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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MELVYN KLEIN, Derivatively on
Behalf of Nominal Defendant OPUS
BANK,

Plaintiff,

v.

STEPHEN H. GORDON, MARK
CICIRELLI, MARK E. SCHAFFER,
MICHAEL MEYER, ROBERT
SHACKLETON, THOMAS M.
BOWERS, CURTIS A. GLOVIER, and
DAVID KING,

Defendants,

And

OPUS BANK, a California Corporation,

Nominal Defendant.

Case No. 8:17-CV-00123(AB)(JPR)

STIPULATION OF SETTLEMENT

Judge: Hon. André Birotte, Jr.
Courtroom: 7B – First Street
Action Filed: January 24, 2017

This Stipulation of Settlement dated as of January 29, 2018 (the “**Stipulation**”) is made and entered into by and among the following Parties: (i) plaintiff in the above-captioned derivative action, Melvyn Klein (“**Plaintiff Klein**”); (2) plaintiff in the shareholder derivative action pending in the Superior Court of California, Los Angeles County, styled *Dillard v. Gordon, et al.*, Case No. BC651522, Andrew Dillard (“**Plaintiff Dillard**,” or together with Plaintiff Klein, the “**Plaintiffs**”); (iii) nominal defendant Opus Bank (“**Opus**” or the “**Bank**”); and (v) Stephen H. Gordon, Nicole M. Carrillo,¹ Mark Cicirelli, Mark E. Schaffer, Michael L. Meyer, Robert J. Shackleton, Thomas M. Bowers, Curtis A. Glovier, and David King (collectively “**Defendants**” and with Plaintiffs, the “**Parties**”), by and through their counsel. Subject to the approval of the Court, the Stipulation is intended by the Parties to fully, finally and forever resolve, discharge, and settle the

¹ Nicole M. Carrillo is a defendant only in the *Dillard* Action (defined below).

1 Derivative Actions and the Released Claims (defined below), upon and subject to
2 the terms and conditions hereof.

3 **I. THE DERIVATIVE ACTIONS**

4 On January 24, 2017, Plaintiff Klein commenced an action against
5 Defendants in the U.S. District Court for the Central District of California, styled
6 *Klein v. Gordon, et al.*, No. 8:17-CV-00123 (C.D. Cal.), asserting claims
7 derivatively on behalf of Opus (the “*Klein Action*”).

8 On February 22, 2017, Plaintiff Dillard commenced an action against the
9 Defendants in the Superior Court of California, Los Angeles County (the “California
10 State Court”), styled *Dillard v. Gordon, et al.*, No. BC651522 (Cal Super. Ct., L.A.
11 Cnty.), asserting claims derivatively on behalf of Opus (the “*Dillard Action*,” and
12 together with the *Klein Action*, the “**Derivative Actions**”).

13 The complaints in the Derivative Actions generally alleged that Defendants
14 breached their fiduciary duties, made or permitted the making of material false and
15 misleading statements to the investing public that failed to disclose that: certain of
16 the Bank’s loans were of poor quality; the Bank was over-representing the quality of
17 the loans; the accounting for the loans did not adhere to Generally Accepted
18 Accounting Principles; the Bank would be forced to recognize large charge-offs
19 associated with the loans, and the Bank had inadequate internal controls over
20 financial reporting and accounting. The complaint in the *Klein Action* alleged counts
21 for breach of fiduciary duty, gross mismanagement, unjust enrichment, violations of
22 Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 promulgated
23 thereunder. The *Dillard* complaint alleged counts for breach of fiduciary duty,
24 unjust enrichment, abuse of control, gross mismanagement and corporate waste.

25 On March 28, 2017, the Court entered an order appointing Gainey McKenna
26 & Egleston as Interim Lead Counsel for Plaintiff Klein and staying the *Klein Action*
27 until the resolution of the motion to dismiss filed in the related securities class
28 action, *Nancy Schwartz v. Opus Bank et al.*, Case No.: 2:16-CV-7991 (C.D. Cal.)

1 (the “**Securities Class Action**”).

2 On July 13, 2017, the California State Court entered an order appointing The
3 Rosen Law Firm, P.A. as Interim Lead Counsel for Plaintiff Dillard and staying the
4 *Dillard* Action until the resolution of the motion to dismiss filed in the Securities
5 Class Action. The Parties participated in a mediation of the Derivative Actions and
6 the Securities Class Action presided over by Gregory P. Lindstrom, Esq. of Phillips
7 ADR on November 1, 2017. On December 12, 2017, the Parties executed a
8 memorandum of understanding (“**MOU**”) memorializing a settlement in principal
9 for the Derivative Actions.

10 This Stipulation provides for certain confirmatory discovery to verify the
11 reasonableness and adequacy of the Settlement. Plaintiffs’ Counsel intends to
12 review the confirmatory discovery prior to seeking the Court’s final approval of the
13 Settlement (defined below) at the Final Hearing (defined below).

14 Attorneys’ fees and Litigation Expenses are not the subject of any agreement
15 between the Parties other than what is set forth in this Stipulation.

16 Although Plaintiffs believe their claims have merit, they recognize the
17 expense and length of continued proceedings necessary to prosecute such claims
18 through trial and subsequent appeals. Plaintiffs’ Counsel also have taken into
19 account the costs and risks inherent in proceeding further with litigation. Therefore,
20 Plaintiffs and Plaintiffs’ Counsel believe that the Settlement, on the terms and
21 conditions set forth herein, is fair reasonable, adequate and in the best interests of
22 Opus and its shareholders.

23 Defendants deny each and every claim and contention alleged by Plaintiffs in
24 these Derivative Actions. Defendants expressly deny all charges of wrongdoing or
25 liability against them arising out of any of the conduct, statements, acts or omissions
26 alleged in the Derivative Actions and deny any and all allegations that Plaintiffs,
27 Opus, or Opus’s shareholders suffered recoverable damages or are entitled to
28 equitable relief as a result of any action or inaction by the Defendants. The

1 Defendants firmly believe these Derivative Actions to be without merit and further
2 assert that, at all relevant times, they acted in good faith, with due care, and in a
3 manner they reasonably believed to be in the best interests of Opus and its
4 shareholders.

5 Nonetheless, Defendants believe it is in Opus's and their best interests that the
6 Derivative Actions be fully and finally settled in the manner and upon the terms and
7 conditions set forth in this Stipulation because, among other things, further conduct
8 of the Derivative Actions could be protracted and expensive, and could further
9 distract the Board, management and workforce from their jobs. Further, Defendants
10 acknowledge that the Settlement set forth in the Stipulation confers substantial
11 benefits upon Opus, and is fair, reasonable, adequate, and in the best interests of
12 Opus and its shareholders.

13 NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and among
14 the parties hereto, through their undersigned counsel, as follows:

15 **II. CERTAIN DEFINITIONS**

16 1. To the extent not otherwise defined herein, as used in this Stipulation,
17 the following terms shall have the meanings specified below. In the event of any
18 inconsistency between any definition set forth below and any definition set forth in
19 any document attached as an exhibit to the Stipulation, the definition set forth below
20 shall control.

21 a. **"Derivative Actions"** means collectively the *Klein* Action and
22 the *Dillard* Action.

23 b. **"Opus Shareholder"** means any Person with a beneficial
24 interest in Opus common stock.

25 c. **"California State Court"** means the Superior Court of
26 California, Los Angeles County, which is the court in which the *Dillard* Action is
27 pending.

28 d. **"Court"** means the U.S. District Court for the Central District of

1 California.

2 e. **“Defendants”** means Stephen H. Gordon, Nicole M. Carrillo,
3 Mark Cicirelli, Mark E. Schaffer, Michael L. Meyer, Robert J. Shackleton, Thomas
4 M. Bowers, Curtis A. Glovier, and David King.

5 f. **“Defendants’ Counsel”** means Katten Muchin Rosenman LLP.

6 g. **“Effective Date”** means the first date by which all of the events
7 and conditions specified in Paragraph VIII.133 of this Stipulation have occurred.

8 h. **“Execution Date”** means the date that this Stipulation has been
9 signed by all the signatories hereto through their counsel.

10 i. **“Final”** means, with respect to any order of court, including,
11 without limitation, the Final Judgment, that such order represents a final and binding
12 determination of all issues within its scope and is not subject to further review on
13 appeal or otherwise. Without limitation, an order becomes “Final” when: (a) no
14 appeal has been filed and the prescribed time for commencing any appeal has
15 expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed
16 and the prescribed time, if any, for commencing any further appeal has expired, or
17 (ii) the order has been affirmed in its entirety and the prescribed time, if any, for
18 commencing any further appeal has expired. For purposes of this Paragraph, an
19 “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals,
20 proceedings involving writs of certiorari or mandamus, and any other proceedings
21 seeking review, alteration, amendment or appeal of a court’s order.

22 j. **“Final Judgment”** means the judgment to be entered by the
23 Court, substantially in the form attached as Exhibit C hereto.

24 k. **“Immediate Family”** means spouse, domestic partner, parents,
25 grandparents, children and grandchildren.

26 l. **“Parties”** means Plaintiff Klein, Plaintiff Dillard, Opus, and the
27 Defendants.

28 m. **“Person”** means any individual, bank, corporation, limited

1 liability company, professional corporation, partnership, limited partnership, limited
2 liability partnership, association, joint stock company, estate, legal representative,
3 trust, unincorporated association, government or any political subdivision or agency
4 thereof, and any other business or legal entity together with the spouses, heirs,
5 predecessors, successors, representatives, or assigns of any of the foregoing.

6 n. **“Plaintiffs’ Counsel”** means Gainey McKenna & Egleston, The
7 Wagner Firm, The Rosen Law Firm, P.A., and The Brown Law Firm, P.C.

8 o. **“Released Claims”** means any and all claims, rights, demands,
9 causes of action or liabilities of any kind, nature and character whatsoever
10 (including, but not limited to, any claims for damages, interest, attorneys’ fees,
11 expert or consulting fees, and any other costs, expenses or liability whatsoever),
12 whether based on federal, state, local, statutory or common law, or any other law,
13 rule or regulation, whether foreign or domestic, whether fixed or contingent, accrued
14 or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured,
15 whether known or unknown including, without limitation, Unknown Claims (as
16 defined below) (collectively **“Claims”**) against any of the Released Persons that
17 have been, could have been, or could in the future be, asserted in the Derivative
18 Actions or in any other forum or proceeding by any Person (including but not
19 limited to Plaintiffs) derivatively on behalf of Opus, or by Opus itself against any of
20 the Released Persons that arise out of or are related, directly or indirectly, in any
21 way to:

- 22 (a) any of the facts, matters, occurrences, actions, practices, conduct,
23 events, transactions, statements, disclosures, representations,
24 misrepresentations, omissions, or failures to act that were involved, set
25 forth, referred to, asserted, alleged, or that could have been alleged in
26 either of the Derivative Actions including, but not limited to, claims for
27 breach of fiduciary duty, abuse of control, mismanagement, gross
28 mismanagement, waste of corporate assets, misappropriation of

1 information, unjust enrichment, insider trading, contribution and
2 indemnification, money damages, disgorgement, any and all demands,
3 actions, damages, claims, rights or causes of action, or liabilities
4 whatsoever; or

5 (b) that would have been barred by res judicata had either of the Derivative
6 Actions been fully litigated to a final judgment,

7 *provided that* Released Claims shall not include claims to enforce the Settlement.
8 Notwithstanding the foregoing, “Released Claims” does not include (1) claims
9 relating to the enforcement of the Settlement or its terms and (2) the claims alleged
10 in *Schwartz v. Opus Bank, et al.*, No. 2:16-CV-7991 (C.D. Cal.).

11 p. **“Released Persons”** means (a) Opus and the Defendants, as well
12 as any person, partnership, bank, firm, corporation, limited liability company, trust
13 or other entity or organization in which Opus or any Defendant has a controlling
14 interest or which is or was related to or affiliated with any of them; and (b) with
15 respect to each of the Persons in subsection (a), their respective past, present or
16 future directors and officers, including but not limited to Richard A. Sanchez,
17 Michael L. Allison, Marcos Alvarado and Norman B. Rice; and their respective
18 past, present or future employees, insurers, reinsurers, attorneys, agents, partners,
19 principals, advisors, investment advisors, auditors, accountants, trustees,
20 underwriters, investment bankers, subsidiaries, parents, successors, predecessors,
21 heirs, Immediate Family, and anyone acting or purporting to act for or on behalf of
22 any of them or their successors.

23 q. **“Settlement”** means the settlement embodied in this Stipulation.

24 r. **“Settlement Counsel”** means Gainey McKenna & Egleston,
25 counsel for Plaintiff Klein.

26 s. **“Unknown Claims”** means any Released Claims that Plaintiffs,
27 Opus or any Opus Shareholder (claiming in the right of, or on behalf of, the Bank)
28 does not know or suspect to exist in his, her or its favor at the time of the release of

1 the Released Persons which, if known by him, her or it, might have affected his, her
2 or its settlement with and release of the Released Persons, or might have affected
3 his, her or its decision not to object to this Settlement. Unknown Claims include
4 those claims in which some or all of the facts comprising the claim may be
5 suspected, or even undisclosed or hidden. With respect to any and all Released
6 Claims, Plaintiffs and Opus stipulate and agree that, upon the Effective Date, they
7 shall expressly waive, and every Opus Shareholder shall be deemed to have, and by
8 operation of the Final Judgment shall have, expressly waived the provisions, rights,
9 and benefits of California Civil Code § 1542, which provides:

10 **A general release does not extend to claims which the**
11 **creditor does not know or suspect to exist in his or her favor**
12 **at the time of executing the release, which if known by him**
13 **or her must have materially affected his or her settlement**
14 **with the debtor.**

14 Plaintiffs and Opus shall expressly waive, and every Opus Shareholder shall be
15 deemed to have, and by operation of the Final Judgment shall have, expressly
16 waived any and all provisions, rights, and benefits conferred by any law of any state
17 or territory of the United States, or principle of common law or foreign law, which
18 is similar, comparable or equivalent in effect to California Civil Code § 1542.

19 Plaintiffs, Opus, and any Opus Shareholder may hereafter discover facts in
20 addition to or different from those which he, she or it now knows or believes to be
21 true with respect to the subject matter of the Released Claims, but Plaintiffs and
22 Opus shall expressly have, and every Opus Shareholder shall be deemed to have,
23 and by operation of the Final Judgment shall have, fully, finally, and forever settled
24 and released any and all Released Claims, known or unknown, suspected or
25 unsuspected, contingent or non-contingent, whether or not concealed or hidden,
26 which now exist, or heretofore have existed, upon any theory of law or equity now
27 existing or coming into existence in the future, including, but not limited to, conduct
28 which is negligent, reckless, intentional, with or without malice, or a breach of any

1 duty, law or rule, without regard to the subsequent discovery or existence of such
2 different or additional facts. Plaintiffs and Opus acknowledge, and every Opus
3 Shareholder shall be deemed by operation of the Final Judgment to have
4 acknowledged, that the foregoing waivers were separately bargained for and a key
5 element of the Settlement.

6 **III. CORPORATE GOVERNANCE CHANGES**

7 2. Within 60 days of the Court's entering the Final Judgment, Opus's
8 Board of Directors ("Board") shall adopt resolutions and amend Board Committee
9 Charters to the extent necessary to adhere to the eight corporate governance reforms
10 set forth in Exhibit A hereto, and incorporated by reference herein ("Corporate
11 Governance Reforms"). Opus acknowledges and agrees that both of the Plaintiffs in
12 the Derivative Actions were a precipitating and material factor in the adoption and
13 implementation by the Bank of the Corporate Governance Reforms.

14 3. Opus also acknowledges and agrees that the filing and pendency of the
15 Derivative Actions comprised a substantial contributing factor to the decision by
16 Opus to adopt five other corporate governance reforms that Opus has already
17 instituted (the "Initial Reforms"), which are also set forth in Exhibit A hereto.

18 4. Opus further acknowledges and agrees that the Corporate Governance
19 Reforms, as well as the Initial Reforms, confer a substantial benefit to Opus and
20 Opus's shareholders.

21 **IV. PROCEDURE FOR IMPLEMENTING THE SETTLEMENT**

22 5. Promptly after the Execution Date, Settlement Counsel shall submit
23 the Stipulation together with its Exhibits to the Court, and shall make an application,
24 which shall be unopposed by Opus and Defendants, for entry of an order
25 substantially in the form and content of Exhibit B attached hereto (the "**Preliminary**
26 **Approval Order**"). The application shall request, *inter alia*, the preliminary
27 approval of the Settlement set forth in the Stipulation, approval of notice to Opus
28 Shareholders in the form attached as Exhibit B-1 hereto ("**Notice**"), as well as a date

1 for a hearing at which the Court will decide whether to grant final approval of the
2 Settlement (“**Final Hearing**”). The Notice shall include the general terms of the
3 proposed Settlement set forth in the Stipulation, contact information for Plaintiffs’
4 Counsel, and the date of the Final Hearing, and shall attach as an exhibit thereto the
5 Stipulation.

6 6. Subject to Court approval, within ten (10) calendar days of the Court’s
7 entry of the Preliminary Approval Order, Opus shall, with all costs borne by Opus
8 and/or its insurers, cause a copy of the Notice to be filed with the Securities and
9 Exchange Commission on Form 8-K; to be published in a press release and/or
10 published in *Investor’s Business Daily*; and to be posted, together with the
11 Stipulation, on the Investors Relations portion of its website. The Parties believe the
12 content and manner of such procedure constitutes adequate and reasonable notice to
13 Opus Shareholders pursuant to applicable law.

14 7. Within four (4) business days after the filing of this Stipulation with the
15 Court, Plaintiff Dillard shall file with the California State Court an Unopposed
16 Motion for Entry of Order to Facilitate Settlement of Related Actions (the “Dillard
17 Motion”) (a) informing the California State Court of the Parties’ Settlement and this
18 Stipulation, and (b) ordering that Plaintiff Dillard, Opus, and Defendants shall file a
19 Stipulation and Proposed Order Voluntarily Dismissing the Dillard Action with
20 Prejudice within four (4) business days of the Final Judgment becoming Final and
21 that the Dillard Action shall be dismissed with prejudice.

22 **V. ATTORNEYS’ FEES**

23 8. The Parties shall negotiate in good faith as to an agreed amount of
24 attorneys’ fees and expenses to be proposed to the Court prior to the Final Hearing
25 as payment to Plaintiffs’ counsel for the benefits achieved on behalf of Opus in the
26 Derivative Actions (the “**Fee and Expense Award**”) payable by the Company
27 and/or its insurer(s).

28 If the Parties do not reach agreement on such an amount, they shall, within 15

1 days thereafter, participate in a non-binding, half-day mediation by the mediator,
2 Gregory P. Lindstrom, Esq. or another mediator with Phillips ADR (not including
3 Layn Phillips) or any other mutually agreeable mediator depending on scheduling,
4 with regard to the amount of attorneys' fees and expenses to be proposed to the
5 Court. If as a result of such mediation, the Parties shall have reached agreement, the
6 Defendants and the Bank shall affirm to the Court that they agree to an award in the
7 agreed-to amount.

8 If the Parties are unable to reach agreement, Plaintiffs may make a motion to
9 the Court seeking an award of attorneys' fees and expenses for the benefits achieved
10 on behalf of Opus on the Derivative Actions. Defendants and the Bank reserve the
11 right to oppose any such motion.

12 The Bank and Defendants will not oppose an application by Plaintiffs for
13 Service Awards of up to \$2,500 each, which shall be paid from the award of
14 attorneys' fees and expenses (the "**Service Awards**").

15 9. Any attorneys' fees and expenses awarded Plaintiffs' counsel by the
16 Court shall be deposited into an escrow account designated by Plaintiffs' counsel
17 within twenty (20) calendar days of the date that the Court enters an order approving
18 the award. The funds deposited into Plaintiffs' Counsel's escrow account may not
19 be distributed until the Court enters a Final Judgment. Plaintiffs' Counsel will
20 allocate the Fee and Expense Award amongst themselves in a manner in which they
21 have agreed. If, and when, as a result of any appeal and/or further proceedings on
22 remand, or successful collateral attack or otherwise, the Fee and Expense Award is
23 overturned, reduced or does not become Final for any reason, or if the Settlement is
24 terminated, not approved by the Court, or otherwise does not become effective
25 pursuant to Paragraph 13 hereof, then, within ten (10) business days after receiving
26 notice from Defendants' Counsel or from a court of appropriate jurisdiction of such
27 event, Plaintiffs' Counsel shall refund to Opus's and Defendants' insurers in an
28 amount consistent with such reversal or modification, the Fee and Expense Award

1 paid to them.

2 **VI. FINAL JUDGMENT APPROVING THE SETTLEMENT**

3 10. At the Final Hearing, Settlement Counsel shall request entry of the
4 Final Judgment, substantially in the form attached hereto as Exhibit C.

5 **VII. RELEASES**

6 11. Upon the Effective Date, Plaintiffs, Opus and all current and former
7 Opus Shareholders, on behalf of themselves, and each of their respective personal
8 representatives, Immediate Family, trustees, heirs, executors, administrators, parent
9 entities, associates, affiliates, predecessors, successors and assigns, and any other
10 Person claiming (now or in the future) to be acting on behalf of any of them, shall be
11 deemed to have, and by operation of the Final Judgment shall have, fully, finally,
12 and forever released, relinquished, settled and discharged all Released Claims
13 against the Released Persons and shall be permanently barred and enjoined from
14 instituting, commencing, participating in, continuing, maintaining, asserting or
15 prosecuting any Released Claim against any of the Released Persons, or assisting
16 any Person in instituting, commencing, participating in, continuing, maintaining,
17 asserting or prosecuting any Released Claim against any of the Released Persons.
18 Nothing herein shall in any way impair or restrict the rights of any of the Parties to
19 enforce the terms of this Stipulation.

20 12. Upon the Effective Date, the Released Persons shall be deemed to have,
21 and by operation of the Final Judgment shall have, fully, finally, and forever
22 released, relinquished, and discharged Plaintiffs and Plaintiffs' Counsel from all
23 claims (including Unknown Claims), arising out of, relating to, or in connection
24 with the defense, institution, prosecution, assertion, settlement, or resolution of the
25 Released Claims. Nothing herein shall in any way impair or restrict the rights of any
26 of the Parties to enforce the terms of this Stipulation.

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1 **VIII. CONDITIONS OF SETTLEMENT; EFFECT OF DISAPPROVAL,**
2 **CANCELLATION OR TERMINATION**

3 13. The Effective Date of this Stipulation, and the Settlement incorporated
4 herein, shall be the date on which all of the following conditions of settlement shall
5 have occurred:

6 a) final approval by the Court of the Settlement, following notice to
7 Opus Shareholders and the Final Hearing;

8 b) entry by the Court of the Final Judgment in all material respects
9 in the form set forth in Exhibit C, and the Final Judgment becoming Final, or, in the
10 event that the Court enters a judgment in a form other than that provided above
11 (“**Alternative Judgment**”) and neither Plaintiffs on the one hand, nor the
12 Defendants on the other, elect to terminate this Settlement, the date that such
13 Alternative Judgment becomes Final;

14 c) if the circumstances described in Paragraphs 144 or 15 occur, the
15 expiration of the time for Plaintiffs on the one hand, or the Defendants on the other,
16 to exercise the termination rights provided in the applicable Paragraph(s) without
17 the termination rights being exercised; and

18 d) filing of the Dillard Motion in accordance with Paragraph 7
19 above agreeing to dismiss the *Dillard* Action with prejudice, and the California
20 State Court’s dismissal of the *Dillard* Action with prejudice.

21 The parties hereto expressly recognize that Settlement pursuant to this
22 Stipulation is expressly conditioned upon the *Dillard* Action being dismissed with
23 prejudice.

24 14. Plaintiffs on the one hand, and Defendants on the other, shall each have
25 the right to terminate the Settlement, and thereby this Stipulation, by providing
26 written notice of their election to do so (“**Termination Notice**”) to all other Parties
27 hereto within thirty (30) calendar days of:

28 (a) the Court’s declining to enter the Preliminary Approval Order in

1 any respect that the terminating Party reasonably and in good faith believes is
2 materially adverse to it;

3 (b) the Court refusing to approve the Settlement as set forth in this
4 Stipulation in any respect that the terminating Party reasonably and in good faith
5 believes is materially adverse to it;

6 (c) the Court's declining to enter the Final Judgment in any respect
7 that the terminating Party reasonably and in good faith believes is materially
8 adverse to it;

9 (d) the date upon which the Final Judgment is modified or reversed
10 by the Court, the Ninth Circuit Court of Appeals or the U.S. Supreme Court in any
11 respect that the terminating Party reasonably and in good faith believes is materially
12 adverse to it; or

13 (e) the date upon which an Alternative Judgment is modified or
14 reversed by the Court, the Ninth Circuit Court of Appeals or the Supreme Court in
15 any respect that the terminating Party reasonably and in good faith believes is
16 materially adverse to it.

17 Notwithstanding anything above, Plaintiffs may not terminate the Settlement
18 based on the amount of attorneys' fees and/or expenses awarded by the Court.

19 15. Defendants shall have the right to terminate this Settlement in the event
20 that Plaintiff Dillard fails to file the Dillard Motion in accordance with this
21 Stipulation or the *Dillard* Action is not dismissed with prejudice.

22 16. In the absence of any of the events enumerated in Paragraphs 14 or
23 155 above, no Party shall have the right to terminate the Stipulation for any reason.

24 17. If the Settlement is terminated by Plaintiffs or Defendants (a
25 "**Termination**"): (a) the Settlement shall be without force and effect upon the rights
26 of the Parties, and none of its terms (other than this Paragraph, Paragraph 9,
27 Paragraph 19, and Paragraph 29) shall be effective or enforceable; (b) the Parties
28 shall revert to their litigation positions immediately prior to the Execution Date and

1 no claims, rights or defenses, whether legal or equitable, of any of the Parties hereto
2 that existed prior to executing this Stipulation shall be diminished or prejudiced in
3 any way; and (c) within ten (10) business days from the date of such Termination,
4 Plaintiffs' Counsel shall return to Opus's and Defendants' insurers any and all sums
5 paid pursuant to Paragraph 9 above. The termination rights set forth herein are not
6 intended to limit or impair the Parties' rights under the law of contracts of the State
7 of California with respect to any breach of this Settlement.

8 **IX. NO ADMISSIONS**

9 18. The Parties intend the Settlement as described herein to be a final and
10 complete resolution of all disputes between them with respect to the Derivative
11 Actions and to compromise claims that are contested. Entry into this Settlement
12 shall not be deemed an admission by any party hereto as to the merits of any claim
13 or defense or any allegation made in any of the Derivative Actions.

14 19. This Stipulation, whether or not it is consummated and whether or not
15 it is terminated, any of its provisions, any negotiations, proceedings or agreements
16 relating to the Stipulation and the Settlement, all matters arising in connection with
17 such negotiations, proceedings or agreements, and all acts performed or documents
18 executed pursuant to or in furtherance of this Stipulation:

19 a) shall not be offered or received against any of the Released
20 Persons as evidence of a presumption, concession, or admission of any kind;

21 b) shall not be offered or received against any of the Released
22 Persons as evidence of an admission by any of those Released Persons with respect
23 to the truth of any fact alleged in any of the Derivative Actions or the validity of any
24 Released Claim, or the deficiency of any defense that has been or could have been
25 asserted, or of any liability, negligence, fault, or wrongdoing of the Released
26 Persons;

27 c) shall not be offered or received against the Released Persons as
28 evidence of any fault, misrepresentation, omission or other actionable conduct with

1 respect to any statement or written document approved or made by any of the
2 Released Persons;

3 d) shall not be offered or received against the Released Persons as
4 evidence of any liability, negligence, fault or wrongdoing, or in any way referred to
5 for any other reason as against any of the Released Persons, in any other civil,
6 criminal or administrative action or proceeding, other than such proceedings as may
7 be necessary to effectuate the provisions of this Stipulation; provided, however, that
8 if this Stipulation is approved by the Court, the Released Persons may refer to it to
9 effectuate the release of Released Claims and other liability protections granted
10 them hereunder;

11 e) shall not be construed against any of the Released Persons as an
12 admission or concession that the consideration to be given hereunder represents the
13 amount that could be or would have been recovered after trial;

14 f) shall not be construed as or received in evidence as an admission,
15 concession or presumption against Plaintiffs or Plaintiffs' Counsel that any of their
16 claims are without merit, or that any defenses asserted by the Defendants have any
17 merit; and

18 g) shall not, in the event of a Termination, be used by any Party for
19 any purpose in any trial in any of the Derivative Actions.

20 Any Party may file or introduce this Stipulation and/or the Final Judgment in
21 any action or proceeding that may be brought to enforce the terms of this Stipulation
22 and/or the Final Judgment, or any action or proceeding related to rights or claims of
23 Defendants relating to indemnification and/or advancement in connection with the
24 Derivative Actions.

25 **X. MISCELLANEOUS PROVISIONS**

26 20. The Parties: (a) acknowledge that it is their intent to consummate the
27 Settlement; and (b) agree to cooperate to the extent reasonably necessary to
28 effectuate and implement all terms and conditions of the Stipulation and to exercise

1 their best efforts to accomplish the foregoing terms and conditions of the
2 Stipulation.

3 21. The Stipulation may be amended or modified only by a written
4 instrument signed by or on behalf of all Parties or their respective successors-in-
5 interest. The Parties reserve the right, upon the agreement of all of them and subject
6 to the Court's approval, to make any reasonable extensions of time or modifications
7 to the Exhibits that might be necessary to carry out any of the provisions of this
8 Stipulation.

9 22. The Stipulation, including its Exhibits, constitutes the entire agreement
10 among the parties hereto and no representations, warranties, or inducements have
11 been made to any party concerning the Stipulation other than the representations,
12 warranties, and covenants contained and memorialized in such documents. Any and
13 all prior or contemporaneous discussions, negotiations, agreements, commitments,
14 and understandings related thereto are superseded hereby. It is understood by the
15 Parties that, except for the matters expressly represented herein, the facts or law
16 with respect to which this Stipulation is entered into may turn out to be other than,
17 or different from, the facts now known to each party or believed by such party to be
18 true; each party therefore expressly assumes the risk of the facts or law turning out
19 to be so different, and agrees that this Stipulation shall be in all respects effective
20 and not subject to termination by reason of any such different facts or law. Except as
21 otherwise provided herein, each Party shall bear its own costs.

22 23. The Stipulation may be executed in one or more counterparts. All
23 executed counterparts and each of them shall be deemed to be one and the same
24 instrument. A complete set of executed counterparts shall be filed with the Court.
25 The Parties agree that facsimile or scanned signatures shall have the same force and
26 effect as original signatures.

27 24. The Stipulation shall be binding upon, and inure to the benefit of, the
28 heirs, executors, administrators, trustees, successors and assigns of the Parties,

1 including any corporation or other entity into or with which any party merges,
2 consolidates, or reorganizes.

3 25. The Court shall retain jurisdiction with respect to implementation and
4 enforcement of the terms of the Stipulation, and all Parties and their counsel hereto
5 submit to the jurisdiction of the Court for purposes of implementing and enforcing
6 the Settlement embodied in the Stipulation.

7 26. Nothing in this Stipulation, Settlement, or the negotiations or
8 proceedings relating to the foregoing is intended to or shall be deemed to constitute
9 a waiver of any applicable privilege or immunity, including, without limitation, the
10 accountants' privilege, the attorney-client privilege, the joint defense privilege, or
11 the work-product privilege, and all information transmitted between Plaintiffs'
12 Counsel and Defendants' Counsel in connection with this Settlement shall be
13 inadmissible in any proceeding in any federal or state court or other tribunal or
14 otherwise, in accordance with Rule 408 of the Federal Rules of Evidence as if such
15 Rule applied in all respects in any such proceeding or tribunal.

16 27. This Stipulation and the Settlement contemplated by it, and all disputes
17 arising out of or relating to the Stipulation and Settlement, shall be construed and
18 enforced in accordance with, and governed by, the substantive laws and procedural
19 rules of the State of California without giving effect to conflicts of law principles,
20 except to the extent that federal law requires that federal law governs. Any dispute
21 relating to this Stipulation or the Settlement shall be brought exclusively in the U.S.
22 District Court for the Central District of California.

23 28. This Stipulation should not be construed more strictly against one Party
24 than another merely by virtue of the fact that it, or any part of it, may have been
25 prepared by counsel for one of the Parties, it being recognized that the Stipulation is
26 the result of arm's length negotiations between the Parties, and all Parties have
27 contributed substantially and materially to the preparation of the Stipulation.

28 29. All agreements by, between or among the Parties, their counsel and

1 their other advisors as to the confidentiality of information exchanged between or
2 among them shall remain in full force and effect, and shall survive the execution and
3 any termination of this Stipulation and the final consummation of the Settlement, if
4 finally consummated.

5 30. In the event any proceedings by or on behalf of Opus, whether
6 voluntary or involuntary, are initiated under any chapter of the U.S. Bankruptcy
7 Code, including any act of receivership, asset seizure, or similar federal or state law
8 action (“**Bankruptcy Proceedings**”), the Parties agree to use their reasonable best
9 efforts to obtain all necessary orders, consents, releases, and approvals for
10 effectuation of the Stipulation and Court approval of the Settlement in a timely and
11 expeditious manner, to the extent consistent with applicable law. If any Bankruptcy
12 Proceedings by or on behalf of Opus are initiated prior to the payment of the Fee
13 and Expense Award, the Settling Parties agree that all dates and deadlines in the
14 Derivative Actions, if any, or any dates and deadlines associated with the appeal of
15 the Derivative Actions, if any, will be extended for such periods of time as are
16 necessary to attempt to obtain necessary orders, consents, releases, and approvals
17 from the bankruptcy court to carry out the terms and conditions of this Settlement,
18 to the extent consistent with applicable law.

19 31. Except in the event of termination of this Settlement, Plaintiffs, Opus
20 and Defendants agree not to assert under Rule 11 of the Federal Rules of Civil
21 Procedure or any similar law, rule or regulation, that the Derivative Actions were
22 brought or defended in bad faith or without a reasonable basis. The Parties agree
23 that the terms of this Settlement were negotiated at arms’ length and in good faith by
24 the Parties and reflect a settlement that was reached voluntarily based upon adequate
25 information and after consultation with their respective experienced legal counsel.

26 32. Any written notice required pursuant to or in connection with this
27 Stipulation shall be addressed to the Parties’ counsel as designated and identified
28 below, and sent by both email and overnight mail.

1 33. The waiver by one Party of any breach of this Stipulation by any other
2 Party shall not be deemed a waiver of any other prior or subsequent breach of this
3 Stipulation.

4 34. The captions contained in this Stipulation are inserted only as a matter
5 of convenience and in no way define, limit, extend or describe the scope of the
6 Stipulation or the intent of any provision.

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

9
10 IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to
11 be executed, by their duly authorized attorneys as of the date set forth below.

12
13 Dated: January 29, 2018

14
15 By: Thomas J. McKenna
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23 *Counsel for Plaintiff Melvyn Klein*

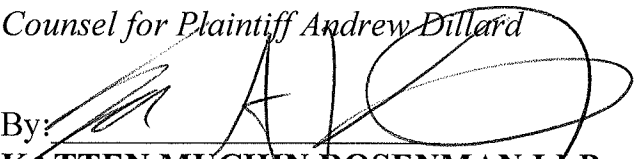
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