

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re POLYURETHANE FOAM ANTITRUST LITIGATION
This document relates to: ALL DIRECT PURCHASER CLASS CASES

MDL Docket No. 2196

Index No. 10 MD 2196 (JZ)

**LONG-FORM SETTLEMENT AGREEMENT BETWEEN THE DIRECT PURCHASER
CLASS AND DEFENDANT FFP HOLDINGS, LLC**

THIS SETTLEMENT AGREEMENT is made and entered into as of the 4th day of May 2015, by and between (1) Plaintiffs Ace Foam, Inc., Adams Foam Rubber Co., a/k/a Adams Foam Rubber Company, Inc., Cambridge of California, Inc., GCW Carpet Wholesalers, Inc. t/a Floors USA, Foam Factory, Inc., J&S Packaging, Inc., VFP Acquisitions d/b/a Vanguard Foam and Packaging Company (collectively, “Direct Purchaser Class Plaintiffs”) and the Direct Purchaser Class, individually and on behalf of the Direct Purchaser Class and (2) Defendant FFP Holdings, LLC (f/k/a Flexible Foam Products, Inc.) (“FFP”), parties in the above-captioned case. The Direct Purchaser Class Plaintiffs, Direct Purchaser Class, Direct Purchaser Settlement Class, and FFP are referred to collectively as the “Parties.”

WHEREAS, the Direct Purchaser Class Plaintiffs, on behalf of themselves and on behalf of the Direct Purchaser Class, allege in the Class Action as defined below, among other things, that FFP participated in a conspiracy with other defendants in this litigation and unnamed co-conspirators, the purpose and effect of which was to fix prices for flexible polyurethane foam and flexible polyurethane foam products which terms are defined in the Consolidated Amended Complaint (collectively, “flexible polyurethane foam”);

WHEREAS, FFP enters into this Agreement without admission of any liability, and has denied and continues to deny all allegations of wrongdoing made in the Class Action and has asserted and would assert defenses to Direct Purchaser Class Plaintiffs' Complaint and does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged in the Class Action;

WHEREAS, Direct Purchaser Class Plaintiffs' Co-Lead Counsel have been appointed to represent the Direct Purchaser Class;

WHEREAS, FFP acknowledges that it is appropriate, solely as part of this Settlement, and subject to final approval, to stipulate to the certification of the Direct Purchaser Settlement Class, as defined below, and that the prerequisites of Fed. R. Civ. P. 23 have been satisfied here;

WHEREAS, Direct Purchaser Class Plaintiffs and FFP wish to resolve all claims asserted and all claims that could have been asserted on behalf of the Direct Purchaser Class Plaintiffs, the Direct Purchaser Class, and the Direct Purchaser Settlement Class in the Class Action as set forth herein;

WHEREAS, Direct Purchaser Class Plaintiffs and FFP have engaged in arm's-length negotiations of the terms of this Agreement, as defined below;

WHEREAS, Direct Purchaser Class Plaintiffs and FFP agree, as more fully described herein, to provide certain cooperation with Direct Purchaser Class Plaintiffs' Co-Lead Counsel;

WHEREAS, the Direct Purchaser Class Plaintiffs have concluded, after substantial fact and expert discovery and investigation of the facts and after considering the circumstances of the Class Action and the applicable law, as well as the value of FFP's cooperation to the Direct Purchaser Class Plaintiffs in seeking relief in the Class Action, that it is in the best interests of the Direct Purchaser Class and Direct Purchaser Settlement Class to enter into this Agreement

with FFP to avoid the uncertainties of further complex litigation, and to obtain the benefits described herein for the Direct Purchaser Class and Direct Purchaser Settlement Class, and, further, that this Settlement is fair, reasonable, adequate, and in the best interests of Direct Purchaser Class Plaintiffs, the Direct Purchaser Class, and the Direct Purchaser Settlement Class;

WHEREAS, FFP wishes to avoid the costs, expenses, and uncertainties of this complex litigation;

NOW THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration herein, it is agreed by and among the Parties that the Class Action be settled and compromised, and dismissed on the merits with prejudice as to FFP, subject to Court approval:

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement.
 - a. “Agreement” means this Settlement Agreement.
 - b. “Binding Term Sheet Agreement” means the Binding Term Sheet Between the Direct Purchaser Class and FFP Holdings, LLC, entered into on March 22, 2015.
 - c. “Class Action” means the Direct Purchaser Class portion of the consolidated proceedings entitled, *In re: Polyurethane Foam Antitrust Litigation*, No. 1:10-md-02196-JZ, pending in the United States District Court for the Northern District of Ohio.
 - d. “Class Member” means any person or entity that is a member or putative member of the Direct Purchaser Settlement Class defined in paragraph 1(l) that has not timely and validly excluded itself from the Direct Purchaser Settlement Class in accordance

- with the procedure to be established by the Court and in accordance with Fed. R. Civ. P. 23.
- e. “Class Period” means January 1, 1999 to July 31, 2010.
 - f. “Co-Lead Counsel” shall mean William A. Isaacson, Esquire, of Boies Schiller & Flexner LLP, and Stephen R. Neuwirth, Esquire, of Quinn Emanuel Urquhart & Sullivan, LLP, as appointed to represent the Direct Purchaser Class, including the Direct Purchaser Class Plaintiffs.
 - g. “Complaint” means the Direct Purchaser Class Plaintiffs’ Consolidated Amended Class Action Complaint filed in the Class Action on February 28, 2011, on behalf of the Direct Purchaser Class and Direct Purchaser Class Plaintiffs.
 - h. “Court” means the United States District Court for the Northern District of Ohio.
 - i. “Days” means calendar days.
 - j. “Defendants” means all of the defendants in the Class Action.
 - k. “Direct Purchaser Class” means that class of direct purchasers of flexible polyurethane foam, including the Direct Purchaser Class Plaintiffs, as certified by the Court pursuant to Order dated April 16, 2014 (at Docket Entry 1115), defined as all persons or entities that purchased flexible polyurethane foam (but excluding molded foam) directly from Defendants and/or their alleged co-conspirators from January 1, 1999 to July 31, 2010 for purchase from or delivery into the United States. Excluded from the Direct Purchaser Class are governmental entities, Defendants, their alleged co-conspirators, and their officers, employees, agents, representatives, parents, subsidiaries, and affiliates. Also excluded from the Direct Purchaser Class are Direct Purchaser class members that timely and validly opted out of the Direct Purchaser

Class on or before January 26, 2015 and who were deemed by the Court to have validly opted out of the Direct Purchaser Class despite an untimely exclusion request (Docket Entry 1540).

- l. “Direct Purchaser Settlement Class” shall have the same definition as the Direct Purchaser Class, except that the Direct Purchaser Settlement Class shall not include members or putative members of the Direct Purchaser Class that timely and validly elect to be excluded from the Direct Purchaser Settlement Class.
- m. “Effective Date” means the date this Agreement becomes final and non-appealable pursuant to its terms.
- n. “Escrow Account” means the escrow account established to receive and maintain funds contributed on behalf of FFP for the benefit of the Direct Purchaser Settlement Class.
- o. “Escrow Agreement” means that certain agreement by and among FFP, a bank designated to hold the Escrow Account, and Direct Purchaser Class, pursuant to which the Escrow Account is established and funded.
- p. “Final Approval” means the first date upon which both of the following conditions shall have been satisfied with respect to this Agreement and the Settlement:
 - i. Entry has been made of the final judgment of dismissal with prejudice as to FFP substantially in a form to be agreed to by the Parties; and
 - ii. Either (1) thirty days have passed from the date of the Court’s entry of final judgment as described in subparagraph (i) hereof with no notice of appeal having been filed with the Court; or (2) such final judgment has been affirmed by a mandate issued by any reviewing court to which any appeal has been taken,

and any further petition for review (including certiorari) has been denied, and the time for any further appeal or review of the Court's judgment has expired.

- q. "Final Approval Order" means an order finally approving this Agreement and the Settlement.
- r. "FFP Released Parties" refers jointly and severally, individually and collectively to FFP and any of its current or former parents, subsidiaries, affiliates and/or predecessors and successors and each of their respective current or former officers, directors, managers, employees, owners and insurers (including Flexible Foam Products, Inc.). As used in this paragraph, "affiliates" means entities controlling, controlled by or under common control with FFP Holdings, LLC.
- s. "Preliminary Approval" means a ruling by the Court to preliminarily approve this Agreement and the Settlement pursuant to Federal Rule of Civil Procedure 23(e).
- t. "Released Claims" shall have the meaning set forth in paragraph 11 of this Agreement.
- u. "Releasing Parties" shall refer individually and collectively to the Direct Purchaser Class, Direct Purchaser Settlement Class and the Direct Purchaser Class Plaintiffs, on behalf of themselves and any person or entity claiming by or through them as an heir, administrator, devisee, predecessor, successor, parent, subsidiary, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, assignee, agent, employee, contractor, attorney, or insurer. As used in this paragraph, "affiliate" means any person controlling, controlled by or under common control with any other Releasing Party.

- v. “Settlement” means the settlement of the Class Action with respect to the FFP Released Parties, as set forth in this Agreement.
 - w. “Settlement Funds” means the payment made by FFP pursuant to this Agreement, including any interest accrued on such payments.
2. Reasonable Best Efforts to Effectuate this Settlement. The Parties shall recommend approval of this Agreement by the Court. Subject to the approval of the Court, the Parties will undertake their reasonable best efforts, including all steps and efforts contemplated by this Agreement and such other steps and efforts which are consistent with this Agreement that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Agreement.
 3. Motion for Preliminary Approval. As soon as practicable (and not later than 7 days) after the execution of this Agreement, the Direct Purchaser Class shall submit to the Court a motion for preliminary approval of this Agreement and certification of the Direct Purchaser Settlement Class. The Parties shall take all reasonable actions as may be necessary to obtain preliminary approval of the Settlement and certification of the Direct Purchaser Settlement Class. FFP shall have a reasonable opportunity to review and comment on all motion papers in support of the Settlement in advance of filing. The parties agree that no confidential information FFP provided in connection with the Parties’ settlement discussions shall be filed or disclosed to any person without the express written consent of FFP. FFP will not unreasonably withhold such consent, and it shall not unreasonably prevent the Direct Purchaser Class from providing sufficient information to the Court to explain the basis for the Direct Purchaser Class’s assessment that FFP was unable to pay

more in settlement. Until the Direct Purchaser Class files a motion for preliminary approval of this Agreement, the Settlement Amount shall be treated as strictly confidential.

4. Motion for Final Approval and Entry of Final Judgment. If the Court preliminarily approves this Agreement, the Direct Purchaser Class shall submit a motion for final approval of this Agreement by the Court, after notice to the Direct Purchaser Class, which notice period shall be no less than 60 days, and shall seek entry of an order and final judgment (the “Final Approval Order”):
 - a. finally approving the Settlement as being a fair, reasonable, and adequate settlement for the Direct Purchaser Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing the execution of the Settlement pursuant to the terms and conditions set forth in this Agreement;
 - b. dismissing the Complaint and the Class Action with prejudice as to FFP without costs or attorneys’ fees;
 - c. discharging and releasing the FFP Released Parties from all Released Claims;
 - d. reserving continuing and exclusive jurisdiction over the Settlement for all purposes – including its administration and execution and disputes that may arise concerning FFP’s cooperation obligations; and
 - e. determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to the FFP Released Parties shall be final and appealable and entered forthwith.

The Parties shall take all reasonable steps to obtain final approval of the Settlement.

5. Escrow Account. The Escrow Account has been established and shall be administered by the Direct Purchaser Class under the Court’s continuing supervision and control pursuant to

the Escrow Agreement. No disbursements of funds from the Escrow Account will occur without order of the Court.

6. Settlement Consideration. FFP agrees to pay the sum of \$16,000,000 (sixteen million United States dollars) (the “Settlement Amount”). The Settlement Amount represents all sums owed and payable by FFP pursuant to this Agreement, including payment of damages, attorneys’ fees, incentive fees, notice costs, costs of administration and costs of any kind. In accordance with the timeframes specified below, FFP shall wire the Settlement Amount, in immediately available funds, into the Escrow Account, which Settlement Amount and Escrow Account will be the property of and for the sole benefit of the Direct Purchaser Settlement Class. It is agreed and understood that the selection of the Escrow Account shall be within the sole discretion of the Direct Purchaser Class. The Settlement Amount shall be paid out as follows:
 - a. A payment shall be paid into the Escrow Account on behalf of FFP in an amount equal to \$16,000,000 (sixteen million United States dollars) within 15 days of the execution of the Binding Term Sheet Agreement by the Parties.
 - b. Until this Agreement becomes final and non-appealable pursuant to its terms, no portion of the Settlement Amount can be used for any purpose, except that up to \$500,000 of the Settlement Amount can be used for payment of any court-approved class notice expenses. Any class notice expenditures paid out of the Settlement Amount shall not be refundable regardless of whether the Court finally approves this Agreement.
7. Qualified Settlement Fund. The Escrow Account is intended by the Parties to be treated as a “qualified settlement fund” for federal income tax purposes pursuant to Treas. Reg.

§1.468B-1, and to that end, the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment.

At the request of FFP, a “relation back election” as described in Treas. Reg. §1.468B-1(j) shall be made so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the Parties shall take all appropriate actions as may be necessary to this end. FFP shall not be responsible for the filing of any tax returns or payment of any taxes or expenses connected to the qualified settlement fund (including, without limitation, taxes, interest and penalties relating to all income and/or gain earned by the fund). In addition, FFP makes no representations or warranties regarding the tax consequences to any person of this Settlement or the receipt of the payments hereunder.

8. Class Action Notice and Administrative Costs. Notice of this Settlement to the Direct Purchaser Class may be combined with notice of other settlements that the Direct Purchaser Class and/or Direct Purchaser Settlement Class may reach with other Defendants. It is understood that the content of such notices will be as reasonably agreed by the Parties and approved by the Court. FFP shall use its reasonable best efforts to provide the names and addresses of all known members of the Direct Purchaser Class who were purchasers of flexible polyurethane foam during the Class Period (in electronic format when available). Prior to Final Approval, and with Court approval, reasonable costs and expenses up to \$500,000 dollars associated with printing, mailing, and publication of such notice and, to the extent expressly authorized in the Escrow Agreement, for payment of income taxes, and certain fees and expenses of the escrow agent, may be paid out of the Settlement Funds on a pro rata basis with funds contributed by other settling Defendant(s).
9. Distribution of Settlement Funds. Members of the Direct Purchaser Settlement Class who have not validly excluded themselves from the Settlement shall be entitled solely to the

Settlement Funds for settlement and satisfaction against the FFP Released Parties for the Released Claims, and shall not be entitled to any other payment or relief from FFP. Except as provided by order of the Court, no Class Member or Releasing Party shall have any interest in the Settlement Funds or any portion thereof. The Direct Purchaser Class and their counsel will be reimbursed and indemnified solely out of the Settlement Funds for all expenses including, but not limited to, the costs of notice of the Settlement to the Direct Purchaser Class. FFP shall not be liable for any costs, fees, or expenses of any of Direct Purchaser Class' respective attorneys, experts, advisors, or representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Funds.

10. Cooperation. FFP agrees to make up to two of FFP's former employees available to appear at trial without subpoena, as needed on not less than five days' prior written notice to counsel, and to provide written declarations or testimony at deposition, for the purposes of authenticating documents or information produced in the litigation by FFP.
11. Release. Upon Final Approval, each Direct Purchaser Class Plaintiff, Class Member and Releasing Party (other than a Class Member, if any, that has validly excluded itself from the Direct Purchaser Settlement Class) shall release, hold harmless and forever discharge the FFP Released Parties, jointly and severally, from any and all causes of action, equitable or legal claims, suits, damages, losses, penalties, liabilities, and remedies of any kind whatsoever, including costs of any kind and attorneys' fees, whether class, individual or otherwise in nature, or expenses or costs of any kind, in law or equity, known or unknown, suspected or unsuspected, accrued or unaccrued, asserted or unasserted (including claims against FFP Released Parties based upon any theory of successor liability), arising out of or related to the Class Action, including, without limitation, the allegations

in the Complaint, from the beginning of time to Final Approval ("Released Claims"). Released Claims also include, but are not limited to, all claims that were or could have been asserted by the Direct Purchaser Class Plaintiffs, Direct Purchaser Class or the Direct Purchaser Settlement Class in the Class Action and any claim that could be or could have ever been asserted in relation to the facts alleged in the Complaint. The Direct Purchaser Class Plaintiffs, Direct Purchaser Class, Class Members, and other Releasing Parties further agree that they will not file any other suit against the FFP Released Parties arising out of or relating to the Released Claims or assist others in doing so. Direct Purchaser Class Plaintiffs, Direct Purchaser Class, and Co-Lead Counsel acknowledge that FFP considers it to be a material term of this Agreement that the provisions of this paragraph will bind the Direct Purchaser Class and all Class Members (other than a Class Member, if any, that has validly excluded itself from the Direct Purchaser Settlement Class). The release of the claims against FFP will be conditioned upon, and will not be effective until the Effective Date. For the avoidance of doubt, this release is intended to cover any Released Claim against the FFP Released Parties in In re Polyurethane Foam Antitrust Litigation, MDL Dkt. No. 2196 for sales of polyurethane foam and polyurethane foam products by Flexible Foam Products, Inc., its subsidiaries and affiliates and their successors.

12. Reservation of Claims. The Parties intend by this Agreement to release only the FFP Released Parties with respect to the Released Claims. The Parties specifically do not intend this Agreement, or any part hereof or any other aspect of the proposed Settlement, to compromise or otherwise affect in any way any rights the Direct Purchaser Class, Direct Purchaser Settlement Class, and any Class Member have or may have against any other

person, firm, association, or corporation whatsoever, including, but not limited to the defendants in the Class Action, other than the FFP Released Parties. The release set forth in paragraph 11 above is not intended to and shall not release any claims other than the Released Claims.

13. FFP Right to Argue No Need for Additional Opt Out Opportunity. Nothing within this Agreement is intended to preclude FFP from arguing that it is not necessary to provide Direct Purchaser Class members with a new opportunity for exclusion in connection with the Settlement. FFP has not agreed that any new opportunity for exclusion shall be afforded to members of the Direct Purchaser Class and such opportunity shall only be afforded on terms (if any) established and authorized by the Court.
14. Opt Out Protection. This Agreement is subject to rescission at the sole option of FFP within 10 days after the end of the period permitting putative class members to opt out of the Direct Purchaser Settlement Class (the “Opt Out Period”) if one or more entities whose purchases in the aggregate represent a certain percentage of FFP total sales from the class period, as identified in Leitzinger’s Rebuttal Exhibit 7, opt out of the Direct Purchaser Settlement Class, but excluding from such calculation of the opt out percentage the class members that to date have filed individual actions, opted out of at least one of the settlements with Vitafoam, Domfoam, Valle Foam, Carpenter, and Leggett & Platt, and/or opted out of the Direct Purchaser Class (“Termination Option”). The percentage of FFP total sales represented by entities opting out of the Direct Purchaser Settlement Class that is necessary to trigger the Termination Option is identified in a filing being submitted concurrently herewith to be made *in camera* and under seal with the Court. The Direct Purchaser Class Plaintiffs and Co-Lead Counsel agree to take no actions, directly or

indirectly, designed or intended to influence any member or putative member of the Direct Purchaser Class to opt out of the Direct Purchaser Settlement Class, or to assist others in doing so.

15. Provision in Case of “Opt-ins”. The parties acknowledge the Court has authority to permit a person or entity who previously opted out of the Direct Purchaser Class, to subsequently withdraw their notice of exclusion or otherwise elect to opt back in to the Direct Purchaser Class or the Direct Purchaser Settlement Class; and that FFP or another party may urge the Court to authorize persons to opt back in. The Direct Purchaser Class Plaintiffs and Direct Purchaser Class make no representation in this Agreement regarding whether or not previous class members should have any opportunity to opt back into the Direct Purchaser Class. However, in the event the Court authorizes persons or entities who previously opted out of the Direct Purchaser Class, to subsequently withdraw their notice of exclusion or otherwise elect to opt back in to the Direct Purchaser Class or the Direct Purchaser Settlement Class, then the definitions of “Direct Purchaser Class” and “Direct Purchaser Settlement Class” respectively shall be deemed for purposes of this Agreement to include any such persons or entities who subsequently validly withdraw their notice of exclusion or otherwise validly elect to opt back in to the Direct Purchaser Class or the Direct Purchaser Settlement Class, respectively.
16. Effect of Disapproval and Rescission Under Paragraph 14. If the Court does not certify the Direct Purchaser Settlement Class as defined in this Agreement, or if the Court does not approve this Agreement in all material respects, or if the Court does not enter a final judgment as provided for in paragraph 4, or if any judgment approving this Agreement is

set aside on appeal or if FFP rescinds the Agreement pursuant to paragraph 14, then this Agreement may be cancelled and terminated:

- a. solely by FFP pursuant to paragraph 14, or
- b. otherwise by FFP or the Direct Purchaser Class Plaintiffs on behalf of the Direct Purchaser Settlement Class.

If cancelled and terminated, this Agreement shall become null and void, and the Settlement Funds, net of escrow fees and taxes, shall be returned to FFP in accordance with the Escrow Agreement within 10 days of such termination. The Parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Agreement.

17. Consent to Jurisdiction. FFP and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of paragraph 11, including but not limited to, any suit, action, or proceeding in which the provisions of paragraph 11 are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of or relating to this Agreement. In the event that the provisions of paragraph 11 are asserted by any FFP Released Party as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such FFP Released Party shall be entitled to a stay of that suit, action, or proceeding until the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on such

provisions. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, the Class Members and FFP irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the *in personam* jurisdiction of the Court. Nothing shall be construed as a submission to jurisdiction for any purpose other than enforcement of this Agreement.

18. Resolution of Disputes and Retention of Jurisdiction. Any disputes between FFP and any Class Member concerning this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain jurisdiction over the implementation, enforcement, and administration of this Agreement.
19. Costs Relating to Administration. FFP shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Funds.
20. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, Class Members, the Releasing Parties, and the FFP Released Parties. Without limiting the generality of the foregoing, upon certification of the Direct Purchaser Settlement Class and Final Approval of the Settlement, each and every covenant and agreement herein by the Direct Purchaser Class Plaintiffs, Direct Purchaser Class, and Direct Purchaser Settlement Class shall be binding upon all Class Members and Releasing Parties (other than those, if any, who have validly excluded themselves from the Direct Purchaser Class and Direct Purchaser Settlement Class).
21. Sole Remedy. This Agreement provides the sole and exclusive remedy for any and all Claims released against any FFP Released Party, and upon entry of the final judgment

order by the Court, the Releasing Parties shall be forever barred from initiating, asserting, maintaining, or prosecuting any and all Released Claims against any FFP Released Party.

22. No Third-Party Beneficiaries. Except as expressly provided in this Agreement, this Agreement does not create, and shall not be construed as creating, any rights enforceable by any person, partnership, corporation, or other entity that is not a party to this Agreement.
23. Authorization to Enter this Agreement. FFP covenants and represents that the undersigned representative of FFP is fully authorized to enter into and to execute this Agreement on behalf of FFP. The Direct Purchaser Class' Co-Lead Counsel represent that they were fully authorized to conduct settlement negotiations with defense counsel on behalf of the Direct Purchaser Class and putative Direct Purchaser Settlement Class and are fully authorized to enter into and execute the Agreement on behalf of the Direct Purchaser Class and Direct Purchaser Settlement Class. The Parties further acknowledge that this Agreement represents the entire agreement by and between them and that each makes no other representation or warranty upon which the other can rely other than as stated herein. This Agreement supersedes the Binding Term Sheet Agreement entered by the Parties.
24. Notices. All notices under this Agreement shall be in writing. Each such notice shall be given either by (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier and, in the case of either (a), (b) or (c) shall be addressed, if directed to Direct Purchaser Class Plaintiffs, Direct Purchaser Class, Direct Purchaser Settlement Class, or any Class Member, to:

William A. Isaacson, Esq.
Boies, Schiller & Flexner LLP
5301 Wisconsin Avenue, NW
Washington, DC 20015
Phone: 202-237-5607
Fax: 202-237-6131

Stephen R. Neuwirth
Quinn Emanuel Urquhart & Sullivan LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Phone: 202-849-7165
Fax: 212-849-7100

if directed to FFP:

Larry A. Mackey
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204
Phone: 317-231-7236
Fax: 317-231-7433

or such other address as the Direct Purchaser Class' Co-Lead Counsel or FFP may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

25. No Admission. Whether or not this Agreement becomes final or is terminated pursuant to paragraph 14 or 16 hereof, the Parties expressly agree that this Agreement and its contents, and any and all statements, negotiations, documents, and discussions associated with it, are not and shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability, fault, or wrongdoing by the FFP Released Parties, or of the truth of any of the claims or allegations made in the Class Action, or an admission that the Class Action may or may not be certified as a class action for any purpose other than the settlement class contemplated by this Agreement. Except in any motion to approve the Settlement or an action to enforce or interpret the terms of this Agreement, the Parties shall not use or otherwise seek to introduce evidence of the Agreement in the Class Action or in any other action or proceeding. FFP has denied, and continues to deny, any wrongdoing or liability. Nothing in this Agreement shall affect the application of Federal Rule of Evidence 408.


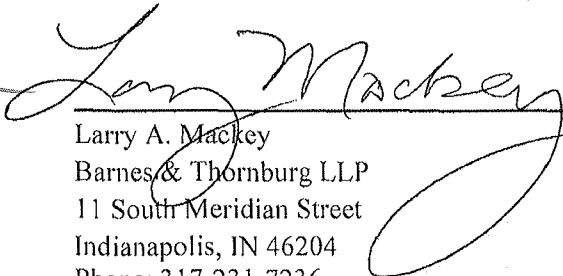
26. Intended Beneficiaries. No provision of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not the Direct Purchaser Class, Direct Purchaser Settlement Class, a Class Member, member of the Direct Purchaser Class, a FFP Released Party, or the Direct Purchaser Class' Co-Lead Counsel (on behalf of the Direct Purchaser Class and Direct Purchaser Settlement Class and with respect to fees and disbursements to be paid from the Settlement Fund pursuant to Court order).
27. Additional Release of California Civil Code Section 1542. The Releasing Parties waive any actual or perceived benefit of California Civil Code Section 1542 ("Section 1542"), which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The provisions of the Release set forth above in paragraph 11 shall apply according to their terms, regardless of provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. The Releasing Parties also hereby expressly waive and relinquish any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the Release set forth above in paragraph 11, including all claims that any Releasing Party does not know or suspect to exist in its, his or her favor at the time of the release of the FFP Released Parties, and claims which, if known by any Releasing Party, might have affected its, his or her decision not to object to the Settlement or opt out of the Direct Purchaser Settlement Class.
28. No Party is the Drafter. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

29. Choice of Law. All terms of this Agreement and the other documents contemplated herein shall be governed by and interpreted according to the substantive laws of the State of Ohio, without regard to its choice of law or conflict of laws principles.
30. Amendment and Waiver. This Agreement shall not be modified in any respect except by a writing executed by the Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any particular breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement. This Agreement does not waive or otherwise limit the Parties' rights and remedies for any breach of this Agreement. Any breach of this Agreement may result in irreparable damage to a Party for which such Party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that the Parties may immediately seek enforcement of this Agreement by means of specific performance or injunction, without the requirement of posting a bond or other security.
31. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. Facsimile or Electronic Mail signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement and filed with the Court.
32. Integrated Agreement. This Agreement comprises the entire agreement between the Parties and the terms of this Agreement are contractual and are not a mere recital. The Parties agree that this Agreement may be modified only by a written instrument signed by the Parties and that no Party will assert any claim against another based on any alleged

agreement affecting or relating to the terms of this Agreement not in writing and signed by the Parties.

IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Agreement on the date first above written.

Dated: May 4, 2015

 _____ William A. Isaacson, Esq. BOIES, SCHILLER & FLEXNER LLP 5301 Wisconsin Avenue, NW Washington, DC 20015 Phone: 202-237-5607 Fax: 202-237-6131	 _____ Larry A. Mackey Barnes & Thornburg LLP 11 South Meridian Street Indianapolis, IN 46204 Phone: 317-231-7236 Fax: 317-231-7433
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Stephen R. Neuwirth
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*Co-Lead Counsel for the Direct Purchaser
Class Plaintiffs*

agreement affecting or relating to the terms of this Agreement not in writing and signed by the Parties.

IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Agreement on the date first above written.

Dated: May 4, 2015

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