

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

ARCTIC SENTINEL, INC. [f/k/a
Fuhu, Inc.], *et al.*,¹
Debtors.

Chapter 11

Case No. 15-12465-CSS

(Jointly Administered)

STIPULATION RESOLVING (1) CLASS CLAIM OF SCOTT MILLER AND JAMES E. GRIFFIN (CLAIM NO. 177), (2) CLAIM OF D&H DISTRIBUTING CO. (CLAIM NO. 153), (3) CLAIM OF WISTRON CORPORATION AND WISTRON INFOCOMM TECHNOLOGY (AMERICA) CORPORATION (CLAIM NO. 162), (4) CERTAIN ADDITIONAL CLAIMS AMONG THE PARTIES, AND (5) DISALLOWING AND EXPUNGING CLAIMS OF GUTRIDE SAFIER LLP (CLAIM NOS. 165, 166, 167, AND 168)

(1) Saccullo Business Consulting, LLC, the Liquidating Trustee (the “*Liquidating Trustee*”) of the Tablet Liquidating Trust (the “*Liquidating Trust*”), (2) Scott Miller (“*Miller*”) and James E. Griffin IV (“*Griffin*”), collectively, the class representatives (the “*Class Representatives*”) of the certified Class (as defined herein) of purchasers of certain Nabi tablets and of various subclasses of the Class, (3) D&H Distributing Co. (“*D&H*”), (4) Wistron Corporation and Wistron Infocomm Technology (America) Corporation (“*Wistron*”), and (5) Gutride Safier LLP (“*Gutride Safier*”), and collectively with the Class, D&H, and Wistron the “*Claimants*”),² hereby enter into this stipulation (the “*Stipulation*”) and agree as follows:

¹ The Debtors, together with the last four digits of each Debtor’s tax identification number, are: Arctic Sentinel, Inc. [f/k/a Fuhu, Inc.] (7896); Arctic Sentinel Holdings, Inc. [f/k/a Fuhu Holdings, Inc.] (9761); Arctic Sentinel Direct, Inc. [f/k/a Fuhu Direct, Inc.] (2180); and Sentinel Arctic, Inc. f/k/a Nabi, Inc.] (4119).

² The Claimants, together with the Liquidating Trustee shall be defined herein as the “*Parties*”).

RECITALS

I. BACKGROUND

A. On December 7, 2015 (the “**Petition Date**”), Debtors Fuhu, Inc. (“**Fuhu**”), and Fuhu Holdings, Inc., filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (“**Petitions**”) in the U.S. Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). Subsequently, on December 11, 2015, Debtors Fuhu Direct, Inc., and Nabi, Inc. filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

B. On January 22, 2016, the Bankruptcy Court entered an order approving the sale of substantially all of the Debtors’ assets (the “**Sale**”) to Mattel, Inc. (“**Mattel**”) or its designee [Bankruptcy Court Docket No. 345]. That transaction closed on January 29, 2016 (“**Sale Date**”).

C. On November 30, 2016, the Bankruptcy Court entered an order (the “**Confirmation Order**”) confirming the First Amended Plan of Liquidation of the Debtors Pursuant to Chapter 11 of the Bankruptcy Code [Bankruptcy Court Docket No. 892]. Pursuant to the [Confirmation Order], on January 25, 2017 the Tablet Liquidating Trust was established, the Liquidating Trustee was appointed, and substantially all of the Debtors’ remaining assets were transferred to the Liquidating Trust. Pursuant to Paragraph 53 of the Confirmation Order, the Debtors’ bankruptcy estates were substantively consolidated.

II. THE CLASS ACTION

D. On July 7, 2014, Miller filed a putative class action complaint in the Superior Court of the State of California, Los Angeles Division (*Miller v. Fuhu, Inc., Fuhu Holdings, Inc. et al.*, Case No. BC550858, defined herein as the “**Class Action**”). The Class Action alleged six causes of action including: (1) violation of the Consumer Legal Remedies Act, (2) violation of the False Advertising Law, (3) fraud, deceit, and/or misrepresentation, (4) breach of express

warranty, (5) violation of the Song-Beverly Consumer Warranty Act, and (6) deceptive and unlawful trade practices under the California Unfair Competition Law against Debtors Fuhu, Inc. and Fuhu Holdings, Inc. (together, the “*Fuhu Defendants*”). At all times, Miller has been represented by a single law firm, Gutride Safier.

E. On August 8, 2014 the Class Action was removed to the U.S. District Court for Central District of California (Western Division) (the “*District Court*”) and assigned Case No. 14-cv-6119 CAS (ASx) [District Court Docket No. 1].

F. On November 26, 2014, Miller and the Fuhu Defendants entered into a stipulated protective order in the Class Action allowing the parties to designate materials produced in discovery as confidential.

G. On March 5, 2015, Miller filed a first amended complaint in the Class Action, alleging the same six causes of action and adding a seventh cause of action for declaratory judgment based on changes to Fuhu’s online Terms of Service [District Court Docket No. 31].

H. On May 25, 2015, Miller filed the operative second amended complaint (“*Second Amended Complaint*”) in the Class Action [District Court Docket No. 50]. The Second Amended Complaint alleged claims on behalf of Miller and those similarly situated who purchased Nabi tablets for (1) violation of California’s Consumers Legal Remedies Act, Cal. Civil Code § 1750, et seq.; (2) violation of California’s False Advertising Law, Cal. Bus. Prof. Code § 17500, et seq.; (3) common law fraud, deceit, and/or misrepresentation; (4) breach of express warranty, in violation of Cal. Com. Code § 2100, et seq.; (5) breach of the implied warranty of merchantability, in violation of the Song-Beverly Consumer Warranty Act, Cal. Civil Code § 1790, et seq.; (6) violation of California’s Unfair Competition Law, Cal. Bus. Prof. Code §§ 17200, et seq.; and (7) for a declaratory judgment that the Defendants’ Terms of Use

and the arbitration provision contained therein were unconscionable, illegal and unenforceable. Except for the seventh cause of action regarding the arbitration provision, the gravamen of Miller's claims is that the Nabi tablet computers were falsely advertised as being "rechargeable" and suitable and appropriate for use by children, despite the fact that the Fuhu Defendants, and their manufacturers and distribution partners, knew they were being designed and manufactured with defective, substandard charging systems that were prone to failure (including, alleging in certain rare instances, such defects caused burns and fires) and that did not allow the tablets to be reliably recharged.

I. On June 11, 2015, the Fuhu Defendants filed their Answer to the Second Amended Complaint [District Court Docket No. 58]. The Fuhu Defendants denied that Miller's purported classes are certifiable or that Miller or others similarly situated suffered any injury or damage as a result of their actions or alleged omissions. In addition, the Fuhu Defendants asserted 24 affirmative defenses.

J. On June 29, 2015, Miller filed a motion for class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure [District Court Docket No. 82].

K. On October 13, 2015, the Fuhu Defendants filed an opposition [District Court Docket No. 111], to which Miller replied on November 2, 2015 [District Court Docket No. 132].

L. On December 2, 2015, the District Court entered a 39-page decision and order denying Miller's motion seeking to represent a class of certain purchasers of the Nabi tablets, without prejudice. [District Court Docket No. 163].

III. THE CLASS CLAIM

M. On May 31, 2016, Miller filed a motion in the Bankruptcy Court seeking limited relief from the automatic stay to renew his motion for class certification in the District Court, or alternatively for an order applying Bankruptcy Rule 7023 pursuant to Bankruptcy Rule 9014(c) to permit the filing of a renewed motion for class certification in the Bankruptcy Court [Bankruptcy Court Docket No. 616].

N. On June 28, 2016, the Class Representatives filed identical proofs of claim numbered 174, 175, 177 and 178 against each of the four Debtors in the Bankruptcy Court asserting a general unsecured claim in the sum of \$455,664.063.32 arising from the Class Action.

O. On July 7, 2016, the Bankruptcy Court entered an order approving a stipulation (the “**July 7, 2016 Stipulation And Order**”) among the Debtors, the Committee and the Class Representatives. [Bankruptcy Court Docket No. 667]. The July 7, 2016 Stipulation and Order certified the following Class and subclasses for the limited purposes of filing and liquidation of class proofs of claim in the Bankruptcy Court and the distribution of funds, if appropriate, to the Class members, Class Representatives and their counsel to the extent of their respective entitlements thereto. Miller and Griffin were jointly appointed as representatives of each Class and subclass as set forth below:

All persons, who between July 3, 2010 and September 30, 2015 purchased, in the United States, a Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (including Nabi Jr. S) or Nabi DreamTab tablet (the “**Class**”);³

All members of the Class who purchased and registered their Nabi tablet with one or more of the Debtors prior to September 24, 2014 (the “**Unconscionability Subclass**”);

³ The Class excludes, inter alia, purchasers of the Nabi BigTab tablets, purchasers for purpose of resale and purchasers who are affiliates of the Debtors.

All members of the Class who purchased their Nabi tablets from a third-party retailer (the “*Warranty Subclass*”).

P. The above Class and each Subclass (collectively referred to as the “*Class*”) is further subdivided into those members who purchased a Nabi (a.k.a. Nabi 1) or Nabi 2 Tablet (“*First Generation Tablet*”) and those members who purchased a Nabi 2S, Nabi XD, Nabi Jr. (including Nabi Jr. S) or Nabi DreamTab Tablet (“*Second Generation Tablet*”). Miller was appointed to represent the subclasses pertaining to the First Generation Tablets, and Griffin was appointed to represent the subclasses pertaining to the Second Generation Tablets.

Q. The July 7, 2016 Stipulation And Order appointed Gutride Safier as Class counsel (“*Class Counsel*”). It also provided that each of the Class Representatives was authorized to file one or more class proofs of claims asserting general unsecured claims against the Debtors in the bankruptcy cases, but that duplicative claims by Class Representatives against multiple Debtors shall be deemed withdrawn upon consolidation of the Debtors’ estates.

R. On November 3, 2017, the Liquidating Trustee filed an omnibus objection to claims (the “*Objection*”) which included an objection to Claim Nos. 174, 175 and 178 on the grounds they were duplicative of Claim No. 177 [Bankruptcy Court Docket No. 1106]. The Liquidating Trustee did not object to Claim No. 177 filed by the Class against Debtor Arctic Sentinel, Inc. f/k/a Fuhu, Inc.

S. On January 5, 2018, the Bankruptcy Court entered an order disallowing and expunging duplicate Claim Nos. 174, 175 and 178 [Bankruptcy Court Docket No. 1151].

T. The Liquidating Trustee has not yet filed any objection to Claim No. 177, by which the Class Representatives assert a general unsecured claim in the sum of \$455,664.063.32 on behalf of themselves and the members of the Class (the “*Class Members*”).

IV. THE GUTRIDE SAFIER CLAIM

U. On June 28, 2016, Gutride Safier filed identical proofs of claim numbered 165, 166, 167 and 168 against each of the four Debtors in the Bankruptcy Court asserting an administrative priority claim under Section 507(a)(2) of the Bankruptcy Code in the sum of \$82,875.00 (the “*Gutride Safier Claims*”). The Gutride Safier Claims assert that Gutride Safier performed work in this bankruptcy proceeding that substantially benefited the estate.

V. The Liquidating Trustee has not yet filed any objection to the Gutride Safier Claims.

V. THE D&H ACTION

W. On January 29, 2015, D&H filed an action against Fuhu in the Superior Court for the State of California, Los Angeles County, Southwest District styled *D&H Distributing Co. v. Fuhu, Inc., et al.*, Case No. YC070375 (the “*D&H Action*”), alleging claims against Fuhu for breach of contract, breach of the implied covenant of good faith and fair dealing, open book account, goods sold and delivered, and account stated.

X. D&H asserted in the complaint in the D&H Action that it provided distribution and logistics services for Fuhu products. Under the D&H Distribution Agreement, the parties agreed that D&H would purchase Fuhu products from manufacturers designated by Fuhu, and resell those products back to Fuhu to enable it to sell them to certain big box retailers such as Walmart, Target and Best Buy. D&H also alleged that Keen High agreed to manufacture and deliver Fuhu products for sale and delivery to D&H. D&H sought recovery of \$44,201,064.33 from Fuhu representing the alleged balance due and owing on outstanding invoices for sale of Fuhu product by D&H, which Fuhu allegedly refused to pay.

Y. On June 11, 2015, D&H filed an amended complaint in the D&H Action adding various allegations, including a new “inventory repurchase” claim against Fuhu which alleged that Fuhu was obligated to repurchase unsold Fuhu products from D&H’s inventory. The total damages sought in D&H’s amended complaint are \$49,460,257.99. Paragraphs 25 through 30 of D&H’s amended complaint provides a detailed calculation of the damages sought by D&H.

Z. On July 16, 2015, Fuhu filed an answer to D&H’s Amended Complaint, generally denying its allegations pursuant to Cal. Code Civ. Proc. § 431.30 and asserted various affirmative defenses including breach of contract, failure of conditions precedent, prevention of performance, estoppel/unclean hands, failure to mitigate damages and setoff. Concurrently with its Answer, Fuhu also filed a Cross-Complaint against D&H in the D&H Action.

VI. THE D&H CLAIM

AA. On June 27, 2016, D&H filed identical proofs of claim numbered 153 and 161 asserting secured claims in the sum of \$44,418,307.30 net of setoff against Arctic Sentinel, Inc. f/k/a Fuhu, Inc.⁴

BB. On November 3, 2017, the Liquidating Trust filed the Objection, which, *inter alia*, included an objection to Claim No. 161 filed by D&H on the grounds it is duplicative of Claim No. 153 [Bankruptcy Court Docket No. 1106].

CC. On January 5, 2018, the Bankruptcy Court entered an order disallowing and expunging Claim No. 161 [Bankruptcy Court Docket No. 1151].

⁴ Claim Nos. 153 and 161 were listed on the Register of Claims Agent Kurtzman Carson Consultants (“KCC”) as unsecured claims, even though each of the individual proofs of claim asserts a secured claim. That is because an attachment to the claims states that D&H alleges “in support of this general unsecured nonpriority claim and its setoff claim, which under the Bankruptcy Code, is to be treated as a secured claim.” For the avoidance of doubt, this Stipulation, once approved by the Bankruptcy Court, provides for the allowance of Claim 153 as a general unsecured nonpriority claim, subject to the terms and conditions as further described herein.

DD. The Liquidating Trustee has not yet filed an objection to Claim No. 153 filed by D&H asserting a secured claim in the sum of \$44,418,307.30, net of setoff against Arctic Sentinel, Inc. f/k/a Fuhu, Inc. (the “*D&H Claim*”)

VII. THE WISTRON CLAIM

EE. On June 27, 2016, Wistron filed Claim No. 162 asserting a general unsecured claim in the sum of approximately \$30,720,000 against debtor Arctic Sentinel, Inc. d/b/a Fuhu, Inc. (the “*Wistron Claim*”).

FF. Wistron’s Claim No. 162 is based upon Wistron’s complaint filed against Fuhu, Inc. on September 4, 2015 in the Superior Court of the State of California for the County of Los Angeles, Southwest District, Case No. YCO70812 (the “*Wistron Action*”). The Wistron Action sought damages of no less than \$38,000,000, plus punitive damages, interest and attorneys’ fees. Since filing the Wistron Action, Wistron states in the Wistron Claim that it had been able to mitigate its damages, decreasing the amount being sought by Wistron to approximately \$30,720,000. On February 5, 2018, Wistron filed a Notice of Dismissal of the Wistron Action without prejudice.

GG. The Wistron Claim is divided into two parts. The first part of the Wistron Claim is a claim for breach of contract and goods sold and delivered under which Wistron asserts that it provided 53,760 DreamTab computers to Fuhu which it manufactured at a price of \$119 per unit, thereby obligating Fuhu to make payment in the amount of \$6,397,400.

HH. The second part of the Wistron Claim, which increased its damage claim to \$30,720,000 (an additional \$24,322,560), relates to Wistron’s allegation that, as a result of Fuhu’s alleged breach of contract and alleged intentional misrepresentations, Wistron suffered

damages relating to, *inter alia*, goods manufactured, work in process, material and components inventory, commitments to purchase materials and components and similar items.

II. Wistron asserts that its proof of claim is supported by additional documentation, including inventory records, shipping records, documents related to the purchase and sale of component parts, and documents related to cancellation charges. Wistron further states in its proof of claim that this documentation is available on request, but that it did not attach such support to its claim because it is voluminous.

JJ. On January 28, 2018, Wistron provided documentation of its supplemental damages to the Liquidating Trustee in support of an aggregate claim in the sum of \$27,100,000.

KK. The Liquidating Trustee has not yet filed an objection to the Wistron Claim.

VIII. THE FUHU ACTION

LL. On June 11, 2015 (prior to the commencement of the Wistron Action), Fuhu filed an action against Wistron in the United States District Court for the Central District of California styled *Fuhu, Inc. v. Wistron Corp., et al.*, Case No. 2:15-cv-04447-DDP (the “**Fuhu Action**”).

MM. In the Fuhu Action, Fuhu alleged various purported contractual and tort claims relating to the parties’ business dealings, and further alleged that these claims excuse Fuhu from its payment obligations to Wistron on the outstanding receivable.

NN. On September 23, 2015, Wistron filed a motion to dismiss the Fuhu Action primarily under the *Colorado River* doctrine. Fuhu filed an opposition to the motion on October 5, 2015 and Wistron filed a reply in support of the motion on October 12, 2015. On May 18, 2016, U.S. District Judge Dean D. Pregerson issued an order granting Wistron’s motion and dismissing the Fuhu Action which stated, *inter alia*, that “[s]imultaneous litigation of the same

liability questions both here [District Court] and in state court would not merely hinder judicial economy but could result in conflicting rulings”.

IX. POTENTIAL CLASS CLAIMS AGAINST D&H

OO. The Class asserts that its members have claims against D&H, arising out of D&H’s marketing and distribution of more than 90% of the Nabi tablets sold, for violations of the California Consumer Legal Remedies Act, false advertising, unfair trade practices, breach of implied warranty, product liability, negligence and fraud, deceit and/or misrepresentation and indemnification arising out of contractual agreements between D&H and Fuhu, Inc.

PP. D&H denies any liability to consumers and the Class arising out of its marketing and distribution of Nabi tablets.

QQ. As of this date, litigation has not been commenced by the Class or any subset thereof against D&H arising out of D&H’s marketing and distribution of the Nabi tablets.

X. POTENTIAL CLASS CLAIMS AGAINST WISTRON

RR. Wistron was engaged in the manufacture of certain of the Nabi tablets. Accordingly, the Class asserts that its members have claims against Wistron for violation of the Song-Beverly Consumer Warranty Act, breach of express and implied warranty, product liability, negligence, and violation of the Magnuson-Moss Warranty Act.

SS. Wistron denies any liability to consumers and the Class for its manufacture of Nabi tablets.

TT. As of this date, no litigation has been commenced by the Class or or any subset thereof against Wistron in connection with its manufacture of Nabi tablets.

XI. THE DEBTORS' INSURANCE POLICY FOR CYBER, PRIVACY AND MEDIA RISKS

UU. After the Class Action was filed, the Debtors made a claim under the Privacy, Cyber and Media Insurance Policy issued to Fuhu, Inc. and Fuhu Holdings, Inc. by Lloyd's with insurance effected through CFC Underwriting Limited (collectively with Lloyd's, the "*Underwriters*") under Policy No. ESC00062426 (the "*Media Policy*"). The Media Policy has a limit of liability of \$1,000,000 and an aggregate limit of liability of \$1,000,000 under Insuring Clause 4 for Multimedia Liability and Advertising Injury, with a deductible of \$50,000.

VV. The Underwriters have declined coverage under the Media Policy. The Debtors have challenged such declination and contend that the Underwriters have breached their duty to defend as required under the Media Policy. Accordingly, the Debtors assert that they are entitled to (1) reimbursement for their reasonable defense costs; (2) contribution of up to the policy limit of \$1,000,000; and (3) consequential damages arising out of the Underwriters' denial of coverage.

XII. LITIGATION BETWEEN WISTRON & D&H

WW. On October 19, 2016, Wistron filed an action against D&H in the Superior Court of the State of California, County of Los Angeles, styled *Wistron Corporation v. D&H Distributing Co. and Does 1 through 100, inclusive*, Case No. BC638092 (the "*Wistron/D&H Action*"). The Wistron/D&H Action avers that Wistron purchased receivables in the total amount of \$13,136,552 allegedly owed by D&H to a Hong Kong company named Keen High Holdings Limited ("*Keen High*"). Keen High also manufactured Nabi tablets for Fuhu that were distributed by D&H.

XX. On November 18, 2016, D&H moved the Wistron/D&H Action to the United States District Court for the Central District of California based upon diversity of citizenship.

On November 20, 2016, D&H filed its Answer, which denied the allegations in the Wistron/D&H Action and asserted 23 affirmative defenses.

YY. On September 12, 2017, Wistron & D&H entered into a stipulation dismissing the Wistron/D&H Action without prejudice, subject to further participation by both parties in mediation proceedings related to the Debtors' bankruptcy proceeding.

ZZ. On October 10, 2017, Wistron directly and derivatively filed an action against D&H in the Superior Court of the State of California, County of Los Angeles, styled *Wistron Corporation and Wistron Infocomm (Taizhou) Co. Ltd, directly and derivatively on behalf of David Ching Wai Yen and Chi Sum Koo, in their capacities as joint and several liquidators of Keen High Holding (HK) Limited v. D&H Distributing Co. and Does 1 through 100, inclusive*, Case No. BC679182 (the "**Fraudulent Transfer Action**"). The Fraudulent Transfer Action avers that certain transactions between Keen High and D&H are avoidable. Pursuant to an agreement between D&H and Wistron, the Fraudulent Transfer Action was dismissed without prejudice on or about February 5, 2018.

XIII. MEDIATION AMONG THE PARTIES

AAA. In an effort to resolve the various issues among the Parties, the Parties conducted a two day mediation in January 2018, before former United States District Judge Gerard Rosen at JAMS. At the mediation, the Parties reached a resolution relative to the claims of the Class, D&H and Wistron against Fuhu. In addition, the Class resolved its putative claims against D&H and Wistron as part of an intercreditor agreement among the Class, D&H and Wistron (the "**Intercreditor Agreement**"), which is annexed hereto as **Exhibit "A."** Matters related to the Wistron/D&H Action and the Fraudulent Transfer Action were not resolved in the mediation.

BBB. The Liquidating Trustee disputes the claims of the Class, D&H and Wistron. However, taking into account the uncertainty and risks inherent in litigation and the costs thereof, the Liquidating Trustee has concluded that it is desirable and beneficial to resolve the remaining claims of the Class, D&H and Wistron against the Debtors' estate. In addition, the Class, on the one hand, and D&H and Wistron, on the other hand, seek to resolve their potential claims against each other under this Stipulation as part of a global resolution of these matters.

CCC. The Parties expressly acknowledge that this Stipulation is entered into solely for the purpose of compromising disputed claims and that nothing herein is an admission of liability or wrongdoing by the Liquidating Trustee.

NOW, THEREFORE, the Parties hereby stipulate and agree as follows:

STIPULATION

1. The above recitals are incorporated herein by reference. Each Party stipulates and represents that the above recitals are true and correct, but only with respect to those recitals resolving matters in which said Party was involved.
2. This Stipulation is subject to this Bankruptcy Court's approval and shall be of no force and effect unless and until approved by this Bankruptcy Court.
3. The Class shall henceforth be defined as "All persons who purchased, in the United States, a Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (including Nabi Jr. S) or Nabi DreamTab tablet, except persons who purchased for resale or returned such tablet for a full refund or non-defective replacement."⁵
4. The Class Claim No. 177 filed on behalf of the Class shall be reduced to \$154,000,000.00 and allowed as a general unsecured claim in that amount.

⁵ Also excluded are the Fuhu Defendants, Mattel, and their current or former affiliates, directors, officers, and employees.

5. The Liquidating Trustee shall assign to the Class all its rights with respect to the Media Policy. The Liquidating Trustee also shall make its best efforts to provide Class Counsel, and shall authorize and request former counsel for the Fuhu Debtors, Kerr & Wagstaffe LLP, to disclose and provide to Class Counsel, all communications (excluding oral communications) and documents to or from the Underwriters in connection with the Media Policy. The Liquidating Trustee and the Class are authorized to execute all necessary documents in connection with such assignment of such rights without needing to seek further approval from the Bankruptcy Court. Class Counsel shall be permitted, but not required, to make demands on and/or initiate litigation against the Underwriters or other obligors with respect to the Media Policy, to recover funds for the benefit of the Class (*“Media Policy Proceeds”*).

6. The D&H Claim No. 153 filed by D&H as a secured claim in the sum of \$44,418,307.30, shall be recharacterized as a general unsecured claim and allowed in that amount.

7. The Wistron Claim No. 162 filed by Wistron shall be reduced to \$27,100,000 and allowed as a general unsecured claim in that amount.

8. The Gutride Safier Claims numbered 165, 166, 167 and 168 asserting administrative priority claims against each of the Debtors in the sum of \$82,875.00 under Section 507(a)(2) of the Bankruptcy Code shall each be disallowed and expunged in their entirety.

9. As part of this Stipulation, the Class, D&H and Wistron have entered into the Intercreditor Agreement annexed hereto as **Exhibit “A”**. As more specifically described in the Intercreditor Agreement, the Class, D&H and Wistron have pooled their claims solely for the purpose of receiving their pro rata distributions from the Liquidating Trust, thereby collectively

holding an allowed general unsecured claim in the amount of \$225,518,307.30 (the “**Pooled Claim**”). The Class, D&H and Wistron shall jointly identify, select, and retain one (1) single designee to receive all pro rata distributions made from the Liquidating Trust on behalf of the Pooled Claim (the “**Escrow Designee**”), and the Escrow Designee will be responsible for making all distributions to the Class, D&H and Wistron (respectively the “**Class Distributions**”, “**D&H Distributions**” and “**Wistron Distributions**”), pursuant to the terms and conditions as set forth in the Intercreditor Agreement.

10. Class Counsel shall appoint, with approval of the Bankruptcy Court, a qualified third-party claim administrator (the “**Claim Administrator**”), who shall provide notice to the Class, administer the claims process, and allocate and distribute the Class Distributions and Media Policy Proceeds as set forth herein. The Claim Administrator shall have the authority to manage the Class Distributions and Media Policy Proceeds as a qualified settlement fund pursuant to 26 CFR 1.468B-1 *et seq.*, and shall maintain such funds in an interest-bearing account at a financial institution approved by Class Counsel. All costs incurred by the Claim Administrator for notice, settlement administration, and distribution (“**Administration Costs**”) shall be paid solely from the Class Distributions and Media Policy Proceeds.

11. Notice to the Class Members of the terms of this Stipulation shall be provided in the form of **Exhibit B1** (the “**Long Form Notice**”), which shall be posted on a dedicated settlement website (the “**Settlement Website**”) to be maintained by the Claim Administrator, with a copy posted on the home page of the website maintained by KCC for this Bankruptcy proceeding. Notice in the form of **Exhibit B2** (the “**Email Notice**”) shall be sent by email to Class Members for whom email addresses were produced by the Fuhu Defendants in the Class Action and that remain available. Notice in the form of **Exhibit B3** (the “**Published Notice**”)

and **Exhibit B4** (the “*Online Notice*”) shall be published respectively in print publications and/or as online banner or social media advertising, as designated by the Claim Administrator and approved by this Bankruptcy Court, so that reasonable notice is provided to Class Members of this Stipulation and their rights hereunder. In addition, the Claim Administrator shall provide notice in compliance with the Class Action Fairness Act, 28 U.S.C. § 1715 (“*CAFA Notice*,” collectively with the Long Form Notice, the Email Notice, the Published Notice and the Online Notice, the “*Class Settlement Notices*”). At least five days prior to the final hearing on approval of the Stipulation (“*Final Approval Hearing*”), the Claim Administrator shall provide a declaration to this Court certifying that the Class Settlement Notices were provided as set forth herein.

12. Each Class Member shall have the right to file a claim for a portion of the Class Distributions, by submitting a claim form in the form of **Exhibit C** (the “*Claim Form*”). Any Claim Form that is submitted in compliance with the instructions forth on the Claim Form and in the Long Form Notice, and prior to the deadline for submitting such Claim Form (“*Claim Form Deadline*”) shall be deemed to be valid (“*Valid Claim*”). The Claim Administrator shall have the final authority to determine whether a claim is a Valid Claim.

13. Class Counsel shall be permitted to apply to this Bankruptcy Court for awards of attorneys’ fees and expenses, and Class Representatives shall be permitted to apply to this Bankruptcy Court for representative awards, to be paid out of the Class Distributions and Media Policy Proceeds (collectively “*Counsel and Representative Awards*”). The Parties shall not object to an award to Class Counsel of attorneys’ fees of up to \$1,500,000.00 and an incentive fee to Miller of up to \$75,000.00, to be paid out of the first \$3,000,000.00 of the Class Distributions. The Stipulation is not conditioned on the Bankruptcy Court awarding any

Counsel and Representative Awards, and a rejection or reduction by the Bankruptcy Court of any requested Counsel and Representative Award shall not affect any of the Parties' other rights and obligations under the Stipulation.

14. Each Class Member who submits a Valid Claim shall be entitled to a pro-rata share of the amount of the Class Distributions and Media Policy Proceeds, if any, after payment of all Administration Costs and Counsel and Representative Awards, provided, however, that the maximum distributed to any Class Member out of the Class Distributions shall be \$30.00 per Valid Claim.

15. If there is a balance remaining from the Class Distributions after payment of the Administration Costs, Counsel and Representative Awards, and Valid Claims as set forth herein, such balance shall be returned to the Escrow Designee for redistribution to D&H and Wistron, as further set forth in the Intercreditor Agreement.

16. Any Class Member who wishes to object to the Stipulation must file a written objection with the Bankruptcy Court by the objection deadline fixed by the Bankruptcy Court as set forth in the Long Form Notice. It shall be the objector's responsibility to ensure the timely filing of any objection with the Bankruptcy Court. The objection must comply with the instructions set forth in the Long Form Notice. Any Class Member who files and serves a written objection has the option to appear at the Final Approval Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Stipulation or to the requested awards to Class Counsel and Class Representatives. Class Members (with or without their attorneys) intending to make an appearance at the Final Approval Hearing must file a timely and valid written objection. Objections may not be submitted by persons who have excluded themselves from the Class or

who are themselves Excluded Class Members. Individuals who file objections must still timely submit a claim form in order to be eligible to receive money under the Stipulation.

17. Any Class Member who wishes to exclude herself or himself from the Class must submit an opt-out request to the Claims Administrator pursuant to the instructions in the Long Form Notice by no later than the deadline to opt out from the Class (the “**Opt-Out Deadline**”). It shall be the Class Member’s responsibility to ensure timely and proper submission of an opt-out request.

18. Except for those who have properly and timely opted out, Class Members will be bound by this Stipulation. A Class Member who elects to opt out of the Class will (i) not be entitled to relief or bound to any releases under this Stipulation; (ii) not gain any rights by virtue of this Stipulation; and (iii) not be entitled to object to any aspect of this Stipulation. Class Members who opt out will retain their rights, if any, to bring a separate lawsuit against D&H or Wistron. Class Members are cautioned, however, that even if they opt out, their rights against the Debtors will be extinguished by operation of bankruptcy law upon the final discharge of the Petitions.

19. Within three (3) business days after the Opt-Out Deadline, the Claims Administrator shall inform the Parties of the number of opt-out requests received. If 2,000 or more Class Members opt out of the Stipulation, then D&H and Wistron shall each have the option to terminate this Stipulation in its entirety. Such option shall be exercised by filing a written notice of termination (“**Notice of Termination**”) with the Bankruptcy Court, within three (3) business days thereafter.

20. This Stipulation shall constitute a full and final resolution of all of the disputes or potential disputes by and between (i) the Liquidating Trustee and (ii) Class Members who have

not excluded themselves by opting out of this Stipulation, in any way relating to or arising from the Class Action or the Class Claim. Upon entry of a final order of this Bankruptcy Court approving this Stipulation, all Class Members who have not opted-out of the Claim, and each of their respective successors, assigns, legatees, heirs, personal representatives, and any members of his or her immediate families shall be deemed to have fully, finally and forever released and discharged the Liquidating Trustee, the Tablet Liquidating Trust, and the Liquidating Trustee's counsel Cooley LLP and Ballard Spahr LLP (the Liquidating Trustee, the Tablet Liquidating Trust, Cooley LLP and Ballard Spahr LLP shall collectively be defined herein as the "**Liquidating Trustee Releasees**") and the Debtors from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have against the Liquidating Trustee Releasees and the Debtors, including but not limited to, those arising out of the Class Action and the Class Claim; provided, however, that this release shall not extend to the obligations (if any) of the Liquidating Trustee Releasees, or any of them, under this Stipulation. For avoidance of doubt, such releases are intended to be in addition to, rather than supplant, the releases of claims against the Debtors that will occur by operation of bankruptcy law, as a result of the Confirmation Order.

21. Upon entry of a final order of this Bankruptcy Court approving this Stipulation, the Liquidating Trustee and each of its respective successors and assigns shall be deemed to have fully, finally and forever released and discharged the Class, the individual Class Members and Class Counsel Gutride Safier (the Class, its individual Class Members and Gutride Safier shall collectively be defined herein as the "**Class Releasees**") from all manner of action, causes

of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees of any nature whatsoever, known or unknown, in law or equity, fixed or contingent which it has or may have against the Class Releasees, including but not limited to, those arising out of or relating to the Class Action and/or the Class Claim; provided, however, that this release shall not extend to the obligations (if any) of the Class Releasees, or any of them, under this Stipulation.

22. This Stipulation shall constitute a full and final resolution of all of the disputes or potential disputes by and between (i) the Liquidating Trustee and (ii) D&H in any way relating to or arising from the D&H Action or the D&H Claim. Upon entry of a final order of this Bankruptcy Court approving this Stipulation, D&H and each of its respective successors and assigns shall be deemed to have fully, finally and forever released and discharged the Liquidating Trustee Releasees and the Debtors from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have against the Liquidating Trustee Releasees and the Debtors, including but not limited to, those arising out of or relating to the D&H Action and/or the D&H Claim provided, however, that this release shall not extend to the obligations (if any) of the Liquidating Trustee Releasees, or any of them, under this Stipulation.

23. Upon entry of a final order of this Bankruptcy Court approving this Stipulation, the Liquidating Trustee and each of its respective successors and assigns shall be deemed to have fully, finally and forever released and discharged D&H, its counsel Robins Kaplan LLP, and any of their agents, attorneys, employees, partners, directors, officers, parents, subsidiaries,

affiliates, insurers, successors and assigns (together, the “*D&H Releasees*”) from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees of any nature whatsoever, known or unknown, in law or equity, fixed or contingent which it has or may have against the D&H Releasees, including but not limited to, those arising out of or relating to the D&H Action and/or the D&H Claim provided, however, that this release shall not extend to the obligations (if any) of the D&H Releasees, or any of them, under this Stipulation; .

24. This Stipulation shall constitute a full and final resolution of all of the disputes or potential disputes by and between (i) the Liquidating Trustee and (ii) Wistron in any way relating to or arising from the Wistron Action or the Wistron Claim. Upon entry of a final order of this Bankruptcy Court approving this Stipulation, Wistron and each of its respective successors and assigns shall be deemed to have fully, finally and forever released and discharged the Liquidating Trustee Releasees and the Debtors from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have against the Liquidating Trustee Releasees and the Debtors, including but not limited to, those arising out of or relating to the Wistron Action and/or the Wistron Claim; provided, however, that this release shall not extend to the obligations (if any) of the Liquidating Trustee Releasees, or any of them, under this Stipulation.

25. Upon entry of a final order of this Bankruptcy Court approving this Stipulation, the Liquidating Trustee and each of its successors and assigns shall be deemed to have fully, finally and forever released and discharged Wistron, its counsel K&L Gates LLP, and any of

their agents, attorneys, employees, partners, directors, officers, parents, subsidiaries, affiliates, insurers, successors and assigns (together, the “*Wistron Releasees*”) from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees of any nature whatsoever, known or unknown, in law or equity, fixed or contingent which it has or may have against the Wistron Releasees, including but not limited to, those arising out of or relating to the Wistron Action and/or the Wistron Claim; provided, however, that this release shall not extend to the obligations (if any) of the Wistron Releasees, or any of them, under this Stipulation.

26. This Stipulation shall constitute a full and final resolution of all of the disputes or potential disputes by and between (i) the Class Releasees, on the one hand, and (ii) D&H and Wistron, on the other hand. Upon entry of a final order of this Bankruptcy Court approving this Stipulation, both Wistron and D&H and each of their respective successors and assigns shall be deemed to have fully, finally and forever released and discharged the Class Releasees from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have against the Class Releasees including but not limited to, those arising out of or relating to the Class Action and/or the Class Claim; provided, however, that this release shall not extend to the obligations (if any) of the Class Releasees, or any of them, under this Stipulation (including the Intercreditor Agreement).

27. Upon entry of a final order of this Bankruptcy Court approving this Stipulation, the Class and the individual Class Members, and each of their respective successors, assigns,

legatees, heirs and personal representatives shall be deemed to have fully, finally and forever released and discharged all of the Debtors' distributors, manufacturers, suppliers and vendors including but not limited to D&H, Wistron, Hon Hai Precision Industry Co., Ltd. (dba Foxconn Technology Group) and Fusing International, Inc. (together referred to herein as "***Foxconn***") and Keen High, and any of their agents, attorneys, employees, partners, directors, officers, parents, subsidiaries, affiliates, insurers, successors and assigns (all of which shall collectively be defined herein as the "***Industry Releasees***") from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees of any nature whatsoever, known or unknown, in law or equity, fixed or contingent which it has or may have against the Industry Releasees, including but not limited to, those arising out of or relating to the Class Action and/or the Class Claims; provided, however, that this release shall not extend to the obligations (if any) of the Industry Releasees, or any of them, under this Stipulation (including the Intercreditor Agreement).

28. D&H is not releasing Wistron or Keen High from any claims it has, may have had, or may have in the future against either Wistron or Keen High, or any of its successors or assigns, of any kind, and regardless of whether such claims sound in contract, tort, equity, common or statutory law, indemnity, or contribution, and regardless of whether the claims are direct, indirect, derivative, or otherwise arise from liability for the tort of another, and regardless of whether D&H's claims against the other party through whom or based upon whose acts, practices, or liability is asserted are released by this agreement or otherwise.

29. Wistron is not releasing D&H from any claims it has, may have had, or may have in the future against D&H, or any of its successors or assigns, of any kind, and regardless

of whether such claims sound in contract, tort, equity, common or statutory law, indemnity, or contribution, and regardless of whether the claims are direct, indirect, derivative, or otherwise arise from liability for the tort of another, and regardless of whether Wistron's claims against the other party through whom or based upon whose acts, practices, or liability is asserted are released by this agreement or otherwise.

30. This Stipulation is subject to approval by this Bankruptcy Court. In the event the Stipulation is not approved by the Bankruptcy Court, or D&H or Wistron files a Notice of Termination, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this Court or in any other proceeding, and any all representations and agreements made in this Stipulation shall be null and void, and the Parties shall return to the positions they occupied immediately prior to the execution of this Stipulation.

31. Within ten (10) days after entry of a final and non-appealable order of this Court approving this Stipulation, the Class shall take all necessary steps to dismiss the Class Action with prejudice.

32. Within ten (10) days after entry of a final and non-appealable order of this Court approving this Stipulation, D&H shall take all necessary steps to dismiss the D&H Action with prejudice.

33. The following provisions shall govern any attempts by Wistron and/or D&H to subpoena discovery materials relating to the Class Action ("*Underlying Discovery*") from Class Counsel or the Liquidating Trustee:

- a. Upon final approval and finality of this Stipulation (including the expiration of any appeal periods), Class Counsel shall provide all Underlying Discovery to the Liquidating Trustee or the Liquidating Trustee's counsel, who shall preserve it.
- b. In the event that Wistron and/or D&H subpoena Underlying Discovery from the Liquidating Trustee (**subsequent** to the handover of documents from Class Counsel to the Liquidating Trustee under subsection (a), above), the Liquidating Trustee will determine whether such Underlying Discovery either is (i) subject to the Debtors' post-closing obligations owed to Mattel in connection with the Sale; or (ii) information the Liquidating Trustee independently determines should remain "confidential"), the subpoenaing party and the Liquidating Trustee shall make reasonable efforts to obtain Mattel's consent to the Liquidating Trustee's production of any materials marked "confidential." To the extent that the Liquidating Trustee determines that Mattel's consent is not required, but where the Liquidating Trustee independently determines that such materials should remain "confidential", the Liquidating Trustee will respond to the subpoena in accordance with subsection (c) below.
- c. If Mattel and/or the Liquidating Trustee does not provide such consent, and if Mattel and/or the Liquidating Trustee file a motion for protective order within 60 days of the receipt of a subpoena seeking to avoid the production of documents marked "confidential," then no documents ("confidential" or otherwise) need be produced until the resolution of the motion. In this scenario, if the court's ruling on the motion permits the Liquidating Trustee to withhold any "confidential" documents from production, then the subpoenaing party shall pay the reasonable

attorney's fees or consulting fees incurred by the Liquidating Trustee solely in connection with the task of separating out such "confidential" materials from the rest of the Underlying Discovery prior to production. The Liquidating Trustee shall have 60 days from the date of entry of the order directing production to perform this task of separation.

- d. In the event that Wistron and/or D&H determine to obtain Underlying Discovery **prior** to the handover of documents from Class Counsel to the Liquidating Trustee under subsection (a), above, then the subpoenaing party shall so inform Class Counsel, who shall promptly provide a duplicate set of all Underlying Discovery to the Liquidating Trustee, and the subpoenaing party seeking the Underlying Discovery shall i) reimburse Class Counsel for the actual and reasonable costs of duplication; ii) serve its intended subpoena upon the Liquidating Trustee; and iii) proceed to deal with the Liquidating Trustee pursuant to the framework, in subsection (b) above.
- e. Wistron and D&H shall not direct discovery demands to Class Counsel or Class Representatives, except as set forth above, nor shall they subpoena Class Counsel or Class Representatives to testify (including at deposition, hearing or trial) in any proceeding.

34. Each individual signing on behalf of a Party represents and warrants to each other Party that it has full power and authority to enter into this Stipulation on behalf of the Party for which it is signing.

35. All representations, warranties, inducements and/or statements of intention made by the Parties that relate to this Stipulation are embodied in this Stipulation and the Intercreditor

Agreement, and none of the Parties have relied upon, shall be bound by, or shall be liable for any alleged representation, warranty, inducement or statement of intention that is not expressly set forth in this Stipulation (including the Intercreditor Agreement). This Stipulation (including the Intercreditor Agreement) constitutes the entirety of the Parties' settlement terms. This Stipulation (excluding the Intercreditor Agreement) may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest, as approved by this Bankruptcy Court.

36. This Stipulation shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors and/or assigns.

37. This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Stipulation may be executed by facsimile or PDF signatures, and such facsimile or PDF signatures will be deemed to be as valid as an original signature whether or not confirmed by delivering the original signatures in person, by courier or mail, although it is the Parties' intention to deliver original signatures after delivery of facsimile or PDF signatures.

38. To the extent permitted by law, this Stipulation may be pled as a full and complete defense to any action, suit, or other proceedings that may be instituted, prosecuted or attempted against the any Party contrary to this Stipulation.

39. The Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation, implementation, or enforcement of the terms and provisions of this Stipulation and to adjudicate, if necessary, all disputes in connection herewith.

40. Upon execution of this Stipulation, the Liquidating Trustee shall move the Bankruptcy Court to (1) grant preliminary approval of this Stipulation and to approve the

methods, form and contents of the Class Settlement Notices and Claim Form, (2) set the dates of the Opt-Out Deadline, the Claim Form Deadline, the Objection Deadline, and the Final Approval Hearing, and (3) grant final approval of this Stipulation upon the occurrence of the Objection Deadline and after the Final Approval Hearing. The Liquidating Trustee shall obtain the approval (which shall not be unreasonably withheld) of all Parties as to the form and contents of such motion, supporting documentation and proposed orders (including any supplemental filings in support thereof) before filing.

Dated: _____, 2018

Tablet Liquidating Trust

Anthony Sacullo of Saccullo Business Consulting,
LLC, Liquidating Trustee of the Tablet Liquidating
Trust

Dated: _____, 2018

Scott Miller
Class Representative on Behalf of
Himself and the Class

Dated: _____, 2018

James E. Griffin
Class Representative on Behalf of
Himself and the Class

Dated: _____, 2018

D&H Distributing Company

By: _____

Name: _____

Its: _____

Dated: _____, 2018

Wistron Corporation

By: _____

Name: _____

Its: _____

Dated: _____, 2018

Wistron Infocomm Technology (America)
Corporation

By: _____

Name: _____

Its: _____

Dated: _____, 2018
San Francisco, California

GUTRIDE SAFIER LLP

Adam Gutride
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Claimant under Claim Nos. 165, 166, 167, and 168

Approved as to Form and Content:

Dated: _____, 2018
New York, New York

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Counsel for the Class Representatives

Dated: _____, 2018
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Counsel for D&H Distributing Co.

Dated: _____, 2018
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