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*Counsel for Lead Plaintiffs Special Situations
Fund III QP, L.P. and Special Situations
Cayman Fund, L.P. and additional named
Plaintiff David M. Fineman*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SPECIAL SITUATIONS FUND III QP, L.P.,
SPECIAL SITUATIONS CAYMAN FUND,
L.P, and DAVID M. FINEMAN, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

MARRONE BIO INNOVATIONS, INC.,
PAMELA G. MARRONE, JAMES B.
BOYD, DONALD J. GLIDEWELL,
HECTOR ABSI, ELIN MILLER, RANJEET
BHATIA, PAMELA CONTAG, TIM
FOGARTY, LAWRENCE HOUGH,
JOSEPH HUDSON, LES LYMAN,
RICHARD ROMINGER, SHAUGN
STANLEY, SEAN SCHICKEDANZ, and
ERNST & YOUNG LLP,

Defendants.

) Master No.: 2:14-cv-2571-MCE-KJN
)
) Hon. Morrison C. England, Jr.
)
) CONSOLIDATED CLASS ACTION
)
) **ORDER PRELIMINARILY**
) **APPROVING PROPOSED**
) **SETTLEMENT AND PROVIDING**
) **FOR NOTICE**

1 WHEREAS, a securities class action is pending in this Court entitled *Special Situations*
2 *Fund III QP, L.P. v. Marrone Bio Innovations, Inc., et al.*, Master No. 14-cv-2571 (the
3 “Action”);

4 WHEREAS, (a) Lead Plaintiffs Special Situations Fund III QP, L.P. and Special
5 Situations Cayman Fund, L.P., (“Lead Plaintiffs” or “The Funds”), and additional named
6 Plaintiff David M. Fineman (“Fineman” and, together with Lead Plaintiffs, “Plaintiffs”), on
7 behalf of themselves and the other members of the Settlement Class, and (b) Defendants
8 Marrone Bio Innovations, Inc. (“MBI”), Pamela G. Marrone, James B. Boyd, Donald J.
9 Glidewell, Hector Absi, Elin Miller, Tim Fogarty, Richard Rominger, Shaugn Stanley, Ranjeet
10 Bhatia, Lawrence Hough, Joseph Hudson, Sean Schickedanz, Pamela Contag, and Les Lyman
11 (collectively, the “Individual Defendants,” with MBI, the “Settling Defendants,” and together
12 with Plaintiffs, the “Settling Parties”), have determined to settle claims asserted in the Action
13 with prejudice on the terms and conditions set forth in the Stipulation and Agreement of
14 Settlement dated June 16, 2016 (the “Stipulation), subject to the approval of the Court (the
15 “Settlement”);

16 WHEREAS, Plaintiffs have made an application, pursuant to Rule 23 of the Federal
17 Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance
18 with the Stipulation, certifying the Settlement Class for purposes of the Settlement only, and
19 allowing notice to Settlement Class Members as more fully described herein;

20 WHEREAS, the Court has read and considered: (a) Plaintiffs’ motion for preliminary
21 approval of the Settlement, and the papers filed and arguments made in connection therewith;
22 and (b) the Stipulation and the exhibits attached thereto; and

23 WHEREAS, unless otherwise defined herein, all capitalized words contained herein
24 shall have the same meanings as they have in the Stipulation;

25 NOW THEREFORE, IT IS HEREBY ORDERED:

26 1. **Class Certification for Settlement Purposes** – Pursuant to Rule 23(a) and
27 (b)(3) of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of
28 effectuating the proposed Settlement, a Settlement Class consisting of all persons and entities

1 who or which (i) purchased or otherwise acquired MBI securities directly in or traceable to the
2 Company's August 1, 2013 initial public offering pursuant to MBI's Form S-1 Registration
3 Statement, dated July 1, 2013, and its Prospectus, dated August 1, 2013, and were damaged
4 thereby; (ii) purchased or otherwise acquired MBI securities directly in or traceable to the
5 Company's secondary offering pursuant to MBI's Form S-1 Registration Statement, dated May
6 16, 2014, and its Prospectus dated June 5, 2014, and were damaged thereby; and (iii) purchased
7 or otherwise acquired MBI securities on the open market between August 1, 2013 and
8 November 10, 2015, inclusive, and were damaged thereby. Excluded from the Settlement Class
9 are the Settling Defendants; Immediate Family of each of the Individual Defendants; the
10 Officers and/or directors of MBI during the Settlement Class Period; any firm, trust,
11 corporation, or other entity in which any MBI Defendant has or had a controlling interest; and
12 any persons or entities that exclude themselves by submitting a request for exclusion that is
13 accepted by the Court as valid.

14 2. **Class Findings** – Solely for purposes of the proposed Settlement of this Action,
15 the Court finds that each element required for certification of the Settlement Class pursuant to
16 Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the
17 Settlement Class are so numerous that their joinder in the Action would be impracticable; (b)
18 there are questions of law and fact common to the Settlement Class which predominate over any
19 individual questions; (c) the claims of Plaintiffs in the Action are typical of the claims of the
20 Settlement Class; (d) Plaintiffs and Lead Counsel have fairly and adequately represented and
21 protected the interests of the Settlement Class and will continue to do so; and (e) a class action
22 is superior to other available methods for the fair and efficient adjudication of the Action.

23 3. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal
24 Rules of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiffs are
25 adequate class representatives and certifies Lead Plaintiffs as the Class Representatives for the
26 Settlement Class. The Court also appoints Lead Counsel as Class Counsel for the Settlement
27 Class, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

1 4. **Preliminary Approval of the Settlement** – The Court hereby preliminarily
2 approves the Settlement, as embodied in the Stipulation, as being fair, reasonable and adequate
3 to the Settlement Class, subject to further consideration at the Settlement Hearing to be
4 conducted as described below.

5 5. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement
6 Hearing”) on September 22, 2016 at 2:00 p.m. in Courtroom 7 of the Robert T. Matsui United
7 States Court House, 501 I Street, Sacramento, CA 95814, for the following purposes: (a) to
8 determine whether the proposed Settlement on the terms and conditions provided for in the
9 Stipulation is fair, reasonable and adequate to the Settlement Class, and should be approved by
10 the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit B
11 to the Stipulation should be entered dismissing the Action with prejudice against Defendants;
12 (c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is
13 fair and reasonable and should be approved; (d) to determine whether the motion by Lead
14 Counsel for an award of attorneys’ fees and reimbursement of Litigation Expenses should be
15 approved; and (e) to consider any other matters that may properly be brought before the Court
16 in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be
17 given to Settlement Class Members as set forth in paragraph 8 of this Order.

18 6. The Court may adjourn the Settlement Hearing without further notice to the
19 Settlement Class; may approve the proposed Settlement with such modifications as the Settling
20 Parties may agree to, if appropriate, without further notice to the Settlement Class; and may
21 enter the Judgment or Alternate Judgment, if applicable, regardless of whether it has approved
22 the Plan of Allocation and/or Lead Counsel’s motion for attorneys’ fees or reimbursement of
23 Litigation Expenses.

24 7. **CAFA Notice** – MBI shall no later than five (5) calendar days following the
25 filing of the Stipulation with the Court serve upon the appropriate state official of each state in
26 which a Class Member resides and the Attorney General of the United States a notice of the
27 proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28
28 U.S.C. § 1715 *et seq.* (“CAFA”). MBI is solely responsible for the costs of the CAFA notice

1 and administering the CAFA notice. At least fourteen (14) calendar days before the Settlement
2 Hearing, MBI shall cause to be served on Lead Counsel and filed with the Court proof, by
3 affidavit or declaration, regarding compliance with CAFA § 1715(b).

4 8. **Retention of Claims Administrator and Manner of Giving Notice** – Lead
5 Counsel are hereby authorized to retain Garden City Group, LLC (the “Claims Administrator”)
6 to supervise and administer the notice procedure in connection with the proposed Settlement as
7 well as the processing of Claims as more fully set forth below. Notice of the Settlement and the
8 Settlement Hearing shall be given by Lead Counsel as follows:

9 a. within three (3) business days of the date of entry of this Order, MBI
10 shall provide or cause to be provided to the Claims Administrator in electronic searchable form,
11 such as Excel (at no cost to the Settlement Fund, Lead Counsel or the Claims Administrator),
12 data from shareholder transfer records containing the names and addresses of record holders
13 who purchased MBI common stock during the Settlement Class Period;

14 b. not later than seven (7) business days after the date of entry of this Order
15 (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice and the Claim
16 Form, substantially in the forms attached hereto as Exhibits 1 and 2, respectively (the “Notice
17 Packet”), to be mailed by first-class mail to potential Settlement Class Members at the addresses
18 set forth in the records provided or caused to be provided by MBI, or who otherwise may be
19 identified through further reasonable effort;

20 c. contemporaneously with the mailing of the Notice Packet, the Claims
21 Administrator shall cause copies of the Notice and the Claim Form to be posted on a website to
22 be developed for the Settlement, from which copies of the Notice and Claim Form can be
23 downloaded;

24 d. not later than five (5) business days after the Notice Date, the Claims
25 Administrator shall cause the Summary Notice, substantially in the form attached hereto as
26 Exhibit 3, to be published once in *The Wall Street Journal* and to be transmitted once over the
27 *PR Newswire*; and
28

1 e. not later than seven (7) calendar days prior to the Settlement Hearing,
2 Lead Counsel shall serve on Morrison & Foerster LLP, and Brownstein Hyatt Farber & Schreck
3 LLP and file with the Court proof, by affidavit or declaration, of such mailing and publication.

4 9. **Approval of Form and Content of Notice** – The Court (a) approves, as to form
5 and content, the Notice, the Claim Form, and the Summary Notice, attached hereto as Exhibits
6 1, 2, and 3, respectively; and (b) finds that the mailing and distribution of the Notice and Claim
7 Form and the publication of the Summary Notice in the manner and form set forth in paragraph
8 8 of this Order: (i) is the best notice practicable under the circumstances; (ii) constitutes notice
9 that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of
10 the pendency of the Action, of the effect of the proposed Settlement (including the Releases to
11 be provided thereunder), of Lead Counsel’s motion for an award of attorney’s fees and
12 reimbursement of Litigation Expenses, of their right to object to the Settlement, the Plan of
13 Allocation and/or Lead Counsel’s motion for attorneys’ fees and reimbursement of Litigation
14 Expenses, of their right to exclude themselves from the Settlement Class, and of their right to
15 appear at the Settlement Hearing; (iii) constitutes due, adequate and sufficient notice to all
16 persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the
17 requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution
18 (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15
19 U.S.C. § 78u-4, *et seq.*, as amended, and all other applicable law and rules. The date and time
20 of the Settlement Hearing shall be included in the Notice and Summary Notice before they are
21 mailed and published, respectively.

22 10. **Nominee Procedures** – Brokers and other nominees that purchased MBI
23 common stock during the Settlement Class Period for the benefit of another person or entity
24 shall (a) within seven (7) calendar days of receipt of the Notice, request from the Claims
25 Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners
26 and within seven (7) calendar days of receipt of those Notice Packets forward them to all such
27 beneficial owners; or (b) within seven (7) calendar days of receipt of the Notice, send a list of
28 the names and addresses of all such beneficial owners to the Claims Administrator in which

1 event the Claims Administrator shall promptly mail the Notice Packet to such beneficial
2 owners. Upon full compliance with this Order, such nominees may seek reimbursement of their
3 reasonable expenses actually incurred in complying with this Order by providing the Claims
4 Administrator with proper documentation supporting the expenses for which reimbursement is
5 sought. Such properly documented expenses incurred by nominees in compliance with the
6 terms of this Order shall be paid from the Settlement Fund, with any disputes as to the
7 reasonableness or documentation of expenses incurred subject to review by the Court.

8 11. **Participation in the Settlement** – Settlement Class Members who wish to
9 participate in the Settlement and to be eligible to receive a distribution from the Net Settlement
10 Fund must complete and submit a Claim Form in accordance with the instructions contained
11 therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later than
12 seventy-five (75) calendar days after the Notice Date. Notwithstanding the foregoing, Lead
13 Counsel may, at their discretion, accept for processing late Claims provided such acceptance
14 does not delay the distribution of the Net Settlement Fund to the Settlement Class. By
15 submitting a Claim, a person or entity shall be deemed to have submitted to the jurisdiction of
16 the Court with respect to his, her or its Claim and the subject matter of the Settlement.

17 12. Each Claim Form submitted must satisfy the following conditions: (a) it must be
18 properly completed, signed and submitted in a timely manner in accordance with the provisions
19 of the preceding paragraph; (b) it must be accompanied by adequate supporting documentation
20 for the transactions and holdings reported therein, in the form of broker confirmation slips,
21 broker account statements, an authorized statement from the broker containing the transactional
22 and holding information found in a broker confirmation slip or account statement, or such other
23 documentation as is deemed adequate by Lead Counsel or the Claims Administrator; (c) if the
24 person executing the Claim Form is acting in a representative capacity, a certification of his, her
25 or its current authority to act on behalf of the Settlement Class Member must be included in the
26 Claim Form to the satisfaction of Lead Counsel or the Claims Administrator; and (d) the Claim
27 Form must be complete and contain no material deletions or modifications of any of the printed
28 matter contained therein and must be signed under penalty of perjury.

1 13. Any Settlement Class Member that does not timely and validly submit a Claim
2 Form or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have
3 waived his, her or its right to share in the Net Settlement Fund; (b) shall be forever barred from
4 participating in any distributions therefrom; (c) shall be bound by the provisions of the
5 Stipulation and the Settlement and all proceedings, determinations, orders and judgments in the
6 Action relating thereto, including, without limitation, the Judgment or Alternate Judgment, if
7 applicable, and the Releases provided for therein, whether favorable or unfavorable to the
8 Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of
9 the Released Plaintiffs' Claims against each and all of the Defendants' Releasees, as more fully
10 described in the Stipulation and Notice. Notwithstanding the foregoing, late Claim Forms may
11 be accepted for processing as set forth in paragraph 11 above.

12 14. **Exclusion From the Settlement Class** – Any member of the Settlement Class
13 who wishes to exclude himself, herself or itself from the Settlement Class must request
14 exclusion in writing within the time and in the manner set forth in the Notice, which shall
15 provide that: (a) any such request for exclusion from the Settlement Class must be mailed or
16 delivered such that it is received no later than fourteen (14) calendar days prior to the Settlement
17 Hearing, to: MBI Securities Litigation, c/o GCG, P.O. Box 10287, Dublin, OH 43017-5887;
18 and (b) each request for exclusion must (i) state the name, address, and telephone number of the
19 person or entity requesting exclusion, and in the case of entities, the name and telephone
20 number of the appropriate contact person; (ii) state that such person or entity “requests
21 exclusion from the Settlement Class in *Special Situations Fund III QP, L.P. v. Marrone Bio*
22 *Innovations, Inc., et al.*, Master No. 14-cv-2571”; (iii) state the number of shares of MBI
23 common stock that the person or entity requesting exclusion purchased/acquired and/or sold
24 during the Settlement Class Period, as well as the number of shares, dates and prices for each
25 such purchase and/or sale; and (iv) be signed by the person or entity requesting exclusion or an
26 authorized representative. A request for exclusion shall not be effective unless it provides all
27 the required information and is received within the time stated above, or is otherwise accepted
28 by the Court in a manner and with timing not inconsistent with the right of the Settling

1 Defendants to terminate the Settlement pursuant to the Stipulation. Lead Counsel are
2 authorized to request from any person or entity requesting exclusion documentation sufficient to
3 prove his, her or its purchases and/or sales of MBI common stock during the Settlement Class
4 Period. Copies of all requests for exclusion shall be provided to counsel for Settling Defendants
5 on a weekly basis, but in no event later than fourteen (14) calendar days prior to the Settlement
6 Hearing.

7 15. Any person or entity that timely and validly requests exclusion in compliance
8 with the terms stated in this Order and is excluded from the Settlement Class shall not be a
9 Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or
10 judgments in the Action, and shall not receive any payment out of the Net Settlement Fund.

11 16. Any Settlement Class Member that does not timely and validly request exclusion
12 from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have
13 waived his, her or its right to be excluded from the Settlement Class; (b) shall be forever barred
14 from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be
15 bound by the provisions of the Stipulation and Settlement and all proceedings, determinations,
16 orders and judgments in the Action, including, but not limited to, the Judgment or Alternate
17 Judgment, if applicable, and the Releases provided for therein, whether favorable or
18 unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining or
19 prosecuting any of the Released Plaintiffs' Claims against any of the Defendants' Releasees, as
20 more fully described in the Stipulation and Notice.

21 17. **Appearance and Objections at Settlement Hearing** – Any Settlement Class
22 Member that does not request exclusion from the Settlement Class may enter an appearance in
23 the Action, at his, her or its own expense, individually or through counsel of his, her or its own
24 choice, by filing with the Clerk of Court and delivering a notice of appearance to both Lead
25 Counsel and counsel for the Settling Defendants, at the addresses set forth in paragraph 18
26 below, such that it is received no later than fourteen (14) calendar days prior to the Settlement
27 Hearing, or as the Court may otherwise direct. Any Settlement Class Member that does not
28 enter an appearance will be represented by Lead Counsel.

1 18. Any Settlement Class Member that does not request exclusion from the
2 Settlement Class may file a written objection to the proposed Settlement, the proposed Plan of
3 Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and reimbursement of
4 Litigation Expenses and appear and show cause, if he, she or it has any cause, why the proposed
5 Settlement, the proposed Plan of Allocation and/or Lead Counsel's motion for attorneys' fees
6 and reimbursement of Litigation Expenses should not be approved; *provided, however*, that no
7 Settlement Class Member shall be heard or entitled to contest the approval of the terms and
8 conditions of the proposed Settlement, the proposed Plan of Allocation and/or the motion for
9 attorneys' fees and reimbursement of Litigation Expenses unless that person or entity has filed a
10 written objection with the Court and served copies of such objection on Lead Counsel and
11 counsel for the Settling Defendants at the addresses set forth below such that they are received
12 no later than fourteen (14) calendar days prior to the Settlement Hearing.

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14 **Lead Counsel**

15 Lowenstein Sandler LLP
16 Attn: Steven M. Hecht, Esq.
17 1251 Avenue of the Americas
18 Telephone: (212) 262-2700
19 Email: shecht@lowenstein.com

13
14 **Counsel for the Settling Defendants**

15 Morrison & Foerster LLP
16 Attn: Judson E. Lobdell, Esq.,
17 Jordan Eth, Esq., and
18 Anne K. Davis, Esq.
19 425 Market Street
20 San Francisco, CA 94105
21 Telephone: (415) 268-7000
22 Email: jlobdell@mof.com

23 Brownstein Hyatt
24 Farber Schreck LLP
25 Attn: John V. McDermott, Esq.
26 410 Seventh Street, Suite 2200
27 Denver, CO 80202
28 Telephone: 303-223-1100
jmcdermott@bhfs.com

Lead Counsel and counsel for the Settling Defendants shall promptly furnish each other with
copies of any and all objections that come into their possession.

19. Any objections, filings and other submissions by the objecting Settlement Class
Member: (a) must state the name, address, and telephone number of the person or entity
objecting and must be signed by the objector; (b) must contain a statement of the Settlement

1 Class Member's objection or objections, and the specific reasons for each objection, including
2 any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's
3 attention; and (c) must include documents sufficient to prove membership in the Settlement
4 Class, including the number of shares of MBI common stock that the objecting Settlement Class
5 Member purchased and/or sold during the Settlement Class Period, as well as the dates and
6 prices of each such purchase and sale. Objectors that enter an appearance and desire to present
7 evidence at the Settlement Hearing in support of their objection must include in their written
8 objection or notice of appearance the identity of any witnesses they may call to testify and any
9 exhibits they intend to introduce into evidence at the hearing.

10 20. Any Settlement Class Member that does not make his, her or its objection in the
11 manner provided herein shall be deemed to have waived his, her or its right to object to any
12 aspect of the proposed Settlement, the Judgment or Alternate Judgment, if applicable, the
13 proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and
14 reimbursement of Litigation Expenses and shall be forever barred and foreclosed from objecting
15 to the fairness, reasonableness or adequacy of the Settlement, the Judgment or Alternate
16 Judgment, if applicable, the Plan of Allocation or the requested attorneys' fees and Litigation
17 Expenses, and from otherwise being heard concerning the Settlement, the Judgment or
18 Alternative Judgment, if applicable, the Plan of Allocation or the requested attorneys' fees and
19 Litigation Expenses in this or any other proceeding.

20 21. **Temporary Injunction** –Pending final determination of whether the Settlement
21 should be approved, the Court bars and enjoins Plaintiffs and all other members of the
22 Settlement Class from commencing or prosecuting any and all of the Released Plaintiffs'
23 Claims against each and all of the Defendants' Releasees.

24 22. **Settlement Administration Fees and Expenses** – All reasonable costs incurred
25 in identifying Settlement Class Members and notifying them of the Settlement as well as in
26 administering the Settlement shall be paid as set forth in the Stipulation.

27 23. **Settlement Fund** – The contents of the Settlement Fund held by Peapack-
28 Gladstone Financial Corporation (which the Court approves as the Escrow Agent), shall be

1 deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the
2 jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation
3 and/or further order(s) of the Court.

4 24. **Taxes** – Lead Counsel are authorized and directed to prepare any tax returns and
5 any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement
6 Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all
7 obligations with respect to Taxes and any reporting or filings in respect thereof without further
8 order of the Court in a manner consistent with the provisions of the Stipulation.

9 25. **Termination of Settlement** – If the Settlement is terminated as provided in the
10 Stipulation, the Settlement is not approved, or the Effective Date of the Settlement otherwise
11 fails to occur, this Order shall be vacated, rendered null and void and be of no further force and
12 effect, except as otherwise provided by the Stipulation, and this Order shall be without prejudice
13 to the rights of Plaintiffs, the other Settlement Class Members and the Settling Defendants, and
14 the Settling Parties shall revert to their respective litigation positions in the Action as of
15 immediately prior to April 4, 2016, as provided in the Stipulation.

16 26. **Use of this Order** – Neither this Order, the Stipulation (whether or not
17 consummated), including the exhibits thereto and the Plan of Allocation contained therein (or
18 any other plan of allocation that may be approved by the Court), the negotiations leading to the
19 execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the
20 Stipulation and/or approval of the Settlement (including any arguments proffered in connection
21 therewith): (a) shall be offered against any of the Defendants’ Releasees as evidence of, or
22 construed as, or deemed to be evidence of any presumption, concession, or admission by any of
23 the Defendants’ Releasees with respect to the truth of any fact alleged by Plaintiffs or the
24 validity of any claim that was or could have been asserted or the deficiency of any defense that
25 has been or could have been asserted in this Action or in any other litigation, or of any liability,
26 negligence, fault, or other wrongdoing of any kind of any of the Defendants’ Releasees or in
27 any way referred to for any other reason as against any of the Defendants’ Releasees, in any
28 civil, criminal or administrative action or proceeding, other than such proceedings as may be

1 necessary to effectuate the provisions of the Stipulation; (b) shall be offered against any of the
2 Plaintiffs' Releasees as evidence of, or construed as, or deemed to be evidence of any
3 presumption, concession or admission by any of the Plaintiffs' Releasees that any of their
4 claims are without merit, that any of the Defendants' Releasees had meritorious defenses, or
5 that damages recoverable under the Complaint would not have exceeded the Settlement Amount
6 or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way
7 referred to for any other reason as against any of the Plaintiffs' Releasees, in any civil, criminal
8 or administrative action or proceeding, other than such proceedings as may be necessary to
9 effectuate the provisions of the Stipulation; (c) shall be offered or construed as evidence that a
10 class should or should not be certified in the Action if the Settlement is not consummated; or (d)
11 shall be construed against any of the Releasees as an admission, concession, or presumption that
12 the consideration to be given under the Settlement represents the amount that could be or would
13 have been recovered after trial; *provided, however*, that if the Stipulation is approved by the
14 Court, the Settling Parties and the Releasees and their respective counsel may refer to it to
15 effectuate the protections from liability granted thereunder or otherwise to enforce the terms of
16 the Settlement.

17 27. **Supporting Papers** – Lead Counsel shall file and serve the opening papers in
18 support of the proposed Settlement, the Plan of Allocation, and Lead Counsel's motion for an
19 award of attorneys' fees and reimbursement of Litigation Expenses no later than twenty-eight
20 (28) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed and
21 served no later than seven (7) calendar days prior to the Settlement Hearing.

22 28. The Court retains jurisdiction to consider all further applications arising out of or
23 connected with the proposed Settlement.

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1 29. The hearing on this unopposed motion (ECF No. 80) currently set for July 14,
2 2016, is VACATED.

3 IT IS SO ORDERED.

4 Dated: July 7, 2016

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6 MORRISON C. ENGLAND, JR.
7 UNITED STATES DISTRICT JUDGE
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