Exhibit 1

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TILE SHOP HOLDINGS, INC. STOCKHOLDER DERIVATIVE LITIGATION	:	Civil Action No. 10884-VCG

- - -

Court of Chancery Courthouse
Courtroom No. 1
34 The Circle
Georgetown, Delaware
Thursday, August 23, 2018
1:30 p.m.

- - -

BEFORE: HON. SAM GLASSCOCK III, Vice Chancellor.

- - -

SETTLEMENT HEARING AND RULING OF THE COURT

CHANCERY COURT REPORTERS
414 Federal Street
Dover, Delaware 19901
(302) 735-2113

I would enjoy playing with this for some time. And I already mentioned the temptation to use some kind of baseball-style arbitration to derive a number. But that's not appropriate either, because this is a task that falls on me, as the judge, in a class action matter where I have to take into account the incentive effects on plaintiffs' counsel, the rights of the plaintiffs, the rights of stockholders generally, and the effect on the corporation.

This is how I look at this. And as I say, there's a certain amount of arbitrariness to it. I think that's unavoidable. But to the best of my ability, as I looked at this last night, it seems to me that getting an independent director is a substantial benefit to the corporation. And I understand the argument by the defendants that this did not tip the corporation from a nonindependent board to an independent board, but it's a pretty close run thing either way. The effect of having an independent director on a board that is even close, I think, is magnified and it is a very substantial improvement for the corporation.

I can't, however, award the kind of fees that I've seen in other cases where there was

hard-fought substantive litigation leading to that result, because I don't find that here. I look at the number of hours that have been reported -- and I have no doubt they were incurred -- but I don't think that this matter, given the division of labor among firms in the substantive actions and given the additional labor that went into the securities action, is really a model of efficiency. When I examined that, it seemed to me that about a million dollars was a proper plaintiff firm recovery for achieving the independent director alone.

The other reforms, it seems to me, are helpful. They are helpful not so much because they substantively changed what the corporation's responsibilities were or how it was going to undertake those responsibilities but to make them prominent before the members of the board. That really, to me, is the benefit of those various reforms. And I think that is probably reflected by -- and his name has already slipped my mind, but the individual that you just described reporting. Whether it was required by the changes or not, I think this is front and center for this board now. And that's a good thing, given the history. Those modest but appreciable changes to

the structure of controls before the board seem, to me, to be worth about a quarter of a million dollars.

I am not going to tell you what I think a reasonable number of hours is for this action. But I've thought about it, and it seems to me that the $1,250,000 award that I have roughly arrived at, based on the benefit, is not out of line with compensation under the lodestar system, with a modest multiplier for the fact that this is -- and I acknowledge the fact that it is -- an action taken on a contingency basis. I won't go through all the *Sugarland* factors. I've discussed the most important. The rest do not direct me away from the figure that I have in mind. And so I am going to award $1,250,000 in fees and costs to the plaintiffs based on that calculation. Is that a perfect calculation? It absolutely is not. It's an arbitrary calculation, arbitrary but informed by my experience in these matters. And looking at various cases and the awards they have generated, I think it is appropriate here. So that's my ruling.

Was that understandable, Counsel?

MS. WILDUNG: Yes.

THE COURT: Was that clear enough?

MR. PORRITT: Yes. Thank you, Your

Exhibit 2

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TERRAFORM POWER, INC.	: Civil Action
DERIVATIVE LITIGATION	: No. 11898-CB

- - -

Chancery Courtroom No. 12A
Leonard J. Williams Justice Center
500 North King Street
Wilmington, Delaware
Monday, December 19, 2016
2:03 p.m.

- - -

BEFORE: HON. ANDRE G. BOUCHARD, Chancellor.

- - -

SETTLEMENT HEARING and RULINGS OF THE COURT

CHANCERY COURT REPORTERS
Leonard J. Williams Justice Center
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0522

APPEARANCES:

DAVID J. MARGULES, ESQ.
Ballard Spahr LLP
-and-
LAWRENCE M. ROLNICK, ESQ.
of the New Jersey Bar
Lowenstein Sandler LLP
for Plaintiff Appaloosa Investment Limited Partnership I

RAYMOND J. DiCAMILLO, ESQ.
Richards, Layton & Finger, P.A.
for Defendants Ahmad Chatila, Martin Truong, and Brian Wuebbels

MEGAN WARD CASCIO, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
-and-
BRADLEY R. WILSON, ESQ.
of the New York Bar
Wachtell, Lipton, Rosen & Katz LLP
for Individual Defendants Peter Blackmore, Christopher Compton, and Jack F. Jenkins-Stark

MATTHEW D. STACHEL, ESQ.
Paul Weiss Rifkind Wharton & Garrison LLP
for Individual Defendant Stephen Tesoriere

MARTIN S. LESSNER, ESQ.
PAUL J. LOUGHMAN, ESQ.
Young, Conaway, Stargatt & Taylor LLP
-and-
TIMOTHY J. PERLA, ESQ.
of the Massachusetts Bar
Wilmer Cutler Pickering Hale and Dorr LLP
for Nominal Defendant TerraForm Power, Inc.

- - -

THE COURT: Mr. Lessner.

MR. LESSNER: Good afternoon, Your Honor. Marty Lessner on behalf of defendant TerraForm Power. With me at counsel table today is Tim Perla from Wilmer Hale and Paul Loughman from Young Conaway.

THE COURT: Good afternoon.

Ms. Cascio.

MS. CASCIO: Good afternoon, Your Honor. Megan Cascio from Morris Nichols on behalf of defendants Blackmore, Compton, and Jenkins-Stark. At counsel table with me is Brad Wilson from Wachtell Lipton.

THE COURT: Good afternoon.

MR. STACHEL: Good afternoon, Your Honor. Matt Stachel from Paul Weiss on behalf of individual defendant Stephen Tesoriere.

THE COURT: All right. Thank you.

Mr. Margules.

MR. MARGULES: I can see, Your Honor, we are out of time. David Margules from Ballard Spahr on behalf of the plaintiff. I rise only to introduce Lawrence Rolnick, who I think Your Honor will remember, from the Lowenstein Sandler firm. He will make the argument on behalf of plaintiff.

THE COURT: Very well.

MR. ROLNICK: Thank you, Your Honor.

Your Honor is probably aware, we don't have any objections filed in connection with the settlement approval. I don't know if anyone here in the courtroom is intending to make any objections.

THE COURT: Is there anyone in the courtroom who intends to object or to speak about the settlement today?

(No response)

THE COURT: All right. We will note for the record that there was no response to that from the gallery.

MR. ROLNICK: Thank you, Your Honor.

So the way I think about this case is essentially to break it into three periods of time that we believe are very relevant.

The first was when we first appeared in connection with the attempt to enjoin the take/pay arrangement, which Your Honor may recall was a transaction that was being sought by SunEdison in connection with the acquisition of Vivint. So we had that period of time.

There was then the post-Vivint time --

that is, after the Vivint deal was scuttled and prior to the bankruptcy.

And then there is the post-bankruptcy period, which is the period we are in now. So I will just focus generally on those three areas.

THE COURT: The post-bankruptcy filing, I assume the bankruptcy is still pending. Right?

MR. ROLNICK: The bankruptcy is still pending and will likely be pending for a while.

But basically, throughout this period of time, Appaloosa, as a majority shareholder -- I'm sorry -- as a large shareholder, not a majority shareholder -- a large shareholder of TERP was concerned about the impact on TERP of a number of transactions that SunEdison was attempting to, we believed, impose on TERP, which we thought were -- may be beneficial to SunEdison but were definitely not beneficial to TERP. And so we were trying throughout the period to allow TERP to remain independent.

Our view from the beginning was that TERP was financially viable, had strong cash flows, could produce good dividends for its shareholders, but we thought that its relationship with its controlling

shareholder, SunEdison, was harmful for TERP and its shareholders because, in our view, again, we thought that SunEdison was overlevered and we thought that it was essentially running out of money and was clinging on to the balance sheet and the income statement of TERP in an attempt to keep itself afloat. And so we were very concerned about the take/pay in particular.

And Your Honor will recall that the take/pay was a very questionable, in our view, transaction. It was imposing billions of dollars of future liabilities on TERP, and there was no assurance that TERP would even be able to pay for these assets when they were available for purchase or when they were put to TERP, nor was there any assurance that the return on the assets would exceed the cost of capital to TERP.

Your Honor heard a lengthy preliminary injunction argument. That argument followed an enormous amount of work in discovery, and so on. And when we got to the hearing, one of the questions Your Honor was raising was how imminent is the potential harm. Is this a situation where I can develop a complete record before making a decision about whether or not to enjoin the take/pay?

One of the things that had happened along the way, Your Honor will recall, is that the independent committee that had been put in place to approve these transactions had -- in our view, again -- essentially been sacked by SunEdison and replaced with what we believed were SunEdison loyalists who approved the take/pay transaction, despite what we thought were serious reservations being expressed by the financial advisor to the committee.

As Your Honor was asking those questions, one of the issues that I was raising, or my colleague was raising, was if an injunction, a preliminary injunction were denied and an expedited trial were to go forward, that if the Vivint transaction closed, the lenders might argue that they have relied on the take/pay arrangement because the take/pay arrangement was essentially collateralizing the loan that they were providing in connection with the acquisition. And we were raising the question of the fairness to the lenders and whether or not the deal could ever be unwound after the loan had been made.

And although Your Honor denied the

preliminary injunction motion, you made it very clear on the record to those lenders that included Goldman Sachs that they could not necessarily rely on the transaction being upheld, that the take/pay arrangement was going to be subjected to judicial scrutiny on a full record, and that they should go forward with notice of that.

Whether or not that was the precipitating event or not, we don't know, because we never pursued discovery on this issue, but it did turn out that several days later Goldman Sachs announced that it was not going forward with the loan. And the effect of that was that the Vivint transaction could not be completed and the Vivint deal was terminated.

We thought that was great for TERP, for TERP's independence, and for the public shareholders of TERP. However, we were still very concerned at that time. We didn't believe that that had completely mooted the lawsuit or our concerns, primarily because we thought that SunEdison continued to basically be drowning financially. We didn't want SunEdison clinging to TERP as a life preserver, and we still had a situation in which we thought that TERP was being controlled by a board and independent

committee who had seen the recent experience of being what we thought was sacked in connection with not following SunEdison's expectations. So we were concerned about whether or not it was a continuingly sufficiently independent entity to stay afloat and to stay away from, essentially, SunEdison in the wake of the Vivint deal going away. Of course, Vivint was now suing SunEdison in connection with that transaction.

In addition, we were really concerned about the fact that the CEO of TERP was the CFO of SunEdison. And we had our own concerns about that individual, Mr. Wuebbels, and whether or not he was the right person to be running TERP in a period that we thought was very important to TERP and its shareholders.

So this was the second phase of our attempt to essentially act as a watchdog for this company. And in the wake of the Vivint deal going away, we amended the complaint, we sought the removal of Mr. Wuebbels, and we sought to shore up the independence of the independent committee.

In particular, we had concerns about whether Mr. Blackmore, who was a long-time SunEdison director who had resigned to chair the independent

committee, was the right person to lead that committee.

After we filed our first amended complaint, SunEdison then went into bankruptcy. And that was -- while it was not unexpected on the part of Appaloosa and TERP, we now entered our third period, and that was a period in which we wanted to make sure that as this bankruptcy progressed, that TERP would continue to have the independence that we thought it needed.

At that time, Mr. Wuebbels resigned, so that mooted the aspect of our complaint that sought to have him removed.

THE COURT: Did he go back to SunEdison, or did he just resign altogether; do you know?

MR. ROLNICK: My understanding is he resigned completely from both companies. And then with the loss of the CEO of TERP, the company announced that there was an office of chairman that was being created. And this office of chairman was basically to replace the CEO, and it consisted of Mr. Blackmore and the other members of the independent committee.

When that happened, we amended our complaint again, seeking to again solidify the independence of TERP. And at that point, we challenged the creation of this office of chairman, saying that it didn't have the independence required for an independent committee of TERP, essentially because the members of that committee were acting as both management and as the independent committee. And we were pursuing a claim for breach of fiduciary duty, the nub of which was that these directors had breached their fiduciary duties by essentially sacking the original independent committee.

After the second amended complaint was filed -- I'm sorry. My timing is a little bit -- it's after the second amended complaint was filed that they then filed the bankruptcy. And ultimately the chairman of -- the office of chairman was dissolved on the filing of the bankruptcy, which was another one of the pieces of relief that we requested.

One of the things that we were seeking throughout in the post-Vivint period was to have additional independent directors named to the board of TERP. It's an interesting question, because while we thought that it would be really beneficial for TERP,

we weren't sure that we could judicially compel such a result, especially given that SunEdison was the controlling shareholder, with approximately 90 percent of the vote. Still we thought that it was something that would really be beneficial for the company.

After the bankruptcy was filed and the office of chairman was dissolved, we continued to press our litigation, primarily because we wanted to ensure that TERP would remain independent. And as the bankruptcy progressed, we started to feel more secure and more confident that SunEdison was going to go through a bankruptcy, TERP was going to remain independent and outside of bankruptcy, its value was going to be preserved, and so we then decided that the best thing for TERP and the shareholders would be to try to negotiate a settlement that gave more wings, you know, greater legs to TERP to assert its independence and remain independent. So we began to negotiate a settlement at that point.

And the three things that we were able to negotiate in terms of the settlement, one was to separate the IT systems of SunEdison and TERP. We thought that this would be a valuable prophylactic form of relief for TERP because TERP had been

historically completely dependent on SunEdison for all aspects of its management. During this period, it hadn't been able to file its financials because it relied on SunEdison to do all of the financial and auditing work in connection with that. So we thought that separating the IT systems was a good idea.

That actually was a very difficult negotiation, because while TERP was willing to do it, it is very complex and time-consuming. And so we negotiated very hard for the milestones that would have to be reached, with the hope of making TERP completely independent from a backroom IT standpoint by the summer of 2017.

We also negotiated to give additional responsibility to the chief operating officer, Mr. Studebaker, who was independent and was given day-to-day responsibility for running TERP.

And then finally, what we thought was one of the most important things, an agreement to add an additional independent director to the board. We agreed that this would not be a director that we would choose or nominate. We didn't want this director to be in any way beholden to Appaloosa. We wanted them to be independent directors for all shareholders.

And, in fact, since the signing of the settlement agreement, they have fulfilled that promise and added not only one director, but three new independent directors, such that the board is now majority independent and Mr. Blackmore has since resigned from the conflicts committee.

And so we sit here today with much of the relief that we sought having been achieved. It's my own personal belief that if Appaloosa had not been proactive at the very beginning, we might today have two companies in bankruptcy, TERP and SunEdison. TERP was a very valuable asset. And while we didn't get the preliminary injunction in its entirety, I think that our lawsuit and the statements that Your Honor made about the fact that you intended to fully vet the take/pay was causally related to the Vivint deal being squelched.

And so while we didn't achieve a great damages award, we never thought that this was a case where damages would be an adequate remedy. You know, this was a situation where if the deals had been allowed to go through, TERP and its shareholders would have been irreparably harmed. The only viable way to save the company was to try to prevent these

transactions from occurring in the first place. Even if some kind of damages award had been achieved, it was doubtful that it could have been enforced against SunEdison, which we thought was essentially not able to respond to any judgment for damages.

So having said that, we think that we meet the standards for having provided a benefit to TERP. We are requesting that not only the settlement be approved, but that Appaloosa be awarded $3 million in attorneys' fees.

THE COURT: Before you turn to that, let me go back to the benefits achieved, to the second one, which concerns, as I understand it, expanding the authority of the chief operating officer.

Explain that a little bit to me. And I'm asking from the perspective of, well, expanding it, like, from what? Presumably the officers had full authority, unless there is something I'm not taking into account here that impinged on their authority. So I'm just trying to understand why that was particularly significant, and sort of who is the CEO now as well. And did the expansion of the CEO authority come at the expense of the CEO? Or give me the picture.

MR. ROLNICK: So we had Blackmore basically acting as the CEO at this time. We were concerned --

THE COURT: He's gone now.

MR. ROLNICK: Right. He's gone from the conflicts committee. He is still the CEO of the company.

THE COURT: All right.

MR. ROLNICK: So we wanted to basically have a counterbalance -- forceful, independent management. Basically, this was the best we could achieve at having some independent person involved in the day-to-day operations of the company.

THE COURT: How is that documented, whatever his additional authority is?

MR. ROLNICK: Well, I don't know how it would be documented. I could turn to Mr. Perla.

MR. PERLA: I would be happy to address that.

THE COURT: Did you change your bylaws or something? What did you do to formalize this?

MR. PERLA: Your Honor, it's formalized in the settlement agreement. I think the key point to make is that historically our chief

operating officer, Mr. Perez, has been a SunEdison employee. So it's not that the role has changed as much as the fact that an independent person has been put into the role.

THE COURT: I see. All right. Thank you.

MR. ROLNICK: And my understanding, Your Honor, is that until the settlement was approved, that they weren't actually required to do that. So basically, going back to it, we think that we conferred benefit. We acknowledge that much of the relief we sought became technically moot, but still we think we were a causal factor in keeping the company independent, preventing the take/pay arrangement from being imposed on the company, seeing the company through that delicate period after Vivint collapsed and before bankruptcy, and assuring ourselves in the post-bankruptcy period that the company was going to continue to move in the direction of being independent, albeit understanding the realities of a situation when we have SunEdison as a majority voting power and subject to its own restraints in Bankruptcy Court from parting with value. So it's been difficult, but we think we are at a place that makes

sense.

With that, with respect to the fees, Your Honor, I know you know from the papers that we're asking for $3 million. We, frankly, thought we should have gotten complete recovery for all of our fees and expenses, which are higher than 3 million. I think it's about 3.6 million. But that's what we were able to negotiate in the context of a settlement in which TERP would not oppose that application. So we think it's a fair reimbursement to Appaloosa for providing a service that benefited all TERP shareholders.

With that, I have no further comments, Your Honor.

THE COURT: So I had two other questions. One is a housekeeping matter. I didn't double-check before I came up. Is there a notice or, rather, an affidavit of the mailing of the notice that's on file?

MR. ROLNICK: Yes, Your Honor. It was filed December 5th, 2016. It's the affidavit regarding notice and mailing and lays out all the details of the fact that notice was provided to all beneficial owners and record owners and all custodians, and so on.

THE COURT: All right. And then the second question I had is, in reviewing the settlement papers, I was taking a look at the release, and I was just curious what the significance of the July 15th, 2016, cutoff date for both of the releases is. Is that just when the litigation ended, as a practical matter? What is it?

MR. ROLNICK: That's exactly right, Your Honor.

THE COURT: Okay. I don't have any other questions.

MR. ROLNICK: Thank you, Your Honor.

THE COURT: Is anybody speaking for the defendants, or is this one of those quiet days?

MR. LESSNER: It is quiet from us.

THE COURT: And Mr. Lessner is the one that stands up to tell me it's going to be a quiet day. I don't know about that.

All right. This will be quick. This is probably the easiest motion I have had in about two years.

I'm going to approve the settlement. It's clearly an appropriate settlement. I'm not, obviously, discussing any class issues because it's a

derivative settlement.

Mr. Rolnick noted for the record, which I appreciate, that the affidavit of mailing went out to the stockholders. There are no objections that have been stated to the proposed settlement.

I do think there are meaningful benefits here that certainly warrant the settlement, which include -- I won't be comprehensive in this, but in general terms include the litigation being a causative factor, it's reasonable to infer, to the withdrawal or rescission of the take/pay arrangement, which was a key objective of the litigation when it began, as well as some management departures, which certainly from the plaintiff's perspective was welcome news in the case, as well as the three specific benefits that are identified beyond the initial aspects of this case. They include separating TERP's information technology systems from SunEdison, being the first one. The second being the addition of an independent board member, which is relief that would have been difficult for the Court to judicially order and certainly is a good thing. And then lastly, putting into the COO position somebody not aligned, as had been the case historically, with SunEdison.

All of these are meaningful benefits. So there is certainly consideration for the releases, which I have reviewed and I found to be reasonable under the circumstances of this case.

Clearly there was enormous effort expended on this case, including over 5800 attorney hours. A significant amount of discovery was undertaken in connection with the preliminary injunction application, which was very well presented by both sides.

I recognize that Appaloosa took this case on a noncontingent basis, but I think they are entitled to reimbursement of the $3 million -- it's not objected to -- for the fee. And I think all counsel did a very admirable, good job in this case. So I'm going to approve the settlement.

Do you have a form of order? Do you want me to enter one that's on the system? What's your pleasure?

MR. ROLNICK: I thought we submitted a form of order, Your Honor.

THE COURT: Let's see here. Well, is the form that's attached to the settlement agreement still the relevant form? Nothing has changed in terms

of anybody modifying it in any way? I mean, I can just enter it on LexisNexis, assuming it's in my queue. And if it's not, I can get it moved over there. But I take it you don't have a hard copy.

MR. ROLNICK: Exhibit C to the settlement agreement has not changed. As far as I am aware, nothing has changed. I think Mr. Perla will agree with that.

MR. PERLA: Exhibit C is the appropriate order.

THE COURT: All right. So if I enter electronically Exhibit C, everybody is happy with that?

MR. PERLA: Yes, Your Honor.

MR. ROLNICK: Yes, Your Honor.

THE COURT: All right. I will do that electronically after I get back to my chambers.

Thank you very much, Counsel. Have a good day.

(Court adjourned at 2:29 p.m.)

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CERTIFICATE

I, DEBRA A. DONNELLY, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Merit Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 22 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 19 through 22, which were revised by the Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 21st day of December, 2016.

/s/ Debra A. Donnelly

Debra A. Donnelly
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter
Delaware Notary Public

Exhibit 3

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

(Mark One)
ý **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2016

or

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission file number 001-35522

BANC OF CALIFORNIA, INC.
(Exact name of registrant as specified in its charter)

Maryland	**04-3639825**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**
18500 Von Karman Ave, Suite 1100, Irvine, California	**92612**
(Address of principal executive offices)	**(Zip Code)**

(Registrant's telephone number, including area code) (855) 361-2262

Securities Registered Pursuant to Section 12(b) of the Act:

Title of each class	**Name of each exchange on which registered**
Common Stock, par value $0.01 per share	New York Stock Exchange
Depositary Shares each representing a 1/40th Interest in a share of 8.00% Non-Cumulative Perpetual Preferred Stock, Series C	New York Stock Exchange
Depositary Shares each representing a 1/40th Interest in a share of 7.375% Non-Cumulative Perpetual Preferred Stock, Series D	New York Stock Exchange
Depositary Shares each representing a 1/40th Interest in a share of 7.00% Non-Cumulative Perpetual Preferred Stock, Series E	New York Stock Exchange
7.50% Senior Notes Due April 15, 2020	New York Stock Exchange

Securities Registered Pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES ý NO ¨
Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES ¨ NO ý
Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. YES ý NO ¨
Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ý NO ¨
Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ¨
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer," "and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	ý	Accelerated filer	¨
Non-accelerated filer	¨ (Do not check if a smaller reporting company)	Smaller reporting company	¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). YES ¨ NO ý
The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant, computed by reference to the closing price of such stock on the New York Stock Exchange as of June 30, 2016, was $874.3 million. (The exclusion from such amount of the market value of the shares owned by any person shall not be deemed an admission by the registrant that such person is an affiliate of the registrant). As of February 22, 2017, the registrant had outstanding 49,579,557 shares of voting common stock and 201,922 shares of Class B non-voting common stock.

DOCUMENTS INCORPORATED BY REFERENCE

PART III of Form 10-K—Portions of the Proxy Statement for the Annual Meeting of Stockholders to be held in 2017.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

An evaluation of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the Act)) as of December 31, 2016 was carried out under the supervision and with the participation of the Company's Principal Executive Officer, Principal Financial Officer and other members of the Company's senior management. Based up that evaluation, the Company's Principal Executive Officer and Principal Financial Officer concluded that as of December 31, 2016, due to the identification of a material weakness in our internal control over financial reporting, as further described below, the Company's disclosure controls and procedures were not effective in ensuring that the information required to be disclosed by the Company in the reports it files or submits under the Act is (i) accumulated and communicated to the Company's management (including the Principal Executive Officer and Principal Financial Officer) to allow timely decisions regarding required disclosure, and (ii) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Notwithstanding the identified material weakness related to the Company's control environment, the Company believes the consolidated financial statements included in this Annual Report on Form 10-K fairly represent in all material respects our financial condition, results of operations and cash flows at and for the periods presented in accordance with U.S. GAAP.

The Company's Report on Internal Control Over Financial Reporting

The management of Banc of California, Inc. (the Company) is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). The Company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. The Company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. All internal control systems, no matter how well designed, have inherent limitations, including the possibility of human error and the circumvention of overriding controls. Accordingly, even effective internal control over financial reporting can only provide reasonable assurance with respect to financial statement preparation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that degree of compliance with the policies or procedures may deteriorate.

The Company has assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2015, based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework (2013). Based on that assessment, management concluded that we did not maintain effective internal control over financial reporting as of December 31, 2016 due to the fact that a material weakness existed in the Company's internal control over financial reporting as further described below. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Material Weaknesses Identified Relating to the Tone at the Top Regarding the Importance of Internal Control over Financial Reporting as of December 31, 2016

As disclosed in the Company's 10-Q, as of September 30, 2016, we determined that an inadequate tone at the top regarding the importance of internal control over financial reporting gave rise to the material weakness. Specifically, the Company's tone at the top did not appropriately prioritize the Company's internal control over financial reporting which has not been sufficient to address new and evolving sources of potential misstatement largely driven by the increased complexity and growth in the size and scale of the business. This ineffective tone at the top adversely impacted a number of processes resulting in an ineffective risk assessment process, ineffective monitoring activities, and insufficient resources or support which caused the Company to experience an increase in the number of control deficiencies across multiple processes. As a result, even though no material misstatement was identified in the financial statements, it was determined that there was a reasonable possibility that a material misstatement in the Company's financial statements would not have been prevented or detected on a timely basis.

The Company's Plan to Remediate the Material Weakness

In order to remediate the inadequate tone at the top regarding the importance of internal control over financial reporting, the Company has initiated or will initiate the following steps:

- We have appointed Robert D. Sznewajs, current Chair of the Joint Audit Committee of the Board of Directors (the Board), to the position of Chairman of the Board - thereby separating the role of Chairman of the Board and Chief Executive Officer. This followed the resignation of Steven A. Sugarman from the Board and his position of President and Chief Executive Officer
- We have established an interim "Office of the CEO/President." The Office of the CEO/President is composed of Hugh Boyle, Chief Risk Officer, who has additionally assumed the title of Interim Chief Executive Officer, and J. Francisco A. Turner, Chief Strategy Officer and Principal Financial Officer who has assumed the title of Interim President and Chief Financial Officer. We believe this change in management has resulted in a change in the tone at the top and a renewed emphasis on compliance and control
- We have eliminated the lead independent and vice chair roles and appointed new independent Board members, Richard Lashley and W. Kirk Wycoff, to fill the vacancy created by the resignation of Mr. Sugarman and the retirement of Chad T. Brownstein
- We have improved our Disclosure Controls and Procedures by implementing a new Disclosure Controls and Procedure Policy which expands internal approval requirements for public statements, and we revised the Company's Disclosure Committee charter. In addition, we have enhanced resources related to the Company's Sarbanes-Oxley program by terminating the Director of Financial Controls and engaging a new Sarbanes-Oxley outsourcing vendor. Our Chief Accounting Officer, who began during the quarter ended September 30, 2016, will oversee the program going forward which will be subject to monitoring activities performed by the Company's Internal Audit division
- We have enhanced the efficiency and transparency of our Board committees by eliminating the Executive Committee of the Board, and separating and appointing new members to the Compensation and Nominating/Governance Committees into two separate committees
- We have approved a new Policy to tighten controls on Outside Business Activities, and a new Policy to add rigor to the review of Related Party Transactions
- We revised our Public Communications Policy to enhance the level of diligence and review in connection with our public disclosures and external communications
- We will further enhance our risk assessment and monitoring activities by implementing new training activities, hiring additional capable resources, improving our certification and sub-certification quarterly processes, and enhancing our Risk and Fraud Risk assessment processes to ensure appropriate resources and controls are in place to mitigate risks are commensurate with the risk assessment
- We will continue to strengthen our governance and controls by further developing consistent, standardized and repeatable desktop procedures for all financial controls and processes

Attestation Report of the Independent Registered Public Accounting Firm

The effectiveness of the Company's internal control over financial reporting as of December 31, 2016, has been audited by KPMG LLP, an independent registered public accounting firm.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the three months ended December 31, 2016 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Our remediation efforts related to the material weakness are ongoing.

/s/ Hugh Boyle	/s/ J. Francisco A. Turner
Hugh Boyle	J. Francisco A. Turner
Interim Chief Executive Officer	Interim President and Chief Financial Officer

Exhibit 4

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 5, 2019

BANC OF CALIFORNIA, INC.

(Exact name of registrant as specified in its charter)

Maryland	**001-35522**	**04-3639825**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

3 MacArthur Place, Santa Ana, California	**92707**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (855) 361-2262

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2.):

☐Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.01 per share	BANC	New York Stock Exchange
Depositary Shares each representing a 1/40th Interest in a share of 7.375% Non-Cumulative Perpetual Preferred Stock, Series D	BANC PRD	New York Stock Exchange
Depositary Shares each representing a 1/40th Interest in a share of 7.00% Non-Cumulative Perpetual Preferred Stock, Series E	BANC PRE	New York Stock Exchange

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On November 5, 2019, the Boards of Directors (collectively, the "Boards") of Banc of California, Inc. (the "Company") and Bank of California, N.A., a wholly owned subsidiary of the Company (the "Bank"), upon the recommendation of the Joint Compensation, Nominating and Corporate Governance Committee of the Boards, appointed James A. "Conan" Barker and Andrew Thau as directors of the Company and the Bank, effective November 5, 2019. Messrs. Barker's and Thau's initial terms as directors of the Company will expire at the Company's 2020 Annual Meeting of Stockholders. Mr. Barker has been named to the Joint Audit Committee and the Joint Asset and Liability Committee of the Boards and Mr. Thau has been named to the Joint Compensation, Nominating and Corporate Governance Committee, the Equity Sub-Committee of the Joint Compensation, Nominating and Corporate Governance Committee, and the Joint Enterprise Risk Committee. On November 6, 2019, Halle J. Benett retired from his position as a member of the Boards, including as a member of the Joint Audit Committee and Joint Enterprise Risk Committee. After giving effect to the foregoing, each Board consists of ten members.

Since 1998, Mr. Barker has served as Co-President and 25% owner of Velocity Vehicle Group, a privately owned group of companies that serve the truck, bus and capital equipment finance markets throughout the Southwest with revenues and assets in excess of $1B. Mr. Barker is also a board member and 50% owner of Velocity SBA, one of 14 non-bank small business lending companies in the United States licensed to originate loans under the Small Business Administration's 7(a) program. From 1994 through 1997, Mr. Barker worked in Palo Alto, California for HAL Investments Inc., a private equity investment firm with holdings in real estate, maritime and industrial interests. From 1991-1994 Mr. Barker worked in the corporate strategy department of Sea Containers, Inc. in London, England setting business strategies for the multi-national transportation and hotel conglomerate. In addition, from 1988-1991 Mr. Barker worked for the Boston Consulting Group in the San Francisco and Chicago offices, assisting Fortune 500 firms on corporate strategy initiatives. Mr. Barker has been a resident of Southern California for 21 years.

Mr. Thau is Chief Operating Officer and General Counsel of global talent and entertainment company United Talent Agency ("UTA"). Since 2007, Mr. Thau has been central to UTA's operations, M&A and business expansion strategies amid a sea change across the entertainment, media and technology landscape. Mr. Thau was the first non-agent to be named to the UTA partnership in 2016 and its Board of Directors in 2018. Mr. Thau also serves on UTA's audit committee and as one of four managing directors responsible for overseeing UTA's day-to-day business. Mr. Thau began his career at the Zalkin, Rodin and Goodman law firm in New York City, specializing in bankruptcy and corporate restructuring. Mr. Thau then moved to 20th Century Fox where he served as an attorney in the licensing/merchandising and filmed entertainment groups before taking on executive roles overseeing domestic and international cable television networks and businesses. Mr. Thau later lead the content and technology venture Be Here as its CEO and subsequently helped launch and served as COO of, Network LIVE, a joint venture of AOL, XM Satellite Radio and AEG that broadcasted live music and entertainment events across all platforms. Mr. Thau has been a resident of Southern California for 25 years.

Messrs. Barker and Thau will generally be entitled to the same compensation arrangement as is provided to the other non-employee directors of the Company and the Bank. A description of this arrangement is set forth under the heading "Director Compensation-Current Director Compensation Program" in the Company's definitive proxy statement filed on April 29, 2019 and is incorporated herein by reference.

Messrs. Barker and Thau have no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K and have no arrangement or understanding with any other person pursuant to which they were selected as a director.

Messrs. Barker and Thau are expected to enter into the same form of indemnification agreement with the Company as the Company's other directors and certain of the Company's officers, which agreement supplements the indemnification provisions of the Company's charter by contractually obligating the Company to indemnify, and to advance expenses to, such persons to the fullest extent permitted by applicable law.

A copy of the press release issued by the Company on November 7, 2019 announcing the appointment of Messrs. Barker and Thau and the retirement of Mr. Benett is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

Exhibit Number	Description
99.1	Banc of California, Inc. Press Release dated November 7, 2019.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BANC OF CALIFORNIA, INC.

November 7, 2019

/s/ Ido Dotan
Ido Dotan
Executive Vice President, General Counsel and Corporate Secretary

Banc of California Announces Two New Appointments to its Board of Directors

SANTA ANA, Calif., **(November 7, 2019)**— Banc of California, Inc. (the "Company")(NYSE: BANC) today announced the appointment of James "Conan" Barker and Andrew Thau to the Board of Directors of the Company (the "Board) and of its wholly-owned subsidiary, Banc of California, N.A. (the "Bank"), effective November 5, 2019. Mr. Barker serves as Co-President of Velocity Vehicle Group and Mr. Thau is Chief Operating Officer and General Counsel of United Talent Agency ("UTA"). Halle Benett, an esteemed and valued Board member, retired after 6 years of service from both Boards, effective November 6, 2019.

These appointments, along with Mr. Benett's retirement, expand the Board to 10 directors, 9 of whom are independent. The Company's Board regularly evaluates its composition to ensure it includes the appropriate skills, experience and perspective necessary to drive growth for all the Company's shareholders and, with these director additions, 8 directors will have joined since 2017. Mr. Barker has been appointed to the Joint Audit Committee and Joint Asset & Liability Committee of the Boards, and Mr. Thau has been appointed to the Joint Compensation, Nominating & Governance Committee as well as the Joint Enterprise Risk Committee of the Boards.

"We are pleased to welcome Conan and Andrew as new independent directors to the Board," said Jared Wolff, the Company's President and CEO. "Their depth of knowledge in their respective industries complements the Board's breadth and talent and will be extremely valuable to the Board as the Company continues to execute on its strategic initiatives. Conan and Andrew both have deep roots in the Southern California business community and their insights into our core markets will be invaluable."

Mr. Barker has over 30 years of experience in corporate strategy, private equity, and management of large corporate enterprises. Since 1998, Mr. Barker has served as Co-President of Velocity Vehicle Group, a privately owned group of companies that serve the truck, bus and capital equipment finance markets throughout the Southwest with revenues and assets in excess of $1 billion. Mr. Barker is also a board member and 50% owner of Velocity SBA, one of 14 non-bank small business lending companies in the United States licensed to originate loans under the Small Business Administration's 7(a) program. Mr. Barker has lived in Southern California for 21 years. He received his Bachelors in Economics and Masters in East Asian Studies from Stanford University.

"Banc of California has an incredible leadership team and I am proud to be joining the Board during such an exciting time in its history," said Mr. Barker. "I look forward to working with my fellow Board members to help the Company further its strategic goals."

Mr. Thau joins the Company's Board with extensive executive, legal and operations experience. He is currently Chief Operating Officer, General Counsel, and a member of the board of UTA, one of the world's largest talent and entertainment companies. In his position since 2007, Mr. Thau has played a central role charting the significant expansion of UTA's global business through M&A, organic and inorganic growth strategies, amid tremendous change across the media and technology landscape. Prior to joining UTA, Mr. Thau was a senior executive at 20th Century Fox, where he oversaw a number of domestic and international cable television networks and businesses. Mr. Thau has also launched or led several new businesses, including Network LIVE, a joint venture of AOL, XM Satellite Radio and AEG, as well as Be Here, a technology and content venture. Mr. Thau began his career as an attorney in New York City specializing in bankruptcy and corporate restructuring. Mr. Thau has lived in Southern California for 25 years. He is a graduate of George Washington University and the Benjamin N. Cardozo School of Law, and has served on the boards of multiple charitable organizations.

"It's an honor to join the Board of Banc of California," said Mr. Thau. "Its reputation as one of the premier relationship-focused business banks in Southern California is well deserved and has been built, in no small part, through the work of a very talented leadership team. I'm excited to join the Board at a moment when the Company is so effectively transforming, and to help management carry out its vision to continue to build shareholder value."

3 MacArthur Place Santa Ana, CA 92707 (949) 236-5250 www.bancofcal.com

Halle Benett's Board tenure dates back to 2013. As one of the longest serving Board members, he has helped the Company navigate through its transformation.

"Halle's contributions and leadership have been immeasurable and I want to thank him for being a valuable and respected member of the Board," said Board chair Bob Sznewajs. "We are grateful for his tremendous guidance and dedication over the years."

"Over the past 6 years, I have seen tremendous change at the Company," said Mr. Benett. "Under the current leadership and Board, Banc of California has never been in a better position to execute on behalf of shareholders for the long-term. I look forward to the Company's continued progress and success."

About Banc of California, Inc.

Banc of California, Inc. (NYSE: BANC) is a bank holding company with approximately $8.6 billion in assets and one wholly-owned banking subsidiary, Banc of California, N.A. (the "Bank"). The Bank has 43 offices including 32 full-service branches located throughout Southern California. Through our dedicated professionals, we provide customized and innovative banking and lending solutions to businesses, entrepreneurs and individuals throughout California. We help to improve the communities where we live and work, by supporting organizations that provide financial literacy and job training, small business support and affordable housing. With a commitment to service and building enduring relationships, we provide a higher standard of banking. We look forward to helping you achieve your goals. For more information, please visit us at www.bancofcal.com.

Forward-Looking Statements

This press release includes forward-looking statements within the meaning of the "Safe-Harbor" provisions of the Private Securities Litigation Reform Act of 1995. These statements are necessarily subject to risk and uncertainty and actual results could differ materially from those anticipated due to various factors, including those set forth from time to time in the documents filed or furnished by Banc of California, Inc. with the Securities and Exchange Commission. You should not place undue reliance on forward-looking statements and Banc of California, Inc. undertakes no obligation to update any such statements to reflect circumstances or events that occur after the date on which the forward-looking statement is made.

Source: Banc of California, Inc.

INVESTOR RELATIONS INQUIRIES:

Banc of California, Inc.

Jared Wolff, (949) 385-8700

John A. Bogler, (855) 361-2262

Exhibit 5

CalPERS' Governance & Sustainability Principles

Last Revised: September 2019

Introduction

Our mission is to "deliver retirement and health care benefits to members and their beneficiaries." The California Public Employees' Retirement System (CalPERS, System) is the nation's largest defined benefit public pension fund with a duty to deliver the retirement and health benefits promised to our members. This responsibility applies not just to our current beneficiaries, but also to future members who may not retire for several decades. We therefore need to ensure that our commitments can be honored over the long-term.

A vital part of this is ensuring that our investments, which fund around two-thirds of our pension payments every year, generate the highest possible returns at an acceptable level of risk. This is a task managed by the CalPERS Investment Office, overseen by the CalPERS Board of Administration, and guided by our Investment Beliefs[1] and Core Values[2]. This responsibility is known as our Fiduciary Duty[3].

Over the years the CalPERS Principles have evolved from a guide to proxy voting in public markets, to a broader statement of our views on best practices guiding our engagement with companies, advocacy agenda with policy makers, and expectations for both our internal and external managers across the total fund.

As the governance and sustainability agenda has developed, so too have the CalPERS Principles. An important area of development has been integrating consideration of environmental and social factors alongside our governance agenda. We have given an economic framework to what is often called ESG in investing. As reflected in our Investment Beliefs, CalPERS considers that long-term value creation requires the effective management of three forms of capital – Financial, Physical, and Human. This economic approach grounds our sustainable investment agenda in our fiduciary duty to generate risk-adjusted returns for our beneficiaries.

A further important area of development has been the recognition that financial markets' safety and soundness are vitally important to CalPERS ability to achieve its risk adjusted returns. This focus on financial markets is also reflected in CalPERS' Investment Beliefs, which recognize that a long-term investment horizon is both an advantage and a responsibility. That responsibility requires that CalPERS advocate for policies that support the long-term with policy makers, companies, and investment managers.

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[1] In September 2013, CalPERS adopted a set of ten Investment Beliefs intended to guide decision-making, facilitate the management of a complex portfolio, and enhance consistency. The Investment Beliefs can be found at www.calpers-governance.org

[2] Quality, Respect, Accountability, Integrity, Openness, and Balance.

[3] CalPERS' Board and its Staff have fiduciary duties of loyalty and prudence, pursuant to the California Constitution, Article XVI, Section 17, to invest "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims."

Governance & Sustainability Principles

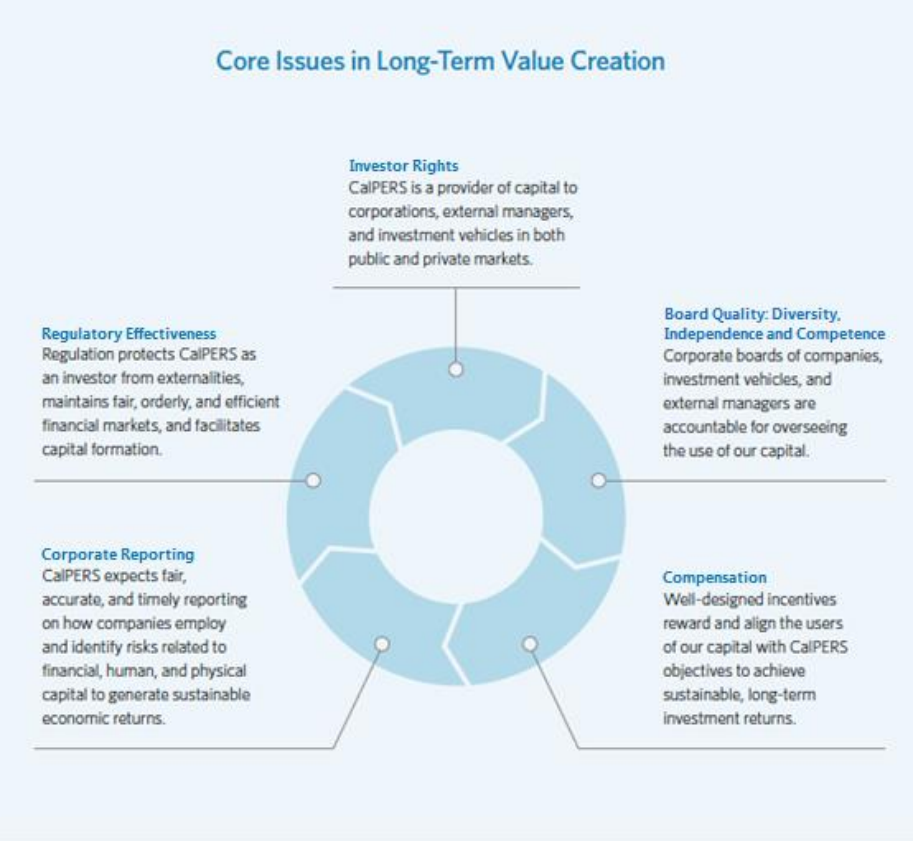
We believe that fully accountable governance structures produce, over the long term, the best returns to shareowners. While we recognize that governance best practices are constantly evolving, we believe the following accountable governance structures provide the underlying tenets that should be adopted by all companies and markets – both developed and emerging – to establish the foundation for achieving long-term sustainable investment returns.

In particular we have identified five core issues that we believe have a long-term impact on risk and return:

A. Investor Rights
B. Board Quality: Diversity, Independence and Competence
C. Executive, Director and Employee Compensation
D. Corporate Reporting
E. Regulatory Effectiveness

As demonstrated in Figure 1 below, it is important to recognize that we believe that managing these five issues is mutually reinforcing. Approaches that only tackle some areas and not others would not be compatible with these Principles.

Figure 1: Core Issues in Long-term Value Creation



appointment. Directors should also be enabled to regularly refresh their skills and knowledge to discharge their responsibilities.

3. **Board Independence**: Independence is the cornerstone of accountability. It is now widely recognized that independent boards are essential to a sound governance structure. Nearly all corporate governance commentators agree that boards should be comprised of at least a majority of "independent directors." But the definitional independence of a majority of the board may not be enough in some instances. The leadership of the board must embrace independence, and it must ultimately change the way in which directors interact with management. Independence also requires a lack of conflict between the director's personal, financial, or professional interests, and the interests of shareowners.
   a. **Majority of Independent Directors**: At a minimum, a majority of the board consists of directors who are independent. Boards should strive to obtain board composition made up of a substantial majority of independent directors.
   b. **Independent Executive Session**: Independent directors should meet periodically (at least once a year) alone in an executive session, without the CEO. The independent board chair or lead (or presiding) independent director should preside over this meeting.
   c. **Board Role of Retiring CEO**: Generally, a company's retiring CEO should not continue to serve as a director on the board and at the very least be prohibited from sitting on any of the board committees.

4. **Board Committee Independence**: The full board is responsible for the oversight function on behalf of shareowners. Should the board decide to have other committees (e.g. an executive committee) in addition to those required by law, the duties and membership of such committees should be fully disclosed. Committees who perform the audit, director nomination and executive compensation functions should consist entirely of independent directors. The board (not the CEO) should appoint the committee chairs and members. Committees should be able to select their own service providers to access independent sources of knowledge and experience. Some regularly scheduled committee meetings should be held with only the committee members (and, if appropriate, the committee's independent consultants) present. The process by which committee members and chairs are selected should be disclosed to shareowners.

5. **Board Chairperson Independence and Leadership**: The board should be chaired by an independent director. The chair is responsible for leadership of the board and ensuring its effectiveness. The chair should ensure a culture of openness and constructive debate that allows a range of views to be expressed. The CEO and chair roles should only be combined in very limited circumstances; in these situations, the board should provide a written statement in the proxy materials discussing why the

iii. Engagement with policy makers regarding environmental risks and opportunities material to the company (including related expenditures).

iii. Risk Management: How the company identifies, assesses, and manages environmental risks and opportunities including the following:
   i. How company works to ensure its business models and supply chain are robust, responsive, and/or resilient.
   ii. If and how company uses internal pricing for carbon, water, or other natural resources.
   iii. How company manages traceability issues in its supply chain.
   iv. How company identifies and manages impacts, or potential impacts, on local environments and communities including company's approach to material human capital issues (e.g., public health, land rights, and just transition in relation to workers).

iv. Metrics and Targets: Environmental metrics[4] used to assess and manage relevant environmental risks and opportunities, noting where third-party verification has been used. These metrics should be decision-useful, for both the company and investors. Performance relative to targets and commitments should also be disclosed.

7. **Codes of Conduct/Ethics**: The board should adopt high standards of business ethics through codes of conduct/ethics (or similar instrument) and oversee a culture of integrity, notwithstanding differing ethical norms and legal standards in various countries. This should permeate all aspects of the company's operations, ensuring that its vision, mission and objectives are ethically sound and demonstrative of its values. Codes should be effectively communicated and integrated into the company's strategy and operations, including risk management systems and compensation structures.
   a. **Behavior and Conduct**: The board should foster a corporate culture which ensures that employees understand their responsibilities for appropriate behavior. There should be appropriate board level and staff training in all aspects relating to corporate culture and ethics. Due diligence and monitoring programs should be in place to enable staff to understand relevant codes of conduct and apply them effectively to avoid company involvement in inappropriate behavior.
   b. **Bribery and Corruption**: The board should ensure that management has implemented appropriately stringent policies and procedures to mitigate the risk of bribery and corruption or other malfeasance. Such policies and procedures should be communicated to shareowners and other interested parties.
   c. **Whistleblowing**: The board should ensure that the company has in place an independent, confidential mechanism whereby an employee, supplier or other stakeholder can (without fear of retribution) raise issues of particular concern with regard to potential or suspected breaches of a company's code of ethics or local law.
   d. **Prohibit Greenmail**: Every company should prohibit greenmail.

Exhibit 6

BlackRock

Investment Stewardship Annual Report

September 2020

SCROLL

Board independence

A core component of our evaluation of a company's board quality is the proportion of board members who are independent of the company or any significant shareholders. We expect there to be a sufficient number of independent directors on the board to ensure the protection of the interests of all shareholders.

We expect independent directors to be free from conflicts of interest that could impair their ability to act in the interests of the company and its shareholders. Our voting guidelines include specific criteria that we use as a benchmark in each key market to assess the likelihood that a director is independent. These reflect local norms and standards so differ slightly across regions. For instance, the U.S. does not have market level restrictions on how long a director can serve on a board and still be considered independent. BIS' guidelines for the U.S. currently reflect an expectation that new directors are regularly brought on board but do not specify term limits in determining independence.

An appropriate level of board independence can also be an important factor in establishing meaningful engagement between companies and their investors. We find that shareholder dialogue with independent board members can be effective in encouraging the adoption of corporate governance best practices. Therefore, we expect at least one independent non-executive director to be accessible to shareholders. Where appropriate, we will hold the most senior non-executive director (e.g., chairman and independent director), accountable for ensuring such a role is identified.

Many publicly traded companies in Asia have a controlling shareholder or block of shareholders who act together. Control is often effective at a declared shareholding of 30% or more of issued share capital, as the largest shareholder will often have aligned but undeclared shareholders that can be counted on to support their interests. Unless required by listing rules or regulation, controlled companies rarely have truly independent directors, and the approach to independence is compliance driven. Given ownership structures, independent directors tend to be more aligned with the controlling shareholders than with the wider shareholder base. As a result, we often have concerns with the balance of independence on boards.

As BlackRock is a minority shareholder in companies on behalf of our clients, BIS is concerned when a board may not be focused on serving the interests of all shareholders. We engage with controlled companies to provide our feedback and to encourage governance mechanisms that afford additional protections for minority shareholders in certain circumstances, such as related party transactions and director elections. We also engage with policy makers and industry associations at the market level to advocate for enhanced governance standards that protect minority shareholders.

We expect there to be a sufficient number of independent directors on the board to ensure the protection of the interests of all shareholders.

Board diversity

As explained in our engagement commentary on board diversity, directors who bring a range of different perspectives and experiences to the board's work contribute to better decision-making and outcomes.*

We recognize that diversity has multiple dimensions** and that diversity considerations are different around the world. We look to boards to explain their approach to ensure they have sufficient diversity amongst their directors. We will vote against the re-election of members of the committee responsible for nominating directors when a board lacks diversity and credible diversity policies.

This year, we voted against 1,569 directors globally on diversity-related concerns. To date, our focus in our voting has been on gender diversity as this is widely disclosed by companies. However, in our engagement for the past several years we have been advocating for diversity in its fuller definition and encouraged companies to voluntarily disclose more information about the diversity characteristics represented amongst board members and how the board's composition contributes to its effectiveness. We are increasingly looking to companies to consider the ethnic diversity of their boards as we are convinced tone from the top matters as companies seek to become more diverse and inclusive.

*Russell Reynolds Associates. Different Is Better: Why Diversity Matters in the Boardroom. **Directors' industry experience, areas of specialist expertise, and market knowledge, as well as personal characteristics such as gender, race, ethnicity, and age, contribute to their ability to make a distinctive contribution to board discussions and decision-making.

Exhibit 7

Schubert Jonckheer & Kolbe LLP

Together with its predecessor firms, Schubert Jonckheer & Kolbe LLP has been in operation for over thirty-five years. In addition to prosecuting cases in California federal and state courts, the firm has been actively involved in securities, antitrust, unfair competition, and employment class actions throughout the United States. Schubert Jonckheer & Kolbe has served as Lead Counsel or Co-Lead Counsel in class actions and shareholder derivative actions that have produced recoveries valued at over $850 million.

- ***Tucker v. Scrushy***, No. CV-02-5212 (AEH) (Ala. Cir., Jefferson Cty.). Co-Lead Counsel in shareholder derivative action on behalf of HealthSouth Corporation alleging breaches of fiduciary duty and insider trading arising from a restatement of financial results. Plaintiffs won partial summary judgment against former Chief Executive Officer Richard Scrushy for restitution to HealthSouth of $47.8 million. Plaintiffs also settled HealthSouth's claims against additional HealthSouth directors and officers for $100 million and against its investment banker for an additional $133 million. At trial against Mr. Scrushy on additional claims, Plaintiffs obtained a $2.9 billion judgment, which was later upheld by the Alabama Supreme Court.

- ***In re Google AdWords Litigation***, No. 5:08-CV-03369-EJD (N.D. Cal.). Lead Counsel for nationwide class of advertisers alleging Google placed their ads on low-quality parked domains and error pages in violation of California's false advertising laws. We obtained a $22.5 million settlement on behalf of over one million class members, which was finally approved in the Northern District of California.

- ***Ciapessoni et al. v. United States***, No. 1:15-cv-00938-LAS (Fed. Cl.). Co-Counsel for nationwide class of raisin growers alleging that the federal government's practice of setting aside a portion of their raisin crop constituted an unconstitutional taking of private property for public use in violation of the Fifth Amendment of the U.S. Constitution. We obtained an $85.8 million settlement on behalf of over 6,000 raisin growers who opted-in to the class, which was finally approved by the U.S. Court of Federal Claims.

- ***Poertner v. The Gillette Company***, No. 12-CV-803 (M.D. Fla.). Co-Lead Counsel in nationwide consumer class action alleging false and misleading advertising of certain Duracell batteries regarding the batteries' longevity, in violation of various state laws. We obtained a settlement valued at approximately $50 million on behalf of approximately 7.26 million class members.

- ***In re The Home Depot, Inc. Shareholder Derivative Litigation***, No. 1:15-CV-2999-TWT (N.D. Ga.). Co-Lead Counsel in shareholder derivative action alleging breaches of fiduciary duty against certain officers and directors concerning The Home Depot 2014 data breach. We successfully resolved the litigation through settlement by causing The Home Depot to enact comprehensive corporate governance reforms and structural improvements to its data security protocols.

- ***Marsh & McLennan Companies, Inc. Derivative Litigation***, No. 753-VCS (Del. Ch.). As co-counsel, we helped obtain a $205 million settlement in a shareholder derivative action brought on behalf of Marsh & McLennan Companies ("MMC"). The complaint alleged

that MMC, the world's largest insurance broker, failed to adequately disclose that it was paid commissions to steer insurance business to favored companies. When the practices were revealed, MMC paid huge fines, to the detriment of its shareholders.

- ***3M Transparent Tape Cases***, No. 4:00-2810-CW (N.D. Cal.). Co-Lead Counsel in nationwide antitrust class action on behalf of purchasers of 3M transparent tape. Plaintiffs claimed that 3M maintained an unlawful monopoly in the market for invisible and transparent tape designed to restrict the availability of lower-priced comparable products to consumers and maintain supracompetitive prices for its own retail products. We obtained a settlement valued at approximately $42 million.

- ***Bonneville Pacific Corporation Securities Litigation***, No. 2:92-C-0181-DS (D. Utah). Co-Lead Counsel in securities class action involving fraudulent financial statements by a power cogeneration company. We obtained settlements totaling $26 million for the class, which recovered 100% of its damages, in one of the largest securities fraud cases in Utah history. We also obtained an important decision from the Utah Supreme Court holding that plaintiffs need not plead or prove reliance under the Utah Uniform Securities Act.

- ***Qwest Communications International, Inc. Derivative Litigation***, No. 02-CV-8188 (Colo. Dist. Ct., Denver). Co-Lead Counsel in shareholder derivative action alleging breaches of fiduciary duty and insider trading arising out of the telecommunications company's earnings restatement. We obtained a $25 million settlement on the company's behalf.

- ***Pfeiffer v. Toll***, No. 4140-VCL (Del. Ch.). Primary counsel in shareholder derivative action alleging breaches of fiduciary duty and insider trading arising out of missed earnings projections. We recovered a $16.25 million settlement on the company's behalf and obtained a key legal ruling rejecting the argument that Delaware's leading insider trading precedent should be overruled. *Pfeiffer v. Toll*, 989 A.2d 683 (Del. Ch. 2010).

Current Court-Appointed Leadership Positions

- ***In re Arris Cable Modem Consumer Litigation,*** No. 5:17-cv-1834-LHK (N.D. Cal.). Class Counsel for certified class of California consumers who purchased allegedly defective cable modems in violation of consumer protection laws.

- ***Nalick v. Seagate Technology LLC,*** No. CGC-15-547787 (Cal. Super. Ct.). Class Counsel for certified class of California consumers who purchased allegedly defective hard disk drives in violation of California consumer protection and false advertising laws.

- ***Brannin, et al., v. Golden Grain Company, et al.***, No. CGC-16-555084 (Cal. Super. Ct.). Class Counsel for certified class of California consumers asserting consumer protection claims on behalf of purchasers of slack-filled food packages.

- ***Fisher v. United States***, No. 13-CV-608-MMS (Fed. Cl.). Lead Counsel in shareholder derivative action on behalf of Fannie Mae alleging unconstitutional taking of private property against U.S. government based on net worth sweep of all profits.

- ***In re Fitbit, Inc. Stockholder Derivative Litigation*****,** C.A. No. 2017-402-JRS (Del. Ch.). Co-Lead Counsel in shareholder derivative action alleging unlawful insider trading and breaches of fiduciary duty against certain of Fitbit, Inc.'s officers and directors.

- ***In re Banc of California, Inc. Stockholder Derivative Litigation*****,** No. 8:19-CV-621-AG-DFM (C.D. Cal.). Co-Lead Counsel in shareholder derivative action alleging breaches of fiduciary duty against certain of Banc of California's officers and directors.

- ***In re Zimmer Biomet Holdings, Inc. Derivative Litigation***, C.A. No. 2019-0455-AGB (Del. Ch.). Co-Lead Counsel in shareholder derivative action alleging unlawful insider trading, breaches of fiduciary duty, and related shareholder claims against certain corporate officers and directors and private investment funds.

- ***In re: MacBook Keyboard Litigation***, No. 5:18-cv-02813-EJD-VKD (N.D. Cal.). Member of the Executive Committee in consumer class action asserting consumer protection and common law claims based on the sale of allegedly defective laptop keyboards.

Attorneys

Robert C. Schubert received a B.S. degree from the New York State School of Industrial and Labor Relations at Cornell University in 1966, where he graduated first in his class. He received his J.D. *cum laude* from Harvard Law School in 1969, after which he taught law at Columbia University and Golden Gate University. He has actively practiced law at both the trial and appellate levels. He specializes in complex litigation, particularly securities and antitrust class actions and shareholder derivative suits. He is a member of the state and federal bars of California, Massachusetts, and New York. Since 1971, he has also arbitrated numerous disputes for the Federal Mediation and Conciliation Service. He is the author of several published articles and lectures on class actions at the University of California Hastings College of the Law. Mr. Schubert was selected to Super Lawyers from 2007-2009 and 2013-2019.

Willem F. Jonckheer received his B.A. degree from Colgate University in 1990. He was awarded his J.D. degree in 1995 from the University of San Francisco School of Law, where he served as an article editor on the USF Maritime Law Journal and participated in the Philip C. Jessup International Law Moot Court Competition. Mr. Jonckheer was a law intern with the Pacific Stock Exchange, where he researched regulatory issues affecting national securities exchanges, and the U.S. Securities & Exchange Commission, where he worked on enforcement cases. Since 2012, Mr. Jonckheer has been a member of the Board of Trustees of Live Oak School, an independent K-8 school in San Francisco, where he served as Chairman of the Audit Committee, and as a member of select committees on Head of School compensation and school bylaws. Mr. Jonckheer is a member of the Northern California Chapter of the Netherland-America Foundation, an organization dedicated to bilateral cultural exchange between the Netherlands and the United States. He was admitted to the State Bar of California in 1995.

Miranda P. Kolbe received her B.A. from Hamilton College. She was awarded her J.D. degree from the University of California at Berkeley, Boalt Hall, where she won the Prosser Prize in

Civil Procedure and the Moot Court Advocacy Award. She served as an Instructor for Boalt's Legal Research and Writing class and interned at the Prison Law Office in San Quentin, California. She later served as a legal researcher in the Civil Division of the San Francisco Superior Court. Ms. Kolbe has participated in numerous continuing litigation programs as an expert on consumer class actions. Ms. Kolbe was selected to Super Lawyers for 2019.

Dustin L. Schubert received his B.A. from the University of California at Berkeley in 2003. He was awarded his J.D. degree in 2007 from Vanderbilt University Law School. Mr. Schubert was admitted to the State Bar of California in 2007. He previously interned with the San Francisco Superior Court for the Hon. A. James Robertson II and for Bay Area Legal Aid. Mr. Schubert was selected to Super Lawyers Rising Stars for 2017.

Noah M. Schubert received his J.D. *cum laude* from the University of San Francisco School of Law in 2011, where he served as Editor-in-Chief of the USF Law Review. Mr. Schubert authored a comment titled *Replacement Justice on the U.S. Supreme Court: The Use of Temporary Justices to Resolve the Recusal Conundrum*, 46 U.S.F. L. Rev. 215 (2011), and was awarded Best Oral Argument in the Moot Court Program. Mr. Schubert received his B.A. from the University of California at Berkeley in 2003.

Kathryn Y. McCauley received her B.A. from Cornell University in 2006. She was awarded her J.D. degree from Harvard Law School in 2009, where she served as an executive editor of the Harvard International Law Journal. Ms. McCauley was admitted to the State Bar of California in 2009 and the State Bar of New York in 2012. She served as a judicial extern with the Santa Clara Superior Court for the Hon. J. Kleinberg. Ms. McCauley previously worked for Kirkland & Ellis LLP and Satterlee Stephens Burke & Burke LLP, where she represented public and private entities in corporate transactions.

Gregory T. Stuart received his J.D. from the University of California at Davis School of Law in 2005. In 2002, Greg was awarded a B.S. in Business Administration, *cum laude*, with a minor in Philosophy, from Humboldt State University. Greg participates in most aspects of the firm's practice but has over a decade of focused experience in document discovery, representing both producing and receiving parties during that time.

Exhibit 8

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TILE SHOP HOLDINGS, INC. STOCKHOLDER DERIVATIVE LITIGATION	)))	C.A. No. 10884-VCG

STIPULATION AND AGREEMENT OF SETTLEMENT, COMPROMISE AND RELEASE

This Stipulation and Agreement of Settlement, Compromise, and Release ("Stipulation" or "Settlement") is entered into as of the 11th day of April, 2018, between and among the following Parties, by and through their respective counsel, in the above-captioned Action (the "Action"): (i) Plaintiffs City of Haverhill Retirement System and Christopher Couch (together, "Plaintiffs), suing derivatively on behalf of Tile Shop Holdings, Inc. ("Tile Shop"); (ii) Defendants Robert A. Rucker, Peter J. Jacullo III, Peter H. Kamin, Todd Krasnow, Adam L. Suttin, and Willian E. Watts (together, "Director Defendants"); (iii) and Tile Shop, as nominal defendant. This Stipulation sets forth the terms and conditions of the Settlement of the Action, and is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all Released Claims (as defined below) as against the Released Parties (as defined below), subject to the approval of the Court.

WHEREAS:

A. This is a consolidated derivative action brought in the right, and for the benefit, of Tile Shop against the Director Defendants, who are present and/or former directors of Tile Shop. Plaintiffs, who are stockholders of Tile Shop, seek

Shop and all other Tile Shop Stockholders by operation of law shall be deemed to have acknowledged, that this waiver and the inclusion of "Unknown Claims" in the definition of "Released Claims" was separately bargained for and was a material element of the Settlement, and was relied upon by each and all of the Parties in entering into this Stipulation and agreeing to the Settlement.

SETTLEMENT CONSIDERATION

2. In consideration of the full settlement, satisfaction, compromise, and release of the Released Plaintiffs' Claims and the dismissal of the Action, the Parties agree as specified below:

a. Tile Shop acknowledges that the efforts of Plaintiffs and Plaintiffs' Counsel were a material and substantial cause of the Settlement consideration described below and that the Settlement and each of its terms are fair, reasonable, and adequate, and in the best interests of Tile Shop.

b. The Board of Directors of Tile Shop has or shall adopt resolutions and amend committee charters to the extent necessary for the implementation of the Corporate Governance Measures set forth below. For the Corporate Governance Measures that have not already been implemented during the course of the Action, Tile Shop shall implement such measures by no later than sixty (60) days following the Effective Date. The Corporate Governance Measures set forth in subparagraphs c, d, e, i, and j herein shall be maintained until July 1, 2021, unless

any provision (or part of any provision) is rendered unlawful or ill-advised under any statute or regulation. The Board may exercise its discretion in deciding whether to continue any of the Corporate Governance Measures after July 1, 2021.

c. Executive-Level Compliance Department. Tile Shop will establish and, where possible, enhance a permanent effective compliance function headed by a Compliance Officer who is currently the Chief Financial Officer. The Compliance Officer will be tasked with ensuring Tile Shop's directors, officers, and employees comply with local, state, and federal laws, as well as an updated Code of Business Conduct and Ethics. The description of the Compliance Officer function is set forth in Exhibit D attached.

d. Amendments to Code of Business Conduct and Ethics. Tile Shop will amend its Code of Business Conduct and Ethics as shown in the red-line that is attached as Exhibit E.

e. Amendments to Audit Committee Charter. Tile Shop will amend the Audit Committee Charter as shown in the red-line that is attached as Exhibit F.

f. Independent Advisor. Before the later of July 1, 2018 or thirty (30) days after the Effective Date, Tile Shop's Board of Directors will retain an outside accounting firm for an enterprise risk assessment of Tile Shop that will include advising on the following: (i) all current and future material transactions between, on one hand, Tile Shop and, on the other, a Tile Shop executive or officer, or any

person or entity affiliated with a Tile Shop executive or officer; (ii) all current and future material transactions between, on one hand, Tile Shop and, on the other, any foreign supplier; (iii) any insider sales exceptions for a director or officer of Tile Shop; and (iv) guidance in implementing the Code of Business Conduct and Ethics and establishing the compliance function of Tile Shop. The independent consultant shall prepare a report for the Audit Committee.

g. Training. Tile Shop will provide each of its directors with an expense reimbursement budget of $5,000 annually to spend on continuing education programs, conferences, or similar presentations approved by the Compliance Officer, and will encourage annual attendance at such programs or presentations or hold internal programs or presentations. Tile Shop will also retain external counsel or other experts to deliver a "boot camp" training program to members of senior management regarding SEC disclosure and compliance regulations.

h. Stockholder Meetings and Board Meetings. Each member of Tile Shop's Board will be required to attend each annual stockholder meeting in person absent extraordinary circumstances. The entire Board shall meet at least four (4) times per year. Stockholders will have the right in annual meetings to ask questions, both orally and in writing, and receive answers and discussion from the Chief Executive Officer and the Board. Such discussion shall take place regardless of whether questions have been submitted in advance.

i. Amendments to "Related Persons" Policy. Tile Shop's "Policies and Procedures Regarding Related Person Transactions" will be amended as shown in the red-line that is attached as Exhibit G.

j. Amendments to Insider Trading Policy. Tile Shop's Insider Trading Policy will be amended to (i) expand the scope of Covered Persons (as defined in the policy) to include persons who were directors within the previous 12 months; (ii) require Covered Persons who wish to trade Tile Shop securities based upon an exemption in the policy to pre-clear the transaction with the Chief Financial Officer; (iii) prohibit Associates (as defined in the policy) from holding Tile Shop securities in a margin account, or pledging Tile Shop securities in connection with a loan, unless prior written approval has been granted by the Chief Financial Officer; (iv) prohibit Covered Persons from investing in derivatives of Tile Shop securities (except for stock options, restricted stock units, or other derivative securities granted under Tile Shop's equity compensation plans); (v) specify a zero-tolerance policy for violations of the policy; (vi) assign oversight of the policy to the Chief Financial Officer; and (vii) provide for annual review of the policy by the Audit Committee.

k. Compensation Reforms—Clawback Policy. To the extent permitted by law, if Tile Shop's Board, or a committee thereof, determines that any bonus, incentive payment, equity award, or other compensation has been awarded or

Exhibit 9

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Counsel for Plaintiff Arnaud van der Gracht de Rommerswael

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARNAUD VAN DER GRACHT DE ROMMERSWAEL, Derivatively on Behalf of PUMA BIOTECHNOLOGY, INC.,

Plaintiff,

v.

ALAN H. AUERBACH, CHARLES R. EYLER, JAY M. MOYES, TROY E. WILSON, ADRIAN M. SENDEROWICZ, FRANK E. ZAVRL, and THOMAS R. MALLEY,

Defendants,

-and-

PUMA BIOTECHNOLOGY, INC., a Delaware corporation,

Nominal Defendant.

Case No. 8:18-cv-00236-AG-JCG

STIPULATION OF SETTLEMENT

Exhibit A

I. PROPOSED CORPORATE GOVERNANCE ENHANCEMENTS

The corporate governance reforms discussed below are critical for improving the functioning of the Company and conveying to investors that they can invest in Puma with confidence. Among other things, we propose that the Board adopt resolutions and amend appropriate committee charters to ensure adherence to at least a significant portion of the following corporate governance reforms, to be maintained for a period of not less than five years:

A. Appointment of One New, Independent Director

1. Size of the Board: The Board is currently comprised of six directors. The Board shall add an additional Independent Director (as defined below), bringing the Board to seven members. The Corporate Governance Guidelines, which currently require the Board to maintain five members, shall be amended to reflect that the Board shall maintain seven members.

2. Procedure for Identifying New Independent Director: Candidates for the Board shall be identified pursuant to the following procedures which are designed to ensure stockholder participation in the identification of qualified, experienced, independent, and effective directors:

   (a) The Nominating and Governance Committee shall identify an objective set of criteria.

   (b) Large independent stockholders holding 5.0% or more of Puma common stock who are not affiliated with a defendant ("Large Stockholders") will be asked to submit recommendations.

   (c) The Nominating and Governance Committee shall review the individuals recommended by the Company's Large Stockholders and recommend candidates the Nominating and Governance Committee considers qualified to serve as a board member.

   (d) In the event that the Nominating and Governance Committee does not select any of the candidates proposed, the Large Stockholders shall be advised of this determination, including the reasons for it, and the Large Stockholders shall be given one additional opportunity to submit qualified candidates. If, after this second opportunity, vacancies remain, the Large Stockholders shall be advised of this determination, including the reasons for it, and the Nominating and Governance Committee shall identify suitable candidates.

3. Stockholder Input Regarding Future Director Nominees: Puma shall amend its Corporate Governance Guidelines to allow any Large Stockholders to recommend director nominees to the Board and to require the Nominating and Governance Committee to consider all such recommendations in connection with the nomination of new directors.

The Nominating and Governance Committee's deliberations and decision-making with respect to the nominees shall be reflected in the minutes of the Committee's proceedings.

B. Board of Directors — Governance Changes

1. Board Independence: Currently, Independent Directors must constitute a majority of the Board. Going forward, at least two-thirds of the members of the Board shall be "independent directors," as defined in the NASDAQ listing standards, Sarbanes-Oxley Act, and described in Section I.B.2 below. In the event the Board is not in compliance with this requirement, it will take steps to return to compliance within ninety days. Each Independent Director shall confirm his or her status as an independent director annually and shall promptly inform the Board or Nominating and Governance Committee of any change in his or her status that would disqualify him or her as an Independent Director.

2. Director Independence Standard Improvements:

   (a) In addition to Nasdaq listing standards and Sarbanes-Oxley Act requirements, to be deemed "independent" for purposes of the director independence requirements, a director shall not:

      (i) Have been employed by the Company or its subsidiaries for more than one year within the last five calendar years;

      (ii) Have any personal service contract(s) with the Company or any member of the Company's senior management;

      (iii) Have any interest in any non-Company related investment that overlaps with an investment by the Company and/or its senior management (including Mr. Auerbach);

      (iv) During the current calendar year or any of the three immediately preceding calendar years, have any business relationship with the Company for which the Company has been required to make disclosure under Item 404 Regulation S-K, other than for service as a director or for which relationship no more than de minimis remuneration (as defined below) was received in any one such year; provided, however, that the need to disclose any relationship that existed prior to a director joining the Board shall not in and of itself render the director non-independent;

      (v) Have any of the relationships described in subsections (i)-(iv) above with any "affiliate" of the Company as

determined pursuant to applicable U.S. Securities and Exchange Commission guidance; nor

(vi) Be a member of the immediate family of any person described in subsections (i)-(iv) above.

(b) A director is deemed to have received remuneration (other than remuneration as a director, including remuneration provided to a nonexecutive Board or committee Chairman), directly or indirectly, if remuneration, other than de minimis remuneration, was paid by the Company, its subsidiaries, or affiliates, to any entity in which the director has a beneficial ownership interest of five percent or more, or to an entity by which the director is employed other than as a director. Remuneration is deemed de minimis remuneration if such remuneration is $120,000 or less in any calendar year, or, if such remuneration is paid to an entity, if it: (i) is less than or equal to $1 million in any calendar year, or one percent (1%) of the gross revenues of the entity in any calendar year, whichever amount is less; and (ii) did not directly result in a material increase in the compensation received by the director from that entity.

3. Director Continuing Education: The Corporate Governance Guidelines reflect that the Company must maintain a continuing education program for all directors, but no specifics are provided. The Company shall adopt a formal continuing education program that requires, at a minimum, the following:

(a) Each director shall at least once every three years attend one multi-day training course provided by a nationally recognized corporate director education provider. Any new directors shall attend such a training course within 6 months of joining the Board.

(b) The Company's CEO shall annually select a topic they believe to be of particular importance to the Company or the Board. The CEO will present on this topic, or arrange for a person knowledgeable regarding the subject to present on this topic, in front of the entire Board, whether at a regularly scheduled Board meeting or an additionally scheduled meeting. Such topics may include, but are not limited to, coverage of compliance with Generally Accepted Accounting Principles ("GAAP"), the Sarbanes Oxley Act ("SOX"), regulatory requirements for New Drug Application ("NDA") submissions, corporate governance, assessment of risk, compliance auditing, and reporting requirements for publicly traded companies.

4. Annual Meetings: Each member of the Board is strongly encouraged to attend each annual stockholder meeting in person, and, during the annual stockholder meeting, stockholders shall have the right to ask questions orally or in writing, and to receive answers and discussion where appropriate from the CEO and members of the Board.

5. Limited Director Engagements Outside of Puma: Puma shall require directors to seek approval from the Board in advance of accepting an invitation to serve on the board of another public company. Puma shall amend Section II of the Corporate Governance Guidelines (the paragraph titled "Membership on Other Boards") to include: "The Chief Executive Officer of Puma shall not serve on the board of directors of more than three public companies, including Puma."

6. Director Stock Ownership Guidelines: Although the Corporate Governance Guidelines encourage directors to have a financial stake in the Company, they do not currently require a minimum number of share ownership. The Corporate Governance Guidelines shall be amended to require each nonemployee director to attain beneficial ownership of not less than 10,000 shares of the Company's common stock within three years and to retain such minimum beneficial stock ownership so long as he or she continues to serve as a director. Unless otherwise approved by a majority of the board, nonemployee directors shall be required to refrain from selling shares (other than for the purpose of paying federal or state income taxes related to the acquisition of such shares) until such minimum beneficial stock ownership is attained.

7. Disclosure of Committee Membership: The Company shall be required to disclose current committee membership on its website.

C. Nominating and Corporate Governance Committee

Puma shall adopt a resolution to amend the Nominating and Corporate Governance Committee Charter. The Nominating and Corporate Governance Committee Charter shall require the following, at a minimum:

1. The Nominating and Corporate Governance Committee shall consist of at least three members, as opposed to the currently required minimum of two members;

2. The Nominating and Corporate Governance Committee shall meet with each prospective new Board member prior to his or her nomination to the Board and then recommend whether such individual shall be nominated for membership to the Board. In determining whether to recommend nomination of a prospective Board member, the Nominating and Corporate Governance Committee shall complete a background check and consider, among other things, interlocking directorships and substantial business, civic, and/or social

relationships with other members of the Board that could impair the prospective Board member's ability to act independently from the other Board members.

3. Puma shall post the amended Nominating and Corporate Governance Committee Charter on its website.

D. Improvements to the Compensation Committee

Puma shall adopt a resolution to amend the Compensation Committee Charter. The Compensation Committee Charter shall require the following: at a minimum:

1. The Compensation Committee shall consist of at least three members, as opposed to the currently required minimum of two members;

2. In determining, setting, or approving annual short-term compensation arrangements, the Compensation Committee shall take into account the particular executive's performance as it relates to both legal compliance and compliance with the Company's internal policies and procedures. This shall not affect payments or benefits that are required to be paid pursuant to the Company's plans, policies, or agreements;

3. In determining, setting, or approving termination benefits and/or separation pay to executive officers, the Compensation Committee shall take into consideration the circumstances surrounding the particular executive officer's departure and the executive's performance as it relates to both legal compliance and compliance with the Company's internal policies and procedures. This shall not affect payments or benefits that are required to be paid pursuant to the Company's plans, policies, or agreements; and

4. Puma shall post the amended Compensation Committee Charter on its website.

E. Audit Committee

1. Audit Committee Executive Sessions: The Audit Committee shall meet in executive session for at least a portion of each regular meeting of the Audit Committee.

2. Puma shall adopt a resolution to amend the Audit Committee Charter. The Audit Committee Charter shall require the following, at a minimum:

   (a) Puma shall agree that the CFO shall certify to the Audit Committee on an annual basis that he or she has performed, or the Company's outside auditor has performed, a risk assessment pertaining to financial reporting risks and promptly addressed potentially unlawful activities;

(b) In conducting its duties, the Audit Committee shall inform the full Board on an ongoing basis of any material suspected errors in the work of the independent audit, or in the Company's maintenance of accounting records, including records for intercompany transactions among its subsidiaries. The Audit Committee shall also inform the full Board on an ongoing basis if, in conducting its duties, it finds that the Company has in insufficient liquidity to operate its business successfully;

(c) The Audit Committee shall receive annually a report listing all trades in Puma securities engaged in by Section 16 officers; and

(d) Puma shall post the amended Audit Committee charter on its website.

F. Committee Chairs

Puma shall amend Section VII of its Corporate Governance Guidelines (the paragraph titled "Selection of Committee Chairs") to expressly prohibit any individual member of the Board from being the chairman of more than one committee of the Board at a time.

G. Management Assessment of Internal Controls

Management shall work with the Audit Committee and, to the extent relevant, the R&D Committee, to assess the adequacy of the Company's internal controls over financial reporting and disclosure controls and procedures, and shall report in the Company's Annual Report on Form 10-K any identified material weaknesses with respect to, among other things, the Company's internal communication policies and procedures regarding the public disclosure of material information concerning the Company's product pipeline, research and development efforts, results of pre-clinical studies and clinical trials, status of NDAs, and communications with the FDA.

H. Creation of Research and Development Committee

Puma shall create a Board-level Research and Development Committee for the purpose of, among other things, overseeing the Company's product pipeline and research and development efforts, including oversight and evaluation of the Company's clinical trials and clinical development risk. The R&D Committee shall operate pursuant to a Charter that shall be made available on the Corporate Governance section of the Company's website and include at least the following provisions:

1. <u>Membership</u>:

(a) The R&D Committee shall be composed of at least three directors, each of whom is an Independent Director (as defined in Section I.B.2 above).

(b) A majority of R&D Committee members must have sufficient scientific and/or medical expertise to review and evaluate the progress of the Company's product pipeline.

(c) At least one member of the R&D Committee must also be a member of the Audit Committee.

(d) The members of the R&D Committee and its chairman shall be selected annually by the Board. Unless a Chair is appointed by the full Board, the members of the R&D Committee may designate a Chair by a majority vote of the full R&D Committee membership; provided, however, that the Chair shall not be someone who received 25% or more withheld votes in the last election.

2. General Responsibilities:

(a) The R&D Committee shall meet with the Chief Medical and Scientific Officer at least quarterly to review the progress of the Company's product pipeline, including a review and analysis of the progress and results of the Company's pre-clinical studies and clinical trials.

(b) The R&D Committee shall assess each product's progress against its targets, taking into account the results of the Company's pre-clinical studies and clinical trials.

(c) The R&D Committee shall be timely provided with copies of all communications with the FDA.

(d) The R&D Committee shall review and pre-approve (prior to public release) the Company's material public disclosures related to its product pipeline, research and development efforts, results of pre-clinical studies and clinical trials, status of NDAs, and communications with the FDA.

3. Meetings: The R&D Committee shall meet at least quarterly. The R&D Committee shall maintain minutes of its meetings, which will be filed with the minutes of the meetings of the Board.

4. Reporting: The R&D Committee shall make a presentation to the entire Board at least quarterly, together with written documentation, summarizing all significant findings concerning the progress of the Company's product pipeline, including any material information that impacts the Company's public disclosures regarding those products, the results of related pre-clinical studies and clinical trials, the status of the Company's NDAs, and communications with the FDA.

5. Independent Advisors: The R&D Committee is authorized, without further action by the Board, to engage external consultants and advisors as deemed appropriate by the R&D Committee in its sole discretion to perform its duties and responsibilities.

6. Access to Information: The R&D Committee shall be authorized to request members of senior management, outside counsel and other advisors to participate in Committee meetings. The R&D Committee shall have access to books, records, facilities and personnel of the Company with respect to any matters within the scope of its responsibilities, as it shall deem appropriate.

7. Self-Evaluation: The R&D Committee shall: (a) evaluate its own performance annually and deliver a report to the Board setting forth the results of its evaluation; and (b) review and reassess the adequacy of its Charter annually and recommend any proposed changes to the Board for its approval.

I. Stockholders' Ability to Call Special Meetings of the Board

The Company shall amend its Bylaws to reflect that Special Meetings may be called by one or more stockholders holding shares in the aggregate entitled to cast more than 25% of the votes that that meeting.

J. Scientific Advisory Board

The Company shall disclose the members of its Scientific Advisory Committee on its website.

K. The Related Party Transactions Policy

Puma currently has a written Related Party Transactions Policy and Procedures (the "RPT Policy"). Puma shall amend its RPT Policy to provide for the following, in addition to the provisions already in the RPT Policy:

1. All Board members shall submit to the Corporate Secretary an up-to-date list of companies in which they are a director, an officer, and/or of which they own a controlling interest, and to promptly update the list when any changes occur;

2. The Corporate Secretary will implement procedures to ensure that any material transaction that Puma is contemplating that would confer a monetary or other benefit to a party that is related to Puma, especially its parent companies and subsidiaries, will promptly be disclosed to the Board. Materiality of such transactions and whether such transactions are with a party that is related to Puma shall be determined by the factors set forth under Item 404(a) of Regulation S-K. The procedures shall include written disclosure to the Board of the details of any such transaction

including the nature of the relationship between the proposed counterparty and the party related to Puma, financial terms and other pertinent information; and

3. The Board's independent directors must approve or ratify any related-party transactions and Puma must make timely disclosures on an annual basis of all such transactions that are determined to be material. The Board's independent directors will consider the business purpose for any proposed related-party transaction, the fairness of the transaction to the Company, and whether the proposed transaction impairs the independence of any outside director or presents an improper conflict of interest for any Puma officer or director.

L. Whistleblower Program

Although the Company has a whistleblower hotline, the following reforms will help ensure complaints are escalated to management and the Board, as appropriate:

1. The provisions of the Code of Ethics shall make clear that the whistleblowing provisions are designed to report any potential or suspected violation of any federal or state law (in any form, including accounting violations, insider trading, etc.), and not simply to report violations of internal Puma policies.

2. Log of Whistleblower Complaints: A log of whistleblower complaints, as well as the results of all investigations of complaints, shall be memorialized in writing and maintained for a period of not less than ten years.

3. Review of Whistleblower Log: The Company shall require its external auditor to review the log and investigation results in connection with each annual audit.

4. Board Involvement: At each regularly- scheduled Board meeting, the Board shall be provided with a summary of the types of complaints received, as well as any material information resulting from any internal investigation into such complaints.

Exhibit 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 18-00236 AG (JCGx)	Date	January 7, 2019
Title	ARNAUD VAN DER GRACHT DE ROMMERSWAEL, DERIVATIVELY ON BEHALF OF PUMA BIOTECHNOLOGY, INC. v. ALAN AUERBACH ET AL.		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

Proceedings: **[IN CHAMBERS] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT (DKT. 26)**

The proposed settlement in this matter resolves the claims pending in four related stockholder derivative actions brought on behalf of Puma Biotechnology. The Court GRANTS Plaintiff's unopposed motion for final approval of this derivative settlement. (Dkt. 26.)

1. BACKGROUND

Puma is a biopharmaceutical company that developed and marketed a breast cancer treatment drug called NERLYNX ("neratinib"). Plaintiffs' derivative claims are based on Puma's allegedly false and misleading statements about neratinib's safety and efficacy. Plaintiff Rommerswael, a Puma stockholder, alleges that in July 2014 Puma executives became aware of poor results from the ExteNET clinical trial. (Compl. Dkt. 1 at ¶ 5.) Among other things, nearly 40% of trial participants experienced grade 3 or 4 diarrhea, and the disease-free survival (DFS) rate was only 2.3% higher for the neratinib group than for the placebo group. (*Id.*) But in a press release after the trial results, Puma CEO Alan Auerbach reported a 33% improvement in the DFS rate and low patient drop-out rates. (*Id.* at ¶¶ 6-7.) Plaintiff alleges these statements were contrary to the facts on hand.

After investigating the alleged wrongdoing and sending a litigation demand letter to the Puma Board, which the Board rejected, Plaintiff filed this lawsuit in February 2018. He alleges that

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 18-00236 AG (JCGx)	Date	January 7, 2019
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Puma's Board of Directors issued misleading Proxy Statements and thus incurred major financial and legal risks for Puma. He brought stockholder derivative claims against Puma's CEO, Senior VP, and five other directors for violation of the Securities Exchange Act (15 U.S.C. § 78 *et seq.*), breach of fiduciary duty, and waste of corporate assets. Three other stockholders filed similar derivative actions in state and federal court. The proposed settlement resolves all of these actions. Another related case was filed in this Court by Puma investors and is set for trial on January 15, 2019. *See Hsu v. Puma Biotechnology, Inc.*, No. 8:15cv00865-AG-SHK.

The parties have reached a global settlement on the four derivative lawsuits. This Court granted Plaintiff's unopposed motion for preliminary approval of the settlement on November 5, 2018. (Dkt. 23.) Plaintiff has now filed a motion for final settlement approval (Dkt. 27), and Defendants have filed a statement of non-opposition (Dkt. 29.) As of the date of Plaintiff's filing, no objections had been received. (Rifkin Decl. ¶ 18.)

2. PROPOSED SETTLEMENT

2.1 Negotiations

Considering recent, positive developments and momentum at Puma, plaintiffs Arnaud van der Gracht de Rommerswael, Paul Duran, Xing Xie, and Kevin McKenney (from four different cases) believe an early resolution of the derivative claims to be in Puma's best interests. *See* Stipulation (Dkt. 17-1, "Stip.") at 5. Plaintiffs issued settlement demands in February and April this year and negotiated with Defendants for several months to accomplish a global settlement. (Motion for Final Settlement Approval (Dkt. 26, "Mot.") at 10.) With the aid of a private mediator, Gregory P. Lindstrom, the parties reached a settlement ("Settlement") to resolve the four related derivative actions. (Mot. at 11.)

After agreeing on the substantive elements, the parties separately negotiated and came to agreement on Plaintiffs' counsel's fees and expenses. (Stip. § I.D.) They then prepared a joint stipulation setting forth the terms of settlement. Puma, acting through its independent, non-

defendant directors, reviewed the allegations and settlement terms and concluded the Settlement was in the company's best interests. (*Id.* ¶ 2.1.)

2.2 Terms

The Settlement requires the following corporate governance reforms, among others:

- Appointment of one new Independent Director to the Board;
- Stockholder input for the new Independent Director and future director nominees;
- Requirement that two-thirds of the directors must satisfy heightened independence standards;
- Creation of Board-level Research and Development Committee to oversee product pipeline efforts and R&D efforts (including those regarding clinical trials) and to review and pre-approve material public disclosures;
- Formal continuing education programs for directors;
- Director stock ownership requirements;
- Annual assessments of Puma's financial reporting and disclosures by management and the Audit Committee;
- Requirement that the Audit Committee annually review disclosures and inform the Board of any material suspected errors in the books and report to the Board if Puma appears to have insufficient liquidity. (Stip., Ex. A.)

2.3 Releases

All four related stockholder derivative actions are to be dismissed with prejudice. (*Id.* at 9.) The Plaintiffs (individually and on Puma's behalf), Plaintiffs' counsel, and Puma release all derivative claims connected to the defense, settlement, or resolution of the federal and state actions against the Defendants, Puma, and certain Related Persons. (*Id.* at 17, 18.) The stipulation purports to release claims by "Applicable Puma Shareholders," meaning any persons who owned Puma common stock on the date of the stipulation and continue to hold it at the settlement hearing, with some exclusions. (*Id.* at 9.)

2.4 Attorney's Fees and Service Awards

The Settlement provides that the Individual Defendants must cause their insurers to pay Plaintiffs' counsel $1,175,000 for attorney's fees and expenses within 10 days of entry of judgment. (Stip. § 4.1.) Plaintiffs explain that this amount was negotiated after the material terms of the Settlement were agreed upon and with the mediator's assistance. (Mot., 8.) Plaintiffs also request that the Court approve $1,500 service awards for each named plaintiff, to be paid only upon Court approval. (Stip. § 4.2.) These awards are to be deducted from the attorney's fees amount. (Mot. 30.)

3. LEGAL STANDARD

Courts may only approve a settlement agreement that is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Review of a proposed settlement generally involves two separate hearings. Federal Judicial Center, Manual for Complex Litigation, § 21.632 (4th ed. 2004). First the court makes a preliminary fairness evaluation. *Id.* It then holds a final approval hearing, where it "takes a closer look at the proposed settlement, taking into consideration objections and any other further developments in order to make a final fairness determination." *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1062 (C.D. Cal. 2010).

To determine whether a settlement agreement is fair, reasonable, and adequate, courts must consider various factors, including (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (citation omitted). "This is by no means an exhaustive list of relevant considerations." *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Id.* "It is the settlement taken as a whole,

rather than the individual component parts, that must be examined for overall fairness, and the settlement must stand or fall in its entirety." *Staton*, 327 F.3d at 960 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

"[T]he decision to approve or reject a settlement is committed to the sound discretion of the trial judge." *Hanlon*, 150 F.3d at 1026. And "[s]trong judicial policy favors settlements." *Churchill Vill., LLC. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004) (omission and quotation marks omitted) (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

4. ANALYSIS

Considering the benefit to Puma stockholders, arms-length negotiations before a qualified mediator, cost and risk of continued litigation in four separate derivative actions, and other factors from *Staton*, the Court grants final approval of the proposed Settlement.

4.1 Benefits to Puma

The Settlement requires the Board of Directors to undertake reforms that confer significant benefits on Puma stockholders, though not pecuniary in nature. *See* above, Section 2. Courts recognize that "a corporation may receive a 'substantial benefit' from a derivative suit . . . regardless of whether the benefit is pecuniary in nature." *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395 (1970). *See also Lewis v. Anderson*, 692 F.2d 1267, 1271 (9th Cir. 1982) ("While less tangible than recovery of money damages," corporate governance reforms that remedy alleged wrongdoing are "sufficiently beneficial to a corporation" to warrant settlement approval and fee award.")

Here, the reforms provide for more oversight over the Company's public disclosures, which are the key issue in these related lawsuits, and they provide for a more independent Board and tighter internal controls. For example, the appointment of a new Independent Director will help diffuse control of the Board by insiders with separate interests from those of Puma stockholders. (Mot., 14-15) Also, the new requirement that Puma nonemployee directors own at least 10,000 shares of common stock will better align the directors' and stockholders'

interests. (*Id.*, 15) And the creation of an R & D Committee will ensure oversight of Puma's clinical trials and development risks and is designed to avoid exactly the sort of problems that led to the current litigation. (*Id.*, 16.) The mediator who guided the parties through settlement negotiations submitted a declaration affirming the fairness of the final agreement, stating that it represents "an excellent result for Puma and its shareholders . . . [that is] carefully tailored to address the alleged wrongdoing . . . ." (Lindstrom Decl. ¶ 9.)

4.2 Informed, Arms-Length Negotiations

The Settlement was the product of arms-length negotiations between experienced and well-informed counsel. A "strong presumption of fairness" thus attaches to the Settlement. *See In re American Apparel, Inc. Shareholder Litig.*, No. CV 10-06352 MMM (JCGx) 2014 WL 10212865, at *8 (C.D. Cal. Jul. 28, 2014). Plaintiffs did extensive document review, exchanged initial settlement demands with Defendants, and participated in months of telephonic and written negotiations and mediation. (Rifkin Decl. ¶ 45.) Plaintiffs thus had enough information to properly evaluate the claims and defenses and pursue settlement. (*Id.* ¶ 43.) The independent, non-defendant directors of Puma also reviewed the Settlement and found it to be in the company's best interests. All of this weighs in favor of approval.

4.3 Fee Award

Regarding Plaintiffs' counsels' fee award of $1,175,000, Plaintiffs explain that filing these lawsuits required extensive investigation, research, and review, including: reviewing Puma's press releases, public statements, SEC filings, and securities analysts' reports; researching applicable law regarding claims and defenses; reviewing Puma's documents produced in a related action; preparing and responding to correspondence and settlement demands; and drafting comprehensive corporate governance reforms. (Rifkin Decl. at ¶¶ 54, 58, 60.) And they point to other cases where counsel received a similar award for achieving corporate governance reform. *See* Mot., 25-26. *See also In re Google Inc. S'holder Derivative Litig.*, No. CV-11-0448-PJH, 2015 WL 2877899, at *5 (awarding $9.2 million fee based on benefit of corporate governance reforms).

A lodestar cross-check also supports the fairness of the fee and expense amount. *See, e.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, (9th Cir. 2002). Plaintiffs' counsel spent over 1,260 hours on these four actions and provided a lodestar amount of $666,357.25. (Rifkin Decl. ¶ 54.) After adding unreimbursed litigation costs, they calculate the lodestar multiplier to be 1.76. (*Id.* ¶ 56.) Given the contingent nature of the representation and substantial benefits conferred on Puma, this multiplier is within the reasonable range. *See, e.g., In Re Hewlett Packard Co. Securities Litig.*, No. CV-11-01494-AG, Reporter's Transcript of Motion Hearing (C.D. Cal. Dec. 10, 2014). Finally, after extensive questioning and discussion at the fairness hearing, Plaintiffs' counsel provided strong support for their fee calculation. Plaintiffs' counsel backed up their request with reference to case law, the particular difficulties of this case, and a description of the unique benefits achieved on Puma's behalf, among other things.

4.4 Risk and Cost of Litigation

Courts agree that derivative actions are particularly complex and "rarely successful." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Derivative action plaintiffs must satisfy strict pleading requirements to show that a presuit demand was wrongfully refused by the board, or that making such a demand would have been futile. (Rifkin Decl. ¶ 35.) Derivative actions also entail extensive discovery and costly expert reports. (*Id.* ¶ 36.) So the risk and cost to Plaintiffs of continuing to litigate on multiple fronts is substantial. Early settlement is thus the best way to achieve the corporate reforms sought without incurring inordinate fees and making bilateral agreement increasingly unlikely.

4.5 Notice and Objections

The Court approved the content of class notice and dissemination methods at the preliminary approval stage. Counsel have since complied with the Court's directions regarding notice. *See* Declaration of Ryan E. Blair Re: Filing and Publishing Notice (Dkt. 25). As of the date of Plaintiffs' motion for final approval, no objections had been received. (Rifkin Decl. ¶ 18.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 18-00236 AG (JCGx)	Date	January 7, 2019
Title	ARNAUD VAN DER GRACHT DE ROMMERSWAEL, DERIVATIVELY ON BEHALF OF PUMA BIOTECHNOLOGY, INC. v. ALAN AUERBACH ET AL.		

5. DISPOSITION

The Court finds the Settlement to be fair, reasonable, and adequate to those whom it is intended to benefit. *See Officers for Justice*, 688 F.2d at 625. The Court GRANTS Plaintiff's unopposed motion for final approval of the derivative settlement. (Dkt. 26.) The Court APPROVES the $1,175,000 attorney's fees and expenses amount and the $1,500 service awards for each named plaintiff (to be deducted from the fee award).

: 0

Initials of Preparer lmb

Exhibit 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SASHA WILFRED, derivatively on behalf of ITT EDUCATIONAL SERVICES, INC., Plaintiff, v. KEVIN M. MODANY, JOHN F. COZZI, THOMAS I. MORGAN, JOHN E. DEAN, JAMES D. FOWLER, JR., JOANNA T. LAU, VIN WEBER, SAMUEL L. ODLE, JOHN A. YENA, DANIEL M. FITZPATRICK, Defendants, and ITT EDUCATIONAL SERVICES, INC., Nominal Defendant.	No. 13-CV-3110 (JPO)

FINAL ORDER AND JUDGMENT

This matter came before the Court for hearing pursuant to this Court's Order Preliminarily Approving Derivative Settlement and Providing for Notice, dated January 29, 2016 (the "Preliminary Approval Order"), on the application of the Settling Parties for final approval of the Settlement set forth in the Stipulation and Agreement of Settlement dated January 21, 2016 (the "Stipulation"). Due and adequate notice having been given to Current ITT Stockholders as required in said Preliminary Approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Order and Judgment ("Judgment") incorporates by reference the definitions in the Stipulation, and except where otherwise specified, all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Actions, including all matters necessary to effectuate the Settlement, and over all Settling Parties.

3. The Court finds that the Settlement set forth in the Stipulation is fair, reasonable, and adequate as to each of the Settling Parties, ITT, and Current ITT Stockholders, and hereby finally approves the Settlement in all respects and orders the Settling Parties to perform its terms to the extent the Settling Parties have not already done so.

4. The New York Action, all claims contained therein, and any other Released Claims, are hereby ordered as fully, finally, and forever compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Judgment. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

5. Upon the Effective Date, ITT, Plaintiffs (individually and derivatively on behalf of ITT), and each of ITT's stockholders (solely in their capacity as ITT stockholders) shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims (including Unknown Claims) against the Released Persons and any and all claims arising out of, relating to, or in connection with the defense, settlement or resolution of the Actions against the Released Persons. ITT, Plaintiffs (acting on their own behalf and derivatively on behalf of ITT) and each of ITT's stockholders (solely in their capacity as ITT stockholders) shall be deemed to have, and by operation of this Judgment shall have, covenanted not to sue any Released Person with respect to any Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting the Released Claims against the Released Persons. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

6. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of Plaintiffs or their beneficiaries, Plaintiffs' Counsel, or ITT from Defendants' Released Claims. The Released Persons shall be deemed to have, and by operation of this Judgment shall have, covenanted not to sue Plaintiffs or their beneficiaries, Plaintiffs' Counsel, or ITT with respect to any claims arising out of, relating to, or in connection with their institution, prosecution, assertion, settlement, or resolution of the Actions or the Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting Defendants' Released Claims against Plaintiffs or their beneficiaries, Plaintiffs' Counsel, or ITT. Notwithstanding the foregoing, nothing herein is intended to release any indemnification, advancement or insurance claims that any Released Person has or may have under any insurance policy, contract, bylaw or charter provision, or under Delaware law, including, but not limited to, any rights any Released Person has or may have related to any pending or threatened civil or government proceedings. Nor shall the foregoing in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

7. The Court finds that the Notice to Current ITT Stockholders filed with the SEC via a Current Report on Form 8-K and posted on the investor relations portion of ITT's website, and the Summary Notice published in *Investor's Business Daily*, were made in accordance with the Preliminary Approval Order and provided the best notice practicable under the circumstances to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23.1 and the requirements of due process.

8. Pursuant to the Stipulation, the Indiana Plaintiffs have agreed that, within five (5) business days after the date that this Judgment finally approving the Settlement is entered, each

of the Indiana Plaintiffs shall notify their respective Indiana court that the Court entered this Judgment, attaching a courtesy copy of the Judgment. The Indiana Plaintiffs also have agreed that, within five (5) business days after the date that this Judgment becomes Final, each of the Indiana Plaintiffs will file papers to move their respective Indiana court for voluntary dismissal of their respective Indiana Action with prejudice, in accordance with that court's local rules. Pursuant to the Stipulation, the Effective Date of the Settlement shall not occur until the Indiana Actions have been dismissed with prejudice and those dismissal orders are Final.

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

10. The Court finds that the Fee Award is fair and reasonable, in accordance with the Stipulation, and finally approves the Fee Award.

11. The Court finds that the Service Awards are fair and reasonable, in accordance with the Stipulation, and finally approves the Service Awards, to be paid from the Fee Award by Plaintiffs' Counsel.

12. This Judgment, the fact and terms of the Stipulation, including any exhibits attached thereto, all proceedings in connection with the Settlement, and any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:

(a) shall not be offered, received, or used in any way against the Settling Parties as evidence of, or be deemed to be evidence of, a presumption, concession, or admission by any of the Settling Parties with respect to the truth of any fact alleged by Plaintiffs or the validity, or lack thereof, of any claim that has been or could have been asserted in the Actions or in any litigation, or the deficiency or infirmity of any defense that has been or

could have been asserted in the Actions or in any litigation, or of any fault, wrongdoing, negligence, or liability of any of the Released Persons;

(b) shall not be offered, received, or used in any way against any of the Released Persons as evidence of, or be deemed to be evidence of, a presumption, concession, or admission of any fault, misrepresentation or omission with respect to any statement or written document approved, issued, or made by any Released Person, or against Plaintiffs as evidence of any infirmity in their claims; or

(c) shall not be offered, received, or used in any way against any of the Released Persons as evidence of, or be deemed to be evidence of, a presumption, concession, or admission of any liability, fault, negligence, omission or wrongdoing, or in any way referred to for any other reason as against the Released Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding in any court, administrative agency, or other tribunal.

13. This Judgment, the Stipulation, the Settlement, and any act performed or document executed pursuant to or in furtherance thereof, shall not be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement. However, the Released Persons may refer to the Settlement, and file the Stipulation and/or this Judgment, in any action that may be brought against them to effectuate the liability protections granted them thereunder, including, without limitation, to support a defense or claim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or claim under U.S. federal or state law or foreign law.

14. Without affecting the finality of this Judgment in any way, the Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement; and (b) all Settling Parties for the purpose of construing, enforcing, and administering the Stipulation and this Judgment, including, if necessary, setting aside and vacating this Judgment, on motion of a Settling Party, to the extent consistent with and in accordance with the Stipulation if the Effective Date fails to occur in accordance with the Stipulation.

15. This Judgment is a final, appealable judgment and should be entered forthwith by the Clerk in accordance with Federal Rule of Civil Procedure 58.

16. The Clerk of Court is directed to close the motion at docket number 62 and to close this case.

17. The Clerk of Court is further directed to close case number 15-CV-3390, which is resolved through this settlement.

SO ORDERED.

Dated: April 6, 2016
New York, New York

J. PAUL OETKEN
United States District Judge

Exhibit 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SASHA WILFRED, derivatively on behalf of ITT EDUCATIONAL SERVICES, INC., Plaintiff, v. KEVIN M. MODANY, JOHN F. COZZI, THOMAS I. MORGAN, JOHN E. DEAN, JAMES D. FOWLER, JR., JOANNA T. LAU, VIN WEBER, SAMUEL L. ODLE, JOHN A. YENA, DANIEL M. FITZPATRICK, Defendants, and ITT EDUCATIONAL SERVICES, INC., Nominal Defendant.	Civil Action No. 13-CV-3110 (JPO)

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the "Stipulation"), dated January 21, 2016, is made and entered into by and among the following Settling Parties (as defined herein), each by and through their respective counsel: (i) plaintiffs to the above-captioned consolidated shareholder derivative action (the "New York Action"), Sasha Wilfred ("Wilfred") and Janice Nottenkamper ("Nottenkamper") (collectively, the "New York Plaintiffs"), derivatively on behalf of ITT Educational Services, Inc. ("ITT" or the "Company"); (ii) Michelle Lawrence ("Lawrence" or the "Indiana Federal Plaintiff"), the plaintiff to the shareholder derivative action pending in the U.S. District Court for the Southern District of Indiana (the "Indiana Federal Court") captioned *Lawrence v. Modany, et al.*, Case No. 14-cv-2106 (the "Indiana Federal Action"), derivatively on behalf of ITT; (iii) William McKee ("McKee" or the "Indiana State Plaintiff"), the plaintiff to the shareholder derivative action pending in the Marion County Superior Court, County of Marion, Indiana (the "Indiana State Court") captioned *McKee v.*

EXHIBIT A

Proposed Therapeutics for Derivative Settlement[1]

1. IMPROVEMENTS ALREADY MADE BY ITT

ITT always has been and continues to be committed to the implementation, enhancement and enforcement of rigorous corporate governance measures. Since the Wilfred Action was filed in May 2013, ITT has implemented a number of improvements to its corporate governance practices, business operations, and system of internal controls. The Wilfred Action, and other actions and regulatory proceedings involving private education loans received by ITT's students, among other factors, significantly contributed to ITT's evaluation of, and implementation of, certain changes to the Company's structure, policies, and procedures to protect the Company from the risk of future losses, damages, litigation, and regulatory proceedings. ITT further acknowledges that the pendency of the Wilfred Action, and similar shareholder derivative actions, is a substantial factor in the changes, modifications, and enhancements that the Company now makes to previously-instituted remedial measures, which will materially benefit ITT and ITT's shareholders. The fact that ITT has implemented, or has agreed to implement, changes, modifications, or enhancements to its corporate governance policies and practices should not be construed as an admission that any such enhanced policies or practices are legally required, or to the extent such policies or practices were not in place in the past, constituted a failure of compliance, a breach of any duty, or any other wrongdoing.

2. DIRECTOR INDEPENDENCE

ITT will agree to adopt a requirement that a two-thirds majority (i.e. at least 6 of 9 members) of ITT's Board will consist of Independent Directors.

3. LIMITED DIRECTOR ENGAGEMENTS OUTSIDE OF ITT

ITT shall revise its Corporate Governance Guidelines to require that ITT's Directors not serve on more than four other public companies' boards of directors (other than affiliates of such other public companies).

4. MEETINGS IN EXECUTIVE SESSION

[1] Where not otherwise specified, the Company will agree to implement any change for a period of at least 3 years. None of the proposed changes will be implemented without full consideration by the Board and the Board's approval. Additionally, the Board, by at least a 3/4 vote of the independent directors, may amend any one or more of these reforms if the Board determines in a good faith exercise of its business judgment that a policy, procedure or control is deemed inconsistent with the best interests of the Company and its shareholders due to changed circumstances, or conflicts with any law, regulation, or rule to which ITT is subject. Furthermore, ITT shall not be required to implement or maintain any change if ITT ceases to be a public company that is required to file reports with the U.S. Securities and Exchange Commission (the "SEC").

ITT shall require that the Independent Directors on the Board meet in executive session at each regularly scheduled meeting of the Board, outside the presence of any director who serves as an officer of ITT.

5. NEW INDEPENDENT BOARD MEMBERS

ITT has added two new Independent Directors since the date the Wilfred Action was filed, including a retired senior partner from Deloitte with broad expertise in finance and accounting, who is serving as the Chair of the Audit Committee.

6. IDENTIFICATION OF NEW DIRECTORS

The Board's Nominating and Governance Committee shall seek shareholder input to identify potential candidates for Director positions. The Nominating and Governance Committee shall contact each individual or entity holding 10% or more of ITT's common stock (as determined based on Schedule 13D and 13G filings with the SEC) for the purpose of requesting that such shareholders provide the name or names of candidates for ITT's Board. Following an initial background and suitability review of names submitted by shareholders, the Nominating and Corporate Governance Committee shall conduct a thorough review of each candidate for potential recommendation to the Board. The Nominating and Corporate Governance Committee shall be under no obligation to recommend shareholder-identified candidates to the Board, and in the exercise of its business judgment and subject to its fiduciary duties, may identify, review and recommend any other candidates for the Board's consideration.

7. DIRECTOR SUCCESSION PLAN

a. ITT shall require that the Board develop and implement a Director succession plan.

b. Directors shall be required to have a thorough understanding of the characteristics necessary to effectively oversee management's execution of a long-term strategy that optimizes operating performance, profitability, and shareholder value creation. The director succession planning process shall:

i. Become a routine topic of discussion by the Board.

ii. Encompass how expected future Board retirements or the occurrence of unexpected director turnover as a result of death, disability or untimely departure is addressed in a timely manner.

iii. Encompass how director turnover either through transitioning off the Board or as a result of rotating committee assignments and leadership is

addressed in a timely manner.

8. DIRECTOR ATTENDANCE AT ANNUAL SHAREHOLDER MEETINGS

Absent extraordinary circumstances, each member of the Board shall be required to attend each annual shareholder meeting in person.

9. DIRECTOR EDUCATION

a. ITT shall require each member of the Board to complete annually six hours of continuing education programs designed for directors of publicly traded companies. Such training shall include topics such as compliance with GAAP, SOX, corporate governance, assessment of risk, compliance, and reporting requirements for publicly traded companies.

b. The Company's Director Orientation and Continuing Education program shall be supplemented to include presentations from appropriate Company personnel regarding (i) state and federal laws governing for-profit educational institutions; (ii) state and federal student loan programs; and (iii) key accounting and financial reporting issues implicated by the Company's business.

10. AUDIT COMMITTEE IMPROVEMENTS

a. At least quarterly, ITT management will be required to provide the Audit Committee with a written report describing:

i. a breakdown by category of all sources of the Company's tuition revenue;

ii. the nature and performance of any existing or proposed Risk-Sharing Agreement, Variable Interest Entity, or other student loan financing program or vehicle in which the Company is involved;

iii. student loan repayment and default rates, and how such rates are calculated;

iv. actual or potential risk exposure related to student loan default rates.

b. ITT will require that the Audit Committee receive annually a report listing all trades in ITT securities engaged in by Section 16 officers.

c. ITT management will be required to provide the Audit Committee with:

i. periodic summaries of findings from completed internal audits and, as appropriate, the status of major audits in process; and

ii. progress reports on the completion of the current year's internal audit plan, including explanations for any significant deviations.

d. The Audit Committee charter will be amended, to provide that:

i. The Audit Committee shall review all disclosures in Form 10-Qs and Form 10-Ks filed with the SEC related to the performance of student loan programs.

ii. At least annually, the Audit Committee shall meet with the Company's independent auditor to review the Company's policies as they relate to accounting for student loan performance.

iii. The Chairperson of the Audit Committee shall meet with the independent auditor at least four times annually.

iv. The Audit Committee shall review and approve the annual budget for the Compliance/Internal Audit division of the Company.

v. The Audit Committee shall review the replacement, reassignment, or dismissal of ITT's Chief Compliance and Risk Officer.

vi. The Chief Compliance and Risk Officer will meet at least quarterly with the Audit Committee to discuss relevant compliance and risk issues.

vii. The Audit Committee shall meet in executive session for at least a portion of each of its meetings.

11. COMPENSATION COMMITTEE IMPROVEMENTS

a. The Compensation Committee charter will be amended, to provide that, in determining, setting, or approving annual short-term compensation arrangements, the Compensation Committee shall take into account the particular executive's performance as it relates to both legal compliance and compliance with the Company's internal policies and procedures. This shall not affect payments or benefits that are required to be paid pursuant to the Company's plans, policies, or agreements.

b. The Compensation Committee charter will be amended, to provide that, in determining, setting, or approving termination benefits and/or separation pay to

executive officers, the Compensation Committee shall take into consideration the circumstances surrounding the particular executive officer's departure and the executive's performance as it relates to both legal compliance and compliance with the Company's internal policies and procedures. This shall not affect payments or benefits that are required to be paid pursuant to the Company's plans, policies, or agreements.

12. CHIEF COMPLIANCE AND RISK OFFICER

a. ITT will agree to formalize the responsibilities of ITT's Chief Compliance Officer to include risk management functions, with a new title of Chief Compliance and Risk Officer. The Chief Compliance and Risk Officer will report directly to ITT's Chief Administrative and Legal Officer and also will have direct communications with ITT's Audit Committee.

b. The responsibilities of the Chief Compliance and Risk Officer will include overseeing and managing ITT's Ethics and Compliance Program, ensuring ITT's compliance with legal and regulatory requirements, and developing and implementing programs to prevent illegal, unethical, or improper conduct. The Chief Compliance and Risk Officer also will be responsible for identifying and monitoring material risks relating to ITT's compliance with applicable laws and regulations and for overseeing ITT's Enterprise Risk Management Program.

c. The Chief Compliance and Risk Officer will keep ITT's senior management and Audit Committee informed regarding the progress and results of compliance and risk assessment efforts.

d. The Chief Compliance and Risk Officer will meet at least monthly with ITT's CEO to discuss relevant compliance and risk issues, including matters set forth in the Item 1A "Risk Factors" section of ITT's annual Form 10-K.

e. The Chief Compliance and Risk Officer will meet at least quarterly with ITT's CFO to discuss relevant compliance and risk issues, including matters set forth in the Item 1A "Risk Factors" section of ITT's annual Form 10-K.

f. The Chief Compliance and Risk Officer shall review all disclosures set forth in the Item 1A "Risk Factors" section of ITT's annual Form 10-K.

g. The Chief Compliance and Risk Officer will meet at least quarterly with ITT's Audit Committee to discuss relevant compliance and risk issues.

h. The Chief Compliance and Risk Officer shall be invited to present a report to the full Board at least annually.

i. The Chief Compliance and Risk Officer (or his or her designee in extraordinary circumstances) shall participate in all meetings of the Disclosure Committee.

j. ITT will agree to keep the Chief Compliance and Risk Officer position in place for at least 3 years.

13. CHIEF ACCOUNTING OFFICER

a. ITT has identified its Controller and Treasurer as the Company's Chief Accounting Officer, separating the roles of the Chief Accounting Officer and the Chief Financial Officer. ITT's current Chief Accounting Officer is responsible for management of the Company's general accounting and treasury functions. Among other duties, the current Chief Accounting Officer's responsibilities include directing and reviewing various accounting analyses and the preparation of annual, quarterly, and monthly financial statements for the Company.

b. ITT will agree to keep the role of Chief Accounting Officer separate from the role of Chief Financial Officer for at least 3 years.

14. VICE PRESIDENT OF FINANCIAL REPORTING

a. ITT created a new executive position of Vice President of Financial Reporting. The Vice President of Financial Reporting is responsible for the preparation and distribution of internal and external financial reports. Among other duties, the Vice President of Financial Reporting is responsible for directing the review and publication process for the Company's financial statements, directing the annual audit process, and coordinating communications between the Company and its independent auditor.

b. ITT will agree to keep the new Vice President of Financial Reporting position in place for at least 3 years.

15. INSIDER TRADING POLICY

ITT maintains an insider trading policy that presently is not available to the public. ITT will agree to disclose publicly on its website the company's insider trading policy.

16. CLAWBACK AND RECOUPMENT POLICY

a. ITT will adopt a Clawback and Recoupment Policy, to be administered by the Board.

b. The Clawback and Recoupment Policy shall state that in the event of a restatement of the Company's financial results, the Board will review the facts and circumstances that led to the restatement, and consider the accountability of any executive officer whose acts or omissions were responsible in whole or in part for the events that led to the restatement and whether such acts or omissions constituted misconduct.

c. If, following the Board's review of the facts and circumstances, the Board determines that there has been misconduct by an executive officer that resulted in ITT being required to prepare the accounting restatement, then the Board shall require that executive officer to reimburse ITT for:

    i. any bonus or other short-term cash compensation or equity-based compensation received by that person from ITT during the 12-month period following the filing of the false financial statement;

    ii. any profits realized by that person from the sale of ITT securities during the 12-month period following the filing of the false financial statement.

d. The Clawback and Recoupment policy to be adopted by the Board will not purport to limit the Sarbanes-Oxley Act in any way.

17. WHISTLEBLOWER PROGRAM/ETHICS HOTLINE

a. ITT will maintain a "whistleblower" policy, for the reporting of instances of fraud and other violations of law or corporate policy, in the company's Code of Business Conduct and Ethics for at least five years.

b. ITT will maintain its Employee Ethics Alert Line, a confidential ethics hotline operated by a qualified third-party vendor, for at least five years. Information relating to the Employee Ethics Alert Line will be communicated to employees via a number of awareness distribution methods, including ITT's employee web portal and poster displays in areas such as employee break rooms.