

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE: SUNEDISON, INC. SECURITIES
LITIGATION**

No. 1:16-md-02742 (PKC) (RWL)

This Document Applies To:

*In re TerraForm Global, Inc. Securities
Litigation*, No. 1:16-cv-07967-PKC, and
consolidated cases

SETTLEMENT MODIFICATION AGREEMENT

This Settlement Modification Agreement, dated as of September 19, 2019 (the “Settlement Modification Agreement”), which is entered into by and among: (i) the Lead Plaintiff Pyramid Holdings, Inc., on behalf of itself and on behalf of the Settlement Class (as defined in ¶ 1.35 of the Stipulation and Agreement of Settlement dated as of December 14, 2017 (the “Stipulation”)) and plaintiffs Iron Workers Mid-South Pension Fund and Simon Fraser (collectively, “the Plaintiffs”); (ii) Defendant TerraForm Global, Inc. (“Global” or the “Company”); (iii) Defendants Ahmad Chatila, Carlos Domenech Zornoza, Jeremy Avenier, Martin Truong, Brian Wuebbels (the “Individual Defendants”); and (iv) Defendants J.P. Morgan Securities LLC, Barclays Capital Inc., Citigroup Capital Markets, Inc., Morgan Stanley & Co. LLC, Goldman, Sachs & Co. (n/k/a Goldman Sachs & Co. LLC), Merrill Lynch, Pierce, Fenner & Smith Incorporated (n/k/a BofA Securities, Inc.), Deutsche Bank Securities Inc., BTG Pactual US Capital LLC, Itaú BBA USA Securities, Inc., SMBC Nikko Securities America, Inc., SG Americas Securities, LLC, and Kotak Mahindra Inc. (the “Underwriter Defendants”) (collectively with Global and the Individual Defendants, the “Defendants”; and together with the Plaintiffs, the “Settling Parties”), by and

through their undersigned attorneys, is intended by the Settling Parties to modify the Stipulation in accordance with the terms and conditions set forth herein.

WHEREAS, on December 14, 2017, the Settling Parties executed the Stipulation which set forth the terms of the settlement of this Action (the “Settlement”) (ECF No. 265)¹;

WHEREAS, on December 19, 2017, the Court granted the Plaintiffs’ motion for preliminary approval of the Settlement, authorized dissemination of notice, and entered a deadline for Settlement Class Members to request exclusion from the Settlement Class (ECF No. 269);

WHEREAS, in compliance with the Court’s order granting preliminary approval of the Settlement, notice was mailed to Settlement Class Members on January 18, 2018 and summary notice was published on January 15, 2018 (ECF No. 315-1);

WHEREAS, pursuant to ¶2.1 of the Stipulation, Defendant Global caused a payment of \$57 million to be made to the Escrow Agent, and such funds have been held since that date in the Escrow Account;

WHEREAS, no objections to any aspect of the Settlement, including the Plan of Allocation, the request for Attorneys’ fees or the request for reimbursement of expenses was received from any Settlement Class Member;²

WHEREAS, on March 27, 2018, two groups of funds requested exclusion from the Settlement Class (the “Opt-Out Funds”), and submitted trading records showing purchases of

¹ References to “ECF No.” are to the docket for *In re: SunEdison, Inc. Sec. Litig.*, No. 1:16-md-02742 (PKC) (S.D.N.Y.) unless stated otherwise.

² Attorneys who represented non-Settlement Class Members in individual actions pending as part of the SunEdison Action notified the Court of their concern that the definition of Released Claims in the Stipulation could be understood to include their claims and sought to prevent any contention that their claims were being released. *See* ECF No. 325. Although disagreeing with such interpretation of Released Claims, the Settling Parties addressed that concern by revising the definition of Released Claims in the proposed Final Judgement to resolve any purported ambiguity. *See* ECF No. 334 & 334-1.

approximately 8.5 million shares of Global Common Stock that incurred losses, allegedly purchased or otherwise acquired pursuant to or traceable to the Registration Statement, which thereby diminished the aggregate amount of damages suffered by the Settlement Class;

WHEREAS, Global asserts that it exercised its right to terminate the Settlement under ¶ 10.6 of the Stipulation and under the separate related Supplemental Agreement entered into contemporaneously therewith by the Settling Parties;

WHEREAS, Plaintiffs dispute that Global terminated the Settlement and/or that Global had or has the right to terminate the Settlement under ¶ 10.6 of the Stipulation and the Supplemental Agreement as a consequence of the Opt-Out Funds requesting exclusion from the Settlement Class, and this dispute has not been resolved by the Settling Parties or the Court;

WHEREAS, on June 15, 2018, the Opt-Out Funds filed an individual action against Global and the Individual Defendants in the Circuit Court of Montgomery County, Maryland, asserting damages in excess of \$50 million based on purchases of Global Common Stock (the “Opt-Out Action”);

WHEREAS, in light of, and in an effort to resolve, the dispute regarding whether Global has the right to terminate the Settlement, as a consequence of the Opt-Out Funds requesting exclusion from the Settlement Class, and in order to move forward with the Settlement on terms agreeable to the Settling Parties, the Settling Parties have negotiated certain amendments to the Stipulation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties as follows:

1. Modifications to Stipulation

- 1.1 The definition of the term “Administrative Costs” set forth in ¶ 1.3 of the Stipulation shall be amended and replaced in its entirety with the following:

“‘Administrative Costs’ means all costs and expenses associated with or ancillary to providing notice of the Settlement to the Settlement Class and otherwise administering or carrying out the terms of the Settlement. Such costs may include, without limitation: escrow agent costs, Taxes and Tax Expenses, the costs of publishing summary notice, the costs of printing and mailing the Notice and Proof of Claim, as directed by the Court, the costs of publishing, mailing and otherwise disseminating the Supplemental Notice as defined in the Settlement Modification Agreement entered by the Settling Parties on September 19, 2019 (‘Settlement Modification Agreement’), in accordance with the terms contained therein and as directed by the Court, the costs associated with the Claims Administrator ascertaining information requested by Global’s Counsel and Lead Counsel in connection with discussions and negotiations surrounding and leading to the Settling Parties entering the Settlement Modification Agreement, and the costs of allocating and distributing the Net Settlement Fund (as defined in ¶ 7.2(e)) to the Authorized Claimants. Such costs may include costs incurred but not yet paid. Such costs do not include the Fee and Expense Award.”

- 1.2 The definition of the term “Claims Administrator” set forth in ¶ 1.9 of the Stipulation shall be amended and replaced in its entirety with the following:

“‘Claims Administrator’ means Garden City Group (aka “GCG”) and any successor, including Epiq, which shall administer the Settlement.”

- 1.3 The definition of the term “Escrow Agent” set forth in ¶ 1.13 of the Stipulation shall be amended and replaced in its entirety with the following:

“‘Escrow Agent’ means Garden City Group (aka “GCG”) and any successor, including Epiq. The Escrow Agent shall perform the duties set forth in this Stipulation and any order of the Court.”

- 1.4 The definition of the term “Final Judgment” set forth in ¶ 1.15 of the Stipulation shall be amended and replaced in its entirety with the following:

“‘Final Judgment’ means the order and judgment to be entered by the Court finally approving the Settlement and dismissing the Action, materially in the form attached as Exhibit A to the Settlement Modification Agreement, dated September 19, 2019.”

- 1.5 The definition of the term “Settlement” set forth in ¶ 1.33 of the Stipulation shall be amended and replaced in its entirety with the following:

“‘Settlement’ means the settlement contemplated by this Stipulation, as modified by the Settlement Modification Agreement dated September 19, 2019.”

- 1.6 The definition of the term “Settlement Amount” set forth in ¶ 1.34 of the Stipulation shall be amended and replaced in its entirety with the following:

“‘Settlement Amount’ means the sum of \$48,750,000 (Forty-Eight Million Seven Hundred Fifty Thousand U.S. Dollars). The Settlement Amount includes all Administrative Costs, Plaintiffs’ Counsel’s attorneys’ fees and expenses (as allowed by the Court), Award to Plaintiffs (as allowed by the Court), Settlement Class Member benefits, as well as any other costs, expenses, or fees of any kind whatsoever associated with the Settlement.”

- 1.7 The definition of the term “Settlement Class” set forth in ¶ 1.35 of the Stipulation shall be amended and replaced in its entirety with the following:

“‘Settlement Class’ means all Persons who purchased or acquired Common Stock pursuant to or traceable to the Registration Statement, without limitation as to time, except that excluded from the Settlement Class are: (i) Defendants and their respective successors and assigns; (ii) past and current officers and directors of Global, SunEdison, Inc. (“SunEdison”), and the Underwriter Defendants; (iii) blood relatives and household members of any Individual Defendant; (iv) the legal representatives, heirs, successors or assigns of the Individual Defendants; (v) any entity in which any of the above excluded Persons have or have had a majority ownership interest; (vi) Opt-Outs; (vii) Persons who have no compensable damages; and (viii) all current or former Global shareholders who had litigation pending against Global in the SunEdison Action as of October 31, 2017, including but not limited to the Individual Actions.

- 1.8 The definition of the term “Settlement Fund” set forth in ¶ 1.37 of the Stipulation shall be amended and replaced in its entirety with the following:

“‘Settlement Fund’ means all funds transferred to the Escrow Account pursuant to this Stipulation and any interest or other income earned thereon, except as otherwise provided by the terms of the Settlement Modification Agreement dated September 19, 2019 entered by the Settling Parties.

1.9 ¶ 2.1 of the Stipulation shall be amended and replaced in its entirety with the following:

“The Settling Parties acknowledge that Global caused to be paid into the Escrow Account the sum of \$57,000,000.00.”

1.10 ¶ 7.2 of the Stipulation shall be amended and replaced in its entirety with the following:

“The Settlement Fund shall be applied as follows:

- (a) To issue payment by check or wire transfer pursuant to written instructions from Global within ten (10) Business Days after the Court grants final approval of the Settlement and the Final Judgment is entered, an amount equal to \$8,250,000 (Eight Million Two Hundred Fifty Thousand U.S. Dollars), plus the interest earned on the Settlement Fund until the date of entry of the Final Judgment, net of all Taxes and Tax Expenses that were paid or accrued during that period (with such accrued and unpaid Taxes and any related Tax Expenses to be paid by the Escrow Agent from such interest earned on the Settlement Fund, which shall be withheld by the Escrow Agent for such purposes) (the ‘Settlement Refund’);
- (b) To pay the Taxes and Tax Expenses described in ¶ 4.1 above;
- (c) To pay Administrative Costs;
- (d) To pay Plaintiffs’ Counsel attorneys’ fees and expenses and Award to Plaintiffs (the ‘Fee and Expense Award’), to the extent allowed by the Court; and
- (e) To distribute the balance of the Settlement Fund, that is the Settlement Fund less the items set forth in ¶ 7.2 (a), (b), (c) and (d) hereof (the ‘Net Settlement Fund’), plus all interest earned on the Settlement Fund after entry of the Final Judgment, to the Authorized Claimants as allowed by this Stipulation, the Plan of Allocation, or the Court.”

1.11 ¶ 7.4 of the Stipulation shall be amended and replaced in its entirety with the following:

“This is not a claims-made settlement, and if all conditions of the Stipulation are satisfied and the Final Judgment becomes Final, no portion of the Settlement Fund will be returned to any of the Defendants or the Insurers, except for the Settlement Refund in accordance with the terms set forth in this Stipulation. Defendants, their counsel, their Insurers and the other Released Parties shall have no responsibility for, involvement in, interest in, or liability whatsoever with respect to the investment or distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding

of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claims against Plaintiffs, Plaintiffs' Counsel, the Claims Administrator or any other agent designated by Plaintiffs' Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or orders of the Court. Plaintiffs' Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim filed, where doing so is in the interest of achieving substantial justice."

- 1.12 ¶ 10.1(vi) of the Stipulation shall be amended and replaced in its entirety with the following:

"(vi) failure on the part of any Settling Party to abide, in material respect, with the terms of this Stipulation. In the absence of any of the events enumerated in the preceding sentence, as well as in ¶ 10.2, ¶ 10.3 or ¶ 10.7, no Settling Party shall have the right to terminate the Stipulation for any reason."

- 1.13 ¶ 10.4 of the Stipulation shall be amended and replaced in its entirety with the following:

"The Effective Date of this Stipulation ('Effective Date') shall not occur unless and until each of the following events occurs, and it shall be the date upon which the last in time of the following events occurs:

- (a) The Court has entered the Preliminary Approval Order attached hereto as Exhibit A or an order containing materially the same terms;
- (b) The Settlement Amount has been paid into the Escrow Account, as set forth in ¶ 2.1;
- (c) The Court has entered the Settlement Modification Order as defined in, and in the form attached as Exhibit B to, the Settlement Modification Agreement dated September 19, 2019, and approved the terms contained in that Agreement;
- (d) The Court has approved the Settlement, following dissemination of the notice to the Settlement Class, dissemination of the Supplemental Notice in accordance with the terms contained in the Settlement Modification Agreement dated September 19, 2019, and the Settlement Hearing, and has entered the Final Judgment;
- (e) The Final Judgment has become Final as defined in ¶ 1.14;
- (f) The Action has been dismissed with prejudice; and
- (g) The Settlement Refund has been paid to Global."

1.14 Global hereby waives and forfeits any right it may have to terminate the Stipulation and Settlement pursuant to ¶ 10.6 of the Stipulation and said ¶ 10.6 is deleted from the Stipulation in its entirety. Despite the deletion of ¶ 10.6, the remaining paragraph numbers in ¶ 10 shall remain the same.

1.15 ¶ 12.1 of the Stipulation shall be amended and replaced in its entirety with the following:

Except in the event a Termination Notice pursuant to ¶¶ 10.1, 10.2, 10.3, or 10.7 of this Stipulation or a Modification Termination Notice pursuant to the Settlement Modification Agreement dated September 19, 2019 is provided to the Settling Parties, the Settling Parties shall take all actions necessary to consummate this agreement; and agree to cooperate with each other to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and the Settlement Modification Agreement dated September 19, 2019.

1.16 ¶ 12.5 of the Stipulation shall be amended and replaced in its entirety with the following:

This Stipulation, together with the Settlement Modification Agreement dated September 19, 2019, constitutes the entire agreement between the Settling Parties related to the Settlement and supersedes any prior agreements. No representations, warranties, promises, inducements or other statements have been made to or relied upon by any Settling Party concerning this Stipulation, other than the representations, warranties and covenants expressly set forth herein and in the Settlement Modification Agreement dated September 19, 2019. Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants acknowledge and agree that any and all other representations and warranties of any kind or nature, express or implied, are specifically disclaimed and were not relied upon in connection with this Stipulation. In entering this Stipulation, the Settling Parties relied solely upon their own knowledge and investigation. Except as otherwise provided herein, each Settling Party shall bear its own costs.

2. Court Approval of Settlement Modification Agreement and the Dissemination of Supplemental Notice

2.1. As soon as practicable after execution of this Settlement Modification Agreement, Lead Counsel shall submit this Settlement Modification Agreement and its exhibits to the Court and shall, with the consent of the Defendants granted hereby, apply for

an order (substantially in the form of Exhibit B hereto; the “Settlement Modification Order”) preliminarily approving this Settlement Modification Agreement and the modifications to the Settlement contained herein and approving the mailing and dissemination of a Supplemental Notice Regarding Modifications to the Proposed Class Action Settlement (substantially in the form of Exhibit C hereto; the “Supplemental Notice”) in the manner set forth herein and in the Settlement Modification Order to those Persons identified by the Claims Administrator as purportedly having timely filed Proofs of Claim and whose claims for recovery have either: 1) been accepted as valid by the Claims Administrator pursuant to the terms of the Stipulation and the exhibits thereto; or 2) been found by the Claims Administrator to be deficient but whose claims for recovery the Claims Administrator has determined can possibly be cured (collectively, “Purported Claimants”).

- 2.2. The Supplemental Notice shall: 1) generally explain how the Settlement Modification Agreement modifies the Settlement (as originally contemplated) and the facts, circumstances and disputes that gave rise to the Settlement Modification Agreement; 2) set forth the procedure by which recipients of the Supplemental Notice may object to such modifications; and 3) explain the possible consequences of the Settling Parties not reaching an agreement concerning modifications of the Settlement and/or the Court not granting final approval of the Settlement (as modified by this Settlement Modification Agreement) and not entering the Final Judgment (as modified by this Settlement Modification Agreement).
- 2.3. Within thirty (30) days of the Court issuing the Settlement Modification Order, the Claims Administrator, upon the direction of Lead Counsel, shall print and

disseminate the Supplemental Notice by first-class mail, postage prepaid, to all Purported Claimants and shall post the Supplemental Notice and the Settlement Modification Order on the website it created and maintains for the Settlement.

2.4. Neither Purported Claimants nor any other Settlement Class Members shall be provided with a second opportunity to exclude themselves from the Settlement Class.

2.5. In connection with its application to the Court for the issuance of the Settlement Modification Order, Lead Counsel shall request, with the consent of the Defendants granted hereby, that the Court set the date and time of the Settlement Hearing and provide in the Settlement Modification Order for the Settlement Hearing to be held on such date and time.

3. Conditions Providing Right to Terminate Settlement Modification Agreement and Consequences of Termination

3.1 Lead Plaintiffs, on behalf of the Settlement Class, and Defendants shall each have the right to terminate the Settlement Modification Agreement by providing written notice of his or its election to do so (“Modification Termination Notice”) to counsel for all other Settling Parties within (7) Business Days of:

- i. entry of a Court order declining to preliminarily approve the Settlement Modification Agreement in any material respect;
- ii. entry of a Court order declining to enter the Settlement Modification Order in any material respect;
- iii. entry of a Court order requiring that Purported Claimants or any other Settlement Class Members be given an opportunity to exclude themselves from the Settlement Class that is in addition to the opportunity previously provided in the Preliminary Approval Order;

- iv. entry of a Court order declining to finally approve the Settlement (as modified by the Settlement Modification Agreement) in any material respect;
- v. entry of a Court order declining to enter the Final Judgment (in the form attached hereto as Exhibit A) in any material respect;
- vi. entry of an order by which the Final Judgment (in the form attached hereto as Exhibit A) is modified or reversed in any material respect by any appeal or review;
- vii. failure on the part of the Escrow Agent to pay the Settlement Refund to Global required by ¶ 1.10(a) of this Settlement Modification Agreement; and
- viii. failure on the part of any Settling Party to abide with the terms of this Settlement Modification Agreement. In the absence of any of the events enumerated in the preceding sentence, no Settling Party shall have the right to terminate the Settlement Modification Agreement for any reason.

3.2 In the event this Settlement Modification Agreement shall be terminated by any party permitted to do so pursuant to ¶3.1 herein, the Settlement Modification Agreement shall become null and void, of no further force and effect, without prejudice to any Settling Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Settling Parties. Upon termination of the Settlement Modification Agreement, the Settling Parties shall be restored to their respective litigation positions in the Action as they existed as of July 1, 2019, and they shall proceed in all respects as if the Settlement Modification Agreement had

not been executed and related orders or judgments had not been entered (including, without limitation, the Settlement Modification Order and the Final Judgment (in the form attached hereto as Exhibit A), with each to be deemed following such termination as vacated, *nunc pro tunc*), and in the event of such termination all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice.

3.3 For the avoidance of doubt, the Settling Parties agree and acknowledge that in the event this Settlement Modification Agreement is terminated, Global may, *inter alia*, seek to terminate (and/or take the position that it has exercised its right to terminate) the Settlement (as originally contemplated prior to the Settling Parties entering into this Settlement Modification Agreement) and the Stipulation (as originally drafted prior to the Settling Parties entering into this Settlement Modification Agreement) pursuant to ¶ 10.6 of the Stipulation (as originally drafted prior to the Settling Parties entering into this Settlement Modification Agreement) and Plaintiffs, on behalf of the Settlement Class, may, *inter alia*, oppose such termination efforts by Global and may seek to enforce the Settlement (as originally contemplated prior to the Settling Parties entering into this Settlement Modification Agreement) and the Stipulation (as originally drafted prior to the Settling Parties entering into this Settlement Modification Agreement).

3.4 Notwithstanding any other provisions contained herein and specifically notwithstanding ¶ 3.2 above, in the event the Settlement Modification Agreement is terminated, the definition of the capitalized term “Administrative Costs” as used in the Stipulation (as originally drafted prior to the Settling Parties entering into this

Settlement Modification Agreement, which will be in effect following such termination) shall continue to be the definition provided herein in ¶ 1.1 above.

- 3.5 In the event the Settlement Modification Agreement is terminated after Final Judgment (in the form attached hereto as Exhibit A) has been entered pursuant to ¶ 3.1.vi of this Settlement Modification Agreement and the Settlement Refund has been paid to Global, Global shall within ten (10) Business Days (as that term is defined in the Stipulation) return the Settlement Refund to the Escrow Agent for deposit into the Escrow Account.

4. Miscellaneous Provisions

- 4.1 The capitalized terms “Stipulation” or “Settlement Stipulation” as used herein and the exhibits hereto, and in the Stipulation and Agreement of Settlement dated as of December 14, 2017, and any exhibits thereto, shall be defined (except as stated herein otherwise) as referring to the Stipulation and Agreement of Settlement dated as of December 14, 2017, as amended by this Settlement Modification Agreement, and any exhibits hereto, unless and until this Settlement Modification Agreement shall terminate in accordance with the terms and conditions contained herein.
- 4.2 This Settlement Modification Agreement incorporates and adopts the defined terms set forth in the Stipulation unless otherwise specified herein. To the extent any inconsistency exists between the terms or definitions in this Settlement Modification Agreement and the Stipulation, the terms or definitions contained in this Settlement Modification Agreement shall apply and supersede the applicable terms or definitions in the Stipulation.

- 4.3 Global represents that the Insurers have agreed that the Settlement Refund is to be paid entirely to Global with no portion of the Settlement Refund being owed to or to be paid to the Insurers.
- 4.4 This Settlement Modification Agreement may be executed in any number of counterparts by any of the signatories hereto and the transmission of an original signature page electronically (including by facsimile or portable document format) shall constitute valid execution of the Settlement Modification Agreement as if all signatories hereto had executed the same document. Copies of this Settlement Modification Agreement executed in counterpart shall constitute one agreement.
- 4.5 Each of the attorneys executing this Settlement Modification Agreement, any of its exhibits, or any related Settlement documents on behalf of any Settling Party hereto hereby warrants and represents that he or she has been duly empowered and authorized to do so by the Settling Party he or she represents.
- 4.6 The Settling Parties agree that this Settlement Modification Agreement was entered into and the Action was resolved in good faith following arm's-length bargaining, in full compliance with applicable requirements of good faith litigation under the Securities Act of 1933, Rule 11 of the Federal Rules of Civil Procedure and/or the PSLRA.
- 4.7 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.
- 4.8 This Settlement Modification Agreement, the Settlement and any and all disputes arising out of or relating in any way to this Settlement Modification Agreement, whether in contract, tort or otherwise, shall be governed by and construed in

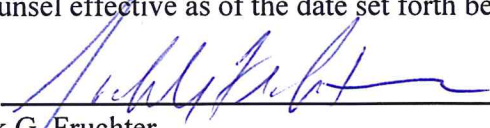
accordance with the laws of the State of New York without regard to conflict of laws principles.

- 4.9 This Settlement Modification Agreement shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties, and all Settling Parties have contributed substantially and materially to the preparation of this Settlement Modification Agreement.
- 4.10 The Settling Parties reserve the right, subject to the Court's approval, to jointly make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Modification Agreement.

IN WITNESS WHEREOF, the Settling Parties have executed this Settlement

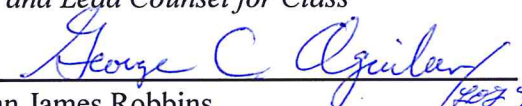
Modification Agreement by their undersigned counsel effective as of the date set forth below.

Dated: September 19, 2019

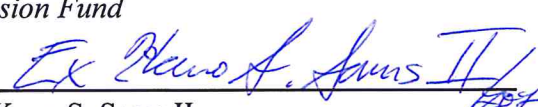
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