

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Southern Division)

WILLIAM SPONN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

EMERGENT BIOSOLUTIONS INC., et al.,

Defendants.

) No. 8:16-cv-02625-RWT

) CLASS ACTION

STIPULATION OF SETTLEMENT

This Stipulation of Settlement, dated October 16, 2018 (the “Stipulation”), is made and entered into by and among: (i) Lead Plaintiffs City of Cape Coral Municipal Firefighters’ Retirement Plan and City of Sunrise Police Officers’ Retirement Plan, and Certified Class Representative Geoffrey L. Flagstad (collectively, “Plaintiffs”) (on behalf of themselves and each of the Settlement Class Members), by and through their counsel of record in the Litigation¹; and (ii) Emergent BioSolutions Inc. (“Emergent” or the “Company”), Fuad El-Hibri, Daniel J. Abdun-Nabi, Robert G. Kramer and Adam R. Havey (together, “Defendants”), by and through their counsel of record in the Litigation. Plaintiffs and Defendants are referred to herein as the “Settling Parties.” The Stipulation is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims, subject to the approval of the Court and the terms and conditions set forth in this Stipulation.

I. THE LITIGATION

The Litigation is pending before the Honorable Roger W. Titus in the United States District Court for the District of Maryland (the “Court”). The initial complaint in this action was filed on July 19, 2016. ECF No. 1. On October 25, 2016, the Court appointed Lead Plaintiffs and Lead Counsel. ECF No. 22.

Plaintiffs allege that Defendants violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 by, *inter alia*, issuing false and misleading statements or failing to disclose material adverse facts about the Company and its financial prospects. Specifically, Plaintiffs allege that Defendants made material misrepresentations and/or omissions to the investing public regarding the renewal of Emergent’s BioThrax procurement contract with the United States Government. ECF No. 23 at ¶¶42, 47, 83, 86-87, 89, 91, 93-94, 96, 98, 100, 102, 104. Plaintiffs allege that Defendants led the market to expect a renewed BioThrax contract calling for significantly increased doses (up to 20-25

¹ All capitalized terms not otherwise defined shall have the meanings ascribed to them in §IV.1 herein.

million doses per year) compared to the contract in existence at the time, which called for 44.75 million doses over a five-year period. *Id.* Plaintiffs further allege that as a result of Defendants' false and misleading statements and omissions, Emergent's stock traded at artificially inflated prices during the Settlement Class Period. *Id.*, ¶¶69, 117, 123, 125, 137.

On June 21, 2016, the Centers for Disease Control ("CDC") issued an official solicitation notice indicating that it intended to renew its sole-source procurement contract for 29.4 million doses of BioThrax over the following five years. ECF No. 37 at 6. On the same day, the Department of Health and Human Services issued a request for a proposal for a next-generation vaccine that could result in a five-year contract for the advanced development and procurement of up to 27 million doses. *Id.*

On June 22, 2016, Emergent announced the next-generation proposal and that the CDC issued the official solicitation notice and stated that the Government sought "the continued procurement of 29.4 million doses of BioThrax" in total, over a five-year period. ECF No. 23, ¶118. Plaintiffs allege the solicitation notice with respect to BioThrax was significantly fewer doses than the number of BioThrax doses Defendants led the market to believe the U.S. Government sought to purchase for the renewed contract. *Id.*, ¶¶7, 58, 118. Plaintiffs allege that in response to this news, the price of Emergent's common stock fell approximately \$8 per share – roughly 20% – from a close of \$39.32 per share on the evening of June 21, 2016, to a close of \$31.33 per share on June 22, 2016. *Id.*, ¶¶8, 60. Defendants deny all of Plaintiffs' allegations.

On December 27, 2016, Lead Plaintiffs filed their Amended Complaint for Violations of the Federal Securities Law (the "Complaint"), alleging a class period of January 11, 2016 to June 21, 2016. ECF No. 23. On February 27, 2017, Defendants moved to dismiss the Complaint. ECF Nos. 36-37. Lead Plaintiffs filed an opposition to Defendants' motion to dismiss on April 28, 2017 (ECF

Nos. 41-42), and Defendants filed their reply brief on May 30, 2017. ECF No. 43. After oral argument, the Court denied Defendants' motion to dismiss the Complaint on July 7, 2017, but said that the statements between January 11, 2016 and May 5, 2016 were not actionable. ECF No. 46. Defendants answered the Complaint on July 28, 2017. ECF No. 49.

On December 20, 2017, Lead Plaintiffs and Class Representative Geoffrey L. Flagstad filed their amended motion for class certification. ECF Nos. 68-74. Defendants deposed Lead Plaintiffs, Mr. Flagstad, and Plaintiffs' class certification expert, and filed their opposition to the motion on January 16, 2018. ECF Nos. 78-80. Defendants also moved to strike the opinion of Plaintiffs' class certification expert. ECF Nos. 81-84. Plaintiffs deposed Defendants' class certification expert and filed their reply to the motion for class certification and their opposition to the motion to strike on February 16, 2018. ECF Nos. 87-90. On March 12, 2018, Defendants filed their reply in support of their motion to exclude Plaintiffs' class certification expert. ECF Nos. 91-92. The Court held a hearing on the motions on May 2, 2018, and directed the parties to provide it with certain additional information. That information was provided by Plaintiffs on May 14, 2018 (ECF No. 94), and responded to by Defendants on May 18, 2018. ECF No. 95. On June 8, 2018, the Court granted the amended motion for class certification, certifying a class of persons who bought shares of Emergent stock during the period of May 5, 2016 through June 21, 2016, and denied Defendants' motion to strike. ECF Nos. 96-97. Plaintiffs have indicated that they intend to ask the Court for leave to file a Second Amended Complaint or motion to extend the class period to persons who bought shares of Emergent stock during the period of January 11, 2016 through June 21, 2016, based on information obtained in discovery. Defendants maintain that discovery has not changed the circumstances that led to the shortening of the class period in the first instance, but are settling the broader class period in recognition of the potential risk that the Court may broaden the class period based on the

statement it made when it shortened the class period: “[C]ertification based on the shortened Class Period does not mean that the parties cannot at a later date move this Court to expand the Class Period to include statements made between January 11, 2016 and May 5, 2016, should they later be found to be actionable based on information obtained in discovery.” ECF No. 96 at 6.

The parties engaged in extensive fact discovery, with the production, review and analysis of over 93,000 pages of documents produced by Defendants and third parties. Plaintiffs also took the depositions of several representatives of Emergent on a variety of topics.

In an effort to conserve judicial resources, save litigation expenses, and attempt to settle the Litigation, the parties engaged the services of Jed Melnick, Esq. of JAMS, a nationally recognized mediator. The parties prepared and exchanged detailed mediation statements and engaged in a full-day, in-person mediation session with Mr. Melnick on August 27, 2018. The parties negotiated in good faith through Mr. Melnick and reached an agreement in principle to settle the Litigation on the terms set forth herein.

II. DEFENDANTS’ DENIALS OF WRONGDOING AND LIABILITY

Throughout this Litigation, Defendants have denied, and continue to deny, any and all allegations of fault, liability, wrongdoing, or damages whatsoever. Defendants maintain that the statements that Plaintiffs challenged were non-actionable, future projections for which Defendants had multiple reasonable bases to substantiate their statements, and therefore cannot form the basis of any liability.

Defendants have expressly denied, and continue to deny, that they have committed any act or omission giving rise to any liability under §10(b) or §20(a) of the Securities Exchange Act of 1934. Specifically, Defendants maintain that the challenged statements are non-actionable because they were projections for which Defendants had multiple reasonable bases in support, including, but not

limited to: (1) BioThrax was (and still is) the only FDA-licensed anthrax vaccine; (2) the Government's stated goal from stockpiling BioThrax was to be able to protect 25 million lives, and at all relevant times, the Government was well below that goal; and (3) the Government had signed a series of previous contracts with Emergent, each calling for a larger number of doses than the previous one, and had just invested over \$100 million to more than double Emergent's manufacturing capacity. ECF No. 37 at 2-3. And Defendants maintain that the Government's ultimate procurement of anthrax vaccine from Emergent was positive, including because: (1) on September 30, 2016, Emergent was awarded a contract for Emergent's next-generation anthrax vaccine valued at up to \$1.5 billion; (2) on December 8, the Government and Emergent executed the follow-on BioThrax procurement contract valued at up to \$911 million; and (3) also on December 8, the Government announced its intent to award a separate BioThrax procurement contract valued at up to \$100 million. ECF No. 91 at 13-15. Also, Defendants expressly have denied, and continue to deny, each and all of the claims alleged by Plaintiffs in the Litigation, including, without limitation, any liability arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. ECF No. 49 at 33-36. Defendants also have denied, and continue to deny, among other allegations, the allegations that Plaintiffs or the Settlement Class have suffered any damage, or that Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Litigation or that could have been alleged as part of the Litigation. *Id.* In addition, Defendants maintain that they have meritorious defenses to all claims alleged in the Litigation. *Id.*

As set forth below, neither the Settlement nor any of the terms of this Stipulation shall in any event be construed or deemed to be evidence of or constitute an admission, concession, or finding of any fault, liability, wrongdoing, or damage whatsoever or any infirmity in the defenses that Defendants have, or could have, asserted. Defendants are entering into this Stipulation solely to

eliminate the uncertainty, burden, and expense of further protracted litigation. Defendants have determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

III. PLAINTIFFS' CLAIMS AND THE BENEFITS OF SETTLEMENT

Plaintiffs believe, based on their investigation and discovery to date, that the claims asserted in the Litigation have merit and that the evidence developed to date supports their claims. However, Plaintiffs and their counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and through appeals. Plaintiffs and their counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiffs and their counsel also are mindful of the inherent problems of proof under and possible defenses to the securities law violations asserted in the Litigation. Plaintiffs and their counsel believe that the Settlement set forth in this Stipulation confers substantial benefits upon the Settlement Class. Based on their evaluation, Plaintiffs and their counsel have determined that the Settlement set forth in this Stipulation is in the best interests of Plaintiffs and the Settlement Class.

IV. TERMS OF THE STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs (for themselves and the Settlement Class Members) and Defendants, by and through their counsel or attorneys of record, that, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of this Stipulation, as follows:

1. Definitions

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

1.1 “Authorized Claimant” means any Settlement Class Member whose claim for recovery has been allowed pursuant to the terms of this Stipulation.

1.2 “Claims Administrator” means the firm of Gilardi & Co. LLC.

1.3 “Defendants” means Emergent and the Individual Defendants.

1.4 “Effective Date,” or the date upon which this Settlement becomes “effective,” means the first date by which all of the events and conditions specified in ¶7.1 of the Stipulation have been met and have occurred or have been waived.

1.5 “Escrow Agent” means the law firm of Robbins Geller Rudman & Dowd LLP or its successor(s).

1.6 “Final” means when the last of the following with respect to the Judgment approving this Stipulation, substantially in the form of Exhibit B attached hereto, shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) the expiration of the time for the filing or noticing of any appeal from the Judgment without any appeal having been taken; and (iii) if a motion to alter or amend is filed or if an appeal is taken, immediately after the final determination of that motion or appeal such that no further judicial review or appeal is permitted, whether by reason of affirmance by a court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise in such a manner as to permit the consummation of the Settlement, substantially in accordance with the terms and conditions of this Stipulation. For purposes of this paragraph, an “appeal” shall include any petition for a writ of *certiorari* or other writ that may be filed in connection with approval or disapproval of this Settlement. Any appeal or proceeding seeking subsequent judicial review

pertaining solely to an order issued with respect to (i) attorneys' fees, costs, or expenses, (ii) the Plan of Allocation (as submitted or subsequently modified), or (iii) the procedures for determining Authorized Claimants' recognized claims, shall not in any way delay, affect, or preclude the time set forth above for the Judgment to become Final, or otherwise preclude the Judgment from becoming Final.

1.7 "Immediate Family" with respect to the Individual Defendants means any spouse, parent, step-parent, grandparent, child, step-child, grandchild, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law. As used in this paragraph, "spouse" shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

1.8 "Individual Defendants" means Fuad El-Hibri, Daniel J. Abdun-Nabi, Robert G. Kramer and Adam R. Havey.

1.9 "Judgment" means the Order and Final Judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit B.

1.10 "Lead Counsel" means the law firm of Robbins Geller Rudman & Dowd LLP.

1.11 "Lead Plaintiffs" means City of Cape Coral Municipal Firefighters' Retirement Plan and City of Sunrise Police Officers' Retirement Plan.

1.12 "Litigation" means the action captioned *Sponn v. Emergent BioSolutions Inc., et al.*, No. 8:16-cv-02625-RWT (D. Md.).

1.13 "Net Settlement Fund" means the Settlement Fund less: (i) any Court-awarded attorneys' fees, expenses, and interest thereon; (ii) Notice and Administration Expenses; (iii) Taxes and Tax Expenses; and (iv) other Court-approved deductions.

1.14 “Notice and Administration Expenses” means all fees, expenses, and interest thereon incurred as a result of providing notice to the Settlement Class and otherwise administering the Settlement.

1.15 “Officer” means any officer as there is defined in Securities Exchange Act of 1934 Rule 16a-1(f).

1.16 “Person” means an individual, corporation, limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, Government or any political subdivision or agency thereof, and any business or legal entity and all of their respective spouses, heirs, beneficiaries, executors, administrators, predecessors, successors, representatives, or assignees.

1.17 “Plaintiffs” means Lead Plaintiffs and Geoffrey L. Flagstad.

1.18 “Plaintiffs’ Counsel” means any attorney or firm who has appeared in the Litigation on behalf of Plaintiffs.

1.19 “Plan of Allocation” means a plan or formula of allocation of the Net Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized Claimants. Any Plan of Allocation is not part of this Stipulation and neither Defendants nor their Related Parties shall have any responsibility or liability with respect thereto.

1.20 “Proof of Claim and Release” means the Proof of Claim and Release form for submitting a claim, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-2, that a Settlement Class Member must complete and submit should that Settlement Class Member seek to share in a distribution of the Net Settlement Fund.

1.21 “Related Parties” means each Defendant’s respective former, present or future parents, subsidiaries, divisions and affiliates and the respective present and former employees, members, partners, principals, officers, directors, controlling shareholders, attorneys, advisors, accountants, auditors, and insurers and reinsurers of each of them; and the predecessors, successors, estates, Immediate Family members, spouses, heirs, executors, trusts, trustees, administrators, agents, legal or personal representatives, assigns, and assignees of each of them, in their capacity as such.

1.22 “Released Claims” means any and all claims, causes of action, rights, actions, suits, obligations, debts, demands, judgments, agreements, promises, liabilities, damages, losses, controversies, costs, expenses or attorneys’ fees, of every nature and description whatsoever that were, may have been, or could have been asserted in the Litigation and whether direct or indirect, now known or unknown, suspected or unsuspected, accrued or unaccrued, in law or in equity, whether having arisen or yet to arise, including, without limitation, any claims of violations of federal or state securities laws and any federal or state claims of fraud, intentional misrepresentation, negligent misrepresentation, negligence, gross negligence, breach of duty of care and/or breach of duty of loyalty, breach of fiduciary duty, or violations of any state or federal statutes, rules or regulations that have been alleged or asserted or could have been alleged or asserted now or in the future by Plaintiffs or any Settlement Class Member against Defendants or any of the Released Persons in this Litigation or in any court action or before any administrative body, tribunal, arbitration panel, or other adjudicative body, arising out of, relating to, or in connection with both (a) the purchase, acquisition or sale of Emergent publicly-traded common stock listed on the New York Stock Exchange during the Settlement Class Period, and (b) the acts, facts, matters, allegations, transactions, events, disclosures, occurrences, representations, statements, acts, or omissions or failures to act that were alleged, may

have been alleged, or that could have been alleged in the Litigation against the Released Persons. “Released Claims” does not include claims to enforce the Settlement. “Released Claims” includes “Unknown Claims” as defined in ¶1.34 hereof.

1.23 “Released Defendants’ Claims” means any and all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and causes of action of every nature and description (including Unknown Claims), whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule or regulation, at law or in equity, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Defendants in the Litigation, except for claims relating to the enforcement of the Settlement or any claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

1.24 “Released Persons” means each and all of the Defendants and their Related Parties.

1.25 “Settlement” means the resolution of the Litigation in accordance with the terms and provisions of this Stipulation.

1.26 “Settlement Amount” means Six Million Five Hundred Thousand Dollars (\$6,500,000.00) in cash to be paid by check to the Escrow Agent pursuant to ¶2.1 of this Stipulation. Such amount is paid as consideration for full and complete settlement of the Released Claims.

1.27 “Settlement Class” means all Persons who purchased or otherwise acquired Emergent publicly-traded common stock listed on the New York Stock Exchange between January 11, 2016 and June 21, 2016, inclusive, or their successors-in-interest. Excluded from the Settlement Class are: Emergent; the Individual Defendants; members of the Immediate Family of each of the Individual Defendants; the Officers and directors of Emergent during the Settlement Class Period;

the heirs, successors, and assigns of any excluded person or entity; and any entity in which any excluded person has or had a controlling interest. Also excluded from the Settlement Class are those Persons who would otherwise be Settlement Class Members who timely and validly exclude themselves therefrom pursuant to ¶15 of the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice, attached hereto as Exhibit A.

1.28 “Settlement Class Member” or “Member of the Settlement Class” means a Person who falls within the definition of the Settlement Class as set forth in ¶1.27 above.

1.29 “Settlement Class Period” means the period from January 11, 2016 through June 21, 2016, inclusive.

1.30 “Settlement Fund” means the Settlement Amount plus all interest and accretions thereto earned after being deposited to an account controlled by the Escrow Agent.

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

1.32 “Settling Parties” means, collectively, Defendants and Plaintiffs, on behalf of themselves and the Settlement Class.

1.33 “Tax” or “Taxes” mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental authority, including, but not limited to, any local, state, and federal taxes.

1.34 “Unknown Claims” means any and all Released Claims which Plaintiffs, Plaintiffs’ Counsel, or any Settlement Class Members do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons and any and all Released Defendants’ Claims that the Released Persons do not know or suspect to exist in his, her, or its favor at the time of the release of

the Plaintiffs, Plaintiffs' Counsel, or any Settlement Class Members, which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Persons, Plaintiffs, Plaintiffs' Counsel or Settlement Class Members, or might have affected his, her, or its decision(s) with respect to the Settlement, including, but not limited to, whether or not to object to this Settlement or to the release of the Released Persons, Plaintiffs, Plaintiffs' Counsel, or Settlement Class Members. With respect to any and all Released Claims and Released Defendants' Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Settling Parties shall expressly waive and each of the Settling Parties shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code §1542, which provides:

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

The Settling Parties shall expressly waive and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. The Settling Parties acknowledge that they may hereafter discover facts in addition to or different from those which he, she, it or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims or Released Defendants' Claims, but the Settling Parties shall expressly settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into

existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is an essential term of the Settlement of which this release is a part.

2. The Settlement

a. The Settlement Amount

2.1 In full and final settlement of the claims asserted in the Litigation against Defendants and in consideration of the releases specified in ¶4 herein, Defendants' carriers shall cause the Settlement Amount to be paid by check, deposited to an interest-bearing escrow account ("Escrow Account") controlled by Robbins Geller Rudman & Dowd LLP serving as Escrow Agent on or before fourteen (14) calendar days after the later of: (i) the entry of the Preliminary Approval Order, as defined in ¶3.1 herein, and (ii) the provision to Defendants of all information necessary to effectuate a payment of funds, including, but not limited to, the payee name, the payee address, and a signed W-9 reflecting the taxpayer identification number for the payee. The Escrow Agent will deposit the check in the Escrow Account within three (3) business days of receiving the check.

2.2 If the entire Settlement Amount is not timely deposited into the Escrow Account, Lead Counsel may terminate the Settlement but only if: (i) Lead Counsel has notified Defendants' counsel in writing of Lead Counsel's intention to terminate the Settlement, and (ii) the entire Settlement Amount is not paid to the Escrow Account within five (5) business days after Lead Counsel has provided such written notice.

2.3 Other than the obligation to pay or cause to be paid the Settlement Amount into the Settlement Fund set forth in ¶2.1 herein, Defendants shall have no obligation to make any other

payment into the Settlement Fund pursuant to this Stipulation, and shall have no responsibility, obligation, or liability with respect to the Escrow Account or the monies maintained in the Escrow Account or the administration of the Settlement, including, without limitation, any responsibility or liability related to any fees, Notice and Administration Expenses, Taxes, investment decisions, maintenance, supervision or distribution of any portion of the Settlement Amount.

b. The Escrow Agent

2.4 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶2.1 hereof in United States Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All costs and risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund, and the Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

2.5 The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the prior written agreement of Defendants' counsel.

2.6 Subject to further order(s) and/or directions as may be made by the Court, or as provided in this Stipulation, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Stipulation. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

2.7 All funds held by the Escrow Agent shall be deemed and considered to be in the legal custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Stipulation and/or further order(s) of the Court.

2.8 Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Lead Counsel may pay from the Settlement Fund, without further approval and/or order of the Court, reasonable costs and expenses actually incurred in connection with providing notice of the Settlement to the Settlement Class by mail, publication, and other means, locating Settlement Class Members, assisting with the submission of claims, processing Proof of Claim and Release forms, administering the Settlement, and paying escrow fees and costs, if any (“Notice and Administration Expenses”) up to the sum of \$300,000.00. Prior to the Effective Date, all such Notice and Administration Expenses in excess of \$300,000.00 shall be paid from the Settlement Fund subject to prior approval of the Court. After the Effective Date, Lead Counsel may pay all further Notice and Administration Expenses from the Settlement Fund, regardless of amount, without further order of the Court. The Released Persons shall have no responsibility for or liability whatsoever with respect to the Notice and Administration Expenses, nor shall they have any responsibility or liability whatsoever for any claims with respect thereto.

c. Taxes

2.9 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. The Settling Parties and the Escrow Agent further agree that the Settlement Fund shall be established pursuant to the Court’s subject matter jurisdiction within the meaning of Treas. Reg. §1.468B-1(c)(1). In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.9, including the “relation-back election” (as defined in Treas. Reg.

§1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” (as defined in Treas. Reg. §1.468B-2(k)(3)) shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other federal, state, or local tax returns necessary or advisable with respect to the earnings on the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the elections described in ¶2.9(a) hereof) shall be consistent with this ¶2.9 and in all events shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.9(c) hereof.

(c) All (i) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Persons or their counsel with respect to any income earned by the Settlement Fund for any period, after the payment of the Settlement Amount, during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶2.9 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶2.9) (“Tax Expenses”) shall be paid out of the Settlement Fund; in all events, the Released Persons and their counsel shall have no liability or responsibility whatsoever for the Taxes or the Tax

Expenses. The Escrow Agent, through the Settlement Fund, shall indemnify and hold each of the Released Persons and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither the Released Persons nor their counsel are responsible nor shall they have any liability for any Taxes or Tax Expenses. The Settling Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.9.

d. Termination of Settlement

2.10 In the event that this Stipulation is not approved or the Settlement is not approved, or is terminated, canceled, or the Effective Date otherwise fails to occur for any reason, including, without limitation, in the event the Judgment is reversed or vacated or materially altered following any appeal taken therefrom, or is successfully collaterally attacked, the Settlement Fund less Notice and Administration Expenses or Taxes or Tax Expenses paid, incurred, or due and owing pursuant to ¶¶2.8 and 2.9 hereof in connection with the Settlement provided for herein, shall be refunded pursuant to written instructions from Defendants' counsel in accordance with ¶7.6 herein.

3. Preliminary Approval Order and Settlement Hearing

3.1 Within five (5) calendar days after execution of this Stipulation, Lead Counsel shall submit this Stipulation together with its Exhibits to the Court and shall apply for entry of an order

(the “Preliminary Approval Order”), substantially in the form of Exhibit A attached hereto, requesting, *inter alia*, the preliminary approval of the Settlement set forth in this Stipulation, certification of the Settlement Class for settlement purposes, and approval for the mailing of a settlement notice (the “Notice”) and publication of a summary notice (“Summary Notice”), substantially in the forms of Exhibits A-1 and A-3 attached hereto. The Notice shall include the general terms of the Settlement set forth in this Stipulation, the proposed Plan of Allocation, the general terms of the Fee and Expense Application, as defined in ¶6.1 hereof, and the date of the Settlement Hearing as defined below.

3.2 Emergent shall provide or cause its transfer agent to provide to the Claims Administrator, at no cost to Plaintiffs or the Settlement Class, within ten (10) business days of the date of entry of the Preliminary Approval Order, transfer, in electronic searchable form, such as Excel, Emergent's shareholder list (containing names and addresses) of record holders of Emergent publicly-traded common stock listed on the New York Stock Exchange during the Settlement Class Period. It shall be solely Lead Counsel’s responsibility to disseminate the Notice and Summary Notice to the Settlement Class in accordance with this Stipulation and as ordered by the Court. Settlement Class Members shall have no recourse as to the Released Persons with respect to any claims they may have that arise from any failure of the notice process.

3.3 Lead Counsel shall request that, after notice is given and not earlier than ninety (90) days after the later of the dates on which the appropriate Federal official and the appropriate State officials are provided with notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1715, *et seq.* (“CAFA”) as set forth in ¶3.4 below, the Court hold a hearing (the “Settlement Hearing”) and approve the Settlement of the Litigation as set forth herein. At or after the Settlement

Hearing, Lead Counsel also will request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application.

3.4 Defendants, via the Claims Administrator, shall no later than ten (10) calendar days following the filing of this Stipulation with the Court serve upon the appropriate State official of each State in which a Settlement Class Member resides and the Attorney General of the United States a notice of the proposed Settlement in compliance with the requirements of CAFA. Defendants are solely responsible for the costs of the CAFA notice and administering the CAFA notice.

4. Releases

4.1 Upon the Effective Date, as defined in ¶1.4 hereof, Plaintiffs shall, and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons, whether or not such Settlement Class Member executes and delivers the Proof of Claim and Release or shares in the Net Settlement Fund. Claims to enforce the terms of this Stipulation are not released.

4.2 Any Proof of Claim and Release that is executed by Settlement Class Members shall release all Released Claims against the Released Persons and shall be substantially in the form contained in Exhibit A-2 attached hereto.

4.3 Upon the Effective Date, Plaintiffs, all Settlement Class Members and anyone claiming through or on behalf of any of them, will be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting the Released Claims against any of the Released Persons.

4.4 Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Defendants' Claims (including Unknown Claims) against the Plaintiffs, each and all of the Settlement Class Members, and Plaintiffs' Counsel. Claims to enforce the terms of the Stipulation, or Settlement, or claims against any Person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court are not released.

5. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of the Settlement Fund

5.1 The Claims Administrator, subject to such supervision and direction of Lead Counsel and the Court as may be necessary or as circumstances may require, shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants.

5.2 The Settlement Fund shall be applied as follows:

(a) to pay all Notice and Administration Expenses;

(b) to pay the Taxes and Tax Expenses;

(c) to pay attorneys' fees and expenses of Plaintiffs' Counsel and reimbursement of Plaintiffs' expenses (the "Fee and Expense Award"), if and to the extent allowed by the Court; and

(d) after the Effective Date, to distribute the Net Settlement Fund to Authorized Claimants as allowed by this Stipulation, the Plan of Allocation, or the Court.

5.3 After the Effective Date, and in accordance with the terms of this Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following provisions of this Stipulation.

5.4 Within one hundred-twenty (120) days after the mailing of the Notice or such other time as may be set by the Court, each Settlement Class Member shall be required to submit to the Claims Administrator a completed Proof of Claim and Release, in the form approved by the Court, signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and Release.

5.5 Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a valid Proof of Claim and Release within such period, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Stipulation and the Settlement set forth herein, but will in all other respects be subject to and bound by the provisions of this Stipulation, the releases contained herein, and the Judgment, and will be barred from bringing any action against the Released Persons concerning the Released Claims. Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not an obligation) to accept late-submitted claims for processing by the Claims Administrator so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby. No Person shall have any claim against Plaintiffs, their counsel, the Claims Administrator or any Settlement Class Member by reason of the exercise or non-exercise of such discretion.

5.6 Each Proof of Claim and Release shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine, in accordance with this Stipulation and the approved Plan of Allocation, the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to ¶5.8 below.

5.7 Proof of Claim and Release forms that do not meet the submission requirements may be rejected. Prior to rejecting a Proof of Claim and Release in whole or in part, the Claims Administrator shall communicate with the claimant in writing to give the claimant the chance to

remedy any curable deficiencies in the Proof of Claim and Release submitted. The Claims Administrator, under the supervision of Lead Counsel, shall notify, in a timely fashion and in writing, all claimants whose claims the Claims Administrator proposes to reject in whole or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of ¶5.8 below.

5.8 If any claimant whose timely claim has been rejected in whole or in part for curable deficiency desires to contest such rejection, the claimant must, within twenty (20) calendar days after the date of mailing of the notice required in ¶5.7 above, or a lesser period of time if the claim was untimely, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the claimant's request for review to the Court.

5.9 Each claimant who declines to be excluded from the Settlement Class shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, including, but not limited to, all releases provided for herein and in the Judgment, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the claimant's status as a Settlement Class Member and the validity and amount of the claimant's claim. In connection with processing the Proofs of Claim and Release, no discovery shall be allowed on the merits of the Litigation or the Settlement.

5.10 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with the Plan of Allocation set forth in the Notice and approved by the

Court. If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the date of the initial distribution of the Net Settlement Fund, Lead Counsel shall, if feasible and economical, reallocate (which reallocation may occur on multiple occasions) such balance among Authorized Claimants in an equitable and economical fashion. Any *de minimis* balance that still remains in the Net Settlement Fund after such reallocation(s) and payments, which is not feasible or economical to reallocate, shall be donated to any appropriate non-sectarian, non-profit charitable organization(s) serving the public interest selected by Lead Counsel.

5.11 Defendants and their Related Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claim of any kind against the Defendants, their Related Parties, or counsel for Defendants with respect to the matters set forth in ¶5 hereof; and the Settlement Class Members, Plaintiffs, and Lead Counsel release the Defendants and their Related Parties from any and all liability and claims arising from or with respect to the administration, investment, or distribution of the Settlement Fund.

5.12 No Person shall have any claim against Defendants or their Related Parties, Defendants' counsel, Plaintiffs, Plaintiffs' Counsel or the Claims Administrator, or any other Person designated by Lead Counsel based on determinations or distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

5.13 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund, including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered

by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect the finality of the Court's Judgment approving this Stipulation and the Settlement set forth herein, or any other orders entered pursuant to the Stipulation.

6. Plaintiffs' Counsel's Attorneys' Fees and Expenses

6.1 Lead Counsel may submit an application or applications (the "Fee and Expense Application") from the Settlement Fund exclusively for: (a) an award of attorneys' fees; plus (b) expenses or charges in connection with prosecuting the Litigation; plus (c) any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. An application for fees and expenses may include a request for reimbursement of Plaintiffs' reasonable costs and expenses pursuant to the Private Securities Litigation Reform Act of 1995. Lead Counsel reserves the right to make additional applications for fees and expenses incurred.

6.2 Any fees and expenses, as awarded by the Court, shall be paid to Lead Counsel from the Settlement Fund, as ordered, immediately after the Court executes the Judgment and an order awarding such fees and expenses, notwithstanding the existence of any timely filed objections thereto or to the Settlement, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. Lead Counsel may thereafter allocate the attorneys' fees among Plaintiffs' Counsel in a manner in which it in good faith believes reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Litigation.

6.3 In the event that the Effective Date does not occur, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or this Stipulation is canceled or

terminated for any other reason, and such reversal, modification, cancellation or termination becomes Final and not subject to review, and in the event that the Fee and Expense Award has been paid to any extent, then Lead Counsel, including its partners and/or shareholders, and such other Plaintiffs' Counsel, including their law firms, partners, and/or shareholders, and Plaintiffs who have received any portion of the Fee and Expense Award shall, within five (5) business days from receiving notice of reversal or modification from a court of appropriate jurisdiction, or from Defendants' counsel, refund to the Settlement Fund all such fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal, modification, cancellation or termination. Any refunds required pursuant to this ¶6.3 shall be the joint and several obligation of Lead Counsel, including its partners and/or shareholders, Plaintiffs' Counsel, including their law firms, partners, and/or shareholders, and Plaintiffs that received fees or expenses to make appropriate refunds or repayments to the Settlement Fund. Each such Lead Counsel, Plaintiffs' Counsel, or Plaintiffs receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that (a) such Person and its partners, shareholders, and/or members are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph, and (b) are jointly and severally liable for the full amount of all fees, expenses, and costs paid from the Settlement Fund. Without limitation, Lead Counsel, Plaintiffs' Counsel, and Plaintiffs and their partners, shareholders, and/or members agree that the Court may, upon application of Defendants and notice to Lead Counsel and Plaintiffs' Counsel, summarily issue orders, including, but not limited to, judgments and attachment orders, and may make appropriate findings of or sanctions for contempt, should such law firms or their partners, shareholders, or members fail to timely repay fees and expenses pursuant to this paragraph.

6.4 The procedure for and the allowance or disallowance by the Court of any applications by any Plaintiffs' Counsel for attorneys' fees and expenses to be paid out of the Settlement Fund is not part of the Settlement set forth in this Stipulation, and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Stipulation, or affect or delay the finality of the Judgment approving this Stipulation and the Settlement of the Litigation set forth therein.

6.5 Any fees and/or expenses awarded by the Court shall be paid solely from the Settlement Fund. With the sole exception of Defendants' obligation to pay or cause the Settlement Amount to be paid to the Escrow Account as provided for in ¶2.1, Defendants and their Related Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees and/or expenses (including Taxes) to Plaintiffs' Counsel, or any other counsel or Person who receives payment from the Net Settlement Fund.

6.6 Defendants and their Related Parties shall have no responsibility for, and no liability whatsoever with respect to, the allocation among Plaintiffs' Counsel and/or any other Person who may assert some claim thereto of any Fee and Expense Award that the Court may make in the Litigation.

6.7 The Released Persons shall have no responsibility for, and no liability whatsoever with respect to, any attorneys' fees, costs, or expenses (including Taxes) incurred by or on behalf of any Settlement Class Member, whether or not paid from the Escrow Account.

7. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

7.1 The Effective Date of the Settlement shall be conditioned on the occurrence of all of the following events:

- (a) the Court has entered the Preliminary Approval Order, as required by ¶3.1 hereof;
- (b) the Settlement Amount has been paid to the Escrow Account;
- (c) Emergent has not exercised its option to terminate the Stipulation pursuant to ¶7.3 hereof;
- (d) the Court has entered the Judgment, or a judgment substantially in the form of Exhibit B attached hereto, following notice to the Settlement Class and the Settlement Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and
- (e) the Judgment has become Final, as defined in ¶1.6 hereof.

7.2 Upon the Effective Date, any and all remaining interest or right of the Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. If the conditions specified in ¶7.1 hereof are not met, then the Settlement shall be canceled and terminated subject to ¶¶7.5-7.8 hereof unless Lead Counsel and counsel for the Defendants mutually agree in writing to proceed with the Settlement.

7.3 Emergent shall have the right to withdraw and terminate the Settlement and render it null and void in the event that Persons who would otherwise be Settlement Class Members who timely and validly exclude themselves therefrom pursuant to ¶15 of the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice, attached hereto as Exhibit A, purchased or otherwise acquired more than a certain percentage of Emergent common stock subject to this Settlement, as set forth in a separate agreement (the “Supplemental Agreement”) executed

between Plaintiffs and Defendants, by and through their counsel. The Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein, to the extent necessary, or as otherwise provided in the Supplemental Agreement), unless and until the Court otherwise directs or a dispute arises between the Settling Parties concerning its interpretation or application. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Settling Parties will seek to have the Supplemental Agreement submitted to the Court *in camera* or filed under seal.

7.4 Each of the Settling Parties shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other parties hereto within thirty (30) calendar days of: (a) the Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the Court’s refusal to approve this Stipulation or any material part of it; (c) the Court’s declining to enter the Judgment in any material respect; or (d) the date upon which the Judgment is modified or reversed in any material respect by the Court, Court of Appeals, or Supreme Court.

7.5 If, before the Settlement becomes Final, Emergent files for protection under the Bankruptcy Code, or any similar law, or a trustee, receiver, conservator, or other fiduciary is appointed under bankruptcy, or any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money or any portion thereof to the Escrow Agent by Emergent to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned to Emergent out of the Escrow Account, and such amount is not promptly placed in the Escrow Account by others, then, at the election of Plaintiffs, the Settling Parties shall jointly move the Court to vacate and set aside the

Judgment, including the releases pursuant thereto, and the Settlement and this Stipulation shall terminate.

7.6 Unless otherwise ordered by the Court, in the event this Stipulation is not approved or this Stipulation or the Settlement is terminated, or canceled, or the Effective Date otherwise fails to occur for any reason, including, without limitation, in the event the Judgment is reversed or vacated or materially altered following any appeal taken therefrom, or is successfully collaterally attacked, within ten (10) business days after written notification of such event is sent by Defendants' counsel or Lead Counsel to the Escrow Agent, the Settlement Fund, less Taxes, Tax Expenses and Notice and Administration Expenses which have either been disbursed pursuant to ¶¶2.8 and 2.9 hereof, or are chargeable to the Settlement Fund pursuant to ¶¶2.8 and 2.9 hereof, shall be refunded by the Escrow Agent to the Persons who contributed to the Settlement Fund in proportion to their respective contribution. Such refunds shall be pursuant to written instructions from Defendants' counsel. The Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Amount and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund to the same Persons in the same manner as the Settlement Fund described in this ¶7.6. Such payments shall be pursuant to written instructions from Defendants' counsel.

7.7 In the event that this Stipulation is not approved or this Stipulation or the Settlement is terminated, canceled, or the Effective Date otherwise fails to occur for any reason, the Settling Parties shall be restored to their respective positions in the Litigation as of August 27, 2018. In such event, the terms and provisions of the Stipulation, with the exception of ¶¶1, 2.6-2.10, 6.3, 6.4, and 7.8 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered

by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or any Fee and Expense Award shall operate to terminate or cancel this Stipulation or constitute grounds for cancellation or termination of this Stipulation.

7.8 If the Effective Date does not occur, or if this Stipulation is terminated pursuant to its terms, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts disbursed pursuant to ¶¶2.8 or 2.9. In addition, any amounts already incurred pursuant to ¶¶2.8 or 2.9 hereof at the time of such termination or cancellation but which have not been paid shall be paid by the Escrow Agent in accordance with the terms of this Stipulation prior to the balance being refunded in accordance with ¶¶2.10 and 7.6 hereof.

8. No Admission of Wrongdoing

8.1 Neither the Settlement, this Stipulation (whether or not consummated), including the Exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), nor any of its terms and provisions, nor any of the negotiations, discussions, or proceedings connected with the Stipulation, nor any act performed or document executed pursuant to or in furtherance of the Stipulation (including any arguments proffered in connection therewith, nor any of the documents or statements referred to therein nor any payment or consideration provided for therein):

(a) shall be offered or received against any Released Persons as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Released Persons of the truth of any allegations by Plaintiffs or any Member of the Settlement Class or the validity of any claim that has been or could have been asserted in the Litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any other

litigation, or of any liability, negligence, fault, or wrongdoing of any kind of any of the Released Persons or in any way referred to for any other reason as against any of the Released Persons, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered or received against any Released Persons as evidence of a presumption, concession, or admission of any fault, misrepresentations, or omission with respect to any statement or written document approved or made by any of the Released Persons, or against Plaintiffs or any Member of the Settlement Class as evidence of any infirmity in the claims of Plaintiffs and the Settlement Class;

(c) shall be offered or received against any Released Persons as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal, or administrative action or proceeding; provided, however, that if this Stipulation is approved by the Court, the Released Persons may refer to it to effectuate the release granted them hereunder; or

(d) shall be construed against any of the Released Persons, Plaintiffs, or the Settlement Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial.

9. Miscellaneous Provisions

9.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of this Stipulation.

9.2 No modification or amendment of this Stipulation shall be valid unless made in writing and signed by or on behalf of all Settling Parties or their respective successors-in-interest.

9.3 No waiver of any term or provision of this Stipulation, or any breach or default hereof or hereunder, shall be valid or effective unless in writing and signed by or on behalf of all Settling Parties or their respective successors-in-interest. No waiver of any term or provision of this Stipulation, or any breach or default hereof or hereunder, shall be construed as a waiver of the same or any other term or provision or of any previous or subsequent breach thereof.

9.4 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises all claims that were or are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Judgment will contain a finding that, during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. The Settling Parties agree that the Settlement Amount and the other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum regarding the Litigation, including that the Litigation was brought or defended in bad faith or without a reasonable basis.

9.5 Defendants, their respective Related Parties, and/or counsel for Defendants and/or their respective Related Parties may file this Stipulation and/or the Judgment from this action in any other action that may be brought against them in order to support a defense, claim, or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar

or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim or otherwise to enforce the terms of the Settlement.

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

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

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

9.9 This Stipulation and the Exhibits attached hereto and the Supplemental Agreement constitute the entire agreement among the Settling Parties hereto as to the subject matter hereof and supersede any prior or contemporaneous written or oral agreements or understandings between the Settling Parties. No representations, warranties, or inducements have been made to any party concerning this Stipulation or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

9.10 Except as otherwise provided herein, each party shall bear his, her, or its own fees and costs.

9.11 Lead Counsel, on behalf of the Settlement Class, is expressly authorized by Plaintiffs to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Stipulation to effectuate its terms and also is expressly authorized to enter into any modifications or amendments to this Stipulation on behalf of the Settlement Class which it deems appropriate.

9.12 Each counsel or other Person executing this Stipulation or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

9.13 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court. Signatures sent by facsimile or pdf'd via e-mail shall be deemed originals.

9.14 All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed duly given (i) when delivered personally to the recipient, (ii) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid), or (iii) seven (7) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Plaintiffs or to Lead Counsel:

ROBBINS GELLER RUDMAN
& DOWD LLP
JONAH H. GOLDSTEIN
655 West Broadway, Suite 1900
San Diego, CA 92101

If to Defendants or to Defendants' counsel:

KIRKLAND & ELLIS LLP
YOSEF J. RIEMER
MATTHEW SOLUM
601 Lexington Avenue
New York, NY 10022

EMERGENT BIOSOLUTIONS, INC.
ATUL SARAN
400 Professional Drive, Suite 400
Gaithersburg, MD 20879

9.15 This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

9.16 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation, and all Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation and matters related to the Settlement.

9.17 Each of the Settling Parties waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, either in contract, tort, or otherwise, relating directly or indirectly to this Settlement, this Stipulation, or any of the transactions contemplated hereby.

9.18 The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver by any other party or a waiver of any other prior or subsequent breach of this Stipulation.

9.19 Pending approval of the Court of this Stipulation and its Exhibits, all proceedings in this Litigation shall be stayed and all Members of the Settlement Class shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Persons.

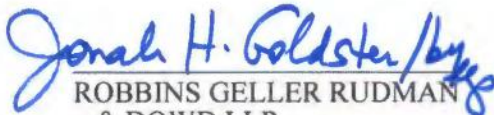
9.20 This Stipulation and the Exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Maryland, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of Maryland without giving effect to its choice-of-law principles.

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

9.22 This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of

the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and the Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed by their duly authorized attorneys, dated October 16, 2018.



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*Counsel for Defendants Emergent
BioSolutions, Inc., Fuad El-Hibri,
Daniel J. Abdun-Nabi, Robert G.
Kramer, and Adam R. Havey*

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 17, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Jonah H. Goldstein

JONAH H. GOLDSTEIN

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Manual Notice List

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