

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re Bally Total Fitness Securities Litigation

Case No. 04 C 3530

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Stipulation”), dated June 29, 2010, is entered into by the Parties (as defined in ¶ 1.22) in the above-captioned litigation (“Litigation”). The Stipulation is intended to resolve the Litigation, subject to the terms and conditions set forth herein (the “Settlement”).

I. THE LITIGATION

On May 20, 2004, the first of several securities fraud class actions was filed against Bally Total Fitness Holding Corp. (“Bally”), Bally’s former Chief Executive Officer Paul A. Toback (“Toback”), Bally’s former Chief Executive Officer Lee S. Hillman (“Hillman”), and Bally’s former Chief Financial Officer John W. Dwyer (“Dwyer”). On July 26, 2004, Cosmos Investment Co., LLC (“Cosmos” or “Lead Plaintiff”) petitioned the Court to consolidate the pending cases, appoint it as Lead Plaintiff for the putative class, and appoint Berger & Montague, P.C. as Lead Counsel. On September 8, 2004, the Court consolidated the pending cases. On March 15, 2005, the Court appointed Cosmos as Lead Plaintiff. On May 23, 2005, the Court approved Berger & Montague as Lead Counsel.

On January 3, 2006, Lead Plaintiff filed a Consolidated Class Action Complaint (“Complaint”) asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, on behalf of all those who purchased or otherwise acquired Bally securities between

August 3, 1999 and April 28, 2004, inclusive, and who were damaged thereby. There were three groups of defendants: (i) Bally; (ii) Toback, Dwyer, and Hillman (the “Individual Defendants”); and (iii) Bally’s auditor, Ernst & Young LLP (“E&Y”) (collectively “Defendants”). The Complaint alleged that Bally and the Individual Defendants reported false financial results in publicly disseminated financial statements for five years, leading to two separate restatements of the financial statements. The Complaint alleged that Bally and the Individual Defendants intentionally or recklessly overstated revenue and net income; understated expenses; misrepresented that Bally’s financial statements were presented in accordance with Generally Accepted Accounting Principles (“GAAP”); and misrepresented that Bally’s internal controls were effective and reliable. Further, the Complaint alleged that E&Y performed reckless audits and issued false audit opinions regarding Bally’s financial statements.

With respect to loss causation, the Complaint also alleged that the false financial statements led to artificial inflation in the value of Bally’s common stock price; that Class members suffered damages when, on the last day of the class period, Bally disclosed that its Chief Financial Officer resigned and the Securities and Exchange Commission began an investigation regarding Bally’s financial statements; and that this announcement resulted in a material drop in Bally’s stock price.

On February 24, 2006, Defendants moved to dismiss the Complaint. On April 5, 2006, the Parties attempted a mediation, using retired U.S. District Court Judge Nicholas Politan as the mediator. The Parties could not reach an agreement, and the litigation continued. Lead Plaintiff filed its opposition to the motions to dismiss on April 10, 2006. Defendants filed their reply briefs on May 24, 2006. On July 12, 2006, the Court issued a Memorandum Opinion granting

Defendants' motions to dismiss as to all claims, without prejudice. The Complaint was dismissed for failure to sufficiently plead that Defendants acted with scienter (intent to defraud).

On August 14, 2006, Lead Plaintiff filed an Amended Consolidated Class Action Complaint ("Amended Complaint"). The allegations in the Amended Complaint were similar to the prior Complaint but contained new assertions regarding scienter, among other things. On September 28, 2006, Defendants again moved to dismiss the complaint. On October 3, 2006, Lead Plaintiff made a written settlement offer to Defendants. The Parties could not reach an agreement to settle, and the litigation continued. Lead Plaintiff filed its opposition to the motions to dismiss on November 14, 2006. Defendants filed their reply briefs on December 19, 2006. On February 20, 2007, the Court issued a Memorandum Opinion granting Defendants' motions to dismiss as to all claims, with prejudice. The complaint was dismissed again for failure to sufficiently plead scienter.

On March 22, 2007, Lead Plaintiff filed a Notice of Appeal with the U.S. Court of Appeals for the Seventh Circuit. The appeal was captioned *Cosmos Investment Co., LLC v. Bally Total Fitness Holding Corp., et al.*, No. 07-1646. Prior to substantive briefing on the appeal, Lead Plaintiff enrolled in the Seventh Circuit's Settlement Conference Program, whereby a Seventh Circuit mediator was assigned to assist the Parties in settlement efforts. A settlement conference was scheduled for August 10, 2007.

On July 31, 2007, Bally filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code. The proceeding was captioned *In re: Bally Total Fitness of Greater New York, Inc., et al.*, No. 07-12395 (BRL) (Bankr. S.D.N.Y.).

On August 6, 2007, the appellate court stayed the appeal due to Bally's bankruptcy pursuant to the automatic stay provisions of the bankruptcy code.

On October 1, 2007, Bally emerged from bankruptcy under a Plan of Reorganization.

On October 30, 2007, Lead Plaintiff timely filed a Proof of Claim in the bankruptcy court. On December 21, 2007, Bally filed an objection to the Proof of Claim on various grounds. On January 29, 2008, Lead Plaintiff stipulated to a Consent Order in the bankruptcy action, in which Lead Plaintiff: (i) withdrew its Proof of Claim; and (ii) agreed not to pursue Bally in the appellate court, stating: “[I]n the appeal captioned *Cosmos Investment Company, LLC, et al. v. Bally Total Fitness Holding Corp., et al.*, Case No. 07-1646, pending before the United States Court of Appeals for the Seventh Circuit, Cosmos shall no longer pursue its claims, if any, against the Debtors, although it may continue to pursue its claims against non-Debtors Lee S. Hillman, John W. Dwyer, Paul A. Toback, and Ernst & Young, LLP.”

In light of the District Court’s prior dismissal of Lead Plaintiff’s claims against Bally with prejudice, the stipulated Consent Order in the bankruptcy court effectively released Bally from any liability in the class action. Accordingly, Bally is not treated as a defendant for purposes of this Stipulation and Settlement. However, Bally is treated as a Released Party as defined in ¶ 1.18 below.

On February 28, 2008, under the Seventh Circuit Settlement Conference Program, counsel for Lead Plaintiff, the Individual Defendants, and E&Y participated in a telephone mediation. Rocco Spagna served as the mediator. A settlement was not immediately reached, due in large part to uncertainty regarding the outcome of three insurance rescission actions filed against Bally by its insurers. Settlement discussions continued for nearly two more years, with continued assistance from the mediator. In October 2009, a settlement was reached between Bally and its insurers in the insurance rescission actions.

On October 28, 2009, Lead Plaintiff, the Individual Defendants, and E&Y reached an agreement in principle to settle the Litigation for \$2 million. The agreement was set forth in a Memorandum of Understanding as of that date.

II. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

Defendants have denied, and continue to deny, each claim and contention alleged by Lead Plaintiff. Defendants have expressly 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 have also denied, and continue to deny, *inter alia*, the allegations that Lead Plaintiff or the Class have suffered damages, that the price of Bally stock was artificially inflated by reasons of alleged misrepresentations, non-disclosures, or otherwise, or that Lead Plaintiff or the Class were harmed by the conduct alleged in the Litigation.

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

III. CLAIMS OF LEAD PLAINTIFF AND LEAD COUNSEL

Lead Plaintiff and Lead Counsel believe that the claims asserted in the Litigation have merit and the allegations and evidence developed to date support the claims. Lead Plaintiff and Lead Counsel have taken into account the uncertain outcome and risks of any litigation, especially in complex class actions such as this, as well as the difficulties and delays inherent in

such litigation, including through appeal and possible trial. Lead Counsel is mindful of the inherent problems of proof under, and possible defenses to, the federal securities law violations asserted in the Litigation. Lead Plaintiff and Lead Counsel also recognize that the complaint has been dismissed twice, the second time with prejudice, and that the chances of success on appeal and in continuing litigation are inherently limited. Lead Plaintiff and Lead Counsel believe that the Settlement set forth in this Stipulation confers substantial benefits upon the Settlement Class. Based on their evaluation, Lead Plaintiff and Lead Counsel have determined that the Settlement set forth in the Stipulation is in the best interests of the Settlement Class, and agree that they will not further litigate claims against Defendants during the pendency of the Settlement.

IV. TERMS OF STIPULATION OF SETTLEMENT

IT IS HEREBY STIPULATED AND AGREED by and among Lead Plaintiff (for itself and the Settlement Class) and Defendants, by and through their respective counsel, that, subject to Court approval, the Litigation and Released Claims shall be finally compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to all Parties.

1. Definitions

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

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

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

1.3 “Claims Administrator” shall mean the firm of Heffler, Radetich & Saitta LLP, to be approved by the Court to administer the Settlement as provided in the Stipulation.

1.4 “Class Period” means the period commencing August 3, 1999 through and including April 28, 2004.

1.5 “Defendants” means Paul A. Toback, Lee S. Hillman, John W. Dwyer, and Ernst & Young LLP.

1.6 “Defendants’ Counsel” means Michael Best & Friedrich, LLP (counsel for Toback), Katten Muchin Roseman, LLP and Cadwalader, Wickersham & Taft, LLP (counsel for Hillman), Jenner & Block, LLP (counsel for Dwyer), and Mayer Brown LLP (counsel for E&Y).

1.7 “E&Y Released Party” means E&Y and all of its past or present directors, officers, employees, partners, members, principals, agents, insurers, co-insurers, reinsurers, attorneys, solicitors, advisors, investment advisors, auditors, accountants, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which E&Y has a controlling interest, or any trust of which E&Y is the settler or which is for the benefit of E&Y.

1.8 “Effective Date” means the first date by which all events and conditions specified in ¶ 8.1 of the Stipulation have been met or have occurred.

1.9 “Escrow Agent” means Berger & Montague, P.C. The Escrow Agent shall maintain an escrow account at Huntington National Bank, subject to such terms as the Parties may agree.

1.10 “Final” means the later of: (i) *if there is an appeal*, the date on which the Judgment, which has not been altered, amended, or modified in any respect by any court without express consent by all Parties, 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 appeal, or otherwise; or (ii) *if no appeal is filed*, the expiration date of the time for

the filing or noticing of any appeal from the court's final Judgment substantially in the form of Exhibit B hereto approving the Stipulation – *i.e.*, thirty (30) days after entry of the Judgment. For purposes of this paragraph, an “appeal” shall include any request for re-argument or reconsideration, or petition for a writ of certiorari or other writ, that may be filed in connection with approval or disapproval of this Settlement. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to the Plan of Allocation and/or the Fee Award and Expense Reimbursement Application (as defined in ¶ 7.1 below) shall not in any way delay or preclude the Judgment from becoming final.

1.11 “Judgment” means the Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court substantially in the form attached hereto as Exhibit B.

1.12 “Lead Plaintiff” means Cosmos Investment Co., LLC (“Cosmos”). In December 2009, Cosmos was dissolved for reasons unrelated to this Litigation. As noted in the Amended Complaint at para. 37, Cosmos was an “investment vehicle through which Dr. Lokesh Sharma makes investments on behalf of himself, his wife, and his parents.” His family, and primarily him, were the sole beneficiaries of Cosmos’ investment activity, including its investments in Bally stock. Dr. Sharma has acted as Cosmos’ representative for purposes of this Litigation throughout the Litigation. He was Cosmos’ primary successor-in-interest upon its dissolution. As such, with the Parties’ consent and subject to Court approval, Dr. Sharma will continue to represent the Class for purposes of the Settlement.

1.13 “Lead Counsel” means Berger & Montague, P.C.

1.14 “Non-E&Y Defendants” mean the Individual Defendants, and each of their past or present insurers, attorneys, solicitors, advisors, investment advisors, associates, personal or legal representatives, assigns, spouses, heirs, related or affiliated entities, any entity in which any

Individual Defendant has a controlling interest, any members of their immediate families, or any trust of which any Individual Defendant is the settler or which is for the benefit of any Individual Defendant and/or member of any Individual Defendant's family.

1.15 "Person" means an individual, corporation, 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, agents, or assignees.

1.16 "Plan of Allocation" means the plan or formula for allocating the Net Settlement Fund to Authorized Claimants after payment of Taxes and Tax Expenses (as defined in ¶ 2.12 below) and attorneys' fees and reimbursement of expenses as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation, and the Released Parties shall have no responsibility or liability with respect thereto.

1.17 "Released Claims" means any claims, demands, rights, liabilities, and causes of action, known or unknown (as defined in ¶ 1.23 below), asserted or that might have been asserted, by Lead Plaintiff or any Settlement Class Member against the Released Parties, arising out of, based upon, or in any way related to, directly or indirectly, their purchase of Bally common stock during the Class Period and/or any of the facts or circumstances alleged or that could have been alleged in the Amended Complaint.

1.18 "Released Parties" means Bally, Toback, Hillman, Dwyer, and E&Y, and each of their past or present directors, officers, employees, partners, members, principals, agents, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, solicitors, advisors, investment advisors, auditors, accountants, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs,

related or affiliated entities, any entity in which Bally or any Defendant has a controlling interest, any members of their immediate families, or any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member of any Defendant's family.

1.19 "Settlement Class" means the class to be certified for settlement purposes only and is defined as all persons or entities that purchased or otherwise acquired the common stock of Bally between August 3, 1999 and April 28, 2004, inclusive. Excluded from the Settlement Class are Defendants, Bally, and the officers and directors of Bally during the Class Period, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants or Bally have or had a controlling interest. Any persons or entities that request exclusion from (*i.e.*, opt out of) the Settlement Class in accordance with the terms set forth in the "Notice of: (1) Pendency and Proposed Settlement of Class Action; (2) Motion for Attorneys' Fees and Expenses; and (3) Court Hearing" (the "Settlement Notice"), which is attached hereto as Exhibit A-1, are also excluded from the Settlement Class.

1.20 "Settlement Class Member" means a Person who falls within the definition of the Settlement Class as set forth in ¶ 1.19 of the Stipulation and who has not submitted a valid request for exclusion.

1.21 "Settlement Fund" means the principal amount of \$2 million paid pursuant to ¶ 2.1 of the Stipulation and delivered to the Escrow Agent, plus any accrued interest.

1.22 "Parties" means, collectively, each of the Defendants, and the Lead Plaintiff on behalf of itself and the Settlement Class.

1.23 "Unknown Claims" means any and all Released Claims which Lead Plaintiff or Settlement Class Members do not know or suspect to exist in his, her, or its favor at the time of

the release of the Released Parties, which, if known by him, her, or it might have affected his, her, or its decision with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Lead Plaintiff and Defendants shall have, and each Settlement Class Member shall be deemed to have, 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 California Civil Code § 1542, which provides:

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

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

2. The Settlement

a. The Settlement Fund

2.1 In settlement of the claims against them, Defendants and/or their insurers shall pay \$2 million in cash (the “Settlement Fund”) to an interest-bearing escrow account. Of the \$2 million, \$95,000 shall be provided by E&Y, and \$1,905,000 shall be provided by Defendants Hillman and Dwyer on behalf of Defendants Hillman, Dwyer, and Toback. All funding, including the \$95,000 contribution from E&Y, shall be paid into the same escrow account.

2.2 The Settlement Fund shall be paid into the escrow account within ten (10) business days of the first date on which both of the following have occurred: (i) disbursement of insurance proceeds to the Individual Defendants’ holding account as provided for in the Settlement Agreement and Release in the bankruptcy proceedings captioned *In re: Bally Total*

Fitness of Greater New York, Inc., et al., No. 07-12395 (BRL) (Bankr. S.D.N.Y.); and (ii) the Parties have executed the Stipulation.

2.3 Interest in the escrow account shall accrue to the benefit of the Class.

2.4 Defendants have no responsibility with respect to the Settlement Fund once the funds are deposited into the escrow account. The settlement will not be affected by what may happen to the Settlement Fund once paid into the escrow account.

2.5 This is not a claims-made settlement. Defendants shall have no interest in the Settlement Fund once the settlement becomes final.

b. The Escrow Agent

2.6 The Escrow Agent shall not disburse the Settlement Fund except as provided in the Stipulation, or by an order of the Court.

2.7 Subject to further order or directions as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class as are consistent with the terms of this Stipulation.

2.8 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 the funds are distributed pursuant to the Stipulation and/or further order(s) of the Court. All Parties agree to hold the Escrow Agent harmless for any actions taken by it in good faith pursuant to the Stipulation and any escrow agreement.

c. Settlement Notice and Administration Expenses

2.9 Defendants agree that Lead Counsel may deduct up to \$75,000 (the “Notice and Administration Fund”) out of the Settlement Fund for payment of notice and administration costs, and may deposit the Notice and Administration Fund into a separate account to be

designated by Lead Counsel. Funds may be disbursed from the Notice and Administration Fund for these purposes without further approval of the Court after the remand set forth in ¶ 3.2 below. Any funds actually expended for these purposes shall not be required to be refunded by Lead Counsel, even if the Settlement is not approved or is otherwise terminated. After the Effective Date, Lead Counsel may withdraw such sums from the Settlement Fund as are necessary to pay any additional unpaid notice and administration costs that may remain after exhaustion of the Notice and Administration Fund. Any such expenditures may be made without further order of the Court, but shall be summarized in any motion seeking a Distribution Order (defined in ¶ 6.6 below). Any additional administration costs incurred by the Claims Administrator, including but not limited to the costs of processing submitted claims, may also be paid from the Settlement Fund, upon Court approval.

d. Taxes

2.10 The Parties and Escrow Agent agree that the Settlement Fund is intended to be at all times a “qualified settlement fund” within the meaning of Treas. Reg. Sec. 1.468B-1. In addition, the Escrow Agent or its designee shall timely make such elections as are necessary or advisable to carry out the provisions of ¶¶ 2.10 – 2.14, including the “relation-back election” (as defined in Treas. Reg. Sec. 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 or its designee 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.

2.11 For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent or its

designee. The Escrow Agent or its designee 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. Sec. 1.468B-2(k). Such returns, as well as the election described in ¶ 2.10, shall be consistent with ¶¶ 2.10 – 2.14 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 ¶ 2.12.

2.12 All (i) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon Defendants or Defendants’ Counsel 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 (ii) expenses and costs incurred in connection with the operation and implementation of this ¶¶ 2.10 – 2.14 (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 ¶¶ 2.10 – 2.14) (“Tax Expenses”), shall be paid out of the Settlement Fund. In all events, Defendants and Defendants’ Counsel shall have no liability or responsibility for Taxes or Tax Expenses. The Settlement Fund shall indemnify and hold Defendants and Defendants’ Counsel harmless for Taxes and Tax Expenses.

2.13 Further, Taxes and Tax Expenses shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court. 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. Sec. 1.468B-2(1)(2). Neither Defendants nor Defendants' Counsel are responsible nor shall they have any liability therefor.

2.14 The Parties 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 ¶¶ 2.10 – 2.14.

e. Termination of Settlement

2.15 In the event that the Stipulation is not approved, or is terminated, canceled, or fails to become effective for any reason, the Settlement Fund (including accrued interest net of Taxes and Tax Expenses and net of any expenditures for notice and administration) shall be refunded to Defendants as described in ¶ 8.5 below.

3. Remand

3.1 In accordance with Seventh Circuit Rule 57, as soon as practicable after the parties' execution of this Stipulation, Lead Counsel shall file a motion in the District Court in which this action is pending, requesting that the Court enter an Order indicating its inclination to modify the judgment of dismissal entered on February 20, 2007 for purposes of approving the proposed class action settlement. The motion shall explain the circumstances and the modification desired and shall ask the District Court to: (1) certify to the court of appeals that it is inclined to alter its judgment for purposes of approving the proposed class action settlement; and (2) forbear from entering a modified judgment unless and until the Court of Appeals has remanded the case for that purpose. The motion shall also be accompanied by a proposed Order of certification to be signed by the District Court Judge.

3.2 Once the District Court Judge has signed the certification, as soon as practicable thereafter, Lead Counsel shall file a Rule 57 motion in the 7th Circuit Court of Appeals seeking a

remand of the case to the District Court, accompanied with the District Court's certification. The Rule 57 motion shall also request that the Court of Appeals issue its mandate as soon as practicable.

3.3 The Parties to this Stipulation agree that the purpose of the remand shall be and shall only be to effectuate the Settlement and that the Parties will not initiate any other actions.

4. Notice Order and Settlement Hearing

4.1 As soon as practicable after the 7th Circuit's mandate remanding the action back to the District Court, Lead Counsel shall submit this 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*, certification of the Settlement Class for settlement purposes; preliminary approval of the Settlement; and approval for the dissemination and publication of notice of the Settlement, substantially in the form of Exhibits A-1 (Settlement Notice), A-3 (Summary Notice), and A-4 (Postcard Notice) hereto, which shall collectively include the general terms of the Settlement, the proposed Plan of Allocation, the Fee Award and Expense Reimbursement Application (as defined in ¶ 7.1 below), and the date of the final settlement hearing.

4.2 The Parties acknowledge that stock transfer records indicating the names and addresses of record holders of Settlement Class Members are not available.

4.3 Following entry of the Notice Order, within thirty (30) days thereafter (the "Notice Date"), the Claims Administrator shall cause a copy of the Postcard Notice to be sent to brokerage firms and other nominees ("Nominees") who can be identified with reasonable effort as holding or having held Bally common stock for the benefit of a Settlement Class Member. The Claims Administrator shall instruct the Nominees to either send the Postcard Notice to such

Settlement Class Members promptly after receipt thereof, or send a list of the names and addresses of such Settlement Class Members to the Claims Administrator, in which event the Claims Administrator promptly shall mail the Postcard Notice to such beneficial owners.

Reasonable and actual out-of-pocket expenses incurred by Nominees as a result of the Notice Order shall be reimbursed as provided in the Settlement Notice.

4.4 Within fourteen (14) days of the Notice Date, the Claims Administrator shall send the Postcard Notice to institutional shareholders that can be identified with reasonable effort as holding or having held Bally common stock during the Class Period.

4.5 Within fourteen (14) days of the Notice Date, the Claims Administrator shall cause the Summary Notice to be published once in *The Wall Street Journal*, or otherwise published as directed by the Court.

4.6 Within fourteen (14) days of the Notice Date, Lead Counsel or the Claims Administrator shall issue a nationwide press release consisting primarily or exclusively of the information contained in the Summary Notice.

4.7 On or before the Notice Date, the Claims Administrator shall cause the Settlement Notice, Proof of Claim, Stipulation of Settlement, and any other relevant documents to be made available at www.bally.hrsclaims.com, a website dedicated solely to the Bally settlement and available to the general public.

4.8 The Claims Administrator shall mail or otherwise distribute the full-length Settlement Notice and Proof of Claim to any Settlement Class Members who request copies of the Settlement Notice and Proof of Claim in response to the Postcard Notice, published Summary Notice, press release, or other means.

4.9 Lead Counsel shall request court approval to distribute a Postcard Notice in lieu of the full Settlement Notice and Proof of Claim. If such approval is not granted, the Settlement Notice and Proof of Claim will be distributed.

4.10 Lead Counsel shall request that, after notice is given, the Court hold a hearing (the “Final Settlement Hearing”) and approve the Settlement as set forth herein, as well as approve the Fee Award and Expense Reimbursement Application.

4.11 Upon final approval of the Settlement as set forth herein, the Amended Complaint shall be dismissed with prejudice. The final Judgment shall further enjoin Lead Plaintiff and Settlement Class Members from bringing any claims which are released pursuant to the Settlement. Lead Counsel agrees not to solicit any claims from Class Members against Defendants or Bally.

5. Releases and Bar Orders

5.1 Upon the Effective Date (as defined in ¶ 1.8), Lead Plaintiff and each Settlement Class Member, on behalf of themselves, their heirs, executors, administrators, successors, or assigns, all in their capacities as such, shall be deemed to have, and by operation of the final Judgment shall have, fully and finally released, relinquished, and discharged all Released Claims against the Released Parties, whether or not such Settlement Class Member files a Proof of Claim and Release, or otherwise shares in the Settlement Fund. The Proof of Claim and Release shall be substantially in the form contained in Exhibit A-2 hereto.

5.2 Upon the Effective Date, each of the Released Parties shall be deemed to have, and by operation of the Judgment shall have, fully and finally released, relinquished, and discharged each and all of the Lead Plaintiff, Lead Counsel, and Settlement Class Members from all claims (including “Unknown Claims” defined in ¶ 1.23) arising out of, relating to, or in

connection with the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims.

5.3 The “Non E&Y Defendants” hereby release and forever discharge the E&Y Released Party from any and all claims, disputes, actions, liabilities, rights or causes of action, suits, set-offs, cross-claims, counterclaims, demands, or damages, including, but not limited to, any indemnity claims for payment of attorneys fees and costs, based upon any legal or equitable theory, right of action or otherwise, foreseen or unforeseen, known or unknown (as defined in ¶ 1.23 above), matured or unmatured, accrued or unaccrued arising out of, based upon, or in any way related to, directly or indirectly, any of the facts or circumstances alleged or that could have been alleged in the Amended Complaint.

5.4 E&Y hereby releases and forever discharges the Non E&Y Defendants from any and all claims, disputes, actions, liabilities, rights or causes of action, suits, set-offs, cross-claims, counterclaims, demands, or damages, including, but not limited to, any indemnity claims for payment of attorneys fees and costs, based upon any legal or equitable theory, right of action or otherwise, foreseen or unforeseen, known or unknown (as defined in ¶ 1.23 above), matured or unmatured, accrued or unaccrued arising out of, based upon, or in any way related to, directly or indirectly, any of the facts or circumstances alleged or that could have been alleged in the Amended Complaint.

5.5 The final Judgment proposed to the Court shall include a bar order stating the following:

(a) In accordance with 15 U.S.C. §78u-4(f)(7)(A), any and all claims for contribution arising out of any Released Claim, including, but not limited to, any claims that are based upon, arise out of or relate to the class action and/or any matters that were alleged or could have been

alleged in the Amended Complaint (i) by any Person against E&Y, and (ii) by E&Y against any Person other than as set out in 15 U.S.C. §78u-4(f)(7)(A)(ii) are hereby permanently barred, extinguished, discharged, satisfied, and unenforceable. Accordingly, without limitation to any of the above, the Non-E&Y Defendants are hereby permanently enjoined from commencing, prosecuting, or asserting against E&Y any such claim for contribution, and E&Y is hereby permanently enjoined from commencing, prosecuting, or asserting any such claim for contribution against the Non-E&Y Defendants.

(b) The Court finds that the Stipulation represents a good faith settlement of all Released Claims of all Settlement Class Members sufficient to discharge E&Y of all Released Claims of all Settlement Class Members. In order to effectuate such settlement, the Court hereby enters the following bar:

(i) The Non-E&Y Defendants are permanently barred, enjoined, and restrained from commencing, prosecuting or asserting any claim against E&Y, however styled, whether legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, whether arising under state, federal, or common law, whether for indemnification or contribution or otherwise denominated, where such claim is based upon, arises out of, or relates to the Litigation, including without limitation, any claim in which any Non-E&Y Defendant has paid, or has become liable (whether in cash or any other form of consideration) in the Litigation, or any action in which one or more Settlement Class Members who validly and timely excluded themselves from the Settlement Class seek recovery on account of any matters that were alleged or that could have been alleged in the Litigation (the “Opt-out Actions”), and /or any costs, expenses, or attorneys’ fees that any Non-E&Y Defendant has incurred or may

incur in defending any claim in the Litigation or the Opt-out Actions. All claims are hereby extinguished, satisfied and unenforceable (hereinafter “Barred Claims”);

(ii) E&Y is permanently barred, enjoined, and restrained from commencing, prosecuting or asserting any claim against any Non-E&Y Defendant, however styled, whether legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, whether arising under state, federal, or common law, whether for indemnification or contribution or otherwise denominated, where such claim is based upon, arises out of, or relates to the Litigation, including without limitation, any claim in which E&Y has paid, or has become liable (whether in cash or any other form of consideration) in the Litigation, or any Opt-out Actions, and/or any costs, expenses, or attorneys’ fees that E&Y has incurred or may incur in defending any claim in the Litigation or the Opt-out Actions. All claims are hereby extinguished, satisfied and unenforceable.

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

6.1 Lead Counsel and/or the Claims Administrator, acting on behalf of the Settlement Class and subject to such supervision and direction of the Court as may be necessary or as circumstances may require, shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund (as defined in ¶ 6.2(d)) to Authorized Claimants. Defendants shall have no involvement in reviewing or challenging claims.

6.2 The Settlement Fund shall be applied as follows:

- (a) To pay the claims administration expenses described in ¶ 2.9 above;
- (b) To pay the Taxes and Tax Expenses described in ¶¶ 2.10 – 2.14 above;

(c) To pay attorneys' fees and the reimbursement of expenses awarded by the Court ("Fee Award" and "Expense Reimbursement Award," respectively); and

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

6.3 Upon the Effective Date and thereafter, and in accordance with the terms of the Stipulation, Plan of Allocation, or such further approval and 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.

6.4 Within 120 days after the Notice Date, 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 specified in the Proof of Claim and Release and as are reasonably available to the Authorized Claimant.

6.5 Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim and Release shall be barred from receiving any payments pursuant to the Settlement, but will in all other respects be subject to and bound by the provisions of the Stipulation, the Releases contained herein, and the Judgment.

6.6 Lead Counsel will apply to the Court for an order (the "Distribution Order"): (i) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of submitted claims; (ii) approving the payment of any remaining administrative costs; and (iii) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

6.7 The Net Settlement Fund shall be distributed to Authorized Claimants substantially in accordance with a Plan of Allocation to be described in the Settlement Notice and approved by the Court.

6.8 The Released Parties shall not have any responsibility for, interest in, or liability with respect to the providing of notice, 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 any losses incurred in connection therewith. However, the Released Parties shall be obligated to cooperate to the extent they have knowledge, custody, or control in making Bally's transfer records and shareholder information available to Lead Counsel and the Claims Administrator for the purposes of identifying and providing notice to the Settlement Class.

6.9 If any funds remain in the Net Settlement Fund by reason of un-cashed checks or otherwise, then, after the Claims Administrator has made reasonable efforts to have Settlement Class Members cash their distribution checks, any balance remaining in the Net Settlement Fund one year after the initial distribution of such funds shall be re-distributed, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution, to Settlement Class Members who have cashed their checks and who would receive at least \$10 from such re-distribution. If after six months from such re-distribution any funds remain in the Net Settlement Fund, then such balance shall be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Lead Counsel.

6.10 Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund by the Claims Administrator. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or

technical defects in any Proofs of Claim submitted, in the interests of achieving substantial justice.

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

(a) Each Settlement Class Member shall be required to submit a Proof of Claim, supported by such documents as are designated therein, including proof of the claimant’s loss, or such other documents or proof as Lead Counsel, in their discretion, may deem acceptable;

(b) All Proofs of Claim must be postmarked on or before the 120th day following the Notice Date. Any Settlement Class Member who fails to submit a Proof of Claim by such date shall be barred from receiving any payment pursuant to this Settlement (unless, by Order of the Court, a later submitted Proof of Claim by such Settlement Class Member is approved), but shall in all other respects be bound by all terms of this Settlement and Stipulation, including terms of the Judgment, and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims;

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

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection, the Claims Administrator shall communicate with the claimant in an

attempt to remedy curable deficiencies. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely fashion and in writing, all claimants whose Proof of Claim they propose to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (e) below;

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

(f) The administrative determinations of the Claims Administrator accepting or rejecting claims shall be presented to the Court for approval by the Court in the Distribution Order.

6.12 No Person shall have any claim against Lead Plaintiff, Lead Counsel, Members of the Class or their counsel, the Claims Administrator, Defendants, or Defendants' Counsel, based on distributions made in accordance with the Settlement, Stipulation, Plan of Allocation, or further orders of the Court.

6.13 It is understood and agreed by the Parties that any proposed Plan of Allocation, 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. Any order or

proceedings relating to the Plan of Allocation shall not operate to terminate or cancel the Settlement or affect the finality of the Court's Judgment approving the Settlement, or any other orders entered pursuant to the Settlement.

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

7.1 Lead Counsel will submit an application to the Court for distributions from the Settlement Fund for attorneys' fees and reimbursement of expenses, including the fees of any experts or consultants incurred in connection with the Litigation (the "Fee Award and Expense Reimbursement Application").

7.2 The attorneys' fees and reimbursement of expenses, as awarded by the Court, shall be paid to Lead Counsel from the Settlement Fund immediately after the Court executes an order awarding such fees and expense reimbursement, notwithstanding any collateral attack on the Settlement or any part thereof, subject to Lead Counsel's obligation to make appropriate refunds or repayments, plus interest, if and when as a result of any successful collateral attack, the fee or expense reimbursement award is reduced or reversed. Defendants shall not oppose Lead Counsel's Fee Award and Expense Reimbursement Application. In the event the Effective Date of the Settlement does not occur, or the Judgment or order concerning Lead Counsel's Fee Award and Expense Reimbursement Application is reversed or modified, or the Settlement is cancelled or terminated for any other reason, and in the event that the fee or expense reimbursement award has been paid to any extent, then those counsel receiving the fee or expense reimbursement shall within ten (10) business days from receiving notice from Defendants' Counsel or a court of appropriate jurisdiction, refund to the Settlement Fund, the fee or expense reimbursement, plus interest thereon at the same rate as earned on the Settlement Fund, in an amount consistent with such reversal or modification.

7.3 The procedure for (and allowance or disallowance by the Court of) Lead Counsel's Fee Award and Expense Reimbursement Application is not part of the Settlement set forth in the Stipulation, and is to be considered by the Court separately from consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or proceedings relating to the Fee Award and Expense Reimbursement Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement, or affect or delay the finality of the Judgment approving the Settlement.

7.4 Defendants shall have no responsibility for, and no liability with respect to, any payment to Lead Counsel from the Settlement Fund, or any distributions made in accordance with the Stipulation or Plan of Allocation.

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

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

- (a) Defendants timely pay the Settlement Fund as required by ¶ 2.1;
- (b) The Court has entered the remand-related Order set forth in ¶ 3.1, and the remand has occurred as set forth in ¶ 3.2;
- (c) The Court has entered the Notice Order as required by ¶ 4.1;
- (d) Defendants have not exercised the right to terminate the settlement provided for in ¶ 8.2;
- (e) The Court has entered a Judgment substantially in the form of Exhibit B hereto; and
- (f) The Judgment has become Final, as defined in ¶ 1.10, above.

8.2 Defendants and Lead Plaintiff, on behalf of the Settlement Class, have entered into a separate agreement in connection with this Settlement which provides that Defendants have the right to terminate the Settlement upon conditions set forth in such agreement if the total number of shares of Bally common stock that request to opt-out of the Settlement meets a certain threshold (the “Supplemental Agreement”). Pursuant to the Supplemental Agreement, Defendants shall notify Lead Counsel at least seven (7) business days before the date set for the hearing on final approval of the Settlement, or such other time as the Court shall allow, if Defendants elect to terminate the Settlement in accordance with the terms of the Supplemental Agreement.

8.3 Upon the occurrence of all events referenced in ¶ 8.1 above, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be extinguished.

8.4 If all of the conditions specified in ¶ 8.1 are not met, then the Stipulation shall be canceled and terminated subject to ¶ 8.5, unless Lead Counsel and Defendants’ Counsel mutually agree in writing to proceed with the Stipulation.

8.5 Unless otherwise ordered by the Court, in the event the Stipulation shall terminate, or be canceled, or shall not become effective for any reason, within seven (7) business days after written notification of such event is sent to the Escrow Agent, the Settlement Fund (including accrued interest), less any funds expended for the payment of notice and administration costs, shall be refunded by the Escrow Agent pursuant to written instructions from Defendants’ Counsel. At the request of Defendants’ Counsel, the Escrow Agent or its designee shall apply for any Tax refund owed to the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application for a refund, to Defendants’ Counsel or their designee.

8.6 In the event that the Stipulation is not approved by the Court, or the Settlement is terminated or fails to become effective for any reason, the Parties shall be restored to their respective positions in the Litigation as of the date of this Stipulation. In such event, the terms and provisions of this Stipulation shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose. 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 shall constitute grounds for cancellation or termination of the Settlement.

9. Miscellaneous Provisions

9.1 All exhibits attached hereto are incorporated by reference as though fully set forth herein.

9.2 The Parties: (a) acknowledge that it is their intent to consummate this Stipulation; (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement; and (iii) agree to exercise their best efforts to obtain court approval of the Settlement.

9.3 The Parties intend this Stipulation 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 Party as to the merits of any claim or defense. The final Judgment may contain a statement that the Parties agree 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. The Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement were negotiated in good faith by the

Parties and reflect a settlement that was reached voluntarily after consultation with competent counsel.

9.4 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 used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Defendants; or (b) is or may be deemed to be used as an admission of, or evidence of, any fault or omission of any of the Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendants may file the Stipulation or 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.

9.5 The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors.

9.6 The Stipulation, Exhibits, and Supplemental Agreement constitute the entire agreement among the Parties. No representations, warranties, or inducements have been made to any Party concerning the Settlement other than the representations, warranties, and covenants contained in such documents.

9.7 Except as otherwise provided herein, each of the Parties shall bear their own costs for the Litigation and Settlement.

9.8 Lead Counsel, on behalf of the Settlement Class, is authorized by the Lead Plaintiff to take all appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

9.9 Each counsel executing the Stipulation or any of its Exhibits on behalf of any of the Parties hereto warrants that such counsel has the full authority to do so.

9.10 The Stipulation may be executed in one or more counterparts, including by facsimile or email. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

9.11 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

9.12 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation. All Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Stipulation.

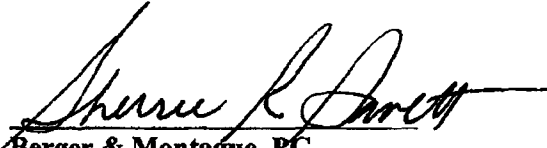
9.13 The Stipulation shall be governed by federal law, including Rule 23 of the Federal Rules of Civil Procedure.

9.14 To the extent not covered by federal law, the Stipulation shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Illinois, 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 Illinois without giving effect to that state's choice of law principles.

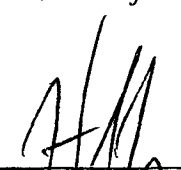
9.15 Each Defendant hereby releases any claims that it or he may have against any other Defendant relating to claims made by and on behalf of Plaintiff and the Class.

IN WITNESS HERETO, the Parties have caused the Stipulation to be executed by their duly authorized counsel.

Dated: June 29, 2010


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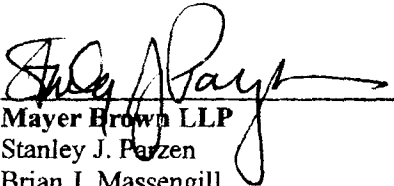
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