

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NANCY SCHWARTZ, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

OPUS BANK, STEPHEN H. GORDON, and
MICHAEL L. ALLISON,

Defendants.

Civil No. 2:16-cv-07991-AB-JPR

~~PROPOSED~~ PRELIMINARY
APPROVAL ORDER

WHEREAS, Lead Plaintiff Arkansas Public Employees Retirement Fund (“Lead Plaintiff” or “APERS”) on behalf of itself and each of the Class Members, and Opus Bank (“Opus”), Stephen H. Gordon (“Gordon”) and Michael L. Allison (“Allison”) (Opus, Gordon, and Allison are collectively referred to as “Defendants”), by and through their respective counsel, have entered into a settlement of the claims asserted against Defendants in the above-captioned putative class action (the “Action”), the terms of which are set forth in a Stipulation and Agreement of Settlement (the “Stipulation” or “Settlement”), dated as of December 22, 2017; and

WHEREAS, Lead Plaintiff has moved, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order, among other things, preliminarily approving the Settlement, certifying a Class solely for the purposes of Settlement, and providing

1 for notice to potential members of the Class; and

2 WHEREAS, the Court has read and considered the Stipulation and the exhibits
3 thereto, including the proposed Notice of Pendency of Class Action and Proposed
4 Settlement (the “Notice”); the Summary Notice of Pendency of Class Action and
5 Proposed Settlement (the “Summary Notice”); the Proof of Claim Form, and the
6 [Proposed] Order and Final Judgment, and found that substantial and sufficient grounds
7 exist for entering this Preliminary Approval Order;

8 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

9 1. The Court, for purposes of this Preliminary Approval Order, hereby
10 adopts and incorporates by reference the definitions in the Stipulation, and all capitalized
11 terms used herein, unless otherwise defined, shall have the same meanings as ascribed to
12 them in the Stipulation. As in the Stipulation, unless otherwise explicitly specified
13 herein, all time periods set forth in the Preliminary Approval Order will be computed
14 in calendar days and pursuant to the terms of Rule 6(a) of the Federal Rules of Civil
15 Procedure.

16 2. The Court preliminarily approves the Stipulation and the proposed
17 settlement embodied therein, including all provisions therein and exhibits attached
18 thereto, as fair, reasonable, and adequate to the Class, subject to further consideration at
19 the Final Approval Hearing.

20 3. The Court hereby preliminarily certifies the following class for purposes of
21 settlement only (the “Class”) pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of
22 Civil Procedure: all persons or entities who purchased shares of Opus common stock
23 between January 26, 2015 and January 30, 2017, inclusive. Excluded from the Class are:
24 (1) Defendants and members of the immediate family of any Defendant; (2) any entity in
25 which any Defendant has, or had during the Class Period, a controlling interest; (3) the
26 officers and directors of Opus during the Class Period; and (4) the legal representatives,
27 agents, executors, heirs, successors, or assigns of any of the foregoing excluded persons
28 or entities who assert an interest in Opus common stock through or on behalf of any such

1 excluded persons or entities. Also excluded from the Class are any putative Class
2 Members who exclude themselves by filing a request for exclusion in accordance with
3 the requirements set forth in the Notice.

4 4. With respect to the Class, the Court preliminarily finds, for purposes of
5 settlement only, that the prerequisites for class certification under Rule 23(a) and Rule
6 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied, in that: (1) the
7 number of Class Members is so numerous that joinder of all Class Members is
8 impracticable; (2) there are questions of law and fact common to the Class Members; (3)
9 Lead Plaintiff's claims are typical of the Class's claims; (4) Lead Plaintiff and Lead
10 Counsel have and will fairly and adequately represent and protect the interests of the
11 Class; (5) the questions of law and fact common to Class Members predominate over any
12 individual questions; and (6) a class action is superior to other available methods for the
13 fair and efficient adjudication of the controversy.

14 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the
15 purposes of settlement only, Lead Plaintiff is preliminarily appointed as class
16 representative for the Class and Cohen Milstein Sellers & Toll PLLC, previously
17 appointed Lead Counsel, is preliminarily appointed counsel for the Class.

18 6. The Court approves the form, substance, and requirements of the Notice,
19 (annexed hereto as Exhibit A-1), Summary Notice (annexed hereto as Exhibit A-2)
20 (Exhibits A-1 and A-2 are collectively referred to as the "Settlement Notices"); and the
21 Proof of Claim Form (annexed hereto as Exhibit A-3), and finds that the procedures
22 established for publication, mailing, and distribution of the Settlement Notices and Proof
23 of Claim Form substantially in the manner and form set forth in ¶ 7 of this Preliminary
24 Approval Order are in full compliance with the notice requirements of Rule 23 of the
25 Federal Rules of Civil Procedure; Section 21D(a)(7) of the Securities Exchange Act of
26 1934 (the "Securities Exchange Act"), as amended by the Private Securities Litigation
27 Reform Act of 1995 (the "PSLRA"), 15 U.S.C. § 78u-4(a)(7); the Constitution of the
28 United States (including the due process clause); and any other applicable law, and

1 constitute the best notice practicable under the circumstances and shall constitute due
2 and sufficient notice to all persons or entities entitled thereto.

3 7. The Court approves the appointment of JND Legal Administration as the
4 Claims Administrator who, under the supervision of Lead Counsel and subject to the
5 jurisdiction of the Court, shall supervise and administer the notice procedure, as well as
6 the processing of Claims, as more fully set forth below:

7 a. No later than twenty-one (21) days after entry of the Preliminary
8 Approval Order (the “Notice Date”), the Claims Administrator shall cause a copy of the
9 Notice and Proof of Claim Form, substantially in the form annexed hereto as Exhibits A-
10 1 and A-3, respectively, to be mailed by first-class mail, postage pre-paid, to all
11 members of the Class at the address of each such person as set forth in the records of
12 Opus’ stock transfer agent, or who otherwise can be identified through reasonable effort.
13 For the purpose of providing notice to the Class, Opus shall, within ten (10) days
14 following the entry of this Preliminary Approval Order, provide or cause to be provided
15 to the Claims Administrator (at no cost to the Settlement Fund, Lead Plaintiff’s Counsel
16 or the Claims Administrator) its shareholder lists as maintained by its stock transfer
17 agent during the Class Period, in electronic form or such other form as is reasonably
18 available to Opus;

19 b. The Summary Notice, substantially in the form annexed hereto as
20 Exhibit A-2, shall be published once in *Investor’s Business Daily* and on *PR Newswire*
21 no later than fourteen (14) days after the Notice Date; and

22 c. The Stipulation, the Notice, and the Proof of Claim Form shall
23 also be placed on a website (the “Settlement Website”) dedicated to the administration
24 of the Settlement on or before the Notice Date.

25 8. The Claims Administrator shall use reasonable efforts to give notice to
26 nominee owners such as brokerage firms and other persons or entities who purchased
27 Opus common stock during the Class Period as record owners but not as beneficial
28 owners. Nominees who purchased Opus common stock for beneficial owners who are

1 Class Members are directed to: (1) request within fourteen (14) days of receipt of the
2 Notice additional copies of the Notice and the Proof of Claim Form from the Claims
3 Administrator for delivery to such beneficial owners; or (2) send a list of the names and
4 addresses of such beneficial owners to the Claims Administrator within fourteen (14)
5 days after receipt of the Notice. If a nominee elects to send the Notice and Proof of
6 Claim Form to beneficial owners, such nominee is directed to mail the Notice and Proof
7 of Claim Form within fourteen (14) days of receipt of the additional copies of the Notice
8 and Proof of Claim Form from the Claims Administrator. Upon such mailing, the
9 nominee shall send a statement to the Claims Administrator confirming that the mailing
10 was made as directed, and the nominee shall retain the list of names and addresses for
11 use in connection with any possible future notice to the Class. Upon full compliance
12 with this Preliminary Approval Order, including the timely mailing of the Notice and
13 Proof of Claim Form to beneficial owners, such nominees may seek reimbursement of
14 their reasonable expenses actually incurred in complying with this Preliminary Approval
15 Order by providing the Claims Administrator with proper documentation supporting the
16 expenses for which reimbursement is sought and reflecting compliance with these
17 instructions, including timely mailing of the Notice and Proof of Claim Form, if the
18 nominee elected or elects to do so. Such properly documented expenses incurred by
19 nominees in compliance with the terms of this Preliminary Approval Order shall be
20 deemed Notice and Administration Costs and paid from the Settlement Fund consistent
21 with the terms of the Settlement.

22 9. No later than thirty-five (35) days prior to the Final Approval Hearing,
23 Lead Counsel shall cause to be filed with the Clerk of this Court affidavits or declarations
24 of the person or persons under whose general direction the mailing of the Notice and
25 Proof of Claim Form, the publication of the Summary Notice, and the creation of the
26 Settlement Website and posting of relevant documents thereto shall have been made,
27 showing that such mailing, publication, website creation, and postings have been made in
28 accordance with this Preliminary Approval Order.

HEARING: RIGHT TO BE HEARD

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2 10. The Court will hold a Final Approval Hearing, pursuant to Rule 23(e) of the
3 Federal Rules of Civil Procedure, on July 20, 2018 at 10 a.m., before the Honorable
4 André Birotte Jr., in the United States District Court for the Central District of
5 California, United States Courthouse, 350 West First Street, Los Angeles, California
6 90012, Courtroom 7B, for the following purposes: (1) to determine whether the proposed
7 settlement of the Action on the terms and conditions provided for in the Stipulation is
8 fair, reasonable, adequate, and in the best interests of the Class and should be approved
9 by the Court; (2) to determine whether the Judgment, substantially in the form attached
10 as Exhibit B to the Settlement, should be entered; (3) to determine, for purposes of
11 settlement, whether the Class should be finally certified; whether Lead Plaintiff should be
12 finally appointed as representative for the Class; and whether Lead Counsel should be
13 finally appointed as counsel for the Class; (4) to determine whether the Plan of
14 Allocation is reasonable and should be approved; (5) to determine whether Lead
15 Counsel's application for an award of attorneys' fees and reimbursement of Litigation
16 Expenses incurred by Lead Plaintiff's Counsel should be granted; and (6) to consider any
17 other matters that may properly be brought before the Court in connection with the
18 Settlement.

19 11. Papers in support of the Settlement, the Plan of Allocation and Lead
20 Counsel's application for attorneys' fees and reimbursement of Litigation Expenses
21 shall be filed no later than thirty-five (35) days prior to the Final Approval Hearing, and
22 any papers in further support thereof shall be filed no later than seven (7) days before
23 the Final Approval Hearing. If an objection is filed pursuant to ¶ 12 below, any
24 reply papers shall be filed no later than seven (7) days before the Final Approval
25 Hearing.

26 12. Any member of the Class may appear at the Final Approval Hearing and
27 show cause why the proposed settlement as embodied in the Stipulation should or should
28 not be approved as fair, reasonable, adequate, and in the best interests of the Class, or why

1 the Judgment should or should not be entered thereon, and/or to present opposition to the
2 Plan of Allocation or to the application of Lead Counsel for attorneys' fees and
3 reimbursement of Litigation Expenses. However, no Class Member or any other person
4 shall be heard or entitled to contest the approval of the terms and conditions of the
5 Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the
6 terms of the Plan of Allocation or the application by Lead Counsel for an award of
7 attorneys' fees and reimbursement of Litigation Expenses, unless that Class Member (1)
8 has served written objections, by hand, first-class mail postage pre-paid or electronic mail,
9 upon the following counsel for receipt no later than twenty-one (21) days prior to the Final
10 Approval Hearing:

11 Counsel for Lead Plaintiff: Cohen Milstein Sellers & Toll PLLC
12 1100 New York Ave. NW
13 East Tower, Suite 500
14 Washington, DC 20005-3964
15 Attn: Steven J. Toll
16 Daniel S. Sommers
S. Douglas Bunch
stoll@cohenmilstein.com

17 Counsel for Defendants: Katten Muchin Rosenman LLP
18 2900 K St. NW
19 North Tower, Suite 200
20 Washington, DC 20007-5118
21 Attn: Eric A. Kuwana
eric.kuwana@kattenlaw.com

22 and (2) filed said written objections with the Clerk of the United States District Court
23 for the Central District of California no later than twenty-one (21) days prior to the
24 Final Approval Hearing. Any such written objection served and filed as set forth above
25 must include: (a) the full name, address, and telephone number of the objecting Class
26 Member; (b) a list and documentation of all of the Class Member's transactions in Opus
27 common stock during the Class Period, such as brokerage confirmation receipts or other
28 competent documentary evidence of such transactions, including the amount and date of

1 each purchase or sale and the price paid and/or received (including all income received
2 thereon); (c) a written statement of all grounds for the objection accompanied by any
3 legal support for the objection; (d) copies of any papers, briefs or other documents
4 upon which the objection is based; (e) a list of all persons, if any, who will be called to
5 testify in support of the objection, the subject of their expected testimony and the basis
6 therefor; (f) a statement of whether the objector intends to appear at the Final Approval
7 Hearing; and (g) the objector's signature, even if represented by counsel. If the objector
8 intends to appear at the Final Approval Hearing through counsel, the objection must also
9 state the identity of all attorneys who will appear on his, her or its behalf at the Final
10 Approval Hearing. Unless the Court orders otherwise, no member of the Class shall be
11 entitled to object, or otherwise be heard, except by serving and filing written objections as
12 described above. Any person or entity who does not object in the manner prescribed
13 above shall be deemed to have waived such objection and shall be bound by all the terms
14 and provisions of the Settlement and by all settlement-related proceedings, orders and
15 judgments in the Action, including the Judgment, if the Settlement is approved by the
16 Court. By objecting to the Settlement, the Judgment, the Plan of Allocation and/or the
17 application by Lead Counsel for an award of attorneys' fees and reimbursement of
18 Litigation Expenses, or otherwise requesting to be heard at the Final Approval Hearing, an
19 objector shall be deemed to have submitted to the jurisdiction of the Court with respect to
20 the person's or entity's objection or request to be heard and the subject matter of the
21 Settlement, including, but not limited to, enforcement of the terms of the Settlement
22 (including, but not limited to, the release of the Released Claims as against the Released
23 Parties provided for in the Settlement and the Judgment).

24 13. Any Class Member may hire their own attorney, at their own expense, to
25 represent them in making written objections or in appearing at the Final Approval
26 Hearing. If any Class Member chooses to hire an attorney at their own expense, that
27 attorney must file a notice of appearance with the Court and serve it on Lead Counsel
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1 and Defendants' Counsel so that the notice is received twenty-one (21) days prior to the
2 Final Approval Hearing.

3 14. All Class Members shall be bound by all determinations and judgments
4 in the Action concerning the Settlement, whether favorable or unfavorable to the Class.
5 If the Settlement is approved, all Class Members will be bound by the Settlement, and by
6 any judgment or determination of the Court affecting Class Members, including the
7 Judgment and the releases contained therein, regardless of whether or not a Class Member
8 submits a Proof of Claim Form.

9 15. Any Class Member may enter an appearance in the Action, at his, her, or
10 its own expense, individually or through counsel of his, her, or its own choice. If they
11 do not enter an appearance, they will be represented by Lead Counsel.

12 16. The Court expressly reserves the right to do the following without further
13 notice to members of the Class: (1) reschedule the Final Approval Hearing; (2) approve
14 the Settlement with modification(s) approved by the Settling Parties; (3) modify the Plan
15 of Allocation; and (4) award such attorneys' fees and reimbursement of Litigation
16 Expenses as the Court finds fair and reasonable. Lead Counsel shall cause any new date
17 for the Final Approval Hearing to be posted on the Settlement Website. The Court retains
18 jurisdiction of this Action to consider all further applications arising out of or otherwise
19 relating to the Settlement; to allow, disallow, or adjust on equitable grounds the Claims
20 of any member of the Class and issue, as appropriate, a Class Distribution Order; and
21 resolve any other issue arising out of or otherwise relating to the Settlement that is
22 otherwise warranted.

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25 **CLAIMS PROCESS**

26 17. In order to be entitled to participate in the distribution(s) from the Net
27 Settlement Fund, a Class Member must complete and timely submit a Proof of Claim
28 Form in accordance with the instructions contained therein. To be valid and accepted,

1 Proof of Claim Forms submitted in connection with this Settlement must be postmarked
2 no later than one hundred twenty (120) days from the date of the entry of this Order.

3 18. The Claims Administrator, subject to the supervision of Lead Counsel
4 and the Court, will make administrative determinations concerning the acceptance and
5 rejection of the Proof of Claim Forms submitted by Claimants pursuant to the procedures
6 set forth in the Settlement. By submitting a Proof of Claim Form, a Claimant shall be
7 deemed to have submitted to the jurisdiction of the Court with respect to the Claim
8 submitted, and the Claim will be subject to investigation and discovery under the Federal
9 Rules of Civil Procedure, provided that such investigation and discovery shall be limited
10 to the Claimant's status as a Class Member and the validity and amount of their claim.

11 19. Any Class Member who does not timely submit a valid Proof of Claim
12 Form shall not be eligible to share in the Net Settlement Fund, but nonetheless will be
13 bound by all of the terms of the Settlement, including the releases provided for therein
14 and in the Judgment, and shall be barred and enjoined from bringing any action, claim,
15 or other proceeding of any kind against any Released Party concerning any Released
16 Claim, and shall be bound by any judgment or determination of the Court affecting the
17 Class Members.

18 **REQUEST FOR EXCLUSION FROM THE CLASS**

19 20. A putative Class Member wishing to make a request for exclusion must
20 submit such a request in written form in the manner and to the address designated in the
21 Notice, such that it is received no later than twenty-one (21) calendar days prior to the
22 Final Approval Hearing. Class Members wishing to be excluded from the Class must, in
23 their written request, provide their (1) name, (2) address, (3) telephone number, (4)
24 number of shares of Opus common stock purchased or sold, (5) prices or other
25 consideration paid or received for such shares(s), (6) the date of each purchase or sale
26 transaction, and (7) a statement that the Class Member wishes to be excluded from the
27 Class. The request for exclusion must also be signed by the person or entity requesting
28 exclusion. All putative Class Members who submit valid and timely requests for

1 exclusion in the manner set forth in this paragraph shall have no rights under the
2 Settlement, shall not share in the distribution of the Net Settlement Fund, and shall not
3 be bound by the Settlement or Judgment.

4 21. Any member of the Class who does not request exclusion from the Class
5 in the manner stated in this Preliminary Approval Order shall be deemed to have waived
6 his, her, or its right to be excluded from the Class, and shall forever be barred from
7 requesting exclusion from the Class in this or any other proceeding, and shall be bound
8 by the Settlement and the Judgment, including, but not limited to, the release of the
9 Released Claims as against the Released Parties provided for in the Settlement and the
10 Judgment, if the Court approves the Settlement.

11 **ADDITIONAL SETTLEMENT CONDITIONS**

12 22. The Released Parties shall have no responsibility or liability whatsoever
13 with respect to Taxes, Notice and Administration Costs, or Lead Counsel's application
14 for an award of attorneys' fees and reimbursement of Litigation Expenses, which shall
15 all be paid from the Settlement Fund, subject to Court approval to the extent set forth
16 herein or in the Settlement. Furthermore, the Released Parties shall have no
17 responsibility or liability whatsoever with respect to the Plan of Allocation or Class
18 Distribution Order. The Plan of Allocation, Lead Counsel's application for an award of
19 attorneys' fees and reimbursement of Litigation Expenses, and any Class Distribution
20 Order will be considered separately from the fairness, reasonableness, and adequacy of
21 the settlement embodied in the Stipulation. At or after the Final Approval Hearing, the
22 Court will determine whether Lead Counsel's proposed Plan of Allocation should be
23 approved, the amount of attorneys' fees and Litigation Expenses to be awarded to Lead
24 Plaintiff's Counsel, and whether a Class Distribution Order should be entered. Any
25 appeal from any orders relating solely to the Plan of Allocation or solely to Lead
26 Counsel's application for an award of attorneys' fees and Litigation Expenses or solely
27 to a Class Distribution Order (or any of them), or any reversal or modification thereof,
28 shall not operate to terminate the Settlement, or preclude the Judgment, if entered by the

1 Court, from becoming Final or the Effective Date of the Settlement from occurring.

2 23. Only Class Members, the Claims Administrator and Lead Plaintiff's
3 Counsel shall have any right to any portion of, or any rights in the distribution of, the
4 Settlement Fund, unless otherwise ordered by the Court or otherwise provided in the
5 Settlement.

6 24. All funds held in the Escrow Account shall be deemed and considered to be
7 *in custodia legis* and shall remain subject to the exclusive jurisdiction of the Court until
8 such time as such funds shall be distributed pursuant to the Settlement or returned to
9 Defendants pursuant to the terms of the Stipulation and/or further order of the Court.

10 25. As set forth in the Stipulation, prior to the Effective Date, the Escrow
11 Agent, without further approval of Defendants or the Court, may pay from the
12 Settlement Fund up to \$150,000 in Notice and Administration Costs actually and
13 reasonably incurred. Prior to the Effective Date, payment by the Escrow Agent of any
14 Notice and Administration Costs exceeding \$150,000 shall require notice to and
15 agreement from Defendants, through Defendants' Counsel, which agreement shall not be
16 unreasonably withheld. Subsequent to the Effective Date, without further approval by
17 Defendants, any Released Parties or the Court, the Escrow Agent may pay from the
18 Settlement Fund all reasonable and necessary Notice and Administration Costs in excess
19 of any amount paid prior to the Effective Date. In the event the Effective Date does not
20 occur or the Settlement is otherwise terminated pursuant to its terms, neither Lead
21 Plaintiff, nor Lead Plaintiff's Counsel, nor the Escrow Agent shall have any obligation to
22 repay any such Notice and Administration Costs actually and properly incurred or paid.

23 26. The Claims Administrator and its agents are authorized and directed to
24 cause to be prepared any tax returns to be filed for the Settlement Fund and to cause any
25 Taxes due and owing to be paid from the Settlement Fund without further Order of the
26 Court, but subject to the supervision of Lead Counsel, and to otherwise perform all
27 obligations with respect to Taxes and any reporting or filings in respect thereof as
28 contemplated by the Settlement without further order of the Court.

1 27. The fact and terms of this Preliminary Approval Order and the Settlement,
2 including the exhibits annexed thereto, all negotiations, discussions, drafts and
3 proceedings in connection with the Settlement, and any act performed or document
4 signed in connection with the Settlement:

5 a. shall not be offered or received against the Released Parties, Lead
6 Plaintiff or the other Class Members as evidence of, or be deemed to be evidence of, any
7 presumption, concession or admission by any of the Released Parties or by Lead Plaintiff
8 or the other Class Members with respect to the truth of any fact alleged by Lead Plaintiff
9 or the validity, or lack thereof, of any claim that has been or could have been asserted in
10 the Action or in any litigation, or the deficiency of any defense that has been or could
11 have been asserted in the Action or in any litigation, or of any liability, negligence, fault
12 or wrongdoing of the Released Parties;

13 b. shall not be offered or received against the Released Parties as
14 evidence of a presumption, concession or admission of any fault, misrepresentation or
15 omission with respect to any statement or written document approved or made by any
16 Released Party, or against Lead Plaintiff or any of the other Class Members as evidence
17 of any infirmity in the claims of Lead Plaintiff and the other Class Members;

18 c. shall not be offered or received against the Released Parties, Lead
19 Plaintiff or the other Class Members as evidence of a presumption, concession or
20 admission with respect to any liability, negligence, fault or wrongdoing, or in any way
21 referred to for any other reason as against any of the foregoing parties, in any arbitration
22 proceeding or other civil, criminal or administrative action or proceeding, other than
23 such proceedings as may be necessary to effectuate the provisions of this Settlement;
24 provided, however, that if the Settlement is approved by the Court, the Released Parties
25 may refer to this Settlement to effectuate the protection from liability granted them
26 hereunder;

27 d. shall not be construed against the Released Parties, Defendants'
28 Counsel, Lead Plaintiff's Counsel, or Lead Plaintiff or the other Class Members as an

1 admission or concession that the consideration to be paid hereunder represents the
2 amount which could be or would have been recovered after trial; and

3 e. shall not be construed as or received in evidence as an admission,
4 concession or presumption against Lead Plaintiff or the other Class Members or any of
5 them that any of their claims are without merit or that damages recoverable under the
6 Complaint would not have exceeded the Settlement Amount.

7 28. There shall be no distribution of any of the Net Settlement Fund to any
8 Class Member prior to the Effective Date occurring nor until the Court approves, after
9 appropriate notice to the Class, a Plan of Allocation in an order that has become Final
10 and the Court enters a Class Distribution Order that has become Final.

11 29. Upon the entry of this Preliminary Approval Order, pending final
12 determination of whether the Settlement should be approved, Lead Plaintiff, all Class
13 Members, and each of them, and anyone who acts or purports to act on their behalf, shall
14 not institute or commence any action which asserts any Released Claim against any
15 Released Party.

16 30. In the event that the Effective Date fails to occur or the Settlement is
17 otherwise terminated pursuant to its terms, this Preliminary Approval Order shall be null
18 and void, and without prejudice, and none of its terms, except for ¶¶ 25-29, shall be
19 effective or enforceable and the facts of the Settlement shall not be admissible in any
20 trial of this Action, and the Settling Parties shall be deemed to have reverted to their
21 respective status in this Action immediately prior to November 1, 2017, and except as
22 otherwise expressly provided herein or in the Settlement, the parties shall proceed in all
23 respects as if the Settlement and any related orders had not been entered, and any portion
24 of the Settlement Amount paid into the Escrow Account, together with any interest
25 earned or gains thereon, less any amounts for Taxes paid or owing with respect to such
26 interest income and/or gains and/or for Notice and Administration Costs actually
27 incurred and paid or payable, shall be returned by the Escrow Agent to Defendants
28 within fourteen (14) business days after written notification of such event by Defendants

1 to Lead Counsel, all as specified in ¶ 48 of the Settlement.

2 31. The Court preliminarily finds that the Escrow Account is a “Qualified
3 Settlement Fund” within the meaning of Section 468B of the Internal Revenue Code of
4 1986, as amended, and Treasury Regulation § 1.468B-1.

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6 IT IS SO ORDERED.



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9 DATED: March 12, 2018

10 THE HONORABLE ANDRÉ BIROTTE JR.
11 UNITED STATES DISTRICT JUDGE
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