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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 THOMAS & THOMAS RODMAKERS,)	Case No. CV-99-07796-FMC(RNBx)
16 INC., et al., On Their Own Behalf and)	(Consolidated)
17 On Behalf of All Others Similarly)	<u>CLASS ACTION</u>
18 Situated,)	
19 Plaintiffs,)	STIPULATION OF SETTLEMENT
20 vs.)	WITH THE TOHO DEFENDANTS
21 NEWPORT ADHESIVES AND)	
22 COMPOSITES, INC., et al.,)	
23 Defendants.)	

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1 This Stipulation of Settlement with the Toho Defendants dated as of October 8,
 2 2004 (the “Stipulation”), is made and entered into by and among the following
 3 Settling Parties (as defined further in §IV hereof): (i) the Representative Plaintiffs (on
 4 behalf of themselves and each of the Class Members), by and through their counsel of
 5 record in the Litigation; and (ii) the Toho Defendants by and through their counsel of
 6 record in the Litigation. The Stipulation is intended by the Settling Parties to fully,
 7 finally and forever resolve, discharge and settle the Released Claims (as defined
 8 below), upon and subject to the terms and conditions hereof.

9 **I. THE LITIGATION**

10 On and after July 29, 1999, the following class actions were filed in the United
 11 States District Court for the Central District of California (the “Court”):

CASE NAME	CASE NUMBER	DATE FILED
<i>Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives and Composites, Inc.</i>	CV-99-07796GHK(CTx)	07/29/99
<i>Lamiglas, Inc. v. Hexcel Corporation</i>	SACV-99-986-GLT(EEx)	07/30/99
<i>Highland Injection Molding, Inc. v. Amoco Polymers, Inc.</i>	CV-99-08017-WDK(RC)	08/06/99
<i>Cape Composites, Inc. v. Mitsubishi Rayon Co., Ltd.</i>	CV-99-08260-RSWL(AJWx)	08/13/99
<i>Tex Tech Industries v. Amoco Polymers, Inc.</i>	SACV-99-1039-AHS(EEx)	08/19/99
<i>Gold Tip, Inc. v. Amoco Polymers, Inc.</i>	CV-99-09199-RJK(EXx)	09/09/99
<i>Royal Precision, Inc. v. Amoco Polymers, Inc.</i>	CV-99-10040-GHK(AIJx)	09/30/99

1 2 3	<i>Cannondale Corporation, Inc. v. Newport Adhesives and Composites</i>	CV-00-04913-HLH(CTx)	05/09/00
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4 By order entered September 21, 1999, the Court executed Amended Pretrial
5 Order No. 1, in which the Court, among other things, appointed Co-Lead Counsel, and
6 ordered the filing of a consolidated complaint. The operative complaint is the
7 Amended and Consolidated Class Action Complaint for Violation of 15 U.S.C. §1, *et*
8 *seq.* filed on October 5, 1999 (the “Complaint”). The Complaint and the claims
9 contained therein are referred to herein as the “Litigation.”

10 **II. TOHO DEFENDANTS’ DENIALS OF WRONGDOING AND
LIABILITY**

11 The Toho Defendants have denied and continue to deny each and all of the
12 claims alleged by the Representative Plaintiffs and the Class in the Litigation. The
13 Toho Defendants expressly have denied and continue to deny all charges of
14 wrongdoing or liability against them arising out of any of the conduct or acts alleged,
15 or that could have been alleged, in the Litigation. The Toho Defendants also have
16 denied and continue to deny, *inter alia*, the allegations that the Representative
17 Plaintiffs or the Class have suffered damage or that the Representative Plaintiffs or the
18 Class were harmed by the conduct alleged in the Litigation.

19 Nonetheless, the Toho Defendants have concluded that further conduct of the
20 Litigation would be protracted and expensive, and that it is desirable that the
21 Litigation be fully and finally settled in the manner and upon the terms and conditions
22 set forth in this Stipulation. The Toho Defendants also have taken into account the
23 uncertainty and risks inherent in any litigation, especially in complex cases like the
24 Litigation. The Toho Defendants have, therefore, determined that it is desirable and
25 beneficial to them that the Litigation be settled in the manner and upon the terms and
26 conditions set forth in this Stipulation.

1 **III. CLAIMS OF THE REPRESENTATIVE PLAINTIFFS AND**
2 **BENEFITS OF SETTLEMENT**

3 The Representative Plaintiffs believe that the claims asserted in the Litigation
4 have merit. However, counsel for the Representative Plaintiffs and the Class
5 recognize and acknowledge the expense and length of continued proceedings
6 necessary to prosecute the Litigation against the Toho Defendants through trial and
7 subsequent appeals. Counsel for the Representative Plaintiffs and the Class also have
8 taken into account the uncertain outcome and the risk of any litigation, especially in
9 complex actions such as the Litigation, as well as the difficulties and delays inherent
10 in such litigation. Counsel for the Representative Plaintiffs and the Class also are
11 mindful of the inherent problems of proof under and possible defenses to the
12 violations asserted in the Litigation. Counsel for the Representative Plaintiffs and the
13 Class believe that the settlement set forth in this Stipulation confers substantial
14 benefits upon the Class. Based on their evaluation, counsel for the Representative
15 Plaintiffs and the Class have determined that the settlement set forth in the Stipulation
16 is in the best interests of the Representative Plaintiffs and the Class.

17 **IV. TERMS OF STIPULATION AND AGREEMENT OF**
18 **SETTLEMENT**

19 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and
20 among the Representative Plaintiffs (for themselves and the Class Members) and the
21 Toho Defendants, by and through their respective counsel or attorneys of record, that,
22 subject to the approval of the Court, the Litigation and the Released Claims shall be
23 finally and fully compromised, settled and released, and the Litigation shall be
24 dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and
25 conditions of the Stipulation, as follows.

26 **1. Definitions**

27 As used in the Stipulation the following terms have the meanings specified
28 below:

1 1.1 “Authorized Claimant” means any Class Member whose claim for
2 recovery has been allowed pursuant to the terms of the Stipulation.

3 1.2 “Carbon Fiber”, as used herein, means carbon fiber and industrial fabrics,
4 filaments and prepregs made from or with carbon fiber.

5 1.3 “Claimant” means any Class Member who files a Proof of Claim in such
6 form and manner, and within such time, as the Court shall prescribe.

7 1.4 “Claims Administrator” means the firm of Heffler, Radetich & Saitta
8 L.L.P.

9 1.5 “Class” means all Persons (excluding governmental entities, Defendants,
10 their subsidiaries and affiliates) who purchased Carbon Fiber in the United States
11 directly from any of the Defendants or any subsidiary or affiliate thereof, at any time
12 during the period from January 1, 1993 through January 31, 1999. Excluded from the
13 Class are those Persons who requested exclusion pursuant to the Notice of Pendency
14 of Class Action dated October 4, 2002.

15 1.6 “Class Member” or “Member of the Class” mean a person who falls
16 within the definition of the Class.

17 1.7 “Class Period” means the period from January 1, 1993 through January
18 31, 1999.

19 1.8 “Defendants” means Amoco Polymers, Inc., Cytec Fiberite, Inc., Cytec
20 Industries, Inc., Grafil, Inc., Hexcel Corporation, Hercules, Inc., Newport Adhesives
21 and Composites, Inc., Mitsubishi Rayon Company, Ltd., Toray Composites
22 (America), Inc., Toray Industries, Inc., Toray Carbon Fibers America, Inc. and the
23 Toho Defendants.

24 1.9 “Effective Date” means the first date by which all of the events and
25 conditions specified in ¶7.2 of the Stipulation have been met and have occurred.

26 1.10 “Escrow Agent” means the law firms of Lerach Coughlin Stoia Geller
27 Rudman & Robbins LLP or its successor(s); and Barrack, Rodos & Bacine or its
28 successor(s).

1 1.11 “Final” means: (i) the date of final affirmance on an appeal of the
2 Judgment, the expiration of the time for a petition for or a denial of a writ of certiorari
3 to review the Judgment and, if certiorari is granted, the date of final affirmance of the
4 Judgment following review pursuant to that grant; or (ii) the date of final dismissal of
5 any appeal from the Judgment or the final dismissal of any proceeding on certiorari to
6 review the Judgment; or (iii) if no appeal is filed, the expiration date of the time for
7 the filing or noticing of any appeal from the Court’s Judgment approving the
8 Stipulation substantially in the form of Exhibit B attached hereto, *i.e.*, thirty (30) days
9 after entry of the Judgment, such that the Judgment represents a final and binding
10 judgment with respect to the Litigation. Any proceeding or order, or any appeal or
11 petition for a writ of certiorari pertaining solely to any plan of allocation and/or
12 application for attorneys’ fees, costs or expenses, shall not in any way delay or
13 preclude the Judgment from becoming Final.

14 1.12 “Judgment” means the judgment to be rendered by the Court,
15 substantially in the form attached hereto as Exhibit B.

16 1.13 “Non-Settling Defendants” means all Defendants except the Toho
17 Defendants.

18 1.14 “Person” means any individual, partnership, corporation, association or
19 other business or legal entity.

20 1.15 “Plaintiffs’ Settlement Counsel” means court appointed Co-Lead
21 Counsel: Lerach Coughlin Stoia Geller Rudman & Robbins LLP, Joy Ann Bull,
22 Bonny E. Sweeney, 401 B Street, Suite 1700, San Diego, California 92101, Telephone
23 (619) 231-1058; Barrack, Rodos & Bacine, Leonard Barrack, Jeffrey B. Gittleman,
24 3300 Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania 19103,
25 Telephone (215)963-0600; and Barrack, Rodos & Bacine, Stephen R. Basser, 402
26 West Broadway, Suite 850, San Diego, California 92101, Telephone (619)230-0800.

27 1.16 “Plan of Allocation” means a plan or formula of allocation of the
28 Settlement Fund whereby the Settlement Fund shall be distributed to Authorized

1 Claimants after payment of expenses of notice and administration of the settlement,
2 Taxes and Tax Expenses and such attorneys' fees, costs, expenses and interest as may
3 be awarded by the Court. Any Plan of Allocation is not part of the Stipulation and the
4 Toho Defendants shall have no responsibility or liability with respect thereto.

5 1.17 "Released Claims" means all claims for economic damages (including,
6 but not limited to, Unknown Claims as defined in ¶1.24), losses, rights, causes of
7 action, suits, appeals, demands, damages, penalties, sanctions, punitive, exemplary or
8 enhanced damages, treble damages, restitution, disgorgement, costs, expenses,
9 attorneys' fees, injunctions, and any other matters and issues, of any nature
10 whatsoever, whether known or unknown, whether suspected or unsuspected, whether
11 concealed or hidden, of any Representative Plaintiff or Class Member against the
12 Toho Defendants, arising under the antitrust laws of the United States or of any state
13 or other jurisdiction, or under any similar statute, whether sounding in antitrust, unfair
14 or deceptive trade practices or unfair competition, consumer protection, fraud
15 protection, price discrimination, unitary pricing, RICO, or other similar laws, that
16 have been, might have been, or are now asserted in the Litigation and that arise out of
17 any alleged unlawful conspiracy to fix, raise, maintain or stabilize the prices of, or to
18 allocate customers, markets, or territories with respect to, Carbon Fiber in the United
19 States during the Class Period. Released Claims do not include any claims against
20 Non-Settling Defendants or any claims against any Person other than the Toho
21 Defendants. The Released Claims shall not include any claims arising out of or solely
22 related to non-antitrust disputes (including, without limitation, any claim for a
23 defective product that may have arisen in the ordinary course of business).

24 1.18 "Released Persons" means each and all of the Toho Defendants.

25 1.19 "Representative Plaintiffs" means Thomas & Thomas Rodmakers, Inc.,
26 Lamiglas, Inc., Gold Tip, Inc., Cannondale Corporation, and Royal Precision, Inc.

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1 1.20 “Representative Plaintiffs’ Counsel” means counsel who have appeared
2 for any of the Representative Plaintiffs in the Litigation or who have performed work
3 on behalf of the Class at the request of Plaintiffs’ Settlement Counsel.

4 1.21 “Settlement Fund” means the principal amount of 7.75 Million Dollars
5 (\$7,750,000), plus any interest that may accrue thereon as provided for herein.

6 1.22 “Settling Parties” means, collectively, each of the Toho Defendants and
7 the Representative Plaintiffs on behalf of themselves and the Members of the Class.

8 1.23 “Toho Defendants” means Toho Carbon Fibers, Inc., and Toho Tenax
9 Company, Ltd. (the successor to Toho Rayon Company, Ltd.) and their predecessors,
10 successors, parents, subsidiaries, divisions and related or affiliated entities, present or
11 former officers, directors, employees, attorneys and insurers, and specifically excludes
12 all Non-Settling Defendants and their predecessors, successors, parents, subsidiaries,
13 divisions and related or affiliated entities.

14 1.24 “Unknown Claims” means any Released Claims which any
15 Representative Plaintiff or Class Member does not know or suspect to exist in his, her
16 or its favor at the time of the release of the Released Persons which, if known by him,
17 her or it, might have affected his, her or its settlement with and release of the Released
18 Persons, or might have affected his, her or its decision not to object to this settlement.
19 With respect to any and all Released Claims, the Settling Parties stipulate and agree
20 that, upon the Effective Date, the Representative Plaintiffs shall expressly waive and
21 each of the Class Members shall be deemed to have, and by operation of the Judgment
22 shall have, expressly waived, the provisions, rights and benefits of Cal. Civ. Code
23 §1542, which provides:

24 A general release does not extend to claims which the creditor
25 does not know or suspect to exist in his favor at the time of executing the
26 release, which if known by him must have materially affected his
27 settlement with the debtor.

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1 The Representative Plaintiffs shall expressly waive and each of the Class Members
2 shall be deemed to have, and by operation of the Judgment shall have, expressly
3 waived any and all provisions, rights and benefits conferred by any law of any state or
4 territory of the United States, or principle of common law, which is similar,
5 comparable or equivalent to Cal. Civ. Code §1542. The Representative Plaintiffs and
6 Class Members may hereafter discover facts in addition to or different from those
7 which any of them now knows or believes to be true with respect to the subject matter
8 of the Released Claims, but each Representative Plaintiff shall expressly and each
9 Class Member, upon the Effective Date, shall be deemed to have, and by operation of
10 the Judgment shall have, fully, finally, and forever settled and released any and all
11 Released Claims, known or unknown, suspected or unsuspected, contingent or non-
12 contingent, whether or not concealed or hidden, which now exist, or heretofore have
13 existed upon any theory of law or equity now existing or coming into existence in the
14 future, including, but not limited to, conduct which is negligent, intentional, with or
15 without malice, or a breach of any duty, law or rule, without regard to the subsequent
16 discovery or existence of such different or additional facts. The Representative
17 Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the
18 Judgment to have acknowledged, that the foregoing waiver was separately bargained
19 for and a key element of the settlement of which this release is a part.

20 **2. The Settlement**

21 **a. The Settlement Fund**

22 2.1 The principal amount of \$7,750,000 (plus any interest that may accrue
23 thereon as provided for herein) shall constitute the Settlement Fund. The cash amount
24 of \$7,750,000 shall be paid by the Toho Defendants by wire transfer into an interest
25 bearing account maintained by the Escrow Agent at San Diego National Bank within
26 ten (10) business days from the date the Toho Defendants execute the Stipulation. If
27 the \$7,750,000 is not transferred to the Escrow Agent by the agreed upon date, interest
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1 will accrue at the rate of 5% per annum from such date until the date such sum is
2 transferred to the Escrow Agent.

3 **b. Cooperation of Toho Defendants**

4 2.2 Upon the request of the Representative Plaintiffs, the Toho Defendants
5 agree to provide declarations from a custodian or other qualified employee, to the
6 extent they can do so in good faith using best efforts, that:

7 (i) The documents listed in the declarations to be provided were
8 produced in this Litigation by the Toho Defendants and were produced from the Toho
9 Defendants' files which were maintained in the ordinary course of the Toho
10 Defendants' business.

11 (ii) The Toho documents listed in the declarations to be
12 provided were marked by the Toho Defendants with a prefix and bates number.

13 (iii) The documents listed in the declarations to be provided
14 constitute originals or duplicates of regularly conducted activity:

15 • Made at or near the time of the occurrence of the matters set
16 forth by, or from information transmitted by a person with knowledge of those
17 matters; and

18 • Were kept in the ordinary course of the regularly conducted
19 activity; and

20 • Were made by the regularly conducted activity as a regular
21 practice.
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23 (iv) In the case of memoranda, e-mails, calendars,
24 correspondence and diaries indicating a Toho author, addressee or both, the
25 documents listed in such declarations were produced from the files maintained by or
26 for the author or addressee.
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1 (v) The documents listed in the declarations to be provided were
2 prepared on or about the date shown on the documents.

3 **c. The Escrow Agent**

4 2.3 The Escrow Agent shall invest the Settlement Fund deposited pursuant to
5 ¶2.1 above in instruments backed by the full faith and credit of the United States
6 Government or fully insured by the United States Government or an agency thereof
7 and shall reinvest the proceeds of these instruments as they mature in similar
8 instruments at their then current market rates. The Escrow Agent shall bear all risks
9 related to investment of the Settlement Fund.

10 2.4 The Escrow Agent shall not disburse the Settlement Fund except as
11 provided in the Stipulation or with the prior written agreement of counsel for the Toho
12 Defendants and Plaintiffs' Settlement Counsel.

13 2.5 The Escrow Agent is authorized to execute such transactions on behalf of
14 the Class Members as are consistent with the terms of the Stipulation.

15 2.6 All funds held by the Escrow Agent shall be deemed and considered to be
16 in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court,
17 until such time as such funds shall be distributed pursuant to the Stipulation.

18 2.7 Within ten (10) days after payment of the Settlement Fund to the Escrow
19 Agent pursuant to ¶2.1, the Escrow Agent may establish a "Notice and Administration
20 Fund," and may deposit up to \$100,000 from the Settlement Fund in it. The Notice
21 and Administration Fund may be used by Plaintiffs' Settlement Counsel to pay the
22 Toho Defendants' *pro rata* share of the costs and expenses reasonably and actually
23 incurred in connection with providing notice to the Class, locating Class Members,
24 assisting with the filing of claims, administering and distributing the Settlement Fund
25 to Authorized Claimants, processing Proof of Claim and Release forms and paying
26 escrow fees and costs, if any. Toho Defendants' *pro rata* share shall be calculated as
27 a percentage of the principal amount of the total settlement monies included in the
28 Notice and Summary Notice referenced in ¶3.1 hereof. The Notice and

1 Administration Fund may also be invested and earn interest as provided for in ¶2.3 of
2 this Stipulation.

3 **d. Taxes**

4 2.8 Settling Parties and the Escrow Agent agree to treat the Settlement Fund
5 as being at all times a “qualified settlement fund” within the meaning of Treas. Reg.
6 §1.468B-1. In addition, the Escrow Agent shall timely make such elections as
7 necessary or advisable to carry out the provisions of this ¶2.8, including the “relation-
8 back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted
9 date. Such elections shall be made in compliance with the procedures and
10 requirements contained in such regulations. It shall be the responsibility of the
11 Escrow Agent to timely and properly prepare and deliver the necessary documentation
12 for signature by all necessary parties, and thereafter to cause the appropriate filing to
13 occur.

14 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as
15 amended, and the regulations promulgated thereunder, the “administrator” shall be the
16 Escrow Agent. The Escrow Agent shall timely and properly file all informational and
17 other tax returns necessary or advisable with respect to the Settlement Fund
18 (including, without limitation, the returns described in Treas. Reg. §1.468B-2(1)).
19 Such returns (as well as the election described in this ¶2.8) shall be consistent with
20 this ¶2.8 and in all events shall reflect that all Taxes as defined in subsection (b) below
21 (including any estimated Taxes, interest or penalties) on the income earned by the
22 Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.8(b)
23 hereof.

24 (b) All (i) Taxes (including any estimated Taxes, interest or penalties)
25 arising with respect to the income earned by the Settlement Fund, including any Taxes
26 or tax detriments that may be imposed upon the Toho Defendants with respect to any
27 income earned by the Settlement Fund for any period during which the Settlement
28 Fund does not qualify as a “qualified settlement fund” for federal or state income tax

1 purposes (“Taxes”), and (ii) expenses and costs incurred in connection with the
2 operation and implementation of this ¶2.8 (including, without limitation, expenses of
3 tax attorneys and/or accountants and mailing and distribution costs and expenses
4 relating to filing (or failing to file) the returns described in this ¶2.8) (“Tax
5 Expenses”), shall be paid out of the Settlement Fund; in all events the Toho
6 Defendants shall not have any liability or responsibility for the Taxes or the Tax
7 Expenses. The Escrow Agent shall indemnify and hold each of the Toho Defendants
8 harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by
9 reason of any such indemnification). Further, Taxes and Tax Expenses shall be
10 treated as, and considered to be, a cost of administration of the Settlement Fund and
11 shall be timely paid by the Escrow Agent out of the Settlement Fund without prior
12 order from the Court and the Escrow Agent shall be obligated (notwithstanding
13 anything herein to the contrary) to withhold from distribution to Authorized Claimants
14 any funds necessary to pay such amounts including the establishment of adequate
15 reserves for any Taxes and Tax Expenses (as well as any amounts that may be
16 required to be withheld under Treas. Reg. §1.468B-2(1)(2)). The Settling Parties
17 hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys
18 and accountants to the extent reasonably necessary to carry out the provisions of this
19 ¶2.8.

20 (c) For the purpose of this ¶2.8, references to the Settlement Fund
21 shall include both the Settlement Fund and the Notice and Administration Fund and
22 shall also include any earnings thereon.

23 **e. Termination of Settlement**

24 2.9 In the event that the Stipulation is not approved, or is terminated,
25 canceled, or fails to become effective for any reason, including, without limitation, in
26 the event the Judgment is reversed or vacated following any appeal taken therefrom,
27 the Settlement Fund (including accrued interest) less the Toho Defendants’ *pro rata*
28 share of reasonable expenses actually incurred or due and owing from the Notice and

1 Administration Fund, shall be refunded to the Toho Defendants as described in ¶7.5
2 below.

3 **3. Notice Order and Settlement Hearing**

4 3.1 Promptly after execution of the Stipulation, the Representative Plaintiffs
5 shall submit the Stipulation together with its Exhibits to the Court and shall apply for
6 entry of an order (the “Notice Order”), substantially in the form and content of Exhibit
7 A attached hereto, requesting, *inter alia*, the preliminary approval of the settlement set
8 forth in the Stipulation, and approval for the mailing and publication of a settlement
9 notice substantially in the form and content of Exhibits A-1 (the “Notice”), and A-3
10 (the “Summary Notice”) hereto. The Notice shall include the general terms of the
11 settlement set forth in the Stipulation, the proposed Plan of Allocation, the general
12 terms of the Fee and Expense Application as defined in ¶6.1 below and the date of the
13 Settlement Hearing as defined below.

14 3.2 The Settling Parties request that after notice is given, the Court hold a
15 hearing (the “Settlement Hearing”) and approve the settlement of the Litigation as set
16 forth herein. At or after the Settlement Hearing, Plaintiffs’ Settlement Counsel also
17 may request that the Court approve the proposed Plan of Allocation and the Fee and
18 Expense Application.

19 **4. Releases**

20 4.1 Upon the Effective Date, as defined in ¶1.9, the Representative Plaintiffs
21 and each of the Class Members shall be deemed to have, and by operation of the
22 Judgment shall have, fully, finally, and forever released, relinquished and discharged
23 all Released Claims against the Released Persons, whether or not such Class Member
24 executes and delivers a Proof of Claim and Release. The Released Claims do not
25 include claims for breach of the Stipulation. All rights of any Class Member against
26 the Non-Settling Defendants or any other Person other than the Released Persons are
27 specifically reserved by the Representative Plaintiffs and Class Members. In addition,
28 any sales of the Toho Defendants in the United States shall remain in the Litigation as

1 against the Non-Settling Defendants as a basis for damage claims and shall be part of
2 any joint and several liability claims against the Non-Settling Defendants in the
3 Litigation.

4 4.2 The Proof of Claim and Release to be executed by Class Members shall
5 release all Released Claims against the Released Persons and shall be substantially in
6 the form and content contained in Exhibit A-2 attached hereto.

7 4.3 Upon the Effective Date, as defined in ¶1.9, each of the Released Persons
8 shall be deemed to have, and by operation of the Judgment shall have, fully, finally,
9 and forever released, relinquished and discharged each and all of the Class Members
10 and Representative Plaintiffs' Counsel from all claims (including "Unknown
11 Claims"), arising out of, in any way relating to, or in connection with the institution,
12 prosecution, assertion, settlement or resolution of the Litigation or the Released
13 Claims, except for claims for breach of the Stipulation.

14 **5. Administration and Calculation of Claims, Final Awards**
15 **and Supervision and Distribution of the Settlement Fund**

16 5.1 Plaintiffs' Settlement Counsel, or their authorized agents, acting on
17 behalf of the Class, and subject to such supervision and direction of the Court as may
18 be necessary or as circumstances may require, shall administer and calculate the
19 claims submitted by Class Members and shall oversee distribution of the Net
20 Settlement Fund (defined below) to Authorized Claimants. The Settlement Fund shall
21 be applied as follows:

22 (a) To pay all the costs and expenses reasonably and actually incurred
23 in connection with providing notice, locating Class Members, assisting with the filing
24 of claims, administering and distributing the Settlement Fund to Authorized
25 Claimants, processing Proof of Claim and Release forms and paying escrow fees and
26 costs, if any;

27 (b) To pay the Taxes and Tax Expenses described in ¶2.8 above;

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1 (c) To pay to Representative Plaintiffs' Counsel attorneys' fees,
2 expenses and costs with interest thereon (the "Fee and Expense Award"); and

3 (d) To distribute the balance of the Settlement Fund (the "Net
4 Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of
5 Allocation, or the Court.

6 5.2 Upon the Effective Date and thereafter, and in accordance with the terms
7 of the Stipulation, the Plan of Allocation, or such further approval and further order(s)
8 of the Court as may be necessary or as circumstances may require, the Net Settlement
9 Fund shall be distributed to Authorized Claimants, subject to and in accordance with
10 the following:

11 (a) Within one-hundred twenty (120) days after the mailing of the
12 Notice or such other time as may be set by the Court, each person claiming to be an
13 Authorized Claimant shall be required to submit to the Claims Administrator a
14 completed Proof of Claim and Release, substantially in the form of Exhibit A-2
15 attached hereto, signed under penalty of perjury and supported by such documents as
16 specified in the Proof of Claim and Release and as are reasonably available to the
17 Authorized Claimant.

18 (b) Except as otherwise ordered by the Court, all Class Members who
19 fail to timely submit a Proof of Claim and Release within such period, or such other
20 period as may be ordered by the Court, or otherwise allowed, shall be forever barred
21 from receiving any payments pursuant to the Stipulation and the settlement set forth
22 herein, but will in all other respects be subject to and bound by the provisions of the
23 Stipulation, the releases contained herein, and the Judgment.

24 (c) The Net Settlement Fund shall be distributed to the Authorized
25 Claimants substantially in accordance with a Plan of Allocation to be described in the
26 Notice and approved by the Court.

27 5.3 The Toho Defendants shall have no responsibility for, interest in, or
28 liability whatsoever with respect to the investment or distribution of the Settlement

1 Fund, the Plan of Allocation, or the determination, administration, or calculation of
2 claims.

3 5.4 Without waiving the Toho Defendants' right to reimbursement under
4 ¶¶6.2, 7.5 and 7.6, no person shall have any claim against Representative Plaintiffs'
5 Counsel or any claims administrator, or other agent designated by Plaintiffs'
6 Settlement Counsel, or the Toho Defendants or their counsel based on distributions
7 made substantially in accordance with the Stipulation and the settlement contained
8 herein, the Plan of Allocation, or further orders of the Court.

9 5.5 If there is any balance remaining in the Net Settlement Fund after six (6)
10 months from the date of distribution of the Net Settlement Fund (whether by reason of
11 tax refunds, uncashed checks or otherwise) Plaintiffs' Settlement Counsel shall
12 reallocate such balance among Authorized Claimants in an equitable and economic
13 fashion.

14 5.6 It is understood and agreed by the Settling Parties that any proposed Plan
15 of Allocation of the Net Settlement Fund including, but not limited to, any
16 adjustments to an Authorized Claimant's claim set forth therein, is not a part of the
17 Stipulation and is to be considered by the Court separately from the Court's
18 consideration of the fairness, reasonableness and adequacy of the settlement set forth
19 in the Stipulation, and any orders or proceedings relating to the Plan of Allocation
20 shall not operate to terminate or cancel the Stipulation or affect the finality of the
21 Court's Judgment approving the Stipulation and the settlement set forth herein, or any
22 other orders entered pursuant to the Stipulation.

23 **6. Representative Plaintiffs' Counsel's Attorneys' Fees and**
24 **Reimbursement of Expenses and Service Awards for**
25 **Representative Plaintiffs**

26 6.1 Representative Plaintiffs' Counsel may submit an application (the "Fee
27 and Expense Application") for distributions to them from the Settlement Fund for: (a)
28 an award of attorneys' fees from the Settlement Fund; and (b) reimbursement of
expenses and costs incurred in connection with prosecuting the Litigation, plus any

1 interest on such attorneys' fees, costs and expenses at the same rate and for the same
2 periods as earned by the Settlement Fund (until paid) as may be awarded by the Court.
3 Representative Plaintiffs' Counsel reserve the right to make additional applications for
4 fees and expenses incurred. In no event shall the Toho Defendants be required to pay
5 attorneys' fees and expenses over and above the sums paid from the Settlement Fund.

6 6.2 The attorneys' fees and expenses, including the fees of experts and
7 consultants, as awarded by the Court, shall be paid to Plaintiffs' Settlement Counsel
8 from the Settlement Fund, as ordered, immediately after the Court executes an order
9 awarding such fees and expenses. Plaintiffs' Settlement Counsel shall thereafter
10 allocate the attorneys' fees amongst Representative Plaintiffs' Counsel in a manner in
11 which they in good faith believe reflects the contributions of such counsel to the
12 prosecution and settlement of the Litigation. In the event that the Effective Date does
13 not occur, or the Judgment or the order making the Fee and Expense Award is
14 reversed or modified, or the Stipulation is canceled or terminated for any other reason,
15 and in the event that the Fee and Expense Award has been paid to any extent, then
16 Plaintiffs' Settlement Counsel shall within five (5) business days from receiving
17 notice from the Toho Defendants' counsel or from a court of appropriate jurisdiction,
18 refund to the Settlement Fund, for refund to the Toho Defendants in accordance with
19 ¶2.9 hereof if applicable, the fees, expenses and costs previously paid to them from
20 the Settlement Fund plus interest thereon at the same rate as earned on the Settlement
21 Fund in an amount consistent with such reversal or modification. Each Representative
22 Plaintiffs' Counsel's law firm and each Plaintiffs' Settlement Counsel, as a condition
23 of receiving such fees and expenses, on behalf of itself and each partner and/or
24 shareholder of it, agrees that the law firm and its partners and/or shareholders are
25 subject to the jurisdiction of the Court for the purpose of enforcing the provisions of
26 this paragraph.

27 6.3 The procedure for and the allowance or disallowance by the Court of any
28 applications by any of the counsel to the Representative Plaintiffs for attorneys' fees,

1 costs and expenses to be paid out of the Settlement Fund, are not part of the settlement
2 set forth in the Stipulation, and are to be considered by the Court separately from the
3 Court's consideration of the fairness, reasonableness and adequacy of the settlement
4 set forth in the Stipulation, and any orders or proceedings relating to the Fee and
5 Expense Application, or any appeal from any order relating thereto or reversal or
6 modification thereof, shall not operate to terminate or cancel the Stipulation, or affect
7 or delay the finality of the Judgment approving the Stipulation and the settlement of
8 the Litigation set forth herein.

9 6.4 The Toho Defendants shall have no responsibility for, and no liability
10 whatsoever with respect to the allocation among Representative Plaintiffs' Counsel
11 and/or any other person who may assert some claim thereto, of any Fee and Expense
12 Award that the Court may make in the Litigation.

13 **7. Conditions of Settlement, Effect of Disapproval,**
14 **Cancellation or Termination**

15 7.1 Promptly after the execution of the Stipulation, Plaintiffs' Settlement
16 Counsel agree to withdraw in writing all current document requests, interrogatories, or
17 deposition notices served on the Toho Defendants, and not to serve any such
18 discovery requests on the Toho Defendants in the future nor to seek to compel the pre-
19 trial or trial testimony of any of the Toho Defendants. If the Settlement is terminated
20 in accordance with ¶2.9 above, Plaintiffs' Settlement Counsel shall have the right to
21 reinstate such discovery against the Toho Defendants or seek to compel the pre-trial
22 testimony of any of the Toho Defendants.

23 7.2 The Effective Date of the Stipulation shall be conditioned on the
24 occurrence of all of the following events:

25 (a) The Toho Defendants have made or caused the contributions to be
26 made to the Settlement Fund as required by ¶2.1 above;

27 (b) The Court has entered the Judgment, or a judgment substantially in
28 the form of Exhibit B attached hereto; and

1 (c) The Judgment has become Final, as defined in ¶1.11, above.

2 7.3 Upon the occurrence of all of the events referenced in ¶7.2 above, any
3 and all remaining interest or right of the Toho Defendants in or to the Settlement
4 Fund, if any, shall be absolutely and forever extinguished.

5 7.4 If all of the conditions specified in ¶7.2 are not met, then the Stipulation
6 shall be canceled and terminated subject to ¶7.6 unless Plaintiffs' Settlement Counsel
7 and counsel for the Toho Defendants mutually agree in writing to proceed with the
8 Stipulation.

9 7.5 In the event the Stipulation shall terminate, or be canceled, or shall not
10 become effective for any reason, within five (5) business days after written
11 notification of such event is sent by counsel for the Toho Defendants or Plaintiffs'
12 Settlement Counsel to the Escrow Agent, the Settlement Fund (including accrued
13 interest), plus any amount then remaining in the Notice and Administration Fund
14 (including accrued interest) less the Toho Defendants' *pro rata* share of expenses and
15 any costs that have either been properly disbursed pursuant to ¶¶2.7 or 2.8 herein, or
16 are determined to be chargeable to the Notice and Administration Fund, shall be
17 refunded by the Escrow Agent pursuant to written instructions from counsel for the
18 Toho Defendants. At the request of counsel for the Toho Defendants, the Escrow
19 Agent or its designee shall apply for any tax refund owed to the Settlement Fund and
20 pay the proceeds, after deduction of any fees or expenses reasonably incurred in
21 connection with such application(s) for refund on a *pro rata* basis to those entities
22 contributing to the Settlement Fund.

23 7.6 In the event that the Stipulation is not approved by the Court or the
24 settlement set forth in the Stipulation is terminated or fails to become effective in
25 accordance with its terms, the Settling Parties shall be restored to their respective
26 positions in the Litigation as of October 7, 2004. In such event, the terms and
27 provisions of the Stipulation, with the exception of ¶¶1.1-1.24, 2.3-2.8, 7.4-7.6, 8.2,
28 8.4, and 8.10-8.14 herein, shall have no further force and effect with respect to the

1 Settling Parties and shall not be used in the Litigation or in any other proceeding for
2 any purpose, and any judgment or order entered by the Court in accordance with the
3 terms of the Stipulation shall be treated as vacated, *nunc pro tunc* (unless the
4 Judgment has become Final in accordance with the terms hereof). No order of the
5 Court or modification or reversal on appeal of any order of the Court concerning the
6 Plan of Allocation or the amount of any attorneys' fees, costs, expenses and interest
7 awarded by the Court to the Representative Plaintiffs or any of their counsel shall
8 constitute grounds for cancellation or termination of the Stipulation. If the Effective
9 Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither
10 the Representative Plaintiffs nor any of their counsel shall have any obligation to
11 repay any amounts actually and properly disbursed from the Notice and
12 Administration Fund. In addition, any expenses already incurred and properly
13 chargeable to the Notice and Administration Fund pursuant to ¶2.7 hereof at the time
14 of such termination or cancellation but which have not been paid, shall be paid by the
15 Escrow Agent in accordance with the terms of the Stipulation prior to the balance
16 being refunded in accordance with ¶7.5 above.

17 7.7 If a case is commenced in respect to any of the Toho Defendants under
18 Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator
19 is appointed under any similar law, and in the event of the entry of a final order of a
20 court of competent jurisdiction determining the transfer of the Settlement Fund, or any
21 portion thereof, by or on behalf of a Toho Defendant to be a preference, voidable
22 transfer, fraudulent transfer or similar transaction, then, as to that Defendant only, the
23 releases given and Judgment entered in favor of such Defendant pursuant to this
24 Stipulation shall be null and void, and, as to such Defendant, the Settling Parties shall
25 thereupon be restored to their respective positions as of October 7, 2004.

26 **8. Miscellaneous Provisions**

27 8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate
28 this agreement; and (b) agree to cooperate to the extent reasonably necessary to

1 effectuate and implement all terms and conditions of the Stipulation and to exercise
2 their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

3 8.2 The Toho Defendants warrant that, at the time the payment provided for
4 herein is made, they are not insolvent and the payment will not render them insolvent.
5 This representation is made by each Toho Defendant, and is not made by counsel for
6 the Toho Defendants.

7 8.3 The Settling Parties intend this settlement to be a final and complete
8 resolution of all disputes between them with respect to the Litigation. The settlement
9 compromises claims which were contested and shall not be deemed an admission by
10 any Settling Party as to the merits of any claim or defense. The Final Judgment will
11 contain a statement that during the course of the Litigation, the Settling Parties and
12 their respective counsel at all times complied with the requirements of Federal Rule of
13 Civil Procedure 11. The Settling Parties agree that the amount paid to the Settlement
14 Fund and the other terms of the settlement were negotiated in good faith by the
15 Settling Parties, and reflect a settlement that was reached voluntarily after consultation
16 with competent legal counsel.

17 8.4 Neither the Stipulation nor the settlement, nor any act performed or
18 document executed pursuant to or in furtherance of the Stipulation or the settlement:
19 (a) is or may be deemed to be or may be used as an admission of, or evidence of, the
20 validity of any Released Claim, or of any wrongdoing or liability of the Toho
21 Defendants; or (b) is or may be deemed to be or may be used as an admission of, or
22 evidence of, any fault or omission of the Toho Defendants in any civil, criminal or
23 administrative proceeding in any court, administrative agency or other tribunal. The
24 Toho Defendants may file the Stipulation and/or the Judgment in any action that may
25 be brought against them in order to support a defense or counterclaim based on
26 principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment
27 bar or reduction or any other theory of claim preclusion or issue preclusion or similar
28 defense or counterclaim.

1 8.5 The Settling Parties agree that there is no need for an additional opt-out
2 period pursuant to Rule 23(e) of the Federal Rules of Civil Procedure since prior
3 notice of the pendency of the Litigation dated May 3, 2002 was sent to the Class.
4 However, in the event the Court decides to allow an additional opportunity to opt-out
5 of the Class, Plaintiffs' Settlement Counsel will provide counsel for the Toho
6 Defendants with a list of those Class Members who timely request exclusion from the
7 class within ten (10) days following the Court's deadline for such exclusion from the
8 Class. The Settling Parties agree that, in the event the Court allows additional opt-
9 outs from the Class, the Toho Defendants shall have the option to rescind this
10 settlement if the purchases of current Class Members who request exclusion exceeds
11 an amount specified in a separate Supplemental Agreement between the Settling
12 Parties. The Supplemental Agreement will not be filed with the Court unless and until
13 a dispute among the Settling Parties concerning its interpretation or application arises.

14 8.6 The Settling Parties and their counsel agree that, other than through the
15 filing of papers necessary for Court approval of the Settlement and the mailing and
16 publication of notices as may be required for settlement approval or otherwise by the
17 Court, and other than through any disclosures that the Toho Defendants may be
18 required by law to make, including any disclosures required by Japanese law and/or
19 by any applicable rules or regulations of the relevant securities exchange, they shall
20 not affirmatively publicize the fact or terms of the settlement.

21 8.7 All agreements made and orders entered during the course of the
22 Litigation relating to the confidentiality of information shall survive this Stipulation.

23 8.8 All of the Exhibits to the Stipulation are material and integral parts hereof
24 and are fully incorporated herein by this reference.

25 8.9 The Stipulation may be amended or modified only by a written
26 instrument signed by or on behalf of all Settling Parties or their respective successors-
27 in-interest.

28

1 8.10 The Stipulation and the Exhibits attached hereto constitute the entire
2 agreement between Representative Plaintiffs and the Class on the one hand, and the
3 Toho Defendants on the other hand, and supercedes and replaces all prior negotiations
4 and proposed or actual agreements whether written or oral. No representations,
5 warranties or inducements have been made to any party concerning the Stipulation or
6 its Exhibits other than the representations, warranties and covenants contained and
7 memorialized in such documents. Except as otherwise provided herein, each party
8 shall bear its own costs.

9 8.11 The undersigned Plaintiffs' Settlement Counsel are fully authorized to
10 enter into the terms and conditions of the Stipulation and settlement on behalf of the
11 Representative Plaintiffs and Class Members and to execute and legally bind the
12 Representative Plaintiffs and all Class Members to the terms of the Stipulation.
13 Plaintiffs' Settlement Counsel are expressly authorized to enter into any modifications
14 or amendments to the Stipulation on behalf of the Class which they deem appropriate
15 and to take all appropriate action required or permitted to be taken by the Class
16 pursuant to the Stipulation to effectuate its terms.

17 8.12 Each counsel or other person executing the Stipulation or any of its
18 Exhibits on behalf of any party hereto hereby warrants that such person has the full
19 authority to do so.

20 8.13 The Stipulation may be executed in one or more counterparts. All
21 executed counterparts and each of them shall be deemed to be one and the same
22 instrument. A complete set of executed counterparts shall be filed with the Court.

23 8.14 The Stipulation shall be binding upon, and inure to the benefit of, the
24 successors and assigns of the Settling Parties.

25 8.15 This Stipulation has been negotiated among and drafted by all
26 signatories. To the extent there is any uncertainty or ambiguity in the Stipulation,
27 none of the signatories shall be deemed to have caused such uncertainty or ambiguity.

28

1 8.16 In the event any one or more of the provisions contained in the
2 Stipulation shall for any reason be held by a court of competent jurisdiction to be
3 invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable
4 provision shall be ineffective but shall not in anyway invalidate or otherwise affect
5 any other provision.

6 8.17 The Court shall retain jurisdiction with respect to implementation and
7 enforcement of the terms of the Stipulation, and all Settling Parties submit to the
8 jurisdiction of the Court for purposes of implementing and enforcing the settlement
9 embodied in the Stipulation.

10 8.18 The Stipulation and the Exhibits hereto shall be considered to have been
11 negotiated, executed and delivered, and to be wholly performed, in the State of
12 California, and the rights and obligations of the Settling Parties shall be construed and
13 enforced in accordance with, and governed by, the internal, substantive laws of the
14 State of California without giving effect to that State's choice of law principles.

15 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be
16 executed, by their duly authorized attorneys, dated as of October 8, 2004.

17 LERACH COUGHLIN STOIA GELLER
18 RUDMAN & ROBBINS LLP
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20 BONNY E. SWEENEY
21 DAVID W. MITCHELL

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Attorneys for the Toho Defendants

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DECLARATION OF SERVICE BY UPS DELIVERY

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant’s business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on October 12, 2004, declarant served by UPS, next day delivery, the **STIPULATION OF SETTLEMENT WITH THE TOHO DEFENDANTS** to the parties listed on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 12th day of October, 2004, at San Diego, California.

YVETTE D. GRAY