

## **STIPULATION OF SETTLEMENT**

This Stipulation of Class Lawsuit Settlement (“Stipulation”) is made by the named plaintiff Deborah Dungee (“Dungee” or “Plaintiff”) on behalf of herself and on behalf of all others similarly situated, and Davison Design & Development, Inc. (“Davison” or “Defendant”) (Plaintiff and Defendant referred to collectively as the “Parties”), by and through their respective counsel.

### **RECITALS**

WHEREAS, on April 21, 2010, Plaintiff brought a class action lawsuit in the United States District Court, District of Delaware, as Case No. 10-325 (GMS) (the “Lawsuit”) on behalf of Defendant’s customers located throughout the United States, who between January 28, 2000 and March 19, 2006 entered into a Pre-Integration Services Agreement (“PI Agreement”) and/or Production Sample Presentation Agreement (“PSP Agreement”) with Defendant for invention services whereby Defendant promised to assist its customers with patenting, marketing, and/or licensing their products and paid some amount to Defendant; and

WHEREAS, the Parties incorporate by reference the allegations of and defenses to the Lawsuit, as further refined by the allegations stated in the amended complaint that will be filed within ten (10) days of execution of this Stipulation; and

WHEREAS, the Parties have litigated this Lawsuit for four years; and

WHEREAS, after an initial motion to dismiss was denied and after initial rounds of discovery, the Parties engaged in extensive arms’ length settlement negotiations with the assistance of an experienced mediator; and

WHEREAS, Plaintiff, through counsel, while believing that the claims asserted in the Lawsuit have substantial merit, examined the benefits to be obtained under the terms of this proposed settlement, considered the risks associated with the continued prosecution and possible

appeal of this complex and time-consuming Lawsuit and the likelihood of success on the merits of the Lawsuit, and believe that, in consideration of all the circumstances, the proposed settlement embodied in this Stipulation (the “Proposed Settlement”) is fair, reasonable, adequate and in the best interests of the Potential Class Members; and

WHEREAS, Defendant, while denying wrongdoing of any kind whatsoever, and without admitting liability, nevertheless agreed to enter into this Stipulation to avoid the further expense, inconvenience and distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims which were asserted or could have been asserted in, or which relate in any way whatsoever to, the Lawsuit; and

WHEREAS, as a result of the negotiations, the Parties entered into an agreement, memorialized by this Stipulation; and

WHEREAS, the terms of the Stipulation provide for a fundamentally fair, reasonable, and adequate resolution of claims, and are therefore highly likely to satisfy the criteria for preliminary – and ultimately final – approval; and

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties, through their respective counsel, that the Lawsuit be settled and compromised as between the Plaintiff, the Settlement Class, and Defendant, upon approval of the Court after hearing as provided for in this Stipulation, on the following terms and conditions:

**I. ADDITIONAL DEFINITIONS**

In addition to the foregoing, the following terms shall have the meanings set forth below:

1. “Aggregate Payment” shall be the total combined cash payment by Davison to the Class, Class Counsel, and Class Representative, inclusive of all cash Settlement Payments, attorneys’ fees, costs, and incentive awards.

2. "CAFA Notice," attached as Exhibit 1, means notice provided to appropriate federal and state officials as required by 28 U.S.C. § 1715.
3. "Claim Form," attached as Exhibit 2 and incorporated herein by reference, means the document a Class Member must submit, subject to the provisions of Sections IV and VI hereof, to obtain benefits from the Settlement.
4. "Class Administrator" means the administrator, whether a third party administrator or Davison (if Davison so elects), which shall be responsible for mailing the Class Notice and the CAFA Notice and for other administrative tasks in connection with this settlement. The Class Administrator will be chosen by Davison subject to Plaintiff's approval, but Plaintiff's approval shall not be unreasonably withheld. Plaintiff hereby approves of Davison serving as the Class Administrator, if Davison so elects. The Class Administrator's fees will be paid by Davison and shall not reduce the amount available to (1) Class Members, (2) Plaintiff as an incentive, or (3) Class Counsel as an award of attorney fees and costs.
5. "Class Counsel" means the law firm Cross & Simon, LLC, who are appointed Lead Counsel and representing the Plaintiff and/or the other Class Members
6. "Class Member" means any person who is included within the definition of the Settlement Class (and that person's heirs, executors, administrators, successors, and assigns), and who does not validly and timely request exclusion from the Settlement Class, in accordance with the provisions of the Class Notice.
7. "Class Notice" means the notice of the preliminarily approved settlement to be sent to Potential Class Members in the form attached as Exhibit 3 hereto.
8. "Class Period" means the period commencing on January 28, 2000 and ending on March 19, 2006.
9. "Effective Date" means that date defined in paragraph 62 of this Stipulation.

10. "Final Settlement Hearing" means the hearing at which final approval of the Settlement in this matter is granted.

11. "Neutral Evaluator" means a neutral third party, mutually acceptable to Plaintiff and Defendant and appointed by the Court upon application of the Parties, to be the binding arbiter of any disagreements as to the amounts due, if any, to a Class Member who submits a Claim Form under the terms of this Stipulation.

12. "Notice Plan" means collectively the Class Notice, the CAFA Notice, and the notice methodology described in Section VI.

13. "Phase I - Partial Payment" – Benefit available to Class Members who executed a PI Agreement with Defendant from January 28, 2000 through March 19, 2006, made a partial payment on their contract, did not otherwise receive a full refund from either Davison or the FTC, and did not later enter into a PSP Agreement. Class Members in this group (approximately 5,385) are entitled to the following cash or voucher benefit:

Cash: \$17.50

Voucher: Voucher to receive a patent search from Defendant (retail value of \$495)

14. "Phase I – Full Payment" – Benefit available to Class Members who executed a PI Agreement with Defendant from January 28, 2000 through March 19, 2006, made a full payment on their contract, did not otherwise receive a full refund from either Davison or the FTC, and did not later enter into a PSP Agreement. Class Members in this group (approximately 27,440) are entitled to the following cash or voucher benefit:

Cash: \$27.50

Voucher: Voucher to receive a patent search from Defendant (retail value of \$495)

15. "Phase II – Partial Payment A" – Benefit available to Class Members who executed a PSP Agreement with Defendant from January 28, 2000 through March 19, 2006, made a

partial payment of less than \$1,000 on their contract, and did not otherwise receive a full refund from either Davison or the FTC. Class Members in this group (approximately 1,893) are entitled to the following cash or voucher benefit:

Cash: \$125.00

Voucher: Voucher to receive pre-development services (retail value of \$795)

16. "Phase II – Partial Payment B" - Benefit available to Class Members who executed a PSP Agreement with Defendant from January 28, 2000 through March 19, 2006, made a partial payment of more than \$1,000 but less than the full amount on their contract, and did not otherwise receive a full refund from either Davison or the FTC. Class Members in this group (approximately 1,328) are entitled to the following cash or voucher benefit:

Cash: \$148.50

Voucher: Voucher to receive pre-development services (retail value of \$795)

17. "Phase II – Full Payment" - Benefit available to Class Members who executed a PSP Agreement with Defendant from January 28, 2000 through March 19, 2006, made full payment on their contract, and did not otherwise receive a full refund from either Davison or the FTC. Class Members in this group (approximately 5,812) are entitled to the following cash or voucher benefit:

Cash: \$205.00

Voucher: Voucher to receive pre-development services (retail value of \$795) and voucher to receive a repackaging service (retail value of \$355)

18. "Potential Class Members" means all persons who would qualify as part of the Settlement Class, prior to the date by which exclusion from the Settlement Class must be requested.

19. "Release" means the release set forth in Section XVII.

20. "Settlement Class" means all persons located throughout the United States who (a) entered into a Pre-Invention Services Agreement and/or Production Sample Presentation Agreement with Davison for invention services; (b) between January 28, 2000 and March 19, 2006; (c) who paid Davison for invention services pursuant to one or both of those agreements; and (d) did not receive a full refund from Davison or the FTC.

21. "Settlement Payment" means the cash or voucher benefit available to Class Members as more fully described in Paragraph 28 .

## II. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

22. Solely for purposes of implementing this Stipulation and effectuating the Proposed Settlement, upon execution of this Stipulation, Plaintiff shall submit this Stipulation to the Court and request an order substantially in the form set forth in Exhibit 4 ("Preliminary Approval Order") without any material alterations that will, among other things:

- a. For settlement purposes only, preliminarily certify the Settlement Class, as defined herein, and designate the Plaintiff as class representative of the Settlement Class, and appoint the following counsel as counsel for the Settlement Class:

Richard H. Cross, Jr.  
Cross & Simon, LLC  
913 North Market Street, 11<sup>th</sup> Floor  
P.O. Box 1380  
Wilmington, Delaware 19899-1380

- b. Provide that preliminary certification and all actions associated with preliminary certification are undertaken on the condition that the certification and designations shall be automatically vacated if this Stipulation is terminated or is disapproved in whole or in material part by

the Court, any appellate court and/or any other court of review, or if any of the Parties invoke their right to revoke their agreement to settle as provided in paragraphs 58-59 below, in which event this Stipulation and the fact that it was entered into shall not be offered, received or construed as an admission or as evidence for any purpose;

- c. Preliminarily approve this Stipulation as sufficiently fair and reasonable to warrant sending notice to the Settlement Class preliminarily certified for settlement purposes;
- d. Determine that the Class Notice and the CAFA Notice are valid and that the distribution of the Class Notice and CAFA Notice is reasonable and the best practicable notice under the circumstances; is reasonably calculated to apprise the appropriate persons of the pendency of the Lawsuit and of their right to object or opt-out of the Proposed Settlement; constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and meets the requirements of the Federal Rules of Civil Procedure, and of due process under the Delaware and United States Constitutions;
- e. Require each Potential Class Member who wishes to exclude himself or herself from the Settlement Class to do so according to the procedures set forth in paragraph 65 below;
- f. Rule that any Potential Class Member who does not submit a timely, written request for exclusion will be bound by all proceedings, orders and judgments in the Lawsuit;
- g. Stay consideration of all motions and deadlines pending in the Lawsuit;

- h. Direct that a Settlement Approval Hearing be held to determine whether the Proposed Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class, and whether Judgment should be entered dismissing the Lawsuit on the merits and with prejudice; and in the event that the Court approves this Proposed Settlement, to determine the motion of Class Counsel for allowance of fees, and to pass upon such other matters as the Court deems appropriate;
- i. Require each Class Member who has not submitted a timely request for exclusion from the Settlement Class pursuant to the requirements of paragraph 65 below, and who wishes to object to the fairness, reasonableness or adequacy of the Proposed Settlement, or to the attorney's fee application, to file an objection pursuant to the procedures set forth in paragraphs 66-67 below or be forever barred from objecting to the terms of the Proposed Settlement;
- j. Preliminarily enjoin all Class Members who have not timely excluded themselves from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating as a plaintiff, claimant, named plaintiff representative of a class, or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Lawsuit or subject of the Release.

23. Preliminary certification of the Settlement Class and appointment of the class representative and Class Counsel by the Court shall be binding only with respect to the Proposed



Settlement. In the event that the Proposed Settlement is not consummated for any reason, whether due to a termination of this Stipulation in accordance with its terms, a failure or refusal of the Court to approve the Proposed Settlement, or a reversal or modification of the Court's approval of the Proposed Settlement on appeal, or any other reason, then the Court shall vacate the certification of the Settlement Class, and the Parties shall litigate the Lawsuit as though the Stipulation had never been entered and the Settlement Class had never been certified and nothing in this Stipulation may be used as an admission or offered into evidence in any proceeding involving Davison whatsoever.

24. Upon the preliminary approval of this Stipulation and the Proposed Settlement as provided in paragraphs 22-23 above, all proceedings in the Lawsuit shall be stayed as to Davison until further order of the Court; provided, however, that the Parties may conduct such limited proceedings as may be necessary to implement the Proposed Settlement or to effectuate the terms of this Stipulation.

### **III. APPOINTMENT OF NEUTRAL EVALUATOR**

25. Upon application of the Parties, the Court shall appoint as the Neutral Evaluator a neutral third party, mutually acceptable to and agreed to in writing by Class Counsel and Davison, and approved by the Court, who will be the binding arbiter of any disagreements between the Class Members and Davison, or among Class Members, as to the amount due, if any, to Class Members who submit a Claim Form under the terms of this Stipulation. All decisions of the Neutral Evaluator shall be final and not subject to any appeal. Neither Davison, nor the Plaintiff, nor any of the Parties' counsel, shall be liable for any act, or failure to act, of the Neutral Evaluator. Payment of the Neutral Evaluator's fees shall be as set forth below in paragraph 50 , and shall not exceed \$275 for any claim.

**IV. CLAIM FORM/REQUIRED SHOWING BY CLASS MEMBERS/METHOD OF PAYMENT**

26. Payments of cash and vouchers to the Settlement Class shall be distributed as set forth in paragraphs 27 through 33.

27. A Class Member must submit a Claim Form postmarked no later than 30 days after the date set for the Final Approval Hearing. The Class Member must provide all of the information requested on the Claim Form (Exhibit 2).

28. Settlement Payment to Class Members shall be calculated as follows:

a. "Phase I - Partial Payment" – Benefit available to Class Members who executed a PI Agreement with Defendant from January 28, 2000 through March 19, 2006, made a partial payment on their contract, did not otherwise receive a full refund from either Davison or the FTC, and did not later enter into a PSP Agreement. Class Members in this group (approximately 5,385) are entitled to the following cash or voucher benefit:

i. Cash: \$17.50

ii. Voucher: Voucher to receive a patent search from Defendant (retail value of \$495)

b. "Phase I – Full Payment" – Benefit available to Class Members who executed a PI Agreement with Defendant from January 28, 2000 through March 19, 2006, made a full payment on their contract, did not otherwise receive a full refund from either Davison or the FTC, and did not later enter into a PSP Agreement. Class Members in this group (approximately 27,440) are entitled to the following cash or voucher benefit:

i. Cash: \$27.50

ii. Voucher: Voucher to receive a patent search from Defendant  
(retail value of \$495)

c. “Phase II – Partial Payment A” – Benefit available to Class Members who executed a PSP Agreement with Defendant from January 28, 2000 through March 19, 2006, made a partial payment of less than \$1,000 on their contract, and did not otherwise receive a full refund from either Davison or the FTC. Class Members in this group (approximately 1,893) are entitled to the following cash or voucher benefit:

i. Cash: \$125.00

ii. Voucher: Voucher to receive pre-development services (retail value of \$795)

d. “Phase II – Partial Payment B” - Benefit available to Class Members who executed a PSP Agreement with Defendant from January 28, 2000 through March 19, 2006, made a partial payment of more than \$1,000 but less than the full amount on their contract, and did not otherwise receive a full refund from either Davison or the FTC,. Class Members in this group (approximately 1,328) are entitled to the following cash or voucher benefit:

i. Cash: \$148.50

ii. Voucher: Voucher to receive pre-development services (retail value of \$795)

e. “Phase II – Full Payment” - Benefit available to Class Members who executed a PSP Agreement with Defendant from January 28, 2000 through March 19, 2006, made full payment on their contract, and did not otherwise receive a full refund from either Davison or the FTC. Class Members in this group (approximately 5,812) are entitled to the following cash or voucher benefit:

- i. Cash: \$205.00
- ii. Voucher: Voucher to receive pre-development services (retail value of \$795) and voucher to receive a repackaging service (retail value of \$355)

29. Davison shall be entitled, in good faith, to make a submission to refute, modify or supplement the claim form documentation submitted by the Class Member. Such a challenge shall be submitted to the Neutral Evaluator[s] for determination, subject to the provisions of Sections IV and VI below.

30. The submissions of any Class Member hereunder shall be reviewed by Davison claims personnel and/or claims personnel retained by Davison pursuant to the procedures set forth in Sections IV and VI below.

31. If a Class Member submits a claim electing the voucher benefits, the following conditions shall apply:

- a. all vouchers for services must be redeemed within 200 days of the mailing date of the voucher, with each voucher containing the actual expiration date (as opposed to a formula for when it expires);

- b. except for a voucher for a re-packaging service (which is a service unique to a customer's prior invention idea), the vouchers for the other services are freely transferable;

- c. Davison shall be entitled to commence performing services under the vouchers on a rolling basis, so long as services are commenced within two (2) years after the submission of a timely voucher; and

- d. while Davison shall perform services pursuant to the vouchers at no charge, Davison's standard contractual terms and conditions for the performance of such

services shall apply, which include, among other things, the specific description of the scope of services to be provided, confidentiality protections, and dispute resolution procedures if a dispute arises between the parties regarding the performance of the services.

32. If a Class Member submits a claim electing cash benefits, payments will be made pursuant to paragraphs 34-38 (“Funding”) and paragraphs 46-50 (“Claims Procedure”).

33. If a Claim Form is deemed incomplete or defective, the Class Administrator will send the Class Member a letter, in a form approved by counsel for the Parties, advising of the defect and providing the Class Member with an opportunity to cure within 30 days. Claim Forms that are resubmitted after a cure letter and which are not reasonably cured may be denied by the Class Administrator. The Class Administrator shall have the option to submit questions to both counsel for the Parties for resolution. A timely submitted Claim Form that materially complies with the specified requirements shall not be deemed defective due to any immaterial omissions or noncompliance.

#### V. FUNDING

34. Davison shall be entitled to pay cash claims over time pursuant to the following distribution schedule:

a. Davison shall make \$300,000 available for payment of the Aggregate Payment within ten (10) days of the Effective Date.

b. On the last business day of each subsequent fiscal quarter, Davison shall pay a portion of the Aggregate Payment equal to the lesser of (i) \$150,000 or (ii) the amount of all then-remaining unpaid Aggregate Payments.

35. In the event that the Court awards Plaintiff an incentive award and Class Counsel any attorneys’ fees or costs, the relative amounts paid to Class Counsel, Plaintiff, and to non-

Plaintiff Class Members in each funding period set forth in paragraph 34 shall be based on weighted average. By way of example, in the event that Davison receives \$900,000 in cash claim elections, the Court awards Plaintiff a \$10,000 incentive award, and the Court awards Class Counsel \$300,000 in attorneys' fees/costs, the aggregate total of the foregoing is \$1,210,000, with the class cash payments accounting for 74% of the aggregate total, Plaintiff's incentive award accounting for 1% of the aggregate total, and Class Counsel's fees/costs accounting for 25% of the aggregate total. Under this example, for each funding period, the class would receive 74% of the quarterly cash distribution by Davison, Plaintiff would receive 1% of the quarterly cash distribution, and Class Counsel would receive 25% of the quarterly cash distribution.

36. At Davison's option, for each funding period, if the portion of the funding for such period that is available to pay Class Members is not sufficient to pay in full all Class Members making cash elections to which there are no unresolved objections pursuant to paragraphs 46-50 ("Claims Procedure"), Davison may elect to make pro-rata payments to all such Class Members, or may elect to choose by lot or other method such number of Class Members to whom full payment shall be made, up to the amount of available funds for the funding period. If Davison chooses the latter option, it may pay an additional amount up to \$205 needed to make a full payment to the last Class Member chosen for that period, and need not recalculate the percentage allocation in paragraph 35 to reflect that additional payment.

37. For purposes of making the percentage calculation set forth in paragraph 35, if at the time of calculation for any funding period there are any unresolved objections to Claim Notices pursuant to paragraphs 46-50 ("Claims Procedure"), the amount of the objected-to claim(s) shall, solely for purposes of making the percentage calculation under paragraph 35, be treated as a cash claim election. Once, however, the calculation of funds available to pay Class

Members has been made for that funding period, the funds for that period shall be paid to electing Class Members as to which there are no unresolved objections; provided, however, that no Class Member shall receive more than the full Settlement Payment provided under paragraph 28 . Upon any resolution of a disputed objection resulting in a cash award, the formerly disputed claim shall become eligible for payment during the next funding period.

38. In order to ensure that there are funds to cover the Aggregate Payment pursuant to the distribution schedule, Davison agrees to provide a security interest in its accounts receivables, the terms of which are set forth in the term sheet attached as Exhibit 5.

#### **VI. NOTICE, COSTS OF NOTICE AND ADMINISTRATION OF SETTLEMENT**

39. Notice of the pendency of the Lawsuit and of the Settlement shall be made by the Notice Plan as described in paragraphs 40-45 below.

40. Notice to Class Members will be provided by direct mail. Davison agrees to use its best efforts to obtain or create, at its expense, a list of the names and last known addresses of Potential Class Members during the Class Period, as reflected by Davison's records and to identify which category of benefits (i.e., Phase I – Partial Payment, Phase I – Full Payment, Phase II – Partial Payment A, Phase II – Partial Payment B, Phase II – Full Payment) to which the Potential Class Member is entitled. Davison shall deliver the list to the Class Administrator no later than 45 days after the Preliminary Approval Order is entered. The Class Administrator or Davison will update the addresses through the National Change of Address database before the mailing of the Class Notice.

41. Within 30 days of receiving the list of Potential Class Members, the Class Administrator will send the Class Notice via First Class Mail, postage prepaid. Direct mail notice will be provided to Potential Class Members as determined by a reasonable search of Davison's available records. The Notice to the Potential Class Member shall provide an

indication of the category of benefits to which Davison has identified that the Potential Class Member is entitled.

42. The Class Administrator will arrange for printing and mailing of the notice. For any notices which remain undelivered, the Class Administrator will agree to consult again the national change of address database to verify address information for class members and may, in its sole discretion, elect to provide supplemental notice by publication.

43. Within 10 days after the filing of the motion for preliminary approval of settlement, Davison or the Class Administrator shall provide CAFA Notice consistent with the requirements at 28 U.S.C. § 1715(b).

44. Davison shall pay all costs associated with claims administration and providing notice of the pendency of the Lawsuit and of the Settlement embodied herein to the Potential Class Members in accordance with the terms of the Preliminary Approval Order.

45. Either Class Administrator or Davison will issue and send the required Settlement Payments to Class Members.

## **VII. CLAIMS PROCEDURE**

46. Potential Class Members will be deemed Class Members unless they request exclusion from the Settlement Class. Each Potential Class Member will be provided the opportunity to fill out and submit a Claim Form to the address set forth in the Class Notice, by a date no later than 30 days after the Final Settlement Hearing.

47. The Class Notice will set forth a forwarding and return address, which will be a Post Office Box controlled by Davison or the Class Administrator. Davison, upon receipt of the Claim Forms, will log the forms. Class Counsel may, upon request, be provided with the forms and the log.



48. Once a Claim Form is submitted to Davison, Davison shall, within 45 days of receipt of the Claim Form, make a determination to pay the claim or object. Davison will give written notice to Class Members and Class Counsel of all determinations. Such written notice may be made with the Settlement Payment. Class Members will have 45 days after mailing of such notice to object to the determination. If an objection is filed by a Class Member to Davison's determination, the dispute shall, if it cannot otherwise be resolved, be submitted to the Neutral Evaluator for determination within 45 days of the Class Member's objection. The Neutral Evaluator shall decide the dispute, in binding fashion, within 60 days. Davison shall provide Class Counsel with lists of those claims where objections are asserted. Davison shall pay those claims to which Davison does not assert an objection based upon the provisions of this Stipulation.

49. The binding determination made by the Neutral Evaluator shall be based solely upon the documentation submitted by or exchanged between the Class Member and Davison. The Neutral Evaluator may award the Class Member cash or vouchers (but not both) up to but not exceeding the amounts set forth for an individual claim as detailed in paragraph 28 .

50. The Neutral Evaluator's fees will be capped at \$275 per dispute, to be paid by Davison.

#### **VIII. DECEASED, DISSOLVED OR BANKRUPT CLASS MEMBERS**

51. Where a Class Member is deceased and a payment is due to that Class Member, upon receipt of a proper notification and documentation, the Settlement Payment will be made to such Class Member's personal representative.

52. Where a Class Member has been declared bankrupt, or is the subject of an open and ongoing bankruptcy proceeding, and a payment is due to the Class Member, upon receipt of

proper notification and documentation, the Settlement Payment will be made to such Class Member in accordance with applicable U.S. Bankruptcy Code laws.

**IX. MINOR SETTLEMENT PROVISION**

53. If any minor is a Class Member, court approval of the final distribution to that Class Member, pursuant to the applicable rules in the state where the minor resides, will be required.

**X. INCAPACITATED CLASS MEMBERS**

54. Claims may be submitted by a legally authorized guardian or representative of an incapacitated Class Member. Before any Settlement Payment will be distributed by Davison, the party submitting such a claim must obtain Court approval that the party is the proper party to receive distribution of the Settlement Payment.

**XI. COMMUNICATIONS WITH THE CLASS**

55. The Class Notice shall list Class Counsel's addresses. Other than as provided for in this Stipulation, communications relating to the Lawsuit or this Settlement with Persons receiving Class Notices and Potential Class Members shall be handled through Class Counsel. Nothing in this Stipulation shall be construed to prevent Davison, its employees, agents or representatives from communicating with Potential Class Members or Class Members in the normal course of its business operations.

**XII. FEES, COSTS, INCENTIVE AWARD**

56. During settlement discussions, the Parties first negotiated and reached agreement regarding the material terms of the class settlement. The Parties did not negotiate the attorney fees and costs for Class Counsel nor the incentive award for the Class Representative at that time. The Parties agreed to attempt to resolve the attorney fees and costs for Class Counsel and the incentive award for the Class Representative only after the material terms were decided. The

Parties agreed that if they could not reach agreement on the attorney fees and costs or the incentive award, Class Counsel could submit a contested motion to the Court to make a binding determination on the amount of attorney fees and costs to be awarded to Class Counsel and the incentive award to be awarded to the Class Representative and that such awards would not reduce the amount of benefits available to the Class Members. The Parties did agree, however, that the payment by Davison of any such incentive award and attorneys' fees and costs would be done so pursuant to the same distribution schedule as cash amounts paid to Class members electing a cash option (as stated in Paragraph 35 above).

**XIII. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION OF STIPULATION**

57. The Plaintiff, Class Members and Davison consent to the entry of a Final Order and Judgment Approving Settlement.

58. Davison may, solely at its option, terminate this Agreement in the event the number of Potential Class Members who have filed valid and timely requests for exclusion exceeds ten percent (10%) of the Potential Class Members.

59. If the Court disapproves this Stipulation or fails to rule, or if the Court enters the Final Judgment but it is reversed or vacated on appeal, this Stipulation shall be null and void and of no force and effect. If the Court materially modifies any provision of the Stipulation or proposed Final Judgment, or if either is materially modified on appeal or remanded to the Court for modification, Davison or Class Counsel shall have the option of terminating this Stipulation and withdrawing this consent to the entry of the Final Judgment, in which case this Stipulation shall be null and void and of no force and effect.

60. If an option to withdraw from and terminate this Stipulation arises under paragraphs 58-59 above, Davison is not required for any reason or under any circumstance to

exercise that option. The option to withdraw from and terminate this Stipulation must be exercised no later than fourteen (14) business days after notice of the event prompting the right to terminate.

61. Upon the preliminary approval of this Proposed Settlement by the Court, as evidenced by entry of the Preliminary Approval Order, all proceedings in the Lawsuit shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the Proposed Settlement or to comply with or effectuate the terms of this Stipulation.

62. The "Effective Date" of this Stipulation shall be the first date after which all the following events and conditions have been met or occurred:

- a. All Parties have executed this Stipulation;
- b. The Court has, by entry of the Preliminary Approval Order, preliminarily approved this Stipulation, the Proposed Settlement set forth herein and the method for providing notice to the Settlement Class;
- c. The Court has entered the Final Judgment, finally approving this Stipulation, without material alteration, providing the Release to the Defendant and dismissing with prejudice, and without leave to amend, the Lawsuit and all claims asserted therein, except as to those Potential Class Members who timely request exclusion; and
- d. Unless the Parties otherwise agree in writing to waive all or any portion of the following provision: (i) the expiration (without the filing or noticing of an appeal) of the time to appeal from the Final Judgment; (ii) the entry of a final dismissal order of any and all appeals from the Final Judgment; (iii) affirmance on appeal of the Final Judgment without material alteration; (iv) if a ruling or decision is entered by an appellate court with respect to affirmance of the Final Judgment, the time to petition for review or a writ

of certiorari with respect to such ruling or decision has expired; or (v) if a petition for review or a writ of certiorari with respect to the Final Judgment is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Judgment without material alteration.

63. In the event that any of the events or conditions described above are not met or do not occur, this entire Stipulation shall become null and void, except that the Parties shall have the option to agree in writing to waive the event or condition and proceed with this Settlement, in which case the Effective Date shall be deemed to have occurred on the date of said written agreement, or a date otherwise specified in said written agreement.

64. Within five (5) days after the deadline fixed by the Court in the Preliminary Approval Order for Potential Class Members to request exclusion from the Settlement Class, Class Counsel and Counsel for Defendant shall exchange a complete list of all timely and valid requests for exclusion received by Class Counsel and Counsel for Defendant.

#### **XIV. OBJECTIONS AND REQUESTS FOR EXCLUSION**

65. All Potential Class Members wishing to be excluded from the class must timely return a valid request for exclusion (a/k/a Opt Out). Requests for exclusion from the Settlement Class will be submitted to and processed by the Class Administrator without the necessity of additional service on counsel for the Parties. A request for exclusion will be effectuated by a written submission from the class member that includes: (1) the Potential Class Member's name, (2) the Potential Class member's address, (3) the Potential Class member's expression of the desire to opt out or be excluded from the Settlement Class; and (4) the Potential Class member's signature or the signature of an authorized representative of the Potential Class member. A separate request for exclusion must be submitted by each person or entity requesting exclusion. The notice will contain the above instructions on how to opt out of the Settlement Class. In

order to be valid, a request for exclusion must satisfy the above requirements and be sent to the Class Administrator by First Class Mail, postage prepaid, postmarked no later than 30 days before the date set for the Final Settlement Hearing.

66. Class Members who do not file a timely request for exclusion may file a notice of intent to object to the Proposed Settlement. The written notice of intent to object must be:

(a) filed with the Clerk of the Court not later than 30 days before the date set for the Final Settlement Hearing; and (b) sent by first-class mail, postmarked not later than 30 days before the date set for the Final Settlement Hearing, to Class Counsel and to counsel for the Defendant.

Any Class Member who does not so request to object waives the right to do so in the future, and shall be forever barred from making any objection to the Proposed Settlement.

67. To be effective, any notice of intent to object must contain: (a) a heading which refers to the Lawsuit; (b) the name, address, telephone number and signature of the Class Member filing the objection; (c) a statement whether the objector intends to appear at the Final Settlement Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address and phone number; (d) a detailed statement of the specific legal and factual bases for each and every objection, and if through counsel, a legal memorandum in support of the objection; (e) a list of any witnesses, along with the expected testimony of each such witness, and photocopies of exhibits that the objector intends to introduce at the Final Settlement Hearing; (f) a detailed description of any and all evidence the objector may offer at the Settlement Approval Hearing, if the objector intends to speak at the hearing; and (g) documentary proof of membership in the Settlement Class. If the Class Member is represented by an attorney, he/she or it must comply with all applicable federal laws and rules for filing pleadings and documents in federal courts. The Notice of Intent to Object, to be effective, also

must be sent by the objector or a legally authorized representative on an individual basis and not as part of a group, class or subclass.

**XV. REPRESENTATIONS AND WARRANTIES**

68. Plaintiff and Class Counsel warrant and represent that no promise or inducement has been offered or made for the Release except as set forth herein, that the Release is executed without any reliance whatsoever on any statements or representations not contained herein, including but not limited to any statements, conduct, disclosure or non-disclosure or representations regarding discovery in the Lawsuit, and that the Release reflects the entire agreement among the Parties with respect to the terms of the Release. The warranties and representations made herein shall survive the execution and delivering of the Release and shall be binding upon the Parties' heirs, representatives, successors and assigns.

69. Plaintiff and Class Counsel acknowledge and agree that they (i) have performed an independent investigation of the allegations of fact and law made in connection with this Lawsuit, and (ii) that they each may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of this Stipulation. Nevertheless, it is the Parties' intention to resolve their disputes pursuant to the terms of this Stipulation and, thus, in furtherance of their intentions, the Stipulation shall remain in full force and effect—notwithstanding the discovery of any additional facts or law, or changes in law, and this Stipulation shall not be subject to rescission or modification by reason of any change or difference in facts or law. Plaintiff and Class Counsel further understand, acknowledge and agree that discovery was ongoing in the Lawsuit and was the subject of discovery disputes. Notwithstanding such disputes and that discovery was ongoing, it is the Parties' intention to resolve their disputes pursuant to the terms of this Stipulation no matter what

additional facts or information Plaintiff and Class Counsel may hereafter become aware of or believe.

**XVI. CONFIRMATORY DISCOVERY**

70. Davison will make reasonable confirmatory discovery regarding the claims process and administration of the settlement available to Class Counsel if requested. All discovery provided by any party to the litigation will be kept confidential and will not be used for any purpose except as specifically agreed by the Parties to support the Proposed Settlement or as otherwise ordered by the Court.

**XVII. DISMISSAL OF THE ACTION AND RELEASES**

71. Upon the Court's final approval of this Stipulation and the Proposed Settlement set forth herein, the Final Judgment shall be entered providing for the dismissal, with prejudice and without leave to amend, of the Lawsuit, and the release by the Plaintiff and the Class Members of all claims against the Defendant as further set forth in Paragraph 72 .

72. Upon the Effective Date, Plaintiff and all Class Members, and their heirs, trustees, executors, administrators, principals, beneficiaries, assigns and successors will be bound by the Final Judgment and conclusively deemed to have fully released, acquitted and forever discharged, to the fullest extent permitted by law the Defendant (including any of Defendant's parent companies, predecessor or successor corporations, affiliates, trusts, or partnerships, any and all wholly- or partly-owned subsidiary corporations, trusts, or partnerships, any and all present and former directors, trustees, officers, shareholders, employees, insurers, representatives, executors, administrators, agents or attorneys and their predecessors, successors or assigns) (collectively "Released Parties") from any and all claims, including known and unknown claims, rights demands, actions, causes of action, suits, debts, liens, liabilities, costs, expenses, or losses, for the acts alleged or which are or could have been alleged by the Plaintiff



or the Potential Class Members in the Lawsuit and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the Released Parties relating in any way whatsoever to the claims encompassed by the Release, including seeking to represent any form of opt-out class from this Settlement, except that Davison will not be released from its obligations to carry out the terms of this Stipulation and Davison will not be released from any ongoing obligations under any license agreements and confidentiality agreement that it has with any Class Member, and Davison will not be released from any purely contractual disputes that may arise out of the performance of services pursuant to any vouchers that have been timely and properly redeemed as part of this settlement. The provisions of any state, federal, municipal, local or territorial law or statute providing in substance that releases shall not extend to claims, demands, injuries, and/or damages that are unknown or unsuspected to exist at the time a settlement agreement is executed and/or approved by a court are hereby expressly, knowingly, and voluntarily waived by and on behalf of Plaintiff and all members of the Settlement Class.

73. Effective upon the Effective Date, all Class Members hereby covenant not to sue the Released Parties in respect to any and all of the claims encompassed by the Release.

#### **XVIII. DENIAL OF LIABILITY**

74. Davison vigorously contests each and every claim in the Lawsuit. Davison maintains that it has consistently acted in accordance with governing laws at all times. Davison vigorously denies all the material allegations set forth in the Lawsuit. Davison nonetheless has concluded that it is in its best interest that the Lawsuit be settled on the terms and conditions set forth in this Stipulation. Davison reached this conclusion after considering the factual and legal issues in the Lawsuit, the benefits of a final resolution of the Lawsuit, the expense that would be necessary to defend the Lawsuit through trial and any appeals that might be taken, the benefits of

disposing of protracted and complex litigation, and the desire of Davison to conduct its business unimpeded by the distraction of continued litigation.

75. As a result of the foregoing, Davison enters into this Stipulation without in any way acknowledging any fault, liability, or wrongdoing of any kind. Neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Davison of the truth of any of the allegations made in the Lawsuit, or of any liability, fault, or wrongdoing of any kind whatsoever on the part of Davison, or shall be used as precedent in the future against Davison in any way.

76. To the extent permitted by law, neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Davison, except in any proceedings brought to enforce the Stipulation.

77. Neither this Stipulation, nor any pleading or other paper related in any way to this Stipulation, nor any act or communication in the course of negotiating, implementing or seeking approval of this Stipulation, shall be deemed an admission by Davison that certification of a class or subclass is appropriate in any other litigation, or otherwise shall preclude Davison from opposing or asserting any argument it may have with respect to certification of any class(es) or subclass(es) in any proceeding or the Lawsuit, or shall be used as precedent in any way as to any subsequent conduct of Davison except as set forth herein.

#### **XIX. FINAL APPROVAL OF THE PROPOSED SETTLEMENT**

78. On the date set by the Court for the Settlement Approval Hearing, the Court may review any objections to the Proposed Settlement that have been timely filed and conduct such other proceedings (including the taking of testimony, receipt of legal memoranda, and hearing of

arguments from the Parties or others properly present at the Settlement Approval Hearing) as the Court may deem appropriate under the circumstances.

79. After the completion of the mailing described in paragraphs 39-45 above, the deadline for seeking exclusion from the Settlement Class as provided in paragraph 65 above, and the deadline for filing a notice of objection to the Proposed Settlement as provided in paragraphs 66-67 above, Class Counsel will file, and Davison will not oppose, a motion seeking the Court's final approval of the Proposed Settlement at a Settlement Approval Hearing to be held at a time, date, and location that will be stated in the Class Notice, and in the Preliminary Approval Order. Plaintiff will request that the Court enter a Final Judgment in the form of a Final Order and Judgment Approving Settlement, certifying the class for settlement purposes, awarding Class Counsel attorneys' fees and costs in an amount to be determined, awarding an incentive award to the Class Representative in an amount to be determined, and dismissing the Lawsuit with prejudice, as well as:

- a. Approving the Proposed Settlement without material alteration, and directing the Parties and counsel to comply with and consummate the terms of this Stipulation;
- b. Certifying the Settlement Class for settlement purposes;
- c. Finding that Class Counsel and the Plaintiff have adequately represented the Settlement Class;
- d. Finding that the Court has personal jurisdiction over Davison and all members of the Settlement Class for the purpose of this settlement only, and that the Court has subject matter jurisdiction to approve the Stipulation and all exhibits thereto;
- e. Finding that the terms of this Stipulation are fair, reasonable, and adequate to the Settlement Class and in compliance with due process and all applicable laws;

f. Providing that each member of the Settlement Class who has not excluded himself or herself therefrom in accordance with the Court's prior orders shall be bound by the provisions of this Stipulation, including the Release;

g. Finding that the mailing of the CAFA Notice and the Class Notice and the Notice Plan implemented pursuant to this Stipulation and approved by the Court were reasonable and the best practicable notice and satisfy the requirements of the CAFA, the Federal Rules of Civil Procedure and the requirements of due process under the Delaware and United States Constitutions;

h. Dismissing all claims in the Lawsuit as to Davison on the merits and with prejudice, and entering final judgment thereon with a finding that there is no just reason to delay enforcement or appeal;

i. Approving the payment of the attorneys' fees and costs to Class Counsel in an amount to be determined by the Court, which shall be paid by Davison;

j. Awarding an incentive award to Dungee in an amount to be determined by the Court, which shall be paid by Davison in addition to the Class Counsel approved attorneys' fees and costs; and

k. Permanently barring and enjoining Plaintiff and each and every Class Member, and their respective heirs, executors, administrators, partners, agents, and the successors and assigns of each of them, from asserting, either directly or indirectly, individually, or in a representative capacity or on behalf of or as part of a class, and whether under State or Federal statutory or common law, any claim encompassed by the Release.

80. Notwithstanding the Court's entry of the Final Judgment, the Court shall retain ongoing jurisdiction over this Lawsuit for purposes of enforcing and interpreting this Settlement,

including entering such orders and injunctions necessary to prevent any collateral litigation that may be filed by Class Members.

**XX. MISCELLANEOUS PROVISIONS**

81. The Parties hereto and their undersigned counsel agree to undertake their best efforts and mutually cooperate to effectuate this Stipulation and the terms of the Proposed Settlement set forth herein, including taking all steps and efforts contemplated by this Stipulation, and any other steps and efforts which may become necessary by order of the Court or otherwise. The Parties hereto further agree to defend this Stipulation against objections made to final approval of the Settlement or in any appeal of the Final Judgment or collateral attack on the Stipulation or Final Judgment.

82. Neither Davison, nor Class Counsel, nor the Plaintiff, directly or indirectly will encourage any person to request exclusion from membership in the Settlement Class, encourage any person to object to the Settlement and/or encourage or discourage any person from participating in the distribution of the proceeds of the Settlement.

83. Within ten (10) days of execution of this Stipulation, Plaintiff shall file an amended complaint in the form of Exhibit 6.

84. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Stipulation on behalf of their respective clients.

85. Except as otherwise provided between the Parties, this Stipulation contains the entire agreement between the Parties hereto, and supersedes any prior agreements or understandings between them. All terms of this Stipulation are contractual and not mere recitals, and shall be construed as if drafted by all Parties hereto. The terms of this Stipulation are and shall be binding upon each of the Parties hereto, their agents, attorneys, employees, successors

and assigns, and upon all other persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Class Member.

86. This Stipulation may be amended or modified only by a written instrument signed by counsel for all Parties hereto. Amendments and modifications may be made without additional notice to the Potential Class Members and/or Class Members unless such notice is required by the Court.

87. This Stipulation shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Delaware.

88. The exhibits to this Stipulation are an integral part of the Settlement and are hereby incorporated into and made a part of this Stipulation.

89. To the extent permitted by law, this Stipulation may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Stipulation.

90. This Stipulation shall be deemed to have been executed upon the last date of execution by all the undersigned counsel.

91. This Stipulation may be executed in counterparts, each of which shall constitute an original.

Deborah Dungee  
Deborah Dungee

DATED this 8<sup>th</sup> day of December, 2014.

SUBSCRIBED AND SWORN TO  
before me this 8<sup>th</sup> day  
of December, 2014.

[Signature]  
Notary Public



\_\_\_\_\_  
Davison Design & Development, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED this \_\_\_ day of \_\_\_\_\_, 2014.

SUBSCRIBED AND SWORN TO  
before me this \_\_\_ day  
of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public


**SIGNATURES CONTINUED ON FOLLOWING PAGE**

\_\_\_\_\_  
Deborah Dungee

DATED this \_\_\_ day of \_\_\_\_\_, 2014.

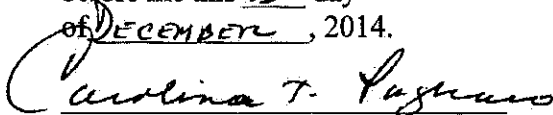
SUBSCRIBED AND SWORN TO  
before me this \_\_\_ day  
of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

  
\_\_\_\_\_  
Davison Design & Development, Inc.  
By: GEORGE M. DAVISON  
Its: CEO

DATED this 15 day of DECEMBER, 2014.

SUBSCRIBED AND SWORN TO  
before me this 15 day  
of DECEMBER, 2014.

  
\_\_\_\_\_  
Notary Public

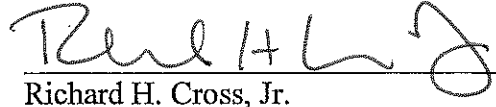
COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Carolina T. Pagliaro, Notary Public  
O'hara Twp, Allegheny County  
My commission expires May 01, 2018

**SIGNATURES CONTINUED ON FOLLOWING PAGE**



AS TO FORM AND SUBSTANCE:

Dated: 12/8/14

  
Richard H. Cross, Jr.  
Cross & Simon, LLC

AS TO FORM AND SUBSTANCE:

Dated: \_\_\_\_\_

\_\_\_\_\_  
J. Nicholas Ranjan  
K&L Gates LLP

**LAST PAGE CONTAINING SIGNATURE**

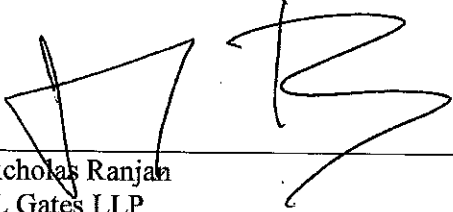
AS TO FORM AND SUBSTANCE:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Richard H. Cross, Jr.  
Cross & Simon, LLC

AS TO FORM AND SUBSTANCE:

Dated: 12/19/14

  
\_\_\_\_\_  
J. Nicholas Ranjan  
K&L Gates LLP

**LAST PAGE CONTAINING SIGNATURE**