

1 resolve, discharge and settle all certified claims asserted in this Action against
2 Defendants subject to the approval of the United States District Court for the
3 Central District of California (the “Court”).
4

5 **I. THE LITIGATION**

6 **A. Procedural History of the Litigation**

7 This securities class action was brought on behalf of purchasers of Exide
8 Technologies (“Exide” or the “Company”) securities under Sections 10(b) and 20(a)
9 of the Securities Exchange Act of 1934 and Sections 11 and 15 of the Securities Act of
10 1933. In their Second Amended Consolidated Complaint (the “Complaint”, as defined
11 below), Plaintiffs allege they were damaged by allegedly false and misleading
12 statements made by Defendants during the period June 1, 2011 to May 24, 2013 (the
13 “Class Period” or “Settlement Class Period”) about Exide’s environmental
14 compliance and financial position. Plaintiffs allege that throughout the Class Period,
15 Exide’s Vernon, California battery recycling facility was experiencing significant
16 environmental problems and was not in compliance with applicable environmental
17 regulations. Plaintiffs further allege that during the Class Period, Exide was also
18 experiencing severe liquidity problems. According to Plaintiffs’ allegations, the truth
19 about Exide’s allegedly undisclosed problems, and the materialization of the allegedly
20 undisclosed risks associated with those problems, were publicly revealed in April and
21 May of 2013 through publication by a third party of an article suggesting that Exide
22 had engaged financial advisors for a possible restructuring, an announcement of an
23
24
25
26
27
28

1 order by the California Department of Toxic Substances Control temporarily
2 suspending Exide's Vernon operations, and the publication by a third party of an article
3 reporting that Exide was in negotiations for debtor in possession financing that would
4 fund Exide in bankruptcy. Following each of the preceding disclosures, the price of
5 Exide stock decreased by 46%, 24% and 42%, respectively.
6
7

8 On April 15, 2013, the first of several purported class action lawsuits was
9 filed against the Company and certain individuals alleging violations of the
10 Securities Exchange Act. On July 9, 2013, Judge Stephen V. Wilson consolidated
11 these cases under the *Loritz v. Exide Technologies, et al.* caption, lead docket
12 number 2:13-02607-SVW-E, and appointed Sandra Weitsman and James Cassella
13 Lead Plaintiffs of the putative class of former Exide stockholders. On July 17,
14 2013, Plaintiffs voluntarily dismissed their claims against the Company, without
15 prejudice, in order to pursue their claims against the individual defendants during
16 the pendency of Exide's bankruptcy.
17
18
19

20 On September 6, 2013, Plaintiffs filed their Consolidated Amended
21 Complaint, naming as defendants Messrs. James R. Bolch, Phillip A. Damaska, R.
22 Paul Hirt, Jr., Louis E. Martinez, John P. Reilly, Herbert F. Aspbury, Michael R.
23 D'Appolonia, David S. Ferguson, John O'Higgins, and Dominic J. Pilleggi. In the
24 Consolidated Amended Complaint Plaintiffs alleged claims under Sections 10(b)
25 and 20(a) of the Securities Exchange Act of 1934 on behalf of purchasers of the
26 Company's stock during the period June 1, 2011 and May 24, 2013. In addition,
27
28

1 Plaintiffs alleged claims under Sections 10(b) and 20(a) of the Securities Exchange
2 Act and Sections 11 and 15 of the Securities Act of 1933 on behalf of those who
3 purchased Exide's 8^{5/8} senior secured notes during the Notes Class Period and
4 traceable to the Company's Form S-4/A Registration Statement effective August
5 12, 2011 . Defendants moved to dismiss all claims against them and, on December
6 19, 2013, Judge Wilson granted defendants' motion to dismiss in its entirety,
7 without prejudice. Judge Wilson gave Plaintiffs leave to file their Consolidated
8 Second Amended Complaint on or before January 30, 2014, which Plaintiffs did.
9 On February 13, 2014, Defendants again moved to dismiss the claims against them
10 and on August 11, 2014, Judge Wilson entered an order dismissing Plaintiffs'
11 Section 15 claim against R. Paul Hirt, Jr., former President of Exide Americas, but
12 denying the remainder of Defendants' motion to dismiss. Defendants filed their
13 Answer and Affirmative Defenses on September 5, 2014.
14
15
16
17
18

19 Over the course of the ensuing sixteen months, the parties exchanged written
20 discovery and Defendants produced nearly one million documents to Plaintiffs. On
21 December 18, 2015, the parties voluntarily participated in a full day mediation
22 session presided over by the Honorable Judge Layn R. Phillips and the Honorable
23 Judge Gary A. Feess, which resulted in an agreement to resolve the certified claims
24 asserted in the Action for payment of \$14,750,000.00 in return for the releases set
25 forth herein.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Plaintiffs’ Assessment of the Claims and Benefits of Settlement

Plaintiffs believe that the claims asserted in the Action, as reflected in evidence developed to date, have merit and support their claims. Additionally, Lead Counsel has researched the applicable law and believes that any defenses Defendants raise can be refuted. Nonetheless, Plaintiffs and Lead Counsel recognize the expense and length of continued prosecution of the Action against Defendants through completion of discovery, trial, and any subsequent appeals. Plaintiffs and Lead Counsel also have taken into account the uncertain outcome and risks of any litigation, especially in complex actions such as this one, as well as the difficulties and delays inherent in such litigation.

Plaintiffs and Lead Counsel believe that the Settlement set forth in this Stipulation confers substantial benefits upon the Class (as defined below), and is fair, reasonable, adequate, and in the best interests of the Class and represents a reasonable compromise of the claims.

C. Defendants’ Denials of Wrongdoing

Defendants have denied and continue to deny, *inter alia*, that Exide’s Vernon facility was experiencing significant environmental problems or that Defendants have engaged in any wrongdoing, including, without limitations, that their public statements were misleading; that they failed to disclose any material information to investors; that they acted in any deceitful manner; and that any investment losses

1 sustained by Plaintiffs and the Class were caused by Defendants' alleged
2 misconduct.

3
4 Nonetheless, taking into account the uncertainty and risks inherent in any
5 litigation, especially in complex cases such as this one, Defendants have concluded
6 that further litigation of the Action would be protracted, burdensome, and
7 expensive, and that it is desirable and beneficial that the claims asserted in the
8 Action be fully and finally settled and terminated in the manner and upon the terms
9 and conditions set forth in this Stipulation.
10

11 **II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

12 **A. Introduction**

13
14 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by
15 and among Plaintiffs, the Class, and each of them, and Defendants, and each of
16 them, by and through their respective undersigned counsel or attorneys of record
17 that, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of
18 Civil Procedure, and in consideration of the benefits flowing to the Parties from the
19 Settlement set forth herein, the Action and the Released Plaintiffs' Claims shall be
20 finally and fully compromised, settled and released, and the Action shall be
21 dismissed with prejudice, as to all Parties, upon and subject to the terms and
22 conditions of this Stipulation.
23
24
25
26
27
28

1 **B. Definitions**

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

4 1.0 “Action” means *David M. Loritz v. Exide Technologies, et al.*, No. 13-
5 cv-2607 (SVW), and includes all actions consolidated therein.
6

7 1.1 “Authorized Claimant” means any member of the Class who is a
8 Claimant (as defined in ¶ 1.4) and whose claim for recovery has been allowed
9 pursuant to the terms of this Stipulation.
10

11 1.2 “Bar Date” means the date of the Final Approval Hearing.
12

13 1.3 “Business Day” means any day except a Saturday or Sunday or other
14 day on which national banks are authorized by law or executive order to close in the
15 State of California.
16

17 1.4 “Claimant” means any Class Member (as defined in ¶ 1.7) who files a
18 Proof of Claim in such form and manner, and within such time, as the Court shall
19 prescribe.
20

21 1.5 “Claims Administrator” means the firm of KCC, LLC, which shall
22 administer the Settlement.
23

24 1.6 “Class” means (a) all persons and entities, other than Defendants and
25 their affiliates, who purchased or otherwise acquired the common stock of Exide
26 during the period June 1, 2011 through May 24, 2013 for Plaintiffs’ claims under
27 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934; and (b) all
28

1 persons and entities, other than Defendants and their affiliates, who purchased or
2 otherwise acquired in the secondary market Exide's 8 and 5/8% senior secured
3 notes due 2018 pursuant and/or traceable to the Company's Form S-4/A
4 Registration Statement effective August 12, 2011, during the period August 12,
5 2011 through November 9, 2012, for Plaintiffs' claims under Sections 11 and 15 of
6 the Securities Act of 1933. Excluded from the Class are Defendants, all current and
7 former directors and officers of Exide during the Class Period, and any family
8 member, trust, company, entity or affiliate controlled or owned by any of the
9 excluded persons and entities referenced above. Also excluded from the Class are
10 those persons and entities who timely and validly request exclusion from the
11 Settlement.

12
13
14
15
16 1.7 "Class Member" means any person or entity that falls within the
17 definition of the Class as set forth in ¶ 1.6.

18 1.8 "Class Period" or "Settlement Class Period" means the Stock Class
19 Period and the Notes Class Period collectively.

20
21 1.9 "Common Stock" means the shares of common stock of Exide.

22 1.10 "Complaint" means any and all complaints filed in the above-
23 captioned lawsuit, including but not limited to the Consolidated Amended
24 Complaint and Consolidated Second Amended Complaint filed in this action and
25 any complaints in actions consolidated by the Court into this Action.
26
27
28

1 1.11 “Court” means the United States District Court for the Central District
2 of California.

3
4 1.12 “Defendants” means James R. Bolch, Phillip A. Damaska, R. Paul
5 Hirt, Jr., Louis E. Martinez, John P. Reilly, Herbert F. Aspbury, Michael R.
6 D’Appolonia, David S. Ferguson, John O’Higgins, and Dominic J. Pilleggi.

7
8 1.13 “Defendants’ Counsel” means the law firm of Dechert LLP.

9
10 1.14 “Effective Date” means the first date by which all of the events and
11 conditions specified in ¶ 8.0 of the Stipulation have been met and have occurred.

12 1.15 “Escrow Account” means, collectively, the Notice Administration
13 Fund and the Settlement Fund.

14
15 1.16 “Escrow Agent” means Huntington Bank or its successor.

16 1.17 “Exchange Act” means the Securities Exchange Act of 1934, as
17 amended.
18

19 1.18 “Final” means (1) the Court has entered a Judgment approving the
20 Settlement in all material respects, including but not limited to, *inter alia*, (a)
21 certifying Classes for settlement purposes only, (b) approving the scope of the
22 Releases, and (c) ordering the Clerk of the Court to enter final judgment
23 substantially in the form set forth in Exhibit B pursuant to Federal Rule 54(b),
24 finding that there is no just reason for delay of enforcement or appeal of the order,
25 and (2) the Judgment has been affirmed in all respects on any appeal or review and
26
27
28

1 is no longer subject to further appeal or review. Provided, however, and
2 notwithstanding any provision to the contrary in this Settlement, “Final” shall not
3 include (and the Settlement is expressly not conditioned upon) the Court's approval
4 of attorneys' fees and the reimbursement of expenses sought by Lead Counsel, the
5 approval of payment of a Compensatory Award for the time and expenses expended
6 by Plaintiffs, the approval of the Plan of Allocation, or any appeals solely related
7 thereto.
8

9
10 1.19 “Judgment” means the proposed final order and judgment to be
11 entered by the Court approving the Settlement, substantially in the form attached
12 hereto as Exhibit B or in such other form as may be approved in writing by all of
13 the Parties acting by and through their respective counsel of record in the Action.
14

15
16 1.20 “Lead Counsel” means Federman & Sherwood.

17 1.21 “Notes” means Exide’s 8 and 5/8% senior secured notes due 2018
18 offered pursuant to the Company’s Form S-4/A Registration Statement effective
19 August 12, 2011.
20

21 1.22 “Notes Class Period” means the period from August 12, 2011 through
22 November 9, 2012, both dates inclusive.
23

24 1.23 “Notice” means the Notice Of Proposed Settlement Of Class Action
25 And Final Approval Hearing, which is to be sent to Class Members substantially in
26 the form attached hereto as Exhibit A-1.
27
28

1 1.24 “Notice Administration Fund” means an interest bearing escrow
2 account established by the Escrow Agent to receive funds pursuant to ¶ 2.0(a).

3
4 1.25 “Order of Preliminary Approval” means the order certifying the Class
5 for settlement purposes only, preliminarily approving the Settlement, and
6 authorizing notice thereof and related matters set forth as Exhibit A hereto.

7
8 1.26 “Parties” means Plaintiffs and Defendants.

9 1.27 “Person” means an individual, corporation, partnership, limited
10 partnership, association, joint stock company, estate, legal representative, trust,
11 unincorporated association, government or any political subdivision or agency
12 thereof, and any business or legal entity and their spouses, heirs, predecessors,
13 successors, representatives, or assigns.

14
15
16 1.28 “Plaintiffs” mean Plaintiffs James Cassella, Sandra Weitsman, Kevin
17 Grace, and James Close.

18 1.29 “Plan of Allocation” means a plan or formula for allocating the Net
19 Settlement Fund to Authorized Claimants. Any Plan of Allocation is not part of
20 this Stipulation and Defendants shall have no responsibility or liability with respect
21 thereto.
22

23
24 1.30 “Proof of Claim” means the Proof of Claim and Release to be
25 submitted by Claimants, substantially in the form attached as Exhibit A-2.
26
27
28

1 1.31 “Publication Notice” means the Summary Notice of Pendency and
2 Proposed Settlement of Action and Final Approval Hearing thereon to be published
3 on a national business newswire, substantially in the form attached as Exhibit A-3.
4

5 1.32 “Released Parties” means the Plaintiffs, the Plaintiffs’ Released
6 Parties, Defendants and Defendants’ Released Parties.
7

8 (i) “Defendants’ Released Parties” shall mean each and every past and
9 current Defendant, including but not limited to Exide Technologies and, whether or
10 not identified in any Complaint, each Defendant and Exide’s past, present or future
11 directors, officers, employees, partners, member firms, affiliates, principals, agents,
12 predecessors, successors, parents, subsidiaries, divisions, joint ventures, attorneys,
13 accountants, insurers, assigns, spouses, heirs, executors, trustees, general or limited
14 partners or partnerships, limited liability companies, members, personal or legal
15 representatives, estates, administrators, predecessors, successors and assigns or
16 other individuals or entities in which Defendants or Exide have a controlling
17 interest or which is related to or affiliated with Defendants or Exide, associates,
18 related or affiliated entities, or any members of their immediate families, or any
19 trusts for which any of them are trustees, settlers or beneficiaries.
20

21 (ii) “Plaintiffs’ Released Parties” shall mean Plaintiffs, and their respective
22 past or present employees, attorneys, accountants, insurers, co-insurers and
23 reinsurers, heirs, executors, trustees, general or limited partners or partnerships,
24 limited liability companies, members, personal or legal representatives, estates,
25
26
27
28

1 administrators, predecessors, successors and assigns or other individuals or entities
2 in which Plaintiffs have a controlling interest or which is related to or affiliated
3 with Plaintiffs and any other representatives of any of these Persons or entities
4 whether or not any such Released Parties were named, served with process or
5 appeared in the Action.
6

7
8 1.33 “Defendants’ Released Claims” means all claims, demands, rights,
9 liabilities or causes of action, in law or in equity, accrued or unaccrued, fixed or
10 contingent, direct, individual or representative, of every nature and description
11 whatsoever, whether known or unknown, or based on federal, state, local, statutory
12 or common law or any other law, rule or regulation, including the law of any
13 jurisdiction outside the United States, that could have been brought heretofore or in
14 the future by Defendants or Exide Technologies against Plaintiffs, Lead Counsel
15 and Plaintiffs’ Released Parties, arising out of the instituting, prosecution,
16 settlement or resolution of the Action, provided however, that Defendants and
17 Exide Technologies shall retain the right to enforce in the Court the terms of the
18 Stipulation.
19

20
21
22 1.34 “Released Plaintiffs’ Claims” means all claims (including “Unknown
23 Claims” as defined in ¶ 1.41), rights, demands, suits, matters, issues, liabilities, or
24 causes of action, in law or in equity, accrued or unaccrued, fixed or contingent,
25 direct, individual or representative, of every nature and description whatsoever,
26 under federal, state, local, foreign law, or any other law, rule, or regulation, whether
27
28

1 known or unknown, whether class or individual in nature, that were, could have
2 been, or could in the future be asserted against Defendants' Released Parties in
3 any court of competent jurisdiction or any other adjudicatory tribunal, in connection
4 with, arising out of, related to, based upon, in whole or in part, directly or
5 indirectly, in any way, the facts, transactions, events, occurrences, acts, disclosures,
6 oral or written statements, representations, filings, publications, disseminations,
7 press releases, presentations, accounting practices or procedures, compensation
8 practices or procedures, omissions or failures to act which were or which could
9 have been alleged or described in the Complaint, provided however, that Plaintiffs
10 and Plaintiffs' Released Parties shall retain the right to enforce in the Court the
11 terms of the Stipulation.
12

13
14
15
16 1.35 "Settled Claims" means all of the Released Plaintiffs' Claims, and/or
17 Defendants' Released Claims.

18 1.36 "Settlement" means the settlement contemplated by this Stipulation.

19
20 1.37 "Settlement Amount" means Fourteen Million Seven Hundred and
21 Fifty Thousand Dollars (\$14,750,000.00).

22 1.38 "Settlement Fund" means an interest bearing escrow account
23 established by the Escrow Agent to receive the amounts of funds payable pursuant
24 to ¶ 2.0.

25
26 1.39 "Stock Class Period" means the period from June 1, 2011 through May
27 24, 2013, both dates inclusive.
28

1 1.40 “Term Sheet” means the Term Sheet entered into on December 18,
2 2015 between Lead Counsel and Defendants’ Counsel.

3
4 1.41 “Unknown Claims” shall collectively mean all claims, demands,
5 rights, liabilities, and causes of action of every nature and description which
6 Plaintiffs or any Class Member does not know or suspect to exist in his, her or its
7 favor at the time of the release of the Defendants and Defendants’ Released Parties
8 which, if known by him, her or it, might have affected his, her or its settlement with
9 and release of the Defendants and Defendants’ Released Parties, or might have
10 affected his, her or its decision not to object to this Settlement. With respect to any
11 and all Released Plaintiffs’ Claims, upon the Effective Date, Plaintiffs shall
12 expressly waive, and each of the Class Members shall be deemed to have waived,
13 and by operation of the Judgment shall have waived, the provisions, rights and
14 benefits of California Civil Code § 1542, which provides:
15
16
17

18 A general release does not extend to claims which the
19 creditor does not know or suspect to exist in his or her
20 favor at the time of executing the release, which if known
21 by him or her must have materially affected his or her
22 settlement with the debtor.

23 Plaintiffs shall expressly and each of the Class Members shall be deemed to
24 have, and by operation of the Judgment shall have, expressly waived any and all
25 provisions, rights and benefits conferred by any law of any state or territory of the
26 United States, or principle of common law, which is similar, comparable or
27 equivalent to California Civil Code § 1542. Plaintiffs and Class Members may
28

1 hereafter discover facts in addition to or different from those which he, she or it now
2 knows or believes to be true with respect to the subject matter of the Released
3 Plaintiffs' Claims, but Plaintiffs shall expressly, fully, finally and forever settle and
4 release, and each Class Member, upon the Effective Date, shall be deemed to have,
5 and by operation of the Judgment shall have fully, finally, and forever settled and
6 released, any and all Released Plaintiffs' Claims, known or unknown, suspected or
7 unsuspected, contingent or non-contingent, whether or not concealed or hidden,
8 which now exist, or heretofore have existed, upon any theory of law or equity now
9 existing or coming into existence in the future, including, but not limited to, conduct
10 which is negligent, intentional, with or without malice, or a breach of any duty, law
11 or rule, without regard to the subsequent discovery or existence of such different or
12 additional facts. Plaintiffs acknowledge, and the Class Members shall be deemed by
13 operation of the Judgment to have acknowledged, that the foregoing waiver was
14 separately bargained for and a key element of the Settlement of which this release is
15 a part.

16
17
18
19
20
21 **C. The Settlement**

22 **a. The Settlement Consideration**

23
24 2.0 In consideration of the full and final settlement of all claims asserted
25 or which could have been asserted against Defendants and Defendants' Released
26 Parties in this Action, Defendants shall direct their insurers to pay to the Class, the
27 Settlement Amount as follows:
28

1 (a) Within fifteen (15) Business Days after (i) execution of this Stipulation
2 and (ii) transmission to Defendants' Counsel of payee information for the Notice
3 Administration Fund (including the name, tax identification number, and Form W-
4 9), Defendants shall direct their insurers to wire or pay by check or draft, at the sole
5 election of the insurers, to the Escrow Agent \$250,000 (Two Hundred and Fifty
6 Thousand Dollars) to be deposited into the Notice Administration Fund.
7

8
9 (b) Within thirty (30) Business Days after entry of the Order of
10 Preliminary Approval, Defendants shall direct their insurers to wire, or pay by
11 check or draft, at the sole election of the insurers, to the Escrow Agent \$14,500,000
12 (Fourteen Million Five Hundred Thousand Dollars) to be deposited by the Escrow
13 Agent into the Settlement Fund.
14

15
16 **b. The Escrow Agent**

17 2.1 The Settlement Amount shall be invested exclusively in instruments or
18 accounts backed by the full faith and credit of the United States Government or
19 fully insured by the United States Government or an agency thereof, including a
20 U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal
21 Deposit Insurance Corporation ("FDIC") or (b) secured by instruments backed by
22 the full faith and credit of the United States Government. The Escrow Agent shall
23 reinvest the proceeds of these instruments as they mature in similar instruments at
24 their then-current market rates. Defendants shall not bear any responsibility for or
25 liability related to the investment of the Settlement Amount by the Escrow Agent.
26
27
28

1 **c. Return of Funds in Certain Circumstances**

2 2.2 Plaintiffs agree that, prior to the Effective Date, the sum deposited into
3
4 the Notice Administration Fund shall be used solely to fund reasonable out-of-
5 pocket costs and expenses relating to the printing, mailing and publication of
6 notices to Class Members as described in ¶ 2.7, below. In the event that this
7 Settlement Agreement is terminated prior to the occurrence of the Effective Date,
8 the Escrow Agent shall refund the remaining balance of the Notice Administration
9 Fund, plus accrued interest to the insurer who made the payment into the Notice
10 Fund, plus accrued interest to the insurer who made the payment into the Notice
11 Administration Fund.
12

13 All Notice related costs shall be paid out of the Notice Administration Fund as
14 provided in ¶ 2.7. In no event shall Plaintiffs, Lead Counsel, or the Class be liable to
15 Defendants for any sums used to fund such properly incurred out-of-pocket costs and
16 expenses.
17

18 **d. Handling and Disbursement of Funds by the Escrow Agent**

19 2.3 No monies will be disbursed from the Settlement Fund until after the
20 Effective Date except:
21

22 (a) As provided in ¶ 2.8, as regards Taxes, and ¶ 7.1, as regards attorneys'
23 fees and expenses;
24

25 (b) To pay Taxes and Tax Expenses (as defined in ¶ 2.8(c)) on the income
26 earned by the Settlement Fund. Taxes and Tax Expenses shall be paid out of the
27 Settlement Fund, shall be considered to be a cost of administration of the
28

1 Settlement, and shall be timely paid by the Escrow Agent without prior order of the
2 Court; and

3
4 (c) As provided in ¶ 2.7, as regards the Notice Administration Fund.

5 2.4 The Escrow Agent shall not disburse the Settlement Fund except as
6 provided in this Stipulation, by an order of the Court, or with the written agreement
7 of Defendants' Counsel and Lead Counsel.
8

9 2.5 Subject to further order and/or direction as may be made by the Court,
10 the Escrow Agent is authorized to execute such transactions on behalf of the Class
11 as are consistent with the terms of this Stipulation.
12

13 2.6 All funds held by the Escrow Agent shall be deemed and considered to
14 be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the
15 Court, until such time as such funds shall be distributed or returned to the parties
16 who deposited such funds pursuant to this Stipulation and/or further order(s) of the
17 Court.
18

19 2.7 The Notice Administration Fund shall be used by the Escrow Agent to
20 pay the reasonable fees and expenses incurred by, and the reasonable fees charged
21 by, the Claims Administrator in connection with the administration and notice of
22 the settlement upon presentation of customary invoices therefor, which invoices
23 have been approved by Lead Counsel, including, without limitation: the cost of
24 identifying and locating members of the Class; mailing Notice and Proof of Claim
25 and publishing the Publication Notice (such amounts shall include, without
26
27
28

1 limitation, the actual costs of publication in national newswires, printing and
2 mailing the Notice, and reimbursement to nominee owners for forwarding notice to
3 their beneficial owners), soliciting Class claims, assisting with the filing of claims,
4 administering and distributing the Net Settlement Fund (as defined below) to
5 Authorized Claimants, processing Proof of Claim and Release forms, and paying
6 escrow fees and costs, if any, and the administrative expenses incurred and fees
7 charged by the Claims Administrator in connection with providing notice and
8 processing the submitted claims (“Notice and Administration Costs”).
9
10
11

12 Any residual monies held in the Notice Administration Fund upon the
13 completion of notice administration for the Settlement shall be transferred to the
14 Settlement Fund. If the costs of notice and administration exceed \$250,000 any such
15 additional costs and expenses shall, subject to approval of the Court, be transferred
16 from the Settlement Fund to the Notice Administration Fund.
17

18 **e. Taxes**

19 2.8

20
21 (a) The Parties and the Claims Administrator agree to treat the Notice
22 Administration and Settlement Funds as “qualified settlement funds” within the
23 meaning of Treasury Regulation §1.468B-1. In addition, the Claims Administrator
24 shall timely make such elections as necessary or advisable to carry out the
25 provisions of this ¶ 2.8, including the “relation-back election” (as defined in
26 Treasury Regulation §1.468B-1) back to the earliest permitted date. Such elections
27
28

1 shall be made in compliance with the procedures and requirements contained in
2 such regulations. It shall be the responsibility of the Claims Administrator to
3 timely and properly prepare and deliver the necessary documentation for signature
4 by all necessary parties, and thereafter to cause the appropriate filing to occur.
5

6 (b) The Claims Administrator shall timely and properly file all
7 informational and other tax returns necessary or advisable with respect to the
8 Notice Administration and Settlement Funds (including without limitation the
9 returns described in Treasury Regulation §1.468B-2(k)). Such returns (as well as
10 the election described in ¶ 2.8(a)) shall be consistent with this ¶ 2.8 and in all events
11 shall reflect that all Taxes (including any estimated Taxes, interest or penalties on
12 the income earned) shall be paid out of the Settlement Fund.
13
14
15

16 (c) All Taxes (including any estimated Taxes, interest or penalties) arising
17 with respect to the income earned by the Notice and Settlement Funds, and
18 expenses and costs incurred in connection with the operation and implementation of
19 this ¶ 2.8 (including, without limitation, expenses of tax attorneys and/or
20 accountants and mailing and distribution costs and expenses or penalties relating to
21 filing (or failing to file) the returns described in this ¶ 2.8) (“Tax Expenses”), shall
22 be paid out of the Settlement Fund.
23
24

25 Defendants, Defendants’ Released Parties, Defendants’ Counsel, Plaintiffs,
26 Plaintiffs’ Released Parties and Lead Counsel shall have no liability or
27 responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be
28

1 treated as, and considered to be a cost of administration of the Settlement and shall
2 be timely paid by the Claims Administrator out of the Settlement Fund without
3 prior order from the Court.
4

5 The Claims Administrator shall indemnify and hold each of the Defendants,
6 Defendants' Released Parties, Defendants' Counsel, Plaintiffs, Plaintiffs' Released
7 Parties and Lead Counsel harmless for Taxes and Tax Expenses (including, without
8 limitation, Taxes payable by reason of any such indemnification).
9

10 The Claims Administrator shall be obligated (notwithstanding anything
11 herein to the contrary) to withhold from distribution to Authorized Claimants any
12 funds necessary to pay such amounts, including the establishment of adequate
13 reserves for any Taxes and Tax Expenses (as well as any amounts that may be
14 required to be withheld under Treasury Regulation §1.468B-2(1)(2)). Neither
15 Defendants, Defendants' Counsel, Plaintiffs, nor Lead Counsel are responsible
16 therefor, nor shall they have any liability with respect thereto.
17
18
19

20 The Parties agree to cooperate with the Claims Administrator, each other,
21 and their tax attorneys and accountants to the extent reasonably necessary to carry
22 out the provisions of this ¶ 2.8. Defendants' Counsel agree to promptly provide the
23 Escrow Agent with the statement described in Treasury Regulation §1.468B-3(e).
24

25 **f. Termination of Settlement**

26 2.9 The Defendants and Exide shall, acting collectively, have the right to
27 terminate the Settlement and this Stipulation, by providing written notice of their
28

1 election to do so to all other Parties within five (5) days of: (a) the Court's denial of
2 Plaintiffs' motion for preliminary approval of the Settlement in any material respect
3 without leave to amend and resubmit; (b) the Court's refusal to approve this
4 Stipulation or any material part of it without leave to amend and resubmit; (c) the
5 Court's declining to enter an Order and Final Judgment in any material respect
6 without leave to amend and resubmit; or (d) the date upon which the Order and
7 Final Judgment is modified or reversed in any material respect by a United States
8 Court of Appeals or the United States Supreme Court. Any decision with respect to
9 any Fee and Expense Application, or with respect to any Plan of Allocation, shall
10 not be considered material to this Stipulation and shall not be grounds for
11 termination. In the event that this Stipulation is terminated, the Settlement Amount
12 including any interest accrued thereon, less expenses actually incurred or due and
13 owing from the Settlement Fund for the Notice and Administration Costs of
14 Settlement pursuant to ¶ 2.7 above, shall be refunded by the Escrow Agent to the
15 insurers, in proportion to their contribution to the Settlement Fund, plus accrued
16 interest attributable to that amount by check or wire transfer pursuant to written
17 instructions from the insurers. Plaintiffs shall have the right to terminate the
18 Settlement and this Stipulation, by providing written notice of his or its or their
19 election to do so to all other Parties within five (5) days of: (a) the Court's denial
20 of Plaintiffs' motion for preliminary approval of the Settlement in any material
21 respect as to the Defendants without leave to amend and resubmit; (b) the Court's
22
23
24
25
26
27
28

1 refusal to approve this Stipulation or any material part of it without leave to amend
2 and resubmit; (c) the Court's declining to enter an Order and Final Judgment in any
3 material respect as to the Defendants without leave to amend and resubmit; (d) the
4 Defendants' failure to timely make full payment of the Settlement Amount into the
5 Escrow Account; or (e) the date upon which the Order and Final Judgment is
6 modified or reversed in any material respect by the Court of Appeals or the
7 Supreme Court. Any decision with respect to any Fee and Expense Application, or
8 with respect to any Plan of Allocation, shall not be considered material to this
9 Stipulation and shall not be grounds for termination.

13 2.10 If, prior to the Final Approval Hearing, any persons who otherwise
14 would be members of the Class have timely filed for exclusion from the Class in
15 accordance with the provisions of the Order for Preliminary Approval and the
16 notice given pursuant thereto (see ¶ 4.9 below), and such persons in the aggregate
17 purchased a number of shares of Common Stock during the Class Period in an
18 amount greater than the sum specified in a separate "Supplemental Agreement"
19 between the Parties, Defendants, in their sole discretion, shall have the option to
20 terminate this Stipulation in accordance with the procedures set forth in the
21 Supplemental Agreement. The Supplemental Agreement shall not be filed with the
22 Court and its terms shall not be disclosed in any other manner (other than the
23 statements herein and in the Notice, to the extent necessary, or as otherwise
24 provided in the Supplemental Agreement) unless and until a dispute among the
25
26
27
28

1 Parties concerning its interpretation or application arises. If submission of the
2 Supplemental Agreement is required for resolution of a dispute or is otherwise
3 ordered by the Court, Plaintiffs and the Defendants will undertake to have the
4 Supplemental Agreement submitted to the Court *in camera*. Copies of all requests
5 for exclusion received and copies of all written revocations of requests for
6 exclusion received shall be sent to counsel for the Parties within a reasonable time
7 of receipt by the Claims Administrator, and in any event not less than seven (7)
8 days prior to the Final Approval Hearing.

9
10
11
12 2.11 If (i) the Defendants exercise their right to terminate the Settlement as
13 provided in this Stipulation; (ii) Plaintiffs exercise their right to terminate this
14 Settlement as provided in this Stipulation; (iii) the Court disapproves the Settlement
15 as to the Defendants; or (iv) the Effective Date as to the Settlement otherwise fails
16 to occur with respect to the Defendants, then:

17
18 (a) The Settlement and the relevant portions of this Stipulation shall be
19 canceled and terminated without prejudice with respect to the Parties to whom the
20 termination of the Settlement applies and only those Parties, and this Stipulation
21 shall be null and void and shall have no further force or effect with respect to those
22 Parties and only those Parties;

23
24 (b) The Parties to whom the termination of Settlement applies and only
25 those Parties shall revert to their respective positions in the Action immediately
26 before the execution of this Stipulation.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. Class Certification

3.0 The Parties hereby stipulate to certification of the Classes, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, solely for purposes of this Settlement. The certification of the Classes shall be binding only with respect to the Settlement and only if the Judgment becomes Final.

E. Preliminary Approval Order

4.0 Promptly after execution of this Stipulation, but in no event later than 14 days after execution of this Stipulation, Lead Counsel and Defendants' Counsel shall jointly submit this Stipulation together with its Exhibits to the Court and shall request entry of an Order of Preliminary Approval (substantially in the form of Exhibit A) that will, *inter alia*, grant preliminary approval to the Settlement; certify the Classes for settlement purposes only; and authorize notification of the Settlement Classes substantially in the form of Exhibits A-1 and A-3 hereto, along with provision of a Proof of Claim Form substantially in the form of Exhibit A-2.

The Notice shall describe the Settlement; the proposed Plan of Allocation; the requests for awards of Attorney Fees and Expenses and Lead Plaintiff Compensatory Awards (consistent with ¶¶ 7.0 and 7.5); the date of the Final Approval Hearing; Class Members' rights to opt out, object or otherwise be heard with regard to these matters; and Class Members' opportunity to file claims upon the Settlement Fund.

1 No later than three (3) days after execution of this Stipulation, 2016,
2 Defendants shall cause Exide to provide, at its expense and to the extent possible,
3 transfer records sufficient to identify Class Members.
4

5 The Stipulation of Settlement, Notice, Proof of Claim Form, and all papers
6 submitted in support thereof shall be posted on a website to be maintained by the
7 Claims Administrator.
8

9 **The Final Approval Hearing/Objections**

10 4.1 Following provision of Notice to the Class Members, the Court shall
11 hold a hearing (the “Final Approval Hearing”) to consider whether to approve the
12 Settlement; approve the Plan of Allocation; and to award attorneys’ fees and
13 expenses and Lead Plaintiff Compensatory Awards.
14

15 4.2 Lead Counsel and Defendants shall submit papers in support of the
16 foregoing matters no later than twenty one (21) days prior to the Final Approval
17 Hearing.
18

19 4.3 Any Class Member who wishes to object to the fairness,
20 reasonableness or adequacy of the matters set forth in ¶¶ 2.0–7.5 must comply with
21 the requirements set forth in the Order for Preliminary Approval, Exhibit A, hereto.
22

23 4.4 Any objector shall be subject to the jurisdiction of the Court and may
24 be deposed by Lead Counsel.
25

26 4.5 All papers in opposition to any objections, and in further support of the
27 foregoing matters shall be filed by the Parties by that time as well.
28

1 4.6 At the Final Approval Hearing, Parties shall request that the Court
2 enter a Judgment substantially in the form attached to this Agreement as Exhibit B.
3

4 **Requests for Exclusion**

5 4.7 Any Person falling within the definition of the Classes may be
6 excluded from the Classes by submitting to the Claims Administrator a request for
7 exclusion (“Request for Exclusion”), which complies with the requirements set
8 forth in the Order for Preliminary Approval, Exhibit A hereto, and is postmarked no
9 later than the Court-ordered date. All Persons who submit valid and timely
10 Requests for Exclusion shall have no rights under the Stipulation, shall not share in
11 the distribution of the Net Settlement Fund (defined below), and shall not be bound
12 by the Stipulation or the Judgment. However, a Class Member may submit a
13 written revocation of a Request for Exclusion up until five (5) days prior to the date
14 of the Final Approval Hearing and receive payments pursuant to this Stipulation
15 and Settlement provided the Class Member also submits a valid Proof of Claim, as
16 set forth in ¶ 6.3(i), below, prior to the Bar Date;
17
18
19
20

21 **F. Releases**

22 5.0 The obligations incurred pursuant to this Stipulation shall be a full and
23 final disposition of the Action, any and all Released Plaintiffs’ Claims, and any and
24 all Defendants’ Released Claims, as against all Released Parties.
25

26 5.1 Upon the Effective Date, Plaintiffs and the Class Members, on behalf
27 of themselves and Plaintiffs’ Released Parties, shall be deemed to have, and by
28

1 operation of the Judgment have, fully, finally, and forever released, relinquished
2 and discharged all Released Plaintiffs' Claims against Defendants and Exide
3 Technologies, and each of them, and any and all of Defendants' Released Parties,
4 whether or not any individual Class Member executes and delivers the Proof of
5 Claim.
6

7
8 5.2 Upon the Effective Date, Defendants and Exide Technologies shall be
9 deemed to have, and by operation of the Judgment shall have, fully, finally, and
10 forever released, relinquished and discharged their Defendants' Released Claims
11 against Plaintiffs and any and all of Plaintiffs' Released Parties including, but not
12 limited to, Lead Counsel.
13

14 **Proof of Claims**

15
16 5.3 Only those Class Members filing valid and timely Proof of Claim and
17 Release forms shall be entitled to participate in the Settlement and receive a
18 distribution from the Settlement Fund. The Proof of Claim and Release to be
19 executed by Class Members shall release all Released Plaintiffs' Claims against the
20 Released Parties, and shall be substantially in the form contained in Exhibit A-2
21 attached hereto.
22

23
24 Such Proof of Claims shall be filed thirty (30) days from the date of the Final
25 Approval Hearing, unless otherwise ordered by the Court.
26
27
28

1 All Class Members not submitting valid and timely requests for exclusion
2 shall be bound by the Releases, whether or not they submit a valid and timely Proof
3 of Claim and Release.
4

5 **G. Administration and Calculation of Claims, Final Awards, And**
6 **Supervision and Distribution of the Settlement Fund**

7 6.0 The Claims Administrator shall administer and calculate the claims
8 submitted by Class Members and shall oversee distribution of the Net Settlement
9 Fund (defined below) to Authorized Claimants. The distribution checks will be
10 drawn upon the Settlement Fund.
11

12 6.1 Defendants shall have no responsibility or liability for the allocation of
13 the Settlement Fund among the Class Members or the allocation of any awards of
14 Plaintiffs' attorneys' fees, costs and expenses. Any such awards shall be paid
15 solely by the Settlement Fund.
16

17 6.2 The Settlement Fund shall be applied as follows:
18

- 19 (i) To pay the Taxes and Tax Expenses described in ¶ 2.8 above;
20
21 (ii) To pay all the costs and expenses reasonably and actually
22 incurred in connection with settlement administration, including, but not limited to,
23 locating members of the Class, providing Notice, soliciting Class claims, assisting
24 with the filing of claims, processing Proof of Claim forms, making administrative
25 determinations concerning the acceptance or rejection of submitted claims,
26 administering and distributing the Settlement Fund to Authorized Claimants, paying
27
28

1 escrow fees and costs, if any, and paying the fees and expenses of the Claims
2 Administrator;

3
4 (iii) To pay Lead Counsel’s attorneys’ fees and expenses, as
5 provided in ¶ 7.1 (the “Fee and Expense Award”), to the extent allowed by the
6 Court;

7
8 (iv) To pay Compensatory Awards to the Plaintiffs as provided in ¶
9 7.5, to the extent allowed by the Court;

10 (v) From amounts paid into the Notice Administration Fund, to pay
11 the Claims Administrator’s fees and expenses reasonably incurred in the claims
12 administration of the Settlement; and

13
14 (vi) Upon court approval, to distribute the balance of the Settlement
15 Fund, that is, the total Settlement Fund less the items set forth in ¶¶ 6.2(i), (ii), (iii),
16 (iv) and (v) (the “Net Settlement Fund”), to the Authorized Claimants as allowed by
17 this Stipulation, the Plan of Allocation, or the Court.
18

19
20 6.3 Upon the entry of the Judgment and thereafter, subject to ¶ 2.3 and in
21 accordance with the terms of the Plan of Allocation, or such further approval and
22 further order(s) of the Court as may be necessary or as circumstances may require,
23 the Net Settlement Fund shall be distributed to Authorized Claimants subject to and
24 in accordance with the following:
25

26 (i) Each Class Member claiming to be an Authorized Claimant
27 shall be required to submit to the Claims Administrator a completed Proof of
28

1 Claim, substantially in the form of Exhibit A-2 hereto, signed under penalty of
2 perjury and supported by such documents as specified in the Proof of Claim or such
3 other documents or proof, as are reasonably available to the Authorized Claimant,
4 as Lead Counsel, in their discretion, may deem acceptable, no later than thirty (30)
5 days from the Final Approval Hearing, unless otherwise ordered by the Court;
6

7
8 (ii) Except as otherwise ordered by the Court, all Class Members
9 who fail to timely submit a Proof of Claim, or otherwise allowed, or who file a
10 Proof of Claim that is rejected, shall be forever barred from receiving any payments
11 pursuant to this Stipulation and Settlement, but will in all other respects be subject
12 to and bound by the provisions of this Stipulation, the releases contained herein,
13 and the Judgment and will be barred and enjoined from bringing any action against
14 the Released Parties concerning the Settled Claims.
15
16

17 6.4 No Person shall have any claim against Plaintiffs, Lead Counsel,
18 Defendants, Defendants' Counsel, the Claims Administrator, the Escrow Agent or
19 any other agent designated by Lead Counsel based on distribution determinations or
20 claim rejections made substantially in accordance with this Stipulation and the
21 Settlement contained therein, the Plan of Allocation, or further orders of the Court.
22
23

24 6.5 The Net Settlement Fund shall be distributed to the Authorized
25 Claimants substantially in accordance with a Plan of Allocation to be described in
26 the Notice and approved by the Court. However, if there is any balance remaining
27 in the Net Settlement Fund after six (6) months from the date of distribution of the
28

1 Net Settlement Fund (whether by reason of tax refunds, uncashed checks or
2 otherwise), the Claims Administrator under the supervision of Lead Counsel shall,
3 if feasible, reallocate such balance among Authorized Claimants in an equitable and
4 economic fashion. Thereafter, any balance that still remains in the Net Settlement
5 Fund shall be donated to such not-for-profit charity as the Court may direct and
6 approve.
7

8
9 This is not a claims-made settlement and, if all conditions of the Stipulation
10 are satisfied and the Settlement becomes Final, no portion of the Settlement Fund
11 will be returned to the Defendants or their insurance carriers.
12

13 Defendants and Defendants' Released Parties shall have no responsibility for,
14 interest in, or liability whatsoever with respect to the distribution of the Net
15 Settlement Fund, the Plan of Allocation, the determination, administration, or
16 calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any
17 losses incurred in connection therewith.
18

19
20 6.6 It is understood and agreed by the Parties that any proposed Plan of
21 Allocation of the Net Settlement Fund including, but not limited to, any
22 adjustments to an Authorized Claimant's claim set forth therein, is not a part of this
23 Stipulation and is to be considered by the Court separately from the Court's
24 consideration of the fairness, reasonableness and adequacy of the Settlement set
25 forth in this Stipulation, and any order or proceedings relating to the Plan of
26 Allocation shall not operate to terminate or cancel this Stipulation or affect the
27
28

1 finality of the Court’s Judgment approving this Stipulation and the Settlement set
2 forth therein, or any other orders entered pursuant to this Stipulation.
3

4 **H. Attorneys’ Fees and Expenses**

5 7.0 Lead Counsel may submit an application or applications (the “Fee and
6 Expense Application”) for payments to Lead Counsel from the Settlement Fund for:
7
8 (a) an award of attorneys’ fees; plus (b) reimbursement of actual costs and
9 expenses, including experts or consultants, incurred in connection with prosecuting
10 the Action as may be awarded by the Court. Lead Counsel reserves the right to
11 make additional applications for fees and expenses incurred, if necessary.
12

13 7.1 The attorneys’ fees and expenses, including the fees and expenses of
14 experts and consultants, as awarded by the Court, shall be payable to Lead Counsel
15 from the Settlement Fund, as ordered, immediatly after the Court executes an order
16 awarding such fees and expenses.
17

18 Lead Counsel agrees to refund to the Settlement Fund any award of
19 attorney’s fees and expenses by the Court paid to Lead Counsel in the event the
20 Court’s award of attorney’s fees and expenses is reduced or reversed on appeal (the
21 “Fee Award”). Payment of some or all of the Fee Award shall be made by Lead
22 Counsel into the Settlement Fund within fifteen (15) business days of a Final order
23 by the Court of Appeals or the Supreme Court directing such reduction or reversal,
24 and shall be distributed by the Escrow Agent to the Class pursuant to the manner
25 directed in the Final order.
26
27
28

1 Lead Counsel further agrees to refund to the Settlement Fund any award of
2 attorney's fees and expenses by the Court paid to Lead Counsel in the event that
3 this Settlement does not become Final; in such situation, payment of all of the Fee
4 Award shall be made by Lead Counsel into the Settlement Fund within fifteen (15)
5 days thereof, and shall thereafter be distributed by the Escrow Agent pursuant to the
6 terms of ¶ 8.3.
7

9 7.2 The procedure for and allowance or disallowance by the Court of any
10 application by Lead Counsel for attorneys' fees and expenses, including the fees
11 and expenses of experts and consultants, to be paid out of the Settlement Fund, are
12 not part of the Settlement set forth in this Stipulation and are to be considered by
13 the Court separately from the Court's consideration of the fairness, reasonableness
14 and adequacy of the Settlement set forth in this Stipulation, and any order or
15 proceedings relating to the Fee and Expense Application, or any appeal from any
16 order relating thereto or reversal or modification thereof, shall not operate to
17 modify, terminate or cancel this Stipulation, or affect or delay the finality of the
18 Judgment approving this Stipulation and the Settlement of the Action.
19

22 7.3 Defendants and Defendants' Released Parties shall have no
23 responsibility for, and no liability whatsoever with respect to, any payment to Lead
24 Counsel or any other Plaintiffs' Counsel and/or any other Person who receives
25 payment from the Settlement Fund, or repayment by Plaintiffs' Counsel of any
26 amounts required to be repaid under this Stipulation.
27
28

1 7.4 Defendants and Defendants' Released Parties shall have no
2 responsibility for, and no liability whatsoever with respect to, the allocation among
3 Lead Counsel and/or any other Person who may assert some claim thereto, of any
4 Fee and Expense Award that the Court may make in the Action.
5

6 **Plaintiffs' Compensatory Award**
7

8 7.5 Lead Counsel may submit an application to the Court to authorize the
9 payment of Compensatory Awards from the Settlement Fund for the time and
10 expenses expended by Plaintiffs in assisting Lead Counsel in the litigation of this
11 Action, including their depositions. Payment for any Compensatory Award payable
12 in cash shall be payable from the Settlement Fund.
13

14 **I. Effect of Disapproval, Cancellation or Termination**
15

16 8.0 The Effective Date of the Stipulation shall be conditioned upon the
17 occurrence of all of the following events:

18 (a) Defendants have caused the contributions to be made to the Settlement
19 Fund, as required by ¶ 2.0 above;

20 (b) the Court has entered the Judgment, or a judgment substantially in the
21 form of Exhibit B attached hereto; and
22

23 (c) the Judgment has become Final, as defined in ¶ 1.18 hereof.
24

25 Any appeal or delay in (a) the approval of the Plan of Allocation, (b) the
26 determination of any award of attorneys' fees and expenses, or (c) the granting of a
27
28

1 Compensatory Award to Plaintiffs, shall not affect, alter, or delay the occurrence of
2 the Effective Date.

3
4 8.1 Upon the occurrence of the Effective Date, any and all interest or right
5 of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever
6 extinguished, except as set forth in this Stipulation. The Settlement Fund shall be
7 distributed in accordance with ¶ 6.2 hereof.

8
9 8.2 In the event that this Stipulation is not approved by the Court, or the
10 Effective Date does not occur, then this Stipulation shall be canceled and
11 terminated subject to ¶ 8.3 unless Lead Counsel and Defendants' Counsel mutually
12 agree in writing to proceed with this Stipulation. None of the Parties, or any of
13 them, shall have any obligation whatsoever to proceed under any terms other than
14 provided for and agreed herein. Without limitation of any Party's other rights or
15 remedies at law or in equity to enforce its rights against any other Party that
16 breaches its obligations under this Stipulation, no breach by any Party of its
17 obligations under this Stipulation shall permit any other Party to terminate this
18 Stipulation or, after the Effective Date, affect or impair the disposition of the Action
19 or release of claims contemplated by ¶ 5.1.

20
21 8.3 Unless otherwise ordered by the Court, in the event the Stipulation is
22 terminated, or is canceled, or shall not become effective for any reason, within ten
23 (10) Business Days after written notification of such event is sent by Defendants'
24 Counsel or Lead Counsel to the Escrow Agent, subject to the terms of ¶ 2.9 hereof,
25
26
27
28

1 the Settlement Fund (including accrued interest), less any expenses and any costs
2 which have either been properly disbursed pursuant to ¶¶ 2.3-2.6 hereof, or are
3 determined to be chargeable to the Settlement Fund or the notice and
4 administration of the Settlement pursuant to ¶ 2.7 hereof, shall be refunded by the
5 Escrow Agent to the insurers, in proportion to their contribution to the Settlement
6 Fund, plus accrued interest attributable to that amount by check or wire transfer
7 pursuant to written instructions from the insurers; provided, however, that in the
8 event that the accrued interest and earnings of the Settlement Fund are not sufficient
9 to cover the expenses paid or due to be paid from the Settlement Fund, any such
10 expenses that Lead Counsel account for as reasonably and properly incurred in
11 connection with the cost of giving notice of the Settlement and the administration
12 of the Settlement prior to the termination or cancellation of the Settlement in
13 accordance with the terms of this Stipulation, and any such expenses consisting of
14 Tax Expenses, shall not be returned. At the request of the insurers, the Escrow
15 Agent or its designee shall apply for any tax refund owed to the Settlement Fund
16 and pay the proceeds, after deduction of any fees or expenses reasonably incurred
17 in connection with such application(s) for refund, to the insurers.

24 8.4 In the event the Stipulation is not approved by the Court or the
25 Settlement set forth in the Stipulation is terminated or fails to become effective in
26 accordance with its terms, the Settling Parties shall be restored to their respective
27 positions in the Action immediately prior to the execution of this Stipulation. In
28

1 such event, the terms and provisions of the Stipulation, with the exception of ¶¶
2 1.0-1.41, 2.2, 2.9 and 8.2-8.5 hereof, shall have no further force and effect and
3 shall not be used in this Action or in any other proceeding for any purpose, and any
4 judgment or order entered by the Court in accordance with the terms of this
5 Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or
6 modification or reversal on appeal of any order of the Court concerning the Plan of
7 Allocation or the amount of any attorneys' fees, costs, expenses and interest
8 awarded by the Court to Lead Counsel shall constitute grounds for cancellation or
9 termination of the Stipulation.
10
11
12

13 8.5 If the Effective Date does not occur, neither Plaintiffs nor Lead
14 Counsel shall have any obligation to repay any amounts actually and properly
15 disbursed from the Notice Administration Fund. In addition, any expenses already
16 incurred and properly chargeable to the Notice Administration Fund pursuant to
17 this Stipulation at the time of such termination or cancellation, but which have not
18 been paid, shall be paid by the Escrow Agent in accordance with the terms of the
19 Stipulation prior to the balance being refunded in accordance with ¶ 8.3.
20
21
22

23 **J. Miscellaneous Provisions**

24 9.0 This Stipulation, and all related documents, shall not be construed as
25 or deemed to be evidence of (i) any presumption, an admission or concession on the
26 part of any Defendant, or any of Defendants' Released Parties (as defined in
27 ¶ 1.31(i)), with respect to any claim of any fact alleged by Plaintiffs or any member
28

1 of the Class, the validity of any claim that was or could have been asserted by
2 Plaintiffs or any member of the Class, or any deficiency or any defense that has
3 been or could have been asserted by the Defendants in this Action or in any other
4 litigation, or (ii) any liability, negligence, fault, liability, wrongdoing, or damage
5 whatsoever and of any kind of any of the Defendants' Released Parties or in any
6 way referred to for any other reason as against any of the Defendants' Released
7 Parties, in any civil, criminal, or administrative action or proceeding, other than
8 such proceeding. The Parties, and each of them, shall not assert or pursue any
9 action, claim or rights that any party hereto violated any provision of Rule 11 of the
10 Federal Rules of Civil Procedure. Further, the Parties, and each of them, will not
11 deny in any statement made to any media representative that the Action is being
12 settled voluntarily after consultation with competent counsel. The Parties, and each
13 of them, and their respective counsel agree that the Action was resolved in good
14 faith, following arm's length bargaining.

15
16
17
18
19
20 9.1 The Parties (a) acknowledge that it is their intent to consummate this
21 agreement; and (b) agree, subject to their fiduciary and other legal obligations, to
22 cooperate to the extent reasonably necessary to effectuate and implement all terms
23 and conditions of this Stipulation and to exercise their reasonable best efforts to
24 accomplish the foregoing terms and conditions of this Stipulation. Lead Counsel
25 and Defendants' Counsel agree to cooperate with one another in seeking Court
26 approval of the Order for Notice and Hearing, the Stipulation and the Settlement,
27
28

1 and to promptly agree upon and execute all such other documentation as may be
2 reasonably required to obtain final approval of the Settlement.

3
4 9.2 The Parties intend this Stipulation to be a final and complete
5 resolution of all disputes between them with respect to the Action as well as any
6 disputes which could have been raised in the Action by Plaintiffs, the Class, and
7 Plaintiffs' Released Parties, and each or any of them, against Defendants and
8 Defendants' Released Parties, Defendants' Counsel, and each or any of them, on
9 the one hand, and by Defendants and Exide Technologies, and each or any of them,
10 against Plaintiffs the Class, Plaintiffs' Released Parties, Lead Counsel, and each or
11 any of them, on the other hand. Additionally, as among and between Defendants
12 and Exide Technologies, and each or any of them, Defendants intend this
13 Stipulation to be a final and complete resolution of all disputes between them with
14 respect to the Action. Accordingly, the Parties agree not to assert in any forum or,
15 in any statement made to any media representative (whether or not for attribution),
16 that the Action was brought by Plaintiffs or defended by any of the Defendants, or
17 each or any of them, in bad faith or without a reasonable basis. The Judgment will
18 contain a statement that during the course of the Action, the parties and their
19 respective counsel at all times complied with the requirements of Rule 11 of the
20 Federal Rules of Civil Procedure. The Parties further agree that the amount paid to
21 the Settlement Fund and the other terms of the Settlement were negotiated at arm's
22
23
24
25
26
27
28

1 length and in good faith by the Parties, and reflect a settlement that was reached
2 voluntarily after consultation with competent legal counsel.

3
4 9.3 Except as otherwise provided herein, all agreements made and orders
5 entered during the course of the Action relating to the confidentiality of information
6 shall survive this Stipulation.

7
8 9.4 The Settlement contemplated herein is not subject to or contingent
9 upon confirmatory discovery or other discovery.

10 9.5 The Term Sheet executed by the Settling Parties shall remain
11 confidential after this Stipulation is filed with the Court.

12
13 Whether or not the Effective Date occurs or this Stipulation is terminated,
14 neither this Stipulation nor the Settlement contained herein, nor any act performed
15 or document executed pursuant to or in furtherance of this Stipulation or the
16 Settlement:
17

18 (i) may be deemed, or shall be used, offered or received against
19 Defendants or Defendants' Released Parties, or each or any of them, as an
20 admission, concession or evidence of the validity of any Released Plaintiffs'
21 Claims, the truth of any fact alleged by Plaintiffs, the deficiency of any defense that
22 has been or could have been asserted in the litigation, or of any alleged
23 wrongdoing, liability, negligence, or fault of the Defendants and Defendants'
24 Released Parties, or any of them;
25
26
27
28

1 (ii) may be deemed, or shall be used, offered or received against
2 Plaintiffs, the Class, Plaintiffs' Released Parties, or each or any of them, as an
3 admission, concession or evidence of, the validity or invalidity of any of
4 Defendants' Released Claims, the infirmity or strength of any claims raised in the
5 Action, the truth or falsity of any fact alleged by Defendants, or the availability or
6 lack of availability of meritorious defenses to the claims raised in the Action;
7

8
9 If this Stipulation is approved by the Court, any party or any of the Released
10 Parties may file this Stipulation and/or Judgment in any action that may be brought
11 against such party or parties in order to support a defense or counterclaim based on
12 principles of *res judicata*, collateral estoppel, release, good faith settlement,
13 judgment bar or reduction or any other theory of claim preclusion or issue
14 preclusion or similar defense or counterclaim;
15

16
17 9.6 The headings used herein are used for the purpose of convenience only
18 and are not meant to have legal effect.
19

20 9.7 The waiver by one party of any breach of this Stipulation by any other
21 party hereto shall not be deemed as a waiver of any other prior or subsequent
22 breaches of this Stipulation.
23

24 9.8 All of the Exhibits to this Stipulation are material and integral parts
25 hereof and are fully incorporated herein by this reference.
26
27
28

1 9.9 This Stipulation may be amended or modified only by a written
2 instrument signed by or on behalf of all Parties or their respective successors-in-
3 interest.
4

5 9.10 This Stipulation and the Exhibits attached hereto constitute the entire
6 agreement among the parties hereto and no representations, warranties or
7 inducements have been made to any party concerning this Stipulation or its Exhibits
8 other than the representations, warranties and covenants contained and
9 memorialized in such documents. Except as otherwise provided herein, each party
10 shall bear its own costs.
11

12 9.11 Each counsel or other Person executing this Stipulation, any of its
13 Exhibits, or any related settlement documents on behalf of any party hereto hereby
14 warrants and represents that such Person has the full authority to do so and that they
15 have the authority to take appropriate action required or permitted to be taken
16 pursuant to the Stipulation to effectuate its terms.
17

18 9.12 This Stipulation may be executed in one or more counterparts. All
19 executed counterparts and each of them shall be deemed to be one and the same
20 instrument provided that counsel for the parties to this Stipulation all exchange
21 original signed counterparts.
22

23 9.13 This Stipulation shall be binding upon, and inure to the benefit of, the
24 successors and assigns of the parties hereto and the Released Parties.
25
26
27
28

1 9.14 The Court shall retain jurisdiction with respect to implementation and
2 enforcement of the terms of this Stipulation, and all parties hereto submit to the
3 jurisdiction of the Court for purposes of implementing and enforcing the Settlement
4 embodied in this Stipulation.
5

6 9.15 This Stipulation and the Exhibits thereto shall be considered to have
7 been negotiated, executed and delivered, and to be wholly performed, in the State
8 of New York and the rights and obligations of the parties to this Stipulation shall be
9 construed and enforced in accordance with, and governed by, the internal,
10 substantive laws of the State of New York without giving effect to that State's
11 choice of law principles.
12

13 9.16 This Stipulation is deemed to have been prepared by counsel for all
14 parties, as a result of arm's length negotiations among the parties. Whereas all
15 parties hereto have contributed substantially and materially to the preparation of
16 this Stipulation, it shall not be construed more strictly against one party than
17 another.
18

19 9.17 Whenever this Stipulation requires or contemplates that a party shall or
20 may give notice to the other, notice shall be provided by electronic mail, or next-day
21 (excluding Saturday and Sunday) express delivery service as follows and shall be
22 deemed effective upon such transmission or delivery to the address set forth below:
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If to Plaintiffs, then to: William B. Federman
Brooke Murphy
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Avenue
Oklahoma City, OK 73120
(405) 235-1560/Fax: (405) 239-2112

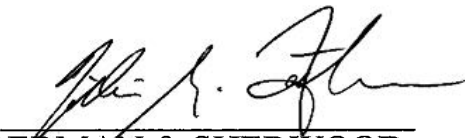
If to Defendants, then to: David Kistenbroker
Carl E. Volz
DECHERT LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
david.kistenbroker@dechert.com
carl.volz@dechert.com

9.19 All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

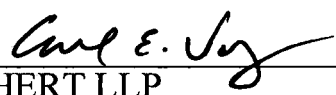
9.20 The parties to this Stipulation reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation.

IN WITNESS WHEREOF, the parties hereto have caused this Amended Stipulation to be executed, by their duly authorized attorneys, dated March 7, 2016.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: 
FEDERMAN & SHERWOOD
William B. Federman
A. Brooke Murphy
10205 N. Pennsylvania Avenue
Oklahoma City, OK 73120
Telephone: (405) 235-1560
Facsimile: (405) 239-2112
wbf@federmanlaw.com
abm@federmanlaw.com

Lead Counsel for Plaintiffs

By: 
DECHERT LLP
Edwin V. Woodsome, Jr.
David H. Kistenbroker
Carl E. Volz
77 W. Wacker Drive, Suite 3200
Chicago, IL 60601
Telephone: (312) 646-5800
Facsimile: (312) 646-5858
ed.woodsomes@dechert.com
david.kistenbroker@dechert.com
carl.volz@dechert.com

Counsel for Defendants