

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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: Civil Action No. 12 Civ. 1845 (PGG)  
: IN RE: NEVSUN RESOURCES LTD.  
: -----X

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (the “Stipulation”), dated as of May 1, 2014, is made and entered by and among (i) Craig F. Piazza and Scott F. Colebourne (collectively, “Plaintiffs”), on behalf of themselves and the Class (as hereinafter defined); and (ii) Defendants Nevsun Resources Ltd., Clifford T. Davis, Peter J. Hardie, and Scott Trebilcock (collectively, “Defendants”) by and through their respective counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure. The settlement and compromise of the captioned consolidated litigation (the “Action”) as provided for herein (the “Settlement”) is contingent upon, *inter alia*, approval of this Stipulation by the United States District Court for the Southern District of New York (the “District Court”) and the occurrence of the Effective Date (as defined below). Subject to the terms expressly provided herein, this Settlement is intended to fully, finally, and forever resolve, discharge, settle and release all Released Claims (as defined herein).

**WHEREAS,**

A. In March 2012, two securities class actions – *Piazza v. Nevsun Resources, Ltd.*, Case No. 12-CV-1845 (PGG), and *Goldberg v. Nevsun Resources Ltd.*, Case No. 12-CV-2322 (PGG) – were commenced in the District Court against Nevsun Resources Ltd. (“Nevsun”) and certain of its officers and directors (collectively, the “Securities Actions”). The Securities Actions alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder, arising from, *inter alia*,

Nevsun's public disclosures concerning the amount of gold reserves at the Bisha Mine, the 2011 strip ratio at the Bisha Mine, and Nevsun's announcement, in February 2012, that it was revising its projections regarding the amount of gold expected to be produced from the Bisha Mine in 2012.

B. By order dated June 28, 2012, the Honorable Paul G. Gardephe ordered that the Securities Actions be consolidated with and into the Action (the "Consolidation Order"). In the Consolidation Order, Judge Gardephe appointed Craig F. Piazza as Lead Plaintiff and Kaplan Fox & Kilsheimer LLP and Rigrodsky & Long, P.A. as Lead Counsel.

C. The Plaintiffs filed a Consolidated Class Action Complaint for Violations of Federal Securities Laws on August 21, 2012 (the "Consolidated Complaint") against Defendants, which superseded all prior complaints filed in the Action and alleged claims on behalf of all investors who purchased or otherwise acquired Nevsun common stock during the period from March 28, 2011 through February 6, 2012.

D. On September 20, 2012, Defendants moved to dismiss the Consolidated Complaint. Plaintiffs filed their memorandum of law in opposition to the motion to dismiss on October 22, 2012, and Defendants filed their reply memorandum of law on November 7, 2012. On September 27, 2013, the Court issued an Order granting in part and denying in part the motion to dismiss.

E. Lead Counsel and Defendants' Counsel subsequently engaged in substantial arm's-length negotiations in an effort to resolve the Action, which included a full-day mediation session on December 9, 2013 before an experienced mediator. Although the parties were not successful in reaching a resolution during the mediation, settlement negotiations continued during the period January through March, 2014. A second mediation session took place on April

10, 2014 before Hon. Layn R. Phillips (Ret.), at the conclusion of which the Parties reached a settlement in principle and executed a Term Sheet.

F. Lead Counsel have conducted an investigation relating to the claims and the underlying events and transactions alleged in the Consolidated Complaint, have analyzed the evidence adduced during this investigation, have consulted with loss causation, damages, and mining industry experts, and have researched the applicable law with respect to the claims of Plaintiffs and the Class against Defendants and the potential defenses thereto.

G. Based upon their investigation and what they have learned through their prosecution of the Action, Lead Counsel have concluded that the terms and conditions of the Settlement are fair, reasonable and adequate to Plaintiffs and the other members of the Class, and in their best interests. Based on Lead Plaintiff's direct oversight of the prosecution of the Action and involvement in the mediation, along with the input of Lead Counsel, Plaintiffs have agreed to settle the Action against the Defendants pursuant to the terms and provisions of this Stipulation, after considering: (i) the substantial benefits that Plaintiffs and the other members of the Class will receive from the resolution of the Action against the Defendants; (ii) the attendant risks of litigation; and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

H. Each of the Defendants has denied, and continues to deny, all allegations of wrongdoing, fault, liability or damage to Plaintiffs and the Class; deny that they engaged in any wrongdoing; deny that they committed any violation of federal securities or any other law; deny that they have committed any act or omission giving rise to any liability and/or violation of law; and deny that Plaintiffs or members of the Class have suffered any damages caused by any of the alleged misrepresentations and omissions set forth in the Consolidated Complaint. Had this

Settlement not been reached, Defendants would have continued to resist vigorously Plaintiffs' claims and contentions and would have continued to assert their defenses thereto. This Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have asserted, or could have asserted, in the Action or otherwise. The Parties recognize, however, that the Action has been filed and prosecuted by Plaintiffs and defended by the Defendants in good faith under Rule 11 of the Federal Rules of Civil Procedure, and that the Action is being voluntarily settled with the advice of counsel. The Parties recognize that the terms of the Settlement are fair, adequate and reasonable. The Defendants are entering into this Settlement solely to avoid the cost and distraction of further litigation.

**NOW, THEREFORE**, without any admission or concession on the part of Plaintiffs of any lack of merit in the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit of the defenses by Defendants, it is hereby **STIPULATED AND AGREED**, between Plaintiffs and Defendants, by and through their respective attorneys, that this Action shall be settled, compromised and dismissed with prejudice, subject to the approval of the District Court, and that all Released Claims against the Released Parties and all Released Claims by Defendants as to Plaintiffs shall be unconditionally, fully, finally and forever compromised, settled, released and dismissed, with prejudice, subject to Court approval, upon and subject to the following terms and conditions:

#### **DEFINITIONS**

1. As used in this Stipulation, the following terms have the meanings specified below. Other terms may be defined elsewhere in this Stipulation.

- a. “Authorized Claimant” means any Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.
- b. “Claim” means a completed and signed Proof of Claim Form submitted to the Claims Administrator in accordance with the instructions on the Proof of Claim Form.
- c. “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit A-2, that a Claimant or Class Member must complete and submit in order that the Claimant or Class Member may be eligible to share in a distribution of the Net Settlement Fund.
- d. “Claimant” means any Class Member who submits a Proof of Claim Form in such form and in the manner, and within such time, as the District Court shall prescribe.
- e. “Claims Administrator” means the claims administration firm selected by Plaintiffs subject to approval of the District Court.
- f. “Class” means all Persons who purchased or otherwise acquired Nevsun common stock from March 28, 2011 through February 6, 2012, inclusive, on the New York Stock Exchange or any other U.S. trading platform, and that claim to have suffered losses as a result of such purchase or acquisition. Excluded from the Class are: (i) Defendants; (ii) any parent or subsidiary of Nevsun; (iii) any present or former director or officer of Nevsun; (iv) any legal representatives, heirs, successors and assigns, and members of the Immediate Family of each Individual Defendant; (v) any firm, trust, corporation or other entity in which any Defendant has or had a majority ownership interest, except for any Investment Vehicle as defined herein; and (vi) those persons or entities who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice.

g. “Class Distribution Order” means an order entered by the District Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

h. “Class Member” or “Member of the Class” means a Person that falls within the definition of “Class.”

i. “Class Period” means the period from March 28, 2011 through February 6, 2012, inclusive.

j. “Defendants’ Counsel” means the law firm of Gibson, Dunn & Crutcher LLP.

k. “Defendant Releasees” or “Released Parties” means each and all of Defendants and each and all of their Related Parties.

l. “District Court” means the United States District Court for the Southern District of New York.

m. “Effective Date” means the first business day on which, unless otherwise waived by the Parties, all of the events and conditions specified in ¶ 33 of this Stipulation have been met and have occurred.

n. “Escrow Account” means the account established by the Escrow Agent to hold the Settlement Fund, which account, subject to the District Court’s supervisory authority, shall be under the control of Lead Counsel.

o. “Escrow Agent” means the law firm of Kaplan Fox & Kilsheimer LLP.

p. “Final” means, with respect to the Judgment: (i) the Judgment has been entered by the Court; (ii) if no appeal is filed, the expiration date of the time provided for filing or noticing of any appeal under the Federal Rules of Civil Procedure from the Judgment, *i.e.*, thirty (30) days after entry of the Judgment; or (iii) if there is an appeal from the Judgment, the date of

(a) final dismissal of all such appeals, or the final dismissal of any proceeding on *certiorari* or otherwise to review the Judgment, or (b) the date the Judgment is finally affirmed on appeal, the expiration of the time to file a petition for a writ of *certiorari* or other form of review, or the denial of a writ of *certiorari* or other form of review, and, if *certiorari* or other form of review is granted, the date of final affirmance of the Judgment following review pursuant to that grant; provided, however, that any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys' fees, costs or expenses, or (ii) the Plan of Allocation (or such other plan of allocation as the District Court may approve), shall not in any way delay or preclude the Judgment from becoming Final.

q. "Individual Defendant(s)" means Clifford T. Davis, Peter J. Hardie, and Scott Trebilcock.

r. "Investment Vehicle" means any mutual fund families or exchange-traded funds.

s. "Immediate Family" means an individual's spouse, parents, siblings, children, grandparents, grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships.

t. "Judgment" means the judgment, substantially in the form attached hereto as Exhibit B, approving the Settlement, to be entered by the District Court pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

u. "Lead Counsel" means the law firms of Kaplan Fox & Kilsheimer LLP and Rigrodsky & Long, P.A., which were appointed co-lead counsel for the Class.

v. "Lead Plaintiff" means Craig F. Piazza.

w. "Litigation Expenses" means costs and expenses incurred in connection with commencing and prosecuting the Action (which may include the costs and expenses of Plaintiffs

directly related to their representation of the Class), for which Lead Counsel intends to apply to the District Court for reimbursement from the Settlement Fund.

x. “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the District Court; (iv) any attorneys’ fees awarded by the District Court; and (v) any award to Lead Plaintiff for reasonable costs and expenses.

y. “Notice” means the Notice of (I) Pendency of Class Action and Proposed Settlements, (II) Settlement Hearing, (III) Motion for Attorneys’ Fees, and Reimbursement of Litigation Expenses, and (IV) Motion for Lead Plaintiff’s Award of Reasonable Costs and Expenses, which is to be sent to members of the Class, substantially in the form attached hereto as Exhibit A-1.

z. “Notice and Administration Costs” means the costs, fees and expenses that are incurred by the Claims Administrator and/or Lead Counsel in connection with (i) providing notice to the Class; (ii) administering the Claims process; and (iii) the Escrow Account.

aa. “Parties” means Plaintiffs, on behalf of themselves and the other Class Members, and Defendants.

bb. “Person” means a natural person, individual, corporation, partnership, limited partnership, association, joint venture, joint stock company, estate, custodian, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and the heirs, executors, administrators, predecessors, successors, parents, subsidiaries, affiliates, representatives or assigns of any of them.

cc. “Plaintiffs” means Craig F. Piazza and Scott F. Colebourne.



dd. “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

ee. “Plaintiff Releasees” shall mean Plaintiffs and Plaintiffs’ Lead Counsel.

ff. “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the District Court preliminarily approving the Settlement and directing notice be provided to the Class.

gg. “Related Parties” means each of a Defendant’s past, present or future parents, subsidiaries, affiliates, partners, agents, assigns, attorneys, advisors, representatives, insurers or reinsurers; members of any Individual Defendant’s Immediate Family, or any of his executors, estates, administrators, trustees, insurers, heirs, agents or assigns; or any firm, trust, corporation, or other entity in which any of the Defendants has or had a controlling interest.

hh. “Released Claims” means any and all claims (including “Unknown Claims” as defined below), debts, demands, controversies, obligations, losses, rights, liabilities and/or causes of action of any kind or nature whatsoever, including, but not limited to, any claims for damages (whether compensatory, special, incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief, rescission or rescissionary damages, interest, attorneys’ fees, expert or consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever, whether based on federal, state, local, foreign, statutory or common law or regulation, whether class or individual in nature, known or unknown, fixed or contingent, direct or derivative, suspected or unsuspected, concealed or hidden, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, that either have been or could have been asserted in this Action by or on behalf of the Plaintiffs or any other Class Member against any of the Released Parties, which (i) arise out of or are based upon or related in any way to the

allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Action or the Consolidated Complaint, and (ii) arise out of or are based upon or related in any way to Plaintiffs' or any other Class Member's purchase, acquisition or holding of Nevsun common stock during the Class Period on the New York Stock Exchange or other U.S. trading platform (except for claims to enforce the Settlement).

ii. "Released Claims by Defendants as to Plaintiffs" means any and all claims, rights, demands, liabilities or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether known claims or Unknown Claims, that have been or could have been asserted in the Action or in this or any other forum, by or on behalf of the Released Parties or any of them, or the successors and assigns of any of them, against Plaintiffs or Lead Counsel which arise out of or relate in any way to the filing, prosecution, or settlement of the Action (except for claims to enforce the Settlement).

jj. "Settlement Amount" means five million, nine hundred ninety five thousand US dollars (US \$5,995,000.00), in cash.

kk. "Settlement Fund" means the Settlement Amount plus any and all interest earned thereon from the date the Settlement Amount is deposited into the Escrow Account.

ll. "Settlement Hearing" means the hearing set by the District Court under Rule 23(e)(1)(c) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

mm. "Summary Notice" means the Summary Notice of (I) Pendency of Class Action and Proposed Settlements, (II) Settlement Fairness Hearing, (III) Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, and (IV) Motion for Lead Plaintiff's Award of

Reasonable Costs and Expenses, substantially in the form attached hereto as Exhibit A-3, to be published as set forth in the Preliminary Approval Order.

nn. "Taxes" means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund after it is deposited into the Escrow Account; and (ii) the expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any federal, state and/or local taxes of any kind owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

oo. "Unknown Claims" means any and all Released Claims which Plaintiffs or other Class Members do not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Released Claims by Defendants as to Plaintiffs which any Released Party does not know or suspect to exist in his, her, or its favor at the time of the release of Plaintiffs or Lead Counsel, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims and Released Claims by Defendants as to Plaintiffs, the Parties stipulate and agree that, upon the Effective Date, Plaintiffs and each of the Defendants shall expressly waive, and each of the other Class Members and each of the other Released Parties shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 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.

Plaintiffs shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Plaintiffs and each of the Defendants acknowledge, and each of the other Class Members and each of the other Released Parties shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for as a key element of the Settlement.

### **RELEASE OF CLAIMS**

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Released Claims as against all Released Parties. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement reached voluntarily after consultation with experienced legal counsel.

3. Upon the Effective Date, Plaintiffs and all of the other Class Members, on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors, assigns and agents, shall be deemed by operation of law to have irrevocably, absolutely and unconditionally, fully, finally and forever released, waived, discharged and dismissed, with prejudice, each and every Released Claim, and shall forever be enjoined from prosecuting any or all Released Claims.

4. Upon the Effective Date, each of the Defendants, on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors, assigns and agents, shall be deemed by operation of law to have irrevocably, absolutely and unconditionally, fully, finally, and forever released, waived, discharged and dismissed, with prejudice, each and every of the

Released Claims by Defendants as to Plaintiffs, and shall forever be enjoined from prosecuting any or all of the Released Claims by Defendants as to Plaintiffs.

### **THE SETTLEMENT CONSIDERATION**

5. In consideration of the Settlement of the Released Claims, including without limitation claims asserted in the Action under the Exchange Act, Defendants shall pay or caused to be paid, in full satisfaction of the monetary obligations under the terms of the Settlement, five million, nine hundred ninety five thousand US dollars (US \$5,995,000.00), in cash, such amount to be deposited into the Escrow Account within fifteen (15) calendar days after (a) the Preliminary Approval Order is entered by the District Court; and (b) receipt by Defendants' Counsel from Lead Counsel of full and complete wiring or other instructions necessary for such payment, an executed W-9 for the Settlement Fund, and payee name and address for delivery of payment by check.

### **USE OF SETTLEMENT FUND**

6. The Settlement Fund shall be used to pay: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the District Court; and (iv) any attorneys' fees awarded by the District Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 15-24 below.

7. Except as expressly provided herein or pursuant to an Order of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held in the Escrow Account shall be deemed to be in the custody of the District Court and shall remain subject to the jurisdiction of the District Court until such time as such funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further Order of the

Court. The Escrow Agent shall invest funds in the Escrow Account in instruments backed by the full faith and credit of the United States Government or an agency thereof (or a mutual fund invested solely in such instruments), or deposit some or all of the funds in interest-bearing transaction accounts up to the limit of Federal Deposit Insurance Corporation insurance. The Defendants and Defendants' Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Escrow Agent. The Settlement Fund shall bear all risks related to the investments of the Settlement Amount in accordance with the guidelines set forth in this paragraph.

8. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agent, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and, in all events, shall reflect that all taxes on the income earned on the Settlement Fund shall be paid out of the Settlement Fund as provided below. The Escrow Agent shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Upon written request, the Defendants will provide to Lead Counsel and the Escrow Agent the statement described in Treasury Regulation § 1.468B-3(e). The Escrow Agent, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the

Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

9. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent, and without prior Order of the District Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settlement Fund shall indemnify and hold harmless the Released Parties for federal, state and/or local taxes, penalties, interests or assessments incurred in connection with the taxation of the Settlement Fund (including, without limitation, taxes paid by reason of any such indemnification).

10. This is not a claims-made settlement. Upon the occurrence of the Effective Date, no person or entity which paid any portion of the Settlement Amount, shall have any right to the return of the Settlement Fund or any portion thereof irrespective of the number of Claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund. If any funds remain from the Settlement Amount, after the above payments, the Court shall, upon motion of Lead Counsel, pay such remaining funds to one or more non-profit or charitable organization.

11. The Claims Administrator shall discharge its duties as set forth in the Court's Preliminary Approval Order and subject to the jurisdiction of the District Court. Regardless of whether the Effective Date occurs, the Released Parties shall have no responsibility whatsoever for the administration of the Settlement, and shall have no liability whatsoever to any person or entity, including, but not limited to, Plaintiffs, Lead Counsel or any other Class Members or

their respective attorneys, in connection with any such administration. The Parties shall use their reasonable efforts to obtain from the transfer agent records regarding purchases of Nevsun common stock on the New York Stock Exchange. Lead Counsel shall cause the Claims Administrator to mail the Notice and Proof of Claim Form to the members of the Class at the address of each such person as set forth in records to be supplied by Defendants' Counsel pursuant to ¶ 15 hereof. The Claims Administrator shall publish the Summary Notice pursuant to the terms of the Preliminary Approval Order or whatever other form or manner might be ordered by the District Court.

12. Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further Order of the District Court, all reasonable Notice and Administration Costs actually incurred. Such costs and expenses shall include, without limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing Notice and processing the submitted claims, and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants, or to any other person or entity who or which paid any portion of the Settlement Amount.

#### **ATTORNEYS' FEES AND EXPENSES**

13. Lead Counsel will apply to the District Court for reimbursement of Litigation Expenses to be paid from the Settlement Fund. No Defendant shall take any position with respect to Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses. Such matters are not the subject of any agreement between Defendants and Plaintiffs



other than what is set forth in this Stipulation, and this Stipulation shall otherwise be enforceable according to its terms without regard to any modification, denial, appeal or other adverse ruling with respect to Lead Counsel's application for an award of attorneys' fees, costs or Litigation Expenses.

14. Any attorneys' fees and Litigation Expenses that are awarded by the District Court shall be paid to Lead Counsel from the Settlement Fund immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Lead Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed. Lead Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after receiving from the Defendants' Counsel or from a court of appropriate jurisdiction notice of the termination of the Settlement or notice of any reduction of the award of attorneys' fees and/or Litigation Expenses. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation or this Settlement and is not a condition of this Stipulation or this Settlement. Plaintiffs and Lead Counsel may not cancel or terminate the Stipulation or the Settlement based on the District Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses. Apart from the Defendants' obligation to pay the Settlement Amount to the Escrow Account as set forth in ¶ 5 above, the Released Parties shall have no liability or obligation whatsoever to any person or entity, including, but not limited to, Plaintiffs, Lead Counsel, or any other Class Members or their

respective counsel, with respect to any attorneys' fees, costs or expenses, or Litigation Expenses, regardless of the amount of any attorneys' fees, costs or expenses, or Litigation Expenses approved by the District Court, and regardless of any termination of this Stipulation or the Settlement contained herein.

### **CLAIMS ADMINISTRATION**

15. The Claims Administrator shall administer the process of receiving, reviewing, and approving or denying Claims under Lead Counsel's supervision and subject to the jurisdiction of the District Court. Except as provided in ¶ 11 herein, neither the Defendants, their respective counsel nor the Released Parties shall have any responsibility whatsoever for the administration of the Settlement or the claims process and shall have no liability whatsoever to any person, including, but not limited to, Plaintiffs, Lead Counsel, or any other Class Members or their respective attorneys in connection with such administration. The Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms, including reasonable efforts to obtain records identifying potential purchasers during the Class Period of Nevsun common stock on the New York Stock Exchange.

16. The Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Loss compared to the total Recognized Losses (as defined in the Plan of Allocation set forth in the Notice, or in such other plan of allocation as the District Court approves) of all Authorized Claimants.

17. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be approved by the District Court. Plaintiffs and Lead Counsel may not cancel or terminate the

Stipulation or the Settlement based on the District Court's or any appellate court's ruling with respect to the Plan of Allocation, any modification made to the Plan of Allocation, or any other plan of allocation as may be ordered by the District Court in this Action. No Defendant, nor any other Released Party, shall have any involvement in or responsibility or liability whatsoever for the Plan of Allocation or the allocation of the Net Settlement Fund.

18. Any Class Member who does not submit a valid Claim Form will not be entitled to receive any distribution from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including, without limitation, the terms of the Judgment and the releases provided for therein or herein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Party concerning any Released Claims.

19. Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund. No Defendant, nor any other Released Party, shall have any liability, obligation or responsibility whatsoever for the administration of the Settlement or disbursement of the Net Settlement Fund. No Defendant, nor any other Released Party, shall be permitted to review, contest or object to any Claim Form or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim Form or Claim for payment by a Class Member. Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

20. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

a. Each Class Member shall be required to submit a Claim Form, supported by such documents as are designated therein, including proof of the Claimant's loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

b. All Claim Forms must be submitted by the date set by the District Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Order of the District Court. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the District Court, late-filed Claim Forms are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including, without limitation, the terms of the Judgment and the releases provided for therein and herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Party concerning the Released Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a Claim Form shall be deemed to be submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator;

c. Each Claim Form shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this Stipulation the extent, if any, to which each Claim shall be allowed, subject to review by the District Court pursuant to subparagraph (e) below;

d. Claims that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely fashion and in writing, all Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right to a review by the District Court if the Claimant so desires and complies with the requirements of subparagraph (e) below;

e. If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the District Court. If a dispute concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the District Court; and

f. The administrative determinations of the Claims Administrator accepting and rejecting Claims shall be presented to the District Court, on notice to Defendants' Counsel, for approval by the District Court in the Class Distribution Order.

21. Each Claimant shall be deemed to have submitted to the jurisdiction of the District Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure; provided, however, that such investigation and discovery shall be limited to that Claimant's status as a Class Member

and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of the Action or this Settlement in connection with the processing of Claim Forms.

22. Lead Counsel will apply to the District Court, on notice to Defendants, for a Class Distribution Order: (i) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (ii) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Settlement Fund, and (iii) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

23. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Class Members. All Class Members whose Claims are not approved by the District Court shall be barred from participating in distributions from the Net Settlement Fund. Whether or not a Class Member submits a Claim, or any Claim is not allowed either in whole or in part, all Class Members shall be bound by all of the terms of this Stipulation and the Settlement, including, without limitation, the terms of the Judgment and the releases provided for therein and herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding against any and all Released Parties concerning any Released Claims.

24. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the District Court.

**CERTIFICATION OF THE CLASS, PRELIMINARY APPROVAL  
ORDER AND SETTLEMENT HEARING**

25. The Parties stipulate to: (i) the certification, for settlement purposes only, of the Class (as defined above), pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil

Procedure; (ii) the appointment of Lead Plaintiff as the class representative; and (iii) the appointment of Lead Counsel as class counsel.

26. As soon as practical after execution of this Stipulation, Lead Plaintiff and Lead Counsel shall submit the Stipulation together with its exhibits to the Court and shall apply to the District Court for entry of the Preliminary Approval Order, substantially in the form of Exhibit A hereto, granting the preliminary approval of the Settlement and approving the mailing of the Notice and Proof of Claim Form and the publication of the Summary Notice, substantially in the form of Exhibits A-1 through A-3 hereto. The Notice shall include the general terms of Settlement, the proposed Plan of Allocation, the Litigation Expenses for which Lead Counsel intends to apply to the District Court for reimbursement from the Settlement Fund, the percentage of the Settlement Fund for which Lead Counsel intends to apply to the District Court for an award of attorneys' fees and Litigation Expense, and the date of the Settlement Hearing.

27. Lead Counsel shall request that after notice is given, the Court hold a hearing (the "Settlement Hearing") and approve the settlement of the Action as set forth herein.

28. To permit Defendants' compliance with the settlement notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, the Settlement Hearing shall take place no earlier than 90 calendar days after the filing of this Stipulation.

29. At or after the Settlement Hearing, Lead Counsel also will request that the Court approve the proposed Plan of Allocation and the application for an award of attorneys' fees and/or Litigation Expenses.

## **TERMS OF THE JUDGMENT**

30. If the Settlement contemplated by this Stipulation is approved by the District Court, Lead Counsel and Defendants' Counsel shall request that the District Court enter the Judgment, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

31. The Judgment shall contain a provision, substantially in the form set forth in Exhibit B hereto (the "Bar Order"), barring claims for contribution by or against the Defendants, to the fullest extent permitted by 15 U.S.C. § 78u-4(f)(7) and any other applicable law or regulation.

32. The Judgment shall also contain a provision, substantially in the form set forth in Exhibit B hereto, requiring that any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against any person or entity subject to the Bar Order as defined herein be reduced by the greater of: (i) an amount that corresponds to the percentage of responsibility of the Defendants for common damages; or (ii) the amount paid pursuant to this Settlement to the Class or Class Member for common damages.

## **CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION**

33. The Effective Date of this Stipulation shall be conditioned on the occurrence or waiver of all of the following events:

- a. the District Court has entered the Preliminary Approval Order;
- b. the Defendants have paid, or caused to be paid, the Settlement Amount into the Escrow Account in accordance with the provisions of ¶ 5 hereof;
- c. the Defendants have not exercised their option to terminate the Settlement pursuant to ¶ 35 hereof; and



d. the District Court has entered the Judgment substantially in the form of Exhibit B hereto, and the Judgment has become Final.

34. The Defendants and Plaintiffs shall both have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (the “Termination Notice”) to the other parties to this Stipulation within thirty (30) days of: (a) the District Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the District Court’s refusal to approve this Stipulation and Settlement or any material part of it; (c) the District Court’s declining to enter the Judgment in any material respect; or (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. However, any decision with respect to an application for attorneys’ fees or Litigation Expenses, or with respect to any plan of allocation, shall not be considered material to the Settlement, shall not affect the finality of the Judgment, and shall not be grounds for termination by any of the Defendants or Plaintiffs.

35. In addition to the grounds set forth in ¶ 34, the Defendants (provided they collectively agree) shall have the right to terminate the Settlement and this Stipulation in the event that Class Members requesting exclusion from the Class meet the conditions set forth in a confidential supplemental agreement with Plaintiffs that is being executed concurrently with this Stipulation (the “Supplemental Agreement”). The Supplemental Agreement shall not be filed with the District Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice) unless and until the District Court requires the Settling Parties to file the Supplemental Agreement or disclose its terms or a dispute arises between Plaintiffs and the Defendants concerning its interpretation or application. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the

District Court, Plaintiffs and the Defendants will undertake to have the Supplemental Agreement submitted to the District Court *in camera*.

36. Except as otherwise provided herein, in the event that the Settlement is terminated or the Effective Date otherwise fails to occur: (a) the Settlement and this Stipulation, other than ¶ 37, shall be null and void, and without prejudice; (b) none of the terms of the Settlement or this Stipulation, including, without limitation, the releases granted herein, shall be effective or enforceable; (c) the facts of the Settlement shall not be admissible in any trial of the Action or otherwise; (d) the Defendants and Plaintiffs shall be deemed to have reverted to their respective status in the Action immediately prior to April 10, 2014 and, except as otherwise expressly provided herein, the Defendants and Plaintiffs shall proceed in all respects as if this Stipulation and any related orders had not been entered; and (e) any portion of the Settlement Amount previously paid by Defendants, together with any interest earned thereon, less any Taxes paid or due with respect to such income, and less reasonable Notice and Administration Costs actually incurred and paid or payable, shall be returned to Defendants within fourteen (14) business days after joint written notification of such event by the Defendants' Counsel and Lead Counsel to the Escrow Agent, and in accordance with written instructions to be provided by the Defendants' Counsel to Lead Counsel.

#### **NO ADMISSION OF WRONGDOING**

37. This Stipulation and Settlement, whether or not consummated, and any actions taken pursuant to it:

a. shall not be offered or received against any of the Released Parties as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Released Parties with respect to the truth of any fact alleged by Plaintiffs or the validity of

any claim that was or could have been asserted against any of the Released Parties in the Action, any other litigation, or the deficiency of any defense that has been or could have been asserted in the Action or any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Parties;

b. shall not be offered or received against any of the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Released Parties;

c. shall not be offered or received against the Plaintiffs or any other Class Members as evidence of any infirmity in the claims of Plaintiffs or the other Class Members;

d. shall not be offered or received against any of the Released Parties, the Plaintiffs or any other Class Members, as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Parties, the Plaintiffs or any other Class Members, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that, if this Stipulation is approved by the District Court in the Judgment, the Defendants, any other Released Party, Plaintiffs and the other Class Members may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement;

e. shall not be construed against any of the Released Parties, Plaintiffs or any other Class Members as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

f. shall not be construed against Plaintiffs or any other Class Members as an admission, concession, or presumption that any of their claims are without merit or that damages recoverable under the Consolidated Complaint would not have exceeded the Settlement Amount.

### **MISCELLANEOUS PROVISIONS**

38. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

39. If a case is commenced in respect of any Defendant under the Bankruptcy Code, or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof paid for the benefit of the Class to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Plaintiffs, the Parties shall jointly move the District Court to vacate and set aside the releases given and the Judgment entered in favor of such Defendant pursuant to this Stipulation, which releases and Judgment shall be null and void as to such Defendant, and that Defendant and Plaintiffs shall be restored to their respective positions in the Action as provided in ¶ 36 and any cash amounts in the Settlement Fund shall be returned as provided in the same paragraph.

40. Defendants represent that they are solvent and fully competent and capable to fulfill their obligations under the terms of this Settlement.

41. Plaintiffs and the Defendants intend this Settlement to be a final and complete resolution of all Released Claims. Accordingly, Plaintiffs and each of the Defendants agree not to assert that the Action was brought by Plaintiffs or defended by Defendants in bad faith or

without a reasonable basis. Neither Plaintiff Releasees nor Defendant Releasees shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action. Plaintiffs and the Defendants agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the parties, including at the formal mediation sessions, and reflect a Settlement that was reached voluntarily after consultation with experienced legal counsel.

42. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by counsel for Plaintiffs and the Defendants or their successors-in-interest.

43. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

44. The administration and consummation of this Settlement as embodied in this Stipulation shall be under the authority of the District Court, and the District Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Lead Counsel and enforcing the terms of this Stipulation.

45. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver by any party of any other prior or subsequent breach of this Stipulation.

46. This Stipulation, its exhibits, and the Supplemental Agreement constitute the entire agreement among Plaintiffs and the Defendants concerning the Settlement, and no representations, warranties, or inducements have been made by Plaintiffs or any Defendant concerning this Stipulation and its exhibits other than those contained and memorialized in such documents or in the Supplemental Agreement.

47. This Stipulation may be executed in one or more original and/or counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

48. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and the Defendants.

49. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

50. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations among the parties and all parties have contributed substantially and materially to the preparation of this Stipulation.

51. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or the Supplemental Agreement, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

52. The Parties (a) acknowledge that it is their intent to consummate this Settlement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of the Stipulation.

53. If any party is required to give notice to another party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand

delivery or facsimile transmission with confirmation of receipt. Notice shall be provided as follows:

To Plaintiffs: Jeffrey P. Campisi  
**KAPLAN FOX & KILSHEIMER LLP**  
850 Third Avenue, 14th Floor  
New York, New York 10022  
Tel: (212) 687-1980  
Facsimile: (212) 687-7714

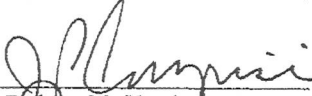
Timothy J. MacFall  
**RIGRODSKY & LONG, P.A.**  
825 East Gate Boulevard; Suite 200  
Garden City, New York 11530  
Tel: (516) 683-3516  
Facsimile: (302) 654-7530

To Any Defendant: Jonathan C. Dickey  
**GIBSON, DUNN & CRUTCHER LLP**  
200 Park Avenue, 48th Floor  
New York, NY 10166  
Tel: (212) 351-4000  
Facsimile: (212) 351-4035

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Stipulation to be executed, by their duly authorized attorneys, as of the day and year first above written.

**KAPLAN FOX & KILSHEIMER LLP**

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

  
Robert N. Kaplan  
Frederic S. Fox  
Jeffrey P. Campisi  
850 Third Avenue, 14th Floor  
New York, New York 10022  
Tel: (212) 687-1980  
Facsimile: (212) 687-7714

*Co-Lead Counsel for Plaintiffs and the Class*

**RIGRODSKY & LONG, P.A.**

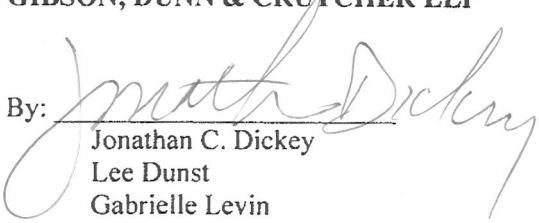
By: \_\_\_\_\_

Seth D. Rigrodsky  
Timothy J. MacFall  
825 East Gate Boulevard; Suite 200  
Garden City, New York 11530  
Tel: (516) 683-3516  
Facsimile: (302) 654-7530

*Co-Lead Counsel for Plaintiffs and the Class*

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

  
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Facsimile: (212) 351-4035

*Counsel for Defendants*



**KAPLAN FOX & KILSHEIMER LLP**

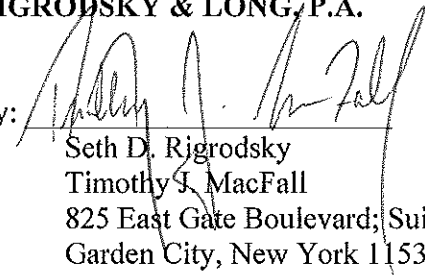
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*Counsel for Defendants*