

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

IN RE BAXTER INTERNATIONAL INC.  
SECURITIES LITIGATION

Case No. 1:19-cv-07786

District Judge Sara L. Ellis

Magistrate Judge Jeffrey I. Cummings

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement dated as of April 1, 2021 (the “Stipulation”) is entered into between (a) Louisiana Municipal Police Employees’ Retirement System and Varma Mutual Pension Insurance Company (together, “Lead Plaintiffs”), on behalf of themselves and the Settlement Class (defined below); and (b) Baxter International Inc. (“Baxter” or the “Company”), José E. Almeida, and James K. Saccaro (“Defendants,” and together with Lead Plaintiffs, the “Parties”), by and through their counsel of record, and embodies the terms and conditions of the settlement of the above-captioned action (“Action”).<sup>1</sup> Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all Released Plaintiffs’ Claims (defined below) against Defendants.

**WHEREAS:**

A. On November 25, 2019, a putative securities class action complaint was filed in the United States District Court for the Northern District of Illinois (“Court”), styled *Silverman v.*

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 below.

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*Baxter International Inc. et al.*, Case No. 1:19-cv-07786, on behalf of certain purchasers of Baxter common stock. ECF No. 1.

B. By Order dated January 31, 2020, the Court appointed Louisiana Municipal Police Employees' Retirement System and Varma Mutual Pension Insurance Company as Lead Plaintiffs and approved Lead Plaintiffs' selection of Bernstein Litowitz Berger & Grossmann LLP and Kessler Topaz Meltzer & Check, LLP as Lead Counsel for the class. ECF No. 21.

C. On June 25, 2020, Lead Plaintiffs filed the Class Action Complaint and Demand for Jury Trial ("Complaint"). ECF No. 34. The Complaint asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder against Defendants. The Complaint alleged that Defendants made materially false and misleading statements and omissions concerning: (i) Baxter's income related to foreign exchange fluctuations, as well as other financial metrics reflecting that income item; (ii) Baxter's compliance with generally accepted accounting principles; and (iii) Baxter's internal controls over financial reporting. The Complaint further alleged that the price of Baxter common stock was artificially inflated during the Class Period as a result of Defendants' allegedly false and misleading statements, and declined when the truth was revealed on October 24, 2019.

D. On August 24, 2020, Defendants moved to dismiss the Complaint. ECF Nos. 39-41. On October 8, 2020, Lead Plaintiffs opposed Defendants' motion to dismiss (ECF No. 43), and on November 9, 2020, Defendants filed their reply in support of their motion (ECF No. 44).

E. On January 12, 2021, the Court issued an Opinion and Order granting Defendants' motion to dismiss ("MTD Order"). ECF No. 47. By the MTD Order, the Court provided Lead Plaintiffs twenty-one (21) days to amend the Complaint. The Court subsequently extended this deadline to February 26, 2021. ECF No. 49.

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F. Following the Court's issuance of the MTD Order, the Parties discussed the possibility of resolving the Action through settlement and agreed to mediation before Greg Lindstrom of Phillips ADR. A mediation session with Mr. Lindstrom was scheduled for February 17, 2021. In advance of the mediation, the Parties exchanged detailed mediation statements addressing liability and damages issues.

G. At the February 17, 2021 mediation session, the Parties reached an agreement in principle to settle the Action. The Parties memorialized their agreement in a term sheet executed on February 25, 2021 ("Term Sheet"). The Term Sheet sets forth, among other things, the Parties' agreement to settle and release all claims against Defendants in return for a cash payment by or on behalf of Defendants of \$16,000,000 for the benefit of the Settlement Class, subject to certain terms and conditions, the execution of a customary "long form" stipulation and agreement of settlement and related papers, and the successful completion of Due Diligence Discovery. This Stipulation (together with the exhibits hereto) reflects the final and binding agreement between the Parties and supersedes the Term Sheet.

H. On February 25, 2021, the Parties filed the Joint Motion Requesting a Stay of Deadlines Pending Motion for Preliminary Approval of Settlement (ECF No. 50), which the Court granted on March 1, 2021 (ECF No. 53).

I. On or about March 4, 2021, in accordance with the Term Sheet, Defendants commenced their production of documents in connection with the Due Diligence Discovery to which the Parties agreed in order to confirm the adequacy of the Settlement.

J. Due Diligence Discovery is ongoing.

K. Based upon their investigation, prosecution, and mediation of the case, and subject to the completion of the ongoing Due Diligence Discovery, Lead Plaintiffs and Lead

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Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to Lead Plaintiffs and the other members of the Settlement Class, and in their best interests. Based on Lead Plaintiffs' direct oversight of the prosecution of this matter and with the advice of their counsel, Lead Plaintiffs have agreed to settle and release the Released Plaintiffs' Claims pursuant to the terms and provisions of this Stipulation, after considering, among other things: (a) the substantial financial benefit that Lead Plaintiffs and the other members of the Settlement Class will receive under the proposed Settlement; (b) the significant risks and costs of continued litigation and trial; and (c) the desirability of permitting the proposed Settlement to be consummated as provided by this Stipulation.

L. This Stipulation constitutes a compromise of all matters that are in dispute between the Parties. Defendants are entering into this Stipulation solely to eliminate the uncertainty, burden, and expense of further protracted litigation. Each of the Defendants denies any wrongdoing, and 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 allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have, or could have, asserted. Defendants expressly deny that Lead Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Lead Plaintiffs of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Lead Plaintiffs (individually and on behalf of all other members of the Settlement Class) and

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Defendants, by and through their respective undersigned attorneys and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties from the Settlement, all Released Plaintiffs' Claims as against the Defendants' Releasees and all Released Defendants' Claims as against the Plaintiffs' Releasees shall be settled and released, upon and subject to the terms and conditions set forth below.

**DEFINITIONS**

1. As used in this Stipulation and any exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

a. "Action" means the securities class action styled *In re Baxter Int'l, Inc. Sec. Litig.*, Case No. 1:19-cv-07786 (N.D. Ill.).

b. "Alternate Judgment" means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Stipulation.

c. "Authorized Claimant" means a Settlement Class Member who submits a Claim to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund pursuant to the terms of the Court-approved Plan of Allocation.

d. "Baxter" or the "Company" means Baxter International Inc.

e. "Claim" means a paper claim submitted on a Proof of Claim Form or an electronic claim that is submitted to the Claims Administrator.

f. "Claim Form" or "Proof of Claim Form" means the form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant must complete and submit should that Claimant seek to share in a distribution of the Net Settlement Fund.

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g. “Claimant” means a person or entity who or which submits a Claim to the Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.

h. “Claims Administrator” means the firm retained by Lead Counsel, subject to approval of the Court, to administer the Settlement, including providing all notices approved by the Court to potential Settlement Class Members and processing Proof of Claim Forms.

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

j. “Class Period” means the period from February 21, 2019 through October 23, 2019, inclusive.

k. “Complaint” means the Class Action Complaint and Demand for Jury Trial filed by Lead Plaintiffs in the Action on June 25, 2020.

l. “Court” means the United States District Court for the Northern District of Illinois.

m. “Defendants” means Baxter, José E. Almeida, and James K. Saccaro.

n. “Defendants’ Counsel” means Latham & Watkins LLP.

o. “Defendants’ Releasees” means Defendants and all of their respective past, present and future parent companies, subsidiaries, affiliates, divisions, joint ventures, subcontractors, agents, assigns, auditors, accountants, attorneys, financial or investment advisors or consultants, banks or investment bankers, insurers, subrogates, co-insurers and reinsurers, and all of their respective past, present and future officers, directors, fiduciaries, employees, members, partners, principals, shareholders, and owners, in their capacities as such; any entity in which a Defendant has a controlling interest; and any member of an Individual Defendant’s

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Immediate Family, or any trust of which any Individual Defendant is a settlor or which is for the benefit of any Defendant and/or member(s) of his or her Immediate Family, and each of the heirs, executors, administrators, predecessors, successors, and assigns of the foregoing, in their capacities as such.

p. “Due Diligence Discovery” means the discovery that Lead Plaintiffs have undertaken for the purpose of confirming the adequacy of the Settlement.

q. “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in ¶ 39 of this Stipulation have been met and have occurred or have been waived.

r. “Escrow Account” means an account maintained at The Huntington National Bank wherein the Settlement Amount shall be deposited and held in escrow under the control of Lead Counsel.

s. “Escrow Agent” means The Huntington National Bank.

t. “Escrow Agreement” means the agreement between Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

u. “Final” shall mean, with respect to the Judgment or, if applicable, the Alternate Judgment, the occurrence of either of the following (whichever is earlier): (i) if an appeal or review is not sought by any Person from the Judgment or the Alternative Judgment, the day following the expiration date of the time provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) days after entry of the Judgment or Alternate Judgment; or (ii) if an appeal or review is sought from the Judgment or the Alternate Judgment, the day after such Judgment or Alternative Judgment is no longer subject to further

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judicial review, including upon appeal or review by a writ of certiorari. However, 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 of Settlement proceeds (as submitted or subsequently modified), shall not in any way delay or preclude the Judgment or, if applicable, the Alternative Judgment from becoming Final.

v. "Immediate Family" means, as defined in 17 C.F.R § 229.404, Instructions 1(a)(iii) and 1(b)(ii), children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law and any persons (other than a tenant or employee) sharing the household.

w. "Individual Defendants" means José E. Almeida and James K. Saccaro.

x. "Judgment" means the final judgment, substantially in the form attached hereto as Exhibit B, to be entered by the Court approving the Settlement.

y. "Lead Counsel" means Bernstein Litowitz Berger & Grossmann LLP and Kessler Topaz Meltzer & Check, LLP.

z. "Lead Plaintiffs" means Louisiana Municipal Police Employees' Retirement System and Varma Mutual Pension Insurance Company.

aa. "Litigation Expenses" means costs and expenses incurred in connection with commencing, prosecuting, and settling the Action (which may include the costs and expenses of Lead Plaintiffs directly related to their representation of the Settlement Class), for which Lead Counsel intend to apply to the Court for payment or reimbursement from the Settlement Fund.

bb. "Mediator" means Greg Lindstrom of Phillips ADR.



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cc. “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys’ fees awarded by the Court; and (v) any other costs or fees approved by the Court.

dd. “Notice” means the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Settlement Class Members.

ee. “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 notices to the Settlement Class; and (ii) administering the Settlement, including but not limited to the Claims process, as well as the costs, fees, and expenses incurred in connection with the Escrow Account.

ff. “Parties” means Defendants and Lead Plaintiffs, on behalf of themselves and the Settlement Class.

gg. “Person(s)” means any individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, and, as applicable, their respective spouses, heirs, predecessors, successors-in-interest, representatives, and assigns.

hh. “Plaintiffs’ Releasees” means (i) Lead Plaintiffs, their attorneys, and all other Settlement Class Members; (ii) the current and former parents, affiliates, subsidiaries,

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successors, predecessors, assigns, and assignees of each of the foregoing in (i); and (iii) the current and former officers, directors, Immediate Family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, agents, affiliates, insurers, reinsurers, predecessors, successors, assigns, and advisors of each of the persons or entities listed in (i) and (ii), in their capacities as such.

ii. “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund, which shall be substantially in the form set forth in the Notice or any other plan for allocating the Net Settlement Fund as shall be approved by the Court.

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

kk. “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended.

ll. “Released Claims” means all Released Defendants’ Claims and all Released Plaintiffs’ Claims.

mm. “Released Defendants’ Claims” means all claims and causes of action of every nature and description, whether known or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Defendants. Released Defendants’ Claims do not include: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

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nn. “Released Plaintiffs’ Claims” means all claims, rights, remedies, demands, liabilities, and causes of action of every nature and description, whether known or Unknown Claims, whether arising under federal, state, common or foreign law, that Lead Plaintiffs or any other member of the Settlement Class (a) asserted in the Complaint, or (b) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase or acquisition of Baxter common stock during the Class Period. For the avoidance of doubt, Released Plaintiffs’ Claims include any claims under the Securities Act of 1933 or the Securities Exchange Act of 1934, or the securities laws of any state or territory. The following claims are not included as Released Plaintiffs’ Claims: (i) any claims relating to the enforcement of the Settlement; and (ii) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court.

oo. “Releasee(s)” means each and any of the Defendants’ Releasees and each and any of the Plaintiffs’ Releasees.

pp. “Releases” means the releases set forth in ¶¶ 10-11 of this Stipulation.

qq. “Settlement” means the resolution of the Action in accordance with the terms and provisions set forth in this Stipulation.

rr. “Settlement Amount” means \$16,000,000.00 in cash.

ss. “Settlement Class” means all persons or entities who purchased or otherwise acquired Baxter common stock during the Class Period, and were damaged thereby. Excluded from the Settlement Class are Defendants, any person who was an executive officer or director of Baxter during the Class Period, their Immediate Family members, any affiliates of

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Baxter, and any persons or entities who or which exclude themselves by submitting a timely and valid request for exclusion that is accepted by the Court.

tt. “Settlement Class Member” means each person and entity who or which is a member of the Settlement Class.

uu. “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

vv. “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

ww. “Summary Notice” means the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

xx. “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

yy. “Unknown Claims” means any Released Plaintiffs’ Claims which any Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants’ Claims that any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have materially affected his, her, or its

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decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Lead Plaintiffs, other Settlement Class Members, or Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiffs and Defendants shall expressly, fully, finally, and forever waive, compromise, settle, discharge, extinguish, and release, and each Settlement Class Member shall be deemed to have waived, compromised, settled, discharged, extinguished, and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have waived, compromised, settled, discharged, extinguished, and released, fully, finally, and forever, any and all Released Claims as applicable, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Lead Plaintiffs and Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have

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acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

**CLASS CERTIFICATION**

2. Solely for purposes of the Settlement, Defendants stipulate and agree to: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) appointment of Lead Plaintiffs as Class Representatives for the Settlement Class; and (c) appointment of Lead Counsel as Class Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

**PRELIMINARY APPROVAL OF SETTLEMENT**

3. Within five (5) business days of execution of this Stipulation, and by no later than April 1, 2021, Lead Plaintiffs will move for preliminary approval of the Settlement, authorization to provide notice of the Settlement to the Settlement Class, and the scheduling of a hearing for consideration of final approval of the Settlement, which motion shall be unopposed by Defendants. Concurrently with the motion for preliminary approval, Lead Plaintiffs shall apply to the Court for, and Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

**DUE DILIGENCE DISCOVERY**

4. The Settlement is subject to the completion of Due Diligence Discovery, which Lead Plaintiffs began conducting following the execution of the Term Sheet and will continue to conduct, in accordance with a separate Confidential Agreement for Confirmatory Discovery, for a period of approximately forty-five (45) days following March 4, 2021, upon which date Defendants began producing documents.

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5. As part of the Due Diligence Discovery, Defendants have (a) produced documents and information to Lead Plaintiffs; and (b) agreed to make an individual knowledgeable concerning the subjects of Lead Plaintiffs' allegations available for an interview.

6. The scope of Due Diligence Discovery has been mutually agreed upon by Lead Plaintiffs and Defendants and encompasses the allegations and claims asserted in the Complaint.

7. Any disputes about the scope of Due Diligence Discovery shall be resolved by the Mediator in accordance with ¶ 67 herein.

8. If, prior to filing their motion in support of final approval of the Settlement, Lead Plaintiffs believe that the documents and information produced during Due Diligence Discovery render the proposed Settlement unfair or unreasonable, they shall submit their concerns to the Mediator. Defendants shall have the opportunity to respond to those concerns and the Parties shall use their best efforts to resolve any disagreements. If, following these discussions, Lead Plaintiffs continue to believe the proposed Settlement is unfair or unreasonable, they shall have the right to withdraw from and terminate the Settlement. No material information provided during Due Diligence Discovery may be disclosed, filed with the Court, or attached as exhibits to any complaint or form the basis of any complaint. In the event that Lead Plaintiffs obtain copies of any documents produced during Due Diligence Discovery through a subsequent production of documents by Defendants not in connection with the Settlement, however, the restrictions of this paragraph will not apply to the documents so-obtained.

**RELEASE OF CLAIMS**

9. The obligations incurred pursuant to this Stipulation are (a) subject to approval by the Court, and the Judgment (or the Alternative Judgment, if applicable) reflecting such approval

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becoming Final; and (b) in consideration of the full and final disposition of the Action with respect to the Releasees and any and all Released Claims provided for herein.

10. Pursuant to the Judgment (or the Alternate Judgment, if applicable), without further action by anyone, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the other Settlement Class Members and Plaintiffs' Releasees shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against Defendants and the other Defendants' Releasees, and shall permanently and forever be barred and enjoined from prosecuting, attempting to prosecute, or assisting others in the prosecution of any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

11. Pursuant to the Judgment (or the Alternate Judgment, if applicable), without further action by anyone, upon the Effective Date of the Settlement, Defendants and Defendants' Releasees shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim against Lead Plaintiffs and the other Plaintiffs' Releasees, and shall permanently and forever be barred and enjoined from prosecuting, attempting to prosecute, or assisting others in the prosecution of any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees.

12. Notwithstanding ¶¶ 10-11 above, nothing in the Judgment (or the Alternate Judgment, if applicable), shall bar any action by any of the Parties to enforce or effectuate the terms of this Stipulation or the Judgment (or Alternate Judgment, if applicable).



**THE SETTLEMENT CONSIDERATION**

13. In consideration of the settlement of the Released Plaintiffs' Claims against Defendants and the other Defendants' Releasees, Defendants shall pay or cause to be paid the Settlement Amount into the Escrow Account within ten (10) business days of the later of: (1) the entry of the Preliminary Approval Order by the Court, or (2) Lead Counsel's provision to Defendants' Counsel of information necessary to effectuate a transfer of funds to the Escrow Account, including but not limited to, complete and accurate payment instructions and an executed Form W-9 for the Settlement Fund that reflects a valid tax identification number.

14. The Settlement Amount is an all-in settlement number, meaning that it includes all attorneys' fees to Lead Counsel, administrative costs, expenses, Settlement Class Member benefits, Lead Plaintiff awards, and other costs associated with the Settlement. Defendants shall bear their own costs and expenses in connection with the Settlement, including costs, expenses, and fees of their counsel; the costs of providing their transfer records for purposes of notice (*see* ¶ 26 below); and the costs of providing notice under the Class Action Fairness Act of 2005, 28 U.S.C. §1715(b) (*see* ¶ 27 below).

15. Other than as described in ¶ 13, Defendants shall have no obligation to make any other payments into the Escrow Account or to any Settlement Class Member pursuant to this Stipulation.

**USE OF SETTLEMENT FUND**

16. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any attorneys' fees awarded by the Court; and (e) any other costs and fees approved by the Court. The balance

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remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 28-37 below.

17. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. At the written direction of Lead Counsel, the Escrow Account shall invest any funds in the Escrow Account exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a United States Treasury Fund or bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”), or (b) secured by instruments backed by the full faith and credit of the United States Government. The Escrow Agent shall reinvest the proceeds of these instruments or accounts as they mature in similar instruments or accounts at their then-current market rates.

18. 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 Lead Counsel, as administrators 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. Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Defendants’ Releasees shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Lead

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Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrators 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.

19. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Lead Counsel and without further order of the 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 on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. Defendants’ Releasees shall have no responsibility or liability for the acts or omissions of Lead Counsel or their agents with respect to the payment of Taxes, as described herein.

20. The Settlement is not a claims-made settlement. After the Effective Date, no Defendant, Defendants’ Releasee, or any other person or entity (including Defendants’ insurance carriers) who or which paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever (including without limitation, the number of Claims submitted, the collective amount of Recognized Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund), and shall not have liability should claims made exceed the amount available in the Settlement Fund for payment of such claims. The Defendants and any Defendants’ Releasee shall not be liable for the loss of any portion of the

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Settlement Fund, nor have any liability, obligation, or responsibility for the payment of Claims, Taxes, legal fees, or any other expenses payable from the Settlement Fund.

21. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Lead Counsel may pay from the Escrow Account, without further approval from Defendants or further order of the Court, up to \$200,000 in Notice and Administration Costs actually incurred and paid or payable (“Notice and Administration Costs Cap”). Following the Effective Date, Lead Counsel may pay from the Escrow Account, without further approval from Defendants or further of the Court, all Notice and Administration Costs exceeding the Notice and Administration Costs Cap. Notice and Administration Costs shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee owners for searching and providing the names/addresses of prospective Settlement Class Members for noticing or forwarding the Notice and Claim Form directly to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and administering the Settlement (including 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, any of the other Defendants’ Releasees, or any other person or entity (including Defendants’ insurance carriers) who or which paid any portion of the Settlement Amount.

**ATTORNEYS’ FEES AND LITIGATION EXPENSES**

22. Lead Counsel will apply to the Court for an award of attorneys’ fees to be paid solely from (and out of) the Settlement Fund. Lead Counsel also will apply to the Court for reimbursement or payment of Litigation Expenses, which may include a request for

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reimbursement of Lead Plaintiffs' costs and expenses directly related to their representation of the Settlement Class, to be paid solely from (and out of) the Settlement Fund. Lead Counsel's application for attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Lead Plaintiffs other than what is set forth in this Stipulation.

23. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel 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 and such order reducing or reversing the award has become Final. Lead Counsel shall make the appropriate refund or repayment in full no later than fifteen (15) business days after receiving from Defendants' Counsel or from a court of appropriate jurisdiction notice of any such reduction of the award of attorneys' fees and/or Litigation Expenses by a non-appealable order, or notice of the termination of the Settlement. The procedure for and the allowance or disallowance by the Court of any attorneys' fees or Litigation Expenses are not part of the Settlement set forth in this Stipulation, and are separate from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Stipulation. Any disapproval or modification of an application for an award of attorneys' fees and/or Litigation Expenses by the Court shall not affect the enforceability of this Stipulation, provide any of the Parties with the right to cancel or terminate the Settlement, or impose an obligation on Defendants to increase the compensation paid in

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connection with the Settlement. Any appeal relating to an award of attorneys' fees or expenses will not affect the finality of the Settlement, the Judgment, or the Releases provided herein.

24. Lead Counsel shall allocate the attorneys' fees between themselves. Defendants' Releasees shall have no responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Lead Counsel shall be payable solely from the Escrow Account.

**NOTICE AND SETTLEMENT ADMINISTRATION**

25. As part of the Preliminary Approval Order, Lead Counsel shall seek appointment of a Claims Administrator. The Claims Administrator shall administer the Settlement, including but not limited to the process of receiving, reviewing, and approving or denying Claims, under Lead Counsel's supervision and subject to the jurisdiction of the Court. With the sole exception of Defendants' obligation to secure payment of the Settlement Amount into the Escrow Account as provided for in ¶ 13, none of the Defendants, nor any other Defendants' Releasees, shall have any responsibility for, interest in, authority, or liability whatsoever with respect to: (i) the selection of the Claims Administrator; (ii) any act, omission, or determination by Lead Counsel or the Claims Administrator, or any of their respective designees, in connection with the administration of the Settlement or otherwise; (iii) the Plan of Allocation; (iv) the management, investment, or disbursement of the Settlement Fund; (v) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any federal, state, or local returns.

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26. In accordance with the terms of the Preliminary Approval Order to be entered by the Court, Lead Counsel shall cause the Claims Administrator to mail the Notice and Claim Form to those members of the Settlement Class as may be identified through reasonable effort. Lead Counsel shall also cause the Claims Administrator to have the Summary Notice published in accordance with the terms of the Preliminary Approval Order to be entered by the Court. For the purposes of identifying and providing notice to the Settlement Class, within five (5) business days of the date of entry of the Preliminary Approval Order, Defendants shall provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the Settlement Fund, Lead Counsel, or the Claims Administrator) a list (consisting of names, addresses, and e-mail addresses (if available)) of holders of Baxter common stock during the Class Period.

27. No later than ten (10) calendar days following the filing of this Stipulation with the Court, Defendants shall serve the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.* (“CAFA”). Defendants are solely responsible for the costs of the CAFA notice and administering the CAFA notice. At least seven (7) calendar days before the Settlement Hearing, Defendants shall cause to be served on Lead Counsel and filed with the Court proof, by affidavit or declaration, regarding compliance with CAFA § 1715(b).

28. 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 Claim compared to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the Court approves).

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29. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiffs and Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation. No Defendant, nor any other Defendants' Releasees, shall have any involvement with or liability, obligation, or responsibility whatsoever for the application of the Court-approved Plan of Allocation.

30. Any Settlement Class Member who does not submit a valid Claim 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 the terms of the Judgment or, the Alternate Judgment, if applicable, to be entered in the Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Defendants' Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective Date occurs with respect to the Settlement.

31. Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to Court approval. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Claims submitted in the interests of achieving substantial justice. No Defendant, no any other Defendants' Releasee shall have any involvement in the administrative decisions of the Claims Administrator or Lead Counsel with respect to the Claims received in connection with the Settlement.



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

a. Each Claimant shall be required to submit a Claim in paper form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, or in electronic form, in accordance with the instructions for the submission of such Claims, and 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 Claims must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice. Any Settlement Class Member who fails to submit a Claim 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 Court such Settlement Class Member's Claim is accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Defendants' Releasees with respect to any Released Plaintiffs' Claim. Provided that it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted when postmarked, 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 on the date when actually received by the Claims Administrator;

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c. Each Claim shall be submitted to and reviewed by the Claims Administrator who shall determine in accordance with this Stipulation and the Plan of Allocation the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below as necessary;

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 submitted. The Claims Administrator 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 Court if the Claimant so desires and complies with the requirements of subparagraph (e) below; and

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 or a lesser time period if the Claim was untimely, 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 Court. If a dispute concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court. Defendants shall not take a position on the administrative determinations of the Claims Administrator.

33. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, including but not limited to, all Releases provided for herein and in the Judgment, or Alternative Judgment, if applicable, and the Claim will be subject

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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 Settlement Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action (including any discovery from Defendants) or of the Settlement in connection with the processing of Claims.

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

35. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Claimants. All Settlement Class Members whose Claims are not approved by the Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, to be entered in this Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action against any and all Defendants' Releasees with respect to any and all of the Released Plaintiffs' Claims.

36. No person or entity shall have any claim against Lead Plaintiffs, Lead Counsel, the Claims Administrator or any other agent designated by Lead Counsel, or Defendants' Releasees and/or their respective counsel, arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or any order of

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the Court. Lead Plaintiffs and Defendants, and their respective counsel, and Lead Plaintiffs' damages expert and all other Releasees shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

37. 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 Court. All Settlement Class Members, other Claimants, and Parties to this Stipulation expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

**TERMS OF THE JUDGMENT**

38. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form attached hereto as Exhibit B.

**CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

39. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events:

- a. the Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A attached hereto, as required by ¶ 3 above;
- b. the Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of ¶ 13 above;

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c. Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation;

d. Lead Plaintiffs have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation; and

e. the Court has approved the Settlement as described herein, following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final, or the Court has entered an Alternate Judgment and none of the Parties seek to terminate the Settlement and the Alternate Judgment has become Final.

40. Upon the occurrence of all of the events referenced in ¶ 39 above, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

41. If (i) Defendants exercise their right to terminate the Settlement as provided in this Stipulation; (ii) Lead Plaintiffs exercise their right to terminate the Settlement as provided in this Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails to occur, then:

a. The Settlement and the relevant portions of this Stipulation shall be canceled and terminated;

b. Lead Plaintiffs and Defendants shall revert to their respective litigation positions in the Action on February 17, 2021;

c. Neither Lead Plaintiffs nor Defendants will use or rely on any statement, document, admission, or agreement concerning the Settlement and/or settlement discussions in

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the Action, including any statement, document, or information provided to Lead Plaintiffs or Lead Counsel in connection with Due Diligence Discovery;

d. The terms and provisions of this Stipulation, with the exception of this ¶ 41 and ¶¶ 21, 23, 45, and 65, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment (or Alternate Judgment, if applicable), or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and

e. Within five (5) business days after joint written notification of termination is sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon, and change in value as a result of the investment of the Settlement Fund, and any funds received by Lead Counsel consistent with ¶ 23 above), less any Notice and Administration Costs actually incurred, paid or payable and less any Taxes paid, due or owing shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as Defendants may direct). In the event that the funds received by Lead Counsel consistent with ¶ 23 above have not been refunded to the Settlement Fund within the five (5) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as Defendants may direct) immediately upon their deposit into the Escrow Account consistent with ¶ 23 above.

42. It is further stipulated and agreed that Defendants, provided they unanimously agree, and Lead Plaintiffs, provided they unanimously agree, shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so ("Termination Notice") to the other Parties to this Stipulation within thirty (30) days of: (a) the Court's final refusal to enter the Preliminary Approval Order in any material respect; (b) the

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Court's final refusal to approve the Settlement or any material part thereof; (c) the Court's final refusal to enter the Judgment in any material respect as to the Settlement, or an Alternate Judgment; (d) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Seventh Circuit or the United States Supreme Court; or (e) the date upon which an Alternate Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Seventh Circuit or the United States Supreme Court, and the provisions of ¶ 41 above shall apply. However, for the avoidance of doubt, any decision or proceeding, whether in this Court or any appellate court, 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 any Judgment or Alternate Judgment, if applicable, and shall not be grounds for termination of the Settlement.

43. In addition to the grounds set forth in ¶ 42 above, Baxter shall also have the unilateral right to terminate the Settlement in the event that the Opt-Out Threshold (defined below) has been reached.

a. Simultaneously herewith, Defendants' Counsel and Lead Counsel are executing a confidential supplemental agreement ("Supplemental Agreement"). The Supplemental Agreement sets forth certain conditions under which Baxter shall have the option to terminate the Settlement and render the Stipulation null and void in the event that requests for exclusion from the Settlement Class exceed certain agreed-upon criteria (the "Opt-Out Threshold"). The Parties agree to maintain the confidentiality of the Supplemental Agreement, which shall not be filed with the Court, and its terms shall not be disclosed in any other manner (other than the statements herein, in the Notice, and in Lead Plaintiffs' briefing in support of the Settlement, to the extent necessary, or as otherwise provided in the Supplemental Agreement)

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unless the Court otherwise directs or a dispute arises between Lead Plaintiffs and 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 Court, the Parties will use their best reasonable efforts to have the Supplemental Agreement submitted to the Court *in camera* or under seal, and will request that the Court afford it confidential treatment.

b. In the event of a termination of the Settlement pursuant to the Supplemental Agreement, the Stipulation shall become null and void and of no further force and effect, with the exception of provisions ¶¶ 21, 23, 41, 45, and 65, which shall continue to apply.

44. In addition to the grounds provided in ¶ 42 above, if, prior to filing their motion in support of final approval of the Settlement, Lead Plaintiffs believe that information produced during Due Diligence Discovery renders the proposed Settlement unfair or unreasonable, they shall submit their concerns to the Mediator. Defendants shall have the opportunity to respond to those concerns and the Parties shall use their best efforts to resolve any disagreements. If, following these discussions, Lead Plaintiffs continue to believe that the Settlement is unfair or unreasonable, they shall have the right to withdraw from and terminate the Settlement. In the event of a termination of the Settlement pursuant to this ¶ 44, the Stipulation shall become null and void and of no further force and effect, with the exception of provisions ¶¶ 21, 23, 41, 45, and 65, which shall continue to apply.

**NO ADMISSION OF WRONGDOING**

45. The Term Sheet, this Stipulation (whether or not consummated and whether or not approved by the Court), including the exhibits hereto and the Plan of Allocation contained therein (or any other Plan of Allocation that may be approved by the Court), and any discussion, communication, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement,



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or any matter arising in connection with settlement discussions, negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than to enforce the terms of the Stipulation, and in particular:

a. do not constitute, and shall not be offered or received against or to the prejudice of any of the Defendants or Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or Defendants' Releasees with respect to the truth of any fact alleged by Lead Plaintiffs, or the validity or infirmity of any claim that was or could have been asserted in this Action or in any other litigation, including but not limited to Released Plaintiffs' Claims, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants or Defendants' Releasees or any other person or entity whatsoever; do not constitute, and shall not be offered or received against or to the prejudice of Defendants 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 Defendants, or against or to the prejudice of Lead Plaintiffs, or any other member of the Settlement Class as evidence of any infirmity in the Lead Plaintiffs' claims, or the other members of the Settlement Class;

b. do not constitute, and shall not be offered or received against or to the prejudice of Defendants, Lead Plaintiffs, any other member of the Settlement Class, or their respective counsel, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against or to the prejudice of any of the Defendants, Lead Plaintiffs, other members of the Settlement Class, or their respective counsel, in any arbitration proceeding or other civil,

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criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

c. do not constitute, and shall not be offered or received against or to the prejudice of any of the Lead Plaintiffs or Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Defendants' Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or 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 Plaintiffs' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; and

d. do not constitute, and shall not be construed against any of the Releasees 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; *provided, however,* that if this Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

**MISCELLANEOUS PROVISIONS**

46. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

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47. Each Defendant warrants, as to the payments made or to be made on behalf of himself or itself only, that at the time of entering into this Stipulation and at the time of such payment they, or to the best of their knowledge any persons or entities contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of them render them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by each of the Defendants and not by their counsel.

48. 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 by or on behalf of Defendants 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 into the Settlement Fund by others, then, at the election of Lead Plaintiffs, Lead Plaintiffs and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment, if applicable, entered in favor of Defendants and the other Releasees pursuant to this Stipulation, in which event the Releases and Judgment, or Alternate Judgment, if applicable, shall be null and void, and the Parties shall be restored to their respective positions in the litigation as provided in ¶ 41(b) above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned as provided in ¶ 41(e) above.

49. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Lead Plaintiffs and any other Settlement Class Members against the Defendants' Releasees with respect to the Released

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Plaintiffs' Claims. Lead Plaintiffs and Defendant agree that each has complied fully with the strictures of Rule 11 of the Federal Rules of Civil Procedure, and the proposed Judgment will contain a statement to reflect this compliance. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, including through a mediation process supervised and conducted by Greg Lindstrom of Phillips ADR, and reflect that the Settlement was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

50. The Parties agree that except as expressly provided herein, or as may otherwise be required by law, in response to any media inquiry regarding the fact of settlement or the terms of the Settlement, or regarding the amount of any payments made or claims released pursuant to the Settlement, the Parties shall state only that the matter was resolved through settlement and shall provide no further comment, explanation, or description of the Settlement, other than a statement that the Settlement is in the best interests of the Parties. In addition, pending final settlement approval, each of the Parties shall not directly or indirectly, individually or in concert with others, engage in any conduct or make, or cause to be made, any statement, observation, or opinion, or communicate any information (whether oral or written) that is calculated to or is likely to have the effect of in any way (i) undermining, defaming, or otherwise in any way reflecting adversely or detrimentally upon Lead Plaintiffs, Defendants, or any of Baxter's current and former directors, officers, representatives, or affiliates; or (ii) accusing or implying that Lead Plaintiffs, Defendants, or any of Baxter's current and former directors, officers, representatives, or affiliates engaged in any wrongful, unlawful, or improper conduct.

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51. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of both Lead Plaintiffs and Defendants (or their successors-in-interest).

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

53. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the 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, including the Plan of Allocation (or such other Plan of Allocation as may be approved by the Court) and the distribution of the Net Settlement Fund to Settlement Class Members.

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

55. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among Lead Plaintiffs and Defendants concerning the Settlement and this Stipulation and its exhibits. All Parties acknowledge that no other agreements, representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation, its exhibits or the Supplemental Agreement other than those contained and memorialized in such documents.

56. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

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57. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Parties, including any and all Releasees and any corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate, or reorganize.

58. The construction, interpretation, operation, effect, and validity of this Stipulation, the Supplemental Agreement and all documents necessary to effectuate the Settlement shall be governed by the internal laws of Illinois without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

59. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in the Court.

60. This Stipulation shall be interpreted in a neutral manner and 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 between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

61. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, 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.

62. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

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63. 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 or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Lead Plaintiffs or Lead Counsel: Bernstein Litowitz Berger & Grossmann LLP  
Attn: James A. Harrod  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444  
Email: Jim.Harrod@blbglaw.com

-and-

Kessler Topaz Meltzer & Check, LLP  
Attn: Sharan Nirmul  
280 King of Prussia Road  
Radnor, PA 19087  
Telephone: (610) 667-7706  
Facsimile: (610) 667-7056  
Email: snirmul@ktmc.com

If to Defendants: Latham & Watkins LLP  
Attn: Sean M. Berkowitz  
330 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Telephone: (312) 876-7700  
Facsimile: (312) 993-9767  
Email: sean.berkowitz@lw.com

64. Except as otherwise provided herein, each Party shall bear its own costs.

65. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

66. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

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67. If any disputes arise out of the finalization of the Settlement documentation or the Settlement itself, those disputes will be resolved by Greg Lindstrom of Phillips ADR first by way of telephonic or video mediation and, if unsuccessful, then by way of final, binding, non-appealable resolution.

68. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of April 1, 2021.

**BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP**

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

James A. Harrod  
James A. Harrod (admitted pro hac vice)  
Adam D. Hollander (admitted pro hac vice)  
Alexander T. Payne (admitted pro hac vice)  
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-and-

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**KESSLER TOPAZ  
MELTZER & CHECK, LLP**

By: 

Sharan Nirmul  
Sharan Nirmul (#90751)  
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