

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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OKLAHOMA FIREFIGHTERS PENSION	:	X
AND RETIREMENT SYSTEM, Individually	:	Civil Action No. 1:17-cv-05543-WHP
and on Behalf of All Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	STIPULATION AND AGREEMENT OF
	:	SETTLEMENT
vs.	:	
	:	
LEXMARK INTERNATIONAL, INC.,	:	
PAUL A. ROOKE, DAVID REEDER, and	:	
GARY STROMQUIST,	:	
	:	
Defendants.	:	

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This Stipulation and Agreement of Settlement dated as of May 8, 2020 (the “Stipulation”), is made and entered into by and among: (i) District No. 9, I.A. of M & A.W. Pension Trust (on behalf of itself and each of the Class Members), by and through its counsel of record in the Litigation (as defined herein); and (ii) Defendants Lexmark International, Inc. (“Lexmark” or the “Company”), and Paul A. Rooke, David Reeder, and Gary Stromquist (the “Individual Defendants,” and collectively, with Lexmark, the “Defendants”), by and through their counsel of record in the Litigation. The Stipulation is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), subject to the approval of the Court and the terms and conditions set forth in this Stipulation.

## **I. THE LITIGATION**

The initial complaint in this case, entitled *Oklahoma Firefighters Pension & Ret. Sys. v. Lexmark Int’l, Inc., et al.*, No. 1:17-cv-05543-WHP, was filed in the United States District Court for the Southern District of New York (the “Court”) on July 20, 2017. On October 11, 2017, the Court appointed District No. 9, I.A. of M & A.W. Pension Trust as Lead Plaintiff. On November 28, 2017, Lead Plaintiff filed the Amended Class Action Complaint for Violations of the Federal Securities Laws.<sup>1</sup>

On February 15, 2018, Lead Plaintiff filed the Second Amended Class Action Complaint for Violations of the Federal Securities Laws (the “Complaint”) and alleged violations of §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”). The named defendants in the Complaint are Lexmark and the Individual Defendants. The Complaint alleges the Defendants violated the Exchange Act by making materially false or misleading statements and omissions of

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<sup>1</sup> Like the initial complaint, the amended complaint named Martin S. Canning as a defendant. With the Court’s approval, Mr. Canning was voluntarily dismissed from the Litigation on December 4, 2017. ECF No. 45.

material fact in U.S. Securities and Exchange Commission filings, press releases, earnings calls, and investor conferences regarding Lexmark's laser printer supplies business, including demand and the amount of Lexmark's "channel inventory." The Complaint further alleges that Defendants' alleged misrepresentations and omissions artificially inflated the price of Lexmark common stock. The Complaint alleges that on July 21, 2015, Lexmark revealed a decline in laser printer supplies revenue stemming from the need to reduce elevated channel inventory, and that this disclosure removed the artificial inflation from the price of Lexmark common stock, which declined in response to the Company's disclosures.

On April 2, 2018, Defendants moved to dismiss the Complaint. Following briefing and oral argument on Defendants' motion to dismiss, on March 19, 2019, the Court denied Defendants' motion to dismiss. On May 2, 2019, Defendants filed their Answer and Defenses to the Complaint. ECF No. 86. Defendants denied, and continue to deny, each and all of the Complaint's allegations of fraud or intentional misconduct. Defendants contend they are not liable for any alleged false or misleading statements and that all information required to be disclosed by the federal securities laws was so disclosed. Defendants also contend that their actions did not cause Lead Plaintiff's alleged loss, and that they did not act with scienter.

On May 28, 2019, the parties submitted a Joint Rule 26(f) Report and [Proposed] Discovery Plan. ECF No. 89. On June 4, 2019, the parties appeared before the Court for the Initial Case Management Conference. Following the conference, the parties submitted a revised Joint Pretrial Schedule on June 6, 2019 (ECF No. 90), which the Court adopted on June 10, 2019. ECF No. 91.

The parties engaged in fact and class-related discovery involving Lead Plaintiff, Defendants, and several third parties, resulting in the production and review of more than 50,000 pages of documents. On August 16, 2019, Lead Plaintiff filed its motion for class certification and

supporting memorandum of law. ECF Nos. 98–100. Defendants’ time to respond to the motion for class certification has not elapsed, and the motion remains pending before the Court.

During the course of the Litigation, the parties engaged a nationally recognized, experienced, and neutral third-party mediator, Michelle Yoshida of Phillips ADR, and held direct settlement discussions. The parties exchanged detailed mediation submissions and Lead Counsel and additional counsel met in person with the mediator and counsel for Defendants on September 11, 2019, but were unable to reach an agreement. Accordingly, the parties submitted a Revised Joint Pretrial Schedule, which the Court adopted on October 2, 2019. ECF No. 102. The parties continued to engage in document and written discovery, including negotiating the appropriate scope of document productions, search terms, and custodians.

On January 8, 2020, the Parties informed the Court that they had resumed their mediation with the assistance of Michelle Yoshida, and respectfully requested a stay of all deadlines to allow the Parties to focus on settlement, conserve resources, and promote judicial economy. ECF No. 111. The Court granted the Parties’ request on January 14, 2020. ECF No. 112.

Following several rounds of negotiations aided by the mediator, the Parties reached an agreement to settle the Litigation for \$12 million in cash, inclusive of attorneys’ fees and expenses, award to the Lead Plaintiff, and administrative and other settlement costs, subject to the negotiation of the terms of a Stipulation and approval by the Court. On January 28, 2020, the Parties notified the Court that they had reached an agreement to settle all claims asserted in the Litigation, and respectfully requested that all case deadlines remain stayed. ECF No. 113. The Court granted the parties’ request on January 30, 2020. ECF No. 114.

## **II. LEAD PLAINTIFF’S CLAIMS AND THE BENEFIT OF SETTLEMENT**

Lead Plaintiff believes that the claims asserted in the Litigation have merit and that the evidence developed to date supports those claims. However, Lead Plaintiff and its counsel

recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and through appeals. Lead Plaintiff and its counsel also have 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. Lead Plaintiff and its counsel also are mindful of the inherent problems of proof under, and possible defenses to, the alleged securities law violations asserted in the Litigation. Lead Plaintiff and its counsel believe that the Settlement set forth in the Stipulation confers substantial benefits upon the Class. Based on their evaluation, Lead Plaintiff and its counsel have determined that the Settlement set forth in the Stipulation is in the best interests of Lead Plaintiff and the Class.

### **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

Defendants have denied and continue to deny each and all of the claims alleged by Lead Plaintiff and the Class 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, among other allegations, the allegations that the Lead Plaintiff or the Class have suffered any damage, that the price of Lexmark common stock was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, or that the Lead Plaintiff or the Class were harmed by the conduct alleged in the Litigation or that could have been alleged as part of the Litigation. Defendants believe that the evidence developed to date shows that they acted properly at all times and that the Litigation is without merit. In addition, Defendants maintain that they have meritorious defenses to all claims alleged in the Litigation.

Nonetheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in

the manner and upon the terms and conditions set forth in this Stipulation. Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as this 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.

#### **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Lead Plaintiff (for itself and the Class Members) and Defendants, by and through their respective counsel or attorneys of record, 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 “Claim(s)” means a paper claim submitted on a Proof of Claim or an electronic claim that is submitted to the Claims Administrator.

1.3 “Claims Administrator” means the firm of A.B. Data, Ltd.

1.4 “Class” means, for purposes of this Settlement only, all those who purchased or otherwise acquired Lexmark common stock between August 1, 2014 and July 20, 2015, inclusive, and were allegedly damaged thereby. Excluded from the Class are Defendants, the officers and directors of Lexmark at all relevant times, members of their immediate families, any entity in which any Defendant owns a greater than 50% equity interest, and the legal representatives, heirs,

successors-in-interest or assigns of any such excluded party. Also excluded from the Class are any Persons who timely and validly request exclusion from the Class as ordered by the Court.

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 above.

1.6 “Class Period” means the period from August 1, 2014 to July 20, 2015, inclusive.

1.7 “Class Representative” means Lead Plaintiff.

1.8 “Defendants” means Lexmark and the Individual Defendants.

1.9 “Defendants’ Counsel” means the law firm of O’Melveny & Myers LLP.

1.10 “Effective Date,” or the date upon which this Settlement becomes “effective,” means the date by which all of the events and conditions specified in ¶7.1 of the Stipulation have been met and have occurred.

1.11 “Escrow Agent” means the Court Registry Investment System (“CRIS”).

1.12 “Final” means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form of Exhibit B attached 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) without any such motion having been filed; (ii) the time in which to appeal the Judgment has passed without any appeal having been taken; and (iii) if a 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 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 Lead Plaintiff's counsel's attorneys' fees and expenses, payments to Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with its representation of the Class, the Plan of Allocation of the Net Settlement Fund, as hereinafter defined, or the procedures for determining Authorized Claimants' recognized claims.

1.13 "Individual Defendants" means Paul A. Rooke, David Reeder, and Gary Stromquist.

1.14 "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, as well as any form of final judgment that may be entered by the Court in a form other than the form attached hereto as Exhibit B and where none of the Settling Parties elects to terminate this Settlement by reason of such variance, consistent with the terms of this Stipulation.

1.15 "Lead Counsel" means the law firm of Robbins Geller Rudman & Dowd LLP and any of its members, partners, associates and/or employees.

1.16 "Lead Plaintiff" means District No. 9, I.A. of M & A.W. Pension Trust.

1.17 "Lexmark" means Lexmark International, Inc.

1.18 "Litigation" means the action captioned *Oklahoma Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc., et al.*, No. 1:17-cv-05543-WHP (S.D.N.Y.).

1.19 "Net Settlement Fund" means the Settlement Fund less any attorneys' fees, costs, expenses, and interest and any award to Lead Plaintiff, provided for herein or approved by the Court and less Notice and Administration Expenses, Taxes and Tax Expenses, and other Court-approved deductions.



1.20 “Notice and Administration Expenses” means costs and expenses actually incurred in connection with providing notice to the Class, locating Class Members, soliciting claims, assisting with the submission of claims, processing Proofs of Claim, administering and distributing the Net Settlement Fund to Authorized Claimants, and paying escrow fees and costs, if any.

1.21 “Person” means an individual, corporation (and all its divisions and subsidiaries thereof), 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.

1.22 “Plaintiffs’ Counsel” means Lead Counsel, additional counsel Labaton Sucharow LLP, and any attorney or firm who has appeared in the Litigation on behalf of any of the Plaintiffs or the Class.

1.23 “Plan of Allocation” means a plan or formula of allocation of the Net Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized Claimants. Any Plan of Allocation is not part of the Stipulation and neither Defendants nor their Related Parties shall have any responsibility or liability with respect thereto.

1.24 “Proof of Claim” means the Proof of Claim and Release form for submitting a claim, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-2.

1.25 “Related Parties” means each of the Defendants’ respective present and former parents, subsidiaries, divisions and affiliates and the respective present and former employees, members, partners, principals, officers, directors, attorneys, advisors, accountants, agents, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors,

trusts, trustees, administrators, agents, representatives and assigns of each of them, in their capacity as such.

1.26 “Released Claims” means any and all claims, demands, rights, causes of action or liabilities of every nature and description whatsoever (including Unknown Plaintiffs’ Claims as set forth below), that could have been asserted in any forum, whether foreign or domestic, whether based on or arising under federal, state, local, or foreign statutory or common law, rule or regulation, whether fixed or contingent, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, based on, arising from or relating to: (i) the purchase or acquisition of the common stock of Lexmark from August 1, 2014 to July 20, 2015, inclusive; and (ii) any of the allegations, acts, transactions, facts, events, matters, occurrences, representations or omissions involved, set forth, alleged or referred to, in this Litigation, or that could have been alleged in this Litigation. Released Claims does not include claims to enforce the Settlement.

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

1.28 “Settlement” means the resolution of the Litigation in accordance with the terms and provisions of this Stipulation.

1.29 “Settlement Amount” means Twelve Million Dollars (\$12,000,000.00) in cash to be paid by wire transfer or check sent by overnight mail to the Clerk of the Court pursuant to ¶2.1 of this Stipulation.

1.30 “Settlement Fund” means the Settlement Amount plus all interest and accretions thereto.

1.31 “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

1.32 “Settling Parties” means, collectively, Defendants and Lead Plaintiff, on behalf of itself and the Class.

1.33 “Supplemental Agreement” means the Supplemental Agreement dated May 8, 2020 between Lead Plaintiff and Defendants.

1.34 “Tax” or “Taxes” mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority.

1.35 “Unknown Plaintiffs’ Claims” means any Released Claims that Lead Plaintiff or any Class Members do 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 settlement with and release of the Released Persons, or might have affected his, her or its decision with respect to this Settlement, including, without limitation, any decision not to object to this Settlement or seek exclusion from the Class. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code § 1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Lead Plaintiff shall expressly waive and each of the Class Members 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. Lead Plaintiff

and Class Members may hereafter discover facts in addition to or different from those that he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly settle and release and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

1.36 “Unknown Defendants’ Claims” means claims referenced in ¶4.4 below that Defendants do not know or suspect to exist in his, her, or its favor at the time of the release of Lead Plaintiff, Class Members, and Lead Plaintiff’s counsel which, if known by him, her, or it, might have affected his, her or its settlement with and release of Lead Plaintiff, Class Members, and Lead Plaintiff’s counsel. With respect to any and all such claims, the Settling Parties stipulate and agree that, upon the Effective Date, Defendants shall expressly waive the provisions, rights, and benefits of California Civil Code § 1542, quoted above, as well as 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. Defendants may hereafter discover facts in addition to or different from those that he, she, or it now knows or believes to be true with respect to the subject matter of the claims referenced in ¶4.4 below, but

Defendants shall expressly release any and all such claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

**2. The Settlement**

**a. The Settlement Amount**

2.1 Lexmark shall cause its insurers, on behalf of all Defendants, to pay the Settlement Amount of \$12,000,000.00 by wire transfer or check sent by overnight mail in accordance with instructions to be provided by the Clerk of the Court within twenty-one (21) calendar days of the entry of an order granting preliminary settlement approval. The Settlement Amount shall be paid by means of check(s) or money order(s) made out to the Clerk of the Court, with a cover letter identifying Lexmark International, Inc. as a Defendant in this Litigation, setting forth the title and civil action number of this Litigation, and the name of the Court, and specifying that payment is made pursuant to the order preliminarily approving the Settlement. The Clerk of the Court shall deposit the funds into an interest bearing account with the CRIS. These funds, together with any interest and income earned thereon shall constitute the Settlement Fund. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk of the Court is directed, without further order of this Court, to deduct from the income earned on the money in the Settlement Fund a fee equal to ten percent of the income earned on the money in the Settlement Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Clerk of the Court shall provide to Lead Counsel the monthly statement of interest earned by the Settlement Fund. The Settlement Fund shall be

held by the CRIS until further order of the Court, except that prior to the time the Court enters the Judgment, \$250,000 may be drawn upon the CRIS account to pay Notice and Administration Expenses. If the entire Settlement Amount is not timely paid to the Clerk of the Court, Lead Counsel may terminate the Settlement but only if: (i) Lead Counsel has notified Defendants' Counsel in writing of Lead Counsel's intention to terminate the Settlement; and (ii) the entire Settlement Amount has not been transferred to the Clerk of the Court within ten (10) calendar days after Lead Counsel provides such written notice.

2.2 The obligations incurred pursuant to this Stipulation shall be in full and final disposition and settlement of all Released Claims. The Settlement Amount paid by Lexmark's insurers on behalf of the Defendants is the sole monetary responsibility under this Stipulation, and Class Members who do not timely seek to exclude themselves from the Class shall not look to any of the Defendants or their respective Released Persons for satisfaction of any and all Released Claims. The Defendants are not responsible for payment of Notice and Administration Expenses as defined below, or any out-of-pocket expenses, other than out of the Settlement Amount, as provided herein.

**b. The Escrow Agent**

2.3 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶2.1 hereof in United States Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, 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. All risks related to the investment of the Settlement Fund shall be borne by the Settlement Fund. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect

to the investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

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

2.5 Subject to further order(s) and/or directions as may be made by the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of the Stipulation. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

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 It shall be Lead Counsel's responsibility to disseminate the Notice, Proof of Claim, and Summary Notice to the Class in accordance with this Stipulation and as ordered by the Court. The Released Persons shall not bear any cost or have any responsibility for class notice, administration, or the allocation of the Net Settlement Fund among Authorized Claimants. Class Members shall have no recourse as to the Released Persons with respect to any claims they may have that arise from any failure of the notice process.

**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. Lead Counsel 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. The Released Persons shall have no responsibility or liability for the Settlement Fund’s tax returns or other filings.

(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 Released Persons or their 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, 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 all events the Released Persons, the parties hereto, and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. 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(l)(2)); neither the Released Persons nor their counsel are responsible nor shall they have any liability for any Taxes or Tax Expenses. 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. Termination of Settlement**

2.9 In the event that the Stipulation is not approved, or is terminated, canceled, or fails to become effective for any reason, the Settlement Fund less Notice and Administration Expenses or Taxes or Tax Expenses paid, incurred, or due and owing pursuant to ¶¶2.7 and 2.8 hereof in connection with the Settlement provided for herein, shall be refunded pursuant to written instructions from Defendants' Counsel in accordance with ¶7.4 herein.

**3. Preliminary Approval Order and Settlement Hearing**

3.1 Promptly after execution of the Stipulation, Lead Counsel shall submit the Stipulation together with its Exhibits to the Court and shall apply for entry of an order (the "Preliminary Approval Order"), substantially in the form of Exhibit A attached hereto, requesting, among other things, the preliminary approval of the Settlement set forth in the Stipulation, and approval for the mailing of a settlement notice (the "Notice") and publication of a summary notice, substantially in the forms of Exhibits A-1 and A-3 attached 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, as defined in ¶6.1 hereof, and the date of the Settlement Hearing and notice that the Settlement Hearing may be conducted telephonically.

3.2 Lead Counsel shall request that after notice is given, the Court hold 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 and Lead Plaintiff's request for an award pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with its representation of the Class.

#### **4. Releases**

4.1 Upon the Effective Date, Lead Plaintiff shall, 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 the Proof of Claim or shares in the Settlement Fund. Claims to enforce the terms of this Stipulation are not released.

4.2 The Proof of Claim 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 attached 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, 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 Lead Plaintiff, each and all of the Class Members, and Lead Counsel from all claims

and causes of action of every nature and description (including Unknown Defendants' Claims) whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Defendants, except for claims relating to the enforcement of the Settlement.

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

5.1 The Claims Administrator, subject to such supervision and direction of Lead Counsel, and as may be necessary or as circumstances may require, the Court, shall administer and calculate the claims submitted by Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants.

5.2 The Settlement Fund shall be applied as follows:

(a) to pay all Notice and Administration Expenses;

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

(c) to pay attorneys' fees and expenses of Lead Counsel (the "Fee and Expense Award"), and to pay Lead Plaintiff an award pursuant to 15 U.S.C. § 78u-4(a)(4), if and to the extent allowed by the Court; and

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

5.3 After the Effective Date, 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) calendar 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, substantially in the form of Exhibit A-2 attached hereto, signed under penalty of perjury and supported by such documents as are specified therein. Any Person who files a Proof of Claim shall reasonably cooperate with the Claims Administrator, including by promptly responding to any inquiry made by the Claims Administrator.

5.5 All Members of the Class (except Persons who request exclusion) shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release form or any similar document, any distribution from the Settlement Fund or the Net Settlement Fund.

5.6 Lead Counsel shall cause to be provided to Defendants' Counsel copies of all Requests for Exclusion, and any written revocation of Requests for Exclusion, as expeditiously as possible and in any event no later than fourteen (14) days prior to the Settlement Hearing.

5.7 Except as otherwise ordered by the Court, all Class Members who fail to timely submit a valid Proof of Claim 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 this Stipulation, the releases contained herein, and the Judgment, and will be barred from bringing any action against the Released Persons concerning the Released Claims. Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not the obligation) to accept late-submitted Claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby. No Person

shall have any claim against Lead Plaintiff, Lead Counsel, the Claims Administrator, or any Class Member by reason of the exercise or non-exercise of such discretion.

5.8 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with the Plan of Allocation set forth in the Notice and approved by the Court. If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the date of the initial distribution of the Net Settlement Fund, Lead Counsel shall, if feasible, reallocate (which reallocation may occur on multiple occasions) such balance among Authorized Claimants, who cash their initial distribution payment and who would receive a distribution of at least \$10.00, in an equitable and economic fashion. Thereafter, any *de minimis* balance which still remains in the Net Settlement Fund shall be donated to the New York Bar Foundation.

5.9 This Settlement is not a claims made settlement and, 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. No person shall have any claim of any kind against the Defendants or their Related Parties with respect to the matters set forth in ¶¶5.1–5.8 hereof; and the Class Members, Lead Plaintiff, and Lead Counsel release the Defendants and their Related Parties from any and all liability and claims arising from or with respect to the administration, investment, or distribution of the Settlement Fund.

5.10 No Person shall have any claim against Lead Plaintiff, Lead Counsel, Defendants, their Related Parties, 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. This does not include any claim by any party for breach of this Stipulation.

5.11 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 this 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 this Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect or delay the finality of the Court's Judgment approving this Stipulation and the Settlement set forth herein (including the releases contained herein), or any other orders entered pursuant to this Stipulation.

## **6. Plaintiff's Counsel's Attorneys' Fees and Expenses**

6.1 Lead Counsel may submit an application or applications for: (a) an award of attorneys' fees; plus (b) expenses or charges in connection with prosecuting the Litigation; plus (c) 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 (the "Fee and Expense Application"). In addition, Lead Plaintiff may request an award in connection with its representation of the Class pursuant to 15 U.S.C. § 78u-4(a)(4). Lead Counsel reserves the right to make additional applications for fees and expenses incurred.

6.2 Lead Counsel shall propose a schedule for the payment of the fees and expenses, as awarded by the Court ("Fee and Expense Award"), with its motion for an award of attorneys' fees and expenses. The Fee and Expense Award shall be paid to Lead Counsel from the Settlement

Fund, as ordered by the Court. Lead Counsel may thereafter allocate the attorneys' fees among other Plaintiffs' Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Litigation.

6.3 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 such reversal, modification, cancellation or termination becomes Final and not subject to review, and in the event that the Fee and Expense Award has been paid to any extent, then Plaintiffs' Counsel who received any portion of the Fee and Expense Award shall be obligated, within ten (10) business days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. Each such Plaintiffs' Counsel's law firm receiving fees and expenses, as a condition of receiving the Fee and Expense Award, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing this provision, and are each jointly and severally liable and responsible for any required repayment.

6.4 The procedure for and the allowance or disallowance by the Court of any applications by counsel for the Lead Plaintiff 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 this 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 this Stipulation, and any order or proceeding 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 this Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the Settlement of the Litigation set forth herein (including, without limitation, the releases contained herein).

6.5 Any attorneys' fees and/or expenses awarded by the Court shall be paid solely from the Settlement Fund. Defendants and their Related Parties shall have no responsibility for any payment of attorneys' fees and/or expenses to Plaintiffs' Counsel or Lead Plaintiff.

**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) the Court has entered the Preliminary Approval Order, as required by ¶3.1 hereof, substantially in the form set forth in Exhibit A attached hereto;
- (b) the Settlement Amount has been deposited into the CRIS;
- (c) the Court has entered the Judgment, or a judgment substantially in the form of Exhibit B attached hereto;
- (d) Lexmark has not exercised its option to terminate the Stipulation pursuant to ¶7.3 hereof; and
- (e) the Judgment has become Final, as defined in ¶1.12 hereof.

7.2 Upon the Effective Date, any and all remaining interest or right of the Defendants or the Defendants' insurers in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the releases herein shall be effective. If 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 Defendants' Counsel mutually agree in writing to proceed with the Stipulation.



7.3 Only Lexmark possesses the option to terminate the Settlement in the event that valid requests for exclusion from the Class exceed the criteria set forth in the Supplemental Agreement, executed between Lead Plaintiff and Lexmark through their respective counsel concurrently with this Agreement. The terms of the Supplemental Agreement shall not be disclosed in any other manner other than the statements herein and in the Notice, or as otherwise provided in the Supplemental Agreement unless and until the Court otherwise directs or a dispute arises between Lead Plaintiff and Defendants concerning its interpretation or application. If submission of the Supplemental Agreement to the Court is required for resolution of a dispute or is otherwise ordered by the Court, the parties will undertake to have the Court review the Supplemental Agreement *in camera* without filing it on the docket. If the Court requires that the Supplemental Agreement be filed, the parties shall request that it be filed under seal or with the percentage redacted.

7.4 Unless otherwise ordered by the Court, in the event the Stipulation is not approved or this Stipulation is terminated, canceled, or the Effective Date otherwise fails to occur, within ten (10) business days after written notification of such event is sent by Defendants' Counsel or Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest), less Taxes, Tax Expenses, and Notice and Administration Expenses which have either been disbursed pursuant to ¶¶2.1 and 2.8 hereof, or are chargeable to the Settlement Fund pursuant to ¶¶2.1 and 2.8 hereof, shall be refunded by the Escrow Agent pursuant to written instructions from Defendants' Counsel. The Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Amount and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, pursuant to written instructions from Defendants' Counsel.

7.5 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 January 28, 2020. In such event, the terms and provisions of the Stipulation, with the exception of ¶¶1.1–1.36, 2.6–2.9, 6.3–6.5, 7.4–7.6, and 9.5–9.6 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 any of Plaintiffs’ Counsel or expenses to the Lead Plaintiff shall operate to terminate or cancel this Stipulation or constitute grounds for cancellation or termination of the Stipulation.

7.6 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither Lead Plaintiff nor any of its counsel shall have any obligation to repay any amounts disbursed pursuant to ¶¶2.1 or 2.8. In addition, any expenses already incurred pursuant to ¶¶2.1 or 2.8 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 ¶¶2.9 and 7.4 hereof.

7.7 Defendants warrant and represent that they are not “insolvent” within the meaning of 11 U.S.C. § 101(32) as of the time the Stipulation is executed and will not be as of the time the payments of the Settlement Amount are actually transferred or made as reflected in the Stipulation. This representation is made by Defendants and not by Defendants’ Counsel. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the

transfer of the Settlement Fund, or any portion thereof, by or on behalf of Defendants to be a voidable preference, voidable transfer, fraudulent transfer, or similar transaction under Title 11 of the United States Code (Bankruptcy), or applicable state law, and any portion thereof is required to be refunded and such amount is not promptly deposited in the Settlement Fund by or on behalf of any Defendants, then, at the election of Lead Plaintiff the Settlement may be terminated and the Judgment entered in favor of Defendants pursuant to the Settlement shall be null and void. Alternatively, at the election of Lead Plaintiff, the Settling Parties shall jointly move the Court to vacate and set aside the release given and the Judgment entered in favor of the Defendants and that the Defendants and Lead Plaintiff and the Members of the Class shall be restored to their litigation positions as of January 28, 2020 and the Settlement Fund shall be promptly returned.

**8. Bar Order**

8.1 If the Settlement embodied in this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form annexed hereto as Exhibit B which shall, among other things, contain a provision providing for a Complete Bar Order in the Action, as follows: Upon the Effective Date, any and all Persons are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim where the alleged injury to that Person is that Person's actual or threatened liability to the Class or a Class Member in the Action), arising out of, based upon, relating to, concerning, or in connection with the Released Claims, against each and every one of the Released Persons, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Action or any separate action, in this Court or in any other court, arbitration proceeding, administrative proceeding, or other forum; and the Released Persons are permanently barred and enjoined, to the fullest extent permitted by law, from

commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim where the alleged injury to the Released Person is that Released Person's actual or threatened liability to the Class or a Class Member in the Action) arising out of, based upon, relating to, concerning, or in connection with the Released Claims, against any Person other than a Person whose liability to the Settlement Class has been extinguished pursuant to the Settlement and Judgment, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Action or any separate action, in this Court or in any other court, arbitration proceeding, administrative proceeding, or other forum; provided, however, that nothing herein shall release or alter the contractual rights, if any, under the terms of any bylaws or other written agreement between the Individual Defendants, on the one hand, and Lexmark, on the other. Notwithstanding the foregoing, nothing herein shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation, the Settlement, or the Judgment.

**9. Miscellaneous Provisions**

9.1 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 best efforts to accomplish the foregoing terms and conditions of the Stipulation.

9.2 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 that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Judgment will contain a finding 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 Settling Parties agree that the Settlement Amount 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 and with the assistance of a neutral third-party mediator, Michelle Yoshida.

9.3 Lead Plaintiff and Plaintiffs' Counsel and Defendants and Defendants' Counsel shall not make any accusations of wrongful or actionable conduct by any party concerning the prosecution, defense, and resolution of the Litigation, and shall not otherwise suggest that the Settlement embodied in this Stipulation constitutes an admission of any claim or defense alleged. 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 regarding the Litigation, including that the Litigation was brought or defended in bad faith or without a reasonable basis.

9.4 Neither this Stipulation nor the Settlement contained herein, 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 respective 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 respective Related Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Defendants and/or their respective Related Parties may file this Stipulation and/or the Judgment from this action in any other 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 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

9.5 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

9.6 Whether or not this Stipulation is approved by the Court and whether or not the Settlement embodied in this Stipulation is consummated, the parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings had in connection with this Stipulation confidential. Notwithstanding the foregoing, the parties agree that this Stipulation may be filed publicly as part of any motion for preliminary or final approval of the Settlement.

9.7 All of the exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto or other document incorporated by reference herein, the terms of this Stipulation shall prevail.

9.8 This Stipulation, along with its Exhibits, 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.

9.9 Defendants shall determine the form of notice to be provided for the purpose of satisfying the requirements of the Class Action Fairness Act and will identify those who will receive notice as provided for therein. Defendants shall be responsible for mailing such notice within the time provided for in 28 U.S.C. § 1715(b) and for all expenses and costs related thereto.

9.10 The waiver by any party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation or a waiver by any party other than the waiving party.

9.11 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 or in a separate written agreement, each party shall bear its own costs.

9.12 Lead Counsel, on behalf of the Class, are expressly authorized by the Lead Plaintiff 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 that they deem appropriate.

9.13 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.

9.14 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 executed counterparts shall be filed with the Court. Signatures sent by facsimile or pdf'd via e-mail shall be deemed originals.

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

9.16 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation and matters related to the Settlement. Any such actions, motions, or disputes arising under or to enforce this Stipulation or any portion thereof shall be commenced and maintained only in this Court.

9.17 Pending approval of the Court of the Stipulation and its Exhibits, all proceedings in this Litigation shall be stayed and all Members of the Class shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Persons.

9.18 This 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. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations between all parties and that all parties have contributed substantially and materially to the preparation of this Stipulation.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys.

Dated: May 8, 2020

ROBBINS GELLER RUDMAN  
& DOWD LLP  
JACK REISE  
ROBERT J. ROBBINS  
MAUREEN E. MUELLER  
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*Additional Counsel*

Dated: May 8, 2020

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*Counsel for Defendants*



**INDEX OF EXHIBITS TO STIPULATION AND AGREEMENT OF SETTLEMENT**

<b>DOCUMENT</b>	<b>EXHIBIT</b>
[Proposed] Order Preliminarily Approving Settlement Pursuant to Fed. R. Civ. P. 23(e)(1) and Permitting Notice to the Class	A
Notice of Pendency and Proposed Settlement of Class Action	A-1
Proof of Claim and Release	A-2
Summary Notice	A-3
[Proposed] Final Judgment and Order of Dismissal with Prejudice	B

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
OKLAHOMA FIREFIGHTERS PENSION	:	Civil Action No. 1:17-cv-05543-WHP
AND RETIREMENT SYSTEM, Individually	:	
and on Behalf of All Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	[PROPOSED] ORDER PRELIMINARILY
	:	APPROVING SETTLEMENT PURSUANT
vs.	:	TO FED. R. CIV. P. 23(e)(1) AND
	:	PERMITTING NOTICE TO THE CLASS
LEXMARK INTERNATIONAL, INC., PAUL	:	
A. ROOKE, DAVID REEDER, and GARY	:	EXHIBIT A
STROMQUIST,	:	
	:	
Defendants.	:	
_____	X	

WHEREAS, an action is pending before this Court entitled *Oklahoma Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc., et al.*, No. 1:17-cv-05543-WHP (S.D.N.Y.) (the “Litigation”);

WHEREAS, Lead Plaintiff on behalf of the proposed Class having made a motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in accordance with a Stipulation and Agreement of Settlement dated as of May 8, 2020 (the “Stipulation”), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the Exhibits annexed thereto; and

WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed the Stipulation and does hereby preliminarily approve the Settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Settlement Hearing described below.

2. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for purposes of this Settlement only, the Litigation is hereby preliminarily certified as a class action on behalf of all Persons and entities who purchased or otherwise acquired Lexmark common shares from August 1, 2014 to July 20, 2015, inclusive, and were damaged thereby. Excluded from the Class are: Defendants, the officers and directors of Lexmark at all relevant times, members of their immediate families, any entity in which any Defendant owns a greater than 50% equity interest, and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

3. Also excluded from the Class are those Class Members who timely and validly request exclusion from the Class pursuant to the requirements described below and in the Notice of Pendency and Proposed Settlement of Class Action (“Notice”) to be sent to Class Members pursuant to this Order.

4. The Court finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Class it seeks to represent; (d) Lead Plaintiff and Lead Counsel have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the Members of the Class predominate over any questions affecting only individual Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiff is preliminarily certified as the Class Representative and Lead Counsel Robbins Geller Rudman & Dowd LLP is preliminarily certified as Class Counsel for the Class.

6. The Court preliminarily finds that the proposed Settlement should be approved as: (i) the result of serious, extensive arm’s-length and non-collusive negotiations; (ii) falling within a range of reasonableness warranting final approval; (iii) having no obvious deficiencies; and (iv) warranting notice of the proposed Settlement to Class Members and further consideration of the Settlement at the Settlement Hearing described below.

7. The Settlement Hearing, which the Court may require or permit to be conducted as a telephonic hearing in light of the ongoing exigent circumstances caused by the COVID-19 pandemic, shall be held before this Court on \_\_\_\_\_, 2020, at \_\_\_\_:\_\_\_\_.m. [a date that is at least one hundred (100) calendar days from the date of this Order], at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, (A) to determine (i) whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class and should be approved by the Court; (ii) whether the proposed Final Judgment and Order of Dismissal with Prejudice as provided under the Stipulation should be entered; (iii) whether the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved; (iv) whether the Class should be finally certified for purposes of the Settlement only; (v) whether Lead Plaintiff and Lead Counsel should be finally appointed as Class Representative and Class Counsel, respectively, for purposes of the Settlement only; (vi) the amount of attorneys' fees, charges, and expenses that should be awarded to Lead Counsel; (vii) any award to Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4); and (B) to hear any objections by Class Members to (i) the Settlement or Plan of Allocation; (ii) the award of attorneys' fees and expenses to Lead Counsel; and (iii) awards to Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4); and to consider such other matters the Court deems appropriate. The Court may adjourn the Settlement Hearing without further notice to the Members of the Class. In the event the Court requires or permits a telephonic Settlement Hearing, Lead Counsel is instructed to update the Settlement website to prominently provide such information as well as the dial-in number.



8. The Court approves, as to form and content, the Notice and Proof of Claim and Release form (“Proof of Claim”) substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively.

9. The Court approves the form of the Summary Notice, substantially in the form annexed hereto as Exhibit A-3.

10. The Court finds that the mailing and distribution of the Notice and publishing of the Summary Notice substantially in the manner and form set forth in ¶¶13, 14 of this Order: (a) constitute the best notice to Class Members practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to describe the terms and effect of the Stipulation and of the Settlement and to apprise Class Members of their right to object to the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive such notice; and (d) satisfy all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c)-(e)), the United States Constitution (including the Due Process Clause), Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as added by the Private Securities Litigation Reform Act of 1995, the Rules of this Court, and other applicable law.

11. The firm of A.B. Data, Ltd. (“Claims Administrator”) is hereby appointed to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below.

12. To the extent they have not already done so, Lexmark and its counsel shall provide or cause Lexmark’s transfer agent to provide Lead Counsel and the Claims Administrator, without any charge to Lead Plaintiff or the Class, the last known names and addresses of all holders of

record of Lexmark common stock during the Class Period to the extent such information is within the possession, custody, or control of Lexmark or its transfer agent.

13. Not later than \_\_\_\_\_, 2020 [a date fourteen (14) calendar days after the Court signs and enters this Order] (the “Notice Date”), the Claims Administrator shall commence mailing the Notice and Proof of Claim, substantially in the forms annexed hereto, to be mailed by First Class Mail to all Class Members who can be identified with reasonable effort and to be posted on the case-designated website, [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com).

14. Not later than \_\_\_\_\_, 2020 [a date seven (7) calendar days after the Notice Date], the Claims Administrator shall cause the Summary Notice to be published once in *The Wall Street Journal* and once over a national newswire service.

15. At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall serve on Defendants’ Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

16. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased or otherwise acquired Lexmark common stock between August 1, 2014 and July 20, 2015, inclusive, as record owners but not beneficial owners. Such nominee purchasers are directed, within seven (7) calendar days after their receipt of the Notice, to either forward copies of the Notice and Proof of Claim to their beneficial owners or to provide the Claims Administrator with lists of the names and addresses of the beneficial owners, and the Claims Administrator is ordered to send the Notice and Proof of Claim promptly to such identified beneficial owners. Nominee purchasers who elect to send the Notice and Proof of Claim to the beneficial owners shall send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Notice

shall be made available to any record holder requiring such for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of timely sending the Notice and Proof of Claim to beneficial owners, which expenses would not have been incurred except for the sending of such notice, subject to further order of this Court with respect to any dispute concerning such compensation.

17. All fees and expenses incurred in identifying and notifying Class Members shall be paid from the Settlement Fund and in no event shall any of the Released Persons bear any responsibility or liability for such fees or expenses.

18. All Class Members shall be bound by all determinations and judgments in the Litigation concerning the Settlement, whether favorable or unfavorable to the Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim or any similar documentation, any distribution from the Settlement Fund or the Net Settlement Fund.

19. Class Members who wish to participate in the Settlement shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked or submitted electronically no later than ninety (90) calendar days from the Notice Date. Any Class Member who files a Proof of Claim shall reasonably cooperate with the Claims Administrator, including by promptly responding to any inquiry made by the Claims Administrator. Any Class Member who does not timely submit a Proof of Claim within the time provided shall be barred from sharing in the distribution of the proceeds of the Settlement Fund but shall nonetheless be bound by the Stipulation, the Judgment, and the releases therein, unless otherwise ordered by the Court. Notwithstanding the foregoing,

Lead Counsel may, in its discretion, accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby.

20. The Proof of Claim submitted by each Class Member must: (i) be properly completed, signed and submitted in a timely manner in accordance with the preceding paragraph; (ii) be accompanied by adequate supporting documentations for the transactions reported in it, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation deemed adequate by the Claims Administrator or Lead Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, include a certification of his or her current authority to act on behalf of the Claimant; (iv) be complete and contain no deletions or modifications of any of the printed matter contained therein; and (v) be signed under penalty of perjury. As part of the Proof of Claim, each Claimant shall submit to the jurisdiction of the Court with respect to the claim submitted.

21. Any Class Member may enter an appearance in the Litigation, at the Class Member's own expense, individually or through counsel of the Class Member's own choice. If a Class Member does not enter an appearance, that Class Member will be represented by Lead Counsel.

22. Any Person falling within the definition of the Class may, upon request, be excluded or "opt out" from the Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), by First-Class Mail such that it is received no later than \_\_\_\_\_, 2020 [a date twenty-one (21) calendar days before the Settlement Hearing]. A Request for Exclusion must be signed and state (a) the name, address, and telephone

number of the Person requesting exclusion; (b) the Person's purchases, acquisitions and sales of Lexmark common stock between August 1, 2014 and July 20, 2015, inclusive, including the dates, the number of shares of Lexmark common stock purchased, acquired or sold, and price paid or received for each such purchase, acquisition or sale; and (c) that the Person wishes to be excluded from the Class. The Request for Exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

23. Any Person who is excluded from the Class by virtue of having submitted a valid and timely Request for Exclusion may, at any point up to seven (7) days before the Settlement Hearing, submit a written revocation of Request for Exclusion following the same instructions in ¶22 above.

24. Lead Counsel shall cause to be provided to Defendants' Counsel copies of all Requests for Exclusion and a list of all Class Members who have requested exclusion, and any written revocation of Requests for Exclusion, as expeditiously as possible and in any event no later than \_\_\_\_\_, 2020 [a date fourteen (14) calendar days before the Settlement Hearing].

25. Any Class Member who does not request exclusion may appear at the Settlement Hearing and show cause why the proposed Settlement of the Litigation should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, why attorneys' fees and expenses should or should not be awarded to counsel for the plaintiffs, or why an amount pursuant to 15 U.S.C. § 78u-4(a)(4) should or should not be awarded to Lead Plaintiff; provided, however,

that no Class Member or any other Person shall be heard or entitled to contest such matters, unless that Person has delivered by hand or sent by First-Class Mail written objections and copies of any papers and briefs such that they are received, not simply postmarked, on or before \_\_\_\_\_, 2020 [a date twenty-one (21) calendar days before the Settlement Hearing], by Robbins Geller Rudman & Dowd LLP, Theodore J. Pinter, 655 West Broadway, Suite 1900, San Diego, California 92101 and O'Melveny & Myers LLP, William Sushon, 7 Times Square, New York, New York 10036, and filed said objections, papers, and briefs with the Clerk of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007, on or before \_\_\_\_\_, 2020 [a date twenty-one (21) calendar days before the Settlement Hearing]. Any objections must: (i) state the name, address, and telephone number of the objector and must be signed by the objector even if represented by counsel; (ii) state that the objector is objecting to the proposed Settlement, Plan of Allocation, or application for attorneys' fees or expenses in this Litigation; (iii) state the objection(s) and the specific reasons for each objection, including any legal and evidentiary support the objector wishes to bring to the Court's attention; (iv) state whether the objection applies only to the objector, to a subset of the Class or to the entire Class; (v) include documents sufficient to prove the objector's membership in the Class, such as the number of shares of Lexmark common stock purchased or acquired during the Class Period, as well as the dates and prices of each such purchase or acquisition; (vi) state whether the objector intends to appear at the Settlement Hearing; (vii) if the objector intends to appear at the Settlement Hearing through counsel, state the identity of all attorneys who will appear on the objector's behalf at the Settlement Hearing; and (viii) state that the objector submits to the jurisdiction of the Court with respect to the objection or request to be heard and the subject matter of the Settlement of the Litigation, including, but not limited to, enforcement of the terms of the

Settlement. The Court will consider a Class Member's objection only if the Class Member has complied with the above requirements. Any Class Member who does not make his, her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the Stipulation, to the Plan of Allocation, or to the award of fees, charges, and expenses to Lead Counsel or any award to Lead Plaintiff, unless otherwise ordered by the Court. Class Members submitting written objections are not required to attend the Settlement Hearing, but any Class Member wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses must file a written objection and indicate in the written objection their intention to appear at the hearing and to include in their written objections the identity of any witnesses they may call to testify and copies of any exhibits they intend to introduce into evidence at the Settlement Hearing. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

26. 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.

27. All opening briefs and supporting documents in support of the Settlement, the Plan of Allocation, and any application by Lead Counsel for attorneys' fees, charges, and expenses and awards to Lead Plaintiff shall be filed and served by no later than \_\_\_\_\_, 2020 [a date thirty-five (35) calendar days before the Settlement Hearing], and any reply papers shall be filed and served no later than \_\_\_\_\_, 2020 [a date seven (7) calendar days before the Settlement Hearing].

28. The Released Persons shall have no responsibility for the Plan of Allocation or any application for attorneys' fees, charges, or expenses submitted by Lead Counsel or any award to Lead Plaintiff, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

29. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Lead Counsel, and any application for attorneys' fees, charges, or expenses, should be approved. The Court reserves the right to enter the Order and Final Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or charges and expenses.

30. All reasonable expenses incurred in identifying and notifying Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Lead Plaintiff nor any of its counsel shall have any obligation to repay any amounts incurred and properly disbursed pursuant to ¶¶2.1 or 2.8 of the Stipulation.

31. Neither this Order, the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Defendants of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind.

32. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.



33. If the Stipulation and the Settlement set forth therein is not approved or consummated for any reason whatsoever, the Stipulation and Settlement and all proceedings had in connection therewith shall be without prejudice to the rights of the Settling Parties *status quo ante* as set forth in ¶7.5 of the Stipulation.

34. Until otherwise ordered by the Court, the Court shall continue to stay all proceedings in the Litigation other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the proposed Settlement should be approved, neither the Lead Plaintiff nor any Class Member, directly or indirectly, representatively, or in any other capacity, shall commence or prosecute against any of the Defendants, any action or proceeding in any court or tribunal asserting any of the Released Claims.

35. Except to the extent the Settling Parties may agree to resolve through mediation any disputes that may arise prior to the entry of judgment, the Court retains exclusive jurisdiction over the Litigation to consider all further matters arising out of or connected with the Settlement.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE WILLIAM H. PAULEY, III  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT A-1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
OKLAHOMA FIREFIGHTERS PENSION	:	Civil Action No. 1:17-cv-05543-WHP
AND RETIREMENT SYSTEM, Individually	:	
and on Behalf of All Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	NOTICE OF PENDENCY AND PROPOSED
	:	SETTLEMENT OF CLASS ACTION
vs.	:	
	:	EXHIBIT A-1
LEXMARK INTERNATIONAL, INC., PAUL	:	
A. ROOKE, DAVID REEDER, and GARY	:	
STROMQUIST,	:	
	:	
Defendants.	:	
_____	X	

**TO: ALL PERSONS AND ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED LEXMARK INTERNATIONAL, INC. (“LEXMARK” OR THE “COMPANY”) COMMON STOCK DURING THE PERIOD BETWEEN AUGUST 1, 2014 TO JULY 20, 2015, INCLUSIVE (THE “CLASS PERIOD”)**

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned class action lawsuit pending in this Court (the “Litigation”) if you purchased or otherwise acquired Lexmark common stock during the Class Period.<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that Lead Plaintiff District No. 9, I.A. of M & A.W. Pension Trust (“Lead Plaintiff”), on behalf of the Class (as defined at page \_\_\_ below), has reached a proposed settlement of the Litigation for a total of \$12,000,000 in cash that will resolve all claims in the Litigation against the Released Persons (the “Settlement”).

**IN ORDER TO QUALIFY FOR A SETTLEMENT PAYMENT, YOU MUST TIMELY SUBMIT A PROOF OF CLAIM AND RELEASE FORM (“PROOF OF CLAIM”) THAT IS POSTMARKED OR SUBMITTED ON OR BEFORE \_\_\_\_\_, 2020.**

**THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.**

#### **WHY SHOULD I READ THIS NOTICE?**

This Notice is given pursuant to an order issued by the United States District Court for the Southern District of New York (the “Court”). This Notice serves to inform you of the pendency and proposed settlement of the above-captioned class action lawsuit for \$12,000,000 in cash and the hearing (“Settlement Hearing”) to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, as set forth in the Stipulation, by and between Lead Plaintiff, on behalf of itself and the Class (as defined below), on the one hand, and Defendants Lexmark, Paul A. Rooke, David Reeder, and Gary Stromquist (collectively, the “Defendants”), on the other hand.

**This Notice is intended to inform you how the pendency of this class action and the proposed Settlement may affect your rights and what steps you may take in reaction to it. This Notice is NOT an expression of any opinion by the Court as to the merits of the claims or defenses asserted in the lawsuit or whether the Defendants engaged in any wrongdoing.**

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<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement dated May 8, 2020 (the “Stipulation”), which is available on the website for the Litigation at [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com).

**QUESTIONS? PLEASE CALL 877-829-4296  
OR VISIT [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>ACTIONS YOU MAY PURSUE</b>	<b>EFFECT OF TAKING THIS ACTION</b>
<b>SUBMIT A PROOF OF CLAIM</b>	This is the only way to be eligible to receive a payment from the Settlement. <b>Proofs of Claim must be postmarked (if mailed) or received (if submitted online) on or before _____, 2020.</b>
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against the Defendants about the legal claims related to the issues raised in this Litigation. <b>A written request for exclusion must be received on or before _____, 2020.</b> If you are considering excluding yourself from the Class, please note that there is a risk that any new claims asserted against the Defendants may no longer be timely and would be time-barred. You should talk to a lawyer before you request exclusion from the Class for the purpose of bringing a separate lawsuit. <b>See page ___ below.</b>
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION</b>	Write to the Court and explain why you do not like the Settlement, the Plan of Allocation, and/or the request for attorneys' fees and expenses. <b>Objections must be filed with the Court and served on the parties on or before _____, 2020.</b>
<b>ATTEND THE SETTLEMENT HEARING ON _____, 2020 AT _:_.M., AND FILE A NOTICE OF INTENTION TO APPEAR</b>	Ask to speak in Court about the fairness of the Settlement. <b>Requests to speak must be filed with the Court and served on the parties on or before _____, 2020.</b> If you submit a written objection, you may (but you do not have to) attend the hearing.
<b>DO NOTHING</b>	Receive no payment. You will, however, still be a Class Member, which means that you give up your right to ever be part of any other lawsuit against the Defendants about the legal claims being resolved by this Settlement and you will be bound by any judgments or orders entered by the Court in the Litigation.

QUESTIONS? PLEASE CALL 877-829-4296  
OR VISIT [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

## SUMMARY OF THIS NOTICE

### Description of the Litigation and the Class

This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors in Lexmark common stock alleging, among other things, that Defendants violated the federal securities law by making materially false and misleading statements or omitting to state facts necessary to make statements made not misleading in public filings and other public statements during the Class Period. A more detailed description of the Litigation is set forth on pages \_\_\_\_ below. The “Class” means all Persons and entities who purchased or otherwise acquired Lexmark common stock from August 1, 2014 to July 20, 2015, inclusive, and were damaged thereby. Those excluded from the Class are described on pages \_\_\_\_ below. The proposed Settlement, if approved by the Court, will settle claims of the Class against the Released Persons, as defined on page \_\_\_\_ below.

### Statement of Class Recovery

Pursuant to the Settlement described herein, a \$12,000,000 settlement fund has been established (the “Settlement Amount”). The Settlement Amount together with any interest earned thereon is the “Settlement Fund.” The Settlement Fund less: (a) any taxes and tax expenses; (b) any Notice and Administration Expenses; and (c) any attorneys’ fees and litigation charges and expenses (including any award to Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with its representation of the Class) awarded by the Court, will be distributed to Class Members under a plan of allocation that is approved by the Court. The proposed plan of allocation (“Plan of Allocation”) is set forth on pages \_\_\_\_\_ below. Based on Lead Plaintiff’s estimate of the amount of Lexmark common stock eligible to recover, the average distribution under the Plan of Allocation is roughly \$0.66 per share, before deduction of any taxes on the income earned on the Settlement Fund, Notice and Administration Expenses, and attorneys’ fees and expenses (including any award to Lead Plaintiff) as determined by the Court. **Class Members should note, however, that these are only estimates.** A Class Member’s actual recovery will be a proportion of the Net Settlement Fund determined by that claimant’s claims as compared to the total claims of all Class Members who submit acceptable and timely Proofs of Claim. An individual Class Member may receive more or less than these estimated average amounts. Please see the Plan of Allocation set forth and discussed at pages \_\_\_\_\_ below for more information on the calculation of your claim.

### Statement of Potential Outcome of the Case

The Settling Parties do not agree on whether Lead Plaintiff would have prevailed on any of its claims against the Defendants. They also do not agree on the average amount of damages per share, if any, that would be recoverable if the Class prevailed on the claims alleged. Defendants deny that they have engaged in any wrongdoing as alleged by Lead Plaintiff, deny any liability whatsoever for any of the claims alleged by Lead Plaintiff, and deny that the Class has suffered any injuries or damages. The issues on which the Settling Parties disagree are many, but include:

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OR VISIT [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

(1) whether any of the Defendants engaged in conduct that would give rise to any liability to the Class under the federal securities laws; (2) whether Defendants have valid defenses to any such claims of liability; (3) the amount by which the price of Lexmark common stock was artificially inflated, if at all, during the Class Period, as well as the methodology for estimating any such inflation; (4) the extent to which external factors, such as general market, economic and industry conditions, influenced the trading price of Lexmark common stock during the Class Period; (5) who, if anyone, can be included in the Class; (6) the amount, if any, of any alleged damages suffered by purchasers or acquirers of Lexmark common stock during the Class Period; and (7) whether Defendants had other meritorious defenses to the alleged claims.

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

Lead Counsel (as defined on page \_\_\_ below) will apply to the Court for an award of attorneys' fees in an amount not to exceed twenty-five percent (25%) of the Settlement Amount, plus charges expenses not to exceed \$300,000, including an award to Lead Plaintiff of no more than \$5,000 pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with its representation of the Class, plus interest earned on these amounts at the same rate as earned by the Settlement Fund. Since the appointment of Lead Plaintiff, Lead Counsel have expended considerable time and effort in the prosecution of this Litigation on a wholly contingent basis and have advanced the expenses of the Litigation in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. If the Court approves the attorneys' fees, charges, and expenses in full, the average amount of fees, charges, and expenses will amount to an average cost of \$0.18 per share. The average cost per damaged share will vary depending on the number of acceptable and timely Proofs of Claim submitted.

### **Further Information**

For further information regarding the Litigation or this Notice or to review the Stipulation, please contact the Claims Administrator toll-free at 877-829-4296, or visit the website [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com).

You may also contact a representative of counsel for the Class: Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, [www.rgrdlaw.com](http://www.rgrdlaw.com).

**Please DO NOT Call the Court or Defendants with Questions About the Settlement.**

### **Reasons for the Settlement**

Lead Plaintiff's principal reason for entering into the Settlement is the substantial cash benefit to the Class now, without further risk or the delays inherent in continued litigation. The cash benefit under the Settlement must be considered against the significant risk that a smaller recovery – or, indeed, no recovery at all – might be achieved after trial, and likely appeals, a process that could last several years into the future.

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Defendants have denied and continue to deny each and all of the claims alleged by Lead Plaintiff in the Litigation. 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. For Defendants, the principal reason for the Settlement is to eliminate the burden, expense, uncertainty and risks inherent in any litigation, especially in complex cases such as this Litigation.

## **WHAT IS THIS LAWSUIT ABOUT?**

### **THE ALLEGATIONS**

The Litigation is currently pending in the United States District Court for the Southern District of New York before the Honorable William H. Pauley, III (the “Court”). The initial complaint was filed on July 20, 2017. On October 11, 2017, the Court appointed District No.9, I.A. of M & A.W. Pension Trust as Lead Plaintiff and Robbins Geller Rudman & Dowd LLP as Lead Counsel.

Lead Plaintiff filed the Amended Class Action Complaint for Violations of the Federal Securities Laws on November 28, 2017. Lead Plaintiff later filed its Second Amended Class Action Complaint for Violations of the Federal Securities Laws on February 15, 2018 (the “Complaint”). The Complaint alleges that Defendants are liable for violations of the Securities Exchange Act of 1934 (“Exchange Act”) resulting from allegedly materially false and misleading statements or omissions of material facts necessary to make statements made by those Defendants in public filings and other public statements not misleading. Among other things, Lead Plaintiff alleges that Defendants are liable for false and misleading statements and omissions regarding Lexmark’s business operations and financial performance. Lead Plaintiff further alleges that when the alleged truth regarding Lexmark’s true business operations and financial condition was revealed, alleged artificial inflation was removed from the price of Lexmark common stock, damaging Members of the Class. Defendants deny each and all of Lead Plaintiff’s allegations. Defendants contend that they are not liable for any such alleged false or misleading statements and that all information required to be disclosed by the federal securities laws was so disclosed. Defendants also contend that they did not act with scienter.

**THE COURT HAS NOT RULED AS TO WHETHER DEFENDANTS ARE LIABLE TO LEAD PLAINTIFF OR TO THE CLASS. THIS NOTICE IS NOT INTENDED TO BE AN EXPRESSION OF ANY OPINION BY THE COURT WITH RESPECT TO THE TRUTH OF THE ALLEGATIONS IN THE LITIGATION OR THE MERITS OF THE CLAIMS OR DEFENSES ASSERTED. THIS NOTICE IS SOLELY TO ADVISE YOU OF THE PENDENCY AND PROPOSED SETTLEMENT OF THIS LITIGATION AND YOUR RIGHTS IN CONNECTION WITH THAT SETTLEMENT.**

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## PROCEDURAL HISTORY

This case has been vigorously litigated for more than two years. After Lead Plaintiff filed the Complaint on February 15, 2018, the parties extensively briefed and argued Defendants' motion to dismiss. After a hearing, the Court denied the motion to dismiss on March 19, 2019, and on May 2, 2019, Defendants answered the Complaint, denying all material allegations and asserting a number of defenses. Following the Court's denial of the motion to dismiss, the parties began engaging in fact and class-related discovery involving the Defendants, Lead Plaintiff, and several third parties. This discovery, which was ongoing at the time of the Settlement, resulted in the parties producing and receiving over 50,000 pages of documents. Lead Plaintiff states that it also conducted interviews of former Lexmark employees, obtained documents related to the Company, and conducted a thorough review of the public record regarding Lexmark. Plaintiffs moved for class certification on August 16, 2019. Defendants' time to respond to Lead Plaintiff's motion for class certification has not yet elapsed, and the Court has not ruled on Lead Plaintiff's motion.

During the course of the Litigation, the parties engaged an experienced and neutral third-party mediator, Michelle Yoshida of Phillips ADR, and held direct settlement discussions. The parties exchanged lengthy and detailed mediation briefs and Lead Counsel met in person with the mediator and counsel for the Defendants on September 11, 2019, but the parties were unable to reach an agreement. In the months that followed, the parties resumed the discovery process and litigation of the case. Ultimately, the parties reengaged the services of their mediator, Michelle Yoshida. After several conferences with the mediator, on January 22, 2020, Michelle Yoshida made a "Mediator's Recommendation" to settle the Litigation. On January 23, 2020, the Lead Plaintiff agreed to settle the Litigation with all Defendants in return for a cash payment of \$12,000,000 for the benefit of the Class.

## HOW DO I KNOW IF I AM A CLASS MEMBER?

If you purchased or otherwise acquired Lexmark common stock during the period between August 1, 2014 and July 20, 2015, inclusive, and are not otherwise excluded, you are a Class Member. As set forth in the Stipulation, excluded from the Class are: Defendants, the officers and directors of Lexmark at all relevant times, members of their immediate families, any entity in which any Defendant owns a greater than 50% equity interest, and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

**PLEASE NOTE:** Receipt of this Notice does not mean that you are a Class Member or that you will be entitled to receive a payment from the Settlement. If you are a Class Member and you wish to be eligible to participate in the distribution of proceeds from the Settlement, you are required to submit the Proof of Claim that is being distributed with this Notice and the required supporting documentation as set forth therein postmarked (if mailed) or submitted online on or before \_\_\_\_\_, 2020.

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## **WHAT IS THE MONETARY VALUE OF THE PROPOSED SETTLEMENT?**

The Settlement, if approved, will result in the creation of a cash settlement fund of \$12,000,000. This fund, plus accrued interest and minus the costs of this Notice and all costs associated with the administration of the Settlement, including Taxes and Tax Expenses, as well as attorneys' fees and expenses, and any award to Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with its representation of the Class, as approved by the Court (the "Net Settlement Fund"), will be distributed to eligible Class Members pursuant to the Plan of Allocation that is described in the next section of this Notice.

## **WHAT IS THE PROPOSED PLAN OF ALLOCATION?**

If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants – *i.e.*, Members of the Class who timely submit valid Proofs of Claim that are accepted for payment by the Court – in accordance with this proposed Plan of Allocation or such other plan of allocation as the Court may approve. Class Members who do not timely submit valid Proofs of Claim will not share in the Net Settlement Fund, but will otherwise be bound by the Settlement. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Class. Any order modifying the Plan of Allocation will be posted on the settlement website, [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com).

The Plan of Allocation is intended to compensate Class Members who purchased or otherwise acquired Lexmark common stock during the Class Period and were damaged thereby under the Exchange Act. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the Class Period, which had the effect of artificially inflating the price of Lexmark common stock. As a result of the alleged corrective disclosure, alleged artificial inflation was removed from the price of Lexmark common stock on July 21, 2015.

## **ALLOCATION OF THE NET SETTLEMENT FUND**

As detailed below, the Net Settlement Fund will be allocated on a *pro rata* basis according to recognized claims for Class Member's Exchange Act damages, which will be calculated based on the claimant's purchases of Lexmark common stock during the Class Period.<sup>2</sup>

## **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

For each Class Period purchase or acquisition of Lexmark common stock that is properly documented, a "Recognized Loss Amount" will be calculated for that stock according to the

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<sup>2</sup> Unless otherwise indicated, any transactions in Lexmark stock executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the next regular trading session.

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formula described below. Such “Recognized Loss Amount” will be aggregated across all purchases to determine the “Recognized Claim” for each Class Member.

The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

### **RECOGNIZED LOSS AMOUNTS**

Estimated damages and the Plan of Allocation were developed based on event study analysis, which determines how much artificial inflation was in the price of Lexmark common stock on each day during the Class Period by measuring how much the prices declined as a result of disclosure that corrected the alleged misrepresentations and omissions. A Recognized Loss Amount is calculated for each Class Member who purchased Lexmark common stock during the Class Period based on when that claimant purchased and sold shares, or retained shares beyond the end of the Class Period.

Based on the formulas presented below, a “Recognized Loss Amount” will be calculated for each purchase or acquisition of Lexmark common stock during the Class Period that is listed on the Proof of Claim and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formula below, that Recognized Loss Amount will be zero.

The allocation below is based on the following inflation per share amount for Class Period common stock purchases and sales as well as the statutory PSLRA 90 day-look back amount of \$30.92. Furthermore, if any of the formulas set forth below yield an amount less than \$0.00 the claim per share is \$0.00.

For shares of Lexmark common stock purchased, or acquired, on or between August 1, 2014 through July 20, 2015, the claim per share shall be as follows:

- (a) If sold prior to July 21, 2015, the claim per share is \$0.00;
- (b) If retained at the end of July 20, 2015, and sold on or before October 16, 2015, the claim per share shall be the least of: (i) \$6.63 (the inflation per share at the time of purchase); (ii) the difference between the purchase price and the selling price; and (iii) the difference between the purchase price and the average closing price up to the date of sale as set forth in the table below.

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OR VISIT [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

- (c) If retained at the close of trading on October 16, 2015, or sold thereafter, the claim per share shall be the least of: (i) the inflation per share at the time of purchase and (ii) the difference between the purchase price and \$30.92.<sup>3</sup>

### ADDITIONAL PROVISIONS

If a Class Member held Lexmark common stock at the beginning of the Class Period or made multiple purchases, acquisitions or sales of Lexmark common stock during or after the Class Period, the starting point for calculating a claimant's Recognized Loss Amount is to match the claimant's holdings, purchases, and acquisitions to their sales using the FIFO (*i.e.*, first-in-first-out) method. Under the FIFO method, Lexmark common stock sold during the Class Period will be matched, in chronological order, first against Lexmark common stock held at the beginning of the Class Period. The remaining sales of Lexmark common stock during the Class Period will then be matched, in chronological order against the respective Lexmark common stock purchased or acquired during the Class Period.

Purchases or acquisitions and sales of Lexmark common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance or operation of law of Lexmark common stock during the Class Period shall not be deemed a purchase, acquisition or sale of Lexmark common stock for the calculation of Recognized Loss Amount, unless (i) the donor or decedent purchased or otherwise acquired such Lexmark common stock during the Class Period; (ii) no Proof of Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such Lexmark common stock; and (iii) it is specifically so provided in the instrument of gift or assignment.

If a claimant had a market gain with respect to his, her, or its overall transactions in Lexmark common stock during the Class Period, the value of the claimant's Recognized Loss Amount shall be zero. Such claimants shall be bound by the Settlement. If a claimant suffered an overall market loss with respect to his, her, or its overall transactions in Lexmark common stock during the Class Period, but that market loss was less than the total Recognized Loss Amount

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<sup>3</sup> Under Section 21(D)(e)(1) of the Exchange Act, "in any private action arising under this Act in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the statute, Recognized Loss Amounts for Lexmark common stock are reduced to an appropriate extent by taking into account the closing prices of Lexmark common stock during the 90-day look-back period. The mean (average) closing price for Lexmark common stock during this 90-day look-back period was \$30.92 per share as shown in the Table below.

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calculated above, then the claimant's Recognized Loss Amount shall be limited to the amount of the actual market loss.

An Authorized Claimant's Recognized Loss Amount shall be the amount used to calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. If the sum total of Recognized Loss Amount of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Loss Amount divided by the total of the Recognized Loss Amounts of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Given the costs of distribution, the Net Settlement Fund will be allocated among all Authorized Claimants whose distribution amount is \$10.00 or greater.

Distributions will be made to Authorized Claimants after all claims have been processed, after the Court has finally approved the Settlement, and after any appeals are resolved. If there is any balance remaining in the Net Settlement Fund after a reasonable amount of time from the initial date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), the Claims Administrator shall, if feasible, reallocate such balance among Authorized Claimants in an equitable and economic fashion. These redistributions shall be repeated until the balance remaining in the Net Settlement Fund is no longer economically feasible to distribute to Class Members. Thereafter, any *de minimis* balance which still remains in the Net Settlement Fund shall be donated to the New York Bar Foundation.

Please contact the Claims Administrator or Lead Counsel if you disagree with any determinations made by the Claims Administrator regarding your Proof of Claim. If you are dissatisfied with the determinations, you may ask the Court, which retains jurisdiction over all Class Members and the claims administration process, to decide the issue by submitting a written request.

The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

<b>Date</b>	<b>Price</b>	<b>Average Closing Price</b>
7/21/2015	\$37.75	\$37.75
7/22/2015	\$36.25	\$37.00
7/23/2015	\$35.39	\$36.46
7/24/2015	\$33.91	\$35.83
7/27/2015	\$33.54	\$35.37
7/28/2015	\$33.91	\$35.13
7/29/2015	\$34.48	\$35.03
7/30/2015	\$34.11	\$34.92

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<b>Date</b>	<b>Price</b>	<b>Average Closing Price</b>
7/31/2015	\$33.99	\$34.81
8/3/2015	\$33.58	\$34.69
8/4/2015	\$32.53	\$34.49
8/5/2015	\$33.37	\$34.40
8/6/2015	\$33.05	\$34.30
8/7/2015	\$32.41	\$34.16
8/10/2015	\$33.01	\$34.09
8/11/2015	\$32.14	\$33.96
8/12/2015	\$32.60	\$33.88
8/13/2015	\$32.13	\$33.79
8/14/2015	\$32.48	\$33.72
8/17/2015	\$32.40	\$33.65
8/18/2015	\$32.14	\$33.58
8/19/2015	\$30.89	\$33.46
8/20/2015	\$30.24	\$33.32
8/21/2015	\$29.16	\$33.14
8/24/2015	\$28.93	\$32.98
8/25/2015	\$28.18	\$32.79
8/26/2015	\$28.87	\$32.65
8/27/2015	\$29.78	\$32.54
8/28/2015	\$29.97	\$32.45
8/31/2015	\$29.98	\$32.37
9/1/2015	\$28.13	\$32.24
9/2/2015	\$28.50	\$32.12
9/3/2015	\$28.81	\$32.02
9/4/2015	\$28.34	\$31.91
9/8/2015	\$28.96	\$31.83
9/9/2015	\$28.92	\$31.75
9/10/2015	\$28.90	\$31.67
9/11/2015	\$29.22	\$31.60
9/14/2015	\$28.97	\$31.54
9/15/2015	\$29.38	\$31.48
9/16/2015	\$30.12	\$31.45
9/17/2015	\$30.20	\$31.42
9/18/2015	\$29.03	\$31.36
9/21/2015	\$29.05	\$31.31
9/22/2015	\$28.76	\$31.25
9/23/2015	\$28.40	\$31.19

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<b>Date</b>	<b>Price</b>	<b>Average Closing Price</b>
9/24/2015	\$28.56	\$31.14
9/25/2015	\$28.54	\$31.08
9/28/2015	\$28.08	\$31.02
9/29/2015	\$27.92	\$30.96
9/30/2015	\$28.98	\$30.92
10/1/2015	\$29.21	\$30.89
10/2/2015	\$29.96	\$30.87
10/5/2015	\$31.04	\$30.87
10/6/2015	\$31.25	\$30.88
10/7/2015	\$31.51	\$30.89
10/8/2015	\$31.58	\$30.90
10/9/2015	\$31.65	\$30.92
10/12/2015	\$31.17	\$30.92
10/13/2015	\$30.90	\$30.92
10/14/2015	\$30.77	\$30.92
10/15/2015	\$30.84	\$30.92
10/16/2015	\$31.00	\$30.92

**DO I NEED TO CONTACT LEAD COUNSEL IN ORDER TO PARTICIPATE IN DISTRIBUTION OF THE SETTLEMENT FUND?**

No. If you have received this Notice and timely submit your Proof of Claim to the designated address, you need not contact Lead Counsel. If your address changes, please contact the Claims Administrator at:

*Lexmark Securities Settlement*  
c/o A.B. Data, Ltd.  
P.O. Box 173100  
Milwaukee, WI 53217  
Telephone: 877-829-4296  
www.LexmarkSecuritiesSettlement.com

**THERE WILL BE NO PAYMENTS IF THE STIPULATION IS TERMINATED**

The Stipulation may be terminated under several circumstances outlined in it. If the Stipulation is terminated, the Litigation will proceed as if the Stipulation had not been entered into.

**WHAT ARE THE REASONS FOR SETTLEMENT?**

The Settlement was reached after contested motion practice directed to the sufficiency of Lead Plaintiff's claims. The parties also completed certain document discovery. Nevertheless,

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the Court has not reached any final decisions in connection with Lead Plaintiff's claims against Defendants. Instead, Lead Plaintiff and Defendants have agreed to this Settlement, which was reached with the substantial assistance of a highly respected mediator. In reaching the Settlement, the parties have avoided the cost, delay and uncertainty of further litigation.

As in any litigation, Lead Plaintiff and the Class would face an uncertain outcome if they did not agree to the Settlement. If Lead Plaintiff succeeded at trial, Defendants would likely file appeals that would postpone final resolution of the case. Continuation of the Litigation against Defendants could result in a judgment greater than this Settlement. Conversely, continuing the case could result in no recovery at all or a recovery that is less than the amount of the Settlement.

Lead Plaintiff and Lead Counsel believe that this Settlement is fair and reasonable to the Members of the Class. They have reached this conclusion for several reasons. Specifically, if the Settlement is approved, the Class will receive a certain and immediate monetary recovery. Additionally, Lead Counsel believes that the significant and immediate benefits of the Settlement, when weighed against the significant risk, delay and uncertainty of continued litigation, are a very favorable result for the Class.

Defendants are entering into this Settlement because it would be beneficial to avoid the burden, inconvenience, and expense associated with continuing the Litigation, and the uncertainty and risks inherent in any litigation. Defendants have 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 the Stipulation.

### **WHO REPRESENTS THE CLASS?**

The following attorneys are counsel for the Class:

Theodore J. Pintar  
ROBBINS GELLER RUDMAN & DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 800/449-4900

If you have any questions about the Litigation, or the Settlement, you are entitled to consult with Lead Counsel by contacting counsel at the phone number listed above.

You may obtain a copy of the Stipulation by contacting the Claims Administrator at:

*Lexmark Securities Settlement*  
c/o A.B. Data, Ltd.  
P.O. Box 173100  
Milwaukee, WI 53217  
Telephone: 877-829-4296  
[www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

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OR VISIT [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)



### **HOW WILL THE LEAD PLAINTIFF'S LAWYERS BE PAID?**

Lead Counsel will file a motion for an award of attorneys' fees and expenses that will be considered at the Settlement Hearing. Lead Counsel was assisted by the firm of Labaton Sucharow, LLP, who appeared as Additional Counsel in the case (collectively, "Plaintiffs' Counsel"). Lead Counsel will apply for an attorneys' fee award on behalf of Plaintiffs' Counsel in the amount of up to twenty-five percent (25%) of the Settlement Amount, plus payment of Plaintiffs' Counsel's charges and expenses incurred in connection with this Litigation in an amount not to exceed \$300,000, including any award(s) to Lead Plaintiff of no more than \$5,000 pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with its representation of the Class. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

The attorneys' fees and charges and expenses requested will be the only payment to Plaintiffs' Counsel for their efforts in achieving this outstanding Settlement and for their risk in undertaking this representation on a wholly contingent basis. The fees requested will compensate Plaintiffs' Counsel for their work in achieving the Settlement. The Court will decide what constitutes a reasonable fee award and may award less than the amount requested by Lead Counsel.

### **HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?**

You may request to be excluded from the Class. To do so, you must mail a written request stating that you wish to be excluded from the Class to:

*Lexmark Securities Settlement*  
Claims Administrator  
c/o A.B. Data, Ltd.  
EXCLUSIONS  
P.O. Box 173100  
Milwaukee, WI 53217

The request for exclusion must state: (1) your name, address, and telephone number; (2) all purchases, acquisitions and sales of Lexmark common stock made from August 1, 2014 through July 20, 2015, inclusive, including the dates and prices of each purchase, acquisition or sale, and the amount of Lexmark common stock purchased, otherwise acquired or sold; and (3) that you wish to be excluded from the Class. ***YOUR EXCLUSION REQUEST MUST BE RECEIVED ON OR BEFORE \_\_\_\_\_, 2020.*** If you submit a valid and timely request for exclusion, you shall have no rights under the Settlement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment.

If you exclude yourself from the Class, you should understand that Defendants and the other Released Persons will have the right to assert any and all defenses they may have to any

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claims that you may seek to assert, including, without limitation, the defense that any such claims are untimely under the applicable statutes of limitations or statutes of repose.

Excluding yourself from the Class is the only option that allows you to be part of any other current or future lawsuit against Defendants or any of the other Released Persons concerning the Released Claims. Please note, however, that if you decide to exclude yourself from the Class, you may be time-barred from asserting the claims covered by the Litigation by applicable statutes of limitations or statutes of repose.

**CAN I OBJECT TO THE SETTLEMENT, THE REQUESTED ATTORNEYS' FEES, THE REQUESTED PAYMENT OF EXPENSES AND/OR THE PLAN OF ALLOCATION?**

Yes. If you are a Class Member and do not exclude yourself from the Class, you may object to the terms of the Settlement. Whether or not you object to the terms of the Settlement, you may also object to the requested attorneys' fees, charges, and expenses, Lead Plaintiff's request for an award for representing the Class, and/or the Plan of Allocation. In order for any objection to be considered, you must file a written statement, accompanied by proof of Class membership, with the Court and send a copy to Lead Counsel and Defendants' Counsel, at the addresses listed below **by \_\_\_\_\_, 2020**. The objection must state whether it applies only to the objector, to a specific subset of the Class, or to the entire Class. The objection must also state with specificity the grounds for the objection. The Court's address is Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007; Lead Counsel's address is Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, c/o Theodore J. Pinter; Defendants' Counsel's address is O'Melveny & Myers LLP, Times Square Tower, 7 Times Square, New York, NY 10036, c/o William J. Sushon. Attendance at the Settlement Hearing is not necessary; however, persons wishing to be heard orally at the Settlement Hearing are required to indicate in their written objection their intention to appear at the hearing and identify any witnesses they may call to testify and exhibits, if any, they intend to introduce into evidence.

**WHAT ARE MY RIGHTS AND OBLIGATIONS UNDER THE SETTLEMENT?**

If you are a Class Member and you do not exclude yourself from the Class, you may receive the benefit of, and you will be bound by, the terms of the Settlement described in this Notice, upon approval by the Court.

**HOW CAN I GET A PAYMENT?**

In order to qualify for a payment, you must timely complete and return the Proof of Claim that accompanies this Notice. A Proof of Claim is enclosed with this Notice and also may be downloaded at [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com). Read the instructions carefully; fill out the Proof of Claim; sign it; and mail or submit it online so that it is **postmarked (if mailed) or received (if submitted online) no later than \_\_\_\_\_, 2020**. The Proof of Claim and Release

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may be submitted online at [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com). If you do not submit a timely Proof of Claim with all of the required information, you will not receive a payment from the Settlement Fund; however, unless you expressly exclude yourself from the Class as described above, you will still be bound in all other respects by the Settlement, the Judgment, and the release contained in them.

### **WHAT CLAIMS WILL BE RELEASED BY THE SETTLEMENT?**

If the Settlement is approved by the Court, the Court will enter a Judgment. If the Judgment becomes Final pursuant to the terms of the Stipulation, all Class Members shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged any and all of the Released Persons from all Released Claims.

- “Released Claims” means any and all claims, demands, rights, causes of action or liabilities of every nature and description whatsoever (including Unknown Plaintiffs’ Claims as set forth below), that could have been asserted in any forum, whether foreign or domestic, whether based on or arising under federal, state, local, or foreign statutory or common law, rule or regulation, whether fixed or contingent, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, based on, arising from or relating to: (i) the purchase or acquisition of the common stock of Lexmark from August 1, 2014 to July 20, 2015, inclusive; and (ii) any of the allegations, acts, transactions, facts, events, matters, occurrences, representations or omissions involved, set forth, alleged or referred to, in this Litigation, or that could have been alleged in this Litigation. Released Claims does not include claims to enforce the Settlement.
- “Related Parties” means each of a Defendant’s respective present and former parents, subsidiaries, divisions and affiliates and the respective present and former employees, members, partners, principals, officers, directors, attorneys, advisors, accountants, agents, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives and assigns of each of them, in their capacity as such.
- “Released Persons” means each and all of the Defendants and their Related Parties.
- “Unknown Plaintiffs’ Claims” means any Released Claims which Lead Plaintiff or any Class Members do 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 settlement with and release of the Released Persons, or might have affected his, her or its decision with respect to this Settlement, including, without limitation, any decision not to object to this Settlement or seek exclusion from the Class. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff shall

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expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code § 1542, which provides:

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

Lead Plaintiff shall expressly waive and each of the Class Members 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. Lead Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly settle and release and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

### **THE SETTLEMENT HEARING**

The Court will hold a Settlement Hearing, which the Court may require or permit to be conducted as a telephonic hearing in light of the ongoing exigent circumstances caused by the COVID-19 pandemic, on \_\_\_\_\_, 2020, at \_\_\_\_\_.m., before the Honorable William H. Pauley, III at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007, for the purpose of determining whether: (1) the Settlement as set forth in the Stipulation for \$12,000,000 in cash should be approved by the Court as fair, reasonable and adequate; (2) the Class should be finally certified pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure for purposes of settlement only; (3) Judgment as provided under the Stipulation should be entered; (4) to award Lead Counsel attorneys' fees and expenses out of the Settlement Fund and, if so, in what amount; (5) to award Lead Plaintiff an amount pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with its representation of the Class out of the Settlement Fund and, if so, in what amount; and (6) the Plan

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of Allocation should be approved by the Court. The Court may adjourn or continue the Settlement Hearing without further notice to Members of the Class.

Any Class Member may appear at the Settlement Hearing and be heard on any of the foregoing matters; provided, however, that no such person shall be heard unless his, her, or its objection is made in writing and is filed, together with proof of membership in the Class and with copies of all other papers and briefs to be submitted by him, her, or it to the Court at the Settlement, with the Court no later than \_\_\_\_\_, 2020, and showing proof of service on the following counsel:

Theodore J. Pintar  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101

William J. Sushon  
O'MELVENY & MYERS LLP  
7 Times Square  
New York, NY 10036

*Attorneys for Lead Plaintiff*

*Attorneys for Defendants*

In light of the ongoing exigent circumstances caused by the COVID-19 pandemic, **the Court may require or permit attendance at the Settlement Hearing by telephone.** If the Court requires or permits telephonic participation in the Settlement Hearing, the dial-in number for the Settlement Hearing will be posted on [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com). Class Members who intend to appear at the Settlement Hearing are advised to visit [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com) for updates.

Unless otherwise directed by the Court, any Class Member who does not make his, her or its objection in the manner provided shall be deemed to have waived all objections to this Settlement and shall be foreclosed from raising (in this or any other proceeding or on any appeal) any objection and any untimely objection shall be barred.

If you hire an attorney (at your own expense) to represent you for purposes of objecting, your attorney must serve a notice of appearance on counsel listed above and file it with the Court (at the address set out above) by no later than \_\_\_\_\_, 2020.

### **INJUNCTION**

The Court has issued an order enjoining all Class Members from instituting, commencing, maintaining or prosecuting any action in any court or tribunal that asserts Released Claims against any Released Persons, pending final determination by the Court of whether the Settlement should be approved.

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OR VISIT [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

## HOW DO I OBTAIN ADDITIONAL INFORMATION?

This Notice contains only a summary of the terms of the proposed Settlement. The records in this Litigation may be examined and copied at any time during regular office hours, and subject to customary copying fees, at the Clerk of the United States District Court for the Southern District of New York. For a fee, all papers filed in this Litigation are available at [www.pacer.gov](http://www.pacer.gov). In addition, all of the Settlement documents, including the Stipulation, this Notice, the Proof of Claim and proposed Judgment may be obtained by contacting the Claims Administrator at:

*Lexmark Securities Settlement*  
c/o A.B. Data, Ltd.  
P.O. Box 173100  
Milwaukee, WI 53217  
Email: [info@LexmarkSecuritiesSettlement.com](mailto:info@LexmarkSecuritiesSettlement.com)  
Telephone: 877-829-4296  
[www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

In addition, you may contact Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1(800)449-4900, if you have any questions about the Litigation or the Settlement.

## DO NOT WRITE TO OR TELEPHONE THE COURT FOR INFORMATION

### SPECIAL NOTICE TO BANKS, BROKERS, AND OTHER NOMINEES

If you hold any Lexmark common stock purchased or acquired during the Class Period, as a nominee for a beneficial owner, then, within seven (7) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice by First-Class Mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

*Lexmark Securities Settlement*  
c/o A.B. Data, Ltd.  
P.O. Box 173100  
Milwaukee, WI 53217  
E-mail: [info@LexmarkSecuritiesSettlement.com](mailto:info@LexmarkSecuritiesSettlement.com)  
Telephone: 877-829-4296  
[www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

If you choose to mail the Notice and Proof of Claim yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the

QUESTIONS? PLEASE CALL 877-829-4296  
OR VISIT [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DATED: \_\_\_\_\_

BY ORDER OF THE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

QUESTIONS? PLEASE CALL 877-829-4296  
OR VISIT [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

# **EXHIBIT A-2**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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OKLAHOMA FIREFIGHTERS PENSION	:	Civil Action No. 1:17-cv-05543-WHP
AND RETIREMENT SYSTEM, Individually	:	
and on Behalf of All Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	PROOF OF CLAIM AND RELEASE
	:	
vs.	:	EXHIBIT A-2
	:	
LEXMARK INTERNATIONAL, INC., PAUL	:	
A. ROOKE, DAVID REEDER, and GARY	:	
STROMQUIST,	:	
	:	
Defendants.	:	

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**I. GENERAL INSTRUCTIONS**

1. To recover as a Member of the Class based on your claims in the action entitled *Oklahoma Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc., et al.*, No. 1:17-cv-05543-WHP (S.D.N.Y.) (the "Litigation"), you must complete and, on page \_\_\_ hereof, sign this Proof of Claim and Release form ("Proof of Claim"). If you fail to submit a timely and properly addressed (as set forth in paragraph 3 below) Proof of Claim, your claim may be rejected and you may not receive any recovery from the Net Settlement Fund created in connection with the proposed Settlement.

2. Submission of this Proof of Claim, however, does not assure that you will share in the proceeds of the Settlement of the Litigation.

3. **YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED PROOF OF CLAIM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN \_\_\_\_\_, 2020, ADDRESSED AS FOLLOWS:**

*Lexmark Securities Settlement*  
Claims Administrator  
c/o A.B. Data, Ltd.  
P.O. Box 173100  
Milwaukee, WI 53217  
[www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

If you are NOT a Member of the Class (as defined in the Notice of Pendency and Proposed Settlement of Class Action ("Notice")) DO NOT submit a Proof of Claim.

4. If you are a Member of the Class and you do not timely request exclusion in response to the Notice, you are bound by the terms of any judgment entered in the Litigation, including the releases provided therein, **WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM.**

## **II. CLAIMANT IDENTIFICATION**

If you purchased or acquired Lexmark International, Inc. (“Lexmark”) common stock and held the certificate(s) in your name, you are the beneficial purchaser or acquirer as well as the record purchaser or acquirer. If, however, you purchased or acquired Lexmark common stock and the certificate(s) were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser or acquirer and the third party is the record purchaser or acquirer.

Use Part I of this form entitled “Claimant Identification” to identify each beneficial purchaser or acquirer of Lexmark common stock that forms the basis of this claim, as well as the purchaser or acquirer of record if different. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S) OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE LEXMARK COMMON STOCK UPON WHICH THIS CLAIM IS BASED.**

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

## **III. CLAIM FORM**

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

On the schedules, provide all of the requested information with respect to *all* of your purchases or acquisitions and *all* of your sales of Lexmark common stock which took place during the period from August 1, 2014 through and including October 16, 2015, inclusive, whether such transactions resulted in a profit or a loss. You must also provide all of the requested information with respect to *all* of the Lexmark common stock you held at the close of trading on July 31, 2014, July 20, 2015 and October 16, 2015. Failure to report all such transactions may result in the rejection of your claim.

List each transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

The date of covering a “short sale” is deemed to be the date of purchase of Lexmark common stock. The date of a “short sale” is deemed to be the date of sale of Lexmark common stock.

Copies of broker confirmations or other documentation of your transactions in Lexmark common stock should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. All claimants **MUST** submit a manually signed paper Proof of Claim whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at 1-877-829-4296 to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*Oklahoma Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc., et al.*

No. 1:17-cv-05543-WHP

PROOF OF CLAIM AND RELEASE

**Must Be Postmarked (if Mailed) or Received (if Filed Electronically) No Later Than:**

\_\_\_\_\_, 2020

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

\_\_\_\_\_  
Beneficial Owner's Name (First, Middle, Last)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State or Province

\_\_\_\_\_  
Zip Code or Postal Code

\_\_\_\_\_  
Country

\_\_\_\_\_  
Social Security Number or  
Taxpayer Identification Number

\_\_\_\_\_  
Individual  
Corporation/Other

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (work)

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (home)

\_\_\_\_\_  
Record Owner's Name (if different from beneficial owner listed above)

PART II: SCHEDULE OF TRANSACTIONS IN LEXMARK COMMON STOCK

- A. Number of shares of Lexmark common stock held as of July 31, 2014: \_\_\_\_\_
- B. Purchases or acquisitions of Lexmark common stock (August 1, 2014 – October 16, 2015, inclusive):

Trade Date Month Day Year	Number of Shares Purchased or Acquired	Purchase or Acquisition Price per Share	Total Purchase or Acquisition Price
1. _____	1. _____	1. _____	1. _____
2. _____	2. _____	2. _____	2. _____
3. _____	3. _____	3. _____	3. _____

**IMPORTANT:** If any purchase listed covered a “short sale,” please mark Yes.  Yes

- C. Sales of Lexmark common stock (August 1, 2014 – October 16, 2015, inclusive):

Trade Date Month Day Year	Number of Shares Sold	Sale Price per Share	Total Sales Price
1. _____	1. _____	1. _____	1. _____
2. _____	2. _____	2. _____	2. _____
3. _____	3. _____	3. _____	3. _____

- D. Number of shares of Lexmark common stock held at the close of trading on July 20, 2015: \_\_\_\_\_
- E. Number of shares of Lexmark common stock held at the close of trading on October 16, 2015: \_\_\_\_\_

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

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

I (We) submit this Proof of Claim under the terms of the Stipulation and Agreement of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of New York, with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator to support this claim (including transactions in other Lexmark securities) if requested to do so. I (We) have not submitted any other claim covering the same purchases, acquisitions or sales of Lexmark common stock during the Class Period and know of no other person having done so on my (our) behalf.

**V. RELEASE**

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge from the Released Claims each and all of the “Released Persons,” defined as each and all of the Defendants and their Related Parties. “Related Parties” means each of a Defendant’s respective present and former parents, subsidiaries, divisions and affiliates and the respective present and former employees, members, partners, principals, officers, directors, attorneys, advisors, accountants, agents, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives and assigns of each of them, in their capacity as such. “Released Claims” means any and all claims, demands, rights, causes of action or liabilities of every nature and description whatsoever (including Unknown Plaintiffs’ Claims as set forth below), that could have been asserted in any forum, whether foreign or domestic, whether based on or arising under federal, state, local, or foreign statutory or common law, rule or regulation, whether fixed or contingent, foreseen or

unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, based on, arising from or relating to: (i) the purchase or acquisition of the common stock of Lexmark from August 1, 2014 to July 20, 2015, inclusive; and (ii) any of the allegations, acts, transactions, facts, events, matters, occurrences, representations or omissions involved, set forth, alleged or referred to, in this Litigation, or that could have been alleged in this Litigation. Released Claims does not include claims to enforce the Settlement.

2. “Unknown Plaintiffs’ Claims” means any Released Claims which Lead Plaintiff or any Class Members do 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 settlement with and release of the Released Persons, or might have affected his, her or its decision with respect to this Settlement, including, without limitation, any decision not to object to this Settlement or seek exclusion from the Class. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Lead Plaintiff shall expressly waive and each of the Class Members 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. Lead Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he,



she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly settle and release and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

3. This release shall be of no force or effect unless and until the Court approves the Stipulation and Agreement of Settlement and the Settlement becomes effective on the Effective Date (as defined in the Stipulation and Agreement of Settlement).

4. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

5. I (We) hereby warrant and represent that I (we) have included the information requested about all of my (our) transactions in Lexmark common stock which are the subject of this claim, which occurred during the Class Period as well as the opening and closing positions in such securities held by me (us) on the dates requested in this Proof of Claim.

6. I (We) certify that I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code. (Note: If you have been

notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the prior sentence.)

I declare under penalty of perjury under the laws of the United States of America that all of the foregoing information supplied on this Proof of Claim by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_  
(Month/Year)

in \_\_\_\_\_  
(City) (State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing,  
e.g., Beneficial Purchaser or Acquirer, Executor  
or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Please sign the above release and declaration.</li> <li>2. If this claim is being made on behalf of Joint Claimants, then both must sign.</li> <li>3. Remember to attach copies of supporting documentation, if available.</li> <li>4. <b>Do not send</b> originals of certificates.</li> <li>5. Keep a copy of your Proof of Claim and all supporting documentation for your records.</li> </ol> | <ol style="list-style-type: none"> <li>6. If you desire an acknowledgment of receipt of your Proof of Claim, please send it Certified Mail, Return Receipt Requested.</li> <li>7. If you move, please send your new address to:<br/><br/><i>Lexmark Securities Settlement</i><br/>Claims Administrator<br/>c/o A.B. Data, Ltd.<br/>P.O. Box 173100<br/>Milwaukee, WI 53217</li> <li>8. <b>Do not use red pen or highlighter</b> on the Proof of Claim or supporting documentation.</li> </ol> |
|---|---|

**THIS PROOF OF CLAIM MUST BE SUBMITTED ONLINE OR, IF MAILED,  
POSTMARKED NO LATER THAN \_\_\_\_\_, 2020 ADDRESSED AS FOLLOWS:**

*Lexmark Securities Settlement*  
Claims Administrator  
c/o A.B. Data, Ltd.  
P.O. Box 173100  
Milwaukee, WI 53217  
[www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com)

# **EXHIBIT A-3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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OKLAHOMA FIREFIGHTERS PENSION	:	X
AND RETIREMENT SYSTEM, Individually	:	Civil Action No. 1:17-cv-05543-WHP
and on Behalf of All Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	SUMMARY NOTICE
	:	
vs.	:	EXHIBIT A-3
	:	
LEXMARK INTERNATIONAL, INC., PAUL	:	
A. ROOKE, DAVID REEDER, and GARY	:	
STROMQUIST,	:	
	:	
Defendants.	:	

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X

TO: ALL PERSONS AND ENTITIES THAT PURCHASED OR ACQUIRED LEXMARK INTERNATIONAL, INC. (“LEXMARK”) COMMON STOCK DURING THE PERIOD FROM AUGUST 1, 2014 TO JULY 20, 2015, INCLUSIVE (THE “CLASS PERIOD”)

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Southern District of New York, that a hearing, which the Court may require or permit to be conducted as a telephonic hearing in light of the ongoing exigent circumstances caused by the COVID-19 pandemic, will be held on \_\_\_\_\_, 2020, at \_\_\_\_\_, \_m., before the Honorable William H. Pauley, III, United States District Judge, at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007, for the purpose of determining: (1) whether the proposed Settlement of the above-captioned Litigation, as set forth in the settlement agreement reached between the parties, consisting of Twelve Million Dollars (\$12,000,000.00) in cash, should be approved as fair, reasonable, and adequate to the Members of the Class; (2) whether the release by Class Members of claims as set forth in the settlement agreement should be authorized; (3) whether the proposed plan to distribute the settlement proceeds (the “Plan of Allocation”) is fair, reasonable, and adequate; (4) whether the application by Lead Plaintiff’s counsel for an award of attorneys’ fees, charges, and expenses and the award to Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class should be approved; and (5) whether the Judgment, in the form attached to the settlement agreement, should be entered.

Please note that the date, time and location of the Settlement Hearing are subject to change without further notice. In light of the ongoing exigent circumstances caused by the COVID-19 pandemic, the Court may require or permit attendance at the Settlement Hearing by telephone. If the Court requires or permits telephonic participation in the Settlement Hearing, the dial-in number for the Settlement Hearing will be posted on [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com). Class

Members who intend to appear at the Settlement Hearing are advised to visit [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com) for updates.

IF YOU PURCHASED OR ACQUIRED ANY OF THE COMMON STOCK OF LEXMARK DURING THE PERIOD FROM AUGUST 1, 2014 THROUGH JULY 20, 2015, INCLUSIVE, YOUR RIGHTS WILL BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION.

If you have not received a detailed Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and a copy of the Proof of Claim and Release form (“Proof of Claim”), you may obtain copies by writing to *Lexmark Securities Settlement*, Claims Administrator, c/o A.B. Data, Ltd., P.O. Box 173100, Milwaukee, WI 53217, or on the internet at [www.LexmarkSecuritiesSettlement.com](http://www.LexmarkSecuritiesSettlement.com).

If you are a Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim by mail (*postmarked no later than \_\_\_\_\_, 2020*) or submitted electronically *no later than \_\_\_\_\_, 2020*, establishing that you are entitled to recovery. Unless the deadline is extended, your failure to submit your Proof of Claim by the above deadlines will preclude you from receiving any payment from the Settlement.

If you are a Class Member and you desire to be excluded from the Class, you must submit a request for exclusion such that it is *received no later than \_\_\_\_\_, 2020*, in the manner and form explained in the detailed Notice, referred to above. All Members of the Class who do not timely and validly request exclusion from the Class will be bound by any judgment entered in the Litigation pursuant to the Stipulation and Agreement of Settlement.

Any objection to the Settlement, the Plan of Allocation of settlement proceeds, or the fee and expense application must be mailed to each of the following recipients, *received no later than* \_\_\_\_\_, 2020:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
DANIEL PATRICK MOYNIHAN  
UNITED STATES COURTHOUSE  
500 Pearl Street  
New York, NY 10007

*Lead Counsel:*

ROBBINS GELLER RUDMAN  
& DOWD LLP  
THEODORE J. PINTAR  
655 West Broadway, Suite 1900  
San Diego, CA 92101

*Counsel for Defendants:*

O'MELVENY & MYERS LLP  
WILLIAM SUSHON  
7 Times Square  
New York, NY 10036

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE OR DEFENDANTS REGARDING THIS NOTICE.** If you have any questions about the Settlement, you may contact Lead Counsel at the address listed above.

DATED: \_\_\_\_\_

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



# **EXHIBIT B**



WHEREAS, this matter came before the Court pursuant to the Order Preliminarily Approving Settlement Pursuant to Fed. R. Civ. P. 23(e)(1) and Permitting Notice to the Class (“Order”) dated \_\_\_\_\_, 2020 on the application of Lead Plaintiff for approval of the Settlement set forth in the Stipulation and Agreement of Settlement dated as of May 8, 2020 (the “Stipulation”). Due and adequate notice having been given to the Class as required in the Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Judgment and Order of Dismissal with Prejudice (“Judgment”) incorporates by reference: (a) the Stipulation; and (b) the Notice of Pendency and Proposed Settlement of Class Action (“Notice”), Summary Notice, and Declaration of the Claims Administrator filed with this Court on \_\_\_\_\_, 2020. All terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Members of the Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby affirms its determinations in the Order and finally certifies for purposes of settlement only a Class defined as all those who purchased or otherwise acquired Lexmark common stock between August 1, 2014 and July 20, 2015, inclusive, and were damaged thereby. Excluded from the Class are Defendants, the officers and directors of Lexmark at all relevant times, members of their immediate families, any entity in which any Defendant owns a greater than 50% equity interest, and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party. Also excluded from the Class are those Persons who timely and validly requested exclusion from

the Class and are listed on Exhibit 1 hereto as having submitted an exclusion request allowed by the Court.

4. This Court hereby affirms its determinations in the Order and finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Class it seeks to represent; (d) Lead Plaintiff and Lead Counsel have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the Members of the Class predominate over any questions affecting only individual Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of settlement only, the Court hereby affirms its determinations in the Order and finally appoints Lead Plaintiff District No. 9, I.A. of M & A.W. Pension Trust as Class Representative for the Class and Robbins Geller Rudman & Dowd LLP as Class Counsel for the Class.

6. The Notice given to the Class was the best notice practicable under the circumstances, including the individual notice to all Members of the Class who could be identified through reasonable effort. The Notice provided the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure (including Rules 23(c)-(e)), the United States Constitution (including the Due Process Clause), Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as added by the Private Securities Litigation Reform Act of 1995, the Rules of this Court, and other applicable law.

7. [There have been \_\_ objections to the Settlement, each of which was addressed by the Court at the Settlement Hearing.]

8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby affirms its determinations in the Order, fully and finally approves the Settlement set forth in the Stipulation in all respects and finds that:

(a) the Stipulation and the Settlement contained therein, are, in all respects, fair, reasonable, and adequate, and in the best interest of the Class;

(b) there was no collusion in connection with the Settlement;

(c) the Settlement was the product of informed, arm's-length negotiations among competent, able counsel; and

(d) the record is sufficiently developed and complete to have enabled the Lead Plaintiff and Defendants to have adequately evaluated and considered their positions.

9. Accordingly, the Court authorizes and directs implementation and performance of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto) who have validly and timely requested exclusion from the Class, the Court hereby dismisses the Litigation and all Released Claims of the Class with prejudice. The Settling Parties are to bear their own costs, except as and to the extent provided in the Stipulation and herein.

10. The Releases set forth in Section 4 of the Stipulation, together with the definitions contained in the Stipulation relating thereto, are expressly incorporated herein by reference. Accordingly, this Court orders that:

(a) Upon the Effective Date, and as provided in the Stipulation, Lead Plaintiff shall, and each of the Class Members shall be deemed to have, and by operation of this Judgment

shall have, fully, finally, and forever released, relinquished, and discharged any and all Released Claims (including Unknown Plaintiffs' Claims) against the Released Persons, whether or not such Class Member executed and delivered the Proof of Claim and Release form or shares in the Settlement Fund. Claims to enforce the terms of the Stipulation are not released.

(b) Lead Plaintiff and all Class Members, and anyone claiming through or on behalf of any of them, are hereby 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 any of the Released Claims against any of the Released Persons.

(c) Upon the Effective Date, and as provided in the Stipulation, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged Lead Plaintiff, each and all of the Class Members, and Lead Plaintiff's counsel from all claims and causes of action of every nature and description (including Unknown Defendants' Claims) whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Defendants, except for claims relating to the enforcement of the Settlement.

11. Upon the Effective Date, any and all Persons are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim where the alleged injury to that Person is that Person's actual or threatened liability to the Class or a Class Member in the Action), arising out of, based upon, relating to, concerning, or in connection with the Released Claims, against each and every one of the Released Persons, whether arising under state, federal, local, common,

or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Action or any separate action, in this Court or in any other court, arbitration proceeding, administrative proceeding, or other forum; and the Released Persons are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim where the alleged injury to the Released Person is that Released Person's actual or threatened liability to the Class or a Class Member in the Action) arising out of, based upon, relating to, concerning, or in connection with the Released Claims, against any Person other than a Person whose liability to the Class has been extinguished pursuant to the Settlement and Judgment, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Action or any separate action, in this Court or in any other court, arbitration proceeding, administrative proceeding, or other forum. Notwithstanding the foregoing, nothing herein shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation, the Settlement, or the Judgment.

12. Any Plan of Allocation submitted by Lead Counsel or any order entered regarding any attorneys' fees, charges, and expense application or an award to the Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4) shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

13. 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 respective 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 respective Related Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Defendants and/or their respective Related Parties may file the Stipulation and/or this Judgment from this action in any other 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 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, charges, and expenses, and interest in the Litigation, as well as any award to the Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4); (d) all parties herein for the purpose of construing, enforcing, and administering the Stipulation; (e) the Class Members for all matters relating to the Litigation; and (f) other matters related or ancillary to the foregoing. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

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

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated



and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation and the Settlement Fund shall be returned in accordance with the Stipulation.

17. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

18. The Court directs immediate entry of this Judgment by the Clerk of the Court.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE WILLIAM H. PAULEY, III  
UNITED STATES DISTRICT JUDGE