

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

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PUBLIC PENSION FUND GROUP, et al.	:	No.: 4:08-CV-1859 (CEJ)
	:	
v.	:	
	:	
KV PHARMACEUTICAL COMPANY, et al.	:	
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**STIPULATION AND AGREEMENT OF SETTLEMENT**

This stipulation and agreement of settlement (the “Stipulation”) is made and entered into by and between Lead Plaintiffs, the Norfolk County Retirement System (“Norfolk”) and the State-Boston Retirement System (“State-Boston”) (collectively, “Lead Plaintiffs”) on behalf of themselves and the proposed Class (as defined below) and KV Pharmaceutical Company (“KV,” “K-V,” or the “Company”), Marc S. Hermelin (“Hermelin” or the “Individual Defendant”, and together with KV, “Defendants”), David Van Vliet (“Van Vliet”), and Rita Bleser (“Bleser,” and together with Van Vliet, “Former Defendants”).

**WHEREAS:**

A. All words or terms used herein that are capitalized shall have the meaning ascribed to those words or terms as set forth herein and in ¶ 1 hereof entitled “Definitions.”

B. Beginning in December of 2008, three securities class action complaints were filed in the U.S. District Court for the Eastern District of Missouri (the “Court”) on behalf of investors in KV:

- *Joseph Mas v. KV Pharmaceutical Company, et al.*, No. 08-cv-01859-CEJ;

- *Norfolk County Retirement Systems v. KV Pharmaceutical Company, et al.*, No. 09-CV-138 (CAS); and

- *Herman Unvericht v. KV Pharmaceutical Company, et al.*, No. 09-CV-61 (RWS).

C. On April 28, 2009, the Court issued an Amended Memorandum and Order (i) consolidating the KV related securities actions (the “Action”); (ii) appointing Norfolk County and State-Boston Lead Plaintiffs; and (iii) appointing Labaton Sucharow LLP as lead counsel (“Lead Counsel”) and Osburn, Hine, Yates & Murphy, LLC as liaison counsel (“Osburn Hine”) to represent the putative class. On June 21, 2013, the Court issued an order granting a motion to substitute liaison counsel, substituting Osburn Hine with Danna McKittrick, P.C. as liaison counsel (together with Osburn Hine, “Liaison Counsel”).

D. The operative complaint in the Action is the Consolidated Amended Complaint for Violations of the Federal Securities Laws, filed on May 22, 2009 (the “Complaint”). The Complaint alleges violations of §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder by the U.S. Securities and Exchange Commission (“SEC”) on behalf of a class of all persons who purchased KV publicly traded securities between June 15, 2004 and January 23, 2009, inclusive (the “Class Period”).

E. On July 27, 2009, Defendants and Former Defendants filed motions to dismiss the Complaint, which Lead Plaintiffs opposed on August 24, 2009. On September 3, 2009, Defendants and Former Defendants filed reply briefs in further support of their respective motions. On February 22, 2010, the Court granted Defendants’ and Former Defendants’ motions to dismiss.

F. On March 18, 2010, Lead Plaintiffs moved pursuant to Rules 59(e) and 60(b)(2) to vacate the Court’s Order dismissing the Complaint and moved, pursuant to Rule 15, to amend

the Complaint. Also on March 18, 2010, Lead Plaintiffs filed a notice of appeal of the Court's dismissal order with the United States Court of Appeals for the Eighth Circuit ("Court of Appeals").

G. On October 20, 2010, the Court denied Lead Plaintiffs' motion for relief from the Court's Order dismissing the Complaint and denied Lead Plaintiffs' motion to amend.

H. On November 1, 2010, Lead Plaintiffs filed an amended notice of appeal with the Court of Appeals, regarding the Court's October 20, 2010 Order.

I. On September 22, 2011, the Court of Appeals heard oral argument. By Order entered June 4, 2012, the Court of Appeals affirmed in part, reversed in part, and remanded to the district court for further proceedings, consistent with its opinion. Specifically, among other things, the Court of Appeals reversed the dismissal of the Lead Plaintiffs' claims that KV and the Individual Defendant made false and misleading statements regarding compliance with the regulatory requirements of the United States Food and Drug Administration ("FDA") and the FDA's current Good Manufacturing Practices, and determined that the Complaint adequately pled that the statements regarding regulatory compliance were false and misleading. The Court of Appeals upheld the dismissal of Lead Plaintiffs' claims against the Former Defendants. The Court of Appeals did not rule on the issue of whether the Complaint adequately pled the elements of scienter and loss causation.

J. On August 4, 2012, KV filed for bankruptcy protection pursuant to Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), *In re K-V Discovery Solutions, Inc., et al.*, Case No. 12-13346 (ALG) (the "Bankruptcy Case"). On August 10, 2012, pursuant

to the automatic stay provision of 11 U.S.C. §362(a)(1), the Court stayed all proceedings in the Action pending completion of the Bankruptcy Case or further order of the Court.

K. On December 6, 2012, Lead Plaintiffs moved to vacate or modify the stay with respect to the non-debtor, the Individual Defendant, which Defendants opposed on December 26, 2012. Lead Plaintiffs filed a reply brief on January 14, 2013. On March 28, 2013, the Court granted Lead Plaintiffs' motion and vacated the Court's stay order with respect to the Individual Defendant.

L. On April 5, 2012, Lead Plaintiffs moved the Court to rule on the Individual Defendant's pending motion to dismiss, and filed a motion for judicial notice of recent events relevant to the case. On April 12, 2013, the Individual Defendant filed a response to Lead Plaintiffs' motion. On April 30, 2013, the Court denied the Individual Defendant's motion to dismiss regarding Lead Plaintiffs' claims that he made materially false and misleading statements and omissions concerning KV's noncompliance with cGMP and FDA regulations with scienter.

M. On September 16, 2013, the effective date of the KV Sixth Amended Plan occurred. (Bankruptcy Case, ECF No. 1120). All pre-confirmation injunctions and stays terminated on the effective date.

N. Defendants and Lead Plaintiffs engaged Robert Meyer of Loeb & Loeb, a well-respected and highly experienced mediator, to assist them in exploring a potential negotiated resolution of the claims against Defendants. On November 16, 2011, Lead Plaintiffs and Defendants and Former Defendants met with Mr. Meyer in an attempt to reach a settlement. The mediation involved an extended effort to settle the claims and was preceded by the exchange of mediation statements. The mediation did not result in a settlement. The Parties continued to

negotiate. Following additional arm's-length discussions over the course of nearly two years, a time period during which the Eighth Circuit reversed the District Court, KV filed for bankruptcy, the Action was stayed pursuant to the automatic stay applicable in bankruptcy cases, and the lifting of the stay, Defendants, Former Defendants, and Lead Plaintiffs reached an agreement in principle to settle the claims in the Action, resulting in the Memorandum of Understanding, entered into on September 3, 2013.

O. Prior to settling the Action, Lead Plaintiffs, through Lead Counsel, conducted a thorough investigation relating to the claims, defenses, and underlying events and transactions that are the subject of the Action. This process included reviewing and analyzing: (i) documents filed publicly by KV with the SEC; (ii) publicly available information, including press releases, news articles, and other public statements issued by or concerning KV, Defendants, and Former Defendants; (iii) research reports issued by financial analysts concerning KV; (iv) other publicly available information and data concerning KV, including information concerning investigations conducted by the United States Food and Drug Administration and the United States Department of Justice; (v) approximately 150,000 pages of documents produced by KV in this Action; (vi) pleadings filed in other pending litigation naming certain Defendants herein as defendants or nominal defendants; and (viii) the applicable law governing the claims and potential defenses. Lead Counsel also consulted with experts on manufacturing practices, bankruptcy, damages, and causation issues. Lead Counsel are satisfied that their investigation has been sufficiently thorough, and that the facts revealed through that investigation support their decision to enter into the Settlement.

P. Defendants and Former Defendants have denied and continue to deny any wrongdoing or that they have committed any act or omission giving rise to any liability or

violation of law, including the U.S. securities laws. Defendants and Former Defendants have denied and continue to deny each and every one of the claims alleged by Lead Plaintiffs in the Action on behalf of the Class, including all claims in the Complaint.

Q. This Stipulation (whether or not consummated), and any proceedings relating to any settlement or any of the terms of any settlement (whether or not consummated), shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of Defendants or Former Defendants with respect to: any fact or matter alleged; any claim of fault, liability, wrongdoing, or damage whatsoever; or any infirmity in any claim or defense that has been or could have been asserted. Defendants and Former Defendants are entering into this Settlement solely to eliminate the burden, expense, uncertainty, and distraction of further litigation.

R. Lead Plaintiffs believe that the claims asserted in the Action have merit and that the evidence developed to date supports the claims asserted. However, Lead Plaintiffs and Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against the Defendants and Former Defendants through trial and appeals. Lead Plaintiffs and Lead Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Lead Counsel also are mindful of the inherent problems of proof and the possible defenses to the claims alleged in the Action, and the risks of proceeding in light of the Bankruptcy Case. Based on their evaluation, Lead Plaintiffs and Lead Counsel believe that the Settlement set forth in this Stipulation confers substantial monetary benefits upon the Class and is in the best interests of Lead Plaintiffs and the Class.

**NOW THEREFORE**, without any concession by Lead Plaintiffs that the Action lacks merit, and without any concession by the Defendants and Former Defendants of any liability or wrongdoing or lack of merit in their defenses, it is hereby **STIPULATED AND AGREED**, by and among the parties to this Stipulation (“Settling Parties”), through their respective attorneys, subject to approval by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Settling Parties hereto, all Released Claims and all Released Defendants’ Claims as against all Released Parties shall be fully, finally, and forever compromised, settled, released, discharged, and dismissed with prejudice, and without costs, as set forth below:

#### **DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the meanings set forth below. In the event of any inconsistency between any definition set forth below and any definition in any other document related to the Settlement, the definition set forth below shall control.

(a) “Action” means the civil action captioned *Public Pension Fund Group v. KV Pharmaceutical Co.*, No. 4:08 CV-1859 (CEJ), pending in the United States District Court for the Eastern District of Missouri before the Honorable Carol E. Jackson (“Judge Jackson”).

(b) “Alternative Judgment” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Stipulation and where none of the Settling Parties hereto elects to terminate this Settlement by reason of such variance.

(c) “Authorized Claimant” means a Class Member who timely submits a valid Proof of Claim and Release form to the Claims Administrator that is accepted for payment by the Court.

(d) “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.

(e) “Claims Administrator” means the firm to be retained by Lead Counsel, subject to Court approval, to provide all notices approved by the Court to Class Members, to process proofs of claim and to administer the Settlement.

(f) “Class” or “Class Member” means all Persons that, between June 15, 2004 and January 23, 2009, inclusive, purchased or otherwise acquired the publicly traded securities of KV and were allegedly damaged thereby. Excluded from the Class are: (i) Defendants; (ii) Former Defendants; (iii) the officers and directors of the Company; (iv) any subsidiaries and affiliates of the Company; (v) members of the immediate families of the Individual Defendant and the Former Defendants and their legal representatives, heirs, successors or assigns; (vi) any entity in which Defendants and Former Defendants have or had a controlling interest; and (vii) any benefit plan on behalf of employees of the Company and its subsidiaries or affiliates. Also excluded from the Class are any Class Members who properly exclude themselves by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

(g) “Class Period” means the period from June 15, 2004 to January 23, 2009, inclusive.

(h) “Court” means the United States District Court for the Eastern District of Missouri, Eastern Division.

(i) “Defendants” means KV and the Individual Defendant.

(j) “Defendants’ Counsel” means the law firms of Gibson Dunn & Crutcher LLP and Steptoe & Johnson LLP.

(k) “Defendants’ Insurance Carriers” means Zurich American Insurance Company and RLI Insurance Company.

(l) “Distribution Order” means an order of the Court approving the Claims Administrator’s determinations concerning the acceptance and rejection of the claims submitted and approving any fees and expenses not previously paid, including the fees and expenses of the Claims Administrator and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

(m) “Effective Date” means the date upon which the Settlement shall become effective, as set forth in ¶ 41 below.

(n) “Escrow Account” means the separate escrow account designated by Lead Counsel at one or more national banking institutions into which the Settlement Amount will be deposited for the benefit of the Class.

(o) “Escrow Agent” means Lead Counsel.

(p) “Final,” with respect to a court order, means the later of: (i) if there is an appeal from a court order, the date of final affirmance on appeal and the expiration of the time for any further judicial review whether by appeal, reconsideration or a petition for a *writ of certiorari* and, if *certiorari* is granted, the date of final affirmance of the order following review pursuant to the grant; or (ii) the date of final dismissal of any appeal from the order or the final dismissal of any proceeding on *certiorari* to review the order; or (iii) the expiration of the time for the filing or noticing of any appeal or petition for *certiorari* from the order (or, if the date for taking an appeal or seeking review of the order shall be extended beyond this time by order of the issuing court, by operation of law or otherwise, or if such extension is requested, the date of expiration of any extension if any appeal or review is not sought). However, any appeal or

proceeding seeking subsequent judicial review pertaining solely to the Plan of Allocation of the Net Settlement Fund, or to the Court's award of attorneys' fees or expenses, shall not in any way delay or affect the time set forth above for the Judgment or Alternative Judgment, or otherwise preclude the Judgment or Alternative Judgment, from becoming Final.

(q) "Former Defendants" mean Van Vliet and Bleser.

(r) "Former Defendants' Counsel" means the law firm of Gibson Dunn & Crutcher LLP, counsel for Van Vliet, together with Reeg Lawyers, LLC, counsel for Bleser.

(s) "Individual Defendant" means Marc S. Hermelin.

(t) "Judgment" means the proposed judgment to be entered by the Court approving the Settlement, substantially in the form attached hereto as Exhibit B.

(u) "Lead Counsel" means the law firm of Labaton Sucharow LLP.

(v) "Lead Plaintiffs" mean the Norfolk County Retirement System and the State-Boston Retirement System.

(w) "Liaison Counsel" means the law firm of Danna McKittrick, P.C. and Osburn Hine.

(x) "Net Settlement Fund" means the Settlement Fund less: (i) Court-awarded attorneys' fees and expenses; (ii) Notice and Administration Expenses; (iii) Taxes; and (iv) any other fees or expenses approved by the Court.

(y) "Notice and Administration Expenses" means all costs, fees, and expenses incurred in connection with providing notice to the Class and the administration of the Settlement, including but not limited to: (i) providing notice of the proposed Settlement by mail, publication, and other means to Class Members; (ii) receiving and reviewing claims; (iii) applying the Plan of Allocation; (iv) communicating with Persons regarding the proposed

Settlement and claims administration process; (v) distributing the proceeds of the Settlement; and (vi) fees related to the Escrow Account and investment of the Settlement Fund.

(z) “Notice” means the Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys’ Fees and Expenses to be sent to Class Members, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-1 to Exhibit A hereto.

(aa) “Person” or “Persons” means any individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity.

(bb) “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, which shall be substantially in the form attached hereto as Exhibit A.

(cc) “Proof of Claim” means the Proof of Claim and Release form for submitting a claim, which, subject to approval of the Court, shall be substantially in the form attached as Exhibit A-2 to Exhibit A hereto.

(dd) “Released Claims” means any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, including both known claims and Unknown Claims (defined below), whether arising under federal, state, foreign or statutory law, common law or administrative law, or any other law, rule or regulation, whether class or

individual in nature, that Lead Plaintiffs or any other Class Member: (i) asserted in the Action; or (ii) could have asserted in the Action or any other action or in any forum, that arise out of, relate to, or are in connection with the claims, allegations, transactions, facts, events, acts, disclosures, statements, representations or omissions or failures to act involved, set forth, or referred to in the complaints filed in the Action, and that relate to the purchase of the publicly traded securities of KV during the Class Period. Released Claims do not include: (i) claims to enforce the Settlement; (ii) any governmental or regulatory agency's claims in any criminal or civil action against any of the Released Defendant Parties; (iii) claims or interests of any Class Member, including Lead Plaintiffs, in the Bankruptcy Case solely in connection with their status as holders of KV securities in the event there is a future distribution in the Bankruptcy Case; or (iv) claims by any benefit plan on behalf of employees of the Company and its subsidiaries or affiliates, including claims in *Harold S. Crocker, Jr. v. KV Pharm. Co., et al.*, 4:09-CV-198 (CEJ) (E.D. Mo.).

(ee) "Released Defendants' Claims" mean all claims, including both known claims and Unknown Claims (as defined below), whether arising under federal, state, common or administrative law, or any other law, that Defendants or Former Defendants could have asserted against any of the Released Plaintiff Parties that arise out of or relate to the commencement, prosecution, or settlement of the Action (other than claims to enforce the Settlement).

(ff) "Released Defendant Parties" mean Defendants, Former Defendants, Defendants' Counsel, Former Defendants' Counsel, their past or present or future subsidiaries, parents, affiliates, principals, successors and predecessors, assigns, officers, directors, shareholders, trustees, partners, agents, fiduciaries, contractors, employees, attorneys, auditors, insurers; the spouses, members of the immediate families, representatives, and heirs of the

Individual and Former Defendants, as well as any trust of which any Individual Defendant or Former Defendant is the settlor or which is for the benefit of any of their immediate family members; any firm, trust, corporation, or entity in which any Defendant or Former Defendant has a controlling interest; and any of the legal representatives, heirs, successors in interest or assigns of the Defendants or Former Defendants.

(gg) “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

(hh) “Released Plaintiff Parties” means each and every Class Member, Lead Plaintiffs, Lead Counsel, Liaison Counsel, and their respective past, current, or future trustees, officers, directors, partners, employees, contractors, auditors, principals, agents, attorneys, predecessors, successors, assigns, parents, subsidiaries, divisions, joint ventures, general or limited partners or partnerships, and limited liability companies; and the spouses, members of the immediate families, representatives, and heirs of any Released Plaintiff Party who is an individual, as well as any trust of which any Released Plaintiff Party is the settlor or which is for the benefit of any of their immediate family members. Released Plaintiff Parties does not include any Person who timely and validly seeks exclusion from the Class.

(ii) “Settlement” means the resolution of the Action in accordance with the terms and provisions of this Stipulation.

(jj) “Settlement Amount” means the total principal amount of twelve million eight hundred thousand dollars (\$12,800,000).

(kk) “Settlement Fund” means the Settlement Amount and any interest earned thereon.

(ll) “Settlement Hearing” means the hearing to be held by the Court to determine whether the proposed Settlement is fair, reasonable, and adequate and should be approved.

(mm) “Settling Party” or “Settling Parties” means Defendants, Former Defendants, and Lead Plaintiffs on behalf of themselves and other Class Members.

(nn) “Stipulation” means this Stipulation and Agreement of Settlement.

(oo) “Summary Notice” means the Summary Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys’ Fees and Expenses for publication, which, subject to approval of the Court, shall be substantially in the form attached as Exhibit A-3 to Exhibit A hereto.

(pp) “Taxes” means all federal, state, or local taxes of any kind on any income earned by the Settlement Fund and reasonable expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the reasonable expenses of tax attorneys and accountants).

(qq) “Unknown Claims” means any and all Released Claims that Lead Plaintiffs or any other Class Member do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any Released Defendants’ Claims that Defendants and Former Defendants do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to exclude himself, herself, or itself from the Class. With respect to any and all Released Claims and Released Defendants’ Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiffs, Defendants, and Former Defendants shall expressly, and each other Class

Member shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state 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 Plaintiffs, other Class Members, Defendants, or Former Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and the Released Defendants' Claims, but Lead Plaintiffs, Defendants, and Former Defendants shall expressly, fully, finally, and forever settle and release, and each Class Member shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendants' Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Lead Plaintiffs, Defendants, and Former Defendants acknowledge, and other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was separately bargained for and was a material element of the Settlement.

#### **SCOPE AND EFFECT OF SETTLEMENT**

2. The obligations incurred pursuant to this Stipulation are subject to approval by the Court and entry of the Judgment reflecting such approval becoming Final, payment of the

Settlement Amount, and are in full and final disposition of the claims in the Action with respect to the Released Parties and any and all Released Claims and Released Defendants' Claims.

3. For purposes of this Settlement only, the Settling Parties agree to: (i) certification of the Action as a class action, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), on behalf of the Class as defined in ¶ 1(f); (ii) the appointment of Lead Plaintiffs as Class Representatives for the Class; and (iii) the appointment of Lead Counsel as Class Counsel for the Class pursuant to Federal Rule of Civil Procedure 23(g).

4. By operation of the Judgment or Alternative Judgment, as of the Effective Date, Lead Plaintiffs and each and every other Class Member on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendant Parties.

5. By operation of the Judgment or Alternative Judgment, as of the Effective Date, Defendants and Former Defendants, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

## **THE SETTLEMENT CONSIDERATION**

6. In full settlement of the claims asserted in the Action against Defendants and Former Defendants and in consideration of the releases specified in ¶¶ 4-5, above, Defendants shall cause their Insurance Carriers to pay the Settlement Amount into the Escrow Account on or before the later of (1) twenty-one (21) calendar days after the entry of an order by the Court granting preliminary approval of the Settlement, or (2) thirty (30) calendar days after Lead Counsel provides to F. Joseph Warin and Jason E. Morrow of Gibson Dunn & Crutcher LLP wire transfer instructions, payment address, and a complete and executed Form W-9 form for the Settlement Fund.

7. KV and the Individual Defendant have represented that their Insurance Carriers have agreed to fund the Settlement Amount in full, subject to the conditions of: (i) receipt of a fully-executed copy of this Stipulation, in a form acceptable to them; and (ii) execution of agreed-upon claims releases by Defendants and Former Defendants (“Claims Releases”). KV and the Individual Defendant have further represented that acceptance of the form of the Stipulation will be obtained by the time Defendants’ Counsel execute the Stipulation and that Claims Releases will be executed within fifteen (15) business days of the execution of the Stipulation. For the avoidance of doubt, this paragraph shall not limit any obligations that may exist between the Insurance Carriers, KV, and the Individual Defendant.

8. With the sole exception of Defendants’ obligation to cause payment by the Defendants’ Insurance Carriers of the Settlement Amount into the Escrow Account as provided for in ¶ 6, Defendants, Former Defendants, Defendants’ and Former Defendants’ Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to the Settlement Fund, including: (i) any act, omission, or determination by Lead Counsel, the Escrow Agent, or the Claims Administrator, or any of their respective designees or agents, in connection with the

administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, allocation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

9. The Settlement Amount is an all-in settlement number, meaning that it includes all attorneys' fees and expenses, Notice and Administration Expenses, Taxes, and costs of any kind whatsoever associated with the resolution of this matter. Other than Defendants' obligation to cause payment by the Defendants' Insurance Carriers of the Settlement Amount pursuant to ¶ 6 or the obligations in ¶ 38, Defendants and Former Defendants shall have no obligation to make any payment into the Escrow Account or to any Class Member or any other person or entity pursuant to this Stipulation. For the avoidance of doubt, under no circumstances shall the total to be paid by Defendants' Insurance Carriers pursuant to this Stipulation exceed the Settlement Amount.

#### **USE AND TAX TREATMENT OF SETTLEMENT FUND**

10. The Settlement Fund shall be used: (i) to pay any Taxes; (ii) to pay Notice and Administration Expenses; (iii) to pay any attorneys' fees and expenses awarded by the Court; (iv) to pay any costs and expenses allowed by the Private Securities Litigation Reform Act of 1995 ("PSLRA") and awarded to Lead Plaintiffs by the Court; (v) to pay any other fees and expenses awarded by the Court; and (vi) to pay the claims of Authorized Claimants.

11. The Net Settlement Fund shall be distributed to Authorized Claimants as provided in ¶¶ 23-36 hereof. The Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held in the Escrow Account shall be deemed to be in the custody of the

Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be disbursed or returned, pursuant to the terms of this Stipulation, and/or further order of the Court. The Escrow Agent shall invest funds in the Escrow Account in instruments backed by the full faith and credit of the United States Government (or a mutual fund invested solely in such instruments), or deposit some or all of the funds in non-interest-bearing transaction account(s) that are fully insured by the Federal Deposit Insurance Corporation (“FDIC”) in amounts that are up to the limit of FDIC insurance. Defendants, Former Defendants, Defendants’ Counsel, and Former Defendants’ Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Escrow Agent. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Fund.

12. The Settling Parties agree to treat the Settlement Fund, as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, Lead Counsel shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this ¶ 12, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the sole responsibility of Lead Counsel to timely and properly prepare and deliver, or cause to be prepared and delivered, the necessary documentation for signature by all necessary parties, and thereafter take all such actions as may be necessary or appropriate to cause the appropriate filing(s) to occur.

(a) For the purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the “administrator” shall be Lead Counsel or its successors, who shall timely and properly file, or cause to be filed, all informational and other federal, state, or local tax returns necessary or advisable with respect to

the earnings on the funds deposited in the Escrow Account (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such tax returns (as well as the election described above) shall be consistent with this subparagraph and in all events shall reflect that all Taxes (including any estimated taxes, earnings, or penalties) on the income earned on the funds deposited in the Escrow Account shall be paid out of such funds as provided in subparagraph (c) of this ¶ 12.

(b) All Taxes shall be paid by the Escrow Agent solely out of the Settlement Fund. In all events, Defendants, Former Defendants, Defendants' Counsel, Former Defendants' Counsel, and Defendants' Insurance Carriers, shall have no liability or responsibility whatsoever for the Taxes or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority. In the event any Taxes of any kind whatsoever, including but not limited to any Taxes payable by reason of indemnification, are owed by any of the Defendants, Former Defendants, or Defendants' Insurance Carriers, on any earnings on the funds on deposit in the Escrow Account, such amounts shall also be paid out of the Settlement Fund. Any taxes or tax expenses owed on any earnings on the Settlement Amount prior to its transfer to the Escrow Account shall be the sole responsibility of the entities that make the deposit.

(c) Taxes shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid, or caused to be paid, by the Escrow Agent out of the Settlement Fund without prior order from the Court or approval by the Defendants or Former Defendants, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treas. Reg. §

1.468B-2(1)(2)). The Settling Parties agree to cooperate with Lead Counsel, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 12.

13. This is not a claims-made settlement. As of the Effective Date, Defendants, their Insurance Carriers, the Former Defendants, and/or any other such other persons or entities funding the Settlement on the Defendants' behalf, shall not have any right to the return of the Settlement Fund or any portion thereof for any reason.

#### **ATTORNEYS' FEES AND EXPENSES**

14. Lead Counsel will apply to the Court for an award from the Settlement Fund of attorneys' fees and reimbursement of litigation expenses incurred in prosecuting the Action, plus any earnings on such amounts at the same rate and for the same periods as earned by the Settlement Fund ("Fee and Expense Application"). Defendants and Former Defendants shall take no position with respect to the Fee and Expense Application.

15. The amount of attorneys' fees and expenses awarded by the Court is within the sole discretion of the Court. Any attorneys' fees and expenses awarded by the Court shall be paid from the Settlement Fund to Lead Counsel immediately after entry of the Order awarding such attorneys' fees and expenses by the Court, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof.

16. Any payment of attorneys' fees and litigation expenses pursuant to ¶¶ 14-15 above shall be subject to Lead Counsel's obligation to make refunds or repayments to the Settlement Fund of any paid amounts, plus accrued earnings at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or fails to become effective for any reason or if, as a result of any appeal or further proceedings on

remand, or successful collateral attack, the award of attorneys' fees and/or litigation expenses is reduced or reversed by Final non-appealable court order. Lead Counsel shall make the appropriate refund or repayment in full no later than thirty (30) calendar days after receiving notice from a court of appropriate jurisdiction of the termination of the Settlement or notice of any reduction or reversal of the award of attorneys' fees and/or litigation expenses by Final non-appealable court order.

17. With the sole exception of Defendants' obligation to cause Defendants' Insurance Carriers to pay the Settlement Amount into the Escrow Account as provided for in ¶ 6, Defendants and Former Defendants shall have no responsibility for, and no liability whatsoever with respect to, any payment whatsoever to Lead Counsel in the Action that may occur at any time.

18. Defendants and Former Defendants shall have no responsibility for, and no liability whatsoever with respect to, any allocation of any attorneys' fees or expenses among Lead Counsel in the Action, or any other Person who may assert some claim thereto, or any fee or expense awards the Court may make in the Action.

19. Defendants and Former Defendants shall have no responsibility for, and no liability whatsoever with respect to, any attorneys' fees, costs, or expenses incurred by or on behalf of the Class Members, whether or not paid from the Escrow Account.

20. The procedure for and the allowance or disallowance by the Court of any Fee and Expense Application are not part of the Settlement set forth in this Stipulation, and are separate from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Stipulation, and any order or proceeding relating to any Fee and Expense Application, including an award of attorneys' fees or expenses in an amount less than the amount

requested by Lead Counsel, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment or Alternative Judgment approving the Stipulation and the Settlement set forth herein, including, but not limited to, the release, discharge, and relinquishment of the Released Claims against the Released Defendant Parties, or any other orders entered pursuant to the Stipulation. Lead Plaintiffs and Lead Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 42 or otherwise based on the Court's or any appellate court's ruling with respect to fees and expenses in the Action.

#### **ADMINISTRATION EXPENSES**

21. Except as otherwise provided herein, the Settlement Fund shall be held in the Escrow Account until the Effective Date.

22. Prior to the Effective Date, without further approval from Defendants, the Former Defendants, Defendants' Insurance Carriers, or further order of the Court, Lead Counsel may expend up to \$350,000 from the Settlement Fund to pay Notice and Administration Expenses actually incurred. Taxes and fees related to the Escrow Account and investment of the Settlement Fund may be paid as incurred, without further approval of Defendants, the Former Defendants, Defendants' Insurance Carriers, or further order of the Court. After the Effective Date, without further approval of Defendants, the Former Defendants, Defendants' Insurance Carriers, or further order of the Court, Notice and Administration Expenses may be paid as incurred.

#### **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

23. Lead Counsel will apply to the Court for a Distribution Order, on notice to Defendants' and Former Defendants' Counsel, approving the Claims Administrator's determinations concerning the acceptance and rejection of the claims submitted herein, and, if

the Effective Date has occurred, directing the payment of the Net Settlement Fund to Authorized Claimants.

24. The Claims Administrator shall administer the Settlement under Lead Counsel's supervision in accordance with the terms of this Stipulation and subject to the jurisdiction of the Court. Except as stated in ¶¶ 6 and 38, hereof, Defendants, Former Defendants, Defendants' Counsel, and Former Defendants' Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to the administration of the Settlement or the actions or decisions of the Claims Administrator, and shall have no liability to the Class in connection with such administration.

25. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Loss, as defined in the Plan of Allocation of Net Settlement Fund (the "Plan of Allocation") included in the Notice, or in such other plan of allocation as the Court may approve.

26. Defendants or the Former Defendants will take no position with respect to the Plan of Allocation. The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of Allocation is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiff and Lead Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 42 or otherwise based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in the Action. Defendants, the Former Defendants, Defendants' Counsel, and Former Defendants'

Counsel shall have no responsibility or liability for reviewing or challenging claims, the allocation of the Net Settlement Fund, or the distribution of the Net Settlement Fund.

### **ADMINISTRATION OF THE SETTLEMENT**

27. Any Class Member who fails to timely submit a valid Proof of Claim (substantially in the form of Exhibit A-2 to Exhibit A hereto) will not be entitled to receive any of the proceeds from the Net Settlement Fund, except as otherwise ordered by the Court, but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternative Judgment to be entered in the Action and all releases provided for herein, and will be barred from bringing any action against the Released Defendant Parties concerning the Released Claims.

28. Upon receiving any request(s) for exclusion pursuant to the Notice, Lead Counsel shall promptly notify counsel for Defendants and the Former Defendants of such request(s) for exclusion upon receiving each request for exclusion, and certainly no later than five (5) calendar days after receiving a request for exclusion or fifteen (15) calendar days prior to the Settlement Hearing, whichever is earlier, and provide copies of such request(s) for exclusion and any documentation accompanying them by email.

29. Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund by the Claims Administrator. Lead Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Lead Counsel deems to be *de minimis* or formal or technical defects in any Proofs of Claim submitted. Defendants, the Former Defendants, Defendants' Counsel, and Former Defendants' Counsel shall have no liability, obligation or responsibility for the administration of the Settlement, the allocation of the Net Settlement Fund, or the reviewing or challenging of claims

of Class Members. Lead Counsel shall be solely responsible for designating the Claims Administrator, subject to approval by the Court.

30. For purposes of determining the extent, if any, to which a Class Member shall be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Class Member shall be required to submit a Proof of Claim, substantially in the form attached hereto as Exhibit A-2 to Exhibit A, supported by such documents as are designated therein, including proof of the claimant's loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

(b) All Proofs of Claim must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Lead Counsel in their discretion, or by Order of the Court. Any Class Member who fails to submit a Proof of Claim by such date shall be barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court or the discretion of Lead Counsel, late-filed Proofs of Claim are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternative Judgment and all releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Defendant Parties. Provided that it is received before the motion for the Distribution Order is filed, a Proof of Claim shall be deemed to be submitted when mailed, if received with a postmark on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this Stipulation the extent, if any, to which each claim shall be allowed, subject to review by the Court;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejecting a Proof of Claim in whole or in part, the Claims Administrator shall communicate with the claimant in writing to give the claimant the chance to remedy any curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely fashion and in writing, all claimants whose claims the Claims Administrator proposes to reject in whole or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (e) below;

(e) If any claimant whose claim has been rejected in whole or in part for curable deficiency desires to contest such rejection, the claimant must, within twenty (20) calendar days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court; and

(f) The determinations of the Claims Administrator accepting or rejecting disputed claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Distribution Order.

31. Each claimant who submits a Proof of Claim shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, including but not limited to, all releases provided for herein and in the Judgment or Alternative Judgment, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the claimant's status as a Class Member and the validity and amount of the claimant's claim. In connection with processing the Proofs of Claim, no discovery shall be allowed on the merits of the Action or the Settlement.

32. Payment pursuant to the Distribution Order shall be deemed final and conclusive against any and all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternative Judgment to be entered in the Action and the releases provided for herein and therein, and will be barred from bringing any action against the Released Defendant Parties concerning the Released Claims.

33. All proceedings with respect to the administration, processing and determination of claims described by this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court, but shall not in any event delay or affect the finality of the Judgment or Alternative Judgment.

34. No Person shall have any claim of any kind against the Released Defendant Parties with respect to the matters set forth in this Section or any of its subsections, or otherwise related in any way to the administration of the Settlement, including without limitation the processing of claims and distributions.

35. No Person shall have any claim against Lead Plaintiffs or their counsel (including Lead Counsel), or the Claims Administrator, or other agent designated by Lead Counsel, based on the distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

36. If there is any balance remaining in the Net Settlement Fund after at least six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Lead Counsel shall, if feasible and economical, reallocate such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. When it is no longer feasible and economical to redistribute the Net Settlement Fund, any balance that still remains in the Net Settlement Fund, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be contributed to non-sectarian, not-for-profit charitable organizations serving the public interest, designated by Lead Plaintiffs and approved by the Court.

#### **TERMS OF THE PRELIMINARY APPROVAL ORDER**

37. Concurrently with their application for preliminary approval by the Court of the Settlement contemplated by this Stipulation and promptly upon execution of this Stipulation, and no later than thirty (30) calendar days after the execution of the Stipulation, Lead Counsel and Defendants' Counsel shall jointly apply to the Court for entry of the Preliminary Approval Order, which shall be substantially in the form annexed hereto as Exhibit A. The Preliminary Approval Order will, *inter alia*, set the date for the Settlement Hearing and prescribe the method for giving notice of the Settlement to the Class.

38. KV shall provide, at no cost to Lead Plaintiffs or the Class, or cause to be provided, to Lead Counsel or the Claims Administrator within seven (7) calendar days of Lead Plaintiffs filing the Stipulation with the Court transfer records in electronic searchable form

containing the names and addresses of purchasers of the publicly traded securities of KV during the Class Period.

### **TERMS OF THE JUDGMENT**

39. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall jointly request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit B.

40. The proposed Judgment will contain the following bar order provisions:

(a) Upon the Effective Date, Lead Plaintiffs and each and every other Class Member, on behalf of themselves and each of their respective agents, representatives, heirs, executors, trustees, administrators, predecessors, successors and assigns, shall be deemed to have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Claims as against each and every one of the Released Defendant Parties and shall forever be BARRED, ENJOINED and RESTRAINED from commencing, instituting, prosecuting or maintaining any of the Released Claims against any of the Released Defendant Parties.

(b) Upon the Effective Date, Defendants and Former Defendants, on behalf of themselves and each of their respective agents, representatives, heirs, executors, trustees, administrators, predecessors, successors and assigns, shall be deemed to have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Defendants' Claims as against each and every one of the Released Plaintiff Parties and shall forever be BARRED, ENJOINED and RESTRAINED from commencing, instituting, prosecuting or maintaining any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

(c) Pursuant to the PSLRA, upon the Effective Date, the Released Defendant Parties are discharged from all claims for contribution and indemnification that have been or may hereafter be brought by or on behalf of any Person, based upon, relating to, or arising out of the Action. Upon the Effective Date, any and all Persons are permanently BARRED, ENJOINED and RESTRAINED from commencing, prosecuting or asserting any and all claims for contribution and indemnification based upon, relating to, or arising out of the Action, whether arising under state, federal or common law, as claims, cross-claims, counterclaims, or third-party claims, in this Action or as a separate action, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative proceeding, or other forum (collectively, the “Barred Claims”) against the Released Defendant Parties; and the Released Defendant Parties are permanently BARRED, ENJOINED and RESTRAINED from commencing, prosecuting or asserting any and all Barred Contribution Claims against any Person, other than a Person whose liability to the Class has been extinguished pursuant to the Settlement and this Judgment.

(d) Any final verdict or judgment obtained by or on behalf of Lead Plaintiffs, the Class or any Class Member in the Action shall be reduced as provided by the PSLRA.

#### **EFFECTIVE DATE OF SETTLEMENT**

41. The Effective Date of this Settlement shall be the first business day on which all of the following shall have occurred or been waived:

- (a) entry of the Preliminary Approval Order, which shall be in all material respects substantially in the form set forth in Exhibit A annexed hereto;
- (b) payment of the Settlement Amount into the Escrow Account;
- (c) approval by the Court of the Settlement, following notice to the Class and the Settlement Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(d) a Judgment, which shall be in all material respects substantially in the form set forth in Exhibit B annexed hereto, has been entered by the Court and has become Final; or in the event that an Alternative Judgment has been entered and none of the Settling Parties elects to terminate the Settlement by reason of such variance, the Alternative Judgment has become Final.

### **WAIVER OR TERMINATION**

42. Defendants, the Former Defendants, and Lead Plaintiffs shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”), through counsel, to all other Settling Parties hereto within fourteen (14) calendar days of: (i) the Court’s Final refusal to enter the Preliminary Approval Order in any material respect; (ii) the Court’s Final refusal to approve this Stipulation or any material part of it; (iii) the Court’s Final refusal to enter the Judgment in any material respect or an Alternative Judgment; or (v) the date upon which the Judgment or Alternative Judgment is modified or reversed in any material respect by a Final order of the Court, the United States Court of Appeals, or the Supreme Court of the United States. For the avoidance of doubt, Lead Plaintiffs shall not have the right to terminate the Settlement due to any decision, ruling, or order respecting an application for attorneys’ fees or litigation expenses or any plan of allocation.

43. Defendants shall also have the right to terminate the Settlement in the event either (a) Defendants’ Insurance Carriers fail to fund the Settlement Amount; or (b) the Termination Threshold (defined below) has been reached.

(a) Simultaneously herewith, counsel for the Settling Parties are executing a confidential Supplemental Agreement Regarding Requests for Exclusion (“Supplemental Agreement”). The Supplemental Agreement sets forth certain conditions under which KV shall have the sole option to terminate the Settlement and render this Stipulation null and void in the

event that requests for exclusion from the Class exceed certain agreed-upon criteria (the “Termination Threshold”). The Settling Parties agree to maintain the confidentiality of the Termination Threshold in the Supplemental Agreement, which, unless otherwise ordered by the Court, shall not be filed with the Court, but it may be examined *in camera*, if so requested by the Court (unless otherwise required by court rule).

(b) In the event of a termination of this Settlement pursuant to the Supplemental Agreement, this Stipulation shall become null and void and of no further force and effect, with the exception of the provisions of ¶¶ 46-47, which shall continue to apply.

44. In addition to all of the rights and remedies that Lead Plaintiffs have under the terms of this Stipulation, Lead Plaintiffs shall also have the right to terminate the Settlement in the event that Defendants do not cause payment by Defendants’ Insurance Carriers and/or Defendants’ Insurance Carriers do not pay the Settlement Amount in the time period provided for in ¶ 6 above, by providing written notice of the election to terminate to all other Settling Parties and, thereafter, Defendants’ Insurance Carriers, or others, fail to pay the Settlement Amount within fourteen (14) calendar days of such written notice.

45. If an option to withdraw from and terminate this Stipulation and Settlement arises under any of ¶¶ 42-44 above: (i) neither Defendants, Former Defendants, nor Lead Plaintiffs (as the case may be) will be required for any reason or under any circumstance to exercise that option; and (ii) any exercise of that option shall be made in good faith, but in the sole and unfettered discretion of Defendants, Former Defendants, or Lead Plaintiffs, as applicable.

46. In the event the Settlement is terminated or fails to become effective for any reason, then: the Settlement shall be without prejudice, and none of its terms, including, but not limited to, the certification of the Class, appointment of Class Representative, and appointment

of Class Counsel, shall be effective or enforceable except as specifically provided herein; the parties shall be deemed to have reverted to their respective litigation positions in the Action immediately prior to their execution of the MOU on September 3, 2013; Defendants and Lead Plaintiffs will file a joint motion with the Court requesting an additional six (6) months to complete discovery in the Action; and the parties in the Action shall proceed in all respects as if this Stipulation and any related orders had not been entered. In such event, the MOU, this Stipulation, or any aspect of the discussions or negotiations leading to this Stipulation, shall not be admissible in this Action and shall not be used by Lead Plaintiffs against or to the prejudice of Defendants or Former Defendants, or by Defendants and Former Defendants against or to the prejudice of Lead Plaintiffs in any court filings, depositions, at trial, or otherwise.

47. In the event the Settlement is terminated or fails to become effective for any reason, any portion of the Settlement Amount previously paid on behalf of or by Defendants, together with any earnings thereon, less any Taxes paid or due, less Notice and Administration Expenses actually incurred and paid or payable from the Settlement Amount shall be returned to the entities that made the deposit(s) within thirty (30) calendar days after written notification of such event. At the request of Defendants, the Escrow Agent or its designee shall apply for any tax refund owed on the amounts in the Escrow Account and pay the proceeds, after any deduction of any fees or expenses incurred in connection with such application(s), for refund to the applicable funder or as otherwise directed.

#### **NO ADMISSIONS**

48. Except as set forth in ¶ 49 below, this Stipulation, whether or not consummated, and whether or not approved by the Court, and any discussions, negotiations, proceedings, or agreements relating to the Stipulation, the Settlement, and any matters arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or

received against or to the prejudice of the Settling Parties for any purpose other than in an action to enforce the terms hereof, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants and/or Former Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by the Defendants and/or Former Defendants with respect to the truth of any allegation by Lead Plaintiffs and the Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants and/or Former Defendants or any person or entity whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants and/or Former Defendants as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by the Defendants and/or Former Defendants, or against or to the prejudice of Lead Plaintiffs or any other members of the Class as evidence of any infirmity in the claims of Lead Plaintiffs or the other members of the Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of the Defendants and/or Former Defendants or against Lead Plaintiffs or any other members of the Class, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against or to the prejudice of any of the Settling Parties, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(d) do not constitute, and shall not be construed against the Defendants, Former Defendants, Lead Plaintiffs, or any other members of the Class, as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

(e) do not constitute, and shall not be construed as or received in evidence as an admission, concession, or presumption against Lead Plaintiffs or any other members of the Class that any of their claims are without merit or infirm or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

49. The Settling Parties, and their respective counsel, may file this Stipulation and/or the Judgment or Alternative Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, statute of limitations, statute of repose, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate any liability protection granted them under any applicable insurance policies. The Settling Parties, and their respective counsel, may file this Stipulation and/or the Judgment or Alternative Judgment in any action that may be brought to enforce the terms of this Stipulation and/or the Judgment or Alternative Judgment. All Settling Parties, and their respective counsel, submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

#### **MISCELLANEOUS PROVISIONS**

50. All of the exhibits to the Stipulation, except any plan of allocation, are material and integral parts hereof and are fully incorporated herein by this reference.

51. The Settling Parties intend the Settlement to be the full, final, and complete resolution of all claims asserted or which could have been asserted by the Settling Parties with respect to the Released Claims and Released Defendants' Claims. Accordingly, the Settling

Parties agree not to assert in any forum that the Action was brought, prosecuted, or defended in bad faith or without a reasonable basis. The Settling Parties and their counsel agree that each has complied fully with Rule 11 of the Federal Rules of Civil Procedure in connection with the maintenance, prosecution, defense, and settlement of the Action and shall not make any applications for sanctions, pursuant to Rule 11 or other court rule or statute, with respect to any claims or defenses in this Action. The Settling Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length and in good faith by the Settling Parties and their respective counsel and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel.

52. This Stipulation, along with its exhibits and the Supplemental Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Settling Parties hereto or their successors.

53. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

54. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and any expenses, and implementing and enforcing the terms of this Stipulation.

55. The waiver by one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

56. This Stipulation, its exhibits, and the Supplemental Agreement constitute the entire agreement among the Settling Parties concerning the Settlement as against the Defendants

and Former Defendants, and no representations, warranties, or inducements have been made by any Settling Party concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

57. Nothing in the Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney-client privilege, joint defense privilege, or work product protection.

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

59. All designations and agreements made, or orders entered during the course of the Action relating to the confidentiality of documents or information shall survive this Stipulation.

60. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signatures sent by facsimile or pdf'd via e-mail shall be deemed originals.

61. This Stipulation shall be binding when signed, but the Settlement shall be effective only on the condition that the Effective Date occurs.

62. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

63. The construction, interpretation, operation, effect, and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

64. This Stipulation shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by

counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations among the Settling Parties, and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

65. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so, and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

66. The Settling Parties and their counsel agree that they will refrain from disparaging each other, either directly or indirectly, in any publicly disseminated statements in connection with the Action.

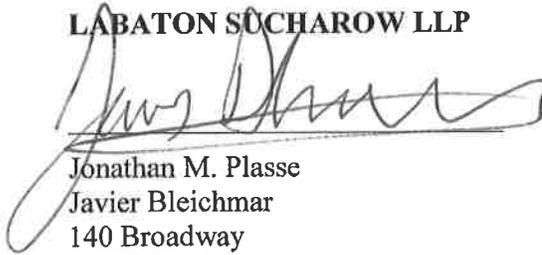
67. The Settling Parties and their counsel agree to cooperate fully with one another in promptly applying for preliminary approval by the Court of the Settlement and for the scheduling of a hearing for consideration of Final approval of the Settlement and Lead Counsel's application for an award of attorneys' fees and expenses, and to agree promptly upon and execute all such other documentation as reasonably may be required to obtain Final approval by the Court of the Settlement.

68. If any disputes arise out of the finalization of the settlement documentation or the Settlement itself prior to joint submission to the Court of the application for preliminary approval of the Settlement as set forth in ¶ 37 above, those disputes will be resolved by Robert Meyer of Loeb & Loeb, first by way of expedited telephonic mediation and, if unsuccessful, then by way of final, binding, non-appealable resolution. This agreement to submit disputes to Mr. Meyer for binding resolution shall not apply to any attempts by any Settling Party to alter any of the terms expressly agreed to in the MOU.

69. Except as otherwise provided herein, each Settling Party shall bear its own costs.

**IN WITNESS WHEREOF**, the Settling Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of December 20, 2013.

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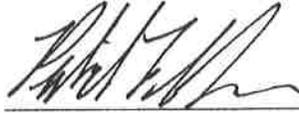
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# **Exhibit A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

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PUBLIC PENSION FUND GROUP, et al.	:	No.: 4:08-CV-1859 (CEJ)
	:	
v.	:	
	:	
KV PHARMACEUTICAL COMPANY, et al.	:	
	:	
	:	
	:	
	x	

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE, AND SETTING  
DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**

WHEREAS, as of December 20, 2013, the Norfolk County Retirement System and the State-Boston Retirement System (“Lead Plaintiffs”), on behalf of themselves and the Class, and KV Pharmaceutical Company (“KV” or the “Company”), Marc S. Hermelin (the “Individual Defendant”, and together with KV, “Defendants”), David Van Vliet, and Rita Bleser (the “Former Defendants”) entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the claims alleged in the Consolidated Amended Complaint for Violations of the Federal Securities Laws (the “Complaint”) on the merits and with prejudice (the “Settlement”); and

WHEREAS, the Court has reviewed and considered the Stipulation and the accompanying exhibits; and

WHEREAS, the Settling Parties to the Stipulation have consented to the entry of this order; and

WHEREAS, all capitalized terms used in this order that are not otherwise defined herein have the meanings defined in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2013 that:

1. The Court has reviewed the Stipulation and preliminarily finds the Settlement set forth therein to be fair, reasonable and adequate, subject to further consideration at the Settlement Hearing described below.

2. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies, for the purposes of the Settlement only, the Class of: all Persons who purchased or otherwise acquired the publicly traded securities of KV during the period between June 15, 2004 and January 23, 2009, inclusive (the "Class Period"), and were allegedly damaged thereby. Excluded from the Class are: (i) Defendants; (ii) Former Defendants; (iii) the officers and directors of the Company; (iv) any subsidiaries and affiliates of the Company; (v) members of the immediate families of the Individual Defendant and the Former Defendants and their legal representatives, heirs, successors or assigns; (vi) any entity in which Defendants and Former Defendants have or had a controlling interest; and (vii) any benefit plan on behalf of employees of the Company and its subsidiaries or affiliates. Also excluded from the Class are any Class Members who properly exclude themselves by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

3. The Court finds and concludes that the prerequisites of class action certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedures have been satisfied for the Class defined herein and for the purposes of the Settlement only, in that:

(a) the members of the Class are so numerous that joinder of all Class Members is impracticable;

(b) there are questions of law and fact common to the Class Members;

(c) the claims of Lead Plaintiffs are typical of the Class's claims;

(d) Lead Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of the Class;

(e) the questions of law and fact common to Class Members predominate over any individual questions; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering that the claims of Class Members in the Action are substantially similar and would, if tried, involve substantially identical proofs and may therefore be efficiently litigated and resolved on an aggregate basis as a class action; the amounts of the claims of many of the Class Members are too small to justify the expense of individual actions; and it does not appear that there is significant interest among Class Members in individually controlling the litigation of their claims.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiffs are certified as Class Representatives for the Class. The law firm of Labaton Sucharow LLP is appointed Class Counsel for the Class and Danna McKitrick, P.C. is appointed Liaison Counsel for the Class.

5. A hearing (the “Settlement Hearing”) pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on \_\_\_\_\_, 2014, at \_\_\_:\_\_\_ .m. for the following purposes:

(a) to determine whether the proposed Settlement is fair, reasonable and adequate, and should be approved by the Court;

(b) to determine whether the proposed Final Order and Judgment (“Judgment”) as provided under the Stipulation should be entered, and to determine whether the release by the Class of the Released Claims, as set forth in the Stipulation, should be provided to the Released Defendant Parties;

(c) to determine, for purposes of the Settlement only, whether the Class should be finally certified; whether Lead Plaintiffs should be finally certified as Class Representatives for the Class; whether the law firm of Labaton Sucharow LLP should be finally appointed as Class Counsel for the Class; and whether Danna McKittrick, P.C. should be finally appointed as Liaison Counsel for the Class;

(d) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved by the Court;

(e) to consider Lead Counsel’s application for an award of attorneys’ fees and reimbursement of expenses (which may include an application for an award to Lead Plaintiffs for reimbursement of their reasonable costs and expenses directly related to its representations of the Class, pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”)); and

(f) to rule upon such other matters as the Court may deem appropriate.

6. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Class of any kind. The Court further reserves the right to enter the Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may also adjourn the Settlement Hearing or modify any of the dates herein without further notice to members of the Class.

7. The Court approves the form, substance and requirements of the Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses (the "Notice") and the Proof of Claim and Release form ("Proof of Claim"), substantially in the forms annexed hereto as Exhibits 1 and 2, respectively.

8. The Court approves the retention of A.B. Data as the Claims Administrator. The Claims Administrator shall cause the Notice and the Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first-class mail, postage prepaid, on or before fifteen (15) business days after entry of this Preliminary Approval Order ("Notice Date"), to all Class Members who can be identified with reasonable effort. KV, to the extent it has not already done so, shall use reasonable efforts to obtain and provide to Lead Counsel, or the Claims Administrator, transfer records in electronic searchable form containing the names and addresses of purchasers of the publicly traded securities of KV during the Class Period no later than five (5) business days after entry of this Preliminary Approval Order.

9. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased or otherwise acquired the publicly traded securities of KV during the Class Period as record owners but not as beneficial owners. Such nominee purchasers are directed, within seven (7) calendar days of their

receipt of the Notice, to either (i) provide the Claims Administrator with lists of the names and last known addresses of the beneficial owners, and the Claims Administrator is ordered to send the Notice and Proof of Claim promptly to such identified beneficial owners by first-class mail, or (ii) request additional copies of the Notice and Proof of Claim, and within seven (7) calendar days of receipt of such copies send them by first-class mail directly to the beneficial owners. Nominee purchasers who elect to send the Notice and Proof of Claim to their beneficial owners shall also send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Notice shall be made available to any record holder requesting such for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, after receipt by the Claims Administrator of proper documentation, for their reasonable expenses actually incurred in sending the Notices and Proofs of Claim to beneficial owners.

10. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of mailing of the Notice and Proof of Claim.

11. The Court approves the form of the Summary Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses ("Summary Notice") substantially in the form annexed hereto as Exhibit 3, and directs that Lead Counsel shall cause the Summary Notice to be published in *Investor's Business Daily* and be transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of publication of the Summary Notice.

12. The form and content of the notice program described herein, and the methods set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the

Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

13. In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the terms and conditions set forth in the Stipulation, each Class Member shall take the following actions and be subject to the following conditions:

(a) A properly executed Proof of Claim, substantially in the form annexed hereto as Exhibit 2, must be submitted to the Claims Administrator, at the address indicated in the Notice, postmarked no later than 120 calendar days after the Notice Date. Such deadline may be further extended by Court order or by Lead Counsel in their discretion. Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first-class or overnight mail, postage prepaid) provided such Proof of Claim is actually received prior to the motion for an order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice. Any 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 Net Settlement Fund, unless otherwise ordered by the Court, but shall remain bound by all determinations and judgments in this Action concerning the Settlement, as provided by paragraph 15 of this order.

(b) The Proof of Claim submitted by each Class Member must satisfy the following conditions, unless otherwise ordered by the Court: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding

subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Lead Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of her current authority to act on behalf of the Class Member must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Proof of Claim, each Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted.

14. Any Class Member may enter an appearance in this Action, at his, her or its own expense, individually or through counsel of his, her or its own choice. If any Class Member does not enter an appearance, he, she or it will be represented by Lead Counsel.

15. Class Members shall be bound by all orders, determinations and judgments in this Action concerning the Settlement, whether favorable or unfavorable, unless such Persons request exclusion from the Class in a timely and proper manner, as hereinafter provided. A putative Class Member wishing to make such an exclusion request shall mail the request in written form by first-class mail to the address designated in the Notice for such exclusions, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing. Such request for exclusion must state the name, address and telephone number of the Person seeking exclusion, must state that the sender requests to be “excluded from the Class in *Public Pension Fund Group v. KV Pharmaceutical Company*, No. 4:08-CV-1859 (E.D. Mo.)” and must be

signed by such Person. Such Persons requesting exclusion are also directed to state the information requested in the Notice, including, but not limited to: the date(s), price(s), and number(s) of shares of all purchases, acquisitions, sales of KV securities during the Class Period, and the amount of holdings of these securities. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

16. Putative Class Members requesting exclusion from the Class shall not be eligible to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

17. The Court will consider any Class Member's objection to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees or reimbursement of expenses only if such Class Member has served by hand or by mail his, her or its written objection and supporting papers such that they are received on or before twenty-one (21) calendar days before the Settlement Hearing, upon Lead Counsel: Jonathan M. Plasse and Javier Bleichmar, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005; and Defendants' Counsel: F. Joseph Warin and Jason E. Morrow, Gibson Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington, DC 20036 and Jeffrey E. McFadden and Patrick E. Linehan, 1330 Connecticut Avenue, N.W., Washington, DC 20036 and has filed said objections and supporting papers with the Clerk of the Court, United States District Court for the Eastern District of Missouri, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, St. Louis, MO 63102. Any Class Member who does not make his, her, or its objection in the manner provided for in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, to the Plan of Allocation, or to the

request for attorneys' fees and expenses, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Attendance at the hearing is not necessary, however, persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and other expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

18. Pending final determination of whether the Settlement should be approved, Lead Plaintiff, all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Claims against the Released Defendant Parties.

19. As provided in the Stipulation, prior to the Effective Date, Lead Counsel may pay the Claims Administrator a portion of the reasonable fees and costs associated with giving notice to the Class and the review of claims and administration of the Settlement out of the Settlement Fund without further approval from Defendants or Former Defendants and without further order of the Court.

20. All papers in support of the Settlement, Plan of Allocation, and Lead Counsel's request for an award of attorneys' fees and expenses shall be filed with the Court and served on or before thirty-five (35) calendar days prior to the date set herein for the Settlement Hearing. If

reply papers are necessary, they are to be filed with the Court and served no later than seven (7) calendar days prior to the Settlement Hearing.

21. The passage of title and ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Stipulation is approved. No person who is not a Class Member or Lead Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

22. All funds held in escrow shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be disbursed pursuant to the Stipulation and/or further order of the Court.

23. Neither Defendants or Former Defendants nor their counsel shall have any responsibility for the Plan of Allocation or any application for attorney's fees or reimbursement of expenses submitted by Lead Counsel or Lead Plaintiffs, and such matters shall be considered separately from the fairness, reasonableness and adequacy of the Settlement.

24. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Settling Parties, and the Settling Parties shall be deemed to have reverted to their respective litigation positions in the Action as of August 28, 2013.

25. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Honorable Carol E. Jackson  
UNITED STATES DISTRICT JUDGE

## **Exhibit A-1**



common stock; (“Class B stock”); (c) 7% Cumulative Convertible Preferred Shares (“Convertible Preferred”); and (d) Contingent Convertible Subordinated Notes due 2033 (“Convertible Notes”).

- The Settlement resolves claims by the Norfolk County Retirement System and the State-Boston Retirement System (“Lead Plaintiffs”) that Defendants (defined below) misled investors about KV’s compliance with manufacturing regulations, avoids the costs and risks of continuing the litigation, pays money to investors like you, and releases Defendants and Former Defendants (defined below) from liability.
- **If you are a Class Member (defined below), your legal rights are affected whether you act or do not act. Read this Notice carefully.**
- The Court will review the Settlement at the Settlement Hearing to be held on \_\_\_\_\_, 2014.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM BY _____, 2014</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF BY _____, 2014</b>	Get no payment. This is the only option that allows you to ever potentially bring or be part of any <u>other</u> lawsuit about the Released Claims (defined below) against Defendants, Former Defendants, and the other Released Defendant Parties (defined below).
<b>OBJECT BY _____, 2014</b>	Write to the Court about why you do not like the Settlement, the proposed Plan of Allocation, and/or the request for attorneys’ fees and expenses. You will still be a member of the Class (defined below).
<b>GO TO A HEARING ON _____, 2014</b>	Ask to speak in Court about the Settlement at the Settlement Hearing.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.

- The Court in charge of this case still has to decide whether to approve the Settlement and whether to finally certify this as a class action. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

## **SUMMARY OF THIS NOTICE**

### **(a) Statement of Plaintiffs' Recovery**

Pursuant to this proposed Settlement, a Settlement Fund consisting of \$12.8 million, plus any accrued interest, has been established. Based on Lead Plaintiffs' estimate of the number of KV securities entitled to participate in the Settlement, and assuming that all such securities entitled to participate do so, Lead Plaintiffs estimate the following average recoveries per allegedly damaged security, before deduction of Court-approved expenses, such as attorneys' fees and expenses and administrative costs:<sup>2</sup> (i) the average recovery per share of Class A stock would be approximately \$0.27 per allegedly damaged share; (ii) the average recovery per share of Class B stock would be approximately \$0.23 per allegedly damaged share; (iii) the average recovery per share of Convertible Preferred would be approximately \$1.90 per allegedly damaged share; and (iv) the average recovery per Convertible Note would be approximately \$14.47 per allegedly damaged note.

A Class Member's actual recovery will be a portion of the Net Settlement Fund, determined by comparing his, her, or its "Recognized Loss" to the total Recognized Losses of all Class Members who submit acceptable Proofs of Claim. An individual Class Member's actual recovery will depend on, for example: (i) the total number of claims submitted; (ii) when the Class Member purchased or acquired KV securities during the Class Period; (iii) the purchase price paid; (iv) the type of securities purchased or acquired; and (v) whether the KV securities were held at the end of the Class Period or sold (and, if sold, when they were sold and the

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<sup>2</sup> An allegedly damaged share or note might have been traded more than once during the Class Period, and the indicated average recovery would be the estimated average for each purchase of a share or note which allegedly incurred damages.

amount received). *See* the Plan of Allocation beginning on page [\_\_\_\_] for information on your Recognized Loss.

**(b) Statement of Potential Outcome if the Action Continued to Be Litigated**

The Settling Parties disagree on both liability and damages and do not agree on the average amount of damages, if any, that would be recoverable if Lead Plaintiffs were to prevail on each claim alleged, if the litigation continued. The issues on which the Settling Parties disagree include, but are not limited to: (i) whether Defendants made any material misstatements or omissions; (ii) whether Defendants acted with the required state of mind; (iii) other than for the purposes of the settlement reached, whether this Action is maintainable as a class action; (iv) the amount by which KV securities were allegedly artificially inflated (if at all) during the Class Period, assuming there was any wrongdoing, which KV disputes; (v) whether the Class members relied on the alleged misstatements or omissions in purchasing KV securities, or whether such reliance should be presumed; (vi) the extent to which the various matters that Lead Plaintiffs alleged were false and misleading influenced (if at all) the trading price of KV securities at various times during the Class Period; (vii) whether any purchasers/acquirers of KV securities have suffered damages as a result of the alleged misstatements and omissions in KV's public statements; (viii) the extent of such damages, assuming they exist; (ix) the appropriate economic model for measuring damages; and (x) the extent to which external factors, such as general market and industry conditions, influenced the trading price of KV securities at various times during the Class Period.

Defendants have denied and continue to deny any wrongdoing, deny that they have committed any act or omission giving rise to any liability or violation of law, and deny that Lead Plaintiffs and the Class have suffered any losses attributable to Defendants' actions. While Lead Plaintiffs believe that they have meritorious claims if the litigation were to continue, they recognize that there are significant obstacles in the way to recovery.

**(c) Statement of Attorneys' Fees and Litigation Expenses Sought**

Labaton Sucharow LLP ("Lead Counsel") intends to make a motion asking the Court to award attorneys' fees not to exceed 30% of the Settlement Fund and approve payment of litigation expenses incurred to date in prosecuting this Action in an amount not to exceed \$750,000, plus any interest on such amounts at the same rate and for the same periods as earned by the Settlement Fund ("Fee and Expense Application"). Lead Counsel's Fee and Expense Application may also include a request for an award to Lead Plaintiffs for reimbursement of their reasonable costs and expenses, including lost wages, directly related to their representation of the Class in an amount not to exceed \$20,000.

If the Court approves the Fee and Expense Application: (i) the average cost per share of Class A stock would be approximately \$0.10 per allegedly damaged share; (ii) the average cost per share of Class B stock would be approximately \$0.08 per allegedly damaged share; (iii) the average cost per share of Convertible Preferred would be approximately \$0.68 per allegedly damaged share; and (iv) the average cost per Convertible Note would be approximately \$5.19 per allegedly damaged note.

The average cost per damaged security will vary depending on the number of acceptable claims submitted. Lead Counsel have expended considerable time and effort in the prosecution of this litigation without receiving any payment, and have advanced the expenses of the litigation, such as the cost of experts, in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovered as attorneys' fees.

**(d) Further Information**

Further information regarding this Action and this Notice may be obtained by contacting the Claims Administrator: *KV Pharmaceutical Securities Action*, c/o \_\_\_\_\_, \_\_\_\_-\_\_\_\_-\_\_\_\_, www.\_\_\_\_; or Lead Counsel: Labaton Sucharow LLP, (888) 219-6877, www.labaton.com, settlementquestions@labaton.com.

**Do Not Call The Court or KV With Questions About The Settlement**

**(e) Reasons for the Settlement**

For Lead Plaintiffs, the principal reason for the Settlement is the immediate benefit to the Class. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly years into the future, or that a potential recovery could be limited as a result of KV’s bankruptcy.

For Defendants, who have denied and continue to deny all allegations of wrongdoing or liability whatsoever, the principal reason for the Settlement is to eliminate the burden, expense, uncertainty, and distraction of further litigation.

[END OF COVER PAGE]

**A. BASIC INFORMATION**

<b>1. Why did I get this notice package?</b>
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You or someone in your family may have purchased or acquired the publicly traded securities of KV during the period between June 15, 2004 and January 23, 2009, inclusive.

The Court in charge of the case is the United States District Court for the Eastern District of New Missouri. The lawsuit is known as *Public Pension Fund Group v. KV Pharmaceutical Company*, No. 4:08-CV-1859 (E.D. Mo.) (the “Action”) and is assigned to the Honorable Carol E. Jackson. The people who sued are called plaintiffs, and the companies and persons they sued are called defendants.

Lead Plaintiffs in the Action, representing the Class, are the Norfolk County Retirement System and the State-Boston Retirement System. Defendants are KV and Marc S. Hermelin (“Hermelin” or the “Individual Defendant” and together with KV, “Defendants”). David Van Vliet and Rita Bleser (the “Former Defendants”) are also parties to the Settlement.

The Court directed that this Notice be sent to Class Members because they have a right to know about a proposed settlement of a class action lawsuit, and about all of their options, before the

Court decides whether to approve the Settlement. The Court will review the Settlement at a Settlement Hearing on \_\_\_\_\_, 2014, at the United States District Court for the Eastern District of Missouri in the Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, Courtroom 14 North, St. Louis, MO 63102 at \_\_:\_\_ \_\_.m. If the Court approves the Settlement, and after objections and appeals are resolved, a claims administrator appointed by the Court will make the payments that the Settlement allows.

This package explains the Action, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

<b>2. What is this lawsuit about and what has happened so far?</b>
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This Action was commenced in December of 2008 by the filing of three complaints against KV alleging that Defendants and Former Defendants violated the federal securities laws. The actions were consolidated into this Action by Order dated April 28, 2009. By the same Order, the Court appointed Lead Plaintiffs and approved their selection of Lead Counsel to represent the putative class.

Following a detailed investigation that included, among other things, the interviews of numerous former KV employees, review of KV's public statements, review of administrative agency documents including documents from the United States Food and Drug Administration (FDA) and the United States Department of Justice (DOJ), Lead Plaintiffs filed the operative Consolidated Amended Complaint for Violations of the Federal Securities Laws on May 22, 2009 (the "Complaint"). The Complaint alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder by making alleged misstatements and omissions during the Class Period regarding Defendants' compliance with the regulatory requirements of the FDA and Current Good Manufacturing Practices (cGMP). The Complaint further alleges that Lead Plaintiffs and other Class Members purchased or acquired KV securities during the Class Period at artificially inflated prices and were damaged thereby.

On July 27, 2009, Defendants and Former Defendants filed motions to dismiss the Complaint, which Lead Plaintiffs opposed on August 24, 2009. On February 22, 2010, the Court granted Defendants' and Former Defendants' motions to dismiss in their entirety.

On March 18, 2010, Lead Plaintiffs moved pursuant to Rules 59(e) and 60(b)(2) to vacate the Court's Order dismissing the Complaint and moved, pursuant to Rule 15, to amend the Complaint. Also on March 18, 2010, Lead Plaintiffs filed a notice of appeal of the Court's dismissal order with the United States Court of Appeals for the Eighth Circuit ("Court of Appeals").

On October 20, 2010, the Court denied Lead Plaintiffs' motion for relief from the Court's Order dismissing the Complaint and denied Lead Plaintiffs' motion to amend.

By Order entered June 4, 2012, the Court of Appeals affirmed in part, reversed in part, and remanded to the district court for further proceedings, consistent with its opinion. The Court of Appeals reversed the dismissal of claims against KV and the Individual Defendant, finding that for purposes of a motion to dismiss, Lead Plaintiffs had adequately alleged that KV and the Individual Defendant made false and misleading statements. The Court of Appeals did not rule on the issue of whether the Complaint adequately pled the elements of scienter and loss causation. The Court of Appeals affirmed the dismissal of claims against the Former Defendants.

On August 4, 2012, KV filed for bankruptcy protection pursuant to Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), *In re K-V Discovery Solutions, Inc., et al.*, Case No. 12-13346 (ALG) (the "Bankruptcy Case"). On August 10, 2012, pursuant to the automatic stay provision of 11 U.S.C. §362(a)(1), the Court stayed all proceedings in the Action pending completion of the Bankruptcy Case or further order of the Court.

On December 6, 2012, Lead Plaintiffs moved to vacate or modify the stay with respect to non-debtor, the Individual Defendant. On March 28, 2013, the Court granted Lead Plaintiffs' motion and vacated the Court's stay order with respect to the Individual Defendant.

On April 5, 2012, Lead Plaintiffs moved the Court to rule on the Individual Defendant's pending motion to dismiss. On April 12, 2013, the Individual Defendant filed a response to Lead Plaintiffs' motion and on April 30, 2013, the Court denied the Individual Defendant's motion to dismiss regarding Lead Plaintiffs' claims that he made materially false and misleading statements and omissions concerning KV's noncompliance with cGMP and FDA regulations.

In November 2011, Lead Plaintiffs and Defendants engaged in a mediation with the assistance of an experienced mediator, Robert Meyer of Loeb & Loeb. This discussion did not result in a resolution of the Action. Following additional arm's-length discussions, Defendants, Former Defendants, and Lead Plaintiffs reached an agreement in principle to settle the claims in the Action, resulting in the Memorandum of Understanding entered into on September 3, 2013.

On September 16, 2013, the effective date of the KV Sixth Amended Plan occurred. (Bankruptcy Case, ECF No. 1120).

Before agreeing to the Settlement, Lead Counsel conducted an extensive investigation into the events and transactions underlying the claims alleged in the Complaint and also conducted confirmatory discovery. Lead Counsel analyzed the evidence adduced during its investigation, which included reviewing and analyzing publicly available information concerning KV and information concerning investigations conducted by the FDA and the DOJ, and consulting with experts on bankruptcy, damages, and causation issues. Lead Counsel researched the applicable law with respect to the claims of Lead Plaintiffs against Defendants and Former Defendants, and their potential defenses. Lead Counsel also completed confirmatory discovery involving the review of approximately 150,000 pages of confidential material produced by KV. Thus, at the

time the agreement to settle was reached, Lead Counsel had a thorough understanding of the strengths and weaknesses of the Settling Parties' positions.

On \_\_\_\_\_, 2014, the Court entered the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, which preliminarily approved the Settlement, authorized that this Notice be sent to potential Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

<b>3. Why is this a class action?</b>
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In a class action, one or more people called class representatives (in this case Lead Plaintiffs) sue on behalf of people who have similar claims. They are known as class members. Here, the Court preliminarily certified the Class for purposes of the Settlement only. Bringing a case as a class action allows adjudication of many similar claims of persons and entities that might be economically too small to bring individually. One court resolves the issues for all class members, except for those who exclude themselves from the class. The Court will decide whether to finally certify the Class at the Settlement Hearing.

<b>4. What are the reasons for a Settlement?</b>
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The Court did not finally decide in favor of Lead Plaintiffs or Defendants. Instead, both sides agreed to a settlement.

Lead Plaintiffs and Lead Counsel believe that the claims asserted against Defendants have merit. Lead Plaintiffs and Lead Counsel recognize, however, the expense and length of continued proceedings necessary to pursue their claims against Defendants through trial and appeals, as well as the difficulties in establishing liability. Lead Plaintiffs and Lead Counsel have considered the uncertain outcome and the risk of any litigation, especially in complex lawsuits like this one, as well as the difficulties and delays inherent in such litigation. For example,

Defendants have raised a number of arguments and defenses (which they would raise at summary judgment and trial), including but not limited to, that the alleged misstatements and omissions were not material, and that Lead Plaintiffs would not be able to establish that Defendants acted with the requisite fraudulent intent. Even assuming Lead Plaintiffs could establish liability, Defendants maintained that any potential investment losses suffered by Lead Plaintiffs and the Class were caused by external, independent factors, and not caused by Defendants' alleged conduct. In the absence of a Settlement, the Settling Parties would present factual and expert testimony on each of these issues, and there is considerable risk that the Court or jury would resolve the inevitable "battle of the experts" against Lead Plaintiffs and the Class. Furthermore, KV would maintain that its bankruptcy and reorganization eliminates the prospect of Lead Plaintiffs obtaining any damages from KV, even should they prevail at trial.

In light of the amount of the Settlement and the immediate recovery to the Class, Lead Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class. The Settlement, which totals \$12.8 million (less the various deductions described in this Notice), provides substantial benefits now as compared to the risk that a similar or smaller recovery would be achieved after trial and appeal, possibly years in the future, or that no recovery would be achieved at all.

Defendants have denied and continue to deny each and every one of the claims alleged by Lead Plaintiffs in the Action. Defendants expressly have denied and continue to deny any wrongdoing or that they have committed any act or omission giving rise to any liability or violation of law arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendants also have taken into account the burden, expense, uncertainty,

distraction, and risks inherent in any litigation, and have concluded that it is desirable that the Action be fully and finally settled upon the terms and conditions set forth in the Stipulation.

## **B. WHO IS IN THE SETTLEMENT**

To see if you will get money from this Settlement, you first have to decide if you are a Class Member.

### **5. How do I know if I am part of the Settlement?**

The Court directed, for the purpose of the proposed Settlement, that everyone who fits this description is a Class Member, unless they are an excluded person or they take steps to exclude themselves (*see* Question 13 below): all Persons who purchased or otherwise acquired the publicly traded securities of KV during the period between June 15, 2004 and January 23, 2009, inclusive, and were allegedly damaged thereby.

### **6. Are there exceptions to being included in the Class?**

Excluded from the Class are: (i) Defendants; (ii) Former Defendants; (iii) the officers and directors of the Company; (iv) any subsidiaries and affiliates of the Company; (v) members of the immediate families of the Individual Defendant and the Former Defendants and their legal representatives, heirs, successors or assigns; (vi) any entity in which Defendants and Former Defendants have or had a controlling interest; and (vii) any benefit plan on behalf of employees of the Company and its subsidiaries or affiliates. Also excluded from the Class are any Class Members who properly exclude themselves by filing a valid and timely request for exclusion in accordance with the requirements explained in Question 13 below.

If one of your mutual funds purchased or owned securities of KV during the Class Period, that alone does not make you a Class Member. You are eligible to be a Class Member if you individually purchased or acquired KV securities during the Class Period. Check your investment records or contact your broker to see if you have eligible purchases/acquisitions.

If you only sold KV securities during the Class Period, your sale alone does not make you a Class Member. You are eligible to be a Class Member only if you **purchased or acquired** these securities during the Class Period.

**7. What if I am still not sure if I am included?**

If you are still not sure whether you are included, you can ask for free help. You can call \_\_\_-\_\_\_-\_\_\_ or visit [www.\\_\\_\\_\\_](http://www.____) for more information. Or you can fill out and return the Proof of Claim and Release form (“Proof of Claim”), described in Question 10, to see if you qualify.

**C. THE SETTLEMENT BENEFITS—WHAT YOU GET**

**8. What does the Settlement provide?**

In exchange for the Settlement and the release of the Released Claims (defined below) against the Released Defendant Parties (defined below), Defendants and Former Defendants have agreed to create a \$12.8 million fund, which will earn interest, to be divided, after deduction of Court-awarded attorneys’ fees and expenses, settlement administration costs, and any applicable taxes (the “Net Settlement Fund”), among all Class Members who send in valid and timely Proofs of Claim.

**9. How much will my payment be?**

Your share of the fund will depend on several things, including: (i) the total amount of Recognized Losses of other Class Members; (ii) the type of KV security you purchased or acquired; (iii) how many KV securities you purchased or acquired; (iv) how much you paid for them; (v) when you bought them; and (vi) whether or when you sold your securities, and, if so, for how much.

Your Recognized Loss will be calculated according to the formula shown below in the Plan of Allocation. It is unlikely that you will get a payment for your entire Recognized Loss, given the number of potential Class Members. After all Class Members have sent in their Proofs of Claim,

the payment you get will be a portion of the Net Settlement Fund based on your Recognized Loss divided by the total of everyone's Recognized Losses. See the Plan of Allocation in Question 25 for more information on your Recognized Loss.

**D. HOW YOU GET A PAYMENT—SUBMITTING A PROOF OF CLAIM**

**10. How can I get a payment?**

To qualify for a payment, you must send in a completed Proof of Claim. A Proof of Claim is being circulated with this Notice. You may also get a Proof of Claim on the Internet at the websites for the Claims Administrator or Lead Counsel: [www.\\_\\_\\_\\_.com](http://www.____.com) or [www.labaton.com](http://www.labaton.com). The Claims Administrator can also help you if you have questions about the form. Please read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and mail it **postmarked no later than \_\_\_\_\_, 2014.**

**11. When would I get my payment?**

The Court will hold a Settlement Hearing on \_\_\_\_\_, **2014**, to decide whether to approve the Settlement. Even if the Court approves the Settlement, there may still be appeals, which can take time to resolve, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. All Proofs of Claim need to be **postmarked by \_\_\_\_\_, 2014.**

Once all the Proofs of Claim are processed and claims are calculated, Lead Counsel, without further notice to the Class, will apply to the Court for an order distributing the Net Settlement Fund to the members of the Class. Lead Counsel will also ask the Court to approve payment of the Claims Administrator's fees and expenses incurred in connection with giving notice and administering the Settlement. Please be patient.

<b>12. What am I giving up to get a payment and by staying in the Class?</b>
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Unless you exclude yourself, you will stay in the Class, which means that upon the “Effective Date” you will release all “Released Claims” (as defined below) against the “Released Defendant Parties” (as defined below).

“Released Claims” means any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, including both known claims and Unknown Claims (defined below), whether arising under federal, state, foreign or statutory law, common law or administrative law, or any other law, rule or regulation, whether class or individual in nature, that Lead Plaintiffs or any other Class Member: (i) asserted in the Action; or (ii) could have asserted in the Action or any other action or in any forum, that arise out of, relate to, or are in connection with the claims, allegations, transactions, facts, events, acts, disclosures, statements, representations or omissions or failures to act involved, set forth, or referred to in the complaints filed in the Action, and that relate to the purchase of the publicly traded securities of KV during the Class Period. Released Claims do not include: (i) claims to enforce the Settlement; (ii) any governmental or regulatory agency’s claims in any criminal or civil action against any of the Released Defendant Parties; (iii) claims or interests of any Class Member, including Lead Plaintiffs, in the Bankruptcy Case solely in connection with their status as holders of KV securities in the event there is a future distribution in the Bankruptcy Case; or (iv) claims by any benefit plan on behalf of employees of the Company and its subsidiaries or affiliates, including claims in *Harold S. Crocker, Jr. v. KV Pharm. Co., et al.*, 4:09-CV-198 (CEJ) (E.D. Mo.).

“Unknown Claims” means any and all Released Claims that Lead Plaintiffs or any other Class Member do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any Released Defendants’ Claims that Defendants and Former Defendants do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to exclude himself, herself, or itself from the Class. With respect to any and all Released Claims and Released Defendants’ Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiffs, Defendants, and Former Defendants shall expressly, and each other Class Member shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state 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 Plaintiffs, other Class Members, Defendants, or Former Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and the Released Defendants’ Claims, but Lead Plaintiffs, Defendants, and Former Defendants shall expressly, fully, finally, and forever settle and release, and each Class Member shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendants’ Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or

authorities. Lead Plaintiffs, Defendants, and Former Defendants acknowledge, and other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims and Released Defendants’ Claims was separately bargained for and was a material element of the Settlement.

“Released Defendant Parties” means mean Defendants, Former Defendants, Defendants’ Counsel, Former Defendants’ Counsel, their past or present or future subsidiaries, parents, affiliates, principals, successors and predecessors, assigns, officers, directors, shareholders, trustees, partners, agents, fiduciaries, contractors, employees, attorneys, auditors, insurers; the spouses, members of the immediate families, representatives, and heirs of the Individual and Former Defendants, as well as any trust of which any Individual Defendant or Former Defendant is the settlor or which is for the benefit of any of their immediate family members; any firm, trust, corporation, or entity in which any Defendant or Former Defendant has a controlling interest; and any of the legal representatives, heirs, successors in interest or assigns of the Defendants or Former Defendants.

The “Effective Date” will occur when an Order by the Court approving the Settlement becomes Final and is not subject to appeal as set out more fully in the Stipulation on file with the Court and available at [www.\\_\\_\\_\\_\\_](http://www._____) or [www.labaton.com](http://www.labaton.com).

If you remain a member of the Class, all of the Court’s orders about the Settlement will apply to you and legally bind you.

#### **E. EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from this Settlement, but you want to keep any right you may have to sue or continue to sue Defendants, Former Defendants, and other Released Defendant Parties, on your own, about the Released Claims, then you must take steps to get out. This is called excluding yourself from—or “opting out” of—the Class. Defendants or Former Defendants may

withdraw from and terminate the Settlement if putative Class Members who have in excess of a certain amount of Recognized Losses exclude themselves from the Class.

**13. How do I get out of the proposed Settlement?**

To exclude yourself from the Class, you must send a signed letter by mail stating that you request to be “excluded from the Class in *Public Pension Fund Group v. KV Pharmaceutical Company*, No. 4:08-CV-1859 (E.D. Mo.)” Your letter must state the date(s), price(s), and number(s) of shares of all your purchases, acquisitions, and sales of KV securities during the Class Period. In addition, you must include your name, address, telephone number and your signature. You must mail your exclusion request so that it is **received no later than \_\_\_\_\_, 2014**, to:

*KV Pharmaceutical Securities Action*

*Claims Administrator*

c/o \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

You cannot exclude yourself by telephone or by email. Your exclusion request must comply with these requirements in order to be valid. If you write to request to be excluded, you will not get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in connection with this Settlement, and, if you have a claim, you may be able to sue (or continue to sue) Defendants, Former Defendants, and the other Released Defendant Parties in the future. **Please note:** if you decide to exclude yourself from the Class, you may be time-barred from asserting some of the claims alleged in the Action by a statute of repose.

**14. If I do not exclude myself, can I sue the Defendants, Former Defendants, or the other Released Defendant Parties for the same thing later?**

No. Unless you exclude yourself, you give up any rights to sue the Defendants, Former Defendants, and the other Released Defendant Parties for any and all Released Claims. If you have a pending lawsuit speak to your lawyer in that case **immediately**. **You must exclude yourself from *this* Class to continue your own lawsuit.** Remember, your exclusion request must be **received by \_\_\_\_\_, 2014.**

**15. If I exclude myself, can I get money from the proposed Settlement?**

No. If you exclude yourself, do not send in a Proof of Claim to ask for any money. But, you may exercise any right you may have to sue, continue to sue, or be part of a different lawsuit against Defendants, Former Defendants, and the other Released Defendant Parties.

**F. THE LAWYERS REPRESENTING YOU**

**16. Do I have a lawyer in this case?**

The Court appointed the law firm of Labaton Sucharow LLP to represent all Class Members. These lawyers are called Lead Counsel. You will not be separately charged for these lawyers. The Court will determine the amount of Lead Counsel's fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

**17. How will the lawyers be paid?**

Lead Counsel have not received any payment for their services in pursuing the claims against Defendants on behalf of the Class, nor have they been paid for their litigation expenses. At the Settlement Hearing, or at such other time as the Court may order, Lead Counsel will ask the Court to award them, from the Settlement Fund, attorneys' fees of no more than 30% of the Settlement Fund, plus any interest on such amount at the same rate and for the same periods as

earned by the Settlement Fund, and litigation expenses (such as the cost of experts) that have been incurred in pursuing the Action. The request for litigation expenses will not exceed \$750,000, plus interest on the expenses at the same rate as may be earned by the Settlement Fund.

### **G. OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

<b>18. How do I tell the Court that I do not like the proposed Settlement?</b>
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If you are a Class Member you can object to the Settlement or any of its terms, the certification of the Class, the proposed Plan of Allocation, and/or the application by Lead Counsel for an award of fees and expenses. You may write to the Court setting out your objection. You may give reasons why you think the Court should not approve any part or all of the Settlement terms or arrangements. The Court will only consider your views if you file a proper written objection within the deadline and according to the following procedures. To object, you must send a signed letter stating that you object to the proposed settlement in “*Public Pension Fund Group v. KV Pharmaceutical Company*, No. 4:08-CV-1859 (E.D. Mo.)” Be sure to include your name, address, telephone number, and your signature, identify the date(s), price(s) and number(s) of shares of all purchases, acquisitions, and sales of KV securities you made during the Class Period, and state the reasons why you object to the Settlement. If you object to the Settlement and you wish to ask the Court for permission to speak at the Settlement Hearing, you must include with your objection the information discussed in Question 22, below. **Unless otherwise ordered by the Court, any Class Member who does not object in the manner described herein will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed settlement and the application for attorneys’ fees and expenses.**

Your objection must be filed with the Court and mailed or delivered to **all** of the following so that it is **received on or before** \_\_\_\_\_, **2014**:

**COURT:**

Clerk of the Court  
United States District Court of the Eastern District of Missouri  
Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street  
St. Louis, MO 63102

**LEAD COUNSEL:**

Jonathan M. Plasse  
Javier Bleichmar  
LABATON SUCHAROW LLP  
140 Broadway  
New York, NY 10005

**DEFENDANTS' COUNSEL:**

F. Joseph Warin  
Jason E. Morrow  
GIBSON DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Jeffrey E. McFadden  
Patrick F. Linehan  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

**19. What is the difference between objecting and seeking exclusion?**

Objecting is simply telling the Court that you do not like something about the proposed Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**H. THE COURT'S SETTLEMENT HEARING**

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend, and you may ask to speak, but you do not have to do so.

**20. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Settlement Hearing at \_\_\_\_\_ .m. on \_\_\_\_\_, 2014, at the Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, Courtroom 14 North, St. Louis, MO 63102 at \_\_:\_\_\_ .m.

At this hearing, the Honorable Carol E. Jackson will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the proposed Plan of Allocation for the Net Settlement Fund and the application of Lead Counsel for attorneys' fees and reimbursement of expenses. The Court will take into consideration any written objections filed in accordance with the instructions set out in Question 18 above. The Court also may listen to people who have properly indicated, within the deadline identified above, an intention to speak at the Settlement Hearing, but decisions regarding the conduct of the Settlement Hearing will be made by the Court. *See* Question 22 for more information about speaking at the Settlement Hearing. After the Settlement Hearing, the Court will decide whether to approve the Settlement, and, if the Settlement is approved, the amount of attorneys' fees and expenses to be awarded. We do not know how long these decisions will take.

You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent. If you want to come to the hearing, you should check with Lead Counsel before coming to be sure that the date and/or time has not changed.

**21. Do I have to come to the Settlement Hearing?**

No. Lead Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval. If you submit an objection, you do not have to come to Court to talk about it. As long as all of the recipients identified in Question 18 received your

written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

## **22. May I speak at the Settlement Hearing?**

If you object to the Settlement, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (*see* Question 18 above) a statement stating that it is your “Notice of Intention to Appear in *Public Pension Fund Group v. KV Pharmaceutical Company*, No. 4:08-CV-1859 (E.D. Mo.).” Persons who intend to object to the Settlement, the Plan of Allocation, and/or Lead Counsel’s Fee and Expense Application and desire to present evidence at the Settlement Hearing must also include in their written objections the identity of any witness they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. You cannot speak at the Settlement Hearing if you excluded yourself from the Class or if you have not provided written notice of your objection and intention to speak at the Settlement Hearing in accordance with the procedures described in Questions 18 and 22.

### **I. IF YOU DO NOTHING**

## **23. What happens if I do nothing at all?**

If you do nothing and you are a member of the Class, you will get no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against Defendants, Former Defendants, and the other Released Defendant Parties about the Released Claims, ever again. To share in the Net Settlement Fund you must submit a Proof of Claim (*see* Question 10). To start, continue or be a part of any *other* lawsuit against the Defendants, Former Defendants, and the other Released Defendant Parties about the Released Claims in this case you *must* exclude yourself from this Class (*see* Question 13).

## J. GETTING MORE INFORMATION

### 24. Are there more details about the proposed settlement?

This Notice summarizes the proposed Settlement. More details are in the Stipulation, dated as of \_\_\_\_\_, 2013. You may review the Stipulation filed with the Court or documents filed in the case during business hours at the Office of the Clerk of the United States District Court for the Eastern District of Missouri, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, Courtroom 14 North, St. Louis, MO 63102.

You also can call the Claims Administrator toll free at \_\_\_-\_\_\_-\_\_\_; write to *KV Pharmaceutical Securities Action*, c/o \_\_\_\_\_, Claims Administrator, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_; or visit the websites of the Claims Administrator or Lead Counsel at [www.\\_\\_\\_\\_](http://www.____) and [www.labaton.com](http://www.labaton.com), where you can find answers to common questions about the Settlement, download copies of the Stipulation or Proof of Claim, and locate other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

### **Please Do Not Call The Court With Questions About The Settlement**

## K. PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS

### 25. How will my claim be calculated?

The purpose of the Plan of Allocation is to distribute settlement proceeds equitably to those Class Members who suffered economic losses resulting from the alleged misrepresentations and omissions by Defendants during the Class Period.

The \$12.8 million Settlement Amount and any interest it earns is called the Settlement Fund. The Settlement Fund, minus all taxes, costs, fees and expenses (the Net Settlement Fund), will be distributed according to the Plan of Allocation described below to members of the Class who timely submit valid Proofs of Claim that show a Recognized Loss (“Authorized Claimants”), and

who have an out-of-pocket market net loss on all Class Period transactions in KV securities. Class Members who do not timely submit valid Proofs of Claim will not share in the Settlement proceeds, but will otherwise be bound by the terms of the Settlement. The Court may approve the Plan of Allocation, or modify it without additional notice to the Class. Any order modifying the Plan of Allocation will be posted on the settlement website at: \_\_\_\_\_ and at **www.labaton.com**.<sup>3</sup>

The Claims Administrator will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Loss," as described below. The Plan of Allocation is not intended to estimate the amount a Class Member might have been able to recover after a trial, nor is it intended to estimate the amount that will be paid to Authorized Claimants. The Plan of Allocation is the basis upon which the Net Settlement Fund will be proportionately divided among all the Authorized Claimants. The Court will be asked to approve the Claims Administrator's determinations before the Net Settlement Fund is distributed to Authorized Claimants. No distributions to Authorized Claimants who would receive less than \$10.00 will be made, given the administrative expenses of processing and mailing such checks.

Defendants, Former Defendants, Defendants' and Former Defendants' Counsel, and all Released Defendant Parties will have no responsibility for or liability whatsoever for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation or the payment of any claim. Lead Plaintiffs and Lead Counsel likewise will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

The following Plan of Allocation reflects the allegations that the prices of KV publicly traded securities during the Class Period were inflated artificially by reason of allegedly false and

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<sup>3</sup> Defendants and Former Defendants had no involvement in the proposed Plan of Allocation.

misleading statements made by Defendants about KV's compliance with manufacturing regulations. Defendants deny any allegations of wrongdoing or liability.

The Plan of Allocation described below was created with the assistance of a consulting damages expert who analyzed the movement of KV's securities after the alleged disclosures. It takes into account, among other things, the portion of the stock drops attributable to the alleged fraud.

## **PLAN OF ALLOCATION OF NET SETTLEMENT FUND**

### **General Provisions**

Investors in four categories of publicly traded securities of KV Pharmaceutical may be eligible for a recovery from the Settlement:

- (a) Class A common stock ("Class A stock") (CUSIP:\_\_\_\_\_);
- (b) Class B common stock; ("Class B stock") (CUSIP:\_\_\_\_\_);
- (c) 7% Cumulative Convertible Preferred ("Convertible Preferred") (CUSIP:\_\_\_\_\_);<sup>4</sup>
- (d) Contingent Convertible Subordinated Notes due 2033 ("Convertible Notes") (CUSIP:\_\_\_\_\_).<sup>5</sup>

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<sup>4</sup> Price and volume data for the entire Class Period are not currently available for the Convertible Preferred, of which 40,000 shares were outstanding during the Class Period and were eligible to trade on the OTC Bulletin Board. According to FINRA Operations, the Convertible Preferred was removed from the OTCBB on August 3, 2009, for lack of activity. This security was convertible into Class A stock, at a ratio of 8.4375 Class A shares per share of Convertible Preferred. The inflation per share of Convertible Preferred has been calculated using the difference between closing prices for this security reported in the Complaint, on the trading day before and on the trading day of fraud-related price declines: May 30, 2008, November 13, 2008, December 23 and 24, 2008, and January 26, 2009.

<sup>5</sup> Price and volume data for the entire Class Period are not currently available for the Convertible Notes. Fraud-related price declines on the dates identified herein were estimated based on the relationship between reported returns (percentage changes in price) of the Convertible Notes and reported returns of the Class A stock, which were highly correlated. Using this regression model, the daily fraud-related residual returns on Class A stock were used to predict the daily fraud-related residual returns on the Convertible Notes, for the alleged disclosure dates.

Settlement Class Members must have purchased KV Class A stock, or Class B stock, or the Convertible Preferred, or one or more Convertible Notes, during the Class Period of June 15, 2004 through January 23, 2009, inclusive, to be eligible for a recovery from the Settlement. Recognized Loss is zero on purchases of any of the four KV securities listed above which were not publicly registered or were restricted from trading.

Federal securities laws allow investors to recover for losses caused by disclosures that corrected a defendant's previous misleading statements or omissions, but not for losses caused by broad market conditions or by other events unrelated to a securities fraud. Therefore, a second requirement for eligibility to recover is that a claimant must have held the KV security at the time its price declined due to a disclosure of information that allegedly corrected an allegedly misleading statement or omission.

Lead Plaintiffs and Lead Counsel have identified the following dates of such price declines: May 30, 2008; November 13, 2008; December 23 and 24, 2008; January 26 and 27, 2009 (the latter date only for Class A stock and the Convertible Notes).<sup>6</sup> For each of the four categories of security, the Class A stock, Class B stock,<sup>7</sup> the Convertible Preferred, and Convertible Notes, the Settlement Class Member must have bought the security on or after June 15, 2004 (and on or before January 23, 2009), and then held the security until at least May 30, 2008 or November 13, 2008 or December 23 or 24, 2008, or January 26, 2009. If the security was purchased and then sold before May 30, 2008, or purchased on one of these dates and then sold before the next consecutive date in this series of dates of price declines, those transactions are excluded from consideration in distribution of settlement proceeds.

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<sup>6</sup> On May 30, 2008 and November 13, 2008, material information unrelated to the alleged fraud also was released; the measure of inflation allegedly purged on these dates is based on the estimated value of the inflation released related to the alleged fraud.

<sup>7</sup> There was no allegedly fraud-related decline in Class B stock on January 27, 2009.

Following is a brief description of the announcements that allegedly revealed the truth and dissipated the alleged fraud, as determined by Lead Plaintiffs and Lead Counsel:<sup>8</sup>

- a) **May 30, 2008:** KV announced preliminary results of the fourth quarter of its fiscal year, ended March 31, 2008. KV announced, among other information, that profit was adversely impacted by a write-off in the fourth quarter of \$5.5 million of inventories of certain unapproved products subject to a previously reported FDA hold. On May 30, 2008, prices of the KV securities declined allegedly in reaction to this announcement.
- b) **November 12, 2008:** after market close, KV announced results of the second quarter of fiscal 2009 in a Form 12b-25 filed with the SEC. KV announced that an investigation by the Audit Committee into management misconduct had expanded, and included involvement of the FDA in investigating compliance matters. KV announced disappointing financial results for the quarter, which it attributed in part to inventory write-offs due to manufacturing interruptions and inefficiencies, payments to customers related to delayed supply, and expenses associated with voluntary recalls of certain products. On November 13, 2008, prices of the KV securities declined allegedly in reaction to this announcement.
- c) **December 23, 2008:** during the trading day, KV announced suspension of all shipments of its approved tablet-form drugs and a nationwide recall of one drug product due to discovery of an oversized tablet. KV stated that operating results likely would be materially adversely affected. Prices of the KV securities declined allegedly in reaction to this announcement on both December 23 and 24, 2008.
- d) **January 26, 2009:** before market open, KV announced it had suspended manufacturing and shipping of all products it distributed and manufactured, and stated that suspension of manufacturing would have a material adverse effect on its financial condition. Prices of the four KV securities allegedly declined in reaction to this announcement on January 26, 2009. Prices of Class A stock and Convertible Notes also declined on January 27, 2009. The price of Class B stock did not decline on January 27, 2009 due to this announcement. The price of Convertible Preferred on January 27, 2009 is not currently available, and Lead Plaintiffs and Lead Counsel have not specified a fraud-related decline in price of this security on January 27, 2009.

Lead Plaintiffs and Lead Counsel maintain that the relative strength of claims arising from purchases of the eligible KV securities increased over the Class Period as the FDA issued successive Forms 483 to KV and cited KV for noncompliance with manufacturing regulations,

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<sup>8</sup> Defendants and Former Defendants deny that there were any false or misleading misrepresentations or omissions and any corrective disclosures.

and as KV issued additional allegedly false and misleading statements and omissions. Based on the assessment of Lead Plaintiffs and Lead Counsel, the following weights have been applied to maximum potential inflation.

- a) 25% of maximum potential inflation beginning on first day of the Class Period (June 15, 2004), before which two FDA Form 483s had been issued in April 2003 and January 2004.
- b) 37.5% of maximum potential inflation beginning on June 15, 2005, the first trading day after KV filed its Form 10-K for Fiscal 2005 with the SEC, containing allegedly false and/or misleading statements or omissions despite FDA issuance of a third Form 483 in January of 2005.
- c) 50% of maximum potential inflation beginning on June 14, 2006, the date on which KV filed its Form 10-K for Fiscal 2006 with the SEC, containing allegedly false and/or misleading statements or omissions despite FDA issuance of a fourth Form 483 in March, 2006.
- d) 70% of maximum potential inflation beginning on April 20, 2007, the date the FDA issued a fifth Form 483.
- e) 100% of maximum potential inflation beginning on May 30, 2008, the next date of allegedly false and/or misleading statements or omissions, following the FDA issuance of a sixth Form 483 on March 26, 2008.<sup>9</sup>

Beginning May 30, 2008, alleged inflation in prices of the four KV securities was reduced sequentially, as corrective disclosures were allegedly made on May 30, 2008, on November 13, 2008, on December 23 and 24, 2008, and January 26, 2009. Inflation in prices of Class A stock and Convertible Notes was reduced to zero on January 27, 2009, as prices continued to react to the final allegedly corrective disclosure made on January 26, 2009. Inflation in prices of Class B stock and Convertible Preferred was reduced to zero on January 26, 2009.

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<sup>2</sup> May 30, 2008 was a date on which both potential inflation allegedly reached its maximum, and the first date of a price decline allegedly attributable to release of information that partially dissipated the alleged fraud. Thus, peak inflation on May 30, 2008 is equal to: maximum potential inflation (measured by the sum of the dollar values of all allegedly fraud-related price declines), minus the dollar value of the allegedly fraud-related price decline on May 30, 2008.

Federal law constrains price inflation under the 90-day-lookback provision of the Public Securities Litigation Reform Act of 1995 (“PSLRA”). In calculating Recognized Loss for the purchase of a KV security, Recognized Loss may not exceed the purchase price minus the 90-day-lookback period mean closing price. The 90-day-lookback period began January 26, 2009, and ended April 26, 2009.

- a) The 90-day-lookback period mean closing price of Class A stock is \$1.14.
- b) The 90-day-lookback period mean closing price of Class B stock is \$1.78.
- c) Because daily closing prices are unavailable in the 90-day-lookback period for the Convertible Preferred for days other than January 26, 2009, the 90-day-lookback period mean closing price is assumed to be \$23.50, the closing price for this security on January 26, 2009.
- d) The 90-day-lookback period mean closing price of a Convertible Note is \$31.79 as reported, or \$317.90 converted to a basis comparable to par value.<sup>10</sup>

If a claimant had a market gain from his/her/its total transactions in the four categories of KV securities during in the Class Period, the value of his/her/its claim will be zero. If a claimant suffered a market loss on total transactions in the four KV securities purchased in the Class Period, but that market loss was less than the sum of his/her/its total of Recognized Losses on transactions in the four securities calculated according to this Plan, that claimant’s total Recognized Loss will be limited to the amount of the actual total market loss.

To match purchases and sales within the Class Period, the Claims Administrator will apply a first-in, first-out (“FIFO”) rule to holdings of a particular security on June 14, 2004 (the day before the beginning of the Class Period) and to purchases and sales of that security in the Class Period. For example, FIFO will match the first units of a particular security sold against any units of that security held as of June 14, 2004, and then against purchases of that security in the

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<sup>10</sup> In calculating the 90-day-lookback period mean closing price of a Convertible Note, where no transaction was reported on a particular trading date in the 90-day-lookback period, the last available transaction price for a Convertible Note was assumed to be the closing price.

Class Period in chronological order, beginning with the earliest purchases in the Class Period. Sales matched to a particular KV security held as of June 14, 2004, will be excluded from calculation of Recognized Loss and market gain or loss.

No Recognized Loss will be calculated for any purchase of a particular security to cover a short sale.

### **Recognized Loss on Class A Stock**

If a share was purchased on or after June 15, 2004, and held at least until January 26, 2009 (the day of the final allegedly corrective disclosure), market gain or loss on that purchase will be the difference between purchase price and the PSLRA 90-day-lookback period mean price of \$1.14. If a share was purchased on or after June 15, 2004, and sold on or before January 23, 2009, market gain or loss on that share purchase will be the difference between purchase price and sale price.

Recognized Loss for shares purchased on or after June 15, 2004 and sold on or before January 23, 2009 shall be limited to the purchase price minus sale price where the Recognized Loss calculated below is greater than market loss. If purchase price minus sale price is less than zero, the Recognized Loss is zero.

Lead Plaintiffs' consulting damages expert has estimated the price decline in Class A stock due to disclosure(s) related to the alleged fraud on each of the dates (May 30, 2008, November 13, 2008, December 23 and 24, 2008, and January 26 and 27, 2009) of price decline attributed in full or in part to release of allegedly corrective information related to the alleged fraud. These net price declines are used to measure alleged inflation in stock price at each purchase and sale date, as described below.

The formulas for calculating Recognized Loss for purchases of Class A stock during the Class Period are:

1. For a share purchased on or after June 15, 2004, and held until at least January 26, 2009, Recognized Loss will be the lesser of the following, but not less than zero:
  - (a) the appropriate value from Table A below for that purchase date (and sale date, if sold January 26, 2009); or
  - (b) purchase price minus \$1.14. If purchase price minus \$1.14 is less than zero, the Recognized Loss is zero.
2. For a share purchased on or after June 15, 2004, and sold on or before January 23, 2009, Recognized Loss will be the appropriate value from Table A below for that purchase date and sale date, but not less than zero.

### **Recognized Loss on Class B Stock**

If a share was purchased on or after June 15, 2004, and held at least until January 26, 2009 (the day of the final allegedly corrective disclosure), market gain or loss on that purchase will be the difference between purchase price and the PSLRA 90-day-lookback period mean price of \$1.78. If a share was purchased on or after June 15, 2004, and sold on or before January 23, 2009, market gain or loss on that share purchase will be the difference between purchase price and sale price.

Recognized Loss for shares purchased on or after June 15, 2004 and sold on or before January 23, 2009 shall be limited to the purchase price minus sale price where the Recognized Loss calculated below is greater than market loss. If purchase price minus sale price is less than zero, the Recognized Loss is zero.

Lead Plaintiffs' consulting damages expert has estimated the price decline in Class B stock due to disclosure(s) related to the alleged fraud on each of the dates (May 30, 2008, November 13, 2008, December 23 and 24, 2008, and January 26, 2009) of price decline attributed in full or in part to release of allegedly corrective information related to the alleged fraud. These net price declines are used to measure alleged inflation in stock price at each purchase and sale date, as described below.

The formulas for calculating Recognized Loss for purchases of Class B stock during the Class Period are:

1. For a share purchased on or after June 15, 2004, and held until at least January 26, 2009, Recognized Loss will be the lesser of the following, but not less than zero:
  - (a) the appropriate value from Table B below for that purchase date (and sale date, if sold January 26, 2009); or
  - (b) purchase price minus \$1.78. If purchase price minus \$1.78 is less than zero, the Recognized Loss is zero.
2. For a share purchased on or after June 15, 2004, and sold on or before January 23, 2009, Recognized Loss will be the appropriate value from Table B for that purchase date and sale date, but not less than zero.

### **Recognized Loss on Convertible Preferred**

If a share was purchased on or after June 15, 2004, and held at least until January 26, 2009 (the day of the final allegedly corrective disclosure), market gain or loss on that purchase will be the difference between purchase price and the PSLRA 90-day-lookback period mean price of \$23.50. If a share was purchased on or after June 15, 2004, and sold on or before January 23,

2009, market gain or loss on that share purchase will be the difference between purchase price and sale price.

Recognized Loss for shares purchased on or after June 15, 2004 and sold on or before January 23, 2009 shall be limited to the purchase price minus sale price where the Recognized Loss calculated below is greater than market loss. If purchase price minus sale price is less than zero, the Recognized Loss is zero.

Lead Plaintiffs' consulting damages expert has estimated the price decline in a share of the Convertible Preferred due to disclosure(s) related to the alleged fraud on each of the dates (May 30, 2008, November 13, 2008, December 23 and 24, 2008, and January 26, 2009) of price decline attributed in full or in part to release of allegedly corrective information related to the alleged fraud. These net price declines are used to measure alleged inflation in stock price at each purchase and sale date, as described below.

The formulas for calculating Recognized Loss for purchases of the Convertible Preferred during the Class Period are:

1. For a share purchased on or after June 15, 2004, and held until at least January 26, 2009, Recognized Loss will be the lesser of the following, but not less than zero:
  - (a) the appropriate value from Table C below for that purchase date (and sale date, if sold January 26, 2009); or
  - (b) purchase price minus \$23.50. If purchase price minus \$23.50 is less than zero, the Recognized Loss is zero.
2. For a share purchased on or after June 15, 2004, and sold on or before January 23, 2009, Recognized Loss will be the following, but not less than zero: the appropriate value from Table C below for that purchase date and sale date.

### **Recognized Loss on a Convertible Note**

If a Convertible Note was purchased on or after June 15, 2004, and held at least until January 26, 2009 (the date of the last allegedly corrective disclosure), market gain or loss on that purchase will be the difference between purchase price and the PSLRA 90-day-lookback period mean price of \$31.79 (in terms as reported) or \$317.90 (on a par-equivalent basis). If a Convertible Note was purchased on or after June 15, 2004, and sold on or before January 23, 2009, market gain or loss on that purchase will be the difference between purchase price and sale price.

Recognized Loss for shares purchased on or after June 15, 2004 and sold on or before January 23, 2009 shall be limited to the purchase price minus sale price where the Recognized Loss calculated below is greater than market loss. If purchase price minus sale price is less than zero, the Recognized Loss is zero.

Lead Plaintiffs' consulting damages expert has estimated the price decline of a Convertible Note due to disclosure(s) related to the alleged fraud on each of the dates (May 30, 2008, November 13, 2008, December 23 and 24, 2008, and January 26 and 27, 2009) of price decline attributed in full or in part to release of allegedly corrective information related to the alleged fraud. These net price declines are used to measure alleged inflation in price at each purchase and sale date, as described below.

The formulas for calculating Recognized Loss for purchases of a Convertible Note during the Class Period are:

1. For a Convertible Note purchased on or after June 15, 2004, and held until at least January 26 2009, Recognized Loss will be the lesser of:
  - (a) the appropriate value from Table D below for that purchase date (and sale date, if sold January 26 or 27, 2009); or
  - (b) purchase price minus \$31.79 (in terms of price as reported), or \$317.90 (in par-equivalent terms). If purchase price minus \$31.79 (in terms of price as reported), or \$317.90 (in par-equivalent terms) is less than zero, the Recognized Loss is zero.
2. For a Convertible Note purchased on or after June 15, 2004, and sold on or before January 23, 2009, Recognized Loss will be the following, but not less than zero: the appropriate value from Table D below for that purchase date and sale date.

#### **Other Provisions of the Plan of Allocation**

Purchases and sales of any of the four KV securities listed above will be considered to have occurred on the "contract" or "trade" date, as opposed to the "settlement" or "payment" date. The amount paid or received for such securities will exclude commissions, taxes, and fees.

Recognized Loss will be calculated only on purchases of any of the four KV securities listed above. No Recognized Loss will be calculated on KV securities "transferred into", "delivered into" or "received into" by gift, grant, inheritance, or operation of law unless the Claimant submits documents supporting that the original purchase of the KV securities listed above occurred during the Class Period. Also, KV securities purchased and subsequently "transferred out" or "delivered out" of a Claimant's account will NOT be considered part of a Claimant's claim, as the right to file for those KV securities belongs to the person or party receiving the KV securities.

Payment under the Plan of Allocation approved by the Court will be conclusive for all Authorized Claimants. Claimants whose claims are determined to have a value of zero will nevertheless be bound by the Settlement. No person shall have any claim against Lead Plaintiffs, Lead Counsel, the Claims Administrator, or any other agent designated by Lead Counsel, arising from distributions made substantially in accordance with the Plan of Allocation or further orders of the Court. Lead Plaintiffs, Defendants, their respective counsel, Lead Plaintiffs' consulting damages expert, the Claims Administrator and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund consistent with the Plan of Allocation, or the determination, administration, calculation, or payment of any Proof of Claim, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

Each Authorized Claimant will recover from the Net Settlement Fund based on his/her/its total Recognized Losses on all four KV securities listed above. However, it is unlikely that you will get a payment for your entire Recognized Loss, given the number of potential Authorized Claimants. If the amount in the Net Settlement Fund is not sufficient to permit payment of the total of all Recognized Losses, then each Authorized Claimant will be paid the percentage of the Net Settlement Fund that each Authorized Claimant's recognized claim bears to the total of the claims of all Authorized Claimants ("*pro rata* share"). If the Authorized Claimant's *pro rata* share is less than \$10.00, it will be removed from the calculation and will not be paid given the administrative expenses of processing payments.

Payment in this manner will be deemed conclusive against all Authorized Claimants. A Recognized Loss will be calculated as defined herein and cannot be less than zero.

Distributions to eligible Authorized Claimants will be made after all claims have been processed and after the Court has approved the Claims Administrator's determinations. After an initial distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement

Fund after at least six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Lead Counsel shall, if feasible and economical, reallocate such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. Any balance that still remains in the Net Settlement Fund, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be contributed to non-sectarian not-for-profit charitable organizations serving the public interest, designated by Lead Plaintiffs and approved by the Court.

Each claimant is deemed to have submitted to the jurisdiction of the United States District Court for the Eastern District of Missouri with respect to his, her, or its Proof of Claim.

**L. SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased Class A stock, Class B stock, the Convertible Preferred, or the Convertible Note (CUSIP:\_\_\_\_; \_\_\_\_; \_\_\_\_; \_\_\_\_ ) during the period from \_\_\_\_\_ to and through \_\_\_\_\_, \_\_\_\_\_, inclusive, for the beneficial interest of a person or organization other than yourself, the Court has directed that, **WITHIN SEVEN (7) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE**, you either: (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased KV securities during such time period or; (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within seven (7) calendar days of receipt of such copies mail the Notice and Proof of Claim form directly to the beneficial owners of those KV securities.

If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you shall send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage

and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

*KV Pharmaceutical Securities Action*

Claims Administrator

c/o \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_ - \_\_\_\_ - \_\_\_\_; Fax: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

[e-mail]

www. \_\_\_\_\_

Dated: \_\_\_\_\_, 2014

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

[TABLES FOR POA WILL BE INSERTED HERE IN MAILED NOTICE]

**Table Footnotes**

Table A: In the period November 13, 2008 through December 22, 2008, inclusive, many reported prices are less than the price inflation of \$5.14 per share calculated for this period. Thus, if price paid or received per share in this period is less than \$5.14 per share inflation, inflation at purchase or sale is considered equal to price.

Table B: In the period November 13, 2008 through December 22, 2008, inclusive, many reported daily prices are less than the price inflation of \$4.80 per share calculated for this period. Thus, if price paid or received per share in this period is less than \$4.80 per share inflation, inflation at purchase or sale is considered equal to price.

## **Exhibit A-2**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

_____	X	
	:	
PUBLIC PENSION FUND GROUP, et al.	:	No.: 4:08-CV-1859 (CEJ)
	:	
v.	:	
	:	
KV PHARMACEUTICAL COMPANY, et al.	:	
	:	
	:	
	:	
_____	X	

**PROOF OF CLAIM AND RELEASE**

**I. GENERAL INSTRUCTIONS**

1. To be eligible to receive a recovery from the Net Settlement Fund as a Member of the Class in the class action lawsuit entitled *Public Pension Fund Group v. KV Pharmaceutical Co.*, No. 4:08 CV-1859 (CEJ), pending in the United States District Court for the Eastern District of Missouri (the “Action”), you must complete and, on page \_\_\_ below, sign this Proof of Claim and Release form. If you fail to submit a timely, properly completed and addressed (as set forth in paragraph 3 below) Proof of Claim, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the Settlement of the Action.

2. Submission of this Proof of Claim form, however, does not ensure that you will share in the Net Settlement Fund, even if you are a Class Member.

3. **YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM POSTMARKED ON OR BEFORE \_\_\_\_\_, 2014, ADDRESSED AS FOLLOWS:**

*KV Pharmaceutical Securities Action*

Claims Administrator

c/o \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_ - \_\_\_\_ - \_\_\_\_; Fax: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

If you are NOT a Member of the Class (as defined in the Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses ("Notice")) DO NOT submit this Proof of Claim form. You are not entitled to a recovery.

4. If you are a Member of the Class and you have not timely and validly requested to be excluded from the Class, you will be bound by the terms of the Final Order and Judgment entered by the Court, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM.

**II. DEFINITIONS**

1. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Notice that accompanies this Proof of Claim and in the Stipulation and Agreement of Settlement, dated \_\_\_\_\_, 2013 (the "Stipulation").

**III. IDENTIFICATION OF CLAIMANT**

1. You are a Class Member if you, between June 15, 2004 and January 23, 2009, inclusive, purchased or otherwise acquired the publicly traded securities of KV and were allegedly damaged thereby and are not an Excluded Person. Excluded from the Class are: (i) Defendants; (ii) Former Defendants; (iii) the officers and directors of the Company; (iv) any subsidiaries and affiliates of the Company; (v) members of the immediate families of the Individual Defendant and the Former Defendants and their legal representatives, heirs, successors or assigns; (vi) any entity in which Defendants and Former Defendants have or had a

controlling interest; and (vii) any benefit plan on behalf of employees of the Company and its subsidiaries or affiliates. Also excluded from the Class are any Class Members who properly exclude themselves by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

2. Investors in four categories of KV's publicly traded securities may be eligible to receive a payment from the Settlement: (a) Class A common stock ("Class A stock"); (b) Class B common stock; ("Class B stock"); (c) 7% Cumulative Convertible Preferred Shares ("Convertible Preferred"); and (d) Contingent Convertible Subordinated Notes due 2033 ("Convertible Notes").

3. If the publicly traded KV securities that you purchased or acquired were held in your name, you are the beneficial purchaser or acquirer as well as the record purchaser or acquirer. If, however, you purchased or otherwise acquired KV publicly traded securities during the Class Period through a third party, such as a nominee or brokerage firm, and the securities were registered in the name of that third party, you are the beneficial purchaser or acquirer of these securities, but the third party is the record purchaser or acquirer of these securities.

4. Use Part I of this form entitled "Claimant Identification" to identify each beneficial purchaser or acquirer of KV publicly traded securities that form the basis of this claim, as well as the purchaser or acquirer of record if different. **THIS CLAIM MUST BE SUBMITTED BY THE ACTUAL BENEFICIAL PURCHASER(S), OR AUTHORIZED ACQUIRER(S) OR LEGAL REPRESENTATIVE(S) OF SUCH BENEFICIAL PURCHASER(S) OR ACQUIRER(S), OF THE KV SECURITIES UPON WHICH THIS CLAIM IS BASED.**

5. All joint beneficial purchasers or acquirers must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of Persons represented by them, proof of their authority must accompany this claim, and their titles or capacities must be stated. The Social Security (or employer identification) number and telephone number of one of the beneficial owner(s) may be used in verifying this claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of your claim.

#### **IV. IDENTIFICATION OF TRANSACTION(S)**

1. Use Part II of this form entitled "Schedule of Transactions" to supply all required details of your transaction(s) in KV's publicly traded securities. If you need more space or additional schedules, attach separate sheets providing all of the required information in substantially the same form. Sign and print or type your name and include your Social Security or employer identification number and the full name of the account on each additional sheet.

2. On the schedules, provide all of the requested information with respect to: (i) *all* of your holdings in KV's publicly traded securities as of the beginning of trading on June 15, 2004; (ii) *all* of your purchases, acquisitions, and sales of KV's publicly traded securities which took place at any time beginning June 15, 2004 through, and including, [date]; and (iii) proof of your holdings of in KV's publicly traded securities as of the close of trading on [date], whether such purchases, acquisitions, sales or transactions resulted in a profit or a loss. Failure to report all such transactions may result in the rejection of your claim.

3. List each purchase, acquisition, sale and transaction in the Class Period separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day and year of each such transaction you list.

4. Copies of broker confirmations or other documentation of your purchases, acquisitions, sales or transactions in in KV's publicly traded securities must be attached to your claim. **DO NOT SEND ORIGINALS.** Failure to provide this documentation could delay verification of your claim or result in rejection of your claim. The Settling Parties and the Claims Administrator do not independently have information about your investments in in KV's publicly traded securities. The Claims Administrator may also request additional information as needed to efficiently and reliably calculate your losses.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

*KV Pharmaceutical Securities Action*  
**08-CV-1859**  
**PROOF OF CLAIM FORM**

Must be Postmarked No Later Than:  
\_\_\_\_\_, 2014

Please Type or Print

**PART I: CLAIMANT IDENTIFICATION**

\_\_\_\_\_  
Beneficial Owner's Name (First, Middle, Last)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Foreign Province

\_\_\_\_\_  
Foreign Country

\_\_\_\_\_  
Social Security Number or  
Employer Identification Number

Check appropriate box:

- |  |                                       |                                       |
|--|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Individual or Sole Proprietor | <input type="checkbox"/> Pension Plan | <input type="checkbox"/> Estate       |
| <input type="checkbox"/> Corporation                   | <input type="checkbox"/> Partnership  | <input type="checkbox"/> Trust        |
| <input type="checkbox"/> IRA                           | <input type="checkbox"/> Other        | <input type="checkbox"/> Joint Owners |

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (work)

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (home)

\_\_\_\_\_  
E-mail address

\_\_\_\_\_  
Facsimile Number

Were your shares held in “street name” (i.e., in the name of a stock broker or other nominee)? If so, that broker or nominee is the Record Owner and you are required to fill in the following line.

\_\_\_\_\_  
 Record Owner’s Name (if different from beneficial owner listed above); e.g., brokerage firm, bank, nominee, etc.

**PART II: SCHEDULE OF TRANSACTIONS IN KV PUBLICLY TRADED SECURITIES**

**KV CLASS A STOCK**

- A. Number of shares of KV Class A stock held at the beginning of trading on June 15, 2004: \_\_\_\_\_
- B. Purchases or other acquisitions, including by way of exchange, conversion or otherwise (on or after June 15, 2004 through and including [date]) of KV Class A stock:

	<b>Trade Date Month/Day/Year</b>	<b>Number of Shares Purchased or Acquired</b>	<b>Total Purchase Price*</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

- C. Sales or other deliveries, including by way of exchange or otherwise (on or after June 15, 2004 through and including [date]) of KV Class A stock:

	<b>Trade Date Month/Day/Year</b>	<b>Number of Shares Sold</b>	<b>Total Sales Price*</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

D. Number of shares of KV Class A stock held at the close of trading on [date]:  
\_\_\_\_\_

**\* Excluding taxes, fees and commissions.**

**KV CLASS B STOCK**

A. Number of shares of KV Class B stock held at the beginning of trading on June 15, 2004: \_\_\_\_\_

B. Purchases or other acquisitions, including by way of exchange, conversion or otherwise (on or after June 15, 2004 through and including [date]) of KV Class B stock:

	<b>Trade Date Month/Day/Year</b>	<b>Number of Shares Purchased or Acquired</b>	<b>Total Purchase Price*</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

C. Sales or other deliveries, including by way of exchange or otherwise (on or after June 15, 2004 through and including [date]) of KV Class B stock:

	<b>Trade Date Month/Day/Year</b>	<b>Number of Shares Sold</b>	<b>Total Sales Price*</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

D. Number of shares of KV Class B stock held at the close of trading on [date]:  
\_\_\_\_\_

**\* Excluding taxes, fees and commissions.**

**KV 7% CUMULATIVE CONVERTIBLE PREFERRED**

- A. Number of shares of KV Convertible Preferred held at the beginning of trading on June 15, 2004: \_\_\_\_\_
  
- B. Purchases or other acquisitions, including by way of exchange, conversion or otherwise (on or after June 15, 2004 through and including [date]) of KV Convertible Preferred:

	<b>Trade Date Month/Day/Year</b>	<b>Number of Shares Purchased or Acquired</b>	<b>Total Purchase Price*</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

- C. Sales or other deliveries, including by way of exchange or otherwise (on or after June 15, 2004 through and including [date]) of KV Convertible Preferred:

	<b>Trade Date Month/Day/Year</b>	<b>Number of Shares Sold</b>	<b>Total Sales Price*</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

- D. Number of shares of KV Convertible Preferred held at the close of trading on [date]: \_\_\_\_\_

**\* Excluding taxes, fees and commissions.**

**KV CONTINGENT CONVERTIBLE SUBORDINATED NOTE DUE 2033**

A. Number of KV Convertible Notes held at the beginning of trading on June 15, 2004: \_\_\_\_\_

B. Purchases or other acquisitions, including by way of exchange, conversion or otherwise (on or after June 15, 2004 through and including [date]) of KV Convertible Notes:

	<b>Trade Date Month/Day/Year</b>	<b>Number of Notes Purchased or Acquired</b>	<b>Total Purchase Price*</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

C. Sales or other deliveries, including by way of exchange or otherwise (on or after June 15, 2004 through and including [date]) of KV Convertible Notes:

	<b>Trade Date Month/Day/Year</b>	<b>Number of Notes Sold</b>	<b>Total Sales Price*</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

D. Number of KV Convertible Notes held at the close of trading on [date]:  
\_\_\_\_\_

\* Excluding taxes, fees and commissions.

If you require additional space, attach extra schedules in the same format as above. Sign and print your name and include your Social Security or employer identification number and full account name on each additional page.

**YOU ARE NOT FINISHED, PLEASE READ THE RELEASE AND SIGN ON PAGE \_\_\_\_\_  
BELOW. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN  
PROCESSING OR THE REJECTION OF YOUR CLAIM.**

**V. SUBMISSION TO THE JURISDICTION OF THE COURT  
AND ACKNOWLEDGMENTS**

I (We) submit this Proof of Claim under the terms of the Stipulation and Agreement of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Eastern District of Missouri with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I (we) will be bound by and subject to the terms of any Final Order and Judgment that may be entered in the Action. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim covering the same purchases, acquisitions or sales or holdings of KV publicly traded securities during the Class Period and know of no other Person having done so on my (our) behalf.

**VI. RELEASE**

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Released Claims each and all of the Released Defendant Parties as those terms and terms related thereto are defined in the accompanying Notice.

2. This release shall be of no force or effect unless and until the Court approves the Stipulation and the Effective Date (as defined in the Stipulation) has occurred.

3. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

4. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases, acquisitions, and sales and other transactions in KV publicly traded securities which occurred during the Class Period and the number of shares and/or notes held by me (us) at the beginning of trading on June 15, 2004, and at the close of trading on [date].

5. I (We) hereby warrant and represent that I am (we are) not excluded from the Class as defined herein and in the Notice.

**CERTIFICATION**

UNDER THE PENALTY OF PERJURY, I (WE) CERTIFY THAT:

- 1. The number shown on this form is my correct SSN, TIN or EIN;
- 2. I am/we are not subject to backup withholding. (If you have been notified by the IRS that you are subject to backup withholding, strike out the previous sentence.); and
- 3. The foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_.  
(Month / Year) (City) (State / Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing, e.g., Beneficial Purchaser, Executor or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A  
SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and certification. If this claim is being made on behalf of joint claimants, both must sign.
2. Remember to attach supporting documentation. Do not highlight the Proof of Claim form or supporting documentation.
3. Do not send original stock certificates or other original documentation; please send only copies. These items cannot be returned to you by the Claims Administrator.
4. Keep a copy of your Proof of Claim form for your records.
5. The Claims Administrator will acknowledge receipt of your Proof of Claim by mail, within 60 days. **Your claim is not deemed by the Claims Administrator to be submitted unless you receive an acknowledgement postcard.** If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator. Also, you can submit your claim using a service that provides you with proof of mailing, such as: registered or certified mail, return receipt requested; express mail that does not waive signature; or courier service.
6. If you move and/or change your name, please inform the Claims Administrator of your new address and/or name.

## **Exhibit A-3**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

	x	
	:	
PUBLIC PENSION FUND GROUP, et al.	:	No.: 4:08-CV-1859 (CEJ)
	:	
v.	:	
	:	
KV PHARMACEUTICAL COMPANY, et al.	:	
	:	
	:	
	:	
	x	

**TO: ALL PERSONS OR ENTITIES THAT PURCHASED OR OTHERWISE ACQUIRED THE PUBLICLY TRADED SECURITIES OF KV PHARMACEUTICAL COMPANY (“KV,” “K-V,” OR THE “COMPANY”) DURING THE PERIOD BETWEEN JUNE 15, 2004 AND JANUARY 23, 2009, INCLUSIVE (THE “CLASS PERIOD”), AND WERE ALLEGEDLY DAMAGED THEREBY (THE “CLASS”).**

**YOU ARE HEREBY NOTIFIED**, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an order of the Court, that the Class in the above-captioned litigation (“Action”) has been preliminarily certified for the purposes of settlement only and that a settlement between the Norfolk County Retirement System and the State-Boston Retirement System (“Lead Plaintiffs”), KV, Marc S. Hermelin (“Hermelin”, and together with KV, “Defendants”), David Van Vliet (“Van Vliet”), and Rita Bleser (“Bleser”, and together with Van Vliet, “Former Defendants”), in the amount of \$12,800,000, has been proposed by the Settling Parties.

A hearing will be held before the Honorable Carol E. Jackson of the United States District Court for the Eastern District of Missouri in the Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, Courtroom 14 North, St. Louis, MO 63102 at \_\_:\_\_\_ \_\_.m., on \_\_\_\_\_, 2014 to, among other things: determine whether the proposed Settlement

should be approved by the Court as fair, reasonable, and adequate; determine whether, thereafter, this Action should be dismissed with prejudice as to the Defendants as set forth in the Stipulation and Agreement of Settlement, dated as of \_\_\_\_ \_ 2014; determine whether the proposed Plan of Allocation for distribution of the settlement proceeds should be approved as fair and reasonable; and consider the application of Lead Counsel for an award of attorneys' fees and reimbursement of litigation expenses. The Court may change the date of the hearing without providing another notice.

**IF YOU ARE A MEMBER OF THE CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO SHARE IN THE NET SETTLEMENT FUND.** If you have not yet received the full printed Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses (the "Notice") and a Proof of Claim and Release Form ("Proof of Claim"), you may obtain copies of these documents by contacting the Claims Administrator:

*KV Pharmaceutical Securities Action*  
Claims Administrator  
c/o \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_ - \_\_\_\_ - \_\_\_\_; Fax: \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
[e-mail]  
www.\_\_\_\_\_

Inquiries, other than requests for information about the status of a claim, may also be made to Lead Counsel.

LABATON SUCHAROW LLP  
Jonathan M. Plasse, Esq.  
Javier Bleichmar, Esq.  
140 Broadway  
New York, NY 10005  
Tel: (888) 219-6877  
www.labaton.com  
settlementquestions@labaton.com

If you are a Class Member, to be eligible to share in the distribution of the Settlement proceeds, you must submit a Proof of Claim *postmarked no later than* \_\_\_\_\_, 2014.

To exclude yourself from the Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Notice so that it is *received no later than* \_\_\_\_\_, 2014. If you are a putative Class Member and do not exclude yourself from the Class, you will be bound by the Final Order and Judgment.

Any objections to the proposed Settlement, Plan of Allocation, and/or application for attorneys' fees and reimbursement of expenses must be filed with the Court and served on counsel for the Settling Parties in accordance with the instructions set forth in the Notice, so that they are *received no later than* \_\_\_\_\_, 2014.

If you are a Class Member and do not timely submit a valid Proof of Claim, you will not be eligible to share in the Net Settlement Fund, but you nevertheless will be bound by the Final Order and Judgment.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE.** If you have any questions about the settlement, you may contact Lead Counsel at the addresses listed above.

DATED: \_\_\_\_\_

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

## **Exhibit B**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

	x	
	:	
PUBLIC PENSION FUND GROUP, et al.	:	No.: 4:08-CV-1859 (CEJ)
	:	
v.	:	
	:	
KV PHARMACEUTICAL COMPANY, et al.	:	
	:	
	:	
	:	
	x	

**[PROPOSED] FINAL ORDER AND JUDGMENT**

WHEREAS:

A. As of December 20, 2013, the Norfolk County Retirement System and the State-Boston Retirement System (“Lead Plaintiffs”), on behalf of themselves and the Class, and KV Pharmaceutical Company (“KV or the “Company”), Marc S. Hermelin (the “Individual Defendant”, and together with KV, “Defendants”), David Van Vliet and Rita Bleser (the “Former Defendants”) entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”).

B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered \_\_\_\_\_, 2013 (the “Preliminary Approval Order”), the Court scheduled a hearing for \_\_\_\_\_, 2014, at \_\_\_\_:\_\_\_\_ \_\_.m. (the “Settlement Hearing”) to, among other things: (i) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate, and

should be approved by the Court; and (ii) determine whether a judgment as provided for in the Stipulation should be entered.

C. The Court ordered that the Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses (the "Notice") and a Proof of Claim and Release form ("Proof of Claim"), substantially in the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid, on or before fifteen (15) business days after the date of entry of the Preliminary Approval Order ("Notice Date") to all potential Class Members who could be identified through reasonable effort, and that a Summary Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses (the "Summary Notice"), substantially in the form attached to the Preliminary Approval Order as Exhibit 3, be published in *Investor's Business Daily* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date.

D. The Notice and the Summary Notice advised potential Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the Settling Parties such that they were received by \_\_\_\_\_, 2014.

E. The provisions of the Preliminary Approval Order as to notice were complied with.

F. On \_\_\_\_\_, 2014, Lead Plaintiffs moved for final approval of the Settlement, as set forth in the Preliminary Approval Order. The Settlement Hearing was duly held before this Court on \_\_\_\_\_, 2014, at which time all interested Persons were afforded the opportunity to be heard.

G. This Court has duly considered Lead Plaintiffs' motion, the affidavits, declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the submissions and arguments presented with respect to the proposed Settlement.

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on \_\_\_\_\_; and (b) the Notice, which was filed with the Court on \_\_\_\_\_.

Capitalized terms not defined in this Judgment are as defined in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Class Members.

3. The Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies, for the purposes of the Settlement only, pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Class of: all Persons who purchased or otherwise acquired the publicly traded securities of KV during the period between June 15, 2004 and January 23, 2009, inclusive (the "Class Period"), and were allegedly damaged thereby. Excluded from the Class are: (i) Defendants; (ii) Former Defendants; (iii) the officers and directors of the Company; (iv) any subsidiaries and affiliates of the Company; (v) members of the immediate families of the Individual Defendant and the Former Defendants and their legal representatives, heirs, successors or assigns; (vi) any entity in which Defendants and Former Defendants have or had a controlling interest; and (vii) any benefit plan on behalf of employees of the Company and its subsidiaries or affiliates. Also excluded from the Class are any Class Members who properly exclude themselves by filing a valid and timely request for exclusion in accordance with the

requirements set forth in the Notice. A list of all valid and timely requests for exclusion allowed by the Court is annexed hereto as Exhibit A.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies Lead Plaintiffs the Norfolk County Retirement System and State-Boston Retirement System as Class Representatives for the Class; and finally appoints Labaton Sucharow LLP as Class Counsel for the Class and Danna McKittrick, P.C. as Liaison Counsel for the Class.

5. The notification provided for and given to the Class (i) was in compliance with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise Class Members of the effect of the Settlement, of the proposed Plan of Allocation, of Lead Counsel's request for an award of attorney's fees and reimbursement of litigation expenses incurred in connection with the prosecution of the Action, of Class Members' right to object to the Settlement, the Plan of Allocation, and/or Lead Counsel's request for an award of attorney's fees and reimbursement of litigation expenses, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), and all other applicable law and rules.

6. The Court has considered each of the objections to the Settlement submitted pursuant to Rule 23(e)(5) of the Federal Rules of Civil Procedure. The Court finds and concludes that each of the objections is without merit, and they are hereby overruled.

7. In light of the benefits to the Class, the complexity, expense and possible duration of further litigation against Defendants, the risks of establishing liability and damages, and the costs of continued litigation, the Court hereby fully and finally approves the Settlement as set forth in the Stipulation in all respects, and finds that the Settlement is, in all respects fair, reasonable and adequate, and in the best interests of Lead Plaintiffs, the Class, and the Class Members. This Court further finds the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of Lead Plaintiffs, the Class, Defendants, and Former Defendants. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation.

8. The Consolidated Amended Complaint for Violations of the Federal Securities Laws, filed on May 22, 2009, is hereby dismissed in its entirety, with prejudice, and without costs to any Settling Party, except as otherwise provided in the Stipulation.

9. The Court further finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

10. Upon the Effective Date, Lead Plaintiffs and each and every other Class Member, on behalf of themselves and each of their respective agents, representatives, heirs, executors, trustees, administrators, predecessors, successors and assigns, shall be deemed to have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Claims as against each and every one of the Released Defendant Parties and shall

forever be BARRED, ENJOINED AND RESTRAINED from commencing, instituting, prosecuting or maintaining any of the Released Claims against any of the Released Defendant Parties.

11. Upon the Effective Date, Defendants and Former Defendants, on behalf of themselves and each of their respective agents, representatives, heirs, executors, trustees, administrators, predecessors, successors and assigns, shall be deemed to have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Defendants' Claims as against each and every one of the Released Plaintiff Parties and shall forever be BARRED, ENJOINED AND RESTRAINED from commencing, instituting, prosecuting or maintaining any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

12. Pursuant to the PSLRA, upon the Effective Date, the Released Defendant Parties are discharged from all claims for contribution and indemnification that have been or may hereafter be brought by or on behalf of any Person, based upon, relating to, or arising out of the Action. Upon the Effective Date, any and all Persons are permanently BARRED, ENJOINED and RESTRAINED from commencing, prosecuting or asserting any and all claims for contribution and indemnification based upon, relating to, or arising out of the Action, whether arising under state, federal or common law, as claims, cross-claims, counterclaims, or third-party claims, in this Action or as a separate action, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative proceeding, or other forum (collectively, the "Barred Claims") against the Released Defendant Parties; and the Released Defendant Parties are permanently BARRED, ENJOINED and RESTRAINED from commencing, prosecuting or asserting any and all Barred Contribution Claims against any Person, other than a Person whose

liability to the Class has been extinguished pursuant to the Settlement and this Judgment. Any final verdict or judgment obtained by or on behalf of Lead Plaintiffs, the Class or any Class Member in the Action shall be reduced as provided by the PSLRA.

13. Each Class Member, whether or not such Class Member executes and delivers a Proof of Claim, is bound by this Judgment, including, without limitation, the release of claims as set forth in the Stipulation.

14. This Judgment and the Stipulation, whether or not consummated, and any discussions, negotiations, proceedings or agreements relating to the Stipulation, the Settlement, and any matters arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of Defendants, Former Defendants, Lead Plaintiffs, or Class Members for any purpose other than in an action to enforce the terms hereof, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants and /or Former Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants and/or Former Defendants with respect to the truth of any allegation by Lead Plaintiffs and the Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants and/or Former Defendants or any person or entity whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants or Former Defendants as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by the Defendants and/or Former Defendants, or against or to the

prejudice of Lead Plaintiffs or any other members of the Class as evidence of any infirmity in the claims of Lead Plaintiffs or the other members of the Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendants and/or Former Defendants or against Lead Plaintiffs or any other members of the Class, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity or wrongdoing, or in any way referred to for any other reason against or to the prejudice of any of the Settling Parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement;

(d) do not constitute, and shall not be construed against Defendants, Former Defendants, Lead Plaintiffs, or any other members of the Class, as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

(e) do not constitute, and shall not be construed as or received in evidence as an admission, concession, or presumption against Lead Plaintiffs or any other members of the Class that any of their claims are without merit or infirm or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

15. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all

orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

17. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

18. The Settling Parties are hereby directed to consummate the Stipulation and to perform its terms.

19. A separate order shall be entered regarding Lead Counsel's application for attorneys' fees and reimbursement of expenses as allowed by the Court. A separate order shall be entered regarding the proposed Plan of Allocation for the Net Settlement Fund. Such orders shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

20. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement; (ii) the allowance, disallowance or adjustment of any Class Member's claim on equitable grounds and any award or distribution of the Settlement Fund; (iii) disposition of the Settlement Fund; (iv) hearing and determining applications for attorneys' fees, costs, interest and reimbursement of expenses in the Action; (v) all Settling Parties for the purpose of construing, enforcing and administering the Settlement and this Judgment; and (vi) other matters related or ancillary to the foregoing. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

Dated: \_\_\_\_\_, 2014

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Honorable Carol E. Jackson  
UNITED STATES DISTRICT JUDGE