



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE SABA SOFTWARE, INC. : CONSOLIDATED  
STOCKHOLDER LITIGATION : C.A. No. 10697-VCN

**STIPULATION AND AGREEMENT OF  
COMPROMISE AND SETTLEMENT**

This Stipulation and Agreement of Compromise and Settlement (the "Settlement Agreement" or the "Stipulation"), dated May 31, 2018, which is entered into between: (i) lead plaintiff Gary Poltash ("Lead Plaintiff," "Plaintiff," or "Poltash"), on his own behalf and on behalf of the Settlement Class (defined below); (ii) Saba Software, Inc. ("Saba" or the "Company"); and (iii) defendants Shawn Farshchi, William V. Russell, Dow R. Wilson, William M. Klein, William N. MacGowan, Michael Fawkes and Nora Denzel (collectively, the "Individual Defendants"); all by and through their undersigned attorneys, states all of the terms of the settlement and resolution of the Consolidated Action (defined below) and is intended by the parties to this Stipulation (each a "Party" and collectively the "Parties") to fully and finally compromise, resolve, discharge and settle the Released Claims (defined below), subject to the approval of the Court of Chancery of the State of Delaware (the "Court").

**BACKGROUND OF THE SETTLEMENT**

WHEREAS, on February 10, 2015, Saba announced that its Board of Directors (the "Board") had entered into an Agreement and Plan of Merger (the "Merger Agreement") with Vector Capital, pursuant to which Saba stockholders

would receive \$9 for each share of Company stock they own (the "Acquisition"). This announcement came after the Company announced on December 15, 2014, that it was unable to complete its financial restatement before the February 15, 2015 deadline set by the U.S. Securities and Exchange Commission ("SEC");

WHEREAS, on February 21, 2015, Poltash filed an action in this Court against the Individual Defendants and entities affiliated with Vector Capital (the "Vector Capital Defendants"), on behalf of himself and all of Saba's public stockholders captioned *Poltash v. Farshchi et. al.*, C.A. No. 10697-VCN, alleging, among other things, that the Board breached its fiduciary duties to the Company's public stockholders in connection with the Acquisition and that the Vector Capital Defendants aided and abetted such breaches (the "Poltash Action");

WHEREAS, on February 24, 2015 Brandon Hughes ("Hughes") filed an action in this Court against Saba, the Vector Capital Defendants and the Individual Defendants, on behalf of himself and all of Saba's public stockholders captioned *Hughes v. Farshchi et. al.*, C.A. No. 10708-VCN, alleging, among other things, that the Board breached its fiduciary duties to the Company's public stockholders and that the Vector Capital Defendants aided and abetted such breaches (the "Hughes Action");

WHEREAS, on February 27, 2015, LR Trust ("LR Trust") filed an action in this Court against Saba, the Vector Capital Defendants and the Individual

Defendants, on behalf of itself and all of Saba's public stockholders captioned *LR Trust v. Saba Software, Inc.*, C.A. No. 10731-VCN, alleging, among other things, that the Board breached its fiduciary duties to the Company's public stockholders and that the Vector Capital Defendants aided and abetted such breaches (the "LR Trust Action");

WHEREAS, also on February 27, 2015, Poltash served a First Request for the Production of Documents to the Individual Defendants;

WHEREAS, on March 4, 2015, Luigi Diana ("Diana") filed an action in this Court against Saba, the Vector Capital Defendants, and the Individual Defendants, on behalf of himself and all of Saba's public stockholders captioned *Diana v. Saba Software, Inc.*, C.A. No. 10754-VCN, alleging, among other things, that the Board breached its fiduciary duties to the Company's public stockholders and that the Vector Capital Defendants aided and abetted such breaches (the "Diana Action");

WHEREAS, also on March 4, 2015, Barbara Williams ("Williams") filed an action in this Court against Saba, the Vector Capital Defendants and the Individual Defendants, on behalf of herself and all of Saba's public stockholders captioned *Williams v. Farshchi, et al.*, C.A. No. 10755-VCN alleging, among other things, that the Board breached its fiduciary duties to the Company's public stockholders and that the Vector Capital Defendants aided and abetted such breaches (the "Williams Action");

WHEREAS, on March 6, 2015, Saba sent a Proxy Statement (the "Proxy") to its stockholders, which recommended that Saba's public stockholders vote in favor of the Acquisition;

WHEREAS, on March 12, 2015, Poltash filed an Amended Verified Class Action Complaint ("Amended Complaint") which repeated the allegations in the initial complaint in the Poltash Action and added allegations that the Proxy failed to include certain material information and/or contained certain materially misleading information that rendered Saba stockholders incapable of making a fully informed decision with respect to the Acquisition;

WHEREAS, in early March, 2015, after counsel for the Parties met and conferred, Defendants agreed to produce certain expedited discovery to counsel for Plaintiff in advance of the stockholder vote and in contemplation of a potential injunction motion, and Defendants subsequently made a production of documents, including, among other things, Board and Board committee meeting minutes and presentations by Saba's financial advisor, Morgan Stanley & Company ("Morgan Stanley");

WHEREAS, on March 13, 2015, Robbins Arroyo LLP, counsel for Poltash ("Lead Counsel"), deposed defendant William V. Russell ("Russell"), the non-executive Chairman of Saba's Board since March 2013 and a member of the Ad Hoc Transaction Committee formed in connection with the Acquisition;

WHEREAS, on March 16, 2015, Lead Counsel deposed Eric W. Marth, an Executive Director at Morgan Stanley, Saba's financial advisor in connection with the Acquisition;

WHEREAS, on March 17, 2015, the Court entered an Order of Consolidation of the Related Actions and Appointment of Plaintiffs' Lead Counsel, Executive Committee and Delaware Counsel, which consolidated the Poltash, Hughes, LR Trust, Diana and Williams Actions into a consolidated action (the "Consolidated Action"), and appointed Poltash as Lead Plaintiff and Robbins Arroyo LLP as plaintiffs' Lead Counsel, and appointed Kahn Swick & Foti, LLC, Levi & Korsinsky, LLP, and Pomerantz LLP as Plaintiffs' Executive Committee, and Andrews and Springer LLP and Rigrodsky and Long, P.A. as Plaintiffs' Delaware Counsel in the Consolidated Action;

WHEREAS, on March 26, 2015, the Saba stockholders voted to approve the Acquisition;

WHEREAS, on March 18, 2015, John F. Martin filed an action in this Court against Saba, the Vector Capital Defendants and the Individual Defendants, on behalf of himself and all of Saba public stockholders captioned *Martin v. Farshchi*, C.A. No. 10808-VCN, alleging, among other things, that the Board breached its fiduciary duties to the Company's public stockholders and that the Vector Capital Defendants aided and abetted such breaches (the "Martin Action");

WHEREAS, on March 30, 2015, the Acquisition closed;

WHEREAS, on April 8, 2015, this Court issued an Amended Order of Consolidation of the Related Actions and Appointment of Plaintiffs' Lead Counsel, Executive Committee and Delaware Counsel, consolidating the Martin Action with the Consolidated Action;

WHEREAS, on April 13, 2015, the Individual Defendants served their Response to Plaintiff's First Request for Production of Documents;

WHEREAS, on June 17, 2015, Plaintiff served the Second Request for Production of Documents Directed to the Individual Defendants;

WHEREAS, on June 22, 2015, Plaintiff served Notice of Depositions to Deloitte Financial Advisory Services LLP, Ernst & Young LLP, KPMG LLP, and Morgan Stanley;

WHEREAS, on June 24, 2015, Plaintiff served a revised Notice of Deposition to KPMG LLP;

WHEREAS, on July 2, 2015, Plaintiff served Subpoena *Duces Tecum* and Subpoena *Ad Testificandum* directed to Deloitte Financial Advisory Services LLP, Ernst & Young LLP, KPMG LLP, and Morgan Stanley;

WHEREAS, on August 13, 2015, the Individual Defendants filed a motion to stay discovery pending resolution of the motion to dismiss ("Motion to Stay

Discovery") and a motion to dismiss the Amended Complaint ("Motion to Dismiss");

WHEREAS, on September 8, 2015, the Parties agreed that they would suspend the briefing on the Motion to Dismiss until after the resolution of the Motion to Stay Discovery and the Court approved the proposed briefing schedule on September 9, 2015;

WHEREAS, on September 25, 2015, Lead Plaintiff filed an opposition to Defendants' Motion to Stay Discovery;

WHEREAS, on September 30, 2015, this Court issued an order regarding the confidential treatment of information contained in the briefing regarding the Motion to Stay Discovery;

WHEREAS, on October 23, 2015, Individual Defendants filed a reply in further support of the Motion to Stay Discovery;

WHEREAS, on November 18, 2015, this Court heard argument of counsel, and granted the Motion to Stay Discovery;

WHEREAS, on December 2, 2015, the Court entered a Stipulation and Proposed Scheduling Order for the filing of the consolidated amended complaint and defendants' motions to dismiss;

WHEREAS, on February 26, 2016, Lead Plaintiff filed the Second Amended Verified Class Action Complaint ("Second Amended Complaint"), alleging, among

other things, that the Board breached their fiduciary duties in connection with the Acquisition and that the Vector Capital Defendants aided and abetted such breaches. Specifically, the Second Amended Complaint alleged, *inter alia*, that: the consideration offered in the Acquisition was financially unfair; the process leading up to the Merger Agreement was unfair; the Board members were motivated to approve the Merger Agreement by their own potential financial gain; and the Proxy contained material misstatements and omissions;

WHEREAS, on April 22, 2016, the Individual Defendants and the Vector Capital Defendants filed motions to dismiss the Second Amended Complaint;

WHEREAS, on June 17, 2016, Lead Plaintiff filed an opposition to the Individual Defendants' and the Vector Capital Defendants' motions to dismiss the Second Amended Complaint;

WHEREAS, on July 20, 2016, the Individual Defendants and the Vector Capital Defendants filed replies to their motions to dismiss the Second Amended Complaint;

WHEREAS, on December 8, 2016, the Court heard oral argument on Defendants' motions to dismiss the Second Amended Complaint;

WHEREAS, on January 31, 2017, this Court requested supplemental briefing on the issue of whether the circumstances surrounding the stockholder



vote approving the Acquisition might be characterized as "coercive" under Delaware law;

WHEREAS, on February 17, 2017, Lead Plaintiff and the Individual Defendants both filed letter briefs in response to the Court's January 31, 2017 request;

WHEREAS, on March 31, 2017, the Court denied the Individual Defendants' motion to dismiss in part. The Court denied the motion to dismiss as to Lead Plaintiff's breach of fiduciary and disclosure claims relating to (i) the reasons why Saba could not complete the restatement; and (ii) the post-deregistration options available to Saba. The Court also held that it was reasonably conceivable that Saba stockholders' approval of the Acquisition was neither fully informed nor uncoerced. The Court dismissed claims that: (i) the Board acted in bad faith by engaging Morgan Stanley; (ii) the Proxy Statement should have disclosed more information about the financial advisor's services provided in the past to Vector Capital and the financial analyses underlying the fairness opinion; (iii) Saba's Chief Executive Officer, who led the negotiations, was motivated by continuing his employment after the Acquisition; and (iv) the Vector Capital Defendants aided and abetted the directors' breaches;

WHEREAS, on April 11, 2017, the Court submitted a revised Memorandum Opinion clarifying that the burden of proof will be addressed at a later date in the litigation;

WHEREAS, on April 17, 2017, the Court entered a Stipulation and Scheduling Order for the filing of Defendants' response to the Second Amended Complaint;

WHEREAS, on May 10, 2017, the Individual Defendants filed an Answer to the Second Amended Complaint;

WHEREAS, on June 20, 2017, the Court entered a Stipulation and Order Governing the Production and Exchange of Confidential and Highly Confidential Information;

WHEREAS, on July 20, 2017, Plaintiff served a Subpoena *Duces Tecum* to KPMG LLP;

WHEREAS, on August 3, 2017, KPMG served its objections to Plaintiff's Subpoena *Duces Tecum*;

WHEREAS, on August 31, 2017, the Court entered an Order Governing Expert Discovery;

WHEREAS, on September 19, 2017, the Court entered a Stipulation and Order Governing Case Schedule;

WHEREAS, on September 25, 2017, Plaintiff served a Third Request for Production of Documents upon the Individual Defendants;

WHEREAS, on September 25, 2017, Plaintiff served a Subpoena *Duces Tecum* directed to Saba;

WHEREAS, on October 9, 2017, Saba and Defendants filed Responses and Objections to the Subpoena *Duces Tecum* and the Third Request for Production of Documents;

WHEREAS, on October 11, 2017, Plaintiff served a Subpoena *Ad Testificandum* on Mark Robinson, Saba's former Chief Financial Officer;

WHEREAS, on November 6, 2017, Plaintiff served a Subpoena *Ad Testificandum* on Raquel Peasley, Saba's Vice President, Corporate Controller;

WHEREAS, on November 15, 2017, Lead Counsel deposed Saba's then-Vice President, Corporate Controller Raquel Peasley;

WHEREAS, on December 13, 2017, Lead Counsel deposed former Saba Chief Financial Officer Mark Robinson;

WHEREAS, on January 30, 2018, the Parties exchanged their respective Mediation Statements in connection with a scheduled mediation with Robert A. Meyer, Esq.;

WHEREAS, on February 6, 2018, the Parties conducted a mediation with Robert A. Meyer, Esq.;

WHEREAS, during February, March, and April 2018, the Parties continued, with the assistance of the mediator, to explore potential resolution;

WHEREAS, on May 3, 2018, after arm's-length negotiations with the guidance of the mediator, the Parties reached an agreement-in-principle to settle the Consolidated Action and resolve Lead Plaintiffs' claims on the basis that Defendants would cause to be paid \$19.5 million to be distributed to the Settlement Class (the "Settlement Payment" defined below);

WHEREAS, on May 10, 2018, the Parties informed the Court that the Parties reached an agreement-in-principle to settle the Consolidated Action;

WHEREAS, throughout the course of the Consolidated Action, Defendants and third parties produced over 209,000 pages of documents, including, *inter alia*, Board and committee meeting minutes, e-mails, bankers' presentations, projected financial information, and Lead Counsel and other plaintiffs' counsel reviewed these documents;

WHEREAS, Lead Counsel took four depositions of Defendants and third-party witnesses;

WHEREAS, throughout the course of the Consolidated Action, Lead Plaintiff consulted with his own financial experts;

WHEREAS, without admitting any wrongdoing or any of the allegations in the Consolidated Action, Defendants acknowledge that the pendency of the

Consolidated Action and the efforts of Lead Counsel were the primary cause of the decision by Defendants to cause to be paid the Settlement Payment pursuant to the Settlement;

WHEREAS, Defendants have denied, and continue to deny, all allegations of wrongdoing, fault, liability, or damage with respect to all claims asserted in the Consolidated Action, including that they have committed any violations of law or breaches of duty or that they have engaged in any wrongful acts or acted improperly in any way, and that they have any liability or owe any damages of any kind to Lead Plaintiff and/or the Settlement Class, and Defendants expressly maintain that they diligently and scrupulously complied with all applicable fiduciary, disclosure and other legal and equitable duties;

WHEREAS, Defendants are entering into this Stipulation solely because they consider it desirable that the Consolidated Action be settled and dismissed with prejudice in order to, among other things, (i) eliminate the uncertainty, burden, inconvenience, expense, and distraction of further litigation, and (ii) fully and finally put to rest and terminate all claims that were or could have been asserted by Lead Plaintiff or any other member of the Settlement Class against Defendants in the Consolidated Action or in any other action, in any court or tribunal, relating to the Acquisition or any allegations, transactions, facts, matters, occurrences, representations or omissions at issue in the Consolidated Action;

WHEREAS, the entry by Lead Plaintiff into this Stipulation is not an admission as to the lack of any merit of any claims asserted in the Consolidated Action. In negotiating and evaluating the terms of this Stipulation, Lead Counsel considered the legal and factual defenses to Lead Plaintiff's claims that Defendants raised and might have raised throughout the pendency of the Consolidated Action and the difficulty they would have likely had in enforcing any judgment they might have obtained at a trial of this action. In addition, Lead Plaintiff considered the benefits to be provided to the Settlement Class through the Settlement Payment. Based upon their evaluation, Lead Plaintiff and Lead Counsel have determined that the Settlement set forth in this Stipulation is fair, reasonable, and adequate to Lead Plaintiff and the Settlement Class, and that it confers substantial benefits upon the Settlement Class;

WHEREAS, the Parties recognize the time and expense that would be incurred by further litigation and the uncertainties inherent in such litigation;

WHEREAS, the Settlement (defined below) of the Consolidated Action on the terms and conditions set forth herein includes, but is not limited to, a release of all claims that were or could have been asserted in the Consolidated Action;

**NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED**, by Lead Plaintiff, for himself and on behalf of the Settlement Class, and Defendants that, subject to the approval of the Court and pursuant to

Court of Chancery Rule 23 and the other conditions set forth herein, for the good and valuable consideration set forth herein and conferred on Lead Plaintiff and the Settlement Class, the Consolidated Action shall be finally and fully settled, compromised, and dismissed with prejudice, and that the Released Claims shall be finally and fully compromised, settled, released, and dismissed with prejudice as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth.

**A. Definitions**

1. The following capitalized terms, used in this Stipulation and its Exhibits, shall have the meanings specified below:

(a) "Account" means an account at Signature Bank, with Lead Counsel (defined herein) as escrow agent, which is to be maintained by the Paying Agent (defined herein) and into which the Settlement Amount shall be deposited. The funds deposited into the Account shall be invested in instruments backed by the full faith and credit of the United States Government or an agency thereof, or if the yield on such instruments is negative, in an account fully insured by the United States Government or an agency thereof.

(b) "Administrative Costs" means all costs and expenses associated with administering or carrying out the terms of the Settlement.

(c) "Effective Date" means the first business day following the date on which all of the conditions set forth in Paragraph 13 hereof shall have occurred.

(d) "Fee and Expense Award" means an award to Lead Counsel of fees and expenses to be paid from the Settlement Amount (defined herein) approved by the Court in accordance with this Stipulation and in full satisfaction of any and all claims for attorneys' fees that have been, could be, or could have been asserted by Lead Counsel or any other counsel for any member of the Class.

(e) "Final," when referring to the Order and Final Judgment, means that the Order and Final Judgment has been entered by the Court and one of the following has occurred: (i) the time for the filing or noticing of any motion for reconsideration, appeal, or other review of the Order and Final Judgment has expired without any such filing or notice, or (ii) the Order and Final Judgment has been affirmed in all material respects on an appeal or after reconsideration or other review and is no longer subject to review upon appeal, reconsideration, or other review, and the time for any petition for reconsideration, reargument, appeal, or review of the Order and Final Judgment or any order affirming the Order and Final Judgment has expired; provided, however, that any disputes or appeals relating solely to the amount,



payment, or allocation of attorneys' fees and expenses shall have no effect on finality for purposes of determining the date on which the Order and Final Judgment became final, and shall not otherwise prevent, limit, or otherwise affect the Order and Final Judgment or prevent, limit, delay, or hinder the Order and Final Judgment's becoming final.

(f) "Final Approval of the Fee Application" shall be deemed to occur on the first business day following the date any award of attorneys' fees and expenses in connection with the Fee Application (defined herein) becomes final and no longer subject to further appeal or review, whether by affirmance on or exhaustion of any possible appeal or review, lapse of time, or otherwise.

(g) "First Net Settlement Amount" means the First Settlement Payment as defined herein less any Fee and Expense Award and Administrative Costs.

(h) "First Settlement Payment" means \$18 million.

(i) "Lead Counsel" means Robbins Arroyo LLP.

(j) "Net Settlement Amount" means the First Net Settlement Amount and the Second Net Settlement Amount.

(k) "Order and Final Judgment" means the Order and Final Judgment to be entered in the Consolidated Action substantially in the form

attached as Exhibit D hereto or as modified by the Court with the written consent of the Parties or as modified by agreement of the Parties in writing.

(l) "Person" means any individual, corporation, partnership, limited liability company, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

(m) "Proof of Claim" means the form, substantially in the form attached hereto as Exhibit C, that will be mailed to Class Members with the Notice and pursuant to which Class Members submit a claim by completing, signing, dating, and returning it to the claims administrator in accordance with the procedures set forth therein.

(n) "Released Claims" means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, discoverable or undiscoverable, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or

previously existed, including Unknown Claims (defined below), that plaintiffs or any or all other Class Members ever had, now have, or may have, whether direct, derivative, individual, class, representative, legal, equitable, or of any other type, or in any other capacity, against any of the Released Parties (defined below), whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule (including, but not limited to, any claims under federal or state securities laws, federal or state antitrust law, or under federal or state disclosure law, including all claims within the exclusive jurisdiction of the federal courts, or any claims that could be asserted derivatively on behalf of Saba) regardless of legal or equitable theory (including, without limitation, claims for negligence, gross negligence, recklessness, deliberate recklessness, intentional wrongdoing, fraud, breach of contract, or breach of the fiduciary duty of care and/or loyalty) that have been or could have been asserted in the Consolidated Action or in any court, tribunal, forum, or proceeding, which, now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, in whole or in part, (i) the Acquisition, (ii) any deliberations or negotiations in connection with the Acquisition, (iii) the consideration received by Class Members or by any other Person in connection with the Acquisition, (iv) the Proxy or any other disclosures,

public filings, periodic reports, press releases, proxy statements, or other statements issued, made available, or filed relating, directly or indirectly, to the Acquisition, (v) the fiduciary duties and obligations of the Released Parties in connection with the Acquisition, or (vi) any of the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in any complaint or amendment(s) thereto filed in the Consolidated Action; provided, however, that the Released Claims shall not include claims to enforce the Settlement or any claims or rights of any Defendant against its insurers or its insurers' successors or assignees.

(o) Whether or not any or all of the following Persons were named, served with process or appeared in the Consolidated Action, "Released Parties" means (i) Defendants, (ii) any Person which is, was, or will be related to or affiliated with any or all of Defendants or in which any or all of Defendants has, had, or will have a controlling interest, or any estate or trust of which any Defendant is a settlor or which is for the benefit of him or her, (iii) Saba (iv) Vector Capital, and (v) each and all of the foregoing's respective past or present family members, spouses, domestic partners, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, affiliates, agents, employees, employers, personnel, fiduciaries, general or limited

partners or partnerships, joint ventures, members, member firms, divisions, limited liability companies, corporations, parents, subsidiaries (foreign or domestic), divisions, shareholders, stockholders, principals, officers, managers, directors, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, analysts, consultants, investment bankers, investment banks, investment funds, underwriters, brokers, dealers, lenders, attorneys, legal representatives, accountants, auditors, insurers, co-insurers, reinsurers, retained professionals, and associates.

(p) "Second Net Settlement Amount" means the Second Settlement Payment as defined herein less any Administrative Costs.

(q) "Second Settlement Payment" means \$1.5 million.

(r) "Settlement" means the settlement of the Consolidated Action between and among Lead Plaintiff, on behalf of himself and the Settlement Class, and Defendants, as set forth in this Stipulation.

(s) "Settlement Amount" means the principal amount of \$19.5 million dollars in cash, plus any accrued interest thereon.

(t) "Settlement Class" means all persons or entities who held shares of Saba common stock (or any interest therein), either of record or beneficially at the close of the Acquisition on March 30, 2015, and who were

cashed out by their shares of Saba common stock in the Acquisition, excluding Defendants, members of the immediate family of each individual Defendant, current or former officers or directors of Saba or Vector Capital, Vector Capital and any affiliates of Vector Capital, any entity controlled by any of the Defendants, and any successors in interest thereto; and the legal representatives, agents, affiliates, heirs beneficiaries, successors in interest or assigns of any excluded party.

(u) "Settlement Class Member" or "Settlement Class Members" mean a member or members of the Class.

(v) "Settlement Hearing" means the hearing to be held by the Court to: (a) consider the proposed Settlement; (b) determine whether Lead Plaintiff and Lead Counsel have adequately represented the interests of the Settlement Class in the Consolidated Action; (c) determine whether this Stipulation, and the terms and conditions of the Settlement proposed in this Stipulation, are fair, reasonable, and adequate to the Settlement Class Members and should be approved by the Court; (d) determine whether the Order and Final Judgment should be entered dismissing the Consolidated Action and Released Claims with prejudice as against Lead Plaintiff and the Class, releasing and discharging with respect to Lead Plaintiff and all Settlement Class Members the Released Claims against the Released Parties,

and permanently barring and enjoining prosecution of any and all Released Claims in any forum; (e) hear and rule on any objections to the Settlement; (f) consider and rule on the Fee Application, and any objections thereto; and (g) rule on other such matters as the Court may deem appropriate.

(w) "Settlement Payment Recipients" means all Settlement Class Members who were record or beneficial holders of Saba common stock at the close of the Acquisition (the "Closing"), and who were cashed out of their shares of Saba common stock in the Acquisition, and who submitted a valid Proof of Claim form substantially in the form attached hereto as Exhibit C to the Paying Agent in accordance with this Stipulation.

(x) "Unknown Claims" means any claim that any plaintiff or any other Settlement Class Member does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Settlement or to object or to not object to the Settlement. With respect to any of the Released Claims, the Parties stipulate and agree that upon the occurrence of the Effective Date, Lead Plaintiff shall expressly and each Settlement Class Member shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived, relinquished, and released any and all provisions,

rights, and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Lead Plaintiff acknowledges, and the Settlement Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Lead Plaintiff, and by operation of law the Settlement Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Lead Plaintiff acknowledges, and the Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of "Released Claims" was separately bargained for and was a material element of the Settlement and was relied upon by each and all of Defendants in entering into the Settlement Agreement.



**B. Settlement Consideration**

2. In consideration for the full and final release, settlement, dismissal, and discharge of any and all Released Claims against the Released Parties, the Parties have agreed to the following consideration:

(a) The Settlement Payments:

(i) Within ten (10) business days after the Effective Date, on behalf of Defendants, Saba shall cause to be deposited the First Settlement Payment into the Account, provided that Lead Counsel has provided, on or before the Effective Date, complete wire transfer information and instructions (or, if payment will be made by check, other appropriate payment information and instructions) to Defendants' counsel and/or Saba's directors' and officers' insurers, along with any other information reasonably requested to facilitate payment (including an IRS Form W-9, if requested). The Account shall be administered by a paying agent chosen by Lead Counsel (the "Paying Agent") and shall be used (i) to pay any Fee and Expense Award, (ii) to pay Administrative Costs, and (iii) following the payment of the foregoing (i) and (ii), for subsequent disbursement of the Net Settlement Amount to the Settlement Payment Recipients as provided in Paragraph 2(b) hereof.

(ii) Within one (1) year of the execution of this Stipulation, Saba shall deposit, or cause to be deposited, the Second Settlement Payment into the Account.

(iii) The First Settlement Payment and the Second Settlement Payment will be made, or caused to be made, on behalf of the Defendants, who shall not be required to personally fund any part of the Settlement Amount. Nothing in this paragraph shall have an effect on the respective rights and obligations between or among Defendants, Saba, or their respective insurers.

(iv) Lead Counsel shall be solely responsible for determining whether any taxes of any kind are due on income earned by the Account, for filing any necessary tax returns, and for causing any necessary taxes to be paid. Any such taxes, as well as any expenses incurred by Lead Counsel in connection with determining the amount of, and paying, such taxes shall be considered Administrative Costs and shall be paid out of the Settlement Amount.

(b) Distribution of the Net Settlement Amounts: As soon as reasonably practicable after the Effective Date, the First Net Settlement Amount will be disbursed by the Paying Agent to the Settlement Payment Recipients and will be allocated on a per-share basis amongst the Settlement

Payment Recipients who have submitted to the Paying Agent a valid Proof of Claim by the deadline provided in the Notice (defined herein) based on the number of shares of Saba common stock held by the applicable Settlement Payment Recipient upon the Closing (provided that if a Settlement Payment Recipient held shares of Saba common stock in registered form and has not submitted a letter of transmittal as of the Effective Date, such payment shall be allocated to such Settlement Payment Recipient but will not be remitted until such Settlement Payment Recipient has submitted its letter of transmittal or other satisfactory proof sufficient to determine whether such Settlement Class Member is a Settlement Payment Recipient) (the "Initial Distribution"). None of Saba, any of the Defendants, or Saba's directors' and officers' insurers or reinsurers shall have any input, responsibility, or liability for any claims, payments, or determinations by the Paying Agent in respect of Settlement Class Member claims for payment under this Settlement. An additional distribution shall be made after the Second Payment is made, or caused to be made, by Saba to the Settlement Payment Recipients pursuant to ¶2(a)(ii) herein (the "Second Distribution"). All unclaimed funds from the Initial Distribution will be included in the Second Distribution.

(c) If Lead Plaintiff and/or the Paying Agent have made reasonable efforts to have Settlement Payment Recipients claim their

payments, and the amount of the Net Settlement Amount that remains unclaimed by the Settlement Payment Recipients (the "Unclaimed Amount") exceeds \$100,000 after a period of six (6) months after the Second Distribution, then the Unclaimed Amount will be re-disbursed by the Paying Agent for payment to all Settlement Payment Recipients, who claimed their payments in the Second Distribution, on a *pro rata* basis. If, however, after a period of six (6) months after the Second Distribution, the amount of the Unclaimed Amount is equal to or less than \$100,000, or if any of the Unclaimed Amount remains unclaimed after the re-disbursement described in the preceding sentence, then any such unclaimed amount of the Net Settlement Amount shall be transferred to the Office of the State Escheator for handling in accordance with the laws of interstate escheat.

(d) Costs of Distribution and Reservation of Rights: Lead Counsel shall pay out of the Account any and all costs associated with the allocation and distribution of the Net Settlement Amount (including the costs of any re-distribution of the Net Settlement Amount and the costs associated with any transfer to the Office of the State Escheator).

(e) No Settlement Class Member shall have any claim against any plaintiff, any counsel for any plaintiff, any Defendant, any of the Released Parties, or any of their counsel or insurers based on the distributions

made substantially in accordance with this Stipulation and/or orders of the Court.

**C. Settlement Consideration, Releases, and Scope of the Settlement**

3. On behalf of Defendants, Saba shall make, or cause to be made, the Settlement Payments pursuant to Paragraph 2(a) hereof.

4. The Settlement Payments having been agreed to and provided in consideration for the full and final settlement and dismissal with prejudice of the Consolidated Action and the release of any and all Released Claims, no Defendant or other Released Party shall have any obligation to pay or bear any additional amounts, expenses, costs, damages, or fees to or for the benefit of plaintiffs or any Settlement Class Member in connection with this Settlement, including but not limited to attorneys' fees and expenses for any counsel to any Settlement Class Member.

5. As of the Effective Date, the Consolidated Action and the Released Claims shall be dismissed with prejudice and without costs.

6. As of the Effective Date, plaintiffs and all Settlement Class Members, on behalf of themselves, and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any

of them, and each of them, agree to release and forever discharge, and by operation of the Order and Final Judgment shall release and forever discharge, all Released Claims as against all Released Parties.

7. As of the Effective Date, Defendants agree to fully, completely, finally, and forever release, relinquish, and discharge Lead Plaintiff and Lead Counsel from all claims, including Unknown Claims, arising out of or relating to the institution, prosecution, settlement, or resolution of the Consolidated Action (provided, however, that this release, relinquishment, and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement or Settlement Agreement or any claims or rights of any Defendant against its insurers or its insurers' successors or assignees).

8. As of the Effective Date, the Released Parties shall be deemed to be released and forever discharged from all of the Released Claims.

9. As of the Effective Date, Lead Plaintiff and all Settlement Class Members, and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, will be forever barred and enjoined from commencing, instituting,

maintaining, prosecuting, or asserting, either directly or in any other capacity, in any forum, any Released Claims against any of the Released Parties.

**D. Submission of the Settlement to the Court for Approval**

10. As soon as practicable after this Settlement Agreement has been executed, the Parties shall jointly apply to the Court for entry of an Order substantially in the form attached hereto as Exhibit A (the "Scheduling Order"), providing for, among other things: (a) the mailing to the Settlement Class Members of the Notice of Pendency of Class Action, Proposed Settlement of Class Action and Settlement Hearing (the "Notice") substantially in the form attached hereto as Exhibit B together with a Proof of Claim substantially in the form attached hereto as Exhibit C; (b) the scheduling of the Settlement Hearing; and (c) the injunction against the prosecution of any of the Released Claims pending further order of the Court. At the Settlement Hearing, the Parties shall jointly request that the Order and Final Judgment be entered substantially in the form attached hereto as Exhibit D.

11. Lead Plaintiff shall be responsible for providing notice of the Settlement to the Settlement Class. Defendants shall cooperate with Lead Plaintiff toward Lead Plaintiff's obligation for providing notice, including but not limited to providing the last known address and phone number (if any) of all stockholders of

record of Saba common stock as of the Closing. Notice shall be provided in accordance with the Scheduling Order.

12. Prior to the Settlement Hearing (as defined herein), Lead Counsel and/or any administrator retained by them shall file with the Court an appropriate declaration or affidavit with respect to the preparation and mailing of the Notice.

**E. Conditions of Settlement**

13. This Settlement Agreement is expressly conditioned on and subject to each of the following conditions and, except as provided in Paragraph 20, shall be cancelled and terminated unless:

- (a) The Court enters the Scheduling Order substantially in the form attached hereto as Exhibit A;
- (b) The Court enters the Order and Final Judgment; and
- (c) The Order and Final Judgment becomes Final.

**F. Attorneys' Fees and Expenses**

14. Lead Counsel, on behalf of all plaintiffs' counsel, intend to petition the Court for an award of attorneys' fees in an aggregate amount not to exceed 25% of the Settlement Amount plus reimbursement of expenses incurred in connection with the Consolidated Action (the "Fee Application"), which petition will be wholly inclusive of any request for attorneys' fees and expenses on behalf of any Class Member or his, her, or its counsel in connection with the Settlement. Defendants



and Saba agree not to oppose this request and shall take no position as to the Fee Application. The Parties acknowledge and agree that any attorneys' fees and expenses awarded by the Court in the Consolidated Action to Lead Counsel shall be paid solely from the Settlement Amount, and that none of Saba, Defendants, or Saba's directors' and officers' insurers or reinsurers shall have any responsibility therefor other than as stated herein. The Fee Application shall be the only petition for attorneys' fees and expenses filed by or on behalf of Lead Plaintiff and Lead Counsel. The Parties shall cooperate in opposing any other petition for an award of attorneys' fees or reimbursement of expenses in connection with any other litigation concerning the Acquisition. In the event that the Court awards any attorneys' fees or reimbursement of expenses to counsel for any Settlement Class Member other than Lead Counsel in connection with the Settlement, such fees and/or expenses shall be paid out of the Settlement Amount and none of Saba, Defendants, or Saba's directors' and officers' insurers or reinsurers shall have any responsibility therefor.

15. Prior to disbursement of the First Net Settlement Amount, and in any event within three (3) business days of the latter of (i) the entry of an Order by the Court awarding attorneys' fees and expenses to plaintiffs' counsel or (ii) the funding of the First Settlement Payment to the Account as described in Paragraph 2(a)(i), the Paying Agent shall disburse from the Account to Lead Counsel an amount equal to the Fee and Expense Award. In the event that the Fee and Expense

Award is disapproved, reduced, reversed, or otherwise modified as a result of any further proceedings including any successful collateral attack, then Lead Counsel shall, within five (5) business days after Lead Counsel receives notice of any such disapproval, reduction, reversal, or other modification of the Fee and Expense Award, return to the Account, as applicable, either the entirety of the Fee and Expense Award or the difference between the attorneys' fees and expenses awarded by the Court in the Fee and Expense Award on the one hand, and any attorneys' fees and expenses ultimately and finally awarded on appeal, further proceedings on remand or otherwise on the other hand.

16. Final resolution by the Court of the Fee Application shall not be a precondition to the Settlement or the dismissal of the Consolidated Action in accordance with the Settlement and this Stipulation. Neither any failure of the Court or any other court (including any appellate court) to approve the Fee Application in whole or in part, nor any other reduction, modification, or reversal of the award order or failure of the award order to become final, shall have any impact on the effectiveness of the Settlement, provide any of the Parties with the right to terminate the Settlement or this Stipulation, or affect or delay the binding effect or finality of the Order and Final Judgment and the release of the Released Claims.

17. Lead Counsel warrant that no portion of any Fee and Expense Award shall be paid to any plaintiff or any Settlement Class Member, except as approved

by the Court. Lead Counsel intends to petition the Court for an incentive award for Poltash not to exceed \$100,000 (the "Incentive Award") to be paid by the Paying Agent from the Account, subject to Court approval. None of Saba, any of the Defendants, or Saba's directors' and officers' insurers or reinsurers shall have any responsibility or liability for any claims, payments, or determinations in respect of any Incentive Award.

**G. Stay Pending Final Court Approval**

18. Lead Plaintiff agrees to stay the proceedings in the Consolidated Action, and to stay and not to initiate any and all other proceedings other than those incident to the Settlement itself, pending the occurrence of the Effective Date. The Parties' respective deadlines to respond to any filed or served pleadings or discovery requests are extended indefinitely. The Parties also agree to use their best efforts to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any Settlement Class Member in any other litigation against any of the Released Parties which challenges the Settlement, the Acquisition, including any transactions contemplated thereby, or otherwise involves, directly or indirectly, a Released Claim.

**H. Effect of Disapproval, Cancellation or Termination**

19. If either (a) the Court does not enter the Order and Final Judgment, (b) the Court enters the Order and Final Judgment but on or following appellate review

the Order and Final Judgment is modified or reversed in any material respect, or (c) any of the other conditions of Paragraph 13 is not satisfied, this Stipulation shall be cancelled and terminated unless each of the Parties to this Stipulation, within ten (10) business days from receipt of such ruling or notice of such event, agrees in writing with counsel for the other Parties hereto to proceed with this Stipulation and Settlement, including only with such modifications, if any, as to which all other Parties in their sole judgment and discretion may agree in writing. For purposes of this paragraph, an intent to proceed shall not be valid unless it is expressed in a writing signed by a Party's counsel. Neither a modification nor a reversal on appeal of the amount of fees, costs, and expenses awarded by the Court to Lead Counsel in the Consolidated Action shall be deemed a material modification of the Order and Final Judgment or this Stipulation. Notwithstanding any other provision hereof, each Defendant shall have the right to withdraw from the Settlement in the event that any claim related to the subject matter of the Consolidated Action, the Acquisition, or the Released Claims is commenced or prosecuted against any of the Released Parties in any court prior to the Effective Date, and (following a motion by any Defendant and subject to the Parties' obligations in Paragraph 19 hereof) any such claim is not dismissed with prejudice or stayed in contemplation of dismissal with prejudice following the Effective Date.

20. If this Stipulation is terminated pursuant to Paragraph 19 hereof, (a) Lead Plaintiff shall within ten (10) business days cause to be refunded to Saba and/or its directors' and officers' insurers all amounts held in the Account as of the date of termination and (b) all of the Parties to this Stipulation shall be deemed to have reverted to their respective litigation status immediately prior to the execution of the Stipulation, and they shall proceed in all respects as if the Stipulation had not been executed (except for Paragraphs 19, 20, and 26 hereof, which shall survive the occurrence of any such event) and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Consolidated Action shall be preserved without prejudice in any way. Furthermore, in the event of such termination, Lead Plaintiff and Lead Counsel agree that neither this Stipulation, nor any statements made in connection with the negotiation of this Stipulation, may be used or entitle any Party to recover any fees, costs, or expenses incurred in connection with the Consolidated Action or in connection with any other litigation or judicial proceeding.

**I. Miscellaneous Provisions**

21. All of the Exhibits referred to herein shall be incorporated by reference as though fully set forth herein.

22. This Stipulation may be amended, modified, or waived only by a written instrument signed by counsel for all Parties hereto or their successors.

23. The Parties represent and agree that the terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

24. If any deadline set forth in this Stipulation or the Exhibits thereto falls on a Saturday, Sunday, or legal holiday, that deadline will be continued to the next business day.

25. The headings in this Stipulation are solely for the convenience of the attorneys for the Parties and the relevant courts. The headings shall not be deemed to be a part of this Stipulation and shall not be considered in construing or interpreting this Stipulation.

26. Neither this Stipulation, nor the fact or any terms of the Settlement, or any negotiations or proceedings in connection therewith, is evidence, or a presumption, admission, or concession by Saba or any Party in the Consolidated Action, any signatory hereto, or any Released Party, of any fault, liability, or wrongdoing whatsoever, or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Consolidated Action, or any other actions or proceedings. This Stipulation is not a finding or evidence of the validity or invalidity of (i) any claims or defenses in the Consolidated Action or any other actions or proceedings, or any wrongdoing by Saba, any of the Defendants named

therein, or any other Released Party or (ii) any alleged damages or injury to any Class Member. Neither this Stipulation, nor any of the terms and provisions of this Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the settlement proceedings, nor any statements in connection therewith, (a) shall (i) be argued to be, used or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, or of any wrongful conduct, acts, or omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damage to any Plaintiff or Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted in the Consolidated Action, or of any purported liability, fault, or wrongdoing of the Released Parties or of any injury or damages to any person or entity, or (b) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that (x) the Stipulation and/or Order and Final Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue that the Stipulation and/or Order and Final Judgment has *res judicata*, collateral estoppel, or other issue or

claim preclusion effect or to otherwise consummate or enforce the Settlement and/or Order and Final Judgment; and (y) Plaintiffs and Plaintiff's Counsel may refer to the final, executed version only of this Stipulation in connection with the Fee Application.

27. In the event that the Court or any other court is called upon to interpret this Stipulation, no one Party or group of Parties shall be deemed to have drafted this Stipulation.

28. To the extent permitted by law and any applicable Court Rules, all agreements made and orders entered during the course of the Consolidated Action relating to the confidentiality of documents or information shall survive this Stipulation and the Effective Date.

29. The waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of that or any other prior or subsequent breach of any provision of this Stipulation by any other Party.

30. This Stipulation and the Exhibits constitute the entire agreement among the Parties and supersede any prior agreements among the Parties with respect to the subject matter hereof. No representations, warranties, or inducements have been made to or relied upon by any Party concerning this Stipulation or its Exhibits, other than the representations, warranties, and covenants expressly set forth in such documents.



31. This Stipulation may be executed in one or more counterparts, including by facsimile, authorized electronic signature, or in portable document format (.pdf), and as executed, shall constitute one agreement.

32. The Parties and their respective counsel of record agree that they will use their best efforts to obtain (and, if necessary, defend on appeal) all necessary approvals of the Court required by this Stipulation (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement); provided, however, that Defendants and Saba shall have no obligation to file briefs or otherwise advocate in favor of the Fee Application referenced in Paragraph 14, and, as specified in Paragraph 14, Defendants and Saba agree not to oppose the Fee Application and shall take no position as to the Fee Application.

33. Lead Plaintiff and Lead Counsel represent and warrant that Lead Plaintiff is a Settlement Class Member and that none of the Lead Plaintiff's claims or causes of action referred to in this Stipulation have been assigned, encumbered, or otherwise transferred in any manner in whole or in part.

34. Each counsel signing this Stipulation represents and warrants that such counsel has been duly empowered and authorized to sign this Stipulation.

35. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and the Class (and, in the case of the releases, all Released Parties) and the respective legal representatives, heirs, executors, administrators, transferees,

successors, and assigns of all such foregoing Persons and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize.

36. Lead Plaintiff agrees that within thirty (30) calendar days of the Effective Date, he will return to the producing party all discovery material obtained from such producing party (the "Discovery Material") or destroy all such Discovery Material and, if requested by such producing party, certify to that fact; provided, however, that Lead Counsel shall be entitled to retain all filings, court papers, deposition transcripts, and attorney work product containing or reflecting Discovery Material, subject to the requirement that Lead Counsel shall not disclose any Discovery Material contained or referenced in such materials to any person except pursuant to court order or agreement with Defendants. The Parties agree to submit to the Court any dispute concerning the return or destruction of Discovery Material.

37. The Stipulation, the Settlement, and any and all disputes arising out of or relating in any way to any of them, whether in contract, tort, or otherwise, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles. Each of the Parties (a) irrevocably submits to the personal jurisdiction of any state or federal court sitting in Delaware, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, in any suit, action, or proceeding arising out of or relating to the

Settlement and/or the Stipulation, (b) agrees that all claims in respect of such suit, action, or proceeding shall be brought, heard, and determined exclusively in this Court (provided that, in the event that subject matter jurisdiction is unavailable in the Court, then all such claims shall be brought, heard, and determined exclusively in any other state or federal court sitting in Delaware), (c) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court, (d) agrees not to bring any action or proceeding arising out of or relating to the Settlement or the Stipulation in any other court, and (e) expressly waives, and agrees not to plead or to make any claim that any such action or proceeding is subject (in whole or in part) to a jury trial.

**ANDREWS & SPRINGER LLC**

*/s/ Peter B. Andrews*

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Craig J. Springer (No. 5529)

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**RICHARDS, LAYTON  
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*/s/ Gregory V. Varallo*

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*Counsel for Defendants Shawn Farshchi,  
William V. Russell, Dow R. Wilson,  
William M. Klein, William N. MacGowan,  
Michael Fawkes, and Nora Denzel, and  
non-defendant Saba Software, Inc.*

# **EXHIBIT A**



**EXHIBIT**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE SABA SOFTWARE, INC. : CONSOLIDATED  
STOCKHOLDER LITIGATION : C.A. No. 10697-VCS

**SCHEDULING ORDER WITH RESPECT TO  
NOTICE AND SETTLEMENT HEARING**

WHEREAS, the Parties to the above-captioned consolidated action (the "Consolidated Action") have entered into a Stipulation and Agreement of Compromise and Settlement dated May 31, 2018 (the "Stipulation"), which sets forth the terms and conditions for the proposed Settlement and dismissal with prejudice of the Consolidated Action, subject to review and approval by this Court pursuant to Court of Chancery Rule 23 ("Rule 23") upon notice to the Settlement Class, including all persons or entities who held shares of Saba common stock (or any interest therein), either of record or beneficially at the close of the Acquisition on March 30, 2015, and who were cashed out by their shares of Saba common stock in the Acquisition; and

WHEREAS, all Parties have consented to the entry of this Order;

NOW, upon application of the Parties, after review and consideration of the Stipulation filed with the Court and the Exhibits annexed thereto,

**IT IS HEREBY ORDERED** this \_\_\_ day of \_\_\_\_\_, 2018 as follows:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for the purposes of this order.

2. A hearing (the "Settlement Hearing") shall be held on \_\_\_\_\_, 2018, at \_\_\_-\_\_\_ a.m. in the Kent County Courthouse, 414 Federal Street, Dover, Delaware 19901, to: (a) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate to the Settlement Class; (b) determine whether the Court should finally approve the Stipulation and enter the Order and Final Judgment as provided in the Stipulation, dismissing the Consolidated Action with prejudice, extinguishing and releasing the Released Claims, and permanently barring and enjoining prosecution of any and all Released Claims in any forum; (c) consider Lead Counsel's application for an award of attorneys' fees, costs, and expenses as provided in the Stipulation ("Fee Application"), and any application for an incentive award to be paid to Lead Plaintiff ("Incentive Award"); (d) hear and determine any objections to the proposed Settlement, Lead Counsel's Fee Application, and any application for an Incentive Award to Lead Plaintiff; and (e) rule on such other matters as the Court may deem appropriate.

3. The Settlement Hearing may be adjourned by the Court from time to time without further notice to the Settlement Class other than by announcement at

the Settlement Hearing or other adjournment thereof, or a notation on the docket in the Consolidated Action.

4. For settlement purposes only and pending the Settlement Hearing, the Class shall be conditionally certified, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), as consisting of:

All persons or entities who held shares of Saba Common Stock, either of record or beneficially, at the close of the Acquisition with Vector Capital on March 30, 2015, and who were cashed out of their shares of Saba stock in the Acquisition, including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, trustees, representatives, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them but excluding Defendants, members of the immediate family of each individual defendant, current or former officers or directors of Saba or Vector Capital, Vector Capital and any affiliates of Vector Capital, any entity controlled by any of the defendants, and any successors in interest thereto; and the legal representatives, agents, affiliates, heirs, beneficiaries, successors in interest or assigns of any excluded party.

5. The Court reserves the right to approve the Settlement at or after the Settlement Hearing, with such modifications as may be consented to by the Parties to the Stipulation, and without further notice to the Settlement Class. Further, the Court may render its Order and Final Judgment, and order the dismissal of the Consolidated Action with prejudice, the approval of releases of the Released Claims against the Released Parties, and the payment of attorneys' fees and expenses and Incentive Award to Lead Plaintiff, all without further notice to the



Settlement Class. The Court retains jurisdiction over this Consolidated Action to consider further applications arising out of or connected with the proposed Settlement.

6. The Court approves, in form and content, the Proof of Claim and Release ("Proof of Claim"), attached to the Stipulation as Exhibit C, and the Notice of Pendency of Class Action, Proposed Settlement of Class Action and Settlement Hearing (the "Notice"), filed by the Parties with the Stipulation as Exhibit B, and finds that the giving of notice substantially in the manner set forth herein meets the requirements of Rule 23 and due process, is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

7. No later than forty-five (45) calendar days prior to the Settlement Hearing (the "Notice Date"), Lead Plaintiff shall mail, or cause to be mailed, by first class U.S. mail or other mail service if mailed outside the U.S., postage pre-paid, the Notice and Proof of Claim, substantially in the form annexed as Exhibits B and C to the Stipulation, to all persons or entities who held shares of Saba common stock (or any interest therein) at the close of the Acquisition on March 30, 2015, and who were cashed out of their shares of Saba common stock in the Acquisition, as set forth in the books and records maintained by or on behalf of Saba, at their respective last-known addresses set forth in such records. No later

than sixty (60) calendar days prior to the Settlement Hearing, Lead Plaintiff shall cause the Proof of Claim, Notice, and Stipulation to be posted on the claims administrator's website. All members of the Settlement Class who were record holders of Saba Software common stock on behalf of beneficial owners shall be directed to forward the Notice promptly to the beneficial owners of those securities. Lead Plaintiff shall use reasonable efforts to give notice to such beneficial owners by (i) making additional copies of the Notice and Proof of Claim available to any record holder who, prior to the Settlement hearing, requests the same for distribution to beneficial owners, or (ii) mailing additional copies of the Notice and Proof of Claim to beneficial owners as reasonably requested by record holders who provide names and addresses for such beneficial holders.

8. Lead Plaintiff shall be responsible for providing notice of the Settlement to the Settlement Class. Defendants shall cooperate with Lead Plaintiff toward Lead Plaintiff's obligation for providing notice, including but not limited to providing the last known address and phone number (if any) of all stockholders of record of Saba Software common stock as of the Closing within ten (10) calendar days after entry of this Order.

9. No later than ten (10) business days before the Settlement Hearing, Lead Counsel and/or any administrator retained by them shall file with the Court an appropriate declaration or affidavit attesting to the preparation and mailing of

the Notice and the posting of the Stipulation and Notice in accordance with this Order.

10. Settlement Class Members who wish to participate in the Settlement shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked no later than [\_\_\_\_\_]. Any Settlement Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the proceeds of the Net Settlement Amount, unless otherwise ordered by the Court or allowed by the Stipulation. Such Settlement Class Members, despite having failed to timely submit a Proof of Claim, shall continue to be bound by the terms of the Settlement.

11. As set forth in the Notice, any Settlement Class Member who objects to the Settlement, the proposed Order and Final Judgment to be entered, the Fee Application (or any Incentive Award to Lead Plaintiff), or who otherwise wishes to be heard ("Objector"), may appear in person or by his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Order and Final Judgment to be entered thereon, the allowance of fees and expenses to Lead Counsel, or any Incentive Award to Lead Plaintiff unless he, she,

or it has, no later than ten (10) business days before the Settlement Hearing (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), filed with the Register in Chancery, Court of Chancery, 38 The Green, Dover, Delaware 19901, the following: (a) proof of ownership of Saba Software stock at the close of the Acquisition on March 30, 2015; (b) a written notice of the Objector's intention to appear; (c) a detailed statement of the objections to any matter before the Court; (d) a detailed statement of all of the grounds thereon and the reasons for the Objector's desire to appear and to be heard; and (e) all documents or writings which the Objector desires the Court to consider. Any such filings with the Court must also be served upon each of the following counsel (via LexisNexis e-service, by hand, or by overnight delivery) on or before such filing:

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*Counsel for Defendants Shawn Farshchi, William V. Russell, Dow R. Wilson, William M. Klein, William N. MacGowan, Michael Fawkes, and Nora Denzel, and non-defendant Saba Software, Inc.*

12. Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection (including the right to appeal), unless the Court in its discretion allows such objection to be heard at the Settlement Hearing, and shall forever be barred from raising such objection in this Consolidated Action or any other action or proceeding or otherwise contesting the Settlement, the Fee Application, any Incentive Award to Lead Plaintiff, or other matter related to the Settlement, and will otherwise be bound by the Order and Final Judgment to be entered and the releases to be given. Settlement Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

13. No later than fifteen (15) business days prior to the Settlement Hearing, Lead Counsel shall file with the Court a brief in support of the Settlement

and Lead Counsel's Fee Application (including any Incentive Award to Lead Plaintiff). Any objections to the Settlement, the proposed Judgment to be entered, the Fee Application, or to any request for an Incentive Award to Lead Plaintiff, shall be filed and served no later than ten (10) business days prior to the Settlement Hearing. Any supplemental briefing in support of the Settlement or in response to any objections shall be filed no later than five (5) business days prior to the Settlement Hearing.

14. If the Settlement is approved by the Court following the Settlement Hearing, the Court shall enter an Order and Final Judgment substantially in the form attached to the Stipulation as Exhibit D.

15. In the event either: (a) the Court does not enter the Order and Final Judgment, (b) the Court enters the Order and Final Judgment but on or following appellate review the Order and Final Judgment is modified or reversed in any material respect, or (c) any of the other conditions of Paragraph 13 of the Stipulation are not satisfied, the Stipulation shall be cancelled and terminated unless each of the Parties to the Stipulation, within ten (10) business days from receipt of such ruling or notice of such event, agrees in writing with counsel for the other Parties to proceed with the Stipulation and Settlement, including only with such modifications, if any, as to which all other Parties in their sole judgment and discretion may agree in writing. Neither a modification nor a reversal on appeal of

the amount of fees, costs, and expenses awarded by the Court to Plaintiffs' Counsel in the Consolidated Action shall be deemed a material modification of the Order and Final Judgment or the Stipulation. Each Defendant shall have the right to withdraw from the Settlement in the event that any claim related to the subject matter of the Consolidated Action, the Acquisition, or the Released Claims is commenced or prosecuted against any of the Released Parties in any court prior to the Effective Date, and (following a motion by any Defendant and subject to the Parties' obligations in Paragraph 19 of the Stipulation) any such claim is not dismissed with prejudice or stayed in contemplation of dismissal with prejudice following the Effective Date.

16. If the Stipulation is terminated pursuant to Paragraph 19 of the Stipulation, (a) Lead Plaintiff shall within ten (10) business days cause to be refunded to Saba Software and/or its insurers all amounts held in the Account as of the date of termination and (b) all of the Parties to the Stipulation shall be deemed to have reverted to their respective litigation status immediately prior to the execution of the Stipulation, and they shall proceed in all respects as if the Stipulation had not been executed (except for Paragraphs 19, 20, 26 of the Stipulation, which shall survive the occurrence of any such event) and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Consolidated Action shall be preserved without

prejudice in any way. Furthermore, in the event of such termination, neither the Stipulation, nor any statements made in connection with the negotiation of the Stipulation, may be used or entitle any Party to recover any fees, costs, or expenses incurred in connection with the Consolidated Action or in connection with any other litigation or judicial proceeding.

17. All proceedings in this Consolidated Action (except as may be necessary to carry out the terms and conditions of the proposed Settlement) are stayed pending the occurrence of the Effective Date. The Parties' respective deadlines to respond to any filed or served pleadings or discovery requests are extended indefinitely.

18. Pending final determination of whether the Settlement should be approved and further order of the Court, Lead Plaintiff, and all members of the Settlement Class, are barred and enjoined from commencing or prosecuting, either directly, representatively or in any other capacity, any action asserting any claims that are, or relate in any way to, Released Claims against Released Parties. The Parties shall use their best efforts to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any Settlement Class Member in any other litigation against any of the Released Parties which challenges the Settlement, the Acquisition, including any transactions contemplated thereby, or otherwise involves, directly or indirectly, a Released Claim.



19. Neither the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by any Defendant of the truth of any of the allegations in the Consolidated Action, or of any liability, fault, or wrongdoing of any kind.

20. The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further notice to anyone other than the Parties to the Consolidated Action and any Objectors.

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Vice Chancellor Joseph R. Slights III

# **EXHIBIT B**



**EXHIBIT**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE SABA SOFTWARE, INC. : CONSOLIDATED  
STOCKHOLDER LITIGATION : C.A. No. 10697-VCS

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED  
SETTLEMENT OF CLASS ACTION AND SETTLEMENT HEARING**

TO: ALL PERSONS OR ENTITIES WHO HELD SHARES OF SABA SOFTWARE, INC. ("SABA" OR THE "COMPANY") COMMON STOCK, EITHER OF RECORD OR BENEFICIALLY, AT THE CLOSE OF THE ACQUISITION WITH VECTOR CAPITAL ON MARCH 30, 2015, AND WHO WERE CASHED OUT OF THEIR SHARES OF SABA STOCK IN THE ACQUISITION, INCLUDING ANY AND ALL OF THEIR RESPECTIVE SUCCESSORS-IN-INTEREST, SUCCESSORS, PREDECESSORS-IN-INTEREST, PREDECESSORS, TRUSTEES, REPRESENTATIVES, EXECUTORS, ADMINISTRATORS, ESTATES, HEIRS, ASSIGNS OR TRANSFEREES, IMMEDIATE AND REMOTE, AND ANY PERSON OR ENTITY ACTING FOR OR ON BEHALF OF, OR CLAIMING UNDER, ANY OF THEM, AND EACH OF THEM BUT EXCLUDING DEFENDANTS, MEMBERS OF THE IMMEDIATE FAMILY OF EACH INDIVIDUAL DEFENDANT, CURRENT OR FORMER OFFICERS OR DIRECTORS OF SABA OR VECTOR CAPITAL, VECTOR CAPITAL AND ANY AFFILIATES OF VECTOR CAPITAL, ANY ENTITY CONTROLLED BY ANY OF THE DEFENDANTS, AND ANY SUCCESSORS IN INTEREST THERETO; AND THE LEGAL REPRESENTATIVES, AGENTS, AFFILIATES, HEIRS, BENEFICIARIES, SUCCESSORS IN INTEREST OR ASSIGNS OF ANY EXCLUDED PARTY (THE "CLASS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS ACTION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS OF THE PROPOSED SETTLEMENT OR PURSUING THE "RELEASED CLAIMS" (DEFINED HEREIN).

BROKERAGE FIRMS, BANKS, AND OTHER PERSONS OR ENTITIES WHO HELD CLASS SHARES OR WHO HELD SHARES OF RECORD WHO ARE NOT ALSO BENEFICIAL OWNERS, ARE DIRECTED TO FORWARD THIS NOTICE PROMPTLY TO THE BENEFICIAL OWNERS OF SUCH SHARES, OR REQUEST LEAD COUNSEL TO DO SO.

The purpose of this Notice is to inform you about: (i) the pendency of the above-captioned consolidated stockholder class action (the "Consolidated Action"), which was brought by Saba stockholders on behalf of and for the benefit of a class of Saba stockholders in the Court of Chancery of the State of Delaware (the "Court"); (ii) a proposed settlement of the Consolidated Action (the "Settlement"), subject to Court approval and subject to other conditions of the Settlement being satisfied, *i.e.*, the occurrence of the Effective Date, as provided in a Stipulation and Agreement of Compromise and Settlement (the "Stipulation") that was filed with the Court and is publicly available for review as indicated in paragraph 41 below; (iii) the hearing that the Court will hold on \_\_\_\_\_, 2018 at \_\_:\_\_\_ .m., at the Kent County Courthouse, 414 Federal Street, Dover, Delaware 19901, to (a) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate; (b) determine whether the Court should finally approve the Stipulation and enter the Order and Final Judgment as provided in the Stipulation, dismissing the Consolidated Action with prejudice, extinguishing and releasing the Released Claims, and permanently barring and enjoining prosecution of any and all Released Claims in any forum; (c) consider Lead Counsel's application for an award of attorneys' fees, costs, and expenses as provided in the Stipulation ("Fee Application"), and an application for an award to be paid to Lead Plaintiff ("Incentive Award"); (d) hear and determine any objections to the proposed Settlement, Lead Counsel's Fee Application, or any application for Incentive Award to Lead Plaintiff; and (e) rule on such other matters.<sup>1</sup>

The Stipulation was entered into as of May 31, 2018 between and among: lead plaintiff Gary Poltash ("Lead Plaintiff", "Plaintiff" or "Poltash"), on his own behalf and on behalf of the Class; (ii) Saba, (iii) Shawn Farshchi, William V. Russell, Dow R. Wilson, William M. Klein, William N. MacGowan, Michael Fawkes, and Nora Denzel ("Individual Defendants") (collectively with Saba and

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<sup>1</sup> All capitalized terms not otherwise defined in this Notice shall have the same definition as provided in the Stipulation.

Lead Plaintiff, the "Parties"), subject to the approval of the Court pursuant to Delaware Court of Chancery Rule 23.

#### WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to explain the Consolidated Action, the terms of the proposed Settlement, and how the Settlement affects Settlement Class Members' legal rights.

2. In a class action, one or more people and/or entities who were stockholders at the time the claim arose sue on behalf of and for the benefit of the individual class members, seeking to enforce the class members' legal rights.

3. As described more fully in Paragraph 39 below, Settlement Class Members have the right to object, appear and be heard at the Settlement Hearing, which will be held before Vice Chancellor Joseph R. Slights III on \_\_\_\_\_, 2018, at \_\_\_:\_\_\_ .m., at the Kent County Courthouse, 414 Federal Street, Dover, Delaware 19901. At the Settlement Hearing, the Court will: (a) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate; (b) determine whether the Court should finally approve the Stipulation and enter the Order and Final Judgment as provided in the Stipulation, dismissing the Consolidated Action with prejudice, extinguishing and releasing the Released Claims, and permanently barring and enjoining prosecution of any and all Released Claims in any forum; (c) consider Lead Counsel's Fee Application and any application for an Incentive Award to be paid to Lead Plaintiff; (d) hear and determine any objections to the proposed Settlement, the Fee Application and/or the Incentive Award; and (e) rule on such other matters as the Court may deem appropriate.

4. The Court has reserved the right to adjourn or continue the Settlement Hearing, without further notice to you other than by announcement at the Settlement Hearing or any adjournment thereof, or notation on the docket in the Consolidated Action. The Court has further reserved the right to approve the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice to the Settlement Class of any kind.

#### WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

THE FOLLOWING DESCRIPTION OF THE CONSOLIDATED ACTION AND THE SETTLEMENT HAS BEEN PREPARED BY COUNSEL FOR THE

PARTIES. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO SUCH MATTERS, AND THIS NOTICE IS NOT AN EXPRESSION OR STATEMENT BY THE COURT OF FINDINGS OF FACT.

5. On September 24, 2014, the U.S. Securities and Exchange Commission ("SEC") determined that Saba had engaged in an accounting fraud which resulted in Saba overstating its pre-tax earnings by approximately \$70 million between 2007 and 2011. Pursuant to a settlement with the SEC, Saba was required pay a civil penalty of \$1.75 million and if the Company failed to complete the investigation and file its Comprehensive Annual Report by February 15, 2015, then Saba's registration of its common stock would be revoked pursuant to section 12(j) of the Exchange Act.

6. On December 15, 2014, Saba announced that it was unable to complete its financial restatement before the February 15, 2015 deadline set by the SEC and was "evaluating strategic alternatives, including a sale of the Company."

7. On February 10, 2015, Saba announced that its Board of Directors (the "Board") had entered into an Agreement and Plan of Merger (the "Merger Agreement") with Vector Capital, pursuant to which Saba stockholders would receive \$9 for each share of Company stock they own (the "Acquisition"). The Acquisition was announced just five days before the February 15, 2015 deadline set by the SEC for Saba to complete its financial restatement and just nine days before Saba was actually deregistered by the SEC, on February 19, 2015, for failure to file financial statements.

8. Beginning on February 21, 2015, a number of lawsuits were filed against Saba's Board, alleging that the Board breached its fiduciary duties in connection with the Acquisition and that Saba and Vector Capital aided and abetted such breaches.<sup>2</sup> These lawsuits alleged, generally, that inadequate merger consideration of \$9 per share was demonstrably below the Company's inherent

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<sup>2</sup> These actions include lawsuits captioned *Poltash v. Farshchi, et al.*, C.A. No. 10697-VCN (filed February 21, 2015); *Hughes v. Farshchi, et al.*, C.A. No. 10708-VCN (filed February 24, 2015); *LR Trust v. Saba Software, Inc.*, C.A. No. 10731-VCN (filed February 27, 2015); *Diana v. Saba Software, Inc.*, C.A. No. 10754-VCN (filed March 4, 2015); *Williams v. Farshchi, et al.*, C.A. No. 10755-VCN (filed March 4, 2015); and *Martin v. Farshchi*, C.A. No. 10808-VCN (filed March 18, 2015).

value and was the result of a flawed, rushed and self-serving process by Saba's Board.

9. On March 6, 2015, Saba disseminated to Saba's stockholders a Proxy Statement (the "Proxy"), which recommended that Saba's public stockholders vote in favor of the Acquisition.

10. In early March, 2015, after counsel for the parties met and conferred, Defendants agreed to produce expedited discovery to counsel for Plaintiffs in advance of the stockholder vote and in contemplation of a potential injunction motion, and Defendants subsequently made a limited production of documents, including, among other things, Board and committee meeting minutes and presentations by Saba's financial advisor, Morgan Stanley, and Plaintiffs' Counsel deposed a representative of Morgan Stanley and defendant William V. Russell, the non-executive Chairman of Saba's Board.

11. On March 17, 2015, the Court entered an Order of Consolidation of the Related Actions and Appointment of Plaintiffs' Lead Counsel, Executive Committee and Delaware Counsel, which consolidated the Poltash, Hughes, LR Trust, Diana and Williams Actions into a consolidated action (the "Consolidated Action"), and appointed Poltash as Lead Plaintiff and Robbins Arroyo LLP as plaintiff's Lead Counsel, and appointed Kahn Swick & Foti, LLC, Levi & Korsinsky, LLP, and Pomerantz LLP as Plaintiffs' Executive Committee, and Andrews and Springer LLP and Rigrodsky and Long, P.A. as Plaintiffs' Delaware Counsel in the Consolidated Action.

12. On March 26, 2015, the Saba stockholders voted to approve the Acquisition, and on March 30, 2015, the Acquisition closed.

13. In June and July 2015, Lead Plaintiff served discovery upon the Defendants and various third parties, including Deloitte Financial Advisory Services LLP, Ernst & Young LLP, KPMG LLP, and Morgan Stanley.

14. On August 13, 2015, the Individual Defendants filed a motion to stay discovery pending resolution of the motion to dismiss ("Motion to Stay Discovery") and a motion to dismiss the Amended Complaint, which Plaintiff opposed. On November 18, 2015, this Court heard argument of counsel, and granted the Motion to Stay Discovery.

15. On February 26, 2016, Lead Plaintiff filed the Second Amended Verified Class Action Complaint ("Second Amended Complaint"), alleging, among other things, that the Board breached their fiduciary duties in connection with the

Acquisition and that the Vector Capital Defendants aided and abetted such breaches.

16. On April 22, 2016, the Individual Defendants and the Vector Capital Defendants filed motions to dismiss the Second Amended Complaint, which Plaintiff opposed on June 17, 2016.

17. On March 31, 2017, following oral argument and supplemental briefing, the Court denied the Individual Defendants' motion to dismiss in part. The Court denied the motion to dismiss as to Lead Plaintiff's breach of fiduciary and disclosure claims relating to (i) the reasons why Saba could not complete the restatement; and (ii) the post-deregistration options available to Saba. The Court also held that as a result of these material misrepresentations and omissions, Plaintiff had sufficiently alleged that Saba shareholders were inequitably coerced to vote in favor of the Acquisition. The Court dismissed claims that: (i) the Board acted in bad faith by engaging Morgan Stanley; (ii) the Proxy Statement should have disclosed more information about the financial advisor's services provided in the past to Vector Capital and the financial analyses underlying the fairness opinion; (iii) Saba's Chief Executive Officer, who led the negotiations, was motivated by continuing his employment after the Acquisition; and (iv) the Vector Capital Defendants aided and abetted the directors' breaches.

18. On May 10, 2017, the Individual Defendants filed an Answer to the Second Amended Complaint.

19. Thereafter, the Parties engaged in extensive discovery efforts, including taking depositions and serving and responding to requests for production of documents and interrogatories, service of Subpoenas *Duces Tecum* and Subpoenas *Ad Testificandum* directed to third parties.

20. Throughout the course of the Consolidated Action, Defendants and third parties produced over 209,000 pages of documents, including Board and committee meeting minutes, bankers' presentations, projected financial information, and emails, and Lead Counsel and other plaintiffs' counsel took four depositions of witnesses.

21. On February 6, 2018, the Parties conducted a mediation with Robert Meyer, Esq. Between February 2018 and May 2018, the Parties continued, with the assistance of mediators, to explore potential resolution of the Consolidated Action.



22. On May 3, 2018, after arm's-length negotiations with the guidance of the mediator, the Parties reached an agreement-in-principle to settle the Consolidated Action and resolve Lead Plaintiff's claims on the basis that Defendants and/or their insurers would pay \$19.5 million for the benefit of the Class.

23. On May 10, 2018, the Parties informed the Court that the parties reached an agreement-in-principle to settle the Consolidated Action.

24. The Court has not finally determined the merits of the claims made by Plaintiffs against, or the defenses of, the Defendants. This Notice does not imply that there has been or would be any finding of violation of the law or that relief in any form or recovery in any amount could be had if the Consolidated Action was not settled.

#### WHAT ARE THE TERMS OF THE SETTLEMENT?

25. The terms and conditions of the Settlement are set forth in detail in the Stipulation, which has been filed with the Court. The Settlement is subject to and becomes effective only upon approval by the Court and the satisfaction of all conditions set forth in Section E of the Stipulation. This Notice only includes a summary of the Settlement, and does not purport to be a comprehensive description of all of its terms, which are available for review as described below.

26. As consideration for the Settlement:

(a) Saba, on behalf of Defendants, shall deposit, or cause to be deposited, a total sum of \$19.5 million dollars (the "Settlement Amount") into an escrow account (the "Account") as follows: Within ten (10) business days after the Effective Date, Saba shall deposit, or cause to be deposited, \$18 million (the "First Settlement Payment") into the Account, provided that Lead Counsel has provided, on or before the Effective Date, complete wire transfer information and instructions to Defendants' counsel and/or Saba's directors' and officers' insurers, along with any other information reasonably requested to facilitate payment (including an IRS Form W-9, if requested). Within one (1) year of the execution of the Stipulation, which took place on May 31, 2018, Saba shall deposit, or cause to be deposited, the remaining \$1.5 million (the "Second Settlement Payment") into the Account.

(b) The balance of the Settlement Amount, minus all costs and expenses incurred in connection with administering the Account, the amount of

any Fee and Expense Award, and the amount of any Incentive Award ("Net Settlement Amount"), will be disbursed by the Paying Agent to the Settlement Payment Recipients as soon as reasonably practicable after the Effective Date, as follows: The First Net Settlement Amount will be allocated on a per-share basis amongst the Settlement Payment Recipients who have submitted to the Paying Agent a valid Proof of Claim by the deadline provided in this Notice based on the number of shares of Saba common stock held by the applicable Settlement Payment Recipient upon the Closing (provided that if a Settlement Payment Recipient held shares of Saba common stock in registered form and has not submitted a letter of transmittal as of the Effective Date, such payment shall be allocated to such Settlement Payment Recipient but will not be remitted until such Settlement Payment Recipient has submitted its letter of transmittal or other satisfactory proof sufficient to determine whether such Settlement Class Member is a Settlement Payment Recipient) (the "Initial Distribution"). None of Saba, any of the Defendants, or Saba's directors' and officers' insurers or reinsurers shall have any input, responsibility, or liability for any claims, payments, or determinations by the Paying Agent in respect of Settlement Class Member claims for payment under this Settlement. An additional distribution shall be made after the Second Settlement Payment is made by Saba to the Settlement Payment Recipients (the "Second Distribution"). All unclaimed funds from the Initial Distribution will be included in the Second Distribution.

(c) Any Settlement Class Member who wishes to participate in the distribution of the Net Settlement Amount, shall submit to the Paying Agent a completed Proof of Claim in the form attached hereto no later than \_\_\_\_\_, 2018. Any Proof of Claim submitted to the Paying Agent after such date may be rejected as untimely. The Settlement and any Order and Final Judgment, including the releases described herein, shall be binding on all Settlement Class Members even if (i) they are ineligible to submit a Proof of Claim because they sold their shares prior to the Closing, or (ii) they fail to submit a valid and timely Proof of Claim.

(d) If Lead Plaintiff and/or the Paying Agent have made reasonable efforts to have Settlement Payment Recipients claim their payments, and the amount of the Net Settlement Amount that remains unclaimed by the Settlement Payment Recipients (the "Unclaimed Amount") exceeds \$100,000 after a period of six (6) months after the Second Distribution, then the Unclaimed Amount will be re-disbursed by the Paying Agent for payment to all Settlement Payment Recipients, who claimed their payments in the Second Distribution, on a *pro rata* basis. If, however, after a period of six (6) months after the Second Distribution,

the amount of the Unclaimed Amount is equal to or less than \$100,000, or if any of the Unclaimed Amount remains unclaimed after the re-disbursement described in the preceding sentence, then any such unclaimed amount of the Net Settlement Amount shall be transferred to the Office of the State Escheator for handling in accordance with the laws of interstate escheat.

(e) None of Saba, any of the Defendants, or Saba's directors' and officers' insurers or reinsurers shall have any input, responsibility, or liability for any claims, payments, or determinations by the Paying Agent in respect of Settlement Class Member claims for payment under this Settlement. Other than as provided in the Stipulation, Defendants, their insurers, and the Released Parties shall have no involvement in, responsibility for, or liability relating to the distribution of the Net Settlement Payment to Settlement Class Members.

#### WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?

27. Lead Plaintiff believes that the claims asserted in the Consolidated Action have merit. In negotiating and evaluating the terms of the Stipulation, Lead Counsel considered the legal and factual defenses to Lead Plaintiff's claims that Defendants raised and might have raised throughout the pendency of the Consolidated Action and the difficulty they would have likely had in enforcing any judgment they might have obtained at a trial of this action. In addition, Lead Plaintiff considered the benefits to be provided to the Settlement Class through the Settlement. Based upon their evaluation, Lead Plaintiff and Lead Counsel have determined that the Settlement set forth in the Stipulation is fair, reasonable, and adequate to Lead Plaintiff and the Settlement Class, and that it confers substantial benefits upon the Settlement Class.

28. Defendants have denied, and continue to deny, all allegations of wrongdoing, fault, liability, or damage with respect to all claims asserted in the Consolidated Action, including that they have committed any violations of law or breaches of duty or that they have engaged in any wrongful acts or acted improperly in any way, and that they have any liability or owe any damages of any kind to Lead Plaintiff and/or the Settlement Class, and Defendants expressly maintain that they diligently and scrupulously complied with applicable fiduciary, disclosure and other legal and equitable duties. Defendants are entering into the Stipulation and Settlement solely because they consider it desirable that the Consolidated Action be settled and dismissed with prejudice in order to, among other things, (i) eliminate the uncertainty, burden, inconvenience, expense, and distraction of further litigation, and (ii) fully and finally put to rest and terminate all claims that were or could have been asserted by Lead Plaintiff or any other

member of the Settlement Class against Defendants in the Consolidated Action or in any other action, in any court or tribunal, relating to the Acquisition.

29. If the Settlement is approved, the Court will enter an Order and Final Judgment. Upon the Effective Date, the Action will be dismissed in its entirety with prejudice and without costs, and the following releases will occur:

**Release of Claims by Lead Plaintiff and all Class Members:** Plaintiffs and all Class Members, on behalf of themselves, and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, agree to release and forever discharge, and by operation of the Order and Final Judgment shall release and forever discharge, all Released Claims as against all Released Parties.

(a) "Released Claims" means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, discoverable or undiscoverable, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or previously existed, including Unknown Claims (defined herein), that plaintiffs or any or all other Settlement Class Members ever had, now have, or may have, whether direct, derivative, individual, class, representative, legal, equitable, or of any other type, or in any other capacity, against any of the Released Parties (defined herein), whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule (including, but not limited to, any claims under federal or state securities laws, federal or state antitrust law, or under federal or state disclosure law, including all claims within the exclusive jurisdiction of the federal courts, or any claims that could be asserted derivatively on behalf of Saba) regardless of legal or equitable theory (including, without limitation, claims for negligence, gross negligence, recklessness, deliberate recklessness, intentional wrongdoing, fraud, breach of contract, or breach of the fiduciary duty of care and/or loyalty) that have been or could have been asserted in the Consolidated Action or in any court, tribunal, forum, or proceeding, which, now or

hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, in whole or in part: (i) the Acquisition, (ii) any deliberations or negotiations in connection with the Acquisition, (iii) the consideration received by Settlement Class Members or by any other Person in connection with the Acquisition, (iv) the Proxy or any other disclosures, public filings, periodic reports, press releases, proxy statements, or other statements issued, made available, or filed relating, directly or indirectly, to the Acquisition, (v) the fiduciary duties and obligations of the Released Parties in connection with the Acquisition, or (vi) any of the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in any complaint or amendment(s) thereto filed in the Consolidated Action; provided, however, that the Released Claims shall not include claims to enforce the Settlement or any claims or rights of any Defendant against its insurers or its insurers' successors or assignees.

(b) Whether or not any or all of the following Persons were named, served with process or appeared in the Consolidated Action, "Released Parties" means (i) Defendants, (ii) any Person which is, was, or will be related to or affiliated with any or all of Defendants or in which any or all of Defendants has, had, or will have a controlling interest, or any estate or trust of which any Defendant is a settlor or which is for the benefit of him or her, (iii) Saba (iv) Vector Capital, and (v) each and all of the foregoing's respective past or present family members, spouses, domestic partners, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, affiliates, agents, employees, employers, personnel, fiduciaries, general or limited partners or partnerships, joint ventures, members, member firms, divisions, limited liability companies, corporations, parents, subsidiaries (foreign or domestic), divisions, shareholders, stockholders, principals, officers, managers, directors, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, analysts, consultants, investment bankers, investment banks, investment funds, underwriters, brokers, dealers, lenders, attorneys, legal representatives, accountants, auditors, insurers, co-insurers, reinsurers, retained professionals, and associates.

(c) "Unknown Claims" means any claim that any plaintiff or any other Settlement Class Member does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those which, if known,

might have affected the decision to enter into the Settlement or to object or to not object to the Settlement. With respect to any of the Released Claims, the Parties stipulate and agree that upon the occurrence of the Effective Date, Lead Plaintiff shall expressly and each Settlement Class Member shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived, relinquished, and released any and all provisions, rights, and benefits conferred by or under Cal. Civ. Code §1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Lead Plaintiff acknowledges, and the Settlement Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Lead Plaintiff, and by operation of law the Settlement Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Lead Plaintiff acknowledges, and the Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of "Released Claims" was separately bargained for and was a material element of the Settlement and was relied upon by each and all of Defendants in entering into the Settlement Agreement.

**Release of Claims by Defendants:** As of the Effective Date, Defendants agree to fully, completely, finally, and forever release, relinquish, and discharge Lead Plaintiff and Lead Counsel from all claims, including Unknown Claims, arising out of or relating to the institution, prosecution, settlement, or resolution of the Consolidated Action (provided, however, that this release, relinquishment, and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement or Settlement

Agreement or any claims or rights of any Defendant against its insurers or its insurers' successors or assignees).

30. As of the Effective Date, plaintiffs and all Settlement Class Members, on behalf of themselves, and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, agree to release and forever discharge, and by operation of the Order and Final Judgment shall release and forever discharge, all Released Claims as against all Released Parties.

31. If the Effective Date does not occur, if Defendants withdraw from the Settlement pursuant to Paragraph 19 of the Stipulation, or if the proposed Settlement otherwise does not become final for any reason, or any judgment or order entered pursuant to the Stipulation is reversed, vacated, or modified in any material respect by the Court or any other court, no reference to the Stipulation or any documents related thereto shall be made by the Parties for any purpose, except as expressly authorized by the terms of the Stipulation, and the Parties shall be returned, without prejudice in any way, to their respective litigation positions immediately prior to the execution of the Stipulation.

32. Pending final determination of whether the Settlement should be approved and occurrence of the Effective Date, all proceedings in the Consolidated Action (except as may be necessary to carry out the terms and conditions of the proposed Settlement) are stayed, and Lead Plaintiff, and all members of the Settlement Class, are barred and enjoined from commencing or prosecuting, either directly, representatively or in any other capacity, any action asserting any claims that are, or relate in any way to, Released Claims against Released Parties. The Parties' respective deadlines to respond to any filed or served pleadings or discovery requests are extended indefinitely.

#### HOW WILL THE ATTORNEYS FOR PLAINTIFFS GET PAID?

33. Plaintiffs' counsel have not received any payment for their services in pursuing the claims asserted in the Consolidated Action, nor have plaintiffs' counsel been reimbursed for their out-of-pocket expenses. Plaintiffs' counsel invested their own resources for pursuing the Consolidated Action on a contingency basis, meaning they would only recover their expenses and be compensated for their time if they created benefits through the Consolidated Action. In light of the risks undertaken in pursuing the Consolidated Action on a

contingency basis and the benefits created for the Settlement Class through the Settlement and the prosecution of the Consolidated Action, Lead Counsel, on behalf of themselves and counsel for plaintiffs, intend to petition the Court for an award of attorneys' fees in an aggregate amount not to exceed 25% of the Settlement Amount plus reimbursement of expenses incurred in connection with the Consolidated Action (the "Fee Application"), which petition will be wholly inclusive of any request for attorneys' fees and expenses on behalf of any Class Member or his, her, or its counsel in connection with the Settlement. Defendants and Saba agree not to oppose this request and shall take no position as to the Fee Application. The Parties acknowledge and agree that any attorneys' fees and expenses awarded by the Court in the Consolidated Action to Lead Counsel shall be paid solely from the Settlement Amount, and that none of Saba, Defendants, or Saba's directors' and officers' insurers or reinsurers shall have any responsibility therefor other than as stated herein. The Fee Application shall be the only petition for attorneys' fees and expenses filed by or on behalf of plaintiffs and plaintiffs' counsel.

34. Lead Counsel warrant that no portion of any Fee and Expense Award shall be paid to any plaintiff or any Class Member, except as approved by the Court. Lead Counsel intend to petition the Court for incentive award for Lead Plaintiff not to exceed \$100,000 be paid from the Settlement Amount, subject to Court approval ("Incentive Award"). None of Saba, any of the Defendants, or any of Saba's directors' and officers' insurers or reinsurers shall have any responsibility or liability for any claims, payments, or determinations in respect of any Incentive Award.

35. The Court will determine the amount of any Fee and Expense Award to plaintiffs' counsel and any Incentive Award to Lead Plaintiff. Final resolution by the Court of the Fee Application or any Incentive Award shall not be a precondition to the Settlement or the dismissal of the Consolidated Action in accordance with the Settlement and the Stipulation, and the Fee Application and Incentive Awards may be considered separately from the Settlement.

36. The Parties agree that Plaintiff shall request that the Court, in the Order and Final Judgment, finally certify the Class for settlement purposes only pursuant to Court of Chancery Rules 23(a) and 23(b)(1) and/or (b)(2).



WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD?  
DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?

37. The Court will consider the Settlement and all matters related to the Settlement at the Settlement Hearing. The Settlement Hearing will be held before Vice Chancellor Joseph R. Slights III on \_\_\_\_\_, 2018, at \_\_\_:\_\_\_ .m., in the Kent County Courthouse, 414 Federal Street, Dover, Delaware 19901.

38. Settlement Class Members who wish to participate in the Settlement shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked no later than [\_\_\_\_\_]. Any Settlement Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the proceeds of the Net Settlement Amount, unless otherwise ordered by the Court or allowed by the Stipulation. Such Settlement Class Members, despite having failed to timely submit a Proof of Claim, shall continue to be bound by the terms of the Settlement.

39. Any Settlement Class Member who objects to the Settlement, the proposed Order and Final Judgment to be entered, the Fee Application, or the application for an Incentive Award to Lead Plaintiff, or who otherwise wishes to be heard ("Objector"), may appear in person or through his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Order and Final Judgment to be entered thereon, or the allowance of fees and expenses to Lead Counsel, or any Incentive Award to Lead Plaintiff, unless, no later than ten (10) business days before the Settlement Hearing (unless the Court in its discretion thereafter otherwise directs, upon application of such person and for good cause shown), such person files with the Register in Chancery, Court of Chancery, 38 The Green, Dover, Delaware 19901, the following: (a) proof of ownership of Saba stock on March 30, 2015; (b) a written notice of the Objector's intention to appear; (c) a detailed statement of the objections to any matter before the Court; and (d) a detailed statement of all of the grounds thereon and the reasons for the Objector's desire to appear and to be heard; and (e) all documents or writings which the Objector desires the Court to consider. Any such filings with the Court must also be served upon each of the following counsel (via LexisNexis e-service, by hand, by overnight delivery) on or before such filing:

Peter B. Andrews  
ANDREWS & SPRINGER LLC

3801 Kennett Pike  
Building C, Suite 305  
Wilmington, DE 19807  
(302) 504-4957

*Delaware Counsel for Plaintiffs*

Stephen J. Oddo  
ROBBINS ARROYO LLP  
600 B Street, Suite 1900  
San Diego, CA 92101  
(619) 525-3990

*Lead Counsel for Plaintiff*

Gregory V. Varallo  
RICHARDS, LAYTON & FINGER, P.A.  
920 North King Street  
Wilmington, DE 19801  
(302) 651-7700

Erik J. Olson  
MORRISON & FOERSTER LLP  
755 Page Mill Road  
Palo Alto, CA 94304  
(650) 813-6500

*Counsel for Defendants Shawn Farshchi, William V. Russell, Dow R. Wilson, William M. Klein, William N. MacGowan, Michael Fawkes, and Nora Denzel, and non-defendant Saba Software, Inc.*

40. Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection (including the right to appeal), unless the Court in its discretion allows such objection to be heard at the Settlement Hearing, and shall forever be barred from raising such objection in this Consolidated Action or any other action or proceeding or otherwise contesting the Settlement, the Fee Application, any Incentive Award to Lead Plaintiff, or other matter related to the Settlement, and will otherwise be bound by the Order and Final Judgment to be entered and the releases to be given.

**CAN I SEE THE COURT FILE?  
WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

41. This Notice does not purport to be a comprehensive description of the Consolidated Action, the terms of the Settlement, or the Settlement Hearing. For a more detailed statement of the matters involved in the Consolidated Action, you may inspect the Stipulation, the Orders entered by the Court, and other papers filed in the Consolidated Action at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Kent County Courthouse, 414 Federal Street Dover, Delaware 19901, during regular business hours of each business day. You may also view a copy of the Stipulation at <http://www.robbinsarroyo.com>. If you have questions regarding the Settlement, you may write or call Lead Counsel: Stephen J. Oddo, Robbins Arroyo LLP, 600 B Street, Suite 1900, San Diego, CA 92101, (619) 525-3990.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE.**

BY ORDER OF THE COURT

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Register in Chancery

# **EXHIBIT C**



**EXHIBIT**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE SABA SOFTWARE, INC. : CONSOLIDATED  
STOCKHOLDER LITIGATION : C.A. No. 10697-VCS

**PROOF OF CLAIM**

Please complete the Proof of Claim below if you were a record or beneficial holder of Saba Software, Inc. ("Saba") common stock at the closing of the transaction consummated by Vector Capital Management, L.P. ("Vector Capital"), Vector Talent II LLC ("Parent"), and Vector Talent Merger Sub, Inc. ("Merger Sub") on March 30, 2015 ("Acquisition"). Excluded persons and entities include: Shawn Farshchi, William V. Russell, Dow R. Wilson, William M. Klein, William N. MacGowan, Michael Fawkes and Nora Denzel (collectively, the "Individual Defendants"), members of the immediate family of any Individual Defendant, any entity in which an Individual Defendant has or had a controlling interest, Saba, Vector Capital, Parent, and Merger Sub, and the legal representatives, heirs, successors, and assigns of any of the foregoing excluded parties.

This Proof of Claim must contain the name, address, and taxpayer identification number (TIN) of the beneficial owner(s). The TIN, consisting of a valid Social Security number (SSN) for individuals or employer identification number (EIN) for business entities, trusts, estates, etc., and telephone number of the beneficial owner(s) may be used in verifying this claim; this information is required.

You must also provide the quantity of shares and the stock certificate numbers (if shares were held in certificate form; if shares were held through a brokerage account, certificate numbers would not be needed). You must sign the Proof of Claim in the space provided in order to make a valid claim. Please also provide your brokerage statement for March 2015 or a letter from your bank, broker, or other nominee indicating the quantity of shares held at the closing of the Acquisition on March 30, 2015. If you held shares in certificate form, please provide confirmation from the transfer agent of surrender.

NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the case listing at [www.SabaSoftwareSettlement.com](http://www.SabaSoftwareSettlement.com) or you may email the Paying Agent's electronic filing department at [eClaim@choossegcg.com](mailto:eClaim@choossegcg.com). Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Paying Agent issues an email after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email.

Proof of Claim forms **must be postmarked no later than** \_\_\_\_\_, **2018** and mailed to:

Saba Software Settlement  
C/O GCG  
P.O. Box 10599  
Dublin, Ohio 43017-7299  
(855) 865-4749

1. Please sign the below release and certification. If this Proof of Claim is being submitted on behalf of multiple claimants, then all claimants must sign.
2. Remember to attach only copies of acceptable supporting documentation.
3. Please do not highlight any portion of the Proof of Claim or any supporting documents.
4. Do not send original stock certificates or documentation. These items cannot be returned to you by the Paying Agent.
5. Keep copies of the completed Proof of Claim and documentation for your own records.
6. You will not receive confirmation of receipt of your Proof of Claim; if confirmation is desired, please send your Proof of Claim Certified Mail, Return Receipt requested.
7. If your address changes in the future, or if this Proof of Claim was sent to an old or incorrect address, please send the Paying Agent written notification of your new address. If you change your name, please inform the Paying Agent.
8. If you have any questions or concerns regarding your Proof of Claim, please contact the Paying Agent at the above address or call or visit [abdataclassaction.com/cases](http://abdataclassaction.com/cases).

**PART I—CLAIMANT INFORMATION**

<p>Last Name (Claimant)</p> <input style="width: 100%; height: 20px;" type="text"/>	<p>First Name (Claimant)</p> <input style="width: 100%; height: 20px;" type="text"/>	
<p>Last Name (Beneficial Owner If Different from Claimant)</p> <input style="width: 100%; height: 20px;" type="text"/>	<p>First Name (Beneficial Owner)</p> <input style="width: 100%; height: 20px;" type="text"/>	
<p>Last Name (Co-Beneficial Owner)</p> <input style="width: 100%; height: 20px;" type="text"/>	<p>First Name (Co-Beneficial Owner)</p> <input style="width: 100%; height: 20px;" type="text"/>	
<p>Company/Other Entity (If Claimant Is Not an Individual)</p> <input style="width: 100%; height: 20px;" type="text"/>	<p>Contact Person (If Claimant Is Not an Individual)</p> <input style="width: 100%; height: 20px;" type="text"/>	
<p>Record Owner's Name (If Different From Beneficial Owner Listed Above (e.g., Trust, Nominee, Other, etc.))</p> <input style="width: 100%; height: 20px;" type="text"/>		
<p>Account Number (If Claimant Is Not an Individual)</p> <input style="width: 100%; height: 20px;" type="text"/>	<p>Trust/Other Date (If Applicable)</p> <input style="width: 100%; height: 20px;" type="text"/>	
<p>Address Line 1</p> <input style="width: 100%; height: 20px;" type="text"/>		
<p>Address Line 2 (If Applicable)</p> <input style="width: 100%; height: 20px;" type="text"/>		
<p>City</p> <input style="width: 100%; height: 20px;" type="text"/>	<p>State</p> <input style="width: 20px; height: 20px;" type="text"/>	<p>Zip Code</p> <input style="width: 100%; height: 20px;" type="text"/>
<p>Foreign Providence</p> <input style="width: 100%; height: 20px;" type="text"/>	<p>Foreign Zip Code</p> <input style="width: 100%; height: 20px;" type="text"/>	<p>Foreign Country</p> <input style="width: 100%; height: 20px;" type="text"/>
<p><input type="checkbox"/> <b>Check Here to Use Alternate Address for Distribution (Optional)</b></p>		
<p>Distribution Address Line 1</p> <input style="width: 100%; height: 20px;" type="text"/>		
<p>Distribution Address Line 2 (If Applicable)</p> <input style="width: 100%; height: 20px;" type="text"/>		
<p>City</p> <input style="width: 100%; height: 20px;" type="text"/>	<p>State</p> <input style="width: 20px; height: 20px;" type="text"/>	<p>Zip Code</p> <input style="width: 100%; height: 20px;" type="text"/>



**YOU MUST SIGN THE PROOF OF CLAIM ON PAGE 5.**

**PART III—RELEASE AND CERTIFICATION**

On behalf of myself (ourselves) or the beneficial owner, I (we) am (are) authorized to file this Proof of Claim, and on behalf of each of my (our, his, her, its) heirs, agents, executors, trustees, administrators, predecessors, successors, and assigns, I (we, he, she, it) hereby acknowledge that as of the Effective Date, I (we, he, she, it) shall (i) be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims (as defined in the Notice of Pendency of Class Action, Proposed Settlement of Class Action, and Settlement Hearing ("Notice")), as against each and every one of the Released Parties; (ii) forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any of the Released Claims against any of the Released Parties; and (iii) be deemed to have covenanted not to sue any Released Party on the basis of any Released Claim or, unless compelled by operation of law, to assist any person in commencing or maintaining any suit relating to any Released Claim against any Released Party.

By checking this box I certify that I (we) am (are) or, if I am filing on behalf of another, that party, is not an excluded party under the terms of the Stipulation. Excluded parties include: Defendants, members of the immediate family of any Defendant, any entity in which a Defendant has or had a controlling interest, Saba, Vector Capital, Parent, and Merger Sub, any person who was an officer of Saba on March 30, 2015, and the legal representatives, heirs, successors, and assigns of any of the foregoing excluded parties.

By signing and submitting this Proof of Claim, the claimant(s) or the person(s) who represent(s) the claimant(s) certifies (certify) as follows:

1. That I (we) have read the Notice, and the Proof of Claim, including the releases provided for in the settlement;
2. That the claimant(s) is (are) a Class Member(s), as defined in the Notice, and is (are) not excluded from the Class;
3. That the claimant(s) owned the Saba common stock identified in the Proof of Claim and has (have) not assigned the claim against the Released Parties to another, or that, in signing and submitting this Proof of Claim, the claimant(s) has (have) the authority to act on behalf of the owner(s) thereof;
4. That the claimant(s) has (have) not submitted any other claim covering the same purchases, acquisitions, sales, or holdings of Saba common stock and knows (know) of no other person having done so on his/her/its/their behalf;
5. That the claimant(s) submits (submit) to the jurisdiction of the Court with respect to his/her/its/their claim and for purposes of enforcing the releases provided for in the settlement;
6. That I (we) agree to furnish such additional information with respect to this Proof of Claim as the Paying Agent or the Court may require;
7. That I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of the Stipulation and Agreement of Compromise and Settlement and any judgment that may be entered in the litigation, including the releases and covenants set forth therein; and



8. That I (we) certify that I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(c) of the Internal Revenue Code.

NOTE: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike the language that you are not subject to backup withholding in the certification above. The Internal Revenue Service does not require your consent to any provision other than the certification required to avoid backup withholding.

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS FORM IS TRUE, CORRECT, AND COMPLETE AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

\_\_\_\_\_  
Signature of Claimant                      Date                      Print Name of Claimant

\_\_\_\_\_  
Signature of Joint Claimant (if any)                      Date                      Print Name of Joint Claimant

\_\_\_\_\_  
Capacity of Person(s) Signing, e.g., beneficial owner(s), executor, administrator, trustee, etc.

**THIS PROOF OF CLAIM MUST BE MAILED TO THE PAYING AGENT POSTMARKED BY**  
\_\_\_\_\_.

# **EXHIBIT D**



**EXHIBIT**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE SABA SOFTWARE, INC. : CONSOLIDATED  
STOCKHOLDER LITIGATION : C.A. No. 10697-VCS

**ORDER AND FINAL JUDGMENT**

A hearing having been held before this Court on \_\_\_\_\_, 2018 pursuant to this Court's Scheduling Order with Respect to Notice and Settlement Hearing, dated \_\_\_\_\_, 2018 (the "Scheduling Order"), and upon a Stipulation and Agreement of Compromise and Settlement, dated May 31, 2018 (the "Stipulation"), outlining a Settlement of the above-captioned consolidated action (the "Consolidated Action"), which is incorporated herein by reference, the Parties having appeared by their attorneys of record, the Court having heard and considered the submissions and evidence presented in support of the proposed Settlement, the application for an award of attorneys' fees, expenses, and the application for an Incentive Award to Lead Plaintiff, the opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Scheduling Order, and the Court having determined that Notice was adequate and sufficient, and the entire matter of the proposed Settlement having been heard and considered by the Court,

**IT IS ORDERED, ADJUDGED AND DECREED**, this \_\_\_\_ day of \_\_\_\_\_, 2018 that:

1. Unless otherwise defined herein, all capitalized terms shall have the same definitions as set forth in the Stipulation and the Scheduling Order.

2. The Court has jurisdiction over the subject matter of the Consolidated Action, and all matters relating to the Settlement of the Consolidated Action, as well as personal jurisdiction over all of the Parties, and it is further determined that Lead Plaintiff, Defendants, Saba Software, Inc. and the Settlement Class, as well as their transferees, heirs, executors, successors, and assigns, are bound by this Order and Final Judgment (the "Judgment").

3. The Notice has been given to persons and entities that owned shares of Saba common stock at the close of the Acquisition on March 30, 2015, and who were cashed out of their shares of Saba common stock in the Acquisition, pursuant to and in the manner directed by the Scheduling Order; proof of mailing of the Notice and Proof of Claim and posting of the Notice, Proof of Claim, and Stipulation was filed with the Court; and full opportunity to be heard has been offered to all Parties, Settlement Class Members, and persons in interest. The Court finds that the form and means of the Notice and Proof of Claim was the best notice practicable under the circumstances and was given in full compliance with the requirements of Court of Chancery Rule 23 ("Rule 23") and due process of law, and that all Settlement Class Members are bound by this Judgment.

4. Based on the record in the Consolidated Action, each of the provisions of Rule 23 has been satisfied, the Consolidated Action has been properly maintained according to the provisions of Rule 23, and the hereby certifies, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), the Class as consisting of:

(a) All persons or entities who held shares of Saba Common Stock, either of record or beneficially, at the close of the Acquisition with Vector Capital on March 30, 2015, and who were cashed out of their shares of Saba stock in the Acquisition, including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, trustees, representatives, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them but excluding Defendants, members of the immediate family of each individual defendant, current or former officers or directors of Saba or Vector Capital, Vector Capital and any affiliates of Vector Capital, any entity controlled by any of the defendants, and any successors in interest thereto; and the legal representatives, agents, affiliates, heirs, beneficiaries, successors in interest or assigns of any excluded party.

5. The Settlement as provided for in the Stipulation is found to be fair, reasonable and adequate to the Class, and it is hereby approved. The Parties are hereby authorized and directed to comply with and to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Judgment in the Consolidated Action.

6. The Consolidated Action is hereby dismissed with prejudice as to all Defendants and as to Saba, and against Lead Plaintiff and the Settlement Class, in full and final discharge of any and all claims or obligations that were or could have

been asserted in the Consolidated Action against any Defendant. As between Lead Plaintiff and Defendants, the Parties are to bear their own costs, except as otherwise provided in Paragraphs 12 and 13 below or as otherwise provided in the Stipulation and the Scheduling Order.

7. All Settlement Class Members shall be and are deemed bound by the Stipulation and this Order and Final Judgment. This Order and Final Judgment, including the release of all Released Claims against all Released Parties, shall have *res judicata* and other preclusive effect in all pending and future lawsuits, arbitrations or other proceedings maintained by or on behalf of Lead Plaintiff and all other Settlement Class Members, as well as any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them.

8. Upon entry of this Judgment and occurrence of the Effective Date, plaintiffs and all Settlement Class Members, on behalf of themselves, and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, agree to release

and forever discharge, and by operation of this Order and Final Judgment shall release and forever discharge any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, discoverable or undiscoverable, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or previously existed, including Unknown Claims (defined below), that plaintiffs or any or all other Settlement Class Members ever had, now have, or may have, whether direct, derivative, individual, class, representative, legal, equitable, or of any other type, or in any other capacity, against any of the Released Parties (defined below), whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule (including, but not limited to, any claims under federal or state securities laws, federal or state antitrust law, or under federal or state disclosure law, including all claims within the exclusive jurisdiction of the federal courts, or any claims that could be asserted derivatively on behalf of Saba) regardless of legal or equitable theory (including, without limitation, claims for negligence, gross negligence, recklessness, deliberate recklessness, intentional

wrongdoing, fraud, breach of contract, or breach of the fiduciary duty of care and/or loyalty) that have been or could have been asserted in the Consolidated Action or in any court, tribunal, forum, or proceeding, which, now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, in whole or in part, (i) the Acquisition, (ii) any deliberations or negotiations in connection with the Acquisition, (iii) the consideration received by Settlement Class Members or by any other Person in connection with the Acquisition, (iv) the Proxy or any other disclosures, public filings, periodic reports, press releases, proxy statements, or other statements issued, made available, or filed relating, directly or indirectly, to the Acquisition, (v) the fiduciary duties and obligations of the Released Parties in connection with the Acquisition, or (vi) any of the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in any complaint or amendment(s) thereto filed in the Consolidated Action (the "Released Claims") as against any or all of the following Persons, whether or not any or all of them were named, served with process or appeared in the Consolidated Action: (i) Defendants, (ii) any Person which is, was, or will be related to or affiliated with any or all of Defendants or in which any or all of Defendants has, had, or will have a controlling interest, or any estate or trust of which any Defendant is a settlor or which is for the benefit of him or her, (iii) Saba, (iv) Vector Capital, and (v) each and all of the foregoing's



respective past or present family members, spouses, domestic partners, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, affiliates, agents, employees, employers, personnel, fiduciaries, general or limited partners or partnerships, joint ventures, members, member firms, divisions, limited liability companies, corporations, parents, subsidiaries (foreign or domestic), divisions, shareholders, stockholders, principals, officers, managers, directors, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, analysts, consultants, investment bankers, investment banks, investment funds, underwriters, brokers, dealers, lenders, attorneys, legal representatives, accountants, auditors, insurers, co-insurers, reinsurers, retained professionals, and associates (the "Released Parties"); provided, however, that the Released Claims shall not include claims to enforce the Settlement or any claims or rights of any Defendant against its insurers or its insurers' successors or assignees.

9. Lead Plaintiff, and all members of the Settlement Class, are barred and enjoined from commencing or prosecuting, either directly, representatively or in any other capacity, any action asserting any claims that are, or relate in any way to, Released Claims against Released Parties. The Parties shall use their best efforts to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any Settlement Class Member in any other litigation against any

of the Released Parties which challenges the Settlement, the Acquisition, or otherwise involves, directly or indirectly, a Released Claim.

10. Upon entry of this Judgment and occurrence of the Effective Date, Defendants agree to fully, completely, finally, and forever release, relinquish, and discharge Lead Plaintiff, plaintiffs in the other actions consolidated in the Consolidated Action, Lead Counsel and counsel for the plaintiffs in the other actions consolidated in the Consolidated Action from all claims, including Unknown Claims (defined in the Stipulation), arising out of or relating to the institution, prosecution, settlement, or resolution of the Consolidated Action (provided, however, that this release, relinquishment, and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement or Settlement Agreement or any claims or rights of any Defendant against its insurers or its insurers' successors or assignees).

11. Neither the Stipulation, nor the fact or any terms of the Settlement, or any negotiations or proceedings in connection therewith, is evidence, or a presumption, admission, or concession by Saba, any Defendant or any Party in the Consolidated Action, any signatory to the Stipulation, or any Released Party, of any fault, liability, or wrongdoing whatsoever, or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Consolidated Action, or any other actions or proceedings. Neither this Judgment, the

Stipulation, nor the fact or any terms of the Settlement, or any negotiations or proceedings in connection therewith is a finding or evidence of the validity or invalidity of (i) any claims or defenses in the Consolidated Action or any other actions or proceedings, or any wrongdoing by Saba, any of the Defendants, or any other Released Party or (ii) any damages or injury to any Class Member. Neither this Judgment, the Stipulation, nor the fact or any terms of the Stipulation, or any negotiations or proceedings in connection therewith, nor any of the documents or statements referred to in the Stipulation, nor the Settlement, nor the fact of the Settlement, nor the settlement proceedings, nor any statements in connection therewith, (a) shall (i) be argued to be, used or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, or of any wrongful conduct, acts, or omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damage to any plaintiff or Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted in the Consolidated Action, or of any purported liability, fault, or wrongdoing of the Released Parties or of any injury or damages to any person or entity, or (b) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for

any purpose whatsoever; provided, however, that (x) the Stipulation and/or this Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue that the Stipulation and/or this Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or this Judgment, and (y) plaintiffs and plaintiffs' counsel may refer to the final, executed version only of the Stipulation in connection with the Fee Application and the Incentive Award.

12. Plaintiffs' counsel are awarded attorneys' fees in the amount of \$\_\_\_\_\_, and \$\_\_\_\_\_ for reimbursement of expenses ("Fee and Expense Award"), which the Court finds to be fair and reasonable. Any Fee and Expense Award shall be paid solely from the Settlement Amount in accordance with the terms of the Stipulation. No counsel representing any plaintiff in the Consolidated Action shall make any further or additional application for fees and expenses to the Court or any other court, nor shall counsel for any other Settlement Class Member make any further or additional application for fees and expenses pursuant to the Settlement. Lead Counsel shall allocate the attorneys' fees awarded among plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to achieving the benefits of the proposed Settlement.

13. Lead Plaintiff Gary Poltash is awarded an Incentive Award of \$\_\_\_\_\_ (the "Incentive Award"), which the Court finds to be fair and reasonable.

The Incentive Award shall be paid solely from the Settlement Amount in accordance with the terms of the Stipulation.

14. No proceedings or Court order with respect to Fee and Expense Award shall in any way disturb or affect this Judgment (including precluding the Judgment from being Final or otherwise being entitled to preclusive effect), and any such proceedings or Court order shall be considered separate from this Judgment. Nothing herein dismisses or releases any claim by or against any party to the Stipulation arising out of a breach of the Stipulation or violation of this Judgment.

15. Without further order of this Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Stipulation.

16. If the Effective Date does not occur or if Defendants withdraw from the Settlement pursuant to Paragraph 19 of the Stipulation, this Judgment shall be rendered null and void and shall be vacated and, in such event, all orders entered in connection herewith (except for Paragraph 11 hereof and Paragraphs 19, 20, 26 of the Stipulation, which shall survive any such termination or vacatur) shall be null and void, and the Parties shall be returned, without prejudice in any way, to their respective litigation positions immediately prior to the execution of the Stipulation.

17. Without affecting the finality of this Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration, enforcement and consummation of the Settlement and this Judgment.

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Vice Chancellor Joseph R. Slights III