

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

4
5 IN RE CHINA INTELLIGENT
6 LIGHTING AND ELECTRONICS, INC.
7 SECURITIES LITIGATION,
8

No. 2:11-CV-2768 (PSG) (SSx)

CLASS ACTION

Hon. Philip S. Gutierrez
Courtroom: 880

9 THIS DOCUMENT RELATES TO:
10 ALL ACTIONS
11

12 **STIPULATION AND AGREEMENT OF SETTLEMENT**

13 This Stipulation and Agreement of Settlement (the "Stipulation") dated May
14 1, 2014 is hereby submitted to the Court pursuant to Rule 23 of the Federal Rules
15 of Civil Procedure.¹ Subject to the approval of the Court, this Stipulation is
16 entered into among Lead Plaintiffs Perritt Emerging Opportunities Fund, Universal
17 Invest Quality SICAV, Acerco SA, and Antoine de Sejournet, on behalf of
18 themselves and the putative class (collectively, "Plaintiffs"); and defendant
19 Kempisty & Company P.C. ("Kempisty" or "Settling Defendant"), by and through
20 their respective counsel.

21 1. WHEREAS, on April 1, 2011, a class action complaint styled *Michael*
22 *Stern v. China Intelligent Lighting and Electronics, Inc. et al.*, 11-CV-2768-PSG-
23 SSx ("*Stern Action*") alleging violations of federal securities laws against: a) China
24 Intelligent Lighting and Electronics, Inc., ("China Intelligent"), Li Xuemei, Kui

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27 1 All capitalized terms not otherwise defined shall have the meanings set forth in
28 section A below.

1 Kevin Jiang, Wu Shiliang, Michael Askew, Su Yang, Ruxiang Niu, Zhang
2 Hongfeng (collectively the “China Intelligent Defendants”); and b) WestPark
3 Capital, Inc., (“WestPark”), Rodman & Renshaw LLC (“Rodman”) (collectively,
4 the “Underwriters” or “Underwriter Defendants”), was filed in the United States
5 District Court for the Central District of California (the "Court");

6 2. WHEREAS, on April 20, 2011, a related action captioned *Colonel*
7 *Nunzio Marabella v. China Intelligent Lighting and Electronics, Inc. et al.*, 11-CV-
8 3390-PSG-SSx (“*Nunzio Action*”) was filed in this Court;

9 3. WHEREAS, by Order dated July 7, 2011, the *Stern Action* and the
10 *Nunzio Action* were consolidated by the Court into the instant action and styled *In*
11 *re China Intelligent Lighting and Electronics, Inc. Securities Litigation*, 2:11-CV-
12 2768 PSG (SSx) (the “*Litigation*”);

13 4. WHEREAS, by the same July 7, 2011 Order, Judge Gutierrez
14 appointed the Perritt Emerging Opportunities Fund, Universal Invest Quality
15 SICAV, Acerco SA, and Antoine de Sejournet as Lead Plaintiffs, and Gold Bennett
16 Cera & Sidener LLP and The Rosen Law Firm, P.A. as Lead Counsel;

17 5. WHEREAS, on September 6, 2011, Lead Plaintiffs filed a
18 Consolidated Class Action Complaint, which added as defendants: a) WestPark’s
19 CEO Richard Rappaport (“Rappaport”) and CFO Anthony Pintsopoulos; b)
20 Rodman’s CEO Edward Rubin (“Rubin”), CFO David Horin (“Horin”), and Senior
21 Managing Director John Borer (“Borer”); c) MaloneBailey LLP (“MaloneBailey”);
22 d) Kempisty & Company, P.C.;

23 6. WHEREAS, on March 16, 2012, Lead Plaintiffs filed the operative
24 First Amended Consolidated Class Action Complaint alleging: (Count 1) violations
25 of Section 11 of the Securities Act of 1933 (the "Securities Act") against all
26 Defendants except Rappaport, Rubin, and Borer; (Count 2) violations of Section
27 12(a)(2) of the Securities Act against Rodman and WestPark; (Count 3) violations

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1 of Section 15 of the Securities Act against Li Xuemei, Kui Kevin Jiang, Rappaport,
2 Rubin, and Borer.

3 7. WHEREAS, on May 7, 2012, Kempisty filed an Answer to the First
4 Amended Consolidated Class Action Complaint;

5 8. WHEREAS, in recognition of the attendant risks and costs of
6 continued litigation and the benefits of resolving this litigation, the parties hereto
7 desire to settle and resolve any and all actual or potential claims by, between, or
8 among Plaintiffs, on the one hand, and Kempisty, on the other hand, arising out of
9 or relating to the subject matter of the Litigation;

10 9. Kempisty denies any wrongdoing whatsoever, and this Stipulation
11 shall in no event be construed as, or be deemed to be evidence of, an admission or
12 concession on the part of Kempisty with respect to any actual or potential claim,
13 liability, wrongdoing, or damage whatsoever, or any infirmity in the defenses that
14 Kempisty has asserted. This Stipulation also shall not be construed as or be
15 deemed to be a concession by the Lead Plaintiffs of any infirmity in the claims
16 asserted in the Litigation. The parties to this Stipulation (the "Settling Parties")
17 wish to settle and compromise any dispute regarding the Litigation or its subject
18 matter, including but not limited to whether the Litigation was filed by the Lead
19 Plaintiffs and defended by Kempisty in good faith and with adequate basis in fact
20 under Rule 11 of the Federal Rules of Civil Procedure. The Settling Parties agree
21 that the Litigation is being voluntarily settled after advice of counsel and that the
22 terms of the Settlement are fair, adequate, and reasonable;

23 10. WHEREAS, Lead Plaintiffs' Counsel has conducted an investigation
24 relating to the claims and the underlying events and transactions alleged in the
25 Litigation. Lead Plaintiffs' Counsel has analyzed the facts and the applicable law
26 with respect to the claims of the Lead Plaintiffs against Defendants and the
27 potential defenses thereto, which in the Lead Plaintiffs' judgment have provided an
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1 adequate and satisfactory basis for the evaluation of an agreement to settle, as
2 described herein;

3 11. WHEREAS, counsel for the Lead Plaintiffs and counsel for
4 Kempisty engaged in extensive arm's-length negotiations with each other, such
5 negotiations bearing fruit in this Stipulation;

6 12. WHEREAS, based upon the investigation conducted by Lead
7 Plaintiffs' Counsel, Lead Plaintiffs' Counsel has concluded that the terms and
8 conditions of this Stipulation are fair, reasonable, and adequate to Plaintiffs, and in
9 their best interests, and Lead Plaintiffs have agreed to settle the claims asserted in
10 the Litigation pursuant to the terms and conditions of this Stipulation, after
11 considering: (a) the substantial benefits that Plaintiffs will receive from settlement
12 of the Litigation; (b) the attendant risks of litigation; and (c) the desirability of
13 permitting the Settlement to be consummated as provided by the terms of this
14 Stipulation;

15 NOW THEREFORE, without any admission or concession on the part of the
16 Lead Plaintiffs of any lack of merit in the Litigation whatsoever, and without any
17 admission or concession on the part of Kempisty of any liability, wrongdoing, or
18 lack of merit in the defenses asserted in the Litigation whatsoever,

19 It is hereby STIPULATED AND AGREED, by and among the Settling
20 Parties, through their respective attorneys, subject to approval of the Court
21 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of
22 the benefits flowing to the Settling Parties hereto from the Settlement, that any and
23 all claims made, or that could have been made, including all Settled Claims (as
24 defined below), by Plaintiffs against the Released Parties (as defined below) shall
25 be compromised, settled, released, and dismissed with prejudice as provided in the
26 Stipulation, to the extent as hereafter provided, without costs as to Plaintiffs or
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1 Settling Defendant, subject to the approval of the Court, upon and subject to the
2 following terms and conditions:

3 **A. CERTAIN DEFINITIONS**

4 As used in this Stipulation, the following terms have the meanings specified
5 below:

6 1. "Attorneys' Fees and Expenses" means the portion of the Gross
7 Settlement Fund approved by the Court for payment to Lead Plaintiffs' Counsel,
8 including attorneys' fees, costs, litigation expenses, including fees and expenses of
9 experts (excluding Notice and Administration Expenses).

10 2. "Authorized Claimant" means any Claimant (as defined below)
11 whose claim for recovery has been allowed pursuant to the terms of the Plan of
12 Allocation or by order of the Court.

13 3. "Award to Lead Plaintiffs" means any award by the Court to
14 Lead Plaintiffs of reasonable costs and expenses (including lost wages) directly
15 relating to the representation of the Settlement Class pursuant to 15 U.S.C. § 78u-
16 4(a)(4).

17 4. "Claimant" means any Settlement Class Member who files a
18 Proof of Claim and Release (as defined below) in such form and manner, and
19 within such time, as set forth in this Stipulation, or as the Court shall prescribe.

20 5. "Claims Administrator" means the accounting and claims
21 administration firm, Gilardi & Co LLC, that Lead Plaintiffs' Counsel requests be
22 appointed by the Court to administer the Settlement and disseminate notice to the
23 Settlement Class.

24 6. "Court" means the United States District Court for the Central
25 District of California District.

26 7. "Defendants" means China Intelligent Lighting and Electronics,
27 Inc., Li Xuemei, Kui Kevin Jiang, Wu Shiliang, Michael Askew, Su Yang, Zhang
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1 Hongfeng, WestPark, Richard Rappaport, Rodman & Renshaw LLC, John Borer,
2 Edward Rubin, MaloneBailey LLP, and Kempisty and Company CPAs, P.C.

3 8. "Effective Date" means the date on which all of the conditions
4 set forth below in paragraph K.1 shall have been satisfied and the Court's Order
5 and Final Judgment, substantially in the form of Exhibit B hereto, becomes
6 "Final."

7 9. "Escrow Account" means the interest-bearing account selected
8 by the Escrow Agent. The Escrow Account shall be managed by the Escrow
9 Agent for the benefit of the Lead Plaintiffs and the Settlement Class until the
10 Effective Date of the Settlement.

11 10. "Escrow Agent" means the Claims Administrator or its duly
12 appointed agent(s). The Escrow Agent shall perform the duties as set forth in this
13 Stipulation.

14 11. "Final" means that either of the following has occurred: (a) if
15 an appeal or review is not sought by any Person from the Order and Final
16 Judgment, the day following the expiration of the time to appeal or petition from
17 the Order and Final Judgment; or (b) if an appeal or review is sought from the
18 Order and Final Judgment, the day after such Order and Final Judgment is affirmed
19 or the appeal or review is dismissed or denied and such Order and Final Judgment
20 is no longer subject to further judicial review. For purposes of the definition of
21 "Final" under this stipulation, an Appeal shall not include any Appeal pertaining
22 solely to any Plan of Allocation or application for an award of attorneys' fees or
23 expenses.

24 12. "Gross Settlement Fund" means the Settlement Amount from
25 this Settlement, as well as the Settlement Amounts from the Settlements with (i)
26 MaloneBailey and (ii) WestPark and Rappaport, plus all interest earned thereon.

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1 13. "Lead Plaintiffs" means Perritt Emerging Opportunities Fund,
2 Universal Invest Quality SICAV, Acerco SA, and Antoine de Sejournet.

3 14. "Lead Plaintiffs' Counsel" means Gold Bennett Cera & Sidener
4 LLP and The Rosen Law Firm, P.A.

5 15. "Net Settlement Fund" means the Gross Settlement Fund, less:
6 (i) Attorneys' Fees and Expenses; (ii) Notice and Administration Expenses; (iii)
7 taxes; (iv) any Award to Lead Plaintiffs; and (v) other fees and expenses
8 authorized by the Court.

9 16. "Notice and Administration Expenses" means all expenses
10 incurred (whether or not paid) in connection with the preparation, printing,
11 mailing, and publication of the Notice to the Settlement Class of the proposed
12 settlement, and all expenses of Settlement administration; provided, however, that
13 none of these expenses shall be deemed to include Attorneys' Fees and Expenses
14 through the Effective Date. All such Notice and Administration Expenses shall be
15 paid from the Gross Settlement Fund.

16 17. "Order and Final Judgment" means the order and judgment
17 entered by the Court, including a Bar Order, approving the Settlement and
18 dismissing the Litigation as against Kempisty with prejudice and without costs to
19 any party.

20 18. "Person" means any individual, corporation, partnership,
21 limited liability corporation, limited liability partnership, joint venture, limited
22 partnership, professional corporation, association, affiliate, joint stock company,
23 trust, estate, unincorporated association, government, or any political subdivision
24 or agency thereof, any other type of legal, business, or political entity, any legal
25 representative, together with, as applicable, their respective domestic partners,
26 spouses, heirs, executors, administrators, predecessors, successors, representatives,
27 or assignees of any of the foregoing.

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1 19. "Plaintiffs" means the Lead Plaintiffs and the Settlement Class.

2 20. "Plan of Allocation" means the plan for allocating the Net
3 Settlement Fund (as set forth in the Notice of Pendency and Settlement of Class
4 Action (the "Notice"), attached as Exhibit A-1 to the Order of Preliminary
5 Approval of Settlement) to Authorized Claimants after payment of Notice and
6 Administration Expenses, Taxes and Tax Expenses, and Attorneys' Fees and
7 Expenses. Any Plan of Allocation is not part of the Stipulation and the Released
8 Parties shall have no liability with respect thereto.

9 21. "Released Parties" means Kempisty and any of its current,
10 former, or future parents, subsidiaries, affiliates, partners, joint venturers, officers,
11 directors, principals, shareholders, members, agents (acting in their capacity as
12 agents), employees, attorneys, trustees, insurers (and their respective businesses,
13 affiliates, subsidiaries, parents and affiliated corporations, divisions, predecessors,
14 shareholders, partners, joint venturers, principals, insurers, reinsurers, successors
15 and assigns, and their respective past, present and future employees, officers,
16 directors, attorneys, accountants, auditors, agents and representatives), reinsurers,
17 advisors, accountants, associates, and/or any other individual or entity in which
18 Kempisty has or had a controlling interest or which is or was related to or affiliated
19 with Kempisty, and the current, former, and future legal representatives, heirs,
20 successors-in-interest, or assigns of Kempisty. Specifically excluded from the
21 definition of Released Parties are the China Intelligent Defendants, Rodman,
22 WestPark, Richard Rappaport, and MaloneBailey. The Defendants in this
23 Litigation, other than Kempisty, are not Released Parties and this Stipulation shall
24 not release any Defendants other than Kempisty, from claims in this Litigation.

25 22. "Settled Claims" means any and all claims, debts, demands,
26 liabilities, rights, and causes of action of every nature and description whatsoever
27 (including, but not limited to, any claims for damages, interest, attorneys' fees,
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1 expert or consulting fees, and any other costs, expenses, or liabilities whatsoever),
2 whether based on federal, state, local, statutory or common law, or any other law,
3 rule, or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or
4 unliquidated, at law or in equity, matured or unmatured, whether class or
5 individual in nature, including both known claims and Unknown Claims (as
6 defined below): (i) that have been asserted in the Litigation by the Lead Plaintiff
7 and/or Settlement Class Members or any of them against any of the Released
8 Parties, including, without limitation, all statements made by Kempisty that
9 Plaintiffs allege in the Litigation were false or misleading, or any of the alleged
10 acts, omissions, representations, facts, events, matters, transactions, or occurrences
11 asserted in or relating to the Litigation, or otherwise alleged, asserted, or contended
12 in the Litigation; or (ii) that relate to the purchase of China Intelligent common
13 stock during the Settlement Class Period, including, without limitation, claims for
14 fraud, negligent misrepresentation, or claims based upon or related in any way to
15 the purchase, acquisition, or sale of China Intelligent securities during the
16 Settlement Class Period by the Plaintiffs their heirs, executors, administrators,
17 successors, and assigns against the Released Parties or any of them. Settled Claims
18 also include any and all claims arising out of, relating to, or in connection with the
19 Settlement or resolution of the Litigation against the Released Parties (including
20 Unknown Claims that arise out of, relate to, or are in connection with the
21 Settlement or resolution of the Litigation against the Released Parties), except
22 claims to enforce any of the terms of this Stipulation.

23 23. "Settled Defendant's Claims" means all claims, demands, rights,
24 remedies, liabilities, and causes of action of every nature and description
25 whatsoever, whether based on federal, state, local, statutory, or common law, or
26 any other law, rule, or regulation, including both known and Unknown Claims, that
27 (i) have been or could have been asserted in the Litigation by Kempisty, or any of
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1 them, or the successors and assigns of any of them, against any of the Lead
2 Plaintiffs, Settlement Class Members, or any of their attorneys, and (ii) arise out of,
3 relate to, or connect in any way to the institution, prosecution, assertion, resolution,
4 or Settlement of this Litigation or the Settled Claims, including but not limited to
5 all claims for malicious prosecution or sanctions. "Settled Defendant's Claims"
6 does not include claims to enforce any of the terms of this Stipulation.

7 24. "Settlement" means the settlement contemplated by this
8 Stipulation.

9 25. "Settlement Amount" means a fund in the amount of \$7,500.

10 26. "Settlement Class" and "Settlement Class Members" mean, for
11 purposes of this Settlement, all Persons who purchased or otherwise acquired any
12 common stock of China Intelligent during the period from June 18, 2010 through
13 and including March 24, 2011, and were allegedly damaged thereby. Excluded
14 from the Settlement Class are Defendants, and all former partners, officers and
15 directors of Kempisty, and excluded Persons' immediate families, legal
16 representatives, heirs, predecessors, successors, and assigns, and any entity in
17 which any excluded Person has or had a controlling interest, and any Persons who
18 have separately filed actions against one or more of the Defendants, based in whole
19 or in part on any claim arising out of or relating to any of the alleged acts,
20 omissions, misrepresentations, facts, events, matters, transactions, or occurrences
21 referred to in the Litigation or otherwise alleged, asserted, or contended in the
22 Litigation. Also excluded from the Settlement Class are those Persons who file
23 valid and timely requests for exclusion in accordance with the Court's Order
24 Preliminarily Approving Settlement and Providing For Notice ("Preliminary
25 Approval Order") concerning this Stipulation.

26 27. "Settlement Class Period" means the period from June 18, 2010
27 to March 24, 2011, inclusive.

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1 28. "Settlement Hearing" means the final hearing to be held by the
2 Court to determine: (1) whether the proposed Settlement should be approved as
3 fair, reasonable, and adequate; (2) whether all Settled Claims should be dismissed
4 with prejudice; (3) whether an order approving the Settlement should be entered
5 thereon; (4) whether the allocation of the Settlement Fund should be approved; and
6 (5) whether the application for an award of Attorneys' Fees and Expenses and an
7 Award to Lead Plaintiffs should be approved.

8 29. "Settling Defendant's Counsel" means counsel of Settling
9 Defendant, which is McAfee & Taft PC.

10 30. "Unknown Claims" means (a) any Settled Claim that the Lead
11 Plaintiffs or any Settlement Class Member does not know or suspect to exist in his,
12 her, or its favor at the time of the release of the Released Parties, which if known
13 by him, her, or it, might have affected his, her, or its decision(s) with respect to the
14 Settlement, including, but not limited to, the decision not to object to the
15 Settlement, provided such claim arises out of or relates to the purchase or sale of
16 China Intelligent common stock during the Settlement Class Period, and (b) any
17 Settled Defendant's Claims that any Settling Defendant does not know or expect to
18 exist in his, her, or its favor, which if known by him, her, or it might have affected
19 his, her, or its decision(s) with respect to the Settlement. With respect to any and
20 all Settled Claims and Settled Defendant's Claims, the Settling Parties stipulate and
21 agree that upon the Effective Date, the Settling Parties shall expressly waive, and
22 each of the Settlement Class Members shall be deemed to have waived and by
23 operation of the Order and Final Judgment shall have waived, any and all
24 provisions, rights, and benefits conferred by any law of any state or territory of the
25 United States, or principle of common law that is similar, comparable, or
26 equivalent to Cal. Civ. Code § 1542, which provides: "A general release does not
27 extend to claims which the creditor does not know or suspect to exist in his or her
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1 favor at the time of executing the release, which if known by him or her must have
2 materially affected his or her settlement with the debtor."

3 **B. SCOPE AND EFFECT OF SETTLEMENT AND RELEASES**

4 1. The obligations incurred pursuant to this Stipulation shall be in
5 full and final disposition of the Litigation and any and all Settled Claims as against
6 all Released Parties and any and all Settled Defendant's Claims as against the Lead
7 Plaintiffs, the Settlement Class Members, and their attorneys.

8 2. Pursuant to the Order and Final Judgment, upon the Effective
9 Date of this Settlement, Lead Plaintiffs and each of the Settlement Class Members
10 on behalf of themselves, their current and future heirs, executors, administrators,
11 successors, attorneys, insurers, agents, representatives, and assigns, and any Person
12 they represent, shall, with respect to each and every Settled Claim, release and
13 forever relinquish and discharge, and shall forever be enjoined from prosecuting,
14 all Settled Claims and any and all claims arising out of, relating to, or in
15 connection with the Settlement, the Litigation, or the resolution of the Litigation
16 against the Released Parties, whether or not such Settlement Class Member
17 executes and delivers the Proof of Claim and Release, except claims to enforce any
18 of the terms of this Stipulation. Further, all Settlement Class Members on behalf
19 of themselves, their current and future heirs, executors, administrators, successors,
20 attorneys, insurers, agents, representatives, and assigns, expressly covenant not to
21 assert any claim or action against any of the Released Parties that: (i) arises out of
22 or relates to the purchase or sale of China Intelligent common stock during the
23 Settlement Class Period, or (ii) that could have been alleged, asserted, or contended
24 in any forum by the Settlement Class Members or any of them against any of the
25 Released Parties, arising out of or relating to the purchase or sale of China
26 Intelligent common stock during the Settlement Class Period, and shall forever be
27 enjoined from commencing, instituting, or prosecuting any such claim, so long as
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1 such claim relates to the purchase or sale of China Intelligent common stock during
2 the Settlement Class Period.

3 3. The Proof of Claim and Release to be executed by the
4 Settlement Class Members shall be substantially in the form and content contained
5 in Exhibit A-3 to the Preliminary Approval Order attached hereto as Exhibit A.

6 4. Pursuant to the Order and Final Judgment, upon the Effective
7 Date of this Settlement, Released Parties shall be deemed to have, and by operation
8 of the Order and Final Judgment entered in the Litigation, shall have, fully, finally,
9 and forever released, relinquished, and discharged each and all of the Settlement
10 Class Members, Lead Plaintiffs, Lead Plaintiffs' Counsel, including their
11 respective successors, assigns, heirs, domestic partners, spouses, marital
12 communities, executors, administrators, attorneys and legal representatives, from
13 all Settled Defendant's Claims.

14 **C. THE SETTLEMENT CONSIDERATION**

15 1. Within 5 business days of the execution of this Stipulation, Philip
16 Philip C. Kempisty shall execute and deliver the Declaration of Philip C. Kempisty
17 re Statement of Financial Affairs of Kempisty & Company P.C. with exhibits.

18 2. Subject to the terms of this Stipulation, the Settlement Amount
19 shall be paid into the Escrow Account within ten (10) calendar days after the Court
20 issues the Preliminary Approval Order. This Gross Settlement Fund shall be paid
21 exclusively by Kempisty.

22 3. The Gross Settlement Fund, net of any Taxes (as defined
23 below) on the income thereof and any Tax Expenses (as defined below), shall be
24 used to pay: (i) the Notice and Administration Expenses as authorized by this
25 Stipulation; (ii) Attorneys' Fees and Expenses authorized by the Court; (iii) any
26 Award to Lead Plaintiffs authorized by the Court; and (iv) other fees and expenses
27 authorized by the Court. The balance of the Gross Settlement Fund remaining
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1 after the above payments shall be the Net Settlement Fund, which shall be
2 distributed to the Authorized Claimants in accordance with this Stipulation.

3 4. Any sums required to be held in escrow hereunder shall be held
4 by the Escrow Agent for the benefit of the Lead Plaintiffs and the Settlement Class
5 until the Effective Date. The Escrow Agent shall not disburse the Settlement Fund
6 except as provided in this Stipulation, by an order of the Court, or with the written
7 agreement of Lead Plaintiffs' Counsel and Settling Defendant's Counsel. Subject
8 to further order or direction as may be made by the Court, the Escrow Agent is
9 authorized to execute such transactions as are consistent with the terms of the
10 Stipulation. After the Order and Final Judgment is entered, payments made from
11 the Settlement Fund shall require only the signature of an authorized representative
12 of the Escrow Agent and shall not require the signature of Settling Defendant's
13 Counsel's authorized representative.

14 5. All funds held by the Escrow Agent shall be deemed to be in
15 *custodia legis* and shall remain subject to the jurisdiction of the Court until such
16 time as the funds shall be distributed or returned pursuant to this Stipulation and/or
17 further order of the Court. Other than amounts disbursed for providing notice to
18 the Settlement Class, customary administration costs, and Taxes and Tax
19 Expenses, and the Attorneys' Fees and Expenses (which shall be paid to Lead
20 Plaintiffs' Counsel within two business days after the Court executes an order
21 awarding such fees and expenses), the Settlement Fund shall not be distributed
22 until the Effective Date. The Escrow Agent shall not disburse the Gross
23 Settlement Fund, or any portion thereof, except as provided in this Stipulation, or
24 upon Order of the Court.

25 6. The Escrow Agent shall invest any funds in excess of \$150,000
26 in short-term United States Treasury Securities (or a mutual fund invested solely in
27 such instruments), and shall collect and reinvest all interest accrued thereon. Any
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1 funds held in escrow in an amount of less than \$150,000 may be held in a bank
2 account insured to the extent possible by the FDIC. Interest earned on the money
3 deposited into the Escrow Account shall be part of the Gross Settlement Fund.

4 7. Notwithstanding the fact that the Effective Date has not yet
5 occurred, Lead Counsel, subject to entry of an order preliminarily approving the
6 Settlement, may pay from the total Settlement Fund, without further approval from
7 Settling Defendant, all reasonable Notice and Administration Expenses actually
8 incurred, up to a maximum aggregate total of \$100,000.00. Such costs and
9 expenses shall include, without limitation, the actual costs of printing and mailing
10 the Notice and Proof of Claim Form, reimbursements to nominee owners for
11 forwarding the Notice and Proof of Claim Form to the beneficial owners of China
12 Intelligent common stock, publication of the Summary Notice, the administrative
13 expenses incurred and fees charged by the Claims Administrator in connection
14 with providing Notice and processing the submitted Claims, and the fees, if any, of
15 the Escrow Agent. In the event that the Settlement is terminated pursuant to the
16 terms of this Stipulation, all Notice and Administration Expenses reasonably paid
17 or reasonably incurred, including any related fees, shall not be returned or repaid to
18 the Settling Defendant or to any person or entity who or which paid any portion of
19 the Settlement Amount on their behalf. Notice and Administration Expenses in
20 excess of \$100,000 shall not be paid out of the Gross Settlement Fund until after
21 the Effective Date. In no event shall an amount more than the Settlement Amount
22 be paid for Notice and Administration Expenses, and in no event shall the Released
23 Parties be responsible to pay any amount for Notice and Administration Expenses.

24 8. Before the Effective Date, Lead Plaintiffs' Counsel shall
25 provide counsel for Kempisty with copies of all records of the Settlement Fund,
26 including all records of disbursements, deposits, and statements of account.

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1 9. After the Effective Date, the Released Parties shall have no
2 interest in the Gross Settlement Fund or in the Net Settlement Fund. The Released
3 Parties shall not be liable for the loss of any portion of the Settlement Fund, nor
4 have any liability, obligation, or responsibility for the payment of claims, taxes,
5 legal fees, or any other expenses payable from the Gross Settlement Fund.

6 **D. ADMINISTRATION AND CALCULATION OF CLAIMS,**
7 **FINAL AWARDS AND SUPERVISION AND DISTRIBUTION**
8 **OF THE SETTLEMENT FUND**

9 1. The Claims Administrator shall administer and calculate the
10 claims that shall be allowed and oversee distribution of the Net Settlement Fund,
11 under the supervision of Lead Plaintiffs' Counsel, and subject to appeal to, and
12 jurisdiction of, the Court. The Released Parties shall have no liability, obligation,
13 or responsibility for the administration of the Gross Settlement Fund or Net
14 Settlement Fund, or for the distribution of the Net Settlement Fund.

15 2. Except as otherwise provided below, on and after the Effective
16 Date, the Gross Settlement Fund shall be applied as follows:

17 a. To pay the expenses incurred in connection with
18 providing notice to Settlement Class Members, administering and distributing the
19 Net Settlement Fund to Settlement Class Members, processing Proofs of Claim,
20 processing requests for exclusion, escrow fees and costs, and any applicable taxes;

21 b. Subject to the approval and further order(s) of the
22 Court, the Net Settlement Fund shall be allocated to Authorized Claimants as set
23 forth in the Plan of Allocation.

24 c. The Net Settlement Fund shall be distributed to
25 Settlement Class Member by the Claims Administrator only after the Effective
26 Date and after: (i) any disputes regarding recognized claim amounts are finally
27 decided by the Court; (ii) all matters with respect to attorneys' fees, costs, and
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1 disbursements have been resolved by the Court, all appeals from such matters have
2 been resolved or the time for such appeals has expired; and (iii) all costs of
3 administration have been paid.

4 3. Each Settlement Class Member wishing to participate in the
5 Settlement shall be required to submit a Proof of Claim and Release (in
6 substantially the form set forth in Exhibit A-3 hereto, which *inter alia* releases all
7 Settled Claims against all Released Parties), signed under penalty of perjury by the
8 beneficial owner(s) of the securities that are the subject of the Proof of Claim and
9 Release, or by someone with documented authority to sign for the beneficial
10 owners and supported by such documents as specified in the instructions
11 accompanying the Proof of Claim and Release.

12 4. All Proofs of Claim must be postmarked or received within the
13 time prescribed in the Preliminary Approval Order unless otherwise ordered by the
14 Court. Any Settlement Class Member who fails to submit a properly completed
15 Proof of Claim within such period as shall be authorized by the Court shall be
16 forever barred from receiving any payments pursuant to this Stipulation or from
17 the Net Settlement Fund (unless Lead Plaintiffs' Counsel in its discretion deems
18 such late filing to be a formal or technical defect, or unless by Order of the Court a
19 later submitted Proof of Claim by such Settlement Class Member is approved), but
20 will in all other respects be subject to the provisions of this Stipulation and Order
21 and Final Judgment, including, without limitation, the release of the Settled Claims
22 and dismissal of the Litigation. A Proof of Claim shall be deemed to have been
23 submitted when posted if received with a postmark indicated on the envelope and
24 if mailed by first-class mail and addressed in accordance with the instructions
25 thereon. In all other cases, the Proof of Claim shall be deemed to have been
26 submitted when actually received by the Claims Administrator.

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1 5. Each Proof of Claim shall be submitted to the Claims
2 Administrator who shall determine, under the supervision of Lead Plaintiffs'
3 Counsel, in accordance with this Stipulation and any applicable orders of the
4 Court, the extent, if any, to which each claim shall be allowed, subject to appeal to
5 the Court. No later than seven (7) days prior to disbursement of the Net Settlement
6 Fund, Lead Plaintiffs' Counsel shall provide Kempisty with a list of Proofs of
7 Claim received by the Claims Administrator indicating which Proofs of Claim
8 have been allowed by the Claims Administrator.

9 6. Lead Plaintiffs' Counsel shall have the right, but not the
10 obligation, to waive what they deem to be formal or technical defects in any Proofs
11 of Claim filed, where doing so is in the interest of achieving substantial justice.

12 7. Proofs of Claim that do not meet the filing requirements may
13 be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall
14 communicate with the Claimant in order to remedy curable deficiencies in the
15 Proof of Claim submitted. The Claims Administrator, under the supervision of
16 Lead Plaintiffs' Counsel, shall notify in a timely fashion and in writing, all
17 Claimants whose Proofs of Claim they propose to reject in whole or in part, setting
18 forth the reasons thereof, and shall indicate in such notice that the Claimant whose
19 claims are to be rejected has the right to review by the Court if the Claimant so
20 desires and complies with the requirement of paragraph D.8 below.

21 8. If any Claimant whose claim has been rejected in whole or in
22 part desires to contest such rejection, the Claimant must, within twenty (20) days
23 after the date of mailing of the notice required by paragraph D.7 above, serve upon
24 the Claims Administrator a notice and statement of reasons indicating the
25 Claimant's ground for contesting the rejection along with any supporting
26 documentation, and requesting a review thereof by the Court. If a dispute
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1 concerning a claim cannot be otherwise resolved, Lead Plaintiffs' Counsel shall
2 thereafter present the request for review to the Court.

3 9. The administrative determination of the Claims Administrator
4 accepting and rejecting claims shall be presented to the Court, on notice to Settling
5 Defendant's Counsel, for approval by the Court at the Settlement Hearing.

6 10. Each Claimant shall be deemed to have submitted to the
7 jurisdiction of the Court with respect to the Claimant's claim, and the claim will be
8 subject to investigation and discovery under the Federal Rules of Civil Procedure,
9 provided that such investigation and discovery shall be limited to that Claimant's
10 status as a Settlement Class Member and the validity and amount of the Claimant's
11 claim. No discovery shall be allowed on the merits of the Litigation or Settlement
12 in connection with processing of the Proofs of Claim.

13 11. Payment pursuant to this Stipulation shall be deemed Final and
14 conclusive against all Settlement Class Members. All Settlement Class Members
15 whose claims are not approved by the Court shall be barred from participating in
16 distributions from the Net Settlement Fund, but are otherwise bound by all of the
17 terms of the Order and Final Judgment to be entered in the Litigation and the
18 releases provided for herein, and will be barred from bringing any action against
19 the Released Parties arising out of or relating to the Settled Claims.

20 12. All proceedings with respect to the administration, processing,
21 and determination of claims described by this paragraph of this Stipulation and the
22 determination of all controversies relating thereto, including disputed questions of
23 law and fact with respect to the validity of claims, shall be subject to the
24 jurisdiction of the Court.

25 13. The Net Settlement Fund shall be distributed to Authorized
26 Claimants by the Claims Administrator only after all of the following having
27 occurred: (i) the Effective Date; (ii) all claims have been processed, and all
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1 Claimants whose claims have been rejected or disallowed, in whole or in part, have
2 been notified and provided the opportunity to be heard concerning such rejection
3 or disallowance; (iii) all objections with respect to all rejected or disallowed claims
4 have been resolved by the Court, and all appeals therefrom have been resolved or
5 the time therefor has expired; (iv) all matters with respect to Attorneys' Fees and
6 Expenses, costs, and disbursements have been resolved by the Court, and all
7 appeals therefrom have been resolved or the time therefor has expired; and (v) all
8 costs of administration have been paid.

9 14. If any funds remain in the Net Settlement Fund by reason of
10 uncashed checks or otherwise, then, after the Claims Administrator has made
11 reasonable and diligent efforts to have Settlement Class Members who are entitled
12 to participate in the distribution of the Net Settlement Fund cash their distribution
13 checks, any balance remaining in the Net Settlement Fund one (1) year after the
14 initial distribution of such funds shall be re-distributed, after payment of any
15 unpaid costs or fees incurred in administering the Net Settlement Fund for such re-
16 distribution, to Settlement Class Members who have cashed their checks and who
17 would receive at least \$10.00 from such re-distribution. If any funds shall remain
18 in the Net Settlement Fund six months after such re-distribution, then such balance
19 shall be contributed to the Legal Aid Foundation of Los Angeles or any not-for-
20 profit successor of it.

21 15. No later than seven (7) calendar days prior to the Settlement
22 Hearing, Lead Plaintiffs' Counsel shall serve on Settling Defendant's Counsel and
23 file with the Court proof, by affidavit or declaration describing how notice of the
24 Settlement was given to the Settlement Class.

25 **E. TAX TREATMENT**

26 1. The Parties agree to treat the Gross Settlement Fund as being
27 at all times a qualified settlement fund within the meaning of Treasury Regulation
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1 § 1.468B-1 and Section 468B of the Internal Revenue Code, as amended, for the
2 taxable years of the Gross Settlement Fund, beginning with the date it is created.
3 In addition, the Escrow Agent and, as required, the Settling Parties, shall jointly
4 and timely make such elections as are necessary or advisable to carry out the
5 provisions of this paragraph, including the "relation-back election" (as defined in
6 Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections
7 shall be made in compliance with the procedures and requirements contained in
8 such regulations. It shall be the responsibility of Lead Plaintiffs' Counsel to timely
9 and properly prepare and deliver the necessary documentation for signature by all
10 necessary parties, and thereafter to cause the appropriate filing to occur.

11 2. For purposes of Section 468B of the Internal Revenue Code, as
12 amended, and the regulations promulgated thereunder, the "administrator" shall be
13 Escrow Agent. The Claims Administrator shall timely and properly file all tax
14 returns necessary or advisable with respect to the Gross Settlement Fund, and make
15 all required tax payments, including deposits of estimated tax payments in
16 accordance with Treas. Reg. § 1.468B-2(k). Such returns (as well as the election
17 described in paragraph E.1. hereof) shall be consistent with this paragraph and
18 reflect that all taxes (including any interest or penalties) on the income earned by
19 the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as
20 provided in paragraph E.3. hereof.

21 3. All (i) taxes (including any interest or penalties) arising with
22 respect to the income earned by the Gross Settlement Fund, including any taxes or
23 tax detriments that may be imposed upon Kempisty with respect to any income
24 earned by the Gross Settlement Fund for any period during which the Gross
25 Settlement Fund does not qualify as a qualified settlement fund for Federal or state
26 income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection
27 with the operation and implementation of this paragraph (including, without
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1 limitation, expenses of tax attorneys and/or accountants, and mailing and
2 distribution costs and expenses relating to filing (or failing to file) the returns
3 described in this paragraph) ("Tax Expenses"), shall be paid out of the Gross
4 Settlement Fund. In all events, the Released Parties shall have no liability for
5 Taxes or the Tax Expenses, and Lead Plaintiffs and Lead Plaintiffs' Counsel agree
6 to indemnify and hold the Released Parties harmless for Taxes and Tax Expenses.
7 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of
8 administration of the Settlement and shall be timely paid by the Escrow Agent out
9 of the Gross Settlement Fund without prior order from the Court. The Escrow
10 Agent shall be obligated (notwithstanding anything herein to the contrary) to
11 withhold from distribution to the Settlement Class Members any funds necessary to
12 pay such Taxes and Tax Expenses, including the establishment of adequate
13 reserves for any Taxes and Tax Expenses (as well as any amounts that may be
14 required to be withheld under Treas. Reg. § 1468B-2(1)(2)). The Released Parties
15 shall have no responsibility or liability therefor. The Settling Parties hereto agree
16 to cooperate with the Escrow Agent, each other, and their tax attorneys and
17 accountants to the extent reasonably necessary to carry out the provisions of this
18 paragraph.

19 **F. ALLOCATION OF NET SETTLEMENT FUND**

20 1. Upon the Effective Date and thereafter, and in accordance with
21 the terms of the Stipulation, the Plan of Allocation, or such further approval and
22 further order(s) of the Court as may be necessary or as circumstances may require,
23 the Net Settlement Fund shall be distributed to Authorized Claimants, subject to
24 and in accordance with the following:

25 (a) Within one hundred and twenty (120) days after the
26 dissemination of the Notice or such other time as may be set by the Court, each
27 Person claiming to be a Settlement Class Member shall be required to submit to the
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1 Claims Administrator a completed Proof of Claim, signed under penalty of perjury
2 and supported by such documents as specified in the Proof of Claim or such
3 substitute documentation as otherwise permitted by Lead Plaintiff's Counsel.

4 (b) Except as otherwise ordered by the Court, all Settlement Class
5 Members who fail to timely submit a Proof of Claim within such period, or such
6 other period as may be ordered by the Court, shall be forever barred from receiving
7 any payment pursuant to this Stipulation and the Settlement set forth herein, but
8 will in all other respects be subject to and bound by the provisions of this
9 Stipulation, the releases contained herein, and the Class Judgment and be enjoined
10 and barred from bringing any action against any of the Released Parties asserting
11 any of the Released Claims.

12 2. The Plan of Allocation is based upon Lead Plaintiffs'
13 Counsel's assessment of the merits and the relative strengths and weaknesses,
14 including recoverable damages, of the claims of the Settlement Class Members.

15 3. Kempisty does not and shall not take any position as to the
16 proposed Plan of Allocation.

17 4. The Released Parties shall have no responsibility for and no
18 obligations or liabilities of any kind whatsoever in connection with the
19 determination, administration, calculation, or payment of claims to Settlement
20 Class Members.

21 5. Kempisty shall have no involvement in the solicitation of, or
22 review of Proofs of Claim, or involvement in the administration process itself,
23 which shall be conducted by the Claims Administrator in accordance with this
24 Stipulation and the Order and Final Judgment to be entered by the Court. No
25 Claimant or Authorized Claimant shall have any claim against the Released Parties
26 or their counsel based on, or in any way relating to, the distributions from either
27 the Gross Settlement Fund or the Net Settlement Fund.

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1 6. No Person shall have any claim against Lead Plaintiffs, Lead
2 Plaintiffs' Counsel, the Claims Administrator, the Escrow Agent or any agent
3 designated by Kempisty, its counsel or any of their respective counsel, based on, or
4 in any way relating to, the investment or distributions from the Settlement Fund
5 that have been made substantially in accordance with this Stipulation and any
6 applicable orders of the Court.

7 7. It is understood and agreed by the Settling Parties that the
8 proposed Plan of Allocation including, but not limited to, any adjustments to an
9 Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is
10 to be considered by the Court separately from the Court's consideration of the
11 fairness, reasonableness and adequacy of the Settlement set forth in this
12 Stipulation, and any order or proceeding relating to the Plan of Allocation shall not
13 operate to terminate or cancel this Stipulation or affect the finality of the Order and
14 Final Judgment approving this Stipulation and the Settlement set forth therein, or
15 any other orders entered pursuant to this Stipulation.

16 8. Any change in the allocation of the Net Settlement Fund
17 ordered by the Court shall not affect the validity or finality of this Settlement.

18 **G. OBLIGATIONS OF AND LIMITATIONS OF LIABILITY OF**
19 **ESCROW AGENT**

20 The Escrow Agent shall not be responsible for the payment of any
21 sums due to Authorized Claimants or other Persons, except to the extent of
22 maintaining account of and properly paying sums as required by this Stipulation to
23 the limited extent that such sums have been delivered into the Escrow Account as
24 required by this Stipulation. The Escrow Agent shall be liable only for acts of
25 gross negligence or willful misconduct.
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1 **H. LEAD PLAINTIFFS' COUNSEL'S REQUEST FOR AN**
2 **AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN**
3 **AWARD TO LEAD PLAINTIFFS**

4 1. Lead Plaintiffs' Counsel may submit one or more applications
5 to the Court, on notice to counsel for Kempisty, for the payment of Attorneys' Fees
6 and Expenses, including: (i) an award of attorneys' fees up to one-third of the
7 Settlement Amount; (ii) reimbursement of litigation costs and expenses, plus
8 interest, including fees and expenses of experts, incurred in connection with the
9 prosecution of the Litigation not to exceed one hundred thousand (\$100,000); (iii)
10 reimbursement of fees and expenses incurred by Lead Plaintiffs' Counsel in
11 administering the Settlement, including hourly attorneys' fees incurred by Lead
12 Plaintiffs' Counsel solely in connection with the administration of the Settlement.
13 and (iv) an Award to Lead Plaintiffs (for reimbursement of time and expenses).
14 Kempisty agrees not to oppose any such application by Lead Plaintiffs' Counsel on
15 the terms set forth above.

16 2. Any attorneys' fees and costs and Award to Lead Plaintiffs
17 awarded by the Court shall be paid from the Gross Settlement Fund within two
18 business days after the Court executes an order awarding such fees and expenses
19 and Award to Lead Plaintiffs. If, and when, as a result of any appeal and/or further
20 proceedings on remand, or successful collateral attack, the Attorneys' Fees and
21 Expenses award is overturned or lowered, or if the Settlement is terminated or is
22 not approved by the Court, or if there is an appeal and any order approving the
23 Settlement does not become Final and binding upon the Class, then, within ten (10)
24 business days from receiving notice from Kempisty's counsel or from a court of
25 appropriate jurisdiction, Lead Plaintiffs' Counsel shall refund to the Settlement
26 Fund such fees and expenses previously paid to them from the Settlement Fund
27 plus interest thereon at the same rate as earned on the Settlement Fund in an
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1 amount consistent with such reversal or modification. Each such Plaintiffs'
2 counsel's law firm receiving fees and expenses, as a condition of receiving such
3 fees and expenses, on behalf of itself and each partner and/or shareholder of it,
4 agrees that the law firm and its partners and/or shareholders are subject to the
5 jurisdiction of the Court for the purpose of enforcing the provisions of this
6 paragraph.

7 3. It is agreed that the procedure for and the allowance or
8 disallowance by the Court of any applications by Lead Plaintiffs' Counsel for
9 Attorneys' Fees and Expenses, including fees for experts and consultants to be paid
10 out of the Gross Settlement Fund, and any order or proceeding relating thereto,
11 shall not operate to terminate or cancel this Stipulation or affect its finality, and
12 shall have no effect on the terms of this Stipulation or on the enforceability of this
13 Settlement.

14 **I. THE PRELIMINARY APPROVAL ORDER**

15 1. Promptly after execution of this Stipulation, Kempisty and
16 Lead Plaintiffs shall submit the Stipulation together with its exhibits to the Court
17 and shall jointly apply for entry of a Preliminary Approval Order in connection
18 with settlement proceedings substantially in the form annexed hereto as Exhibit A,
19 providing for, among other things, preliminary approval of the Settlement and
20 notice to the Settlement Class of the Settlement Hearing. The Preliminary
21 Approval Order (Exhibit A hereto) to be submitted to the Court shall contain
22 exhibits substantially in the form set forth in: (i) the Notice of Pendency and
23 Settlement of Class Action (the "Notice") (Exhibit A-1 to the Preliminary
24 Approval Order); (ii) the Summary Notice of Pendency and Settlement of Class
25 Action ("Summary Notice") (Exhibit A-2 to the Preliminary Approval Order); and
26 (iii) the Proof of Claim and Release (Exhibit A-3 to the Preliminary Approval
27 Order).

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1 2. The Released Parties are not liable or responsible for the
2 method of, or representations made in, the Notice or the Summary Notice.

3 **J. ORDER AND FINAL JUDGMENT TO BE ENTERED BY THE**
4 **COURT APPROVING THE SETTLEMENT**

5 1. Kempisty and Lead Plaintiffs shall seek to have the Court enter
6 an Order and Final Judgment substantially in the form of Exhibit B hereto.

7 2. At or after the Settlement Hearing, Lead Plaintiffs' Counsel
8 also will request that the Court approve the Plan of Allocation of the Net
9 Settlement Fund and Authorized Claimants and Lead Plaintiffs' Counsel may
10 request an award of attorneys' fees and reimbursement of expenses incurred in the
11 prosecution of the Litigation and an award for Lead Plaintiffs.

12 **K. CONDITIONS OF SETTLEMENT**

13 1. The Effective Date of the Settlement shall be conditioned upon
14 the occurrence of ALL of the following events:

15 a. The Court shall enter the Preliminary Approval Order in
16 all material respects, as required by paragraph I above substantially in the form of
17 Exhibit A attached hereto;

18 b. No party shall have exercised within the required time
19 period any right to terminate the Settlement as permitted by paragraph L below;

20 c. The Court has approved the Settlement as described
21 herein, following notice to the Settlement Class and a hearing, as prescribed by
22 Rule 23 of the Federal Rules of Civil Procedure;

23 d. Court has entered the Order and Final Judgment in all
24 material respects, as required by paragraph J above;

25 e. The Court's Order and Final Judgment, substantially in
26 the form of Exhibit B, shall have become "Final," as defined in paragraph A.8.;

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1 f. The Settlement Amount shall have been paid, as set forth
2 in paragraph C.1. above;

3 2. Upon occurrence of ALL of the events referenced in paragraph
4 K.1 above, Lead Plaintiffs shall have, and each and all of the members of the
5 Settlement Class shall hereby be deemed to have, and by operation of the Order
6 and Final Judgment shall have, fully, finally, and forever, released, settled, and
7 discharged, in accordance with the terms of paragraph B above, the Released
8 Parties from and with respect to the Settled Claims, whether or not such members
9 of the Settlement Class execute and deliver a Proof of Claim.

10 3. Upon occurrence of ALL of the events referenced in paragraph
11 K.1 above, the obligation of the Escrow Agent to return funds from the Gross
12 Settlement Fund to Kempisty pursuant to paragraph L.4 or any other provision
13 hereof shall be absolutely and forever extinguished.

14 **L. RIGHTS OF TERMINATION AND EFFECTS THEREOF**

15 1. Kempisty and Lead Plaintiffs shall each have the right to
16 terminate the Settlement and this Stipulation by providing written notice of their
17 election to do so ("Termination Notice") to all other counsel of the Settling Parties
18 within thirty (30) days after the date on which any of the following occurs (except
19 that Kempisty may not terminate the Settlement or the Stipulation if any of the
20 following occurs due to Kempisty's non-payment of the Settlement Amount):

21 a. the Court issues an order declining to enter the
22 Preliminary Approval Order in any material respect;

23 b. the Court issues an order declining to approve this
24 Stipulation or any material part of it;

25 c. the Court declines to enter the Order and Final Judgment
26 in all material respects as required by paragraph J. above;

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1 d. the Order and Final Judgment is modified or reversed in
2 any material respect by a Court of Appeals or the United States Supreme Court.

3 e. the Order and Final Judgment in a form other than that
4 provided above (an "Alternative Judgment") is modified or reversed in any
5 material respect by a Court of Appeals or the United States Supreme Court, if none
6 of the Settling Parties elects to terminate this Settlement upon the Court's entering
7 the Alternative Judgment.

8 2. If prior to the Settlement Hearing, (i) Persons who otherwise
9 would be Settlement Class Members have filed with the Court valid and timely
10 requests for exclusion ("Requests for Exclusion") from the Settlement Class in
11 accordance with the provisions of the Preliminary Approval Order and the notice
12 given pursuant thereto, and such Persons in the aggregate purchased China
13 Intelligent common stock during the Settlement Class Period in an amount greater
14 than the amounts specified in a separate Supplemental Agreement between the
15 Settling Parties (the "Supplemental Agreement"), or (ii) Persons file lawsuits
16 alleging fraud in connection with the purchase of more than the number of shares
17 of China Intelligent common stock during the Settlement Class Period specified in
18 the Supplemental Agreement, then Kempisty shall have the option to terminate this
19 Stipulation and Settlement in strict accordance with the requirements and
20 procedures set forth in the Supplemental Agreement ("Opt-out Termination
21 Option"). The Supplemental Agreement shall not be filed with the Court unless
22 and until a dispute among the parties concerning its interpretation or application
23 arises. Copies of all Requests for Exclusion received, together with copies of all
24 written revocations of Requests for Exclusion, shall be delivered to Kempisty no
25 later than fourteen (14) days prior to the Settlement Hearing. The required
26 procedure for and consequences of exercising an Opt-out Termination Option are
27 as follows:

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1 3. If the Settlement Amount payable pursuant to paragraph C.1 of
2 this Stipulation is not paid, then the Lead Plaintiffs, in their sole discretion, may
3 elect, at any time prior to the Court's entering the Order and Final Judgment, (a) to
4 terminate the Settlement by providing written notice to Kempisty; or (b) to enforce
5 the terms of the Settlement and this Stipulation and seek a judgment effecting the
6 terms herein.

7 4. Upon termination of the Stipulation pursuant to the terms of the
8 Stipulation, the Escrow Agent shall refund the Gross Settlement Fund, less
9 amounts already expended for notice to the Settlement Class pursuant to the terms
10 of the Stipulation, to Kempisty within ten (10) business days thereafter (the
11 "Returned Settlement Amount"). Under no circumstances shall Lead Plaintiffs or
12 Lead Plaintiffs' Counsel be responsible for, or required to reimburse or return any
13 amounts disbursed or incurred for notice to Settlement Class Members,
14 administration of the Settlement, payment of Taxes or payment of Tax Expenses,
15 whether such amounts are paid before or after the Settlement Hearing from the
16 Settlement Fund or as part of a reimbursement of expenses to Lead Plaintiffs'
17 Counsel at or after the Settlement Hearing. At the request of counsel for
18 Kempisty, the Escrow Agent or its designee shall apply for any tax refund owed to
19 the Settlement Fund and pay the proceeds, after payment by Kempisty of any
20 reasonable fees or expenses incurred by Lead Plaintiffs' Counsel and the Escrow
21 Agent in connection with such application(s) for refund, to counsel for Kempisty
22 who shall, in turn, refund such amounts to Kempisty or its insurers in proportion to
23 their respective contributions to the Settlement Fund.

24 5. If this Stipulation is terminated pursuant to its terms, all of the
25 Settling Parties shall be deemed to have reverted to their respective status prior to
26 the execution of this Stipulation, and they shall proceed in all respects as if this
27 Stipulation had not been executed and the related orders had not been entered,
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1 preserving in that event all of their respective claims and defenses in the Litigation,
2 and shall revert to their respective positions in the Litigation, except that the
3 provisions of paragraphs E.1-3, G, L.5-6, M.10-11, and M.13 shall survive
4 termination.

5 6. No order of the Court or modification or reversal of any order
6 of the Court concerning the Plan of Allocation or the amount of any attorneys' fees,
7 costs, and expenses awarded by the Court shall constitute grounds for cancellation
8 or termination of the Stipulation.

9 **M. MISCELLANEOUS PROVISIONS**

10 1. The Settling Parties: (a) acknowledge that it is their intent to
11 consummate the Settlement contemplated by this Stipulation; (b) agree to
12 cooperate to the extent necessary to effectuate and implement all terms and
13 conditions of this Stipulation; and (c) agree to exercise their best efforts and to act
14 in good faith to accomplish the foregoing terms and conditions of the Stipulation.

15 2. Immediately upon preliminary approval by the Court of the
16 Settlement of the Litigation as to Kempisty, Kempisty will, at the request of Lead
17 Counsel, provide, without objection, relevant documents. Any documents obtained
18 from Kempisty will only be used in connection with the Litigation and be subject
19 to a protective order in each case to be prepared at a later time.

20 3. The Settling Parties acknowledge and warrant as follows:

21 a. By executing this Stipulation, each of the Settling Parties
22 represents that they have carefully read and fully understand this Stipulation and its
23 final and binding effect;

24 b. By executing this Stipulation, each of the Settling Parties
25 represents that they have the right, legal capacity, power and authority to enter into
26 this Stipulation and to perform their obligations hereunder, without the consent,
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1 approval, or authorization of any Person, board, entity, tribunal, or other regulatory
2 or governmental authority;

3 c. By executing this Stipulation, each of the Settling Parties
4 represents that the execution and delivery of this Stipulation and the performance
5 of each and every obligation in this Stipulation do not and will not result in a
6 breach of or constitute a default under, or require any consent under, any duty,
7 relationship, contract, agreement, covenant, promise, guarantee, obligation or
8 instrument to which the executing Settling Party is a party or by which the
9 executing Settling Party is bound or affected.

10 d. By executing this Stipulation, each of the Settling Parties
11 represents that there is no demand for monetary, non-monetary, or injunctive relief,
12 or any civil, criminal, administrative, or arbitration proceeding for monetary, non-
13 monetary, or injunctive relief known or suspected to exist against them that would
14 affect this Stipulation or their ability to enter into, execute or perform each and
15 every obligation in this Stipulation.

16 e. By executing this Stipulation, each of the Settling Parties
17 represents that no representations or promises of any kind or character have been
18 made by any other Settling Party, Released Party, or anyone else to induce the
19 execution of this Stipulation except as expressly provided herein.

20 f. By executing this Stipulation, each of the Settling Parties
21 represents that this Stipulation is fair and is executed voluntarily, with full
22 knowledge of the consequences and implications of the obligations contained
23 herein.

24 g. By executing this Stipulation, each of the Settling Parties
25 represents that this Stipulation is not the result of any fraud, duress, or undue
26 influence, and that they have not assigned, transferred, or conveyed or purported to
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1 assign, transfer, or convey, voluntarily, involuntarily or by operation of law, any or
2 all of their respective rights and claims.

3 h. By executing this Stipulation, each of the Settling Parties
4 represents that they have had the opportunity to be represented by counsel of their
5 choice that is duly licensed to practice in the State of California throughout the
6 negotiations which preceded the execution of this Stipulation and in connection
7 with the preparation and execution of this Stipulation.

8 i. By executing this Stipulation, each of the Settling Parties
9 represents that they have been afforded sufficient time and opportunity to review
10 this Stipulation with advisors and counsel of their choice.

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

13 5. No amendment or modification of this Stipulation shall be
14 effective unless in writing and signed by the Settling Parties or their successors-in-
15 interest.

16 6. This Stipulation, and the exhibits attached hereto, constitute
17 the entire agreement among the Settling Parties, and no representations, warranties,
18 or inducements have been made to any Settling Party concerning this Stipulation or
19 its exhibits, other than the representations, warranties, and covenants contained and
20 memorialized in such documents.

21 7. Except as otherwise provided herein, each Settling Party shall
22 bear its own costs. Lead Plaintiffs' Counsel's Attorneys' Fees and Expenses,
23 subject to Court approval, shall be paid only out of the Gross Settlement Fund, and
24 the Released Parties shall have no obligation with respect to the payment of said
25 Attorneys' Fees and Expenses.

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1 8. Counsel for the Settling Parties are expressly authorized by
2 their respective clients to take all appropriate action required or permitted to be
3 taken pursuant to this Stipulation to effectuate its terms and conditions.

4 9. This Stipulation may be executed in one or more original,
5 photocopied, or facsimile counterparts. All executed counterparts and each of
6 them shall be deemed to be one and the same instrument. The Settling Parties shall
7 exchange among themselves original signed counterparts of this Stipulation, and a
8 complete set of executed counterparts of this Stipulation shall be filed with the
9 Court.

10 10. This Stipulation shall be binding upon, and inure to the benefit
11 of, the successors, assigns, executors, administrators, heirs, and legal
12 representatives of the Settling Parties. No assignment shall relieve any party
13 hereto of any obligations hereunder.

14 11. All terms of this Stipulation and all exhibits hereto shall be
15 governed and interpreted according to the laws of the State of California without
16 regard to its rules of conflicts of law, except to the extent that federal law requires
17 that federal law governs, and in accordance with the laws of the United States.

18 12. The Lead Plaintiffs, on behalf of himself and each member of
19 the Settlement Class, and the other Settling Parties hereby irrevocably submit to
20 the jurisdiction of the Court for any suit, action, proceeding, or dispute arising out
21 of or relating to this Stipulation, the applicability of this Stipulation, or the
22 enforcement of this Stipulation. The administration and consummation of the
23 Settlement as embodied in this Stipulation shall be under the authority of the
24 Court, and the Court shall retain jurisdiction for the purpose of entering orders
25 providing for awards of Attorneys' Fees and Expenses to Lead Plaintiffs' Counsel,
26 Awards to Lead Plaintiffs, and enforcing the terms of this Stipulation.

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1 13. None of the Settling Parties shall be considered to be the
2 drafter of this Stipulation or any provision hereof for purposes of any statute, case
3 law, or rule of interpretation or construction that would or might cause any
4 provision to be construed against the drafter hereof. Because of the arm's-length
5 negotiations that preceded the execution of this Stipulation, all Settling Parties
6 have contributed substantially and materially to the preparation of this Stipulation.

7 14. Neither this Stipulation, nor the fact of the Settlement, is an
8 admission or concession by Kempisty of any liability or wrongdoing whatsoever.
9 This Stipulation shall not constitute a finding of the validity or invalidity of any
10 claims in the Litigation or of any wrongdoing by any Settling Defendant named
11 therein. This Stipulation, the fact of settlement, the settlement proceedings, the
12 settlement negotiations, and any related documents, shall not be used or construed
13 as an admission of any fault, liability, or wrongdoing by any Person.

14 15. The Settling Parties intend the Settlement to be a final and
15 complete resolution of all claims and disputes asserted or that could be asserted by
16 the Settlement Class Members against the Released Parties with respect to the
17 Settled Claims. Accordingly, unless the Court's Order and Final Judgment
18 approving the Settlement does not become Final, the Settling Parties agree not to
19 assert in any forum that the Litigation was brought by Lead Plaintiffs or defended
20 by Kempisty in bad faith or without a reasonable basis. Additionally, the Settling
21 Parties shall not assert any claims of any violation of Rule 11 of the Federal Rules
22 of Civil Procedure relating to the prosecution, defense, or settlement of the
23 Litigation. The Settling Parties agree that the amount paid and the other terms of
24 the Settlement were negotiated at arm's-length in good faith by the Settling Parties,
25 and reflect a settlement that was reached voluntarily after consultation with
26 experienced legal counsel.

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1 16. The headings in this Stipulation are used for purposes of
2 convenience and ease of reference only and are not meant to have any legal effect,
3 nor are they intended to influence the construction of this Stipulation in any way.

4 17. The waiver of one Settling Party of any breach of this
5 Stipulation by any other Settling Party shall not be deemed a waiver of any other
6 breach of this Stipulation. The provisions of this Stipulation may not be waived
7 except by a writing signed by the affected Settling Party or counsel for that Settling
8 Party. No failure or delay on the part of any Settling Party in exercising any right,
9 remedy, power, or privilege under this Stipulation shall operate as a waiver thereof
10 or of any other right, remedy, power, or privilege of such Settling Party under this
11 Stipulation; nor shall any single or partial exercise of any right, remedy, power, or
12 privilege under this Stipulation on the part of any Settling Party operate as a waiver
13 thereof or of any other right, remedy, power, or privilege of such Settling Party
14 under this Stipulation, or preclude further exercise thereof or the exercise of any
15 other right, remedy, power, or privilege.

16 18. The Settling Parties agree that nothing contained in this
17 Stipulation shall cause any Settling Party to be the agent or legal representative of
18 another Settling Party for any purpose whatsoever, nor shall this Stipulation be
19 deemed to create any form of business organization between the Settling Parties,
20 nor is any Settling Party granted any right or authority to assume or create any
21 obligation or responsibility on behalf of any other Settling Party, nor shall any
22 Settling Party be in any way liable for any debt of another Settling Party as a result
23 of this Stipulation except as explicitly set forth herein.

24 19. For purposes of this Stipulation and Settlement only, the
25 Settling Parties stipulate of the certification of the Settlement Class, as defined in
26 Paragraph A-27 hereof, the appointment of Lead Plaintiffs as class representatives
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1 of the Settlement Class, and the appointment of Lead Plaintiffs' Counsel as
2 Settlement Class Counsel.

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

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THE ROSEN LAW FIRM, P.A.

MCAFEE & TAFT PC

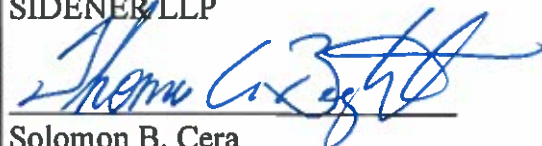




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