

EXECUTION COPY

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

In re VIROPHARMA INCORPORATED  
SECURITIES LITIGATION

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This Document Relates To:

ALL ACTIONS.

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) Civil Action No. 2:12-cv-02714

) CLASS ACTION

) STIPULATION AND AGREEMENT OF  
) SETTLEMENT

Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Stipulation and Agreement of Settlement (the “Settlement Agreement”)<sup>1</sup> is entered into between and among (a) Carpenters’ Local 27 Defined Benefit Trust Fund (“Lead Plaintiff”), on behalf of themselves and the Settlement Class; (b) defendant ViroPharma Incorporated (“ViroPharma” or the “Company”); and (c) the Individual Defendants, (together with ViroPharma, “Defendants”), by and through their respective duly authorized counsel.

Lead Plaintiff and Defendants (collectively the “Settling Parties”) intend for this Settlement Agreement to fully and finally compromise, resolve, discharge, release and settle the Released Claims, as defined herein, and to dismiss this Action with prejudice, subject to the terms and conditions set forth below and without any admission or concession as to the merits of any claim or defense by Lead Plaintiff or Defendants.

WHEREAS:

A. On May 17, 2012, a Complaint for Violations of the Federal Securities Laws, styled *Castro v. ViroPharma Incorporated, and Vincent J. Milano*, was filed in the United States District Court for the Eastern District of Pennsylvania. (ECF No. 1)

B. On August 10, 2012, pursuant to provisions of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4 (the “PSLRA”), the Court appointed the Carpenters’ Local 27 Defined Benefit Fund as Lead Plaintiff in this Action and approved its selection of Labaton Sucharow LLP (“Lead Counsel”) to serve as Lead Counsel to represent the putative class. The Court also amended the caption to read *In re ViroPharma Incorporated Securities Litigation*, Civil Action No. 2:12-02714. (ECF No. 24)

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<sup>1</sup> Capitalized terms not otherwise defined shall have the meanings provided in the definitions of the Stipulation, ¶1(a) through ¶1(tt), and the definitions provided in these subparagraphs shall control over any definitions found otherwise herein.

C. On October 19, 2012, Lead Plaintiff filed the Amended Class Action Complaint for Violations of the Federal Securities Laws (the “Complaint”), asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) against Defendants. (ECF No. 35)

D. On December 20, 2012, Defendants moved to dismiss the Complaint. On February 4, 2013, Lead Plaintiff filed its opposition to Defendants’ Motion to Dismiss the Complaint, to which Defendants replied on February 25, 2013 and Lead Plaintiff filed a sur-reply on March 11, 2013. On June 26, 2013, Defendants filed a supplemental brief in further support of their motion to dismiss the Complaint. On July 3, 2013, Lead Plaintiff filed a response to Defendants’ supplemental brief. (ECF Nos. 41-44, 52, 54-57) A hearing on the Motion to Dismiss was held on June 10, 2013.

E. On May 16, 2014, the Court entered an order denying Defendants’ Motion to Dismiss the Complaint. (ECF No. 61)

F. On May 30, 2014, Defendants moved for certification of interlocutory appeal of the May 16, 2014 Order denying their Motion to Dismiss. (ECF No. 63) Concurrently Defendants filed a Motion to Stay Discovery pending the resolution of the motion for certification of interlocutory appeal. (ECF No. 64) Lead Plaintiff opposed both motions. (ECF No. 69)

G. On July 25, 2014, the Court granted Defendants’ Motion for Stay of Discovery pending resolution of the motion for certification of interlocutory appeal. (ECF No. 77)

H. On September 5, 2014, the Court denied Defendants’ request to certify its May 16, 2014 Order for interlocutory appeal and lifted the stay of discovery. (ECF No. 78)

I. On July 15, 2014, Defendants filed their Answer denying the material allegations of the Complaint, asserting affirmative defenses, and demanding a jury trial. (ECF No. 72)

J. Lead Plaintiff, through Lead Counsel, conducted a thorough investigation relating to the claims and underlying events and transactions of the Action. This process included reviewing

and analyzing: (i) ViroPharma's filings with the Securities and Exchange Commission (the "SEC"); (ii) regulatory filings and reports; (iii) securities analysts' reports, public statements, investor conference transcripts, press releases, media reports, and other public statements issued by the Company; (iv) documents received from the Food and Drug Administration ("FDA") in response to a Freedom of Information Act ("FOIA") request and filings from actions filed by ViroPharma against the FDA; and (v) more than 40,000 core non-public documents produced by Defendants in anticipation of mediation. Lead Counsel also located and interviewed numerous former employees of the Company and other non-parties with knowledge of the facts at issue, issued subpoenas to third-parties with potentially relevant information, and consulted with several who, in Lead Plaintiff's view, are experienced experts in differing disciplines and possessing different areas of expertise including an economist with significant experience analyzing and evaluating complex issues regarding damages and loss causation as well as an expert in the biopharmaceutical industry and FDA regulations.

K. On January 5, 2015, Lead Plaintiff and Defendants, or their representatives, along with representatives of insurers of ViroPharma, among others, participated in a lengthy arm's-length mediation session facilitated by the Honorable Layn Phillips, United States District Court Judge (Ret.) ("Judge Phillips"), a private mediator engaged by the Settling Parties. In connection with the mediation process, the Settling Parties submitted detailed pre-mediation statements to Judge Phillips, and exchanged these statements with each other. The statements summarized the Settling Parties' respective settlement positions and included substantial documentation.

L. Between January 5, 2015 and February 5, 2015, the Settling Parties continued to participate in arm's-length settlement mediation communications with the assistance of Judge Phillips.

M. On February 5, 2015, the Settling Parties' arm's-length negotiations, facilitated by Judge Phillips, resulted in an agreement-in-principle between Lead Plaintiff and Defendants to settle this Action.

N. Lead Plaintiff believes that the claims asserted in the Action have merit and that the evidence developed to date supports the claims asserted. However, Lead Plaintiff and Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeal. Lead Plaintiff and Lead Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in complex matters such as the Action, as well as the difficulties and delays inherent in such action. Lead Counsel also are mindful of the inherent problems of proof and the possible defenses to the claims alleged in the Action. Based on their evaluation, Lead Plaintiff and Lead Counsel believe that the Settlement set forth in this Settlement Agreement confers substantial monetary benefits upon the Settlement Class and is in the best interest of the Settlement Class.

O. Defendants have denied and continue to deny all claims of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged in the Action, including any violations of the federal securities laws or any other legal obligation or duty potentially giving rise to the Released Claims. Defendants have denied and continue to deny each of the claims alleged by Lead Plaintiff on behalf of the Settlement Class, including all claims in the Complaint. Defendants believe that they have meritorious defenses to all claims asserted or that could have been asserted based on the allegations of the Complaint. Defendants also have denied and continue to deny, among other things, that: Lead Plaintiff and the Settlement Class have suffered damages; the prices of ViroPharma securities were artificially inflated by reason of the alleged misrepresentations, non-disclosures, or otherwise; and Lead Plaintiff and the Settlement Class were otherwise harmed in any other way by the conduct alleged in the Complaint. Moreover, Defendants

believe that the evidence developed to date supports their position and assert that the Action has no merit. Nonetheless, Defendants have concluded that continuation of the Action would be protracted and expensive, and have taken into account the uncertainty and risks inherent in any litigation, especially a complex case like this Action, and believe that the Settlement set forth in this Settlement Agreement is in their best interests.

P. Nothing in this Settlement Agreement, whether or not consummated, or in any proceedings relating to any settlement, or in any of the terms of any settlement, whether or not consummated, shall in any way be construed as, or deemed to be evidence of, an admission or concession on the part of Defendants with respect to any claim of any liability, fault, wrongdoing, or damage whatsoever, or any infirmity in any defense that Defendants have or could have asserted. Defendants are entering into this Settlement to eliminate the burden, expense, uncertainty, distraction and risk of further litigation.

NOW THEREFORE, without any admission or concession by Lead Plaintiff that the Action lacks merit, and without any admission or concession by Defendants of any liability or wrongdoing, or lack of merit in their defenses, it is hereby STIPULATED AND AGREED, by and among the Settling Parties to this Settlement Agreement, 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 an assessment of costs against any party or counsel, upon and subject to the following terms and conditions:

#### **CERTAIN DEFINITIONS**

1. As used in this Settlement Agreement and the exhibits annexed hereto, 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 above-captioned action titled *In re ViroPharma Incorporated Securities Litigation*, Civil Action No. 2:12-cv-02714, pending in the United States District Court for the Eastern District of Pennsylvania.

(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 Settlement Agreement and where none of the Settling Parties hereto elects to terminate this Settlement by reason of such variance.

(c) “Authorized Claimant” means a Settlement Class Member (or the duly authorized representative of such Settlement Class Member including, without limitation, its agents, administrators, executors, heirs, successors, and assigns) who timely submits a valid Proof of Claim and Release form to the Claims Administrator that is accepted for payment by the Court.

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

(e) “Class Period” means the period of time between December 14, 2011 and April 9, 2012, inclusive.

(f) “Company” means ViroPharma Incorporated.

(g) “Complaint” means the Amended Class Action Complaint for Violations of the Federal Securities Laws, filed in this Action on October 19, 2012 (ECF No. 35).

(h) “Court” means the United States District Court for the Eastern District of Pennsylvania.

(i) “Defendants” means ViroPharma and the Individual Defendants.

(j) “Defendants’ Counsel” means the law firm of Morgan, Lewis & Bockius LLP.

(k) “Distribution Order” means an order of the Court approving the Claims Administrator’s administrative determinations concerning the acceptance and rejection of the claims submitted in the Settlement 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.

(l) “Effective Date” means the date upon which the Settlement shall become effective, as set forth in ¶39 below.

(m) “Escrow Account” means the separate escrow account at a banking institution designated by Lead Counsel into which the Settlement Amount shall be deposited under this Settlement for the benefit of the Settlement Class.

(n) “Escrow Agent” means Labaton Sucharow LLP or its successor(s).

(o) “Fee and Expense Application” means the request for such amounts as the Court may award to Plaintiff’s Counsel to compensate them for their fees and pay them for their expenses in connection with the Action, which may include some or all of the following: (i) an award of attorneys’ fees; (ii) payment of expenses incurred in connection with prosecuting the Action, including, without limitation, expenses attributable to experts and/or consultants retained by Lead Counsel; (iii) any award to Lead Plaintiff for its reasonable costs and expenses (including lost wages) pursuant to the PSLRA; and (iv) interest on such attorneys’ fees and expenses at the same rate as earned by the Settlement Fund, from the date the Court orders such award until the date paid from the Settlement Fund.

(p) “Final” with respect to a court order, including, but not limited to, the Judgment or Alternative Judgment, means the later of: (i) if there is an appeal, 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 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* (or, if the date for taking an appeal or seeking review 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 to become Final, or otherwise preclude the Judgment or Alternative Judgment from becoming Final.

(q) "Immediate Family" or "Immediate Families" shall mean spouse, domestic partner, parents, grandparents, children, and grandchildren.

(r) "Individual Defendants" means Vincent J. Milano, Charles A. Rowland, Jr., Thomas F. Doyle, and J. Peter Wolf.

(s) "Judgment" means the Final Judgment and Order of Dismissal with Prejudice to be entered by the Court approving the Settlement, substantially in the form annexed hereto as Exhibit B.

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

(u) "Lead Plaintiff" means Carpenters' Local 27 Benefit Trust Fund.

(v) "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 Court-approved fees or expenses, including any award to Lead Plaintiff for its reasonable costs and expenses (including lost wages) pursuant to the PSLRA.

(w) “Notice” means the Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys’ Fees and Expenses (“Notice”), substantially in the form annexed hereto as Exhibit 1 to Exhibit A, which is to be mailed to Settlement Class Members pursuant to Court order.

(x) “Notice and Administration Expenses” means all costs, fees, and expenses incurred in connection with providing notice to the Settlement 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 potential Settlement 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; provided, however, that Notice and Administration Expenses shall not include any of the Fee and Expense Award.

(y) “Person” or “Persons” means an individual, partnership, firm, corporation, limited liability company, trust, governmental entity or any other form of entity or organization.

(z) “Plaintiff’s Counsel” means the law firms of Labaton Sucharow LLP, Robbins Geller Rudman & Dowd LLP, and Goldman Scarlato & Penny, P.C.

(aa) “Plan of Allocation” means the terms and procedures for allocating the Net Settlement Fund among, and distributing the Net Settlement Fund to, Authorized Claimants as proposed by Lead Counsel, with the approval of Lead Plaintiff, and set forth in the Notice, or such other plan of allocation as the Court shall approve.

(bb) “Preliminary Approval Order” means the proposed Court order preliminarily approving the Settlement and providing for notice, substantially in the form annexed hereto as Exhibit A.

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

(dd) “Qualified Settlement Fund” means a fund within the meaning of Treasury Regulation § 1.468B-1.

(ee) “Released Claims” means any and all claims, rights, causes of action, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations and arguments of every nature and description, including both known claims and Unknown Claims (defined below), whether arising under federal, state, local, foreign or statutory law, common law or administrative law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Lead Plaintiff or any other Settlement 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 ViroPharma’s Securities during the Class Period. For the avoidance of doubt, Released Claims do not include: (i) claims to enforce the Settlement; and (ii) any governmental or regulatory agency’s claims in any criminal or civil action against any of the Released Defendant Parties.

(ff) “Released Defendant Parties” means Defendants, and their respective current and former parents, subsidiaries, affiliates, trustees, officers, directors, principals, employees, agents, employers, controlling persons, partners, insurers, reinsurers, auditors, accountants, advisors, financial advisors, investment advisors, commercial bank lenders, investment bankers, creditors,

administrators, estates, legal representatives, heirs, attorneys, predecessors, successors or assigns, divisions, joint ventures, general or limited partners or partnerships, limited liability companies and any trust of which any Individual Defendant is the settlor or which is for the benefit of a member of their Immediate Family; and, as to each of the foregoing, their respective current and former legal representatives, heirs, successors and assigns.

(gg) “Released Defendants’ Claims” means all claims, rights and causes of action, controversies, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, allegations, arguments, and liabilities of every nature and description, whether known or Unknown Claims (as defined below), fixed or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, whether arising under federal, state, local, common or administrative law, or any other law, that the Defendants or any Released Defendant Party or their heirs, agents, executors, administrators, trustees, beneficiaries, predecessors, successors or assigns asserted, or could have asserted, against any of the Released Plaintiff Parties that arise out of, are based upon, involve, or relate in any way to the commencement, prosecution, settlement or resolution of the Action (other than claims to enforce the Settlement).

(hh) “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties, collectively.

(ii) “Released Plaintiff Parties” means each and every Lead Plaintiff, Settlement Class Member and Plaintiff’s Counsel, and their respective current and former parents, subsidiaries, affiliates, trustees, officers, directors, principals, employees, employers, controlling persons, agents, partners, insurers, reinsurers, auditors, accountants, advisors, financial advisors, investment advisors, commercial bank lenders, investment bankers, creditors, administrators, estates, legal representatives, heirs, attorneys, predecessors, successors or assigns, divisions, joint ventures, general or limited partners or partnerships, limited liability companies and any trust of which any

Lead Plaintiff, Settlement Class Member or Plaintiff's Counsel is the settlor or which is for the benefit of a member of their Immediate Family; and, as to each of the foregoing, their respective current and former legal representatives, heirs, successors and assigns.

(jj) "Settlement" means the settlement contemplated by this Settlement Agreement.

(kk) "Settlement Agreement" means this Stipulation and Agreement of Settlement and its accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

(ll) "Settlement Amount" means Eight Million Dollars (\$8,000,000.00) in cash.

(mm) "Settlement Class" or "Settlement Class Member" means all Persons that purchased or otherwise acquired ViroPharma Securities between December 14, 2011 and April 9, 2012, inclusive, and were damaged thereby. Excluded from the Settlement Class are: Defendants; the Company's officers, directors, and employees during the Class Period; the Company's successors, and assigns; any person, entity, firm, trust, corporation or other entity related to, affiliated with, or controlled by any of the Defendants, as well as the Immediate Families of the Individual Defendants. Also excluded from the Settlement Class are those Persons who submit valid and timely requests for exclusion from the Settlement Class in accordance with the requirements set forth in the Notice.

(nn) "Settlement Fund" means the Settlement Amount and any interest earned thereon.

(oo) "Settlement Hearing" means the hearing to be held by the Court to determine, among other things, whether to grant final approval of the Settlement, as contemplated by the Preliminary Approval Order.

(pp) “Settling Party” or “Settling Parties” means Defendants and Lead Plaintiff, on behalf of themselves and the other Settlement Class Members.

(qq) “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 annexed hereto as Exhibit 3 to Exhibit A.

(rr) “Taxes” means all federal, state, or local taxes of any kind on any income earned by the Settlement Fund and all 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).

(ss) “Unknown Claims” means any and all Released Claims which Lead Plaintiff, any other Settlement Class Member or any other Released Plaintiff Party does 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 any Defendant or any other Released Defendant Party does 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. With respect to any and all Released Claims and Released Defendants’ Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and the Defendants shall expressly, and each other Settlement Class Member, Released Plaintiff Party and Released Defendant Party shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, expressly waived and relinquished any and all provisions, rights and benefits conferred by Cal. Civ. Code § 1542, or 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 Plaintiff, the other Settlement Class Members, the Released Plaintiff Parties, the Defendants and the Released Defendant Parties acknowledge that they may hereafter discover facts in addition to or different from those which any of them or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims and the Released Defendants' Claims, but Lead Plaintiff and the Defendants shall expressly, fully, finally and forever settle and release, and each other Settlement Class Member, Released Plaintiff Parties and Released Defendant Parties 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 that now exist or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts, without regard to whether those facts were concealed or hidden. Lead Plaintiff and the Defendants acknowledge, and other Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was separately bargained for and was a key element of the Settlement.

(tt) "ViroPharma Security(ies)" means ViroPharma's publicly traded common stock, its 2.0% Senior Convertible Notes due 2017 ("Notes"), and its exchange-traded call and put options.

## **SCOPE AND EFFECT OF SETTLEMENT**

2. The obligations incurred pursuant to this Settlement Agreement are, subject to approval by the Court and such approval becoming Final, in full and final disposition of 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, Lead Plaintiff and Defendants 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 Settlement Class as defined in ¶1(mm); (ii) the certification of the Lead Plaintiff as Class Representative for the Settlement Class; and (iii) the appointment of Lead Counsel as Class Counsel for the Settlement Class.

4. By operation of the Judgment or Alternative Judgment, as of the Effective Date, Lead Plaintiff and each and every other Settlement Class Member, on behalf of themselves and each of their respective heirs, agents, representatives, attorneys, subsidiaries, affiliates, executors, trustees, administrators, predecessors, successors, assigns, any trust of which Lead Plaintiff or any Settlement Class Member is the settlor or is for the benefit of a member of their Immediate Family, and any entity acting on behalf of Lead Plaintiff or any Settlement Class Member, in their capacity as Lead Plaintiff or Settlement Class Member, shall: (i) 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; (ii) be barred and enjoined from commencing, instituting, prosecuting or maintaining any of the Released Claims against any of the Released Defendant Parties; and (iii) be deemed to have covenanted not to sue any Released Defendant Party on the basis of any Released Claim or, unless compelled by operation of law, to assist any person in commencing or maintaining any suit relating to any Released Claim against any Released Defendant Party. The foregoing release is given regardless of whether such Lead Plaintiff or Settlement Class Members have: (i) executed and delivered a Proof of Claim; (ii) received the Notice; (iii) participated in the Settlement Fund; (iv) filed an objection to the Settlement, the Plan of Allocation, or any application by Plaintiff's Counsel for attorneys' fees and expenses; or (v) had their claims



approved or allowed. Nothing contained herein shall, however, bar any action or claim to enforce the terms of this Settlement Agreement or the Judgment or Alternative Judgment.

5. By operation of the Judgment or Alternative Judgment, as of the Effective Date, Defendants, on behalf of themselves and each of their respective heirs, agents, representatives, attorneys, affiliates, executors, trustees, administrators, predecessors, successors and assigns shall: (i) 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; (ii) be barred and enjoined from commencing, instituting, prosecuting or maintaining any of the Released Defendants' Claims against any of the Released Plaintiff Parties; and (iii) be deemed to have covenanted not to sue any Released Plaintiff Party on the basis of any Released Defendants' Claim or, unless compelled by operation of law, to assist any person in commencing or maintaining any suit relating to any Released Defendants' Claim against any Released Plaintiff Party. Nothing contained herein shall, however, bar any action or claim to enforce the terms of this Settlement Agreement or the Judgment or Alternative Judgment.

#### **THE SETTLEMENT CONSIDERATION**

6. In full settlement of the claims asserted in the Action against Defendants and in consideration of the releases specified in ¶4 and ¶5 above, ViroPharma shall pay, or cause to be paid, the Settlement Amount in cash into the Escrow Account on or before twenty-one (21) business days after both: (i) the Court has entered the Preliminary Approval Order; and (ii) Lead Counsel has provided to Defendants' Counsel all information necessary to effectuate a transfer of funds, including but not limited to, wiring instructions, payment address, and a complete and signed W-9 form for the Settlement Fund that reflects a valid taxpayer identification number.

7. With the sole exception of ViroPharma's obligation to secure payments into the Escrow Account as provided for in ¶6, the Released Defendant Parties and Defendants' Counsel

shall have no obligation to make or cause to be made any other payment into the Escrow Account pursuant to this Settlement Agreement, and shall have no responsibility or liability with respect to the Escrow Account or the monies maintained in the Escrow Account, including, without limitation, any responsibility or liability related to any fees, Taxes, investment decisions, maintenance, supervision or distributions of any portion of the Settlement Amount.

8. The Settling Parties agree to cooperate in expeditiously seeking preliminary and final approval of the Settlement.

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

9. 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 PSLRA and awarded to Lead Plaintiff by the Court; (v) to pay any other Court-awarded fees and expenses; and (vi) to pay the claims of Authorized Claimants.

10. The Net Settlement Fund shall be distributed to Authorized Claimants as provided in ¶22 through ¶35 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 Settlement Agreement, 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 and 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.

11. 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 ¶11, 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” (as defined in Treas. Reg. § 1.468B-2(k)(3)) shall be Lead Counsel or their 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 ¶11.

(b) All Taxes shall be paid solely out of the Escrow Account. In all events, the Released Defendant Parties and Defendants’ Counsel 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 are owed by any of the Defendants on any interest earned on the funds on deposit in the Escrow Account, such amounts shall also be paid out of the Escrow Account. The Settling Parties agree that Defendants shall be entitled to reimbursement for any Taxes, which shall also be paid out of the Escrow Account.

(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 Lead Counsel out of the Escrow Account without prior order from the Court or approval by Defendants, and Lead Counsel 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(l)). 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 paragraph.

12. This is not a claims-made settlement. As of the Effective Date, neither Defendants nor any Person making payments on their behalf shall have any right to the return of the Settlement Fund or any portion thereof for any reason.

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

13. Plaintiff's Counsel will apply to the Court for an award from the Settlement Fund of: (i) attorneys' fees and (ii) payment of litigation expenses incurred in prosecuting the Action, plus any interest on such amounts at the same rate and for the same periods as earned by the Settlement Fund. Defendants will take no position with respect to the Fee and Expense Application.

14. The amount of attorneys' fees and expenses awarded is within the sole discretion of the Court. Any Court-awarded attorneys' fees and expenses awarded shall be paid from the Settlement Fund to Plaintiff's Counsel immediately after entry of the Order awarding such attorneys'

fees and expenses, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to the obligations of Plaintiff's Counsel pursuant to ¶15. Lead Counsel shall allocate any Court-awarded attorneys' fees and expenses among all Plaintiff's Counsel.

15. Any payment of attorneys' fees and litigation expenses pursuant to ¶14 above shall be subject to Plaintiff's Counsel's obligation to make refunds or repayments to the Settlement Fund of any paid amounts, plus accrued interest at the same rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Settlement Agreement 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 court order. Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than twenty (20) business days after receiving notice from a court of appropriate jurisdiction of the termination of the Settlement or notice of any reduction of the award of attorneys' fees and/or litigation expenses by Final court order. Lead Plaintiff and Plaintiff's Counsel may not cancel or terminate the Settlement Agreement or the Settlement based on the Court's or any appellate court's ruling with respect to the Fee and Expense Application.

16. With the sole exception of ViroPharma making, or causing to be made, the payment into the Escrow Account as provided for in ¶6, the Released Defendant Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment to Plaintiff's Counsel or any other plaintiff's counsel that may occur at any time.

17. The Released Defendant Parties shall have no responsibility for, and no liability whatsoever with respect to, the allocation of any attorneys' fees or expenses among Plaintiff's Counsel, or any other plaintiff's counsel, or any other Person who may assert some claim thereto, or any fee or expense awards the Court may make in the Action.

18. The Released Defendant Parties 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 Settlement Class Members, whether or not paid from the Escrow Account.

19. The procedure for and the allowance or disallowance by the Court of any Fee and Expense Application are not necessary terms of the Settlement set forth in this Settlement Agreement, and are separate from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in the Settlement Agreement. Any order or proceeding relating to any Fee and Expense Application, including an award of attorneys' fees in an amount less than the amount requested by Plaintiff's Counsel, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement, or affect or delay the finality of the Judgment or Alternative Judgment approving the Settlement Agreement 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 Settlement Agreement.

#### **ADMINISTRATION EXPENSES**

20. Except as otherwise provided herein, the Settlement Fund shall remain in escrow pending: (i) final Court approval of the Settlement; (ii) the expiration of all rights of appeal of the Judgment or Alternative Judgment; and (iii) the final denial of any and all appeals or objections or collateral attacks or challenges to the Settlement.

21. Prior to the Effective Date, without further approval from Defendants or further order of the Court, Lead Counsel may expend up to \$250,000 from the Settlement Fund to pay the Notice and Administration Expenses actually incurred. Such costs and expenses shall include, without limitation, the actual costs of publication, printing and mailing the Notice and Summary Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, and the

administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims. Taxes and fees related to the Escrow Account and investment of the Settlement Fund may be paid as incurred, without further approval of Defendants or further order of the Court. After the Effective Date, without further approval of Defendants or further order of the Court, Notice and Administration Expenses may be paid as incurred.

### **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

22. Lead Counsel will apply to the Court for a Distribution Order, on notice to Defendants' Counsel, approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted in the Settlement, and, if the Effective Date has occurred, directing the payment of the Net Settlement Fund to Authorized Claimants.

23. The Claims Administrator shall administer the Settlement under Lead Counsel's supervision and subject to the jurisdiction of the Court. Except as stated in ¶6 and ¶37 hereof, the Released Defendant Parties and 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 Settlement Class in connection with such administration.

24. 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 included in the Notice, or in such other plan of allocation as the Court may approve.

25. Defendants will take no position with respect to the Plan of Allocation. The Plan of Allocation is a matter separate and apart from the Settlement between Lead Plaintiff and Defendants,

and any Court decision concerning the Plan of Allocation shall not affect the validity or finality of the Settlement. The Plan of Allocation is not a necessary term of this Settlement Agreement and it is not a condition of this Settlement Agreement that the Court approve any particular plan of allocation. Lead Plaintiff and Lead Counsel may not cancel or terminate the Settlement Agreement or the Settlement in accordance with ¶40 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. The Released Defendant Parties and 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.

26. 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. Lead Counsel shall continue to reallocate and redistribute any balance that still remains in the Net Settlement Fund unless the amounts involved are too small to make individual distributions economically viable. At that time, any balance that still remains in the Net Settlement Fund, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, shall be contributed to the Council of Institutional Investors, a non-profit organization.

#### **ADMINISTRATION OF THE SETTLEMENT**

27. Any member of the Settlement Class who fails to timely submit a valid Proof of Claim (substantially in the form of Exhibit 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 Settlement Agreement and the Settlement, including the terms of the Judgment or Alternative Judgment entered in the Action and the 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 Party concerning any Released Claim, whether or not such Settlement Class Member has filed an objection to the Settlement, the Plan of Allocation, or any Fee and Expense Application by Plaintiff's Counsel.

28. Upon receiving any request(s) for exclusion pursuant to the Notice, Lead Counsel shall promptly notify counsel for Defendants of such request(s) 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 deem to be *de minimis* or formal or technical defects in any Proofs of Claim submitted. Except for ViroPharma's obligations arising under ¶6 and ¶37, the Released Defendant Parties and Defendants' Counsel shall have no liability, obligation or responsibility for the administration of the Settlement, the allocation of the Net Settlement Fund or reviewing or challenging of claims of members of the Settlement Class.

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

(a) Each Settlement Class Member shall be required to submit a Claim Form, substantially in the form annexed hereto as Exhibit 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 Claim Forms must be submitted by the date set forth in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Lead Counsel in its discretion, or by Court Order. Any Settlement Class Member who fails to submit a Claim Form by such date shall be barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Settlement Agreement (unless, by Order of the Court or the discretion of Lead Counsel, late-filed Claim Forms are accepted), but shall in all other respects be bound by all of the terms of this Settlement Agreement 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 will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Party concerning any Released Claim or Released Defendants' Claims, whether or not such Settlement Class Member has filed an objection to the Settlement, the Plan of Allocation, or any Fee and Expense Application by Plaintiff's Counsel. Provided that it is received before the motion for the Distribution Order is filed, a Claim Form 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 Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Claim Form shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this Settlement Agreement the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below; Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a 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 Claim Form submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely fashion and in writing, all timely 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;

(d) If any timely claimant whose claim has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) calendar days after the date of mailing of the notice required in subparagraph (c) 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

(e) The administrative determinations of the Claims Administrator accepting and 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 form shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, 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 Settlement 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 final and conclusive against all Settlement Class Members. Any Settlement Class Member whose claim is 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 Settlement Agreement 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 will be permanently barred and enjoined from bringing any action against any Released Defendant Party concerning any Released Claim, whether or not such Settlement Class Member has filed an objection to the Settlement, the proposed Plan of Allocation, or any Fee and Expense Application by Plaintiff's Counsel.

33. All proceedings with respect to the administration, processing and determination of claims described by ¶22 through ¶35 of this Settlement Agreement 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 or their counsel, including Defendants' Counsel, with respect to the matters set forth in ¶22 through ¶35.

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

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

36. Concurrently with the application for preliminary Court approval of the Settlement contemplated by this Settlement Agreement and promptly after execution of this Settlement Agreement, Lead Counsel shall 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 methods for giving notice of the Settlement to the Settlement Class.

37. For the purpose of identifying and providing notice to the Settlement Class, within five (5) business days after the date of entry of the Preliminary Approval Order, ViroPharma shall provide to Lead Counsel, or the Claims Administrator, at no cost, a list in electronic searchable form of the names and addresses of purchasers of ViroPharma Securities during the Class Period, as identified in the records maintained by ViroPharma's transfer agent(s).

#### **TERMS OF THE JUDGMENT**

38. If the Settlement contemplated by this Settlement Agreement 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.

#### **EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

39. The Effective Date of this Settlement shall be the date when all of the following shall have occurred:

(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) Court approval of the Settlement, following notice to the Settlement 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.

40. Each Settling Party shall have the right to terminate the Settlement and this Settlement Agreement by providing written notice of its election to do so ("Termination Notice"), through counsel, to all other Settling Parties hereto within thirty (30) calendar days of: (a) the Court's final refusal to enter the Preliminary Approval Order in any material respect; (b) the Court's

final refusal to approve this Settlement Agreement or any material part of it; (c) the Court's final refusal to enter the Judgment in any material respect (with the understanding that those parts that pertain to the Plan of Allocation or the award of attorneys' fees and expenses are not material for this purpose); or (d) the date upon which the Judgment or Alternative Judgment is modified or reversed in any material respect by the United States Court of Appeals or the Supreme Court of the United States (with the understanding that those parts that pertain to the Plan of Allocation or the award of attorneys' fees and expenses are not material for this purpose).

41. Simultaneously herewith, Defendants' Counsel and Lead Counsel are executing a confidential Supplemental Agreement Regarding Requests for Exclusion ("Supplemental Agreement"). The Supplemental Agreement sets forth certain conditions under which ViroPharma shall have the option to terminate the Settlement and render this Settlement Agreement null and void in the event that requests for exclusion from the Settlement Class exceed certain agreed-upon criteria (the "Opt-Out Threshold"). The Settling Parties agree to maintain the confidentiality of the Opt-Out Threshold in the Supplemental Agreement, which shall not be filed with the Court unless a dispute arises as to its terms, or as otherwise ordered by the Court, nor shall the Supplemental Agreement otherwise be disclosed unless required by the Court. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Settling Parties will undertake to have the Opt-Out Threshold submitted to the Court *in camera*. In the event of a termination of this Settlement pursuant to the Supplemental Agreement, this Settlement Agreement shall become null and void and of no further force and effect, with the exception of the provisions of ¶45 through ¶47 which shall continue to apply.

42. Lead Plaintiff shall have the option and right to terminate the Settlement in the event that the entire Settlement Amount is not paid into the Escrow Account by the deadline provided for in ¶6 above. In such event, to terminate the Settlement pursuant to this paragraph, Lead Plaintiff

must provide written notice, through counsel, of its intent to terminate to all other Settling Parties to this Settlement Agreement within ten (10) calendar days after the expiration of this deadline. If, thereafter, Defendants fail to pay or cause to be paid any unpaid portion of the Settlement Amount (along with interest at the Pennsylvania statutory rate for the time passed after the expiration of the deadline), within fourteen (14) calendar days of Defendants' receipt of such written notice, the Settlement shall be deemed terminated and null and void.

43. If any portion of the Settlement Amount is required, by judicial order, government directive or otherwise by operation of law, to be returned or refunded from the Escrow Account, and is in fact returned or refunded from the Escrow Account before the Distribution Order is entered and before any funds from the Net Settlement Fund are distributed to the Settlement Class, Lead Plaintiff shall have the option and right to terminate the Settlement. To do so, Lead Plaintiff must provide written notice of its intent to terminate to all other Settling Parties to this Settlement Agreement within ten (10) calendar days after such portion of the Settlement Amount is returned or refunded from the Escrow Account. If, thereafter, Defendants fail to pay or cause to be paid any returned or refunded portion of the Settlement Amount, with statutory interest, within fourteen (14) calendar days of Defendants' receipt of such written notice, the Settlement shall be deemed terminated and null and void.

44. If an option to withdraw from and terminate this Settlement Agreement and Settlement arises under any of ¶40 through ¶43 above: (i) neither Defendants nor Lead Plaintiff will be required for any reason or under any circumstance to exercise that option; and (ii) any exercise of that option shall be in the sole and unfettered discretion of each of the Defendants or Lead Plaintiff, as applicable.

45. Except as otherwise provided herein, in the event the Settlement is terminated or fails to become effective for any reason, then: (i) the Settlement shall be without prejudice, and none of

its terms, including, but not limited to, the certification of the Settlement Class, shall be effective or enforceable except as specifically provided herein; (ii) the Settling Parties to this Settlement Agreement shall be deemed to have reverted to their respective litigation positions in the Action on February 5, 2015; (iii) any portion of the Settlement Amount previously paid shall be returned pursuant to ¶46; and (iv) except as otherwise expressly provided, the Settling Parties in the Action shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered. In such event, the fact and terms of this Settlement Agreement, or any aspect of the negotiations leading to this Settlement Agreement, shall not be admissible in this Action and shall not be used by Lead Plaintiff against any Defendant or by any Defendant against Lead Plaintiff in any court filings, depositions, at trial or otherwise.

46. Within ten (10) business days after the Escrow Agent is sent written notification that the Settlement failed to become effective as defined herein or was terminated pursuant to the provisions of ¶40 through ¶43 above, any portion of the Settlement Amount previously paid by or on behalf of Defendants, together with any interest earned 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 by the Escrow Agent to the Defendant that provided the funding, or the Persons who contributed the funds on their behalf, on a *pro rata* basis based on each Person's contribution actually paid into the Escrow Account. At the request of counsel to any Person who contributed funds to the Escrow Account, 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 Persons who contributed funds to the Escrow Account on a *pro rata* basis based on their contributions actually paid into the Escrow Account.



(a) Instructions as to the proper allocation of any interest, Taxes and Notice and Administration Expenses, as well as any tax refund proceeds, amongst Defendants and their insurers shall be communicated to Lead Counsel in a writing signed by counsel for Defendants, and Lead Counsel, the Escrow Agent and its designees may rely upon the instructions provided.

#### **NO ADMISSION OF WRONGDOING**

47. Except as set forth in ¶48 below, this Settlement Agreement, whether or not consummated, and any negotiations, proceedings or agreements relating to the Settlement Agreement, the Settlement, and any matters arising in connection with settlement negotiations, proceedings, or agreements, shall not be offered or received against the Released Parties for any purpose, and in particular, do not:

(a) constitute, and shall not be offered or received against the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by the Released Defendant Parties for any purpose, including with respect to the truth of any fact alleged by Lead Plaintiff and the Settlement Class or the validity of any claim that has been or could have been asserted in the Action or in any action or other proceeding, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of the Released Defendant Parties;

(b) constitute, and shall not be offered or received against the Released Defendant Parties 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 Released Defendant Parties, or against the Released Defendant Parties, Lead Plaintiff or any other members of the Settlement Class as evidence of any infirmity in the claims or defenses that have been or could have been asserted in the Action;

(c) constitute, and shall not be offered or received against the Released Parties, 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 any of the Released 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 Settlement Agreement;

(d) constitute, and shall not be construed against the Released Parties, 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; and

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

48. Notwithstanding ¶47 above, the Released Parties may file or refer to this Settlement Agreement, the Judgment, the Alternative Judgment, and/or any Claim Form submitted by a Settlement Class Member: (i) to effectuate the liability protection granted hereunder, including, without limitation, to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; or (ii) to effectuate the liability protection granted them under any applicable insurance policies. The Released Parties may file or refer to this Settlement Agreement and/or the Judgment or the Alternative Judgment in any action that may be brought to enforce the terms of this Settlement Agreement and/or the Judgment or the Alternative Judgment. All Released Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

## MISCELLANEOUS PROVISIONS

49. All of the exhibits to the Settlement Agreement, except any Plan of Allocation, to the extent incorporated in those exhibits, are material and integral parts hereof and are fully incorporated herein by this reference.

50. ViroPharma warrants that, to its knowledge, at the time that it will make or cause to be made payment pursuant to ¶6 above, it will not be insolvent, nor will the payment required to be made by or on behalf of it render ViroPharma insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§101 and 547 thereof, or any applicable fraudulent transfer or conveyance law.

51. The Settling Parties to this Settlement Agreement intend the Settlement of the Action to be the full, final and complete resolution of all claims asserted or which could have been asserted by the Settling Parties and other Released Parties with respect to the Released Claims and Released Defendants' Claims. Accordingly, Lead Plaintiff and Defendants agree not to assert in any forum or tribunal that the Action was brought, prosecuted or defended in bad faith or without a reasonable basis. The Settling Parties agree that at all times 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. Defendants and Lead Plaintiff agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by Defendants and Lead Plaintiff, and their respective counsel, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel.

52. The terms and provisions of this Settlement Agreement and Settlement may be amended, modified, or expanded only by written agreement of the Settling Parties and approval of the Court; *provided, however*, that after entry of the Judgment (or any applicable Alternative Judgment), the parties hereto may by unanimous written agreement effect such amendments,

modifications or expansions of this Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) without notice to or approval by the Court if such changes are not materially inconsistent with the Court's Judgment or Alternative Judgment and do not: (a) materially limit the rights of Settlement Class Members under the Settlement Agreement; or (b) materially limit the rights of the Released Parties under the Settlement Agreement.

53. The headings herein are used for the purpose of convenience only and are not meant to have legal effect. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of, *inter alia*, entering orders providing for awards of attorneys' fees and any expenses, awarding reimbursement to the Lead Plaintiff for its reasonable costs and expenses (including lost wages), and implementing and enforcing the terms of this Settlement Agreement, including, but not limited to, administration of the Settlement, distribution of the Settlement Fund, and enforcement of the releases provided for herein.

54. Unless ordered by a Court or other tribunal, no Settling Party, its insurers or reinsurers, or any of their respective counsel shall disseminate, refer to, or otherwise distribute to any third party any information or documents they obtained from another Settling Party in connection with the Settlement, including the mediation and negotiations resulting in this Settlement Agreement, except as necessary in connection with this Settlement Agreement or Court approval of the Settlement, or as the Settling Parties may otherwise agree, or as may be required by applicable securities or other law, including, without limitation, any freedom of information, open records or "sunshine" statute or similar regulation or common law. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Settlement Agreement.

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

56. This Settlement Agreement, its exhibits and the Supplemental Agreement constitute the entire agreement among the Settling Parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto concerning this Settlement Agreement and its exhibits other than those contained and memorialized in such documents.

57. Nothing in the Settlement Agreement, 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, nor shall it constitute an agreement that such privilege or immunity exists or is applicable here.

58. This Settlement Agreement 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 provided that counsel for the Settling Parties to this Settlement Agreement shall exchange among themselves original signed counterparts. Signatures sent by facsimile or in PDF format sent by e-mail shall be deemed originals.

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

60. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto and their counsel.

61. The construction, interpretation, operation, effect and validity of this Settlement Agreement, and any documents necessary to effectuate it, shall be governed by the internal laws of

the Commonwealth of Pennsylvania without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

62. This Settlement Agreement 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 Settlement Agreement.

63. If any disputes arise out of the finalization of the settlement documentation or the Settlement itself prior to the application for preliminary approval of the Settlement, those disputes will be resolved by Judge Phillips first by way of expedited telephonic mediation and, if unsuccessful, then by way of final, binding, non-appealable resolution.

64. Lead Counsel, on behalf of the Settlement Class Members, warrants and represents that it is expressly authorized by Lead Plaintiff to take all appropriate action required or permitted to be taken by the Settlement Class Members pursuant to the Settlement Agreement to effectuate its terms and are also expressly authorized by Lead Plaintiff to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class Members that it deems appropriate.

65. All counsel and any other person executing this Settlement Agreement 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 Settlement Agreement to effectuate its terms.

66. The Settling Parties agree that, other than disclosures required by law, any public comments from the Settling Parties regarding the Settlement will not substantially deviate from the

words to the effect that the Settling Parties have reached a mutually acceptable resolution by way of a mediated settlement, and that both sides are satisfied with the Settlement.

67. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement and the Settlement and in consummating the Settlement in accordance with its terms, and to promptly agree upon and execute all such other documentation as may be required by the Court to obtain final approval of the Settlement.

68. Except as otherwise provided herein, each party shall bear his, her, or its own costs.

**IN WITNESS WHEREOF**, the Settling Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized attorneys, as of April 28, 2015.

LABATON SUCHAROW LLP



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*Attorneys for Defendants*



# **Exhibit A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

In re VIROPHARMA INCORPORATED  
SECURITIES LITIGATION

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This Document Relates To:

ALL ACTIONS.

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) Civil Action No. 2:12-cv-02714

) CLASS ACTION

) [PROPOSED] ORDER GRANTING  
) PRELIMINARY APPROVAL OF CLASS  
) ACTION SETTLEMENT AND DIRECTING  
) NOTICE TO THE SETTLEMENT CLASS

EXHIBIT A

WHEREAS, as of April 28, 2015, (a) Carpenters' Local 27 Defined Benefit Trust Fund ("Lead Plaintiff"), on behalf of itself and the proposed Settlement Class; (b) ViroPharma Incorporated ("ViroPharma" or the "Company"); and Vincent J. Milano, Charles A. Rowland, Jr., Thomas F. Doyle and J. Peter Wolf (the "Individual Defendants" and, collectively with the Company, the "Defendants"), by and through their respective duly authorized counsel, entered into a Stipulation and Agreement of Settlement (the "Settlement Agreement") in the above-captioned 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 Amended Class Action Complaint for Violations of the Federal Securities Laws, filed in this Action on October 19, 2012 ("Complaint") against the Defendants on the merits and with prejudice (the "Settlement");

WHEREAS, all capitalized terms used in this Order that are not otherwise defined herein have the meanings defined in the Settlement Agreement;

WHEREAS, the Court has read and considered the Settlement Agreement to determine, among other things, whether the Settlement is sufficiently fair, reasonable, and adequate to warrant the issuance of notice of the proposed Settlement to the members of the Settlement Class; and

WHEREAS, the Settling Parties to the Settlement Agreement have consented to the entry of this Order;

NOW, THEREFORE, the Court, declares that it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Jurisdiction.** The Court has jurisdiction over the subject matter of this Action and over the Settling Parties.

2. **Settlement Class.** The Court hereby certifies the following class for the purposes of settlement only (the "Settlement Class"), pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal

Rules of Civil Procedure: all Persons that purchased or otherwise acquired ViroPharma Securities between December 14, 2011 and April 9, 2012, inclusive, (the “Class Period”) and were damaged thereby. Excluded from the Settlement Class are: Defendants; the Company’s officers, directors, and employees during the Class Period; the Company’s successors, and assigns; any person, entity, firm, trust, corporation or other entity related to, affiliated with, or controlled by any of the Defendants, as well as the Immediate Families of the Individual Defendants. Also excluded from the Settlement Class are those Persons who submit valid and timely requests for exclusion from the Settlement Class 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 Procedure have been satisfied for the Settlement Class defined herein, in that:

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

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

(c) Lead Plaintiff’s claims are typical of the Settlement Class’s claims;

(d) Lead Plaintiff and its counsel have fairly and adequately represented and protected the interests of the Settlement Class;

(e) the questions of law and fact common to the Settlement 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 Settlement 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 Settlement Class Members are too small to justify the expense of

individual actions; and it does not appear that there is any intent among Settlement 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 Plaintiff Carpenters' Local 27 Benefit Trust Fund, is certified as Class Representative for the Settlement Class.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the law firm of Labaton Sucharow LLP is appointed Class Counsel for the Settlement Class.

6. Any Settlement 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 Settlement Class Member does not enter an appearance, he, she or it will be represented by Lead Counsel.

7. **Preliminary Findings Concerning Proposed Settlement.** The Court preliminarily finds that the proposed Settlement should be approved as it: (i) is the result of serious, extensive arm's-length and non-collusive negotiations; (ii) falls within a range of reasonableness warranting final approval; (iii) has no obvious deficiencies; (iv) does not improperly grant preferential treatment to the Lead Plaintiff or segments of the Settlement Class; and (v) warrants notice of the proposed Settlement to Settlement Class Members and further consideration of the Settlement at the fairness hearing described below.

8. **Settlement Hearing.** A hearing (the "Settlement Hearing") will be held on \_\_\_\_\_, 2015 at \_\_\_\_\_.m. before the Honorable C. Darnell Jones, II in Courtroom \_\_\_\_ of the United States District Court for the Eastern District of Pennsylvania, at the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106, to determine, among other things:

(a) whether the proposed Settlement of the Action on the terms and conditions provided in the Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court;

(b) whether a Final Judgment and Order substantially in the form of Exhibit B to the Settlement Agreement should be entered, dismissing the Action in its entirety and with prejudice; whether the covenants by the Settlement Class and the release by the Settlement Class of the Released Claims, as set forth in the Settlement Agreement, should be provided to the Released Defendant Parties; and whether the Settlement Class should be forever barred and enjoined from commencing, instituting, prosecuting or maintaining any of the Released Claims against the Released Defendant Parties;

(c) whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

(d) whether the Settlement Class should be finally certified for the purposes of the Settlement only; whether Lead Plaintiff should be finally certified as Class Representative for the Settlement Class; and whether the law firm of Labaton Sucharow LLP should be finally appointed Class Counsel for the Settlement Class;

(e) whether Plaintiff's Counsel's application for a Fee and Expense Award should be granted; and

(f) such other matters as may properly be before the Court in connection with the Settlement.

9. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Settlement 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 Settlement Class.

10. **Notice.** The Court approves the form, substance, and requirements of the Notice and Summary Notice (together, the “Notices”) and the Proof of Claim form annexed hereto as Exhibits 1-3 and finds that the procedures established for publication, mailing, and distribution of the Notices and Proof of Claim form substantially in the manner and form set forth in paragraphs 10-12 of this Order: (a) constitute the best notice to Settlement Class Members practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to describe the terms and effect of the Settlement Agreement and of the Settlement and to apprise Settlement Class Members of their right to object to the proposed Settlement or to exclude themselves from the Settlement Class; (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive such notice; and (d) satisfy all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d)), the United States Constitution (including the Due Process Clause), Section 21D(a)(7) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-4(a)(7), the Rules of this Court, and any other applicable law.

11. **Retention of Claims Administrator and Manner of Notice.** The Court approves the retention of The Garden City Group, LLC as the Claims Administrator to supervise and administer the notice procedure and the processing of claims under the supervision of Lead Counsel as more fully set forth below:

(a) Not later than ten (10) business days after entry of this Order by this Court (the “Notice Date”), the Claims Administrator shall cause the Notice, substantially in the form attached hereto as Exhibit 1, along with a Proof of Claim form, substantially in the form attached hereto as Exhibit 2, to be sent to each Settlement Class Member who can be identified by reasonable

effort. Such notice shall be sent by first-class mail, postage prepaid, to the Settlement Class Members' last known address. Not later than five (5) business days after entry of this Order, ViroPharma shall provide to Lead Counsel, or the Claims Administrator, at no cost, a list in electronic searchable form of the names and addresses of the Persons who purchased ViroPharma Securities during the Class Period, as identified in the records maintained by ViroPharma's transfer agent(s).

(b) Not later than fourteen (14) calendar days after the Notice Date, the Claims Administrator shall cause the Summary Notice, substantially in the form attached hereto as Exhibit 3, to be published in *Investor's Business Daily* and disseminated over *PR Newswire*, a national business-oriented wire service. The Summary Notice need not be published in each of these media on the same day.

(c) Not later than thirty-five (35) calendar days before the Settlement Hearing, Lead Counsel shall file with the Court one or more affidavits or declarations showing timely compliance with the foregoing mailing and publication requirements.

12. **Nominee Purchasers.** Banks, brokerage firms, institutions, and other Persons who are nominees that purchased ViroPharma Securities for the beneficial interest of other Persons during the Class Period ("Nominee Purchasers") shall, within seven (7) calendar days of receiving the Notice: (a) provide to the Claims Administrator the name and last-known address of each such beneficial owner; or (b) request additional copies of the Notice and Proof of Claim form and, within seven (7) calendar days of receipt, mail the Notice and Proof of Claim form directly to such beneficial owners. Nominee Purchasers following procedure (b) shall promptly send a statement to the Claims Administrator confirming that the mailing was made as directed. The Claims Administrator shall, if requested, and upon receipt of appropriate supporting documentation, reimburse Nominee Purchasers out of the Settlement Fund solely for Nominee Purchasers'



reasonable out-of-pocket expenses incurred in sending the Notice and Proof of Claim form to the beneficial owners who are potential Settlement Class Members, which expenses would not have been incurred except for the sending of such notice, subject to further Order of this Court with respect to any dispute concerning such reimbursement.

13. **Submission of Proof of Claim Forms.** 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 Settlement Agreement, each Settlement Class Member shall take the following actions and be subject to the following conditions:

(a) Any Settlement Class Member who wishes to participate in the distributions of the Net Settlement Fund must sign and return a completed Proof of Claim form in accordance with the instructions contained therein and in the Notice. All Proofs of Claim must be submitted by first-class mail, 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 its discretion. If a Settlement Class Member chooses to return his, her, or its Proof of Claim in a manner other than by first-class mail (including electronic submission), then the Proof of Claim must be actually received by the Claims Administrator no later than 120 calendar days after the Notice Date, or such other date as may be set by the Court or allowed by Lead Counsel. Unless otherwise ordered by the Court or allowed by Lead Counsel, any Settlement Class Member who does not sign and return a valid Proof of Claim within the time provided shall be barred from sharing in the distribution of the Net Settlement Fund, but shall nonetheless be bound by the Settlement Agreement, the Judgment and the releases therein.

(b) The Proof of Claim submitted by each Settlement 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 Settlement 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 Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted.

14. **Exclusions from the Settlement Class.** Any Settlement Class Member who does not timely submit a valid written request for exclusion from the Settlement Class in accordance with the instructions in the Notice and herein is a Settlement Class Member and shall be bound by all of the terms and conditions of the Settlement Agreement, and by all proceedings, rulings, orders, and judgments in this Action regardless of whether such Settlement Class Member submits a Proof of Claim form. Requests for exclusion shall be made in writing and shall clearly state the name, mailing address, daytime telephone number, and e-mail address of the Person seeking exclusion; shall list the date(s), price(s), and number(s) of ViroPharma common shares, Notes, and options purchased, acquired, or sold during the Class Period; and state clearly that the Person “wishes to be excluded from the Settlement Class in *In re ViroPharma Securities Litigation*, Civil Action No. 2:12-cv-02714.” Requests for exclusion must be submitted by first-class mail or delivered so that they are received no later than twenty-one (21) days before the Settlement Hearing. A request for exclusion shall not be effective unless it provides the required information set forth herein and in the Notice and is made within the time stated herein, or the request for exclusion is otherwise accepted

by the Court. Any Settlement Class Member who is excluded from the Settlement Class shall not be entitled to participate in any distributions from the Net Settlement Fund.

15. **Objections to Settlement.** Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed Fee and Expense Application, or to Lead Plaintiff's request for reimbursement of its expenses in representing the Settlement Class may file an objection. An objector must file with the Court a written statement of his, her, or its objection(s): (a) clearly indicating the objector's name, mailing address, daytime telephone number, and e-mail address; (b) stating that the objector is objecting to the proposed Settlement, Plan of Allocation, Fee and Expense Application or Lead Plaintiff's request for reimbursement of its expenses in representing the Settlement Class in *In re ViroPharma Securities Litigation*, Civil Action No. 2:12-cv-02714; (c) specifying the reason(s), if any, for the objection, including any legal support and/or evidence, including witnesses, that such objector wishes to bring to the Court's attention or introduce in support of such objection; and (d) listing the date(s), price(s), and number(s) of ViroPharma common shares, Notes, and options purchased, acquired, or sold during the Class Period. The objector must mail or deliver the objection and all supporting documentation to Lead Counsel and Defendants' Counsel's representative. The addresses for filing objections with the Court and service on counsel are as follows:

***To the Court:***

Clerk of the Court  
United States District Court  
for the Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106

***To Lead Counsel:***

Jonathan Gardner, Esq.  
LABATON SUCHAROW LLP  
140 Broadway  
New York, NY 10005

***To Defendants' Counsel's Representative:***

Marc J. Sonnenfeld, Esq.  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103

The objector, or his, her, or its counsel (if any), must serve the objection upon the counsel listed above and file it with the Court so that it is received no later than twenty-one (21) days before the Settlement Hearing. Any member of the Settlement Class who does not timely file and serve a written objection complying with the terms of this paragraph and the Notice shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, the Plan of Allocation, and the Fee and Expense Application unless otherwise ordered by the Court. Any submissions by the Settling Parties in opposition or response to objections shall be filed with the Court no later than seven (7) calendar days before the Settlement Hearing.

16. **Appearance at Settlement Hearing.** Any objector who files and serves a timely, written objection in accordance with the instructions above and in the Notice, may also appear at the Settlement Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Settlement Hearing must effect service of a notice of intention to appear on Lead Counsel and on Defendants' Counsel's representative at the addresses

set out above. The objector must also file the notice of intention to appear with the Court no later than twenty-one (21) days before the Settlement Hearing. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph and the Notice shall not be permitted to appear at the Settlement Hearing, except for good cause shown.

17. **Service of Papers.** Counsel for the Defendants and Lead Counsel shall promptly furnish all Settling Parties with copies of any and all objections and notices of intention to appear that come into its possession. All papers in support of the Settlement, Plan of Allocation, and the Fee and Expense Application 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.

18. **Notice and Administration Expenses and Escrow Matters.** As provided in the Settlement Agreement, 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 Settlement Class and the review of claims and administration of the Settlement out of the Settlement Fund without further approval from the Defendants and without further order of the Court.

19. The passage of title and ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Settlement Agreement is approved. No person who is not a Settlement Class Member or Plaintiff's 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 Settlement Agreement. 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 Settlement Agreement and/or further order of the Court.

20. **Bar on Litigating Released Claims.** Pending final determination of whether the Settlement should be approved, Lead Plaintiff and all other Settlement Class Members, and anyone who acts or purports to act on their behalf, shall not institute, prosecute, participate in, or assist in the institution, prosecution, or assertion of any Released Claim against any of the Released Defendant Parties.

21. **Termination of Settlement.** If the Settlement fails to become effective as defined in the Settlement Agreement or is terminated pursuant to the Settlement Agreement, then, in any such event, the Settlement Agreement, including any amendment(s) thereof, except as expressly provided in the Settlement Agreement 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 on February 5, 2015.

22. **Use of Order.** This Order shall not be construed or used as an admission, concession, or presumption by or against any of the Released Defendant Parties of any fault, wrongdoing, breach, or liability or as a waiver by any Settling Party of any arguments, defenses, or claims he, she, or it may have in the event that the Settlement Agreement is terminated, nor shall it be used in any manner prohibited by paragraph 47 of the Settlement Agreement. In the event this Order becomes of no force or effect, it shall not be construed or used as an admission, concession, or presumption by or against the Released Defendant Parties, the Released Plaintiff Parties, or the Settlement Class.

23. **Stay.** All proceedings in this Action are stayed until further Order of the Court, except as may be necessary to implement the Settlement or comply with the terms of the Settlement

Agreement and this Order. This Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

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

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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THE HONORABLE C. DARNELL JONES, II  
UNITED STATES DISTRICT JUDGE

## **Exhibit A-1**



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

In re VIROPHARMA INCORPORATED  
SECURITIES LITIGATION

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This Document Relates To:

ALL ACTIONS.

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) Civil Action No. 2:12-cv-02714

) CLASS ACTION

) NOTICE OF PENDENCY OF CLASS  
) ACTION AND PROPOSED SETTLEMENT  
) AND MOTION FOR ATTORNEYS' FEES  
) AND EXPENSES

EXHIBIT A-1

**If you purchased or otherwise acquired ViroPharma Securities during the period between December 14, 2011 and April 9, 2012, inclusive (the “Class Period”), and were damaged thereby, you may be entitled to receive money from a class action settlement.**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

The purpose of this Notice is to inform you of: (a) the pendency of this Action; (b) the proposed settlement of the Action on the terms set forth in the Stipulation and Agreement of Settlement dated as of April 28, 2015 (the “Settlement Agreement”);<sup>1</sup> and (c) the hearing to be held by the Court (the “Settlement Hearing”) to consider: (i) whether the Settlement should be approved; (ii) whether the Plan of Allocation for the proceeds of the Settlement should be approved; (iii) the application of Lead Counsel for attorneys’ fees and expenses; and (iv) certain other matters. This Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement or wish to be excluded from the Settlement Class.<sup>2</sup>

- If approved by the Court, the Settlement will provide a total recovery of **\$8 million** in cash. The securities at issue in the Action are: ViroPharma’s publicly traded common stock; its 2.0% Senior Convertible Notes due 2017 (“Notes”); and its exchange-traded call and put options (listed in Table 1 below) (collectively, “ViroPharma Securities”).
- The Settlement resolves claims by Carpenters’ Local 27 Defined Benefit Trust Fund (referred to as the “Lead Plaintiff”) brought as a class action, alleging that ViroPharma Incorporated (“ViroPharma or the “Company”), misled investors regarding the Company’s ability to maintain its exclusive marketing of Vancocin; avoids the costs and risks of continuing the litigation; pays money to Settlement Class Members; and releases Defendants (defined below) from liability.
- **If you are a Settlement Class Member, your legal rights will be affected by this Settlement whether you act or do not act. Please read this Notice carefully.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A PROOF OF CLAIM FORM BY _____,</b>	The <u>only</u> way to get a payment.

<sup>1</sup> The Settlement Agreement and all of its exhibits can be viewed at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) and at [www.labaton.com](http://www.labaton.com).

<sup>2</sup> All capitalized terms not otherwise defined in this Notice shall have the same meanings as set forth in the Settlement Agreement.

<b>2015</b>	
<b>EXCLUDE YOURSELF BY _____, 2015</b>	You will get no payment. This is the only option that, assuming your claim is timely brought, might allow you to ever bring or be part of any other lawsuit against the Defendants and/or the other Released Defendant Parties concerning the Released Claims.
<b>OBJECT BY _____, 2015</b>	Write to the Court about why you do not like the Settlement, the Plan of Allocation, the Fee and Expense Application, and/or any other matter relating to the Settlement.
<b>GO TO A HEARING ON _____, 2015</b>	Ask to speak in Court about the Settlement.
<b>DO NOTHING</b>	You will get no payment, you will give up rights, and you will still be bound by the Settlement.

- 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. Payments will be made to all Settlement Class Members who timely submit a valid proof of claim form, if the Court approves the Settlement and after any appeals are resolved. Please be patient.

### **SUMMARY OF THE NOTICE**

#### **Statement of Plaintiffs’ Recovery**

Lead Plaintiff has entered into a proposed Settlement with all Defendants that, if approved by the Court, will resolve this Action in its entirety. Pursuant to this Settlement, a Settlement Fund consisting of \$8 million in cash (“Settlement Amount”), plus any accrued interest, has been established. Based on Lead Plaintiff’s consulting expert’s estimate of the number of ViroPharma Securities entitled to participate in the Settlement, and assuming that all investors entitled to participate do so, Lead Plaintiff estimates that the average recovery, before deduction of Court-approved fees and expenses, such as attorneys’ fees, litigation expenses and administrative costs, would be: approximately \$0.49 per allegedly damaged common share; and approximately \$2.13 per

allegedly damaged Note.<sup>3</sup> After deduction of the attorneys' fees and litigation expenses discussed below, the average recovery per allegedly damaged common share would be approximately \$0.33 per share and approximately \$1.42 per Note. A Settlement 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 Settlement Class Members who timely submit valid Proofs of Claim, as described more fully below. An individual Settlement Class Member's actual recovery will depend on, for example: (a) the total amount of Recognized Losses of other Settlement Class Members; (b) how many securities a Settlement Class Member purchased or acquired during the Class Period; (c) the purchase price(s) paid; (d) the date of the purchase(s); and (e) whether and when the Settlement Class Member sold his, her or its ViroPharma Securities. See the Plan of Allocation beginning on page [\_\_] for information on your Recognized Loss.

### **Statement of Potential Outcome of Case**

The Settling Parties disagree about both liability and damages and do not agree on the damages that would be recoverable if Lead Plaintiff were to prevail on each claim asserted against Defendants. The issues on which the Settling Parties disagree include, for example: (a) whether the statements made or facts allegedly omitted were materially false or misleading, or otherwise actionable under the federal securities laws; (b) whether any allegedly materially false or misleading statements made by Defendants were made with the requisite level of intent or recklessness; (c) the amounts by which the prices of ViroPharma Securities were allegedly artificially inflated (or deflated in the case of put options), if at all, during the Class Period; (d) the appropriate economic models for determining the amounts by which the prices of ViroPharma Securities were allegedly artificially inflated (or deflated in the case of put options), if at all, during the Class Period; (e) the

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<sup>3</sup> An allegedly damaged share might have been traded more than once during the Class Period, and the average recovery indicated above represents the estimated average for each purchase of a share that allegedly incurred damages.

extent to which external factors, such as general market, economic and industry conditions, or unusual levels of volatility, influenced the trading prices of ViroPharma Securities at various times during the Class Period; (f) the extent to which the various matters that Lead Plaintiff alleged were materially false or misleading influenced (if at all) the trading prices of ViroPharma Securities during the Class Period; and (g) the extent to which the alleged omission of various allegedly adverse material facts influenced (if at all) the trading prices of ViroPharma Securities during the Class Period.

Defendants have denied and continue to deny all claims of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged in the Action, including any violations of the federal securities laws or any other legal obligation or duty potentially giving rise to the Released Claims. Defendants have denied and continue to deny each of the claims alleged by Lead Plaintiffs on behalf of the Settlement Class, including all claims in the Complaint. Defendants believe that they have meritorious defenses to all claims asserted or that could have been asserted based on the allegations of the Complaint. Defendants also have denied and continue to deny, among other things, that: Lead Plaintiff and the Settlement Class have suffered damages; the prices of ViroPharma Securities were artificially inflated (or deflated in the case of put options) by reason of the alleged misrepresentations or non-disclosures; and Lead Plaintiff and the Settlement Class were otherwise harmed in any way by the conduct alleged in the Complaint. Moreover, Defendants believe that the evidence developed to date supports their position and assert that the Action has no merit. Nonetheless, Defendants have concluded that continuation of the Action would be protracted and expensive, and have taken into account the uncertainty and risks inherent in any litigation, especially a complex case like this Action, and believe that the Settlement set forth in this Settlement Agreement is in the best interests of the Company.

**Statement of Attorneys' Fees and Expenses Sought**

The attorneys representing Lead Plaintiff and the Settlement Class have expended considerable time and effort in prosecuting this Action on a contingent-fee basis and have incurred substantial expenses, with the expectation that if they were successful in obtaining a recovery for the Settlement Class they would be paid from such recovery. In this type of litigation, it is customary for plaintiffs' counsel to be awarded a percentage of the common fund recovered as attorneys' fees.

Lead Counsel, on behalf of all plaintiffs' counsel, will make an application to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 30% of the Settlement Fund, which includes any interest earned on such amount at the same rate and for the same period as earned by the Settlement Fund. Lead Counsel will also apply for payment of litigation expenses incurred in prosecuting the Action in an amount not to exceed \$275,000, plus any interest earned on such amount at the same rate as earned by the Settlement Fund. Lead Counsel's Fee and Expense Application may include a request for an award to Lead Plaintiff for reimbursement of its reasonable costs and expenses, including lost wages, directly related to its representation of the Settlement Class in an amount not to exceed \$10,000. If the Court approves the Fee and Expense Application in full, the average amount of fees and expenses will be approximately \$0.16 per allegedly damaged common share and approximately \$0.71 per allegedly damaged Note.

#### **Identification of Attorneys' Representatives**

Lead Plaintiff and the Settlement Class are being represented by Labaton Sucharow LLP, the Court-appointed Lead Counsel. Any questions regarding the Settlement should be directed to Jonathan Gardner, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, (888) 219-6877, [www.labaton.com](http://www.labaton.com), or [settlementquestions@labaton.com](mailto:settlementquestions@labaton.com).

#### **Reasons for the Settlement**

For Lead Plaintiff, the principal reason for the Settlement is the immediate benefit of a substantial cash recovery to the Settlement Class. This benefit must be compared to the uncertainty of being able to prove the allegations in the Complaint; the uncertainty of having a class certified; the risk that the Court may grant, in whole or in part, some or all of the

anticipated motions for summary judgment to be filed by Defendants; the uncertainty inherent in the Settling Parties' various and competing theories of liability, loss causation and damages; the attendant risks of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation (including any appeals).

For Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that any Settlement Class Members were damaged, the principal reasons for entering into the Settlement are to bring to an end the substantial burden, expense, uncertainty, and risk of further litigation.

### **BASIC INFORMATION**

#### **1. Why did I get this notice package?**

The Court authorized that this Notice be sent to you because you or someone in your family may have purchased or otherwise acquired ViroPharma Securities during the period between December 14, 2011 and April 9, 2012, inclusive.

If this description applies to you or someone in your family, you have a right to know about the Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

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

The Court in charge of this Action is the United States District Court for the Eastern District of Pennsylvania, and the case is known as *In re ViroPharma Incorporated Securities Litigation*, Civil Action No. 2:12-cv-02714-JP. The Action is assigned to the Honorable C. Darnell Jones, II, United States District Judge.

The institution that is suing and leading the Action, Carpenters' Local 27 Defined Benefit Fund, is called the Lead Plaintiff and was appointed by the Court. The company being sued is

ViroPharma. The people being sued are Vincent J. Milano, Charles A. Rowland, Thomas F. Doyle, and J. Peter Wolf, and are referred to as the Individual Defendants. Together, ViroPharma and the Individual Defendants are called the Defendants.

## **2. What is this lawsuit about?**

ViroPharma develops, licenses and markets pharmaceutical products. The Company marketed and sold Vancocin, an antibiotic drug primarily used to treat Clostridium Difficile Associated Diarrhea (“CDAD”), and no generic for Vancocin was approved by the FDA.

On October 19, 2012, Lead Plaintiff filed the Amended Class Action Complaint for Violation of the Federal Securities Laws (the “Complaint”) asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934.

The Complaint alleges, among other things, that throughout the Class Period Defendants, while in possession of nonpublic, material information from the Food and Drug Administration (“FDA”), made false and misleading statements to the market that contradicted what the FDA had told them. Specifically, the Complaint alleges that in December 2011, after the FDA approved ViroPharma’s supplemental New Drug Application (“sNDA”) to revise the package labeling for Vancocin, Defendants told the market that ViroPharma met the qualifications for an additional three years of marketing exclusivity for Vancocin based on the approved sNDA and a new law that allowed for exclusivity if the applicant could show that the drug could be used for a new “condition of use.” The Complaint further alleges, however, that the FDA had previously told Defendants privately on several occasions that the clinical studies upon which ViroPharma based its exclusivity application—the Genzyme Studies—were not adequate and well-controlled trials as to Vancocin. The Complaint alleges that this was important because an adequate and well-controlled trial was a prerequisite to establishing that Vancocin could be used to treat a new “condition of use.”



Lead Plaintiff further alleges that the truth about Vancocin was not disclosed to investors until the opening of trading on April 10, 2012, when the Company issued a press release announcing the FDA's decision denying ViroPharma's application for an additional three years of marketing exclusivity because Vancocin's new label did not reflect a significant new use or indication. The press release further disclosed that the FDA simultaneously approved applications for generic versions of Vancocin from three different manufacturers. Lead Plaintiff contends that, upon these disclosures, the artificial inflation (or deflation in the case of put options) created by Defendants' false and misleading public statements regarding the Company's ability to exclusively market Vancocin was removed from the trading prices of ViroPharma Securities, damaging Lead Plaintiff and members of the Settlement Class.

Defendants deny all material allegations of the Complaint and deny that they misled the market in any way. Defendants assert, among other things, that they were not advised during the Class Period how the FDA would rule on the Company's exclusivity request, that the request involved the interpretation of a new statute, that the FDA had not even made a determination until the end of the Class Period and, in any event, Defendants had repeatedly warned the market that the FDA might deny the Company's application.

On December 20, 2012, Defendants filed a motion seeking the dismissal of the Complaint. On May 16, 2014, following briefing and oral argument on Defendants' motion, Judge Jones issued an order denying Defendants' motion. Following Judge Jones' order, Defendants filed a Motion for Certification of Interlocutory Appeal of the Court's May 16, 2014 Order Denying Defendants' Motion to Dismiss, seeking appellate court review of the Court's denial of Defendants' motion to dismiss. Following briefing, the Court denied Defendants' motion to file an interlocutory appeal. Lead Plaintiff then began discovery.

Thereafter, the Settling Parties discussed the utility of engaging a neutral mediator for the purpose of exploring a resolution of the Action. To that end, the Settling Parties agreed to engage the Honorable Layn R. Phillips (ret.) (“Judge Phillips”), a former United States District Judge with extensive experience mediating complex securities class actions. Prior to and in connection with the mediation, Defendants produced over 40,000 pages of non-public, core documents, which were reviewed and analyzed by Lead Counsel. Lead Plaintiff and Defendants also exchanged lengthy and detailed mediation briefs in preparation for the mediation.

On January 5, 2015, counsel for Lead Plaintiff and Defendants, along with representatives of ViroPharma and ViroPharma’s insurers, met for a day-long mediation with Judge Phillips. The Settling Parties, however, were unable to reach an agreement as to the terms of a proposed settlement. After the mediation and continuing until February 5, 2015, the Settling Parties continued to engage in extensive and protracted settlement discussions facilitated by Judge Phillips. On February 5, 2015, the Settling Parties agreed in principle to the Settlement, which was thereafter memorialized in the Settlement Agreement.

Defendants deny the allegations of wrongdoing and any liability whatsoever.

### **3. Why is this a class action?**

In a class action, one or more persons or entities (in this case, Lead Plaintiff), sue on behalf of people and entities who have similar claims. Together, these people and entities are a “class,” and each is a “class member.” Bringing a case, such as this one, as a class action allows the adjudication of many similar claims of persons and entities that might be economically too small to bring as individual actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or “opt-out,” from the class.

### **4. Why is there a settlement?**

With the assistance of Judge Phillips acting as a mediator, the Settling Parties agreed to the Settlement summarized herein and set forth in the Settlement Agreement. The Settlement will end all the claims against Defendants in the Action and will avoid the uncertainties and costs of further litigation and any future trial. Affected investors will be eligible to receive compensation immediately, rather than after the time it would take to resolve future motions, conduct discovery, have a trial, and exhaust all appeals. Lead Plaintiff and Lead Counsel think the Settlement is in the best interests of the Settlement Class.

### **WHO IS IN THE SETTLEMENT**

To be eligible for a payment from the proceeds of the Settlement, you must be a Settlement Class Member.

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

The Court has directed, for the purpose of the proposed Settlement, that everyone who fits this description is a Settlement Class Member and subject to the Settlement, unless they are an excluded person (*see* Question 6 below) or take steps to exclude themselves (*see* Question 13 below):

All Persons that purchased or otherwise acquired ViroPharma Securities between December 14, 2011 and April 9, 2012, inclusive, and were damaged thereby.

If one of your mutual funds purchased ViroPharma Securities during the Class Period, that alone does not make you a Settlement Class Member. You are a Settlement Class Member only if you individually purchased or acquired ViroPharma Securities during the Class Period. Check your investment records or contact your broker to see if you purchased ViroPharma Securities during the Class Period.

#### **6. Are there exceptions to being included?**

Yes. There are some people who are excluded from the Settlement Class by definition. Excluded from the Settlement Class are: Defendants; the Company's officers, directors, and

employees during the Class Period; the Company's successors, and assigns; any person, entity, firm, trust, corporation or other entity related to, affiliated with, or controlled by any of the Defendants, as well as the Immediate Families of the Individual Defendants.

Also excluded from the Settlement Class is anyone who submits a valid and timely request for exclusion from the Settlement Class, in accordance with the procedures set forth in Question 13 below.

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

If you are still not sure whether you are included in the Settlement, you can ask for free help. You can call the Claims Administrator toll-free at (\_\_\_\_) \_\_\_\_\_, send an e-mail to the Claims Administrator at \_\_\_\_\_, or write to the Claims Administrator at *ViroPharma Incorporated Securities Litigation, c/o The Garden City Group, LLC*, \_\_\_\_\_. Or you can fill out and return the Proof of Claim form described in Question 10, to see if you qualify.

**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 have agreed to create an Eight Million Dollar (\$8,000,000.00) cash fund, which will earn interest, to be distributed, after the deduction of Court-approved fees and expenses, among all Settlement Class Members who submit valid Proof of Claim forms and are found by the Court to be entitled to a distribution from the Net Settlement Fund ("Authorized Claimants").

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

If you are an Authorized Claimant entitled to a payment, your share of the Net Settlement Fund will depend on several things, including, how many Settlement Class Members timely send in valid Proof of Claim forms; the total amount of Recognized Losses of other Settlement Class

Members; how many ViroPharma common shares, Notes, or options you bought (or sold in the case of put options); how much you paid for them; when you bought them; and whether or when you sold your securities, and if so, for how much you sold them.

You can calculate your Recognized Loss in accordance with the formulas shown below in the Plan of Allocation. It is unlikely that you will receive a payment for all of your Recognized Loss. See the Plan of Allocation of Net Settlement Fund on pages \_\_\_ for more information on your Recognized Loss.

**HOW TO RECEIVE A PAYMENT:  
SUBMITTING A PROOF OF CLAIM FORM**

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

To qualify for a payment, you must submit a timely and valid Proof of Claim form. A Proof of Claim form is included with this Notice. If you did not receive a Proof of Claim form, you can obtain one on the Internet at the websites for the Claims Administrator: [www.\\_\\_\\_\\_\\_](http://www._____), or Lead Counsel: [www.labaton.com](http://www.labaton.com). You can also ask for a Proof of Claim form by calling the Claims Administrator toll-free at (\_\_\_\_) \_\_\_\_\_.

Please read the instructions carefully, fill out the Proof of Claim form, include all the documents the form requests, sign it, and mail or submit it to the Claims Administrator so that it is **postmarked or received no later than \_\_\_\_\_, 2015.**

**11. When will I receive my payment?**

The Court will hold a hearing on \_\_\_\_\_, **2015** to decide, among other things, whether to finally approve the Settlement. Even if the Court approves the Settlement, there may be appeals which can take time to resolve, perhaps more than a year. It also takes a long time for all of the Proofs of Claim to be accurately reviewed and processed. Please be patient.

**12. What am I giving up to receive a payment or stay in the Settlement Class?**

Unless you exclude yourself, you are staying in the Settlement Class, and that 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, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations and arguments of every nature and description, including both known claims and Unknown Claims (defined below), whether arising under federal, state, local, foreign or statutory law, common law or administrative law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Lead Plaintiff or any other Settlement 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 ViroPharma’s Securities during the Class Period. For the avoidance of doubt, Released Claims do not include: (i) claims to enforce the Settlement; and (ii) any governmental or regulatory agency’s claims in any criminal or civil action against any of the Released Defendant Parties.

**“Released Defendant Parties”** means Defendants, and their respective current and former parents, subsidiaries, affiliates, trustees, officers, directors, principals, employees, agents, employers, controlling persons, partners, insurers, reinsurers, auditors, accountants, advisors, financial advisors, investment advisors, commercial bank lenders, investment bankers, creditors, administrators, estates, legal representatives, heirs, attorneys, predecessors, successors or assigns, divisions, joint ventures, general or limited partners or partnerships, limited liability companies and any trust of which any

Individual Defendant is the settlor or which is for the benefit of a member of their Immediate Family; and, as to each of the foregoing, their respective current and former legal representatives, heirs, successors and assigns.

“**Unknown Claims**” means any and all Released Claims which Lead Plaintiff, any other Settlement Class Member or any other Released Plaintiff Party does 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 any Defendant or any other Released Defendant Party does 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. With respect to any and all Released Claims and Released Defendants’ Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and the Defendants shall expressly, and each other Settlement Class Member, Released Plaintiff Party and Released Defendant Party shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, expressly waived and relinquished any and all provisions, rights and benefits conferred by Cal. Civ. Code § 1542, or 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 Plaintiff, the other Settlement Class Members, the Released Plaintiff Parties, the Defendants and the Released Defendant Parties acknowledge that they may hereafter discover facts in addition to or different from those which any of them or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims and the Released Defendants’ Claims, but Lead Plaintiff and the Defendants shall expressly, fully, finally and forever settle and release, and each other Settlement Class Member, Released Plaintiff Parties and Released Defendant Parties

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 that now exist or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts, without regard to whether those facts were concealed or hidden. Lead Plaintiff and the Defendants acknowledge, and other Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was separately bargained for and was a key element of the Settlement.

The "Effective Date" will occur when an Order entered by the Court approving the Settlement becomes final and not subject to appeal.

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

### **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 and the other Released Defendant Parties on your own concerning the Released Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or "opting out." **Please note:** if you decide to exclude yourself, there is a risk that any lawsuit you may thereafter file to pursue claims alleged in the Action may be dismissed, including if such suit is not filed within the applicable time periods required for filing suit. Also, ViroPharma may terminate the Settlement if Settlement Class Members who purchased in excess of a certain amount of ViroPharma Securities seek exclusion from the Settlement Class.

<b>13. How do I exclude myself from the proposed Settlement?</b>
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To exclude yourself from the Settlement Class, you must mail a signed letter stating that you “wish to be excluded from the Settlement Class in *In re ViroPharma Incorporated Securities Litigation*, Civil Action No. 2:12-02714.” You cannot exclude yourself by telephone or e-mail. Your letter must state the date(s), price(s), and number(s) of ViroPharma common shares, Notes, and options purchased, acquired, or sold during the Class Period. Your letter must include your name, mailing address, telephone number, e-mail address, and your signature. You must submit your exclusion request so that it is **received no later than \_\_\_\_\_, 2015** to:

*ViroPharma Incorporated Securities Litigation*  
c/o The Garden City Group, LLC

\_\_\_\_\_  
\_\_\_\_\_

Your exclusion request must comply with these requirements in order to be valid. If you ask to be excluded, you will not receive any settlement payment, and you cannot object to the Settlement. Moreover, if you submit a valid exclusion request, you will not be legally bound by anything that happens in connection with this Settlement, and you may be able to sue (or continue to sue) Defendants and the other Released Defendant Parties in the future.

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

No. Unless you properly exclude yourself, you remain in the Settlement Class and you give up any rights to sue Defendants and the other Released Defendant Parties for any and all Released Claims. If you do not exclude yourself, you will not be entitled to receive any recovery in any other action against any of the Released Defendant Parties based on or arising out of the Released Claims. If you have a pending lawsuit, **speak to your lawyer in that case immediately**. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is \_\_\_\_\_, **2015**.

**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 form 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 and the other Released Defendant Parties.

### **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 Settlement Class Members. These lawyers are called Lead Counsel.

You will not be separately charged for these lawyers. The Court will determine the amount of plaintiffs' 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?**

Plaintiffs' Counsel have not been paid for any of their work. Lead Counsel will ask the Court to award them, on behalf of all Plaintiffs' Counsel, attorneys' fees of no more than 30% of the Settlement Fund, which includes interest on such fees at the same rate as earned by the Settlement Fund. Lead Counsel will also seek payment of litigation expenses incurred by plaintiffs' counsel in connection with the prosecution of this Action of no more than \$275,000, plus interest on such expenses at the same rate as earned by the Settlement Fund. Lead Plaintiff may apply for reimbursement of its expenses in representing the Settlement Class in an amount not to exceed \$10,000.

### **OBJECTING TO THE SETTLEMENT**

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

#### **18. How do I tell the Court that I do not like something about the proposed Settlement?**

If you are a Settlement Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation of the Net Settlement Fund, and/or the Fee and Expense

Application. You may give reasons why you think the Court should not approve any or all of the Settlement terms or arrangements. If you would like the Court to consider your views, you must file a proper 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 “*In re ViroPharma Incorporated Securities Litigation*, Civil Action No. 2:12-02714.” You must include your name, address, telephone number, e-mail address, and signature; identify the date(s), price(s), and number(s) of ViroPharma common shares, Notes, and options purchased, acquired, or sold during the Class Period; and state the reasons why you object, which part(s) of the Settlement you object to and include any legal support and/or evidence, including witnesses that support your objection. Unless otherwise ordered by the Court, any Settlement 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, the Plan of Allocation, and/or the Fee and Expense Application. Your objection must be filed with the Court **and** mailed or delivered to the following counsel so that it is **received on or before** \_\_\_\_\_, **2015:**

**The Court:**

Clerk of the Court  
United States District Court for the  
Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106

**Lead Counsel:**

**LABATON SUCHAROW LLP**  
Jonathan Gardner, Esq.  
140 Broadway  
New York, NY 10005

**Defendants’ Counsel:**

**MORGAN, LEWIS & BOCKIUS LLP**  
Marc J. Sonnenfeld, Esq.  
1701 Market Street  
Philadelphia, PA 19103

You do not need to attend the Settlement Hearing to have your written objection considered by the Court. Any Settlement Class Member who has not submitted a request for exclusion from the Settlement Class and who has complied with the procedures set out in this Question 18 and below in

Question 22 may appear at the Settlement Hearing and be heard, to the extent allowed by the Court, about any objection to the Settlement, the Plan of Allocation, and/or Lead Counsel's Fee and Expense Application. Any such objector may appear in person or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Settlement Hearing.

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

Objecting is telling the Court that you do not like something about the proposed Settlement, Plan of Allocation, or Fee and Expense Application. You can still recover from the Settlement. You can object *only* if you stay in the Settlement Class.

Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**THE SETTLEMENT HEARING**

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

The Court will hold the Settlement Hearing on \_\_\_\_\_, **2015** at \_\_\_\_ .m., in Courtroom \_\_\_\_ of the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106.

At this hearing, the Court will consider whether (a) the Settlement is fair, reasonable, and adequate and should be finally approved; (b) the Plan of Allocation is fair, reasonable and adequate and should be approved; and (c) the application of Lead Counsel for an award of attorneys' fees and payment of litigation expenses, including those of Lead Plaintiff, is reasonable and should be approved. The Court will take into consideration any written objections filed in accordance with the instructions in Question 18. We do not know how long it will take the Court to make these decisions.

You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Settlement Class Members. If you want to attend the hearing,

you should check with Lead Counsel beforehand 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 any questions the Court may have. But, you are welcome to attend at your own expense. If you submit a valid and timely objection, you do not have to come to Court to discuss it. You may also pay your own lawyer to attend, but it is not required. If you do hire your own lawyer, he or she must file and serve a Notice of Appearance in the manner described in the answer to Question 22 below.

**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) a statement that it is your intention to appear in “*In re ViroPharma Incorporated Securities Litigation*, Civil Action No. 2:12-02714.” Persons who intend to object to the Settlement, the Plan of Allocation, or Lead Counsel’s Fee and Expense Application and desire to present evidence at the Settlement Hearing must also include in their objections (prepared and submitted in accordance with the answer to Question 18 above) the identity of any witness they may wish to call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing. You may not speak at the Settlement Hearing if you exclude yourself from the Settlement 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.

**IF YOU DO NOTHING**

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

If you do nothing and you are a member of the Settlement Class, you will receive 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 and the other Released Defendant Parties concerning the Released Claims. To share in the Net Settlement Fund, you must submit a Proof of Claim form (*see* Question 10). To start, continue or be a part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Claims in this case, you must exclude yourself from the Settlement Class (*see* Question 13).

### GETTING MORE INFORMATION

#### **24. Are there more details about the proposed Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may review the Settlement Agreement filed with the Court or documents in the case at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, 2609 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797, on weekdays (other than court holidays) between 8:30 a.m. and 5:00 p.m. Subscribers to PACER, a fee-based service, can also view the papers filed publicly in the Action through the Court's on-line Case Management/Electronic Case Files System at <https://www.pacer.gov>.

You can also get a copy of the Settlement Agreement by calling the Claims Administrator toll free at (\_\_\_\_) \_\_\_\_\_; writing to the Claims Administrator at *ViroPharma Incorporated Securities Litigation*, c/o The Garden City Group, LLC; or visiting the websites of the Claims Administrator or Lead Counsel at [www.\\_\\_\\_\\_\\_](http://www.____), or [www.labaton.com](http://www.labaton.com), where you will find answers to common questions about the Settlement, can download copies of the Settlement Agreement or Proof of Claim form, and locate other information about the Settlement and whether you are eligible for a payment.

***Please do not Call the Court with Questions about the Settlement.***

## PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

### A. Preliminary Matters

As discussed above, the Settlement provides \$8 million in cash for the benefit of the Settlement Class. The Settlement Amount and the interest earned thereon is the “Settlement Fund.” The Settlement Fund, after deduction of Court-approved attorneys’ fees and expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court is the “Net Settlement Fund.” The Net Settlement Fund will be distributed to Authorized Claimants – *i.e.*, members of the Settlement Class who timely submit valid Proofs of Claim that show a Recognized Loss and are approved by the Court. Settlement 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 this Plan of Allocation (“Plan of Allocation” or “Plan”), or modify it, without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the settlement website at: \_\_\_\_\_ and at [www.labaton.com](http://www.labaton.com).

The purpose of this Plan of Allocation is to establish a reasonable and equitable method of distributing the Net Settlement Fund among Authorized Claimants who allegedly suffered economic losses as a result of the alleged violations of the federal securities laws, as opposed to losses caused by market or industry factors or Company-specific factors unrelated to the alleged violations of law. For purposes of determining the amount an Authorized Claimant may recover under this Plan, Lead Counsel have conferred with a consulting damages expert. This Plan is intended to be generally consistent with an assessment of, among other things, the damages that Lead Counsel and Lead Plaintiff believe were recoverable in the Action. The Plan, however, is not a formal damages analysis and the calculations made pursuant to the Plan are not intended to be indicative of the amounts that Settlement Class Members might have been able to recover after a trial.

For losses to be compensable under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of the security. In this case,

Lead Plaintiff alleges that Defendants issued false statements and omitted material facts during the Class Period, which allegedly inflated the prices of ViroPharma publicly traded common stock, Notes, and call options (or deflated the prices of its put options). In order for the Authorized Claimant to share in the distribution of the Net Settlement Fund, the market price of a ViroPharma Security must have declined (or increased in the case of put options) due to disclosure of the alleged false and misleading statements and omissions. In order for an Authorized Claimant to share in the distribution, the ViroPharma Security must have been purchased during the Class Period (or sold in the case of a written put) and held until at least until the close of trading on April 9, 2012 (the last trading day before the alleged corrective disclosure); and the Authorized Claimant must have suffered a Net Trading Loss, as described below.

Because the Net Settlement Fund is less than the total losses alleged to be suffered by Settlement Class Members, the formulas described below for calculating Recognized Losses are not intended to estimate the amount that will actually be paid to Authorized Claimants. Rather, these formulas provide the basis on which the Net Settlement Fund will be distributed on a *pro rata* basis among Authorized Claimants.

The Settlement proceeds available for ViroPharma call options and ViroPharma put options sold (written) during the Class Period shall be limited to a total amount equal to three percent (3%) of the Net Settlement Fund.

Defendants, their respective counsel, and all other Released Defendant Parties will have no responsibility 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 Plaintiff, Plaintiffs' Counsel, and their agents, likewise will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.



**B. Certain Definitions Applicable to the Plan of Allocation**

1. The “Class Period” is the time period between December 14, 2011 and April 9, 2012, inclusive.
2. “Inflation Loss” is the amount of loss calculated based on the amount of inflation in the price of ViroPharma common stock, notes or call options, or deflation in the price of ViroPharma put options based on the methodology described below.
3. The “PSLRA 90-Day Lookback Period” is the period of ninety calendar days beginning on the trading day following the end of the Class Period, *i.e.*, from Tuesday, April 10, 2012 through Friday, July 6, 2012.
4. “Purchase Amount” is the amount paid (excluding all fees, taxes, and commissions) for ViroPharma Securities purchased or acquired during the Class Period (for written put options, it is the amount paid to close out such positions during the Class Period, excluding all fees, taxes, and commissions).
5. “Sales Proceeds” equals the amount received (excluding all fees, taxes, and commissions) for sales of such ViroPharma Securities sold during the Class Period (for written put options, it is the amount received for opening such a position during the Class Period, excluding all fees, taxes, and commissions).
6. “Trading Gain” means the amount by which the Sales Proceeds exceeds the Purchase Amount for each transaction by a Claimant in ViroPharma Securities.
7. “Trading Loss” means the amount by which the Purchase Amount exceeds the Sales Proceeds for each transaction by a Claimant in ViroPharma Securities.
8. “ViroPharma Security(ies)” means:
  - ViroPharma’s publicly traded common stock
  - ViroPharma’s 2.0% Senior Convertible Notes due 2017 (“Notes”)
  - ViroPharma’s exchange-traded call and put options (listed in Table 1)<sup>4</sup>

**C. Computation of Inflation Loss**

**1. *Inflation Loss for ViroPharma publicly traded common stock***

For each purchase of ViroPharma common stock between December 14, 2011 and April 9, 2012, inclusive, the Inflation Loss for each purchase transaction will be computed (using FIFO matching of purchases to sales) as follows:

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<sup>4</sup> Table 1 excludes those options that expired before April 10, 2012, the date of the price reaction to the alleged corrective disclosure. Class Members who purchased call options (or wrote put options) that are excluded from Table 1 do not have a claim compensable from the Net Settlement Fund with respect to those particular securities.

If purchased during the Class Period and:

- a) *sold on or before April 9, 2012*, the last trading day before the corrective disclosure that reduced the amount of inflation in the ViroPharma common stock price, the Inflation Loss for purchased shares matched to such sales is zero;
- b) *sold after April 9, 2012 but on or before July 6, 2012*, the Inflation Loss equals the number of shares purchased matched to such sales in such transaction multiplied by the lesser of: (i) the inflation per share of \$4.37; or (ii) the difference between the purchase price per share and the average closing price per share from April 10, 2012 to the date of sale as shown in Table 2 (but not less than zero);
- c) *held as of the close of trading on July 6, 2012*, the Inflation Loss equals the number of shares purchased matched to such shares held in such transaction multiplied by the lesser of: (i) the inflation per share of \$4.37 or (ii) the difference between the purchase price per share and the Holding Price of \$21.29 per share, which is the average closing price per share during the PSLRA 90-Day Lookback Period.

## **2. Inflation Loss for ViroPharma Notes**

For each purchase of ViroPharma Notes (each \$1,000 of face-value equals one Note) between December 14, 2011 and April 9, 2012, inclusive, the Inflation Loss for each purchase transaction will be computed (using FIFO matching of purchases to sales) as follows:

If purchased during the Class Period and:

- a) *sold on or before April 9, 2012*, the last trading day before the corrective disclosure that reduced the amount of inflation in the ViroPharma Note price, the Inflation Loss for purchased Notes matched to such sales is zero;
- b) *sold after April 9, 2012 but on or before July 6, 2012*, the Inflation Loss equals the number of Notes purchased matched to such sales in such transaction multiplied by the lesser of: (i) the inflation per Note of \$19.11 (per \$1,000 face value); or (ii) ) the difference between the purchase price per Note and the average closing price per Note from April 10, 2012 to the date of sale as shown in Table 3 (but not less than zero);
- c) *held as of the close of trading on July 6, 2012*, the Inflation Loss equals the number of Notes purchased matched to such Notes held in such transaction multiplied by the lesser of: (i) the inflation per Note of \$19.11 (per \$1,000 face value); or (ii) the difference between the purchase price per Note and the Holding Price of \$131.00 per Note (per \$1,000 face value), which is the average closing price per Note during the PSLRA 90-Day Lookback Period.

### **3. *Inflation Loss for ViroPharma publicly traded call options***

Exchange-traded options are typically traded in units called contracts. Each contract entitles the option buyer/owner to 100 shares of the underlying stock upon exercise or expiration. For options, a unit is an option with one hundred shares of ViroPharma common stock as the underlying security.

**Inflation Loss:** For publicly traded call options on ViroPharma common stock purchased or otherwise acquired between December 14, 2011 and April 9, 2012, inclusive (and not purchased to close a written call), the Inflation Loss for each purchase transaction will be computed (using FIFO matching) as follows (but not less than zero):

- a) *if closed (through sale, exercise or expiration) on or before April 9, 2012*, the last trading day before the corrective disclosure that reduced the amount of inflation in the ViroPharma call options price, the Inflation Loss for call options matched to such sales is zero;
- b) *if open as of the close of trading on April 9, 2012*, the Inflation Loss equals the number of call options purchased or otherwise acquired multiplied by the lesser of: (i) the inflation per call option as shown in Table 1 multiplied by 100; or (ii) the purchase price per call option minus the Holding Price (which is based on closing bid/ask prices on April 10, 2012) per call option as shown in Table 1 multiplied by 100;

### **4. *Inflation Loss for ViroPharma put options***

**Inflation Loss:** For publicly traded put options on ViroPharma common stock written between December 14, 2011 and April 9, 2012, inclusive, the Inflation Loss for each transaction will be computed (using FIFO matching) as follows (but not less than zero):

- a) *if closed (through purchase, assignment or expiration) on or before April 9, 2012*, the last trading day before the corrective disclosure that reduced the amount of deflation in the ViroPharma put options price, the Inflation Loss for put options matched to such sales is zero;
- b) *if open as of the close of trading on April 9, 2012*, the Inflation Loss equals the number of put options written multiplied by the lesser of: (i) the deflation per put option as shown in Table 1 multiplied by 100; or (ii) the Holding Price (which is based on closing bid/ask prices on April 10, 2012) per put option as shown in Table 1 minus the price for which the put option was sold multiplied by 100;

### **5. *Computing Total Inflation Loss***

If the Inflation Loss for a transaction is greater than zero, then the Claimant has an Inflation Loss for that purchase transaction (or sale transaction for written put options). If the Inflation Loss is less than zero for a transaction, then the Claimant has no Inflation Loss for that purchase transaction (or sale transaction for written put options).

Total Inflation Loss for a Claimant is the sum of all Inflation Losses for all transactions in all ViroPharma Securities. If a Claimant has a Total Inflation Loss for a Claimant's purchases of all ViroPharma Securities, the Claims Administrator will then compute the Net Trading Loss (or Gain), as indicated below.

**D. Computation of Net Trading Loss (or Gain)**

For each purchase transaction (or writing transaction for put options) of ViroPharma Securities between December 14, 2011 and April 9, 2012, inclusive, the Trading Loss (or Gain), using FIFO matching of purchases (writings) to sales, will be computed as follows:

- a) *if sold (or for options, if closed through sale, exercise, assignment or expiration) on or before April 9, 2012, the Trading Loss (Gain) equals the Purchase Amount minus the Sales Proceeds; or*
- b) *if held (or for options, if open) as of the close of trading on April 9, 2012, the Trading Loss (Gain) is:*
  - (i) for common stock, equal to (a) the Purchase Amount minus (b) the number of shares held multiplied by the Holding Price of \$21.29 per share;
  - (ii) for Notes, equal to (a) the Purchase Amount minus (b) the number of Notes held multiplied by the Holding Price of \$131.00 per Note;
  - (iii) for call options, equal to (a) the Purchase Amount minus (b) the number of open call options multiplied by the Holding Price per call option as shown in Table 1 multiplied by 100; or
  - (iv) for put options, equal to (a) the number of open put options multiplied by the Holding Price per put option as shown in Table 1 multiplied by 100 minus (b) the Sales Proceeds.

If the Trading Loss for a transaction is greater than zero, then the Claimant has a Trading Loss for that transaction. If the Trading Loss for a transaction is less than zero, then the Claimant has a Trading Gain (negative Trading Loss) for that transaction. Net Trading Loss (or Gain) for each Claimant will be the sum of all Trading Losses and Trading Gains (negative Trading Losses) for all transactions in all ViroPharma Securities for that Claimant.

If a Claimant has a Net Trading Gain (Total Trading Gains exceed or are equal to Total Trading Losses) for all transactions in all ViroPharma Securities, the Claimant will not be eligible to receive a distribution from the Net Settlement Fund. If there is a Total Inflation Loss and a Net Trading Loss for all of the Claimant's transactions in ViroPharma Securities, the Claims Administrator will then compute the Recognized Loss, as indicated below.

**E. Computation of Recognized Loss and Pro Rata Share**

For all transactions in ViroPharma Securities, if a Claimant has a Total Inflation Loss and a Net Trading Loss, the Recognized Loss for each Claimant will be the **lesser** of the Claimant's: (i) Total Inflation Loss; or (ii) Net Trading Loss.

After all Class Members have submitted their Proofs of Claim, the payment any Authorized Claimant will get will be his, her, or its *pro rata* share of the Net Settlement Fund. An Authorized Claimant's *pro rata* share will be his, her, or its Recognized Loss divided by the total Recognized Losses of all Authorized Claimants and then multiplied by the total amount in the Net Settlement Fund, after taking into account the amount of the Net Settlement Fund allocated to transactions in put and call options. *Please note that the term "Recognized Loss" is used solely for calculating the amount of participation by Authorized Claimants in the Net Settlement Fund. It is not the actual amount an Authorized Claimant can expect to recover.*

**F. Additional Provisions**

If a Settlement Class Member has more than one purchase or sale of ViroPharma Securities during the Class Period, all purchases and sales of such securities shall be matched on a FIFO basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period, and then against purchases in chronological order, beginning with the earliest purchase made during the Class Period. Sales (purchases in the case of written put options) matched to holdings at the beginning of the Class Period are excluded from the calculation of Inflation Loss and Trading Loss (or Gain). In addition, all sales of common stock, Notes, or call options on or before April 9, 2012 and purchases matched to such sales are excluded from the calculation of Inflation Loss. All purchases to cover written put options on or before April 9, 2012 and such written positions matched to such purchases are also excluded from the calculation of Inflation Loss. Note: Short sales and purchases to cover short sales (whether they occurred before, during, or after the Class Period) are not included when calculating Inflation Loss or Trading Loss (or Gain).

Purchases and sales of ViroPharma Securities shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. With respect to ViroPharma common stock purchased or sold through the exercise of an option, the purchase/sale

date of the common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

The receipt or grant by gift, inheritance or operation of law of ViroPharma Securities during the Class Period shall not be deemed a purchase or sale for purposes of the calculation of a claimant's Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase or sale of such ViroPharma Securities unless: (a) the donor or decedent purchased or otherwise acquired the ViroPharma Securities during the Class Period; (b) no Proof of Claim was submitted by or on behalf of the donor, or the decedent, or by anyone else with respect to such ViroPharma Securities; and (c) it is specifically so provided in the instrument of gift or assignment.

The date of covering a "short sale" is deemed to be the date of purchase of the ViroPharma Security. The date of a "short sale" is deemed to be the date of sale of the ViroPharma Security. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" is zero. In the event that a claimant has an opening short position in ViroPharma Securities, the earliest Class Period purchases shall be matched against such opening short position and not be entitled to a recovery until that short position is fully covered.

The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

Payment in this manner will be deemed conclusive against all Authorized Claimants. Recognized Losses will be calculated as defined herein by the Claims Administrator 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. Lead Counsel shall continue to reallocate and redistribute any balance that still remains in the Net Settlement Fund unless the amounts involved are too small to make individual distributions economically viable. When it is no longer feasible or economical to redistribute the Net Settlement Fund, any balance that still remains after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be contributed to the Council of Institutional Investors, a non-profit organization.

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

#### **SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES**

If you purchased ViroPharma publicly traded common stock, Notes, or options (Ticker: VPHM; CUSIP: 928241108, 928241AH1) during the Class Period for the beneficial interest of a person or organization other than yourself, the Court has directed that, **WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE**, you **MUST EITHER**: (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased such ViroPharma Security 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) DAYS** mail the Notice and Proof of Claim form directly to the beneficial owners of that security. If you choose to follow alternative procedure (b), the Court has also directed that, upon

such mailing, **YOU MUST 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 expense 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:

*ViroPharma Incorporated Securities Litigation*  
c/o The Garden City Group, LLC

\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 2015

BY ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE  
EASTERN DISTRICT OF  
PENNSYLVANIA



**Table 1**  
**Inflation/Deflation and Holding Prices for ViroPharma Call/Put Options**

Expiration Date	Exercise Price	Call Options		Put Options	
		Inflation	Holding Price	Deflation	Holding Price
4/21/2012	\$15.00	\$3.98	\$7.50	\$0.00	\$0.00
4/21/2012	\$17.50	\$3.86	\$5.00	\$0.00	\$0.00
4/21/2012	\$20.00	\$3.73	\$2.65	\$0.01	\$0.18
4/21/2012	\$22.50	\$3.34	\$0.85	\$0.16	\$0.88
4/21/2012	\$25.00	\$2.82	\$0.23	\$1.28	\$2.78
4/21/2012	\$30.00	\$0.32	\$0.00	\$4.03	\$7.65
4/21/2012	\$35.00	\$0.00	\$0.00	\$4.36	\$12.56
4/21/2012	\$40.00	\$0.00	\$0.00	\$4.36	\$17.56
4/21/2012	\$45.00	\$0.00	\$0.00	\$4.36	\$22.56
5/19/2012	\$5.00	\$4.26	\$17.50	\$0.00	\$0.00
5/19/2012	\$7.50	\$4.22	\$15.00	\$0.00	\$0.00
5/19/2012	\$10.00	\$4.15	\$12.45	\$0.00	\$0.00
5/19/2012	\$12.50	\$4.10	\$9.95	\$0.00	\$0.00
5/19/2012	\$15.00	\$3.95	\$8.15	\$0.00	\$0.00
5/19/2012	\$17.50	\$3.81	\$5.25	\$0.01	\$0.28
5/19/2012	\$20.00	\$3.63	\$3.20	\$0.05	\$0.78
5/19/2012	\$22.50	\$3.29	\$1.68	\$0.18	\$1.75
5/19/2012	\$25.00	\$2.82	\$0.80	\$1.50	\$3.20
5/19/2012	\$30.00	\$0.94	\$0.13	\$3.45	\$7.60
5/19/2012	\$35.00	\$0.10	\$0.00	\$4.33	\$12.56
5/19/2012	\$40.00	\$0.00	\$0.00	\$4.33	\$17.56
5/19/2012	\$45.00	\$0.00	\$0.00	\$4.33	\$22.56
8/18/2012	\$15.00	\$3.89	\$8.55	\$0.01	\$0.35
8/18/2012	\$17.50	\$3.73	\$5.85	\$0.02	\$0.73
8/18/2012	\$20.00	\$3.52	\$4.05	\$0.65	\$1.35
8/18/2012	\$22.50	\$3.17	\$2.63	\$1.07	\$2.45
8/18/2012	\$25.00	\$2.76	\$1.58	\$1.60	\$3.95
8/18/2012	\$30.00	\$1.56	\$0.50	\$2.86	\$7.65
8/18/2012	\$35.00	\$0.57	\$0.18	\$4.25	\$12.60
8/18/2012	\$40.00	\$0.16	\$0.00	\$4.24	\$17.56
8/18/2012	\$45.00	\$0.00	\$0.00	\$4.24	\$22.56
11/17/2012	\$15.00	\$3.88	\$8.85	\$0.01	\$0.73
11/17/2012	\$17.50	\$3.73	\$6.80	\$0.46	\$1.38
11/17/2012	\$20.00	\$3.77	\$4.25	\$0.76	\$2.13
11/17/2012	\$22.50	\$3.38	\$2.95	\$1.13	\$2.70
11/17/2012	\$25.00	\$2.77	\$1.95	\$1.60	\$4.00
11/17/2012	\$30.00	\$1.87	\$0.88	\$2.67	\$7.65
11/17/2012	\$35.00	\$0.88	\$0.30	\$3.51	\$12.56
11/17/2012	\$40.00	\$0.45	\$0.00	\$4.16	\$17.56
11/17/2012	\$45.00	\$0.00	\$0.00	\$4.16	\$22.56

**Table 2**  
**Average 90-Day Look-Back Closing Prices for**  
**ViroPharma Common Stock**

<b>Date</b>	<b>Average Price</b>	<b>Date</b>	<b>Average Price</b>
4/10/2012	\$22.44	5/23/2012	\$20.84
4/11/2012	\$22.15	5/24/2012	\$20.82
4/12/2012	\$22.13	5/25/2012	\$20.80
4/13/2012	\$22.10	5/29/2012	\$20.79
4/16/2012	\$21.86	5/30/2012	\$20.77
4/17/2012	\$21.79	5/31/2012	\$20.76
4/18/2012	\$21.85	6/1/2012	\$20.74
4/19/2012	\$21.85	6/4/2012	\$20.72
4/20/2012	\$21.86	6/5/2012	\$20.70
4/23/2012	\$21.81	6/6/2012	\$20.69
4/24/2012	\$21.74	6/7/2012	\$20.67
4/25/2012	\$21.73	6/8/2012	\$20.67
4/26/2012	\$21.74	6/11/2012	\$20.65
4/27/2012	\$21.76	6/12/2012	\$20.65
4/30/2012	\$21.76	6/13/2012	\$20.65
5/1/2012	\$21.62	6/14/2012	\$20.68
5/2/2012	\$21.54	6/15/2012	\$20.71
5/3/2012	\$21.46	6/18/2012	\$20.74
5/4/2012	\$21.36	6/19/2012	\$20.79
5/7/2012	\$21.30	6/20/2012	\$20.85
5/8/2012	\$21.25	6/21/2012	\$20.89
5/9/2012	\$21.21	6/22/2012	\$20.93
5/10/2012	\$21.19	6/25/2012	\$20.97
5/11/2012	\$21.17	6/26/2012	\$21.01
5/14/2012	\$21.12	6/27/2012	\$21.06
5/15/2012	\$21.09	6/28/2012	\$21.10
5/16/2012	\$21.05	6/29/2012	\$21.15
5/17/2012	\$20.99	7/2/2012	\$21.19
5/18/2012	\$20.93	7/3/2012	\$21.23
5/21/2012	\$20.90	7/5/2012	\$21.26
5/22/2012	\$20.87	7/6/2012	\$21.29

**Table 3**  
**Average 90-Day Look-Back Closing Prices for**  
**ViroPharma Notes**

<b>Date</b>	<b>Average Price</b>	<b>Date</b>	<b>Average Price</b>
4/10/2012	\$143.25	5/23/2012	\$129.52
4/11/2012	\$138.66	5/24/2012	\$129.44
4/12/2012	\$136.75	5/25/2012	\$129.37
4/13/2012	\$135.98	5/29/2012	\$129.30
4/16/2012	\$135.03	5/30/2012	\$129.24
4/17/2012	\$134.21	5/31/2012	\$129.19
4/18/2012	\$133.63	6/1/2012	\$129.14
4/19/2012	\$133.43	6/4/2012	\$129.09
4/20/2012	\$133.27	6/5/2012	\$129.04
4/23/2012	\$133.16	6/6/2012	\$129.00
4/24/2012	\$133.07	6/7/2012	\$128.96
4/25/2012	\$133.02	6/8/2012	\$128.92
4/26/2012	\$132.98	6/11/2012	\$128.84
4/27/2012	\$133.06	6/12/2012	\$128.77
4/30/2012	\$133.15	6/13/2012	\$128.80
5/1/2012	\$132.67	6/14/2012	\$128.89
5/2/2012	\$132.17	6/15/2012	\$128.97
5/3/2012	\$131.73	6/18/2012	\$129.05
5/4/2012	\$131.34	6/19/2012	\$129.23
5/7/2012	\$131.08	6/20/2012	\$129.40
5/8/2012	\$130.84	6/21/2012	\$129.57
5/9/2012	\$130.67	6/22/2012	\$129.72
5/10/2012	\$130.51	6/25/2012	\$129.88
5/11/2012	\$130.36	6/26/2012	\$130.02
5/14/2012	\$130.23	6/27/2012	\$130.17
5/15/2012	\$130.10	6/28/2012	\$130.30
5/16/2012	\$129.99	6/29/2012	\$130.43
5/17/2012	\$129.88	7/2/2012	\$130.56
5/18/2012	\$129.78	7/3/2012	\$130.69
5/21/2012	\$129.69	7/5/2012	\$130.84
5/22/2012	\$129.60	7/6/2012	\$131.00

## **Exhibit A-2**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

In re VIROPHARMA INCORPORATED	)	Civil Action No. 2:12-cv-02714
SECURITIES LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
	)	
This Document Relates To:	)	<b>PROOF OF CLAIM</b>
	)	
ALL ACTIONS.	)	EXHIBIT A-2
_____	)	

**I. GENERAL INSTRUCTIONS**

1. To be eligible to recover from the Net Settlement Fund in the action entitled *In re ViroPharma Incorporated Securities Litigation*, Civil Action No. 2:12-cv-02714 (the “Action”), you must complete and, on page \_\_\_ hereof, sign this Proof of Claim form. If you fail to submit a properly completed and addressed Proof of Claim form, 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 assure that you will share in the Net Settlement Fund.

**3. YOU MUST MAIL OR SUBMIT YOUR COMPLETED AND SIGNED PROOF OF CLAIM FORM SO THAT IT IS POSTMARKED OR RECEIVED NO LATER THAN \_\_\_\_\_, 2015, ADDRESSED AS FOLLOWS:**

***VIROPHARMA INCORPORATED SECURITIES LITIGATION***

**c/o The Garden City Group, LLC**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. If you are NOT a Settlement Class Member (as defined in the Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys’ Fees and Expenses (“Notice”) that accompanies this Proof of Claim), DO NOT submit a Proof of Claim form.

5. If you are a Settlement Class Member and have not requested exclusion, you will be bound by the terms of the Settlement and any judgment entered in the Action, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM FORM.

## II. DEFINITIONS

1. Capitalized terms not defined in this Proof of Claim have the same meaning as set forth in the Notice that accompanies this Proof of Claim form and in the Stipulation and Agreement of Settlement, dated as of April \_\_, 2015 (the “Settlement Agreement”). The Settlement Agreement and other Settlement-related documents can be viewed at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), and [www.labaton.com](http://www.labaton.com).

2. The securities for which a claimant may be entitled to receive a recovery consist of ViroPharma’s publicly traded common stock, its 2.0% Senior Convertible Notes due 2017 (“Notes”), and its exchange-traded call and put options (collectively, “ViroPharma Security(ies)”).

## III. IDENTIFICATION OF CLAIMANT

1. If you purchased or otherwise acquired ViroPharma Securities during the Class Period and held the securities in your name, you are the beneficial purchaser as well as the record purchaser. If, however, you purchased or otherwise acquired ViroPharma Securities but the securities were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is the record purchaser.

2. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) (OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S)) OF THE SECURITIES UPON WHICH THIS CLAIM IS BASED. Use Part I of this form entitled “Claimant Identification” to identify each purchaser of record (“nominee”), if different from the beneficial purchaser of the securities that form the basis of this claim.

3. Separate Proofs of Claim should be submitted for each separate legal entity (for example, a claim by joint owners should not include the transactions of just one of the joint owners, and an individual should not submit one claim that combines his or her IRA transactions with transactions made solely in the individual’s name). Conversely, a combined Proof of Claim should be submitted on behalf of each legal entity (including an individual) that includes all transactions

made by that entity, no matter how many separate accounts that entity has (for example, a corporation/individual with multiple brokerage accounts should include all transactions made in ViroPharma Securities during the Class Period on one Proof of Claim, no matter how many accounts the transactions were made in).

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

#### **IV. IDENTIFICATION OF TRANSACTIONS**

1. Use Part II of this form entitled “Schedule of Transactions” to supply all required details of your transaction(s) in ViroPharma Securities. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

2. On the schedules, provide all of the requested information with respect to: (i) *all* of your holdings of ViroPharma Securities as of the beginning of trading on December 14, 2011; (ii) *all* of your purchases, acquisitions, and sales of ViroPharma Securities which took place at any time during the time periods stated below; and (iii) proof of your holdings in ViroPharma Securities as of the close of trading on July 6, 2012 whether such 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 transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

4. Broker confirmations or other documentation of your transactions in ViroPharma Securities must be attached to your claim. Do not send originals. Please keep copies of all



documents that you send to the Claims Administrator. 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 transactions in ViroPharma Securities. The Claims Administrator may also request additional information as needed to efficiently and reliably calculate your losses.

5. A purchase or sale of ViroPharma Securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date; please provide only “contract” or “trade” dates in your claim.

6. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. If you wish to file your claim electronically, you must call the Claims Administrator toll-free at \_\_\_\_\_, send an e-mail to \_\_\_\_\_, or visit the website for this Settlement at \_\_\_\_\_ to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a report listing all transactions contained in the electronic file. Do not assume that your file has been received or processed until you receive this report.

7. To be considered timely, a Proof of Claim must be submitted to the Claims Administrator so that it is **postmarked or received, on or before \_\_\_\_\_, 2015** in accordance with the above instructions. In all other cases, a Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

8. You should be aware that it will take a significant amount of time to process fully all of the Proofs of Claim and to administer the Settlement. This work will be completed as promptly as time permits, given the need to investigate and calculate each Proof of Claim. Please notify the Claims Administrator of any change of address.

MUST BE  
POSTMARKED OR  
RECEIVED NO  
LATER THAN  
\_\_\_\_\_ 2015

*In re ViroPharma Incorporated Securities  
Litigation*  
**PROOF OF CLAIM AND RELEASE**  
Use Blue or Black Ink Only

For Official Use Only

**PART I: CLAIMANT IDENTIFICATION** - Complete either Section A or B and then proceed to C.  
Please type or print.

- A. Complete this Section ONLY if the Beneficial Owner is an individual, joint, or IRA account.  
Otherwise, proceed to B.

Last Name (Beneficial Owner)

First Name (Beneficial Owner)

Last Name (Joint Beneficial Owner, if applicable)

First Name (Joint Beneficial Owner, if applicable)

Name of Custodian, if applicable

If this account is an IRA, and if you would like any check that you MAY be eligible to receive made payable to the IRA account, please include "IRA" in the "Last Name" box above (e.g., Jones IRA).

- 
- B. Complete this Section ONLY if the Beneficial Owner is an Entity; i.e., corporation, trust, estate, etc.  
Then, proceed to C.

Entity Name

Name of Representative, if applicable (Executor, administrator, trustee, c/o, etc.)

- 
- C. Account/Mailing Information:

Specify one of the following:

Individual(s)    Corporation    UGMA Custodian    IRA    Partnership    Estate  
 Trust

Other:

Number and Street or P.O. Box

City

State

Zip Code

Foreign Province and Postal Code

Foreign Country

Telephone Number (Day)

Telephone Number (Evening)

Email Address

Account Number

**PART II: SCHEDULE OF TRANSACTIONS**

**VIROPHARMA PUBLICLY TRADED COMMON STOCK CUSIP No. 928241108 ONLY**

*YOU MUST SUBMIT DOCUMENTATION SUPPORTING  
THE INFORMATION BELOW*

**COMMON STOCK BEGINNING HOLDINGS**

1. Number of shares of ViroPharma publicly traded common stock held at the beginning of trading on **December 14, 2011**.  
(If none, write "zero" or "0"; if other than zero, must be documented)

Number of Shares

**COMMON STOCK PURCHASES**

2. List (in chronological order) all purchases and/or acquisitions of ViroPharma publicly traded common stock made between **December 14, 2011** and **April 9, 2012**, inclusive:

Check Box if result of an Option Exercised/ Assigned	Date(s) of Purchase (List Chrono- logically) Month/Date/ Year	Number of Shares Purchased	Purchase Price Per Share	Amount Paid (Excluding Commissions, Taxes & Fees)
<input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____

**COMMON STOCK SALES**

3. List (in chronological order) all sales of ViroPharma publicly traded common stock made between **December 14, 2011** and **July 6, 2012**, inclusive:

Check Box if result of an Option Exercised/ Assigned	Date(s) of Sale (List Chrono- logically) Month/Date/ Year	Number of Shares Sold	Sale Price Per Share	Amount Received (Excluding Commissions, Taxes & Fees)
<input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____

**IF ANY OF THE ABOVE TRANSACTIONS RELATE TO SHORT SALES, PLEASE CHECK THIS BOX**   
IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, PHOTOCOPY THIS PAGE

**COMMON STOCK ENDING HOLDINGS**

4. Number of shares of ViroPharma publicly traded common stock held at *the close of trading on July 6, 2012:*   
 (If none, write "zero" or "0"; if other than zero, must be documented) Number of Shares

**VIROPHARMA 2.0% SENIOR CONVERTIBLE NOTES DUE 2017 CUSIP No. 928241AH1 ONLY**

*YOU MUST SUBMIT DOCUMENTATION SUPPORTING THE INFORMATION BELOW*

**PURCHASES OF 2.0% SENIOR CONVERTIBLE NOTES DUE 2017:**

1. List (in chronological order) each and every 2.0% Senior Convertible Note **IF NONE, CHECK HERE**  purchased between **December 14, 2011** and **April 9, 2012**, inclusive:

Coupon Rate/Maturity	Trade Date Month/ Day/ Year	Principal Amount	Purchase Price per \$1000 of Principal Amount*	Aggregate Cost*

**SALES OF 2.0% SENIOR CONVERTIBLE NOTES DUE 2017:**

2. List (in chronological order) each and every 2.0% Senior Convertible Note sold **IF NONE, CHECK HERE**  between **December 14, 2011** and **July 6, 2012**, inclusive:

Coupon Rate/Maturity	Trade Date Month/ Day/ Year	Principal Amount	Sale Price per \$1000 of Principal Amount*	Aggregate Received*

\* Excluding taxes, fees, and commissions.

**VIROPHARMA PUBLICLY TRADED CALL AND PUT OPTIONS ONLY**

*YOU MUST SUBMIT DOCUMENTATION SUPPORTING THE INFORMATION BELOW*

**BEGINNING POSITION OF CALL OPTIONS**

1. At the beginning of trading on December 14, 2011, the following call options on ViroPharma common stock were owned:

Date of Purchase (Month/Day/Year)	Number of Contracts	Expiration Month and Year / Strike Price of Options (i.e. March 2012/\$40)	Purchase Price Per Contract	Amount Paid*	Exercised "E" or Expired "X" (leave blank if neither)	Exercise Date (Month/Day/Year)

**PURCHASES OF CALL OPTIONS**

2. Purchases, including by way of exchange, conversion or otherwise, between **December 14, 2011** and **April 9, 2012**, inclusive of call options on ViroPharma common stock:

Date of Purchase (Month/Day/Year)	Number of Contracts	Expiration Month and Year / Strike Price of Options (i.e. March 2012/\$40)	Purchase Price Per Contract	Amount Paid*	Exercised "E" or Expired "X" (leave blank if neither)	Exercise Date (Month/Day/Year)

\* Excluding taxes, fees, and commissions.

**SALES OF CALL OPTIONS**

3. Sales of the above call options on ViroPharma common stock, which call options were purchased before **April 10, 2012** (include all such sales no matter when they occurred):

Date of Sale (Month/Day/Year)	Number of Contracts	Expiration Month and Year / Strike Price of Options (i.e. March 2012/\$40)	Sale Price Per Contract	Amount Received*

**BEGINNING WRITTEN POSITION OF PUT OPTIONS**

1. At the beginning of trading on **December 14, 2011** the following put options written on ViroPharma common stock were open:

Number of Contracts	Expiration Month and Year / Strike Price of Options (i.e. March 2012/\$40)	Sale Price Per Contract	Amount Received*	Assigned "A" or Expired "E" (leave blank if neither)	Assign Date (Month/Day/Year)

**SALES (WRITING) OF PUT OPTIONS**

2. Written (sold) put options on ViroPharma common stock between **December 14, 2011** and **April 9, 2012**, inclusive:

Date of Writing (Sale) (Month/Day/Year)	Number of Contracts	Expiration Month and Year / Strike Price of Options (i.e. March 2012/\$40)	Sale Price Per Contract	Amount Received*	Assigned "A" or Expired "E" (leave blank if neither)	Assign Date (Month/Day/Year)

**COVERING TRANSACTIONS (REPURCHASES) OF PUT OPTIONS**

3. Repurchases of the above put options on ViroPharma common stock that were written (sold) before **April 10, 2012**, (include all repurchases no matter when they occurred):

Date of Purchase (Month/Day/Year)	Number of Contracts	Expiration Month and Year / Strike Price of Options (i.e. March 2012/\$40)	Price Paid Per Contract	Aggregate Cost*

\* Excluding taxes, fees, and commissions.

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

By signing and submitting this Proof of Claim form, the claimant(s) or the person(s) acting on behalf of the claimant(s) certify(ies) that: I (We) submit this Proof of Claim form under the terms of the Plan of Allocation of Net Settlement Fund described in the accompanying Notice. I (We) also submit to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania (the “Court”) with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the releases set forth herein. I (We) further acknowledge that I (we) will be bound by the terms of any judgment entered in connection with the Settlement in the Action, including the releases set forth therein. I (We) agree to furnish additional information to the Claims Administrator to support this claim, such as additional documentation for transactions in ViroPharma Securities, if required to do so. I (We) have not submitted any other claim covering the same purchases, acquisitions or sales of ViroPharma Securities during the Class Period and know of no other person having done so on my (our) behalf.

**VI. RELEASES AND WARRANTIES**

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

2. I (We) hereby acknowledge that I (we) will not be entitled to receive recovery in any other action against any of the Released Defendant Parties based on or arising out of the Released Claims (as these terms are defined in the accompanying Notice).

3. I (We) hereby warrant and represent that I am (we are) a Settlement Class Member as defined in the Notice, that I am (we are) not excluded from the Settlement Class, that I am (we are) not one of the “Released Defendant Parties” as defined in the accompanying Notice, and that I (we)





2. I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because: (a) I am (we are) exempt from backup withholding; or (b) I (we) have not been notified by the Internal Revenue Service that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the Internal Revenue Service has notified me (us) that I am (we are) no longer subject to backup withholding.

*NOTE:* If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

I (We) declare that all of the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ in

\_\_\_\_\_, \_\_\_\_\_  
(City) (State/County)

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
(Type or print name of Claimant)

\_\_\_\_\_  
Signature of Joint Claimant, if any

\_\_\_\_\_  
(Type or print name of Joint Claimant, if any)

\_\_\_\_\_  
Signature of person signing on behalf of Claimant

\_\_\_\_\_  
(Type or print name of person signing, on behalf of Claimant)

\_\_\_\_\_  
Capacity of person signing on behalf of Claimant, if other than an individual (e.g., Administrator, Executor, Trustee, President, Custodian, Power of Attorney, etc.)

**Reminder Checklist:**

1. Please sign the above release and certification. If this Proof of Claim is submitted on behalf of joint claimants, then both claimants must sign.
2. Remember to attach supporting documentation, if available. **DO NOT HIGHLIGHT THE PROOF OF CLAIM FORM OR YOUR SUPPORTING DOCUMENTATION.**
3. Do NOT send original stock certificates or original brokerage statements.
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 submitted until you receive an acknowledgment postcard. If you do not receive an acknowledgment postcard within 60 days, please call the Claims Administrator toll free at \_\_\_\_\_.
6. If you move after submitting this Proof of Claim, please notify the Claims Administrator of the change in your address.
7. If you have any questions regarding your Proof of Claim, please contact the Claims Administrator at the address below.

**THIS PROOF OF CLAIM MUST BE POSTMARKED OR RECEIVED NO LATER  
THAN \_\_\_\_\_, 2015.**

*ViroPharma Incorporated Securities Litigation*

c/o The Garden City Group, LLC

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **Exhibit A-3**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

In re VIROPHARMA INCORPORATED  
SECURITIES LITIGATION

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This Document Relates To:

ALL ACTIONS.

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) Civil Action No. 2:12-cv-02714

) CLASS ACTION

) SUMMARY NOTICE OF PENDENCY OF  
) CLASS ACTION AND PROPOSED  
) SETTLEMENT AND MOTION FOR  
) ATTORNEYS' FEES AND EXPENSES

EXHIBIT A-3

**TO: ALL PERSONS OR ENTITIES THAT PURCHASED OR OTHERWISE ACQUIRED VIROPHARMA SECURITIES DURING THE PERIOD BETWEEN DECEMBER 14, 2011 AND APRIL 19, 2012, INCLUSIVE, AND WERE DAMAGED THEREBY (“SETTLEMENT CLASS”).**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Eastern District of Pennsylvania, that a settlement between (i) Lead Plaintiff, on behalf of the Settlement Class and (ii) ViroPharma Incorporated (“ViroPharma”), Vincent J. Milano, Charles A. Rowland, Jr., Thomas F. Doyle, and J. Peter Wolf (collectively “Defendants”) in the amount of \$8,000,000 to resolve the captioned action in its entirety has been proposed by the Settling Parties.

A hearing will be held before the Honorable C. Darnell Jones, United States District Judge, on \_\_\_\_\_, 2015 at \_\_\_\_\_.m. in Courtroom \_\_\_\_ of the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106, for the purpose of determining, among other things, (i) whether the Settlement set forth in the Stipulation and Agreement of Settlement, dated as of \_\_\_\_\_, 2015 (“Settlement Agreement”) is fair, reasonable, and adequate and should be approved; (ii) whether this Action should be dismissed with prejudice as set forth in the Settlement Agreement; (iii) whether the Plan of Allocation of the Net Settlement Fund is fair, reasonable and adequate and should be approved; and (iv) the reasonableness of the application of Plaintiff’s Counsel for the payment of attorney’s fees and expenses, with interest, incurred in connection with this Action. The Court has reserved the right to reschedule the hearing without further notice.

If you are a member of the Settlement Class described above, your rights will be affected by this Action and the proposed Settlement thereof. If you have not received the detailed Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys’ Fees and Expenses (the “Notice”) and Proof of Claim form, you may obtain them by downloading them at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or by contacting the Claims Administrator:

*VIROPHARMA INCORPORATED SECURITIES LITIGATION*

c/o The Garden City Group, LLC

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

Lead Counsel:

**LABATON SUCHAROW LLP**  
Jonathan Gardner, Esq.  
140 Broadway  
New York, NY 10005  
1-888-219-6877  
www.labaton.com  
settlementquestions@labaton.com

If you are a member of the Settlement Class and wish to share in the Settlement proceeds, you must submit a Proof of Claim **postmarked or received no later than \_\_\_\_\_, 2015** establishing that you are entitled to recovery. As further described in the Notice, you will be bound by any judgment entered in the Action, regardless of whether you submit a Proof of Claim, unless you exclude yourself from the Settlement Class, in accordance with the procedures set forth in the Notice, **no later than \_\_\_\_\_, 2015**. Any objections to the Settlement, Plan of Allocation, or Plaintiff's Counsel's request for attorney's fees and expenses, must be filed and served, in accordance with the procedures set forth in the Notice, such that they are **received no later than \_\_\_\_\_, 2015**.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE ABOUT THIS NOTICE.**

DATED: \_\_\_\_\_, 2015

BY ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN  
DISTRICT OF PENNSYLVANIA

## **Exhibit B**



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

In re VIROPHARMA INCORPORATED	)	Civil Action No. 2:12-cv-02714
SECURITIES LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
	)	
This Document Relates To:	)	[PROPOSED] FINAL JUDGMENT AND
	)	ORDER
ALL ACTIONS.	)	
_____	)	EXHIBIT B

WHEREAS, this matter came before the Court for a hearing pursuant to the Order of this Court entered on \_\_\_\_\_, 2015 (the “Preliminary Approval Order”), on the application of the Settling Parties for approval of the Settlement set forth in the Stipulation and Agreement of Settlement executed as of April 28, 2015 (the “Settlement Agreement”), and filed with the Court on \_\_\_\_\_, 2015;

WHEREAS, all capitalized terms used herein have the meanings set forth and defined in the Settlement Agreement;

WHEREAS, the Court has received declarations attesting to the mailing of the Notice and publication of the Summary Notice in accordance with the Preliminary Approval Order;

WHEREAS, due and adequate notice having been given to the Settlement Class as required by the Preliminary Approval Order, and the Court having considered all papers filed and proceedings in this Action and otherwise being fully informed of the matters herein, and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this Action, including the terms and conditions of the Settlement Agreement and all exhibits thereto and the Plan of Allocation of the Net Settlement Fund, and over all parties to the Action and all Settlement Class Members.

2. The Court hereby finally certifies the following class for the purposes of Settlement only (the “Settlement Class”), pursuant to Rules 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure: all Persons that purchased or otherwise acquired ViroPharma Securities between December 14, 2011 and April 9, 2012, inclusive, (the “Class Period”) and were damaged thereby. Excluded from the Settlement Class are: Defendants; the Company’s officers, directors, and employees during the Class Period; the Company’s, successors, and assigns; any person, entity, firm, trust, corporation or other entity related to, affiliated with, or controlled by any of the Defendants, as

well as the Immediate Families of the Individual Defendants. Also excluded from the Settlement Class are those Persons listed on Exhibit A hereto who submitted valid and timely requests for exclusion from the Settlement Class in accordance with the requirements set forth in the Notice.

3. The Court hereby affirms its appointment of Lead Plaintiff as Class Representative for the Settlement Class and Labaton Sucharow LLP as Class Counsel for the Settlement Class.

4. This Court finds that the distribution of the Notice, the publication of the Summary Notice, and the notice methodology all were implemented in accordance with the terms of the Settlement Agreement and the Court's Preliminary Approval Order, and:

(a) constituted the best practicable notice to Settlement Class Members under the circumstances of the Action;

(b) were reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (i) the proposed Settlement of this class action; (ii) their right to exclude themselves from the Settlement Class; (iii) their right to object to any aspect of the proposed Settlement; (iv) their right to appear at the Settlement Hearing, either on their own or through counsel hired at their own expense, if they are not excluded from the Settlement Class; and (v) the binding effect of the proceedings, rulings, orders, and judgments in this Action, whether favorable or unfavorable, on all Persons who are not excluded from the Settlement Class;

(c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and

(d) fully satisfied all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d)), the United States Constitution (including the Due Process Clause), Section 21D(a)(7) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. §78u-4(a)(7), the Rules of the Court, and any other applicable law.

5. In light of the benefits to the Settlement Class, the complexity, expense and possible duration of further litigation against the Defendants, and the risks of establishing liability and damages, pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby fully and finally approves the Settlement as set forth in the Settlement Agreement, and finds that the Settlement is, in all respects fair, reasonable and adequate, and in the best interests of Lead Plaintiff, the Settlement Class, and the Members of the Settlement Class. This Court further finds the Settlement set forth in the Settlement Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of Lead Plaintiff, the Settlement Class, and the Defendants. The Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

6. The Amended Class Action Complaint for Violations of the Federal Securities Laws, filed in this Action on October 19, 2012, is hereby dismissed with prejudice. The Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement or this Judgment.

7. Upon the Effective Date, Lead Plaintiff and each and every Settlement Class Member, other than those listed in Exhibit A hereto, on behalf of themselves and each of their respective heirs, agents, representatives, attorneys, subsidiaries, affiliates, executors, trustees, administrators, predecessors, successors, assigns, any trust of which Lead Plaintiff or any Settlement Class Member is the settlor or is for the benefit of a member of their Immediate Family, and any entity acting on behalf of Lead Plaintiff or any Settlement Class Member, in their capacity as Lead Plaintiff or Settlement Class Member, shall: (i) 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; (ii) be barred and enjoined from commencing, instituting, prosecuting or maintaining any of the Released Claims against any of the Released Defendant Parties; and (iii) be deemed to have covenanted not to sue any Released Defendant Party

on the basis of any Released Claims or, unless compelled by operation of law, to assist any person in commencing or maintaining any suit relating to any Released Claim against any Released Defendant Party. The foregoing release is given regardless of whether Lead Plaintiff or any Settlement Class Members have: (i) executed and delivered a Proof of Claim form; (ii) received the Notice; (iii) participated in the Settlement Fund; (iv) filed an objection to the Settlement, the proposed Plan of Allocation, any application by Plaintiff's Counsel for attorneys' fees and expenses; or Lead Plaintiff's request for reimbursement of its expenses in representing the Settlement Class; or (v) had their claims approved or allowed. Nothing contained herein shall, however, bar any action or claim to enforce the terms of the Settlement Agreement or this Judgment.

8. Upon the Effective Date, the Defendants, on behalf of themselves and each of their respective heirs, agents, representatives, attorneys, affiliates, executors, trustees, administrators, predecessors, successors and assigns shall: (i) 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; (ii) be barred and enjoined from commencing, instituting, prosecuting or maintaining any of the Released Defendants' Claims against any of the Released Plaintiff Parties; and (iii) be deemed to have covenanted not to sue any Released Plaintiff Party on the basis of any Released Defendants' Claim or, unless compelled by operation of law, to assist any person in commencing or maintaining any suit relating to any Released Defendants' Claim against any Released Plaintiff Party. Nothing contained herein shall, however, bar any action or claim to enforce the terms of the Settlement Agreement or this Judgment.

9. All Persons whose names appear on Exhibit A hereto are hereby excluded from the Settlement Class, are not bound by this Judgment, and may not make any claim with respect to or receive any benefit from the Settlement.

10. Neither the Settlement Agreement nor the terms of the Settlement Agreement shall be offered or received into any action or proceeding for any purpose, except: (i) in an action or proceeding arising under the Settlement Agreement or arising out of this Judgment; (ii) in any action or proceeding where the releases provided pursuant to the Settlement Agreement may serve as a bar to recovery; or (iii) in any action or proceeding to determine the availability, scope, or extent of insurance coverage (or reinsurance related to such coverage) for the sums expended for the Settlement and defense of the Action.

11. This Judgment, the Settlement Agreement, and any of their respective provisions, and any negotiations, proceedings or agreements relating to the Settlement Agreement and the Settlement, and any matters arising in connection with settlement negotiations, proceedings or agreements, and all acts performed or documents executed pursuant to or in furtherance of the Settlement Agreement, shall not be offered or received against the Released Parties for any purpose, and in particular, do not:

(a) constitute, and shall not be offered or received against the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by the Released Defendant Parties for any purpose, including with respect to the truth of any fact alleged by Lead Plaintiff and the Settlement Class or the validity of any claim that has been or could have been asserted in the Action or in any action or other proceeding, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of the Released Defendant Parties;

(b) constitute, and shall not be offered or received against the Released Defendant Parties 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 Released Defendant Parties, or against the Released Defendant Parties, Lead Plaintiff or any member of the

Settlement Class as evidence of any infirmity in the claims or defenses that have been or could have been asserted in the Action;

(c) constitute, and shall not be offered or received against the Released Parties, 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 any of the Released 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 Agreement or this Judgment;

(d) constitute, and shall not be construed against the Released Parties, 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; and

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

12. A separate order shall be entered regarding Plaintiff's Counsel's application for attorneys' fees and payment of expenses and Lead Plaintiff's request for reimbursement of its expenses in representing the Settlement Class as allowed by the Court. A separate order shall also be entered regarding the proposed Plan of Allocation. Such orders shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

13. This Court finds that Lead Plaintiff and Lead Counsel adequately represented the Settlement Class under Rules 23(a)(4) and (g) of the Federal Rules of Civil Procedure for the

purpose of negotiating, entering into, and implementing the Settlement and at all times during the pendency of this Action.

14. This Court finds that during the course of the litigation, Lead Plaintiff, Plaintiff's Counsel, Defendants, and Defendants' Counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

15. Nothing in this Judgment constitutes or reflects a waiver, release or discharge of any rights or claims of Defendants against their insurers, or their insurers' subsidiaries, predecessors, successors, assigns, affiliates, or representatives.

16. The Settling Parties are hereby authorized, without further approval of the Court, to unanimously agree to and adopt in writing such amendments, modifications, and expansions of the Settlement Agreement and all exhibits attached thereto, provided that such amendments, modifications, and expansions of the Settlement Agreement are done in accordance with the terms of Paragraph 52 of the Settlement Agreement, are not materially inconsistent with this Judgment, and do not materially limit the rights of Settlement Class Members under the Settlement Agreement.

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 Settlement Agreement.

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

19. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution from the Settlement Fund, and interest earned thereon; (b) disposition of the Settlement Fund; (c)



hearing and determining applications for attorneys' fees, costs, interest and payment of expenses in the Action; and (d) all Settling Parties for the purpose of construing, enforcing and administering the Settlement.

20. The provisions of this Judgment constitute a full and complete adjudication of the matters considered and adjudged herein, and the Court determines that there is no just reason for delay in the entry of judgment. The Clerk is hereby directed to immediately enter this Judgment.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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C. DARNELL JONES, II  
UNITED STATES DISTRICT JUDGE