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14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

- 19 **STATE OF CALIFORNIA**
- 20 **STATE OF ALABAMA**
- 21 **STATE OF ARKANSAS**
- 22 **STATE OF DELAWARE**
- 23 **DISTRICT OF COLUMBIA**
- 24 **STATE OF FLORIDA**
- 25 **STATE OF HAWAII**
- 26 **STATE OF IDAHO**
- 27 **STATE OF ILLINOIS**
- 28 **STATE OF INDIANA**

Case No. 18-cv-675

**SETTLEMENT AGREEMENT AND
 STIPULATED ORDER FOR ENTRY OF
 INJUNCTION**

1 **STATE OF IOWA**
2 **COMMONWEALTH OF KENTUCKY**
3 **STATE OF LOUISIANA**
4 **STATE OF MARYLAND**
5 **STATE OF MINNESOTA**
6 **STATE OF MISSISSIPPI**
7 **STATE OF NORTH DAKOTA**
8 **STATE OF OKLAHOMA**
9 **STATE OF OHIO**
10 **STATE OF RHODE ISLAND**
11 **STATE OF WASHINGTON**
12 **STATE OF WISCONSIN**
13 **COMMONWEALTH OF VIRGINIA**

14
15 Plaintiffs,

16 v.

17 **TEIKOKU SEIYAKU CO., LTD. and**
18 **TEIKOKU PHARMA USA, INC.**

19 Defendants.
20

21 This Settlement Agreement and Stipulated Order for Entry of Injunction (ASO) is made and
22 entered into this 31st day of January, 2018, by and between the States of States of California,
23 Alabama, Arkansas, Delaware, Hawaii, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky,
24 Louisiana, Maryland, Minnesota, Mississippi, North Dakota, Oklahoma, Ohio, Rhode Island,
25 Virginia, Washington, and Wisconsin, and the District of Columbia through their respective
26 Attorneys General acting in their law enforcement and sovereign capacities (the “States”), on the
27 one hand, and Teikoku Pharma USA, Inc. (TPU) and Teikoku Seiyaku Co., Ltd. (TSC)

1 (hereinafter together “Teikoku”), on the other (collectively “Parties”). Any State electing to join
2 the ASO shall do so by executing a signature page that shall be annexed to this ASO.

3 WHEREAS, TSC manufactures a five-percent lidocaine patch product sold under the
4 brand name Lidoderm® in Japan, which it sells to its wholly owned subsidiary TPU;

5 WHEREAS, TPU is the owner of the New Drug Approval for Lidoderm® and TPU sells
6 Lidoderm® in the United States to Endo Pharmaceuticals;

7 WHEREAS, on May 28, 2012, Teikoku entered into a Settlement and License Agreement
8 with Endo Pharmaceuticals, Inc. and Watson Laboratories, Inc., which agreement settled
9 litigation captioned *Endo Pharmaceuticals Inc., et al. v. Watson Laboratories, Inc.*, Civil Action
10 No. 1:10-cv-138-GMS and *Endo Pharmaceuticals Inc. v. Watson Laboratories, Inc.*, Civil Action
11 No. 11-cv-S75-GMS (the “Lidoderm Settlement and License Agreement”);

12 WHEREAS, the States contend that the Lidoderm Settlement and License Agreement
13 delayed and foreclosed competition from generic equivalents of Lidoderm® for a period of time
14 in violation of federal and state antitrust and consumer protection laws;

15 WHEREAS, the States initiated an investigation of Teikoku with respect to the above
16 alleged actions;

17 WHEREAS, Teikoku deny that they have engaged in any wrongful or unlawful conduct
18 and contend that they have, at all times, operated within the law and within industry standard
19 practices;

20 WHEREAS, the Parties have agreed to resolve any claims arising from the States’
21 investigation through this ASO;

22 WHEREAS, nothing in this ASO will be construed as a finding or admission of any
23 violation of law on the part of Teikoku;

24 WHEREAS, Teikoku have consented to this ASO and will comply with the provisions of
25 this ASO pending entry by the Court of the Stipulated Order for Entry of Injunction per the terms
26 of this ASO; and
27
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1 WHEREAS, the States contend that the entry of this ASO is in the public interest;

2 **THEREFORE, IT IS on this 31st day of January, 2018 AGREED, as follows:**

3 **I. DEFINITIONS**

4 For purposes of this ASO, the following definitions apply:

5 1. "States" means the Attorneys General of the states of States of California, Alabama,
6 Arkansas, Delaware, Hawaii, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana,
7 Maryland, Minnesota, Mississippi, North Dakota, Oklahoma, Ohio, Rhode Island, Virginia,
8 Washington, and Wisconsin, and the District of Columbia.

9 2. "Teikoku" means Teikoku Pharma USA, Inc. and Teikoku Seiyaku Co., Ltd.
10 collectively, and their respective predecessors, affiliates, parent, and assigns, any joint venture,
11 subsidiary, division, group, or affiliate controlled directly or indirectly, currently or in the future,
12 by Teikoku, their successors and assigns, including successors in interest through bankruptcy,
13 merger, acquisition or otherwise, and the respective directors, officers, employees, agents, and
14 representatives acting on behalf of each.

15 3. "505(b)(2) Application" means an application filed with the United States Food and Drug
16 Administration pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, 21
17 U.S.C. § 355(b)(2).

18 4. "ANDA" means an Abbreviated New Drug Application filed with the United States Food
19 and Drug Administration pursuant to Section 505(j) of the Federal Food, Drug and Cosmetic Act,
20 21 U.S.C. § 355(j).

21 5. "Authorized Generic" or "AG" means a Drug Product that is manufactured pursuant to
22 an NDA and marketed, sold, or distributed in the United States under a name other than the
23 proprietary name identified in the NDA, or by the NDA Holder or a party at the direction or
24 consent of the NDA Holder.

25 6. "Brand/Generic Settlement" means any agreement or understanding that resolves, settles
26 or results in termination of a Patent Claim that has been threatened or made by or against an NDA
27 Holder with respect to any Patent alleged to cover any Drug Product, whether said Claim has
28

1 been filed in a court or in the Patent & Trademark Office or before the Patent Trademark &
2 Appeals Board.

3 7. “Brand/Generic Settlement Agreement” means a written agreement that resolves, settles,
4 precedes or follows by up to 30 days the termination of a Patent Claim.

5 8. “Branded Subject Drug Product” means a Subject Drug Product marketed, sold, or
6 distributed in the United States under the proprietary name identified in the NDA for the Subject
7 Drug Product.

8 9. “Commerce” has the same definition as it has in 15 U.S.C. § § 12, 44.

9 10. “Control” or “Controlled” means the holding of more than fifty percent (50%) of the
10 common voting stock or ordinary shares in, or the right to appoint more than fifty percent
11 (50%) of the directors of, or any other arrangement resulting in the right to direct the
12 management of the said corporation, company, partnership, joint venture, or entity.

13 11. “Drug Product” means a finished dosage form (e.g., tablet, capsule, solution, or patch),
14 as defined in 21 C.F.R. § 314.3(b), that contains a drug substance, generally, but not necessarily,
15 in association with one or more other ingredients.

16 12. “Investigation” means the investigation conducted by the States.

17 13. “Generic Filer” means a party to a Brand/Generic Settlement who controls an ANDA or
18 505(b)(2) Application for the Subject Drug Product or has the exclusive right under such
19 ANDA or 505(b)(2) Application to distribute the Subject Drug Product.

20 14. “Generic Product” means a Drug Product manufactured and/or sold under an ANDA or
21 pursuant to a 505(b)(2) Application.

22 15. “Lidoderm Settlement and License Agreement” means the Settlement and License
23 Agreement entered into on or about May 28, 2012, by and between Endo Pharmaceuticals
24 Inc., Teikoku, and Watson Laboratories, Inc. relating to Lidoderm®.

25 16. “NDA” means a New Drug Application filed with the United States Food and Drug
26 Administration pursuant to Section 505(b) of the Federal Food, Drug and Cosmetic Act,

27 21 U.S.C. § 355(b), including all changes or supplements thereto that do not result in the
28 submission of a new NDA.

1 17. “NDA Holder” means a party that controls the NDA for the Subject Drug Product or
2 has the exclusive right to distribute the Branded Subject Drug Product in the United States.

3 18. “No-AG Commitment” means any agreement with, or commitment or license to, a
4 Generic Filer that restricts, delays, transfers, imposes a condition precedent upon, or otherwise
5 interferes with the research, development, manufacture, regulatory approval, marketing or sale of
6 an Authorized Generic.

7 19. “Patent Claim” means any allegation threatened or included in a petition or complaint
8 filed with a court of law or with the United States Patent & Trademark Office or Patent Trial &
9 Appeal Board, that a Generic Product or other Drug Product may infringe any U.S. Patent held
10 by, or licensed to, an NDA Holder, or that any U.S. Patent held by the NDA Holder is invalid,
11 unenforceable or not infringed, or that any U.S. Patent held by a Generic Filer is invalid,
12 unenforceable or not infringed.

13 20. “Payment by the NDA Holder to the Generic Filer” means a transfer of any form of
14 value or consideration by the NDA Holder to the Generic Filer (including, but not limited to: a
15 No-AG Commitment; money; contracts for distribution, manufacturing, co-promotion, stand-by
16 manufacturing, co-development¹; agreements about the dates of launch of the Subject Drug
17 Products or other drug products outside the United States; settlements of pre-existing lawsuits; or
18 other contracts for goods, or services) regardless of whether the Generic Filer purportedly
19 transfers value in return, where such transfer is either (i) implicitly or expressly contingent on
20 entering into a Brand/Generic Settlement Agreement, or (ii) agreed to or formulated in whole or
21 in part, during the 60 day period starting 30 days before executing a Brand/Generic Settlement
22 Agreement and ending 30 days after executing a Brand/Generic Settlement Agreement. The
23 following, however, are not Payments by the NDA Holder to the Generic Filer:

24
25 ¹ Contracts for distribution, manufacturing, co-promotion, stand-by manufacturing, co-
26 development will not be considered Payments under this definition if they were contemplated,
27 executed and documented at least in part more than 30 days prior to the commencement of
28 discussion of the resolution of a Patent Claim or more than 30 days after the resolution of a Patent
Claim and are the result of an arms length transaction that is not implicitly or expressly
contingent on entering into a Brand/Generic Settlement Agreement.

1 a. compensation for saved future litigation expenses of the Brand or Generic Filer that
2 Teikoku can prove was budgeted and forecast in writing in good faith at least four months prior to
3 the subject Brand/Generic Settlement Agreement, not to exceed a maximum limit which is
4 initially set at seven million dollars (\$7,000,000) and shall be increased (or decreased) as of
5 January 1 of each year by an amount equal to the percentage increase (or decrease) from the
6 previous year in the annual average Producer Price Index for Legal Services (Series Id. PCU541
7 1--541 1--) published by the Bureau of Labor Statistics of the United States Department of Labor,
8 or its successor;

9 b. provisions in a Brand/Generic Settlement Agreement that provide only a date after which
10 a Generic Filer can begin selling, offering for sale, or distributing the Subject Drug Product on the
11 condition that Teikoku enters into no other agreements otherwise providing Payments to a
12 Generic Filer less than 30 days before or greater than 30 days after the resolution of the Patent
13 Claim;

14 c. continuation or renewal of a pre-existing agreement provided: (i) the preexisting
15 agreement was entered at least thirty (30) days before the relevant Brand/Generic Settlement
16 Agreement; (ii) the terms of the renewal or continuation, including the duration and the financial
17 terms, are substantially similar to those in the preexisting agreement; and (iii) entering the
18 continuation or renewal is not implicitly or expressly contingent on agreeing to a Brand/Generic
19 Settlement or termination of a Patent Claim.

20 d. provisions in a Brand/Generic Settlement Agreement that permit a Generic Filer to begin
21 selling, offering for sale, or distributing the Subject Drug Product once another drug company
22 begins selling, offering for sale, or distributing the Subject Drug Product.

23 21. "Subject Drug Product" means the Drug Product for which one or more Patent Claims
24 are settled under a Brand/Generic Settlement. For purposes of this Order, the Drug Product of the
25 NDA Holder and the Generic Filer to the same Brand/Generic Settlement shall be considered to
26 be the same Subject Drug Product.

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1 22. "U.S. Patent" means any patent issued by the United States Patent and Trademark
2 Office, including all divisions, reissues, continuations, continuations-in part, modifications, or
3 extensions thereof.

4 23. "States Enforcement Council" means counsel for the States of California, Minnesota,
5 Mississippi and any other State whose status as States Enforcement Council has been established
6 per this Agreement.

7 **II. PROHIBITED AGREEMENTS**

8 A. From the date Teikoku signs this ASO, Teikoku individually and collectively, are
9 prohibited from entering into any Brand/Generic Settlement that includes both: (1) Payment by
10 the NDA Holder to the Generic Filer; and (2) an agreement by the Generic Filer not to research,
11 develop, manufacture, market, or sell the Subject Drug Product or any other drug product for any
12 period of time.

13 B. Nothing in this ASO shall preclude any State from challenging a future
14 Brand/Generic Agreement under otherwise applicable law if such future Brand/Generic
15 Agreement falls outside the scope of this ASO. Nothing in this ASO shall or can be utilized in
16 any litigation or manner outside of any enforcement action brought under this ASO.

17 **III. ENFORCEMENT AUTHORITY**

18 A. The States Enforcement Council shall consist initially of the Attorney General of the
19 State of California, the Attorney General of Louisiana, the Attorney General of Minnesota, the
20 Attorney General of Mississippi (the original States Enforcement Council). Any other State that
21 has provided Teikoku 30 days' notice of its desire to serve as a member of the States Enforcement
22 Council shall become active members of the States Enforcement Council upon the expiration of
23 the 30-day notice period. The States that are party to this ASO shall have exclusive authority to
24 enforce this ASO as set forth herein, but only active members of the States Enforcement Council
25 shall have authority to implement the Reporting Requirements set forth under Section IV of this
26 ASO or the right to demand and receive Reports from Teikoku under this ASO.

27 B. The States Enforcement Council shall have the exclusive authority to implement the
28 terms of this ASO by filing a complaint and request to enter the Stipulated Order for Injunctive

1 Relief described herein. The exclusive forum to file such a complaint and request or in which to
2 file any complaint, petition or other action to enforce the terms of this ASO shall be the United
3 States District Court for the Northern District of California (the “Court”). The States
4 Enforcement Council shall also have the exclusive authority to seek such orders as are necessary
5 from the Court to enforce this Stipulated Order, provided, however, that the States Enforcement
6 Council will provide notice of an alleged violation and an opportunity to cure alleged violations
7 to Teikoku as set forth below. Notwithstanding the foregoing, any action by the Teikoku to cure
8 any such violation shall not be a defense to enforcement with respect to any knowing, willful or
9 systematic violations of this ASO.

10 C. If any of the States Enforcement Council or any party State believes that a Teikoku
11 entity is not in compliance with the terms of this ASO, the States Enforcement Council shall give
12 Teikoku written notice of such alleged non-compliance. Teikoku shall have fifteen (15) working
13 days from the date of receipt to respond in writing to such notice unless the parties agree to a
14 longer period of time. If the States Enforcement Council is not satisfied with Teikoku’s response,
15 it shall notify Teikoku in writing, and Teikoku shall have thirty (30) calendar days from the date
16 of receipt of the States’ response to cure such non-compliance. If after such time, the States
17 Enforcement Council alleges that a Teikoku entity is still not in compliance, the States
18 Enforcement Council may seek enforcement, fees and costs thereof, and civil penalties as granted
19 by applicable state law. Nothing in this clause prohibits the States Enforcement Council from
20 pursuing immediate enforcement for potential noncompliance if delay would cause irreparable
21 harm or prevent the States Enforcement Council from adequately enforcing the ASO.

22 D. The Parties agree that the exclusive venue for enforcing this ASO or any disputes that
23 arise out of the interpretation of this ASO or the entry of the Stipulated Order for Injunctive
24 Relief shall be the United States District Court for the Northern District of California (the
25 “Court”) and that no such action shall be brought in any other forum. The Parties agree to submit
26 to the jurisdiction of the Court to resolve such disputes and that the Court has the subject matter
27 to resolve them. The Parties further agree that venue to bring such action properly lies in the
28 Court.

1 E. To the extent the States Enforcement Council commences legal action to challenge a
2 Brand/Generic Settlement, any party State wishing to proceed as a member of the States
3 Enforcement Council as to that challenge must provide Teikoku with notice of its intention to do
4 so within 90 days of the commencement of such proceeding.

5
6 **IV. REPORTING REQUIREMENTS**

7 A. To determine and enforce compliance with this ASO, Teikoku shall submit to the
8 States Enforcement Council:

9 1) Copies of all agreements submitted to the Federal Trade Commission Bureau of
10 Competition and the Assistant Attorney General in charge of the Antitrust Division of the
11 Department of Justice pursuant to Section 1112 of the Medicare Prescription Drug, Improvement,
12 and Modernization Act of 2003 (the 2003 Act).

13 2) Copies of the written reports and additional documents required to be submitted to the
14 FTC under Section II of the FTC SO.

15 3) Along with each verified written report required under this section, Teikoku shall also
16 provide the States Enforcement Council a copy of any additional agreement with a party to a
17 Brand/Generic Settlement to which Teikoku is also a signatory if (i) the relevant Brand/Generic
18 Settlement Agreement includes an agreement by the Generic Filer not to research, develop,
19 manufacture, market or sell the Subject Drug Product for any period of time, and (ii) the relevant
20 additional agreement is entered within a year of executing the Brand/Generic Settlement
21 Agreement. For clarity, Teikoku need not submit such additional agreement to the extent such
22 agreement was submitted with a prior verified written report to the States Enforcement Council
23 pursuant to this ASO; this provision is intended to mirror the requirement set forth in the FTC
24 SO.

25 B. Any reports or notices required under this ASO shall be submitted to each active
26 member of the States Enforcement Council. Specific address information for Teikoku and for
27 each current member of the States Enforcement Council and all States that are party to this ASO
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1 is attached hereto as Exhibit A. Teikoku may, at its option, provide notice to any State that is a
2 party to this ASO.

3 C. No agreements, information or documents produced by Teikoku pursuant to this ASO
4 shall be divulged by any party State to any person not an authorized representative or retained
5 consultant or expert of any party State as set forth above, with the following exceptions:

6 1) in the course of a legal proceeding regarding enforcement or modification of this ASO
7 provided all parties to such a proceeding take reasonable steps to protect the confidentiality of
8 documents or information that they may reasonably understand Teikoku considers confidential;

9 2) as otherwise required by law for the purpose of securing compliance with this ASO
10 provided Teikoku is given notice and a reasonable opportunity to preserve the confidentiality of
11 documents that might otherwise be disclosed;

12 3) in a legal proceeding to which a party State is a party, or as otherwise required by law
13 (other than a grand jury proceeding), provided the party State shall reasonably attempt to preserve
14 such confidentiality by proceeding under any applicable protective order and utilizing sealing
15 procedures provided by law or court rule and by providing reasonable advance notice to Teikoku
16 (a minimum ten business days) before disclosing Teikoku's confidential documents to a third
17 person.

18 4) to the Federal Trade Commission or the Department of Justice.

19 D. Neither the terms of this ASO nor any reports or notices provided by Teikoku under
20 this ASO shall operate as a waiver of any future claims by any party. Further, any such reports or
21 notices provided by Teikoku to active members of the States Enforcement Council or to other
22 States that are parties to this ASO shall not be deemed to constitute actual or constructive notice
23 of any claims as to other states that have not received such reports or notices.

24 V. CHANGE OF CORPORATE CONTROL

25 A. Teikoku shall notify the States Enforcement Council within thirty (30) days of

26 1) Dissolution of Teikoku;

27 2) Any final acquisition, merger, or consolidation of Teikoku; or

28 3) Any other substantial change in Teikoku, including, but not limited to,

1 assignment of a substantial portion of Teikoku's assets, or the creation or dissolution of
2 subsidiaries, if such changes might affect Teikoku's compliance with the obligations arising out
3 of this ASO.

4 B. Teikoku shall submit any notice required under this paragraph to the States
5 Enforcement Council or, at its option, to any party States as set forth above.

6 VI. ACCESS TO INFORMATION

7 A. For the purpose of determining or securing compliance with this ASO, subject to and
8 without limiting any legally recognized privilege, and upon written request with reasonable
9 notice, Teikoku shall:

10 1) Timely respond to and cooperate with the States Enforcement Council's reasonable
11 request for production of documents or information related to compliance to include unredacted
12 (except for privilege) internal written justifications and economic modeling;

13 2) Agree to accept service of process of any complaint filed hereunder provided it is filed
14 in the United States District Court for the Northern District of California and cooperation with
15 any subpoenas issued by the States Enforcement Council, and

16 3) Allow the States Enforcement Council to informally interview a reasonable number of
17 officers, directors, or employees of Teikoku who may have counsel present regarding such
18 matters.

19 B. The States Enforcement Council will seek to coordinate any requests for information
20 under this Section with the FTC and Department of Justice, if involved, to the fullest extent
21 possible. The States Enforcement Council agrees to coordinate any and all requests and designate
22 one State to forward such requests from the States Enforcement Council.

23 VII. COOPERATION

24 A. At the request of States Enforcement Council, Teikoku shall cooperate with the party
25 States in the Investigation as follows:

26 (1) To the extent practical, Teikoku shall make its employees available in the United
27 States in person, by video conference, or by such other means as the Parties may agree to, for
28 such interviews and affidavits as reasonably required by the party States;

1 (2) Upon request, Teikoku shall provide the last-known contact information for any former
2 employees;

3 (3) Teikoku shall produce at trial in person, by deposition, or by affidavit, whichever is
4 legally necessary, witnesses to testify as to the amount of their respective relevant sales and to
5 testify as to the genuineness, status as business records, and authenticity of documents;

6 (4) Teikoku will provide non-privileged evidence supporting the assertions made in the
7 July 30, 2015 presentation to the Federal Trade Commission Staff, which presentation was also
8 made to the States representatives on May 27, 2016.

9 (5) Notwithstanding anything in the foregoing, Teikoku will have no obligation to disclose
10 evidence provided to Teikoku pursuant to a joint defense agreement with Endo Pharmaceuticals,
11 Inc. and Actavis plc to the extent doing so would violate the terms of such agreement.

12 **VIII. MONETARY RELIEF**

13 The parties recognize that there is ongoing litigation between Teikoku and private class and
14 individual parties (the “Private Parties”) pending in the Northern District of California before
15 Judge Orrick concerning the claims that are the subject of this ASO. In the event that Teikoku
16 and the Private Parties ultimately agree to mediation or engage in settlement negotiations, the
17 States reserve the right to participate in said proceedings. The Parties agree, however, that a
18 recovery the States may receive from participating in such proceedings and the injunction
19 contemplated herein shall be the States’ exclusive remedy for any alleged violation by Teikoku
20 arising from the Lidoderm Settlement and License Agreement and that Teikoku does not
21 guarantee and shall have no obligation to ensure that the States Enforcement Council or the States
22 will be permitted to participate in such proceedings or that they will receive any monetary
23 recovery as any resolution between Teikoku and the Private Parties (“Private Resolution”).

24 **IX. RELEASED CLAIMS**

25 In consideration of the injunctive provisions and the other commitments made by Teikoku
26 contained in this ASO, each State will be deemed to have fully, finally, and forever released
27 Teikoku and their officers, directors, employees, and attorneys (collectively “Releasees”) from
28 antitrust and consumer protection claims that were asserted or could have been asserted, by the

1 State Attorneys General in his or her sovereign capacity as chief law enforcement officer of his or
2 her respective state, arising from the Lidoderm Settlement and License Agreement. This
3 agreement does not relate to or release criminal actions or any non-competition or non-consumer
4 protection claims regarding Lidoderm, including but not limited to those regarding Medicare or
5 Medicaid fraud, irregularities or false claims, off-label marketing, false advertising or product or
6 product liability claims.

7 **X. EXPIRATION**

8 This ASO will expire on the date that is the earlier of 20 years from the date Teikoku signs
9 this ASO or the expiration of the FTC SO.

10 **XI. OTHER**

11 A. The terms of this ASO shall be binding on, and shall inure to the benefit of the Parties
12 and their successors.

13 B. If any clause, provision, or section of this ASO shall, for any reason, be held illegal,
14 invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other
15 clause, provision, or section of this ASO, and this ASO shall be construed and enforced as if such
16 illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

17 **XII. DISMISSAL AND COSTS**

18 This action shall be dismissed with prejudice. Each party shall bear its own costs.

19 **SO ORDERED this 12th day of February, 2018.**

20 
21 _____
22 The Honorable William H. Orrick