

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

CIVIL ACTION NO. 06-10234(HB)

STIPULATION OF SETTLEMENT

**IN RE XETHANOL CORPORATION
SECURITIES LITIGATION**

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This Stipulation of Settlement dated as of April 29, 2008 (the “Stipulation”), is made and entered into by and among the following Settling Parties (as defined further in Section IV hereof) to the above-entitled Litigation: (i) the Lead Plaintiffs (on behalf of themselves and each of the Class Members), by and through their counsel of record in the Litigation; and (ii) the Defendants, by and through their counsel of record in the Litigation. The Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

I. THE LITIGATION

On and after October 23, 2006, the following actions were filed in the United States District Court for the Southern District of New York as purported securities class actions on behalf of purchasers of the publicly-traded securities of Xethanol Corporation (“Xethanol” or the “Company”) during a defined period of time:

<u>CASE NAME</u>	<u>CASE NUMBER</u>
<i>Ariail v. Xethanol Corp. et al.</i>	06-cv-10234
<i>Spoto v. Xethanol Corp. et al.</i>	06-cv-11476
<i>Jones v. Xethanol Corp. et al.</i>	06-cv-13128
<i>Hamilton v. Xethanol Corp. et al.</i>	06-cv-11477
<i>Difruscio v. D'Arnaud-Taylor et al.</i>	06-cv-11516
<i>Lindberg v. D'Arnaud-Taylor et al.</i>	06-cv-14448
<i>Lemoine v. Xethanol Corp. et al.</i>	06-cv-15176

On March 14, 2007, the Court appointed the Counsell Group (Ronald L. Counsell, Clayton Antonio Leamons, John Zipay, Jr. and Ernest J. Shepherd) as Lead Plaintiffs pursuant to §21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”) as amended by the

Private Securities Litigation Reform Act of 1995, and approved their selection of Kahn Gauthier Swick, LLC in the consolidated action *In re Xethanol Corporation Securities Litigation* (the “Litigation”).

The operative complaint in the Litigation is the Amended and Consolidated Class Action Complaint for Violation of Federal Securities Laws (the “Complaint”), filed March 27, 2007. The Complaint alleges violations of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder on behalf of a class of all purchasers of the publicly-traded securities of Xethanol between January 31, 2006 and August 8, 2006, inclusive (the “Class Period”).

On April 23, 2007 Xethanol and the Individual Defendants moved the Court to dismiss the Complaint. On May 14, 2007, Lead Plaintiffs filed their memorandum of law in opposition to Defendants’ motion to dismiss. On May 24, 2007, Defendants filed their reply memorandum of law in further support of their motion to dismiss the Complaint. A hearing on the motion to dismiss was held on July 2, 2007.

On September 7, 2007 the Court issued an opinion and order denying Defendants’ motion to dismiss in full. Defendants answered the Complaint on November 2, 2007.

The discovery phase of the Litigation commenced immediately after the Complaint was sustained. Lead Plaintiffs served their First Request for Production of Documents directed to Xethanol on September 19, 2007. Lead Plaintiffs’ First Requests for Production of Documents directed to each of the three individual defendants were served between September 18 and 20, 2007.

Defendants served their First Request for Production to Lead Plaintiffs on September 19, 2007. On October 22, 2007, Lead Plaintiffs served their written responses and objections to Defendants’ Request for Production. On October 26, 2007, Defendant Taylor served his written

responses and objections to Lead Plaintiffs' Request for Production. On October 29, 2007, Lead Plaintiffs produced responsive, non-privileged documents. Also on October 29, 2007, Defendants Bellone and Langberg served their written responses and objections to Lead Plaintiffs' Request for Production. On October 29, 2007, Lead Counsel served an initial meet and confer letter on Defendants regarding various discovery issues. On November 19, 2007, Counsel for the parties met and conferred telephonically. Thereafter, numerous detailed letters were exchanged by the parties regarding discovery issues and multiple telephonic conferences were held to attempt to resolve these issues. Agreements were reached regarding a variety of discovery issues, narrowing the number of disputed issues. On October 25, 2007, Defendants served documents responsive to Lead Plaintiffs' Request for Production, consisting of thousands of pages of bates-stamped documents.

The parties prepared a confidentiality stipulation and proposed order, which they executed on November 26, 2007. The following day, on November 27, 2007, Lead Plaintiffs produced all remaining non-privileged documents responsive to Defendants' First Request for Production. By November 26, 2007, Defendants had produced additional documents responsive to Lead Plaintiffs' First Request for production. Lead Counsel carefully reviewed and analyzed all documents produced by Defendants. Defendants carefully reviewed and analyzed all documents produced by Lead Plaintiffs.

On October 26, 2007, Defendants served notices of depositions for each of Plaintiffs' four confidential sources cited in the Complaint. On the same day, Defendants served notices of depositions for each of the Lead Plaintiffs. The parties agreed that each of the Lead Plaintiffs would sit for his deposition in early December in New Orleans, Louisiana.

On October 30, 2007, Lead Plaintiffs served Defendants with Notices of Deposition of

James Stewart, a Xethanol Vice President of Plant Operations & General Manager, and of Robin Buller, a Xethanol Vice President of Strategic Development. That same day, Lead Plaintiffs also served Notices of Inspection of Premises for Xethanol Plants located in: Blairstown, Iowa; Hopkinton, Iowa; Spring Hope, North Carolina; and Augusta, Georgia. Lead Plaintiffs interviewed various ethanol experts and chose two consultants and a videographer to assist with the plant inspections.

On November 1, 2007, Lead Plaintiffs served Subpoenas upon third-parties Goldman Sachs & Co. and Louis Bernstein, a former Xethanol board member and former interim CEO. On November 8, 2007, Defendants served their First Set of Interrogatories to Lead Plaintiffs. On November 13, 2007, Lead Plaintiff – providing an early response to part of the interrogatory request – served Defendants with a letter identifying all confidential sources cited in the Complaint.

On November 28, 2007, Lead Counsel, Counsel for Defendants, and Xethanol's CEO David Ames and COO Thomas Endres met in West Palm Beach, Florida to mediate the case before a retired Federal Judge, the Honorable Nicholas Politan. After a lengthy mediation session, the parties reached a resolution and agreed in principle to settle the Litigation.

II. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

Defendants have denied and continue to deny each and all of the claims and contentions alleged by Lead Plaintiffs in the Litigation. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also have denied and continue to deny, *inter alia*, the allegations that the Lead Plaintiffs and the Class have suffered damage, that the prices of Xethanol securities were

artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, and that Lead Plaintiffs and the Class were harmed by the conduct alleged in the Complaint, and Defendants believe that the evidence developed to date supports their position.

Nonetheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive and have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Litigation. Defendants have, therefore, determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

III. CLAIMS OF LEAD PLAINTIFFS AND BENEFITS OF SETTLEMENT

Lead Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims. However, Lead Plaintiffs recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and through appeals. Lead Plaintiffs have also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Litigation, as well as the difficulties and delays inherent in such litigation, as well as the risk of inability to pay a judgment by Defendants. Lead Plaintiffs are also mindful of the inherent problems of proof and possible defenses to the securities law violations asserted in the Litigation. Lead Plaintiffs believe that the settlement set forth in the Stipulation confers substantial benefits upon the Class. Based on their evaluation, Lead Plaintiffs and Lead Counsel have determined that the settlement set forth in the Stipulation is in the best interests of the Lead Plaintiff and the Class.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the

Lead Plaintiffs (for themselves and the Class Members) and Defendants, by and through their counsel, that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Stipulation, as follows.

1. Definitions

As used in the Stipulation, the following terms have the meanings specified below:

1.1 “Authorized Claimant” means any Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.

1.2 “Claimant” means any Class Member who files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.3 “Claims Administrator” means Complete Claims Solutions.

1.4 “Class” means all Persons who purchased the publicly-traded securities of Xethanol between January 31, 2006 and August 8, 2006. Excluded from the Class are Defendants, members of the immediate families of the Individual Defendants, current or former directors and officers of Xethanol and the legal representatives, heirs, successors, or assigns of any such excluded Person. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action.

1.5 “Class Member” or “Member of the Class” means a Person who falls within the definition of the Class as set forth in ¶1.4 of the Stipulation.

1.6 “Class Period” means the period between January 31, 2006 and August 8, 2006.

1.7 “Xethanol” means Xethanol Corporation.

1.8 “Defendants” means Xethanol and the Individual Defendants.

1.9 “Effective Date” means the first date by which all of the events and conditions specified in ¶7.1 of the Stipulation have been met and have occurred.

1.10 “Escrow Agent” means Kahn Gauthier Swick, LLC, or its successor(s).

1.11 “Final” means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form of Exhibit B hereto, shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of the time in which to appeal the Judgment has passed without any appeal having been taken, which date shall be deemed to be thirty (30) days following the entry of the Judgment, unless the date to take such an appeal shall have been extended by Court order or otherwise, or unless the 30th day falls on a weekend or a Court holiday, in which case the date for purposes of this Stipulation shall be deemed to be the next business day after such 30th day; and (iii) if such motion to alter or amend is filed or if an appeal is taken, immediately after the determination of that motion or appeal so that it is no longer subject to any further judicial review or appeal whatsoever, whether by reason of affirmance by a court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise, and in such a manner as to permit the consummation of the settlement substantially in accordance with the terms and conditions of this Stipulation. For purposes of this paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of this settlement, but shall not include any appeal that concerns only the issue of attorneys’ fees and reimbursement of costs or the Plan of Allocation of the Settlement Fund.

1.12 “Individual Defendants” means Christopher D’Arnaud-Taylor, Jeffery S.

Langberg, and Lawrence S. Bellone.

1.13 “Judgment” means the judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit B.

1.14 “Lead Counsel” means Kahn Gauthier Swick, LLC.

1.15 “Lead Plaintiffs” means the Counsell Group, consisting of Ronald L. Counsell, Clayton Antonio Leamons, John Zipay, Jr. and Ernest J. Shepherd.

1.16 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.17 “Plan of Allocation” means a plan or formula of allocation of the Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the settlement, Taxes and Tax Expenses, such attorneys’ fees, costs, expenses and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation and Defendants and their Related Parties shall have no responsibility therefore or liability with respect thereto.

1.18 “Related Parties” means each of a Defendant’s past or present directors, officers, employees, partners, insurers, co-insurers, reinsurers, agents, controlling shareholders, attorneys, accountants, auditors, advisors, investment advisors, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a controlling interest, any members of an Individual Defendant’s immediate family, or any trust of which an Individual Defendant is the settlor or which is for the benefit of an Individual Defendant’s family.

1.19 “Released Claims” shall collectively mean any and all claims, debts, demands, rights, liabilities and causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, including, without limitation, claims for negligence, gross negligence, breach of duty of care and/or breach of duty of loyalty, fraud, breach of fiduciary duty, whether class or individual in nature including both known claims and Unknown Claims (as defined below), whether or not concealed or hidden (i) that have been asserted in this Action by the Lead Plaintiffs or any Class Member against any of the Parties or Related Parties, or (ii) that could have been asserted in any forum by the Lead Plaintiffs or any Class Member against any of the Parties or Related Parties which arose out of the purchase of Xethanol stock during the Class Period.

1.20 “Released Persons” means each and all of the Defendants and each and all of their Related Parties.

1.21 “Unknown Claims” means any and all Released Claims which any Lead Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiffs shall expressly waive and each Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable

or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

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

1.22 “Settlement Fund” means the principal amount of Two Million Eight Hundred Thousand Dollars (\$2,800,000) in cash to be paid to the Escrow Agent pursuant to ¶2.1 of this Stipulation, plus all interest earned thereon pursuant to ¶¶2.1, 2.2 and 2.6.

1.23 “Settling Parties” means, collectively, each of the Defendants, and the Lead Plaintiffs on behalf of themselves and the Class Members.

1.24 “Notice Order” means the preliminary order as approved by the Court for mailing and publication as defined in ¶3.1 hereof.

2. The Settlement

a. The Settlement Fund

2.1 Defendants shall pay or cause to be paid the sum of Two Million, Eight Hundred Thousand Dollars (\$2,800,000) (\$2,400,000 to be provided by Defendants’ insurers and \$400,000 to be provided by Defendants), within the time set forth in ¶ 2.2, below, into an interest bearing account maintained by the Escrow Agent in settlement of the Litigation which, with any accrued interest, shall constitute the Settlement Fund.

2.2 Subject to the terms of this Stipulation, Xethanol and the Individual Defendants shall collectively pay \$100,000 of the Settlement Fund into the Escrow Account within ten (10) business days of the execution of the Notice Order as defined in ¶ 3.1 hereof. Defendants shall pay or see to the payment of the remaining balance of the Settlement Fund into the Escrow

Account within 30 days following the Court's issuance of the Notice Order.

b. The Escrow Agent

2.3 The Escrow Agent may invest the Settlement Fund deposited pursuant to ¶2.1 hereof in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Escrow Agent shall bear all risks related to investment of the Settlement Fund.

2.4 The Escrow Agent shall not disburse the Settlement Fund except as provided in the Stipulation, by an order of the Court, or with the written agreement of counsel for Defendants.

2.5 Subject to further order and/or direction as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Class Members as are consistent with the terms of the Stipulation.

2.6 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

2.7 Within thirty (30) days after payment of the Settlement Fund to the Escrow Agent pursuant to ¶2.1 hereof, the Escrow Agent may establish a "Class Notice and Administration Fund," and may deposit up to \$100,000 from the Settlement Fund in it. The Class Notice and Administration Fund may be used by Lead Counsel to pay costs and expenses reasonably and actually incurred in connection with providing notice to the Class, locating Class Members, assisting with the filing of claims, administering and distributing the Settlement Fund to

Authorized Claimants, processing Proof of Claim and Release forms and paying escrow fees and costs, if any. The Class Notice and Administration Fund may also be invested and earn interest as provided for in ¶2.1 of this Stipulation. In no event shall Defendants have any responsibility for or liability with respect to the Escrow Agent or its actions or the Class Notice and Administration Fund. Any costs or expenses expended for notice or claims administration in excess of \$100,000 shall be paid from the Settlement Fund, subject to approval of Lead Counsel.

c. Taxes

2.8

(a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.8, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶2.8(a) hereof) shall be consistent with this ¶2.8 and in all events shall reflect that all Taxes

(including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.8(c) hereof.

(c) All (a) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Defendants or their Related Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”), and (b) expenses and costs incurred in connection with the operation and implementation of this ¶2.8 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶2.8) (“Tax Expenses”), shall be paid out of the Settlement Fund; in no event shall the Defendants or their Related Parties have any responsibility for or liability with respect to the Taxes or the Tax Expenses. The Escrow Agent shall indemnify and hold each of the Defendants and their Related Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither the Defendants nor their Related Parties are responsible therefore nor shall they have any liability with respect thereto. The parties hereto agree to cooperate with the Escrow Agent, each other,

and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.8.

(d) For the purpose of this ¶2.8, references to the Settlement Fund shall include both the Settlement Fund and the Class Notice and Administration Fund and shall also include any earnings thereon.

d. CAFA Notice

2.9 Pursuant to the requirements of the Class Action Fairness Act (“CAFA”), no later than 10 days after the proposed settlement of the class action is filed with the Court, each Defendant shall serve, upon the appropriate State official of each State in which a Class Member resides and the appropriate Federal official, a notice of the proposed settlement. The parties hereto agree to cooperate with each other to the extent reasonably necessary for Defendants to carry out the provisions of this section.

e. Termination of Settlement

2.10 In the event that the Stipulation is not approved, or is terminated, canceled, or fails to become effective for any reason, the Settlement Fund and the Class Notice and Administration Fund (in each case, including accrued interest), less expenses actually incurred and properly due and owing in connection with the settlement provided for herein, shall be refunded *pro rata* to the entities contributing to the Settlement Fund, as provided in ¶7.3 below.

3. Notice Order and Settlement Hearing

3.1 Promptly after execution of the Stipulation, the Settling Parties shall submit the Stipulation together with its Exhibits to the Court and shall apply for entry of an order (the “Notice Order”), substantially in the form of Exhibit A hereto, requesting, *inter alia*, the preliminary approval of the settlement set forth in the Stipulation, and approval for mailing the

Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) substantially in the form of Exhibit A-1 hereto and publication of a summary notice substantially in the form of Exhibit A-3 hereto. The Notice shall include the general terms of the settlement set forth in the Stipulation, the proposed Plan of Allocation, the general terms of the Fee and Expense Application and the date of the Settlement Hearing.

3.2 Lead Counsel shall request that after notice is given, the Court hold a hearing (the “Settlement Hearing”) and approve the settlement of the Litigation as set forth herein. At or after the Settlement Hearing, Lead Counsel also will request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application. Lead Counsel may also request Court approval of an application by Lead Plaintiffs for reimbursement for reasonable costs and expenses, including their time spent on the Litigation.

4. Releases

4.1 Upon the Effective Date, as defined in ¶1.9 hereof, Lead Plaintiffs, and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Persons, whether or not such Class Member executes and delivers a Proof of Claim and Release form.

4.2 The Proof of Claim and Release to be executed by Class Members shall release all Released Claims against the Released Persons and shall be substantially in the form contained in Exhibit A-2 hereto.

4.3 Upon the Effective Date, all Class Members and anyone claiming through or on behalf of any of them, will be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or

equity, arbitration tribunal, or administrative forum, asserting the Released Claims against any of the Released Persons.

4.4 Upon the Effective Date, as defined in ¶1.9 hereof, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged the Lead Plaintiffs, each and all of the Class Members, and Lead Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Litigation or the Released Claims.

5. Administration and Calculation of Claims, Final Awards and Supervision and Distribution of Settlement Fund

5.1 The Claims Administrator shall administer and calculate the claims submitted by Class Members.

5.2 The Settlement Fund shall be applied as follows:

(a) to pay all the costs and expenses reasonably and actually incurred in connection with providing notice, locating Class Members, assisting with the filing of claims, administering and distributing the Settlement Fund to Authorized Claimants, processing Proof of Claim and Release forms and paying escrow fees and costs, if any;

(b) to pay the Taxes and Tax Expenses described in ¶2.8 hereof;

(c) to pay Lead Counsel's attorneys' fees and expenses (the "Fee and Expense Award"), if and to the extent allowed by the Court; and

(d) after the Effective Date, to distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

5.3 Upon the Effective Date and thereafter, and in accordance with the terms of the

Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following.

5.4 Within ninety (90) days after the mailing of the Notice or such other time as may be set by the Court, each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release, substantially in the form of Exhibit A-2 hereto, signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and Release and as are reasonably available to the Authorized Claimant.

5.5 All Class Members who fail to timely submit a Proof of Claim and Release within such period, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to the Stipulation and the settlement set forth herein, but will in all other respects be subject to and bound by the provisions of the Stipulation, the releases contained herein, and the Judgment.

5.6 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation to be described in the Notice and approved by the Court. If any funds remain in the Net Settlement Fund by reason of un-cashed distributions or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be re-distributed to Class Members who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Net

Settlement Fund for such re-distribution. Thereafter, the Court in its sole discretion shall designate the recipient(s) of any balance which still remains in the Net Settlement Fund, except that in no event shall any portion of the Net Settlement Fund be returned to Defendants.

5.7 This is not a claims-made settlement. If all conditions of the Stipulation are satisfied and the settlement becomes Final, no portion of the Settlement Fund will be returned to Defendants or their insurers. Defendants and their Related Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the 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.

5.8 No Person shall have any claim against Lead Counsel, the Claims Administrator or other entity designated by Lead Counsel based on distributions made substantially in accordance with the Stipulation and the settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

5.9 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in the Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel the Stipulation or affect or delay the finality of the Court's Judgment approving the Stipulation and the settlement set forth therein (including the releases contained therein), or any other orders entered pursuant to the Stipulation.

6. Lead Counsel's Attorneys' Fees and Reimbursement of Expenses

6.1 Lead Counsel may submit an application or applications (the "Fee and Expense

Application”) for distributions to them from the Settlement Fund for: (a) an award of attorneys’ fees; plus (b) reimbursement of actual expenses, including the fees of any experts or consultants, incurred in connection with prosecuting the Litigation, plus any interest on such attorneys’ fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid), as may be awarded by the Court. Lead Counsel reserves the right to make additional applications for fees and expenses incurred.

6.2 The attorneys’ fees and expenses, as awarded by the Court, shall be paid to Lead Counsel from the Settlement Fund, as ordered, immediately after the Court executes an order awarding such fees and expenses. In the event that the Effective Date does not occur, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or the Stipulation is canceled or terminated for any other reason, and in the event that the Fee and Expense Award has been paid to any extent, then Lead Counsel shall within five (5) business days from receiving notice from Defendants’ counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund the fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned by the Settlement Fund in an amount consistent with such reversal or modification.

6.3 The procedure for and the allowance or disallowance by the Court of any applications by Lead Counsel for attorneys’ fees and expenses, including the fees of experts and consultants, to be paid out of the Settlement Fund, are not part of the settlement set forth in the Stipulation, and are to be considered by the Court separately from the Court’s consideration of the fairness, reasonableness and adequacy of the settlement set forth in the Stipulation, and any order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the

Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the settlement of the Litigation set forth therein (including the releases contained therein).

6.4 Defendants and their Related Parties shall have no responsibility for or liability with respect to any payment of attorneys' fees and expenses to Lead Counsel over and above payment from the Settlement Fund.

7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

(a) Defendants have timely made their contributions to the Settlement Fund as required by ¶2.1 hereof;

(b) Defendants have not exercised their option to terminate the Stipulation pursuant to the Supplemental Agreement to Stipulation of Settlement;

(c) the Court has entered the Notice Order, as required by ¶3.1 hereof;

(d) the Court has entered the Judgment, or a judgment substantially in the form of Exhibit B hereto; and

(e) the Judgment has become Final, as defined in ¶1.11 hereof.

7.2 Upon the occurrence of all of the events referenced in ¶7.1 hereof, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. If all of the conditions specified in ¶7.1 hereof are not met, then the Stipulation shall be canceled and terminated subject to ¶7.4 hereof unless Lead Counsel and counsel for Defendants and their insurers mutually agree in writing to proceed with the Stipulation.

7.3 Unless otherwise ordered by the Court, in the event the Stipulation shall

terminate, or be canceled, or shall not become effective for any reason, then within ten (10) business days after written notification of such event is sent by counsel for Defendants to the Escrow Agent and in accordance with the terms of ¶2.10 hereof, the Settlement Fund (including accrued interest), plus any amount then remaining in the Class Notice and Administration Fund (including accrued interest), less expenses and any costs which have either been disbursed pursuant to ¶2.7 hereof or are determined to be chargeable to the Class Notice and Administration Fund, shall be refunded by the Escrow Agent to the respective entities that contributed to the Settlement Fund, pursuant to written instructions from Xethanol or its successor-in-interest. At the request of counsel to Xethanol, the Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, pursuant to written direction from Xethanol or its successor-in-interest.

7.4 In the event that the Stipulation is not approved by the Court or the settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Litigation as of the date this Settlement Agreement was fully executed. In such event, the terms and provisions of the Stipulation, with the exception of ¶¶2.10, 7.3-7.5, and 8.4 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses and interest awarded by the Court to Lead Counsel shall constitute grounds for cancellation or termination of the Stipulation.

7.5 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither the Lead Plaintiff nor Lead Counsel shall have any obligation to repay any amounts actually and properly disbursed from the Class Notice and Administration Fund. In addition, any expenses already incurred and properly chargeable to the Class Notice and Administration Fund pursuant to ¶2.7 hereof at the time of such termination or cancellation, but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Stipulation prior to the balance being refunded in accordance with ¶¶2.10 and 7.3 hereof.

7.6 If a case is commenced in respect to any Defendant under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of the Settlement Fund by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction, then, at Lead Plaintiff's option, as to such Defendant, the releases given and Judgment entered in favor of such Defendant pursuant to this Stipulation shall be null and void.

7.7 Notwithstanding the foregoing ¶7.6, Lead Plaintiffs' right to nullify the releases and Judgment as to any Defendant pursuant to ¶7.6 hereof shall expire upon the Effective Date.

7.8 Pursuant to Fed. R. Civ. P. 23(e)(3), under which the parties seeking approval must file a statement identifying any agreement made in connection with the proposal, the parties state that there is a Supplemental Agreement to this Stipulation of Settlement with additional provisions confidentially agreed upon between the Parties subject to Court approval.

8. Miscellaneous Provisions

8.1 The Settling Parties (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and

implement all terms and conditions of the Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of the Stipulation.

8.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Final Judgment will contain a statement that during the course of the Litigation, the parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. While retaining their right to deny liability, Defendants agree that the amount paid to the Settlement Fund and the other terms of the settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

8.3 Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants or their Related Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants or their Related Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Defendants and/or their Related Parties may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res*

judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8.4 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation, pursuant to their terms.

8.5 All of the Exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

8.6 The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8.7 The Stipulation and the Exhibits attached hereto constitute the entire agreement among the parties hereto and no representations, warranties or inducements have been made to any party concerning the Stipulation or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs.

8.8 Lead Counsel, on behalf of the Class, are expressly authorized by Lead Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to the Stipulation to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the Class which they deem appropriate.

8.9 Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

8.10 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete

set of original executed counterparts shall be filed with the Court.

8.11 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

8.12 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Stipulation.

8.13 The Stipulation and the Exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice-of-law principles.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys dated as of April 29, 2008.

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