

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VISTA HEALTHPLAN, Inc., <i>et al.</i> ,  Plaintiffs,  v.  CEPHALON, INC., <i>et al.</i> ,  Defendants.	CIVIL ACTION  2:06-cv-01833-MSG  Judge Mitchell S. Goldberg
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**TRUE-UP AGREEMENT FOR THE CEPHALON/BARR/TEVA SETTLEMENT**

THIS TRUE-UP AGREEMENT is made and entered into as of May, \_\_\_\_ 2019, by and among:

(a) End-Payor Class Plaintiffs: (collectively “End-Payor Class Plaintiffs”) in the above-captioned action pending in federal court in the Eastern District of Pennsylvania ( the “Class Action”); and

(b) SHP Group: a group of health insurance companies and health plans (“Settling Health Plans,” “SHPs,” or “SHP Group”), represented by the undersigned SHP Counsel.

WHEREAS, End-Payor Class Plaintiffs and Defendants Cephalon, Inc., Teva Pharmaceutical Industries Ltd., Teva Pharmaceuticals USA, Inc., and Barr Pharmaceuticals, Inc. (collectively “Defendants”) have entered into a settlement agreement of the Class Action (“the Class Settlement Agreement”) dated May 21, 2018;

WHEREAS, the Settlement Class is comprised of third-party payers (“TPPs”) and individual consumers;

WHEREAS, Consumer Allocation Counsel and TPP Allocation Counsel appointed by Lead Class Counsel engaged in vigorous arm’s-length negotiations to allocate the Total

Settlement Amount between Consumers and TPPs;

WHEREAS, the allocation negotiations of the Total Settlement Amount was based on a Total Settlement Amount of \$125,000,000;

WHEREAS, the SHP Group and Defendants have entered into a settlement agreement (the “SHP Settlement Agreement” or “SHP Agreement”) dated as of February 1, 2018;

WHEREAS, the SHP Group has represented that, in the aggregate, they provide or administer prescription drug and health benefits to at least a majority of the covered lives privately insured in the United States as of December 31, 2014;

WHEREAS, End-Payor Class Plaintiffs, through Lead Class Counsel, and the SHP Group, through SHP Group Counsel, after vigorous, arm’s-length negotiations, have agreed to an initial payment to the SHP Group (the “SHP Group Initial Payment”);

WHEREAS, End-Payor Class Plaintiffs and the SHP Group intend TPP Class Members and SHP Group claims to be paid on the same *pro rata* basis and intend to establish a reconciliation mechanism herein between settlement amounts allocated to the TPP Settlement Pool and the SHP Group Initial Payment, to be applied once all Claims Documentation by TPP Class Members and SHPs are submitted, for that purpose;

WHEREAS, Lead Class Counsel having agreed to use their best efforts to obtain Court approval for the terms of this True-Up Agreement, and having agreed that the allocation set forth herein is fair and equitable, and that the fairness of the overall settlement to which this True-Up Agreement is made a part, requires the adoption of this proposed True-Up Agreement;

NOW THEREFORE, it is agreed by the undersigned, on behalf of End-Payor Class Plaintiffs and the Settlement Class, and the SHP Group, that the Total Settlement Amount shall be allocated and distributed, subject to the Class Settlement Agreement, the SHP Agreement and

Court approval, where required, as set forth herein:

1. General Definitions. As used in this True-Up Agreement, the following terms shall have the indicated meanings:

(a) “Authorized Consumer Claimant” means a Consumer Class Member who submits a Proof of Claim that is acceptable in whole or in part by the Settlement Administrator.

(b) “Authorized TPP Claimant” means a TPP Class Member who submits a Proof of Claim that is accepted in whole or in part by the Settlement Administrator.

(c) “Claim Documentation” means the materials required for submission of a claim to the Settlement Administrator pursuant to this True-Up Agreement.

(d) “Class Member” means any natural person or entity falling within the definition of the Settlement Class who is not a Class Opt-Out.

(e) “Class Opt-Out” means any natural person or entity falling within the definition of a Settlement Class who timely and validly submits a request for exclusion from the Settlement Class in accordance with the procedures set forth in the Settlement Notice.

(f) “Consumer” means any person falling within the definition of the Settlement Class who is a natural person and not a TPP. “Consumer” includes living persons as well as the executors, heirs, administrators, trustees, or other authorized representatives of deceased persons.

(g) “Consumer Allocation Counsel” means the law office of Robert Sink.

(h) “Consumer Class Members” means Consumers who are not Class Opt-Outs.

(i) “Consumer Settlement Pool” means Seventeen Million Five Hundred

Thousand Dollars (\$17,500,000), which constitutes the portion of the Class Settlement Fund allocated to Consumer Class Members, which amount shall be segregated into an account as provided in Paragraph 2, plus all interest or other income that accrues thereon.

(j) “Class Settlement Fund” means the Total Settlement Amount minus the SHP Group Initial Payment, and shall be in an amount not less than Forty Eight Million Dollars (\$48,000,000).

(k) “Court” or “Settlement Court” means the Honorable Mitchell S. Goldberg of the United States District Court for the Eastern District of Pennsylvania or if Judge Goldberg is not available, another judge from the United States District Court for the Eastern District of Pennsylvania who will be designated by Judge Goldberg or who is appointed, or any subsequent court before which the Defendants’ Counsel and Lead Class Counsel agree to settle the claims of the Settlement Class.

(l) “Defendants” means Cephalon, Inc., Teva Pharmaceutical Industries Ltd., Teva Pharmaceuticals USA, Inc., and Barr Pharmaceuticals, Inc. and any respective predecessor entities and past or present parents, subsidiaries, divisions, affiliates, successors, and assigns.

(m) “Effective Date” means the first date after entry by the Settlement Court of an Order and Final Judgment, substantially in the form proposed by the parties and the expiration of any time for appeal or review of such Order and Final Judgment, or, if any appeal is filed and not dismissed, after such Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari.

(n) “Escrow Account” means the accounts established pursuant to the Class Settlement Agreement.

(o) “Lead Class Counsel” means the law firms of Spector Roseman & Kodroff, P.C., Kessler Topaz Meltzer & Check, LLP and Criden & Love, P.A.

(p) “Net Consumer Settlement Pool” means the balance of the Consumer Settlement Pool after deducting fees, expenses, incentive awards and costs, including costs of notice and claims administration for Consumer Class Members.

(q) “Net TPP Settlement Pool” means the TPP Settlement Pool after deducting fees, expenses, incentive awards, costs, including costs of notice and claims administration for TPP Class Members, and the SHP Group True-Up Amount, if any.

(r) “Settlement Administrator” means A.B. Data, Inc.

(s) “Settlement Class” means the classes as defined in the Class Settlement Agreement. While the Settlement Classes are designated as “State Antitrust/Consumer protection and “State Unjust Enrichment” classes, there is no distinction between those groups for purposes of calculating damages or claims, or for allocating the Class Settlement Fund.

(t) “Settlement Notice” means the Notice Program prepared by A.B. Data or as ordered by the Court.

(u) “SFPs” means self-funded healthcare plans and/or entities for which one or more SHP Group Member or TPP Class Member provides or provided prescription drug or health benefit services through administrative services-only contracts or as a third-party administrator and on whose behalf the SHP Group Member and/or TPP Class Member is authorized to make a claim. Such SFPs will be identified in the purchase information submitted by the SHPs and TPP Class Members.

(v) “SHP Group” or “SHPs” means the third-party payors represented by SHP Group Counsel that have entered into the SHP Settlement Agreement, including their affiliates and SFPs, including group customers.

(w) “SHP Group Counsel” means the law firms of Rawlings & Associates, PLLC; Lowey Dannenberg P.C.; and Wallace, Jordan, Ratliff & Brandt, LLC.

(x) “SHP Group Initial Payment” means the amount payable to the SHP Group pursuant to the SHP Settlement Agreement.

(y) “SHP Group Recognized Claim Percentage” or “SHPRCP” means the total amount of claims by all SHP Group Members that are allowed by the Settlement Administrator divided by the total allowed claims of (a) all Authorized TPP Claimants and (b) all members of the SHP Group.

(z) “SHP Group True-Up Amount” means an amount calculated after the total allowed claim amounts for all Authorized TPP Claimants and the SHP Group have been determined by the Settlement Administrator. If the Gross True-Up Amount is positive then the SHP Group True-Up Amount is determined by the following calculation: (Gross True-Up Amount less (Gross True-Up Amount x True-up Attorney Fee percentage)). If the Gross True-Up Amount is negative then the SHP Group True-Up Amount is equal to the Gross True-Up Amount. If there is a spillover from the Net Consumer Settlement Pool as described in ¶ 6(v)(i) then such spillover shall be allocated to SHPs based on the SHP Group Recognized Claim Percentage. The amount of any such spillover due SHPs shall be applied to the SHP Group True-Up Amount whether positive or negative. These calculations are illustrated in the Excel spreadsheet titled Allocation Example as exchanged between Lead Class Counsel and SHP Group Counsel. This spreadsheet will be made available to the Court, under seal, if so requested.

- (aa) “Gross True-Up Amount” means the (SHPRCP x Total TPP Settlement Amount After Expenses) less SHP Group Initial Payment.
- (bb) “True-Up Attorney Fee” means the same percentage of attorneys’ fees awarded by the Court and used to calculate attorney fees on the Consumer Settlement Pool and the TPP Settlement Pool.
- (cc) “Total TPP Settlement Amount” means the sum of the TPP Settlement Pool and the SHP Group Initial Payment.
- (dd) “Total TPP Settlement Amount After Expenses” means the Total TPP Settlement Amount less TPP Expenses.
- (ee) “Total Settlement Amount” means the amount which is paid by Defendants in full and final satisfaction of all Released Claims held by any Class Member or SHP Group Member. The Total Settlement Amount is inclusive of any payments for reasonable attorneys’ fees and costs of any kind, including all costs associated with Settlement Notice and claims and escrow administration.
- (ff) “TPP Allocation Counsel” means Gerald Lawrence of the law firm of Lowey Dannenberg, P.C.
- (gg) “TPP List” means a list of the identities of all TPP Class Members that submit Claim Documentation prepared by the Settlement Administrator.
- (hh) “TPP Class Members” means Third Party Payors falling within the definition of the Settlement Class, excluding any Class Opt-Outs.
- (ii) “TPP Claimant List” means a list of the TPP Class Members who have the 100 largest aggregate claims approved by the Settlement Administrator and the amount of such claims.

(jj) “TPP Expenses” are the litigation expenses approved by the Court multiplied by the percentage created by dividing the Total TPP Settlement Amount by the sum of the Total TPP Settlement Amount plus the Consumer Settlement Pool.

(kk) “TPP Fees and Settlement Costs” means (1) the fees approved by the Court multiplied by the TPP Settlement Percentage, and (2) the portion of the Settlement Notice and the portion of the costs of administering the Class Settlement, including but not limited to, payments to the Settlement Administrator or Escrow Agent, or taxes due from the Class Settlement Fund, that are attributable to TPPs.

(ll) “TPP Settlement Percentage” means the portion of the Class Settlement Fund allocated to TPPs, expressed as a percentage as may be subsequently modified to reflect any spillover from the Consumer Settlement Pool.

(mm) “TPP Settlement Pool” means the portion of the Class Settlement Fund allocated to TPP Class Members, which amount shall be segregated as provided in Paragraph 2, plus all interest or other income that accrues thereon. The TPP Settlement Pool will be in an amount *not less than* Thirty Million Five Hundred Thousand Dollars (\$30,500,000).

(nn) “Provigil” means modafinil formulations of various strengths marketed under the brand-name Provigil® and/or its generic equivalent modafinil.

(oo) “Provigil Purchases” means payments or reimbursements for all or part of the cost of Provigil prescribed and dispensed in the United States; including but not limited to, the payment or partial payment for or reimbursement of Provigil to any pharmacy or other healthcare provider, or the payment of a co-insurance amount, deductible amount, flat payment amount (excluding flat co-pay amounts where brand co-pay is equal to generic co-pay) or co-pay amount for Provigil pursuant to a Medicare or Medicaid co-insurance obligation, an

insurance agreement, or other health care plan. Provigil Purchases do not include purchases of Provigil for resale purposes.

(pp) “United States” means the United States of America including its states, commonwealths, territories, and possessions.

2. Initial Allocation of the Settlement Proceeds. The Defendants have agreed to pay Forty-Eight Million Dollars (\$48,000,000) to the Settlement Class, which will be allocated:

a. Consumer Settlement Pool: Seventeen Million Five Hundred Thousand Dollars (\$17,500,000); and

b. TPP Settlement Pool: Thirty Million Five Hundred Thousand Dollars (\$30,500,000). If any amount remains in the Net Consumer Settlement Pool after Authorized Consumer Claimants have been paid 100% of their documented Provigil Purchases as approved by the Settlement Administrator, such amount will be transferred to and become part of the TPP Settlement Pool.

3. Disbursements Prior to Final Approval of the Class Settlement.

Prior to the Settlement becoming final, disbursements for the costs and expenses of Class notice and administration for Consumer Class Members and TPP Class Members may be made from the Consumer Settlement Pool and TPP Settlement Pool respectively as provided in the Class Settlement Agreement and approved by the Court.

4. SHP Group “True-Up” and Reversion Amount and Requirements.

a. No later than the date set by the Court, as may be extended from time-to-time, for TPP Class Members to submit Proofs of Claim, the SHP Group shall submit its Claim Documentation, which will include the same information as required of TPP Class

Members for submission of valid claims to the Settlement Administrator.

b. Lead Class Counsel shall submit a schedule of all Opt-Outs to SHP Group Counsel, with a copy to the Defendants' Counsel, no later than thirteen (13) days following the opt-out deadline. Within twenty one (21) days of receipt of a schedule of all opt-outs SHP Group Members shall then submit to the Settlement Administrator any necessary amendments to their Claim Documentation to exclude claims made on behalf of any TPP End-Payor Opt-Outs.

c. The Settlement Administrator shall not authorize any claims made by SHP Group Members on behalf of any entity excluded from the Settlement Class pursuant to the Class Settlement Agreement. The Settlement Administrator also shall not allow duplication of claims by SHPs and/or TPP Class Members, and will institute a process by which to consult with SHPs and TPP Class Members submitting claims that appear duplicative to resolve any disputes as to the validity of the claims.

d. Representations and Warranties. Each Consumer Class Member and TPP Class Member and each SHP shall warrant that any data or other information it submits to the Settlement Administrator will be true and accurate in good faith and to the best of their ability. To verify the accuracy of claim information and to prevent duplication of claims, the Settlement Administrator may reasonably request additional information from TPP and Consumer Class Members and SHPs as deemed appropriate by the Settlement Administrator

e. Confidentiality. All Claim Documentation (including the identification of SHPs) or other information submitted by SHPs to the Settlement Administrator pursuant to this True-Up Agreement shall be kept confidential and may be used or disclosed only for the purpose of effectuating this True-Up Agreement. Adequate steps shall be taken to protect

against unlawful disclosure of confidential patient information, if any, that is included in such Claim Documentation, or other information

f. SHP Group “True Up” Reversion Amount Computation

i. Notice of Proposed Computation. The Settlement Administrator shall make the TPP List available to SHP Group Counsel. The TPP List shall be deemed confidential and can be used only for the purposes of determining duplication of claims or whether any entity submitting Claim Documentation falls within the definition of a TPP Class Member as set forth herein. The TPP List shall be generated by the Settlement Administrator and transmitted to SHP Group Counsel no later than the date for the fairness hearing set by the Settlement Court or ten (10) days following the TPP Class Member proof of claim filing deadline whichever is earlier, and any subsequent changes to the TPP List shall be promptly transmitted to SHP Group Counsel. SHP Group Counsel shall have the opportunity, within twenty-one (21) days of receipt of a TPP List or any updates thereto, to identify in writing to Lead Class Counsel any TPP Class Member that SHP Group Counsel believes has submitted a claim that is duplicative of a claim already asserted by another TPP Class Member or SHP, or that falls outside the definition of a TPP Class Member as set forth herein. At least thirty-five (35) days prior to any intended distribution of the Net TPP Settlement Pool to Authorized TPP Claimants, Lead Class Counsel shall provide SHP Group Counsel with the proposed computation of the SHP Group True-Up Amount payment, including a list reflecting the Settlement Administrator’s determination of the amount of each SHP Group Member’s allowed claims for Provigil Purchases. Such computation will become binding upon the SHP Group unless within ten (10) business days of receipt of computation, SHP Group Counsel disputes the amount of the proposed SHP Group True-Up Amount payment in writing to Lead Class Counsel.

In the event of such a dispute, SHP Group Counsel may request and receive the TPP Claimant List from Lead Class Counsel. The TPP Claimant List shall be held in confidence by SHP Group Counsel, will be provided for attorneys' eyes only, and shall not be provided or shared with any other person, including any member of the SHP Group or another TPP Class Member, except as provided herein. SHP Group Counsel shall be entitled to show the list to a single third-party consultant who is not employed by any TPP Class Member, and who agrees in writing to be bound by the same confidentiality as SHP Group Counsel, solely for purposes of dispute resolution under this Paragraph. The proposed computation will then become binding upon the SHP Group within ten (10) business days of receipt of the TPP Claimant List, unless SHP Group Counsel further disputes the amount of the proposed SHP Group Reversion Amount payment in writing to Lead Class Counsel. Other than as provided in this True-Up Agreement and the SHP Agreement, the SHP Group and SHP Group Counsel shall not be entitled to any information collected or generated by the Settlement Administrator or Class Settlement Counsel, except to the extent permitted by the Court in a proceeding pursuant to the Dispute Procedure below.

ii. Dispute Procedure. Lead Class Counsel and the SHP Group shall attempt to resolve any disputes raised pursuant to this Paragraph through good faith negotiations. If the dispute cannot be resolved informally, it shall be submitted to binding arbitration. The arbitrator will be agreed upon by the parties or, if no agreement can be reached, the arbitrator will be selected by the Settlement Court. The arbitrator's decision shall be final and will not be subject to appeal. Defendants shall not be involved in any arbitration pursuant to this Paragraph, and shall have no obligations or liability with respect thereto.

g. SHP Group "True-Up" Amount Payment. On or before five (5) days after the Effective Date, or within five (5) days of any resolution of a dispute under

Paragraph 4(f)(ii) above, or within five (5) days after all TPP Class Member claims have been processed and the total authorized claim amounts for all Authorized TPP Claimants and SHPs has been finally determined, whichever is later, the parties shall cause the payment of the SHP Group True-Up Amount to be made as follows:

i. If the SHP Group True-Up Amount is calculated by reference to a positive SHP Over/Underage, Lead Class Counsel shall cause the Escrow Agent to pay from the TPP Settlement Pool and into an account designated by SHP Group Counsel an amount equal to the SHP Group True-Up Amount and SHP Group Counsel may distribute the SHP Group True-Up Amount to SHP Group Members according to a formula to be agreed upon by the SHP Group only.

ii. If the SHP Group True-Up Amount is calculated by reference to a negative SHP Over/Underage, SHP Group Counsel shall cause payment to be made to the TPP Settlement Pool in an amount equal to the SHP Group True-Up Amount.

5. Court Approval of Disbursements and Distributions. Approval by the Court shall be required prior to any disbursement or any distribution from the Class Settlement Fund, other than for any fees and expenses incurred to administer the Escrow Account, costs associated with Settlement Notice and claims administration, and taxes on the Class Settlement Fund.

6. Disbursements and Distributions from the Class Settlement Fund. The Class Settlement Fund shall be distributed as follows or as otherwise ordered by the Court:

(a) Prior to the Effective Date of the Class Settlement Agreement:

i. Any fees and expenses incurred in administering the Escrow Account shall be paid pursuant to the Escrow Agreement. The costs of Settlement Notice shall

be paid by the Escrow Agent to the Settlement Administrator at the direction of Lead Class Settlement Counsel, with notice of such payments provided to the Defendants. The cost of notice and administration related to Consumer Class Members' claims shall be paid from the Consumer Settlement Pool. The costs of notice and administration related to TPP Class Members' claims shall be paid from the TPP Settlement Pool.

ii. Disbursements for the payment of any taxes (including any estimated taxes, interest or penalties) due as a result of income earned by the Class Settlement Fund shall be made promptly by the Escrow Agent pursuant to the Escrow Agreement, with notice of such disbursements provided to Lead Class Counsel and the Defendants. Net income and estimated taxes shall be calculated and paid for the Class Settlement Fund and the tax returns shall be filed for the Class Settlement Fund.

(b) After the Effective Date of the Class Settlement Agreement, the Class Settlement Fund shall be distributed as follows:

i. First, any remaining fees or expenses incurred in connection with the administration of the Escrow Account shall be paid pursuant to the Escrow Agreement, and to the extent, if any, that the reasonable fees and expenses incurred as part of Settlement Notice and claims administration have not been paid, such fees and expenses shall be distributed to the Settlement Administrator by the Escrow Agent with notice of such disbursements provided to Lead Class Counsel. Such fees, expenses and costs shall be paid from the Class Settlement Fund as provided in this Paragraph 6;

ii. Second, disbursements for the payment of any taxes (including any estimated taxes, interest or penalties) due as a result of income earned by the Class Settlement Fund shall be made promptly by the Escrow Agent pursuant to the Escrow Agreement with

notice of such disbursements provided to Lead Class Counsel. Net income and estimated taxes shall be calculated and paid for the Class Settlement Fund; and tax returns shall be filed for the Class Settlement Fund;

iii. Third, any attorneys' fees and litigation expenses awarded by the Court shall be paid from the Class Settlement Fund to Lead Class Counsel for distribution as directed by Lead Class Counsel. Unless otherwise ordered by the Settlement Court, such attorneys' fees and expenses as are awarded by the Court shall be paid from the Class Settlement Fund;

iv. Fourth, any incentive award determined by the Court for services rendered to the Settlement Class by the Class Plaintiffs shall be distributed to such persons or entities. Any incentive awards, unless otherwise ordered by the Settlement Court, shall be paid from the Class Settlement Fund.

v. Fifth, the Class Settlement Fund shall be payable to Authorized Consumer Claimants and Authorized TPP Claimants in accordance with this True-Up Agreement and as approved by the Court.

(i) Payments from the Net Consumer Settlement Pool to Authorized Consumer Class Claimants shall be made as promptly as practicable after the Effective Date. Authorized Consumer Class Claimants shall be entitled to receive up to 100% of their documented Provigil Purchases allowed by the Settlement Administrator. If funds remain in the Net Consumer Settlement Pool after distribution to Authorized Consumer Class Claimants, such funds shall spillover to the TPP Settlement Pool and be included as part of the TPP Settlement Pool. If 100% of the documented Provigil Purchases by Authorized Consumer Class Claimants' claims exceeds the Net Consumer Settlement Pool, Authorized Consumer Class Claimants shall

receive up to their *pro rata* share of the Net Consumer Settlement Pool.

vi. Sixth, any SHP Group True-Up Amount shall be paid from or to the TPP Settlement Pool as provided in Paragraph 4 above.

7. Effect of Disapproval. In the event that the Settlement Court or a later appellate court declines to approve the True-Up Agreement substantially in its proposed form, Lead Class Counsel and SHP Group Counsel shall have the right and the obligation to renegotiate the terms of the True-Up Agreement in a manner substantially as close to the original True-Up Agreement as possible. In the event that the Settlement Court or a later appellate court declines to approve the True-Up Agreement substantially in its proposed form, Lead Class Counsel will support the SHP Group if they determine it is necessary to join the Class for the purpose of renegotiating the terms of the True-Up Agreement in a manner substantially as close to the original True-Up Agreement as possible.

8. Termination. In the event that the Class Settlement Agreement is terminated pursuant to Paragraphs 16 or 17 of the Class Settlement Agreement, or for any other reason does not become final in accordance with the terms of paragraph 5 of the Class Settlement Agreement, then this True-Up Agreement shall be of no force or effect, except as that contingency is provided for in the Class Settlement Agreement, such as for payment of Settlement Notice and administrative fees and costs from the Class Settlement Fund.

9. Disposition of the SHP Group True-Up Amount in the Event of Termination of the Class Settlement Agreement. If the Court declines to finally approve the Class Settlement Agreement, or if such approval is reversed, vacated, or otherwise materially modified on appeal, or if the Court does not enter the final judgment in substantially the form provided for in the Class Settlement Agreement, or if the Court enters final judgment and

appellate review is sought, and on such review, such final judgment is reversed, vacated or materially modified (an “Adverse Appellate Decision”), and this Settlement is terminated upon the election of any of the Defendants or Lead Class Counsel, then the SHP True-Up Amount shall be distributed as follows:

- (a) If the parties are able to negotiate amendments to the Class Settlement Agreement such that it is approved by the Court and becomes effective within thirty (30) months after entry of the Adverse Appellate Decision, then the SHP Group shall be permitted to participate in the SHP Group True-Up Amount on terms substantially similar to those provided in this Agreement.
- (b) If the Adverse Appellate Decision is for reasons relating to allocation of the TPP Settlement Pool, then, as part of any attempted re-negotiation of the Class Settlement Agreement, any additional monies required to be allocated to one such group shall reduce the monies allocated to the remaining groups *pro rata*. Any such re-allocation shall not result in a reversion payment from the SHP Group to the Class unless such a reversion payment was due under the initial terms of this Agreement. If the Class Settlement Agreement is so amended, finally approved by the Court, and becomes effective within thirty (30) months after entry of the Adverse Appellate Decision, then the SHP Group shall be permitted to participate in the SHP Group True-Up Amount (as adjusted) on terms substantially similar to those provided in this Agreement.

10. Preliminary Approval. This True-Up Agreement, shall be submitted to the Court as presumptively fair, reasonable and adequate under Fed. R. Civ. P. 23(e) as part of the preliminary approval process.

11. Execution in Counterparts. This True-Up Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this agreement and filed with the Court.

IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this True-Up Agreement as of the date first herein above written.

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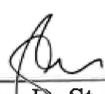
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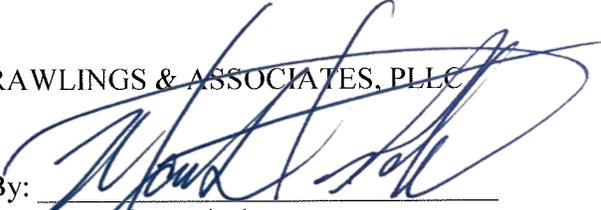
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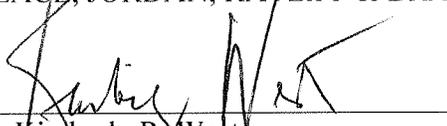
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