for purposes of implementing and enforcing the Settlement
4 embodied in the Stipulation.

5 11.14 The Stipulation and the Exhibits hereto shall be considered to have been
6 negotiated, executed and delivered, and to be wholly performed, in the State of
7 California, and the rights and obligations of the Parties to the Stipulation shall be
8 construed and enforced in accordance with, and governed by, the internal, substantive
9 laws of the State of California without giving effect to that State's choice-of-law
10 principles, except to the extent that federal law requires that federal law govern.

11 11.15 Pending approval by the Court of the Settlement, all proceedings in the
12 Litigation shall be stayed.

13 11.16 The Released Persons may file the Stipulation and/or the Judgment in any
14 action or proceeding that may be brought against them in order to support a defense or
15 counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith
16 settlement, judgment bar or reduction, or any other theory of claim preclusion or issue
17 preclusion or similar defense or counterclaim.

18 11.17 If any Party is required to give notice to the other Parties under this
19 Stipulation, such notice shall be in writing and shall be deemed to have been duly given
20 upon receipt by hand delivery, facsimile transmission, or electronic mail. Notice shall
21 be provided to the counsel indicated on the signature block below.

22 11.18 Within twenty-one (21) days following the Parties' execution of the
23 Stipulation, and without any charge to Plaintiffs or the Settlement Class, IMUC shall
24 provide such shareholder lists as may be within its possession, custody, or control, as
25 appropriate for providing notice to the Class.

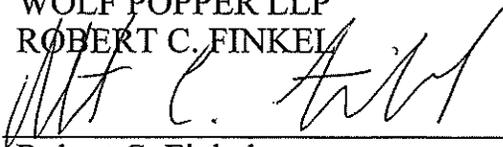
26 IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be
27 executed, by their duly authorized attorneys, dated as of September 13, 2018.

28 AGREED TO AND ACCEPTED:

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Dated: December 10, 2018

WOLF POPPER LLP
ROBERT C. FINKEL



Robert C. Finkel

Counsel for Lead Plaintiffs

Dated: December 10, 2018

LEVI & KORSINSKY LLP
ROSEMARY M. RIVAS (209147)

Rosemary M. Rivas

Counsel for Lead Plaintiffs

Dated: December 10, 2018

GLANCY PRONGAY & MURRAY LLP
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ROBERT V. PRONGAY (270796)
LESLEY F. PORTNOY (304851)
CHARLES H. LINEHAN (307439)

Robert V. Prongay

Counsel for Lead Plaintiffs

Dated: December 10, 2018

COOLEY LLP
JOHN C. DWYER (136533)
ANGELA L. DUNNING (212047)
TIJANA M. BRIEN (286590)
JESSIE A. R. SIMPSON LAGOY (305257)

Angela L. Dunning

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Dated: December 10, 2018 LEVI & KORSINSKY LLP
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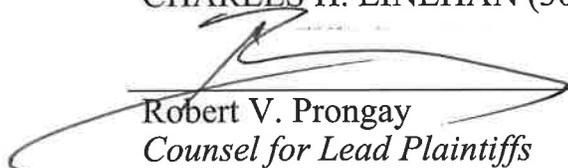
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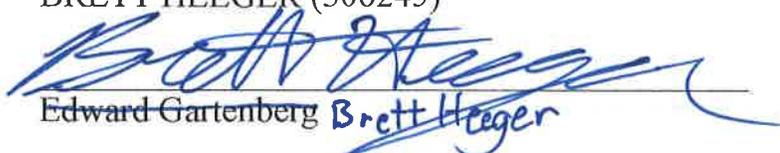

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*Counsel for Defendants ImmunoCellular
Therapeutics, Ltd., David Fractor, John Y. Yu,
and Andrew Gengos*

Dated: December 10, 2018

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MILENA DOLUKHANYAN (303157)
BRETT HEEGER (306245)



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Dated: December 10, 2018

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FRANCISCA M. MOK (206063)

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*Counsel for Defendants Manish Singh and Lavos,
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Dated: December 10, 2018

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PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On December 10, 2018, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court’s Service List.

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

s/ Robert V. Prongay _____
Robert V. Prongay

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

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

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.

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