

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

IN RE:

**SUNTERRA CORPORATION
SECURITIES LITIGATION**

Case No. 6:00-cv-79-Orl-28B

Consolidated Case Numbers:

6:00-cv-97-Orl-28B	6:00-cv-112-Orl-28B	6:00-cv-115-Orl-28B
6:00-cv-116-Orl-28B	6:00-cv-121-Orl-28B	6:00-cv-127-Orl-28B
6:00-cv-128-Orl-28B	6:00-cv-169-Orl-28B	6:00-cv-210-Orl-28B
6:00-cv-268-Orl-28B	6:00-cv-278-Orl-28B	6:00-cv-285-Orl-28B
6:00-cv-286-Orl-28B	6:00-cv-321-Orl-28B	

STIPULATION AND AGREEMENT OF SETTLEMENT

This stipulation and agreement of settlement, dated as of January 21, 2005 (the “Stipulation”), is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. This Stipulation is entered into among Lead Plaintiffs Arnold and Marian Bowles and Bulldog Capital Management, L.P. and the Class (as hereinafter defined) and Defendants Steven C. Kenninger, L. Steven Miller, Richard A. Goodman, Ann Cohen, and Charles C. Frey (collectively, the “Individual Defendants”), as well as Arthur Andersen LLP (“Andersen” (defined below)) (collectively referred to hereinafter as the “Defendants”), by and through their respective counsel.

WHEREAS:

A. In or about January 2000, fourteen class action complaints were filed against Sunterra Corporation (“Sunterra” or the “Company”), various officers and directors of Sunterra, and Andersen. By Order dated March 28, 2000, Magistrate Judge David A. Baker consolidated

the cases under the caption above (hereinafter referred to as the “Action” or the “Securities Action”) and, by Order, dated May 24, 2000, appointed Bulldog Capital Management, LP (“Bulldog”), and Arnold and Marion Bowles (“the Bowles”) as lead plaintiffs (collectively “Lead Plaintiffs”). In an Order dated October 17, 2000, Magistrate Judge Baker approved Lead Plaintiffs’ selection of the lead counsel;

B. The Third Consolidated Amended Class Action Complaint, which Lead Plaintiffs filed on or about July 3, 2002 (the “Complaint”), generally alleges, among other things, that Defendants issued false and misleading public filings, press releases, and other statements regarding the Company’s financial condition during the Class Period -- October 6, 1998 through and, including, January 19, 2000 -- in a scheme to make Sunterra appear profitable to enable Defendants to sell the Company, as well as maintain the illusion of sequential growth in order to secure and maintain essential credit lines.

C. The Complaint further alleges that Lead Plaintiffs and other Class members purchased or acquired Sunterra’s common stock during the Class Period at prices artificially inflated as a result of Defendants’ dissemination of materially false and misleading statements regarding the Company, in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated under Section 10(b);

D. Defendants deny liability in the Action, and enter into this Agreement solely to avoid: (1) the substantial costs, inconvenience and burden associated with preparing this case for summary judgment and/or trial, including (a) reviewing millions of pages of documents, (b) preparing for, taking and defending numerous depositions, and (c) retaining and preparing numerous expert witnesses; (2) the substantial costs, inconvenience and burden associated with litigating the Gessow Action (as defined below) and the Coverage Action, (3) the uncertainty

over the scope of insurance available to the Defendants to cover the substantial costs of defending this Action and the Gessow Action; (4) the likelihood that the costs of defending this Action and the Gessow Action would far exceed the amount of available insurance; and (5) their desires to focus their time and efforts pursuing positive, productive endeavors, rather than litigating what Defendants believe are meritless allegations in the Action and the Gessow Action. Neither this Agreement, nor any document referred to herein, nor any action taken pursuant to it to carry out this Agreement, nor the transfer of any consideration provided for herein, shall be construed or deemed to be evidence of or an admission or concession on the part of any Defendant with respect to any fact, claim, assertion, matter or contention, or of culpability or of any fault or liability or wrongdoing or damage whatsoever. The parties have voluntarily agreed to settle the Action after consultation with legal counsel;

E. Plaintiffs' Lead Counsel have conducted an extensive investigation relating to the claims and the underlying events and transactions alleged in the Complaint. Plaintiffs' Lead Counsel have interviewed numerous former employees of Sunterra and third parties familiar with Sunterra's financial reports and condition during the Class Period; analyzed the allegations in the lawsuits filed by, or in the name of, Sunterra in the actions entitled *Sunterra Corp. v. Gessow, et al.*, Civil Action No. 02-Civ.-1853 (D. Md. Complaint filed May 30, 2002; Amended Complaint filed November 27, 2002) ("Gessow Case"); *Sunterra Corp. v. Arthur Andersen, LLP*, Civil Action No. 6:02-Civ.-633-Orl-18JGG (M.D. Fla. Complaint filed May 30, 2002) ("Gray Federal Case"); *Gray & Assocs. LLC v. Arthur Andersen, LLP*, Case No. 02-Ca-5174 (Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida) ("Gray State Case"); *Sunterra Corp. v. Ernst & Young, LLP, et al.*, Case No. 24-C-02-002963 (Balt. City. Md. Cir. Complaint filed May 30, 2002); and have researched the applicable law with respect to the claims of Lead

Plaintiffs and the Class against Defendants and the potential defenses thereto;

F. The parties and their respective counsel have conducted discussions and an arm's-length mediation before the Hon. Nicholas H. Politan (U.S.D.J. Ret.) with respect to a compromise and settlement of the Action;

G. Based upon their investigation, the discovery taken in the Action, the three (3) days of mediation before Judge Politan, the bankruptcy of Sunterra and the limited or disputed insurance resources available to the Defendants, Lead Plaintiffs and Plaintiffs' Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to Lead Plaintiffs and the Class, and in their best interests, and have agreed to settle the claims asserted in the Action pursuant to the terms and provisions of this Stipulation, after considering (a) the substantial benefits that Lead Plaintiffs and the Class will receive from settlement of the Action, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation;

H. Certain Defendants tendered the Securities Action to Twin City Fire Insurance Company for coverage. A coverage dispute arose between Twin City Fire Insurance Company and those Defendants regarding the existence, if any, of the coverage obligation owed by Twin City Fire Insurance Company in connection with the Securities Action which manifested itself in coverage litigation entitled *Aron et al. v. Genesis Insurance Company et al.*, USDC C.D. Cal. Case No. CV-03-389-GAF,

I. Twin City Fire Insurance Company has denied any coverage obligation whatsoever in connection with the Securities Action, and has denied any coverage obligation to the Defendants in the Securities Action, and this Stipulation shall in no event be construed or deemed to be evidence of, an admission or a concession on the part of Twin City Fire Insurance

Company with respect to any claim, coverage obligation, fault, liability, wrongdoing, or damage whatsoever; and

J. The allocation of the \$300,000 in funds contributed by Twin City Fire Insurance Company towards the global settlement of the Gessow Case and the Securities Action between those respective settlements shall in no event be construed or deemed to be evidence of, an admission or a concession on the part of Twin City Fire Insurance Company with respect to any claim, coverage obligation, fault, liability, wrongdoing, or damage whatsoever. Said allocation is made solely for the convenience of Defendants, Lead Plaintiffs and the Class, and is not reflective of Twin City Fire Insurance Company's coverage positions whatsoever.

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiffs and the Class of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among the parties to this Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the Settlement, that all Released Claims (as defined below) as against the Released Parties (as defined below) shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

CERTAIN DEFINITIONS

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Andersen” means Arthur Andersen LLP, AWSC Societe Cooperative (“AWSC”), en liquidation, and all of their past and present member firms, and all of their

respective current and former partners, members, principals, managing or other agents, management personnel, officers, directors, shareholders, administrators, servants, employees, consultants, advisors, insurers, reinsurers, attorneys, accountants, representatives, parent companies, subsidiaries, related entities, divisions, affiliates, predecessors, successors and assigns, along with the heirs, spouses, executors, administrators, insurers, reinsurers, representatives, estates, successors and assigns of any such person or entities.

(b) “Authorized Claimant” means a Class member who submits a timely and valid Proof of Claim form to the Claims Administrator.

(c) “Claims Administrator” means the firm of Strategic Claims Services, 2710 Concord Road, Suite 5, Aston, PA 19014, which shall administer the Settlement.

(d) “Class” and “Class members” mean, for the purposes of the Settlement only, all persons who purchased or otherwise acquired Sunterra common stock between October 6, 1998 through January 19, 2000, inclusive. Excluded from the Class are Defendants, members of the immediate family of each of the Individual Defendants, any subsidiary or affiliate of Sunterra and the current or former directors, officers, and employees of Sunterra or its subsidiaries or affiliates, or any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person. Also excluded from the Class are any putative Class members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth below.

(e) “Class Period” means, for the purposes of the Settlement only, the period between October 6, 1998 through January 19, 2000, inclusive.

(f) “Defendants” means Steven C. Kenninger (“Kenninger”), L. Steven Miller (“Miller”), Richard A. Goodman (“Goodman”), Ann Cohen (“Cohen”), Charles C. Frey

(“Frey”), and Andersen.

(g) “Defendants’ Counsel” means the law firms of Davis Polk & Wardwell; White & Case, LLP; Akerman Senterfitt; and Arnold & Porter LLP.

(h) “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in paragraph 30 below.

(i) “Notice” means the Notice of Pendency of Class Action, Hearing On Proposed Settlement and Attorneys’ Fee Petition and Right to Share in Settlement Fund, substantially in the form attached hereto as Exhibit A-1, which is to be sent to members of the Class.

(j) “Order and Final Judgment” means the proposed order to be entered approving the Settlement and dismissing the Action with prejudice substantially in the form attached hereto as Exhibit B.

(k) “Plaintiffs’ Counsel” means Plaintiffs’ Lead Counsel and all of the other attorneys representing Lead Plaintiffs and the Class in the Action.

(l) “Plaintiffs’ Lead Counsel” means the law firms of Bernstein Liebhard & Lifshitz, LLP (“Bernstein Liebhard”) and Donovan Searles, LLC (“Donovan Searles”).

(m) “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class substantially in the form attached hereto as Exhibit A.

(n) “Proof of Claim” means the proposed Proof of Claim and Release substantially in the form attached as Exhibit A-2.

(o) “Publication Notice” means the summary notice of proposed Settlement and hearing for publication substantially in the form attached as Exhibit A-3.

(p) “Released Claims” means any and all direct, derivative, and/or representative claims, rights, demands, causes of actions, suits, matters, and issues, whether known or unknown, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including Unknown Claims (defined below), that have been, might have been, or could be asserted at any time against any of the Released Parties (defined below), including any Defendant (and any of Sunterra’s former and present insurers, parents, subsidiaries, affiliates, shareholders, directors, officers, employees, agents, representatives, accountants, auditors, attorneys, insurers, investment bankers, heirs, executors, administrators, beneficiaries, predecessors, successors and assigns) by any Class member, in any capacity, in the Action or in any court of competent jurisdiction, which arise out of or relate in any way to any of the following: (i) the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to or that could have been asserted in the Complaint; (ii) any alleged misrepresentation or omission concerning or relating to the financial condition, results of operations, financial statements, press releases, public filings, or other public financial disclosures of Sunterra; (iii) any purchase, sale or other disposition of ownership of Sunterra common stock by any defendant and/or (iv) the conduct of the business of Sunterra with regard to any of the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to or that could have been asserted in the Complaint; provided, however, Released Claims shall not include any claim arising out of the violation or breach of this Stipulation.

(q) “Released Defendants’ Claims” means any and all direct, derivative, and/or representative claims, rights, demands, causes of actions, suits, matters, and issues, whether known or unknown, whether based on federal, state, local, statutory or common law or any other

law, rule or regulation, including Unknown Claims (defined below), that have been, might have been, or could be asserted at any time against any of the Released Parties (defined below), including any Defendant (and any of Sunterra's former and present insurers, parents, subsidiaries, affiliates, shareholders, directors, officers, employees, agents, representatives, accountants, auditors, attorneys, insurers, investment bankers, heirs, executors, administrators, beneficiaries, predecessors, successors and assigns) by any other Defendant or Released Party, in any capacity, in the Action or in any court of competent jurisdiction, which arise out of or relate in any way to any of the following: (i) the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to or that could have been asserted in the Complaint; (ii) any alleged misrepresentation or omission concerning or relating to the financial condition, results of operations, financial statements, press releases, public filings, or other public financial disclosures of Sunterra; (iii) any purchase, sale or other disposition of ownership of Sunterra common stock by defendants and/or (iv) the conduct of the business of Sunterra with regard to any of the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to or that could have been asserted in the Complaint; provided, however, Released Defendants' Claims shall not include any claim arising out of the violation or breach of this Stipulation.

(r) "Released Parties" means Defendants, Sunterra, and their respective present and former parents, subsidiaries and affiliates, and Sunterra's and the Defendants' present and former officers, directors, employees, agents, representatives, attorneys, advisors, investment bankers, auditors and accountants, and the predecessors, heirs, successors, executors, administrators, beneficiaries, and assigns of any of them, and any person or entity in which any of the foregoing has or had a controlling interest or which is or was related to or affiliated with any of the

foregoing (including, without limitation, Andrew J. Gessow (“Gessow”), Osamu Kaneko (“Kaneko”), Joshua S. Friedman (“Friedman”), Adam Aron (“Aron”), J. Taylor Crandall (“Crandall”), Genevieve Giannoni (“Giannoni”)), and the insurers of the foregoing, including Genesis Insurance Company and Twin City Fire Insurance Company.

(s) “Settled Defendants’ Claims” means all claims of every nature and description, known or unknown, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Plaintiffs, Lead Plaintiffs, Plaintiffs’ Lead Counsel, Class members and their legal representatives, heirs, successors or assigns, and/or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action; provided, however, Settled Defendants’ Claims shall not include any claim arising out of the violation or breach of this Stipulation.

(t) “Settlement” means the settlement contemplated by this Stipulation.

(u) “Unknown Claims” means any and all Released Claims that any Plaintiff or Class member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties; any and all Settled Defendants’ Claims that any Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement; and any and all Released Defendants’ Claims that any Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, Released Defendants’ Claims and Settled Defendants’ Claims, the parties stipulate and agree that upon the Effective Date, Plaintiffs and Defendants shall expressly, and each Class Member shall be deemed to have, and

by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR; AND ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS OF ANY SIMILAR STATE OR FEDERAL LAW.

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

SCOPE AND EFFECT OF SETTLEMENT

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Released Claims, Released Defendants’ Claims and Settled Defendants’ Claims as against all Released Parties.

3. Upon the Effective Date of this Settlement, Lead Plaintiffs and the Class on behalf of themselves, their present and former affiliates, agents, predecessors, heirs, executors, administrators, successors and assigns, and any persons they represent, shall, with respect to each and every Released Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Released Claim against any of the Released Parties.

4. Upon the Effective Date of this Settlement, each of the Defendants, on behalf of themselves and the Released Parties, shall release and forever discharge each and every

one of the Settled Defendants' Claims, and shall forever be enjoined from prosecuting the Settled Defendants' Claims.

5. Upon the Effective Date of this Settlement, each of the Released Parties shall, with respect to each and every one of the Released Defendants' Claims, release and forever discharge, and shall forever be enjoined from prosecuting, any Released Defendants' Claim against any other Released Party.

THE SETTLEMENT CONSIDERATION

6. Defendants shall cause the sum of Four Million Four Hundred Fifty Thousand Dollars (\$4,450,000) (the "Settlement Amount") to be paid into a separate interest-bearing escrow account as established by Plaintiffs' Lead Counsel at PNC Bank, N.A. (the "Settlement Account"). Prior to the Effective Date, no expenditure will reduce the Settlement Amount in the Settlement Account below \$4,350,000. Two signatures will be required (i) one from Bernstein Liebhard; (ii) one from Donovan Searles; for all expenditures from the Settlement Account. After the Effective Date, the escrow shall terminate and the Settlement Account may be transferred on the signature of Plaintiffs' Lead Counsel for distribution in accordance with the terms set forth below.

7. It is intended by the parties that the Settlement Amount shall be funded as follows:

(a) Within seven (7) business days after entry of the Preliminary Approval Order, the Individual Defendants shall cause their insurer Genesis Insurance Company to pay Two Million Seven Hundred Fifty Five Thousand Dollars (\$2,755,000) into the Settlement Account;

(b) Within seven (7) business days after entry of the Preliminary Approval Order, the Individual Defendants shall cause their insurer Twin City Fire Insurance Company to pay One Hundred Fifty Thousand Dollars (\$150,000) into the Settlement Account;

(c) Within seven (7) business days after entry of the Preliminary Approval Order, Defendant Kenninger shall pay or cause to be paid Ninety Eight Thousand, Six Hundred Dollars (\$98,600) into the Settlement Account;

(d) Within seven (7) business days after entry of the Preliminary Approval Order, Defendant Goodman shall pay Thirty Six Thousand, Four Hundred Dollars (\$36,400) into the Settlement Account;

(e) Within seven (7) business days after entry of the Preliminary Approval Order, Defendant Miller shall pay Ten Thousand Dollars (\$10,000) into the Settlement Account;

(f) Within seven (7) business days after entry of the Preliminary Approval Order, Defendant Andersen shall pay One Million Four Hundred Thousand Dollars (\$1,400,000) into the Settlement Account; and

(g) In the event that Defendants fail to meet their payment obligations as set forth above, Lead Plaintiffs shall have the option of withdrawing from the Settlement.

Except to the extent that a Defendant has not cooperated with the insurers or has failed to use his, her or its best efforts to consummate this settlement, no Defendant shall be responsible for more than his, her or its respective contribution to the Settlement Account, as set forth in subparagraphs 7(c)-(f) above, but subject to the provisions of paragraph 32, below.

8. (a) All claims of Lead Plaintiffs and the Class, all fees and expenses of counsel to the Class, and experts, consultants, and agents, and all administrative or other

approval expenses of the Settlement, including taxes, if any, shall be paid from the Settlement Amount. Class members shall look solely to the Settlement Amount for settlement and satisfaction of any and all claims against the Defendants that are released under the Settlement. Except as expressly provided in this Stipulation or by Order of the Court, no Class member shall have any interest in the Settlement Account or any portions thereof.

8. (b) The Settlement Amount, net of any Taxes (as defined below) on the income thereof, shall be used to pay (i) the Notice and Administration Costs referred to in paragraph 12 hereof, (ii) the remaining administration expenses referred to in paragraph 14 hereof, and (iii) the attorneys' fee and expense award referred to in paragraph 13 hereof. The balance of the Settlement Amount after the above payments shall be the "Net Settlement Fund" which shall be distributed to the Authorized Claimants as provided in paragraphs 15-17 hereof. Any sums required to be held hereunder shall be held in escrow by Plaintiffs' Lead Counsel, shall be deemed to be in the custody, and shall remain subject to the jurisdiction, of the Court until such time as the funds shall be distributed pursuant to this Stipulation and/or further order of the Court. The parties hereto agree that the Settlement Amount is intended to be a Qualified Settlement Account within the meaning of Treasury Regulation § 1.468B-1 and that the custodian of the funds, as administrator of the Settlement Account within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns for the Settlement Account and paying from the Settlement Account any Taxes owed with respect to the Settlement Account. The parties hereby agree to cooperate to the extent reasonably necessary to carry out the provisions of this paragraph as it relates to the tax treatment of the Settlement Account.

9. (a) All taxes on the income of the Settlement Account and (b) all expenses and costs incurred in connection with the taxation of the Settlement Account (including, without limitation, expenses of tax attorneys and accountants) (collectively "Taxes") shall be paid out of the Settlement Account, shall be considered to be a cost of administration of the Settlement and shall be timely paid by the custodian of the funds without prior Order of the Court. Defendants and/or the Released Parties shall have no liability with respect to any of the foregoing Taxes, expenses and/or costs incurred in connection with the taxation of the Settlement Account. Defendants and/or the Released Parties shall have no obligation or liability to further fund the settlement in the event the claims and expenses exceed the settlement consideration provided for in paragraph 6.

10. In the event that there are any monies remaining in the Settlement Account following the distribution to all Authorized Claimants pursuant to the terms of this Stipulation, the payment of any Court-awarded attorneys' fees and the reimbursement of expenses, the payment of the costs and expenses of administering the Settlement, and the payment of all Taxes, the parties hereby agree that the monies remaining in the Settlement Account shall be donated to a charity mutually agreed upon by the parties.

ADMINISTRATION

11. The Claims Administrator shall administer the Settlement under Plaintiffs' Lead Counsel's supervision and subject to the jurisdiction of the Court. Except for Defendants' obligations to cause the Settlement Amount to be deposited into the Settlement Account as set forth in paragraphs 6 and 7 above, Defendants, Defendants' Counsel and/or the Released Parties shall have no responsibility for the administration of the Settlement and shall have no liability to

the Class in connection with such administration. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

12. Prior to the Effective Date, Plaintiffs' Lead Counsel may expend from the Settlement Amount, without further approval from the Defendants or the Court, up to the sum of \$100,000 to pay the reasonable costs and expenses associated with the administration of the Settlement, including without limitation, the costs of identifying members of the Class and effecting mail Notice and Publication Notice. Such amounts shall include, without limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding notice to their beneficial owners, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims.

ATTORNEYS' FEES AND EXPENSES

13. Plaintiffs' Lead Counsel will apply to the Court for an award of attorneys' fees not to exceed 33 percent (33%) of the Settlement Amount and reimbursement of expenses, not to exceed \$450,000, plus interest. Such attorneys' fees, expenses, and interest as are awarded by the Court shall be paid from the Settlement Amount to Plaintiffs' Lead Counsel immediately upon the Effective Date. Any decision by the Court concerning the amount of any fee award shall not affect the validity or finality of the proposed Settlement. Plaintiffs' Lead Counsel shall be authorized and directed to allocate and distribute the fees and expenses among Plaintiffs' Counsel in a manner which in Plaintiffs' Lead Counsel's good faith determination, reflects each counsel's contribution to the institution, prosecution, and settlement of the Action. Plaintiffs' Lead Counsel hereby agree that they will be subject to the continuing jurisdiction of the Court in connection with the award of any attorneys' fees and/or the reimbursement of expenses.

ADMINISTRATION EXPENSES

14. Plaintiffs' Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for an order (the "Class Distribution Order") approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

DISTRIBUTION TO AUTHORIZED CLAIMANTS

15. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Allowable Claim (as defined in the Plan of Allocation described in the Notice annexed hereto as Exhibit A-1, or in such other plan of allocation as approved by the Court). Every Class member entitled to participate in the Settlement shall be required to provide a sworn proof of loss, with supporting documentation, setting forth his, her, or its entire positions and trading history in Sunterra common stock during the Class Period. Each Class member's Allowable Claim shall be calculated by reference to his, her, or its trading history in Sunterra common stock during the Class Period, and each Class member shall recover that proportion of the Net Settlement Fund (after appropriate deductions) that his, her, or its Allowable Claim bears to the sum of all Allowable Claims.

16. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that the Plan of Allocation be approved.

17. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his or her Allowable Claim compared to the total Allowable Claims of all Authorized Claimants.

ADMINISTRATION OF THE SETTLEMENT

18. (a) Any member of the Class who does not submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Amount, but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims.

18. (b) Plaintiffs' Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund by the Claims Administrator. Except for Defendants' obligations to cause the Settlement Amount to be deposited into the Settlement Account as set forth in paragraphs 6 and 7 above, and to cooperate in the administration of the Settlement, as provided herein, Defendants shall have no liability, obligation or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund. Plaintiffs' Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.

19. For purposes of determining the extent, if any, to which a Class member shall be entitled to be treated as an "Authorized Claimant", the following conditions shall apply:

(a) Each Class member shall be required to submit a Proof of Claim (*see* attached Exhibit 2 to Exhibit A), supported by such documents as are designated therein,

including proof of the Claimant's loss, or such other documents or proof as Plaintiffs' Lead Counsel, in their discretion, may deem acceptable;

(b) All Proofs of Claim must be submitted by the date specified in the Notice unless such period is extended by order of the Court. Any Class member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by order of the Court, a later submitted Proof of Claim by such Class member is approved), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions in the Notice and Proof of Claim form. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

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

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the claimant in order to remedy the curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under supervision of Plaintiffs' Lead Counsel, shall notify, in a

timely fashion and in writing, all claimants whose Proofs of Claim they propose to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (e) below;

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

(f) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

20. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Class member and the validity and amount of the claimant's claim. No discovery shall be allowed of Defendants or on the merits of the Action or Settlement in connection with processing of the Proofs of Claim.

21. Payment pursuant to this Stipulation shall be deemed final and conclusive against all Class members. All Class members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be

bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims.

22. All proceedings with respect to the administration, processing, and determination of claims described by paragraphs 18-21 of this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

23. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date and after: (i) all claims have been processed, and all claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iii) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (iv) all costs of administration have been paid.

EXCLUSION FROM THE CLASS

24. Any person falling within the definition of the Class may, upon request, be excluded from the Class. Any such person must submit to the Claims Administrator a written request for exclusion ("Request for Exclusion"), postmarked no later than twenty one (21) days before the Settlement Hearing. A Request for Exclusion must state: (1) the name, address, and telephone number of the person requesting exclusion; (2) the person's purchases of Sunterra common stock made during the Class Period, including the dates, the number of shares, and price

paid per share for each such purchase; and (3) that the person wishes to be excluded from the Class. 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 the Order and Final Judgment.

THE RIGHT TO BE HEARD AT THE HEARING

25. Any Class member who has not validly and timely requested to be excluded from the Class, and who objects to any aspect of the Settlement, the Plan of Allocation, the adequacy of representation by Plaintiffs' Lead Counsel, or the application for attorneys' fees, costs and expenses, may appear and be heard at the Settlement Hearing. Any such person must submit a written notice of objection. Such objection must be served and filed so that it is received at least fourteen (14) days prior to the Settlement Hearing by the Court, Plaintiffs' Lead Counsel and Defendants' Counsel as provided in the Notice.

26. The notice of objection must demonstrate the objecting person's membership in the Class, including the number of Sunterra shares purchased and sold during the Class Period, and contain a statement of the reasons for objection. Only members of the Class who have submitted written notices of objection in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise.

TERMS OF PRELIMINARY APPROVAL ORDER

27. As soon as practicable following the execution of this Stipulation, the parties shall jointly apply to the Court for entry of a Preliminary Approval Order, substantially in the form annexed hereto as Exhibit A, and Plaintiffs' Lead Counsel shall move for certification of the Class solely for purposes of this Settlement, pursuant to Federal Rule of Civil Procedure

23. In the event that the Settlement is terminated for any reason, the parties shall revert to their litigation positions immediately prior to September 13, 2004, and the certification of the Class shall be rescinded.

TERMS OF ORDER AND FINAL JUDGMENT

28. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the parties shall request that the Court enter an Order and Final Judgment dismissing the Action with prejudice substantially in the form annexed hereto as Exhibit B.

SUPPLEMENTAL AGREEMENT

29. Plaintiffs' Lead Counsel and Defendants' Counsel have executed a "Supplemental Agreement" setting forth certain conditions under which this Stipulation may be withdrawn or terminated by Defendants, jointly, if potential Class members who purchased in excess of a certain number of shares of Sunterra common stock during the Class Period exclude themselves from the Class. The Supplemental Agreement shall not be filed prior to the Settlement Fairness Hearing unless a dispute arises as to its terms. In the event of a withdrawal from this Stipulation pursuant to the Supplemental Agreement, this Stipulation shall become null and void and of no further force and effect and the provisions of paragraph 32 shall apply. Notwithstanding the foregoing, the Stipulation shall not become null and void as a result of an election by the Defendants to exercise their joint option to withdraw from the Stipulation pursuant to the Supplemental Agreement until the conditions set forth in the Supplemental Agreement have been satisfied.

EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

30. The Effective Date of Settlement shall be the date when all the following shall have occurred:

- (a) entry of the Preliminary Approval Order in all material respects in the form annexed hereto as Exhibit A;
- (b) approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and
- (c) entry by the Court of an Order and Final Judgment, in all material respects in the form set forth in Exhibit B annexed hereto, and the expiration of any time for appeal or review of such Order and Final Judgment, or, if any appeal is filed and not dismissed, after such Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari, or, in the event that the Court enters an order and final judgment in form other than that provided above (“Alternative Judgment”) and none of the parties hereto elect to terminate this Settlement, the date that such Alternative Judgment becomes final and no longer subject to appeal or review.

31. The Individual Defendants (jointly), Andersen, or Plaintiffs’ Lead Counsel shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to the signatories hereto within thirty (30) calendar days of the latest of any of the following events: (i) the Court’s declining to enter the Preliminary Approval Order in any material respect; (ii) the Court’s refusal to approve this Stipulation or any material part of it; (iii) the Court’s declining to enter the Order and Final Judgment in any material respect, other than with respect to the Plan of Allocation or award of attorneys’ fees and reimbursement of expenses to Plaintiffs’ Counsel; (iv) the date upon which

the Order and Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; (v) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (vi) the Failure to Complete Settlements (as defined in paragraph 34 below) of the Gessow Case or the Gray State Case. Defendants shall also have the right to terminate the Settlement and this Stipulation as provided in paragraph 29 above.

32. Except as otherwise provided herein, in the event the Settlement is terminated or fails to become effective for any reason, then (a) the Settlement shall be without force and effect upon the rights of the parties, and none of its terms shall be effective or enforceable, except to the extent costs of notice and administration have been incurred or expended pursuant to the provisions herein; (b) the balance remaining in the Settlement Account, less any notice or administration expenses incurred prior to such termination, up to \$100,000, and less any Taxes payable on the income of the Settlement Account, shall be returned to Defendants, Genesis and Twin City, in proportion to their respective contributions pursuant to paragraph 7 within ten (10) business days; and (c) the parties shall revert to their litigation positions immediately prior to September 13, 2004.

NO ADMISSION OF WRONGDOING

33. This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

(a) shall not be offered or received against any Defendant and/or Released Party or against Lead Plaintiffs or the Class as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants and/or the Released Parties or by any of the Lead Plaintiffs or the Class with respect to the truth of any fact

alleged by Lead Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants and/or the Released Parties or the appropriateness of the certification of any class;

(b) shall not be offered or received against the Defendants and/or the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant and/or the Released Parties, or against the Lead Plaintiffs and the Class as evidence of any infirmity in the claims of Lead Plaintiffs and the Class;

(c) shall not be offered or received against the Defendants and/or the Released Parties or against the Lead Plaintiffs or the Class as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal or administrative action or proceeding, including in particular any informal or formal proceedings conducted by the Securities and Exchange Commission, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendants and/or the Released Parties may refer to it to effectuate the liability protection granted them hereunder;

(d) shall not be construed against the Defendants and/or the Released Parties or the Lead Plaintiffs and the Class as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

(e) shall not be construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or the Class or any of them that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the Settlement Fund.

MISCELLANEOUS PROVISIONS

34. This Stipulation and the Settlement are expressly conditioned on the completion of the settlements in the Gessow Case and the Gray State Case. For purposes of this Stipulation of Settlement and Settlement, there has been a “Failure to Complete Settlements” of the Gessow Case and/or the Gray State Case if any of the following occur in the Gessow Case and/or Gray State Case: (a) the parties in the Gessow Case and/or the Gray State Case are unable to agree upon and execute settlement agreements in those cases such that litigation resumes; or (b) the settlement agreements are not approved (if approval is necessary or sought by the parties in the Gessow Case and/or the Gray State Case) by the courts considering those settlements such that litigation resumes. In the event of a termination of this Stipulation pursuant to this paragraph, this Stipulation shall become null and void and of no further force and effect and the provisions of paragraph 32 shall apply.

35. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

36. Counsel for each Defendant is authorized to warrant on behalf of such Defendant, and hereby warrants on his or its behalf that, as to the payments made by or on behalf of him, her, or it, at the time of such payment that Defendants made or caused to be made pursuant to paragraphs 6 and 7 above, he, she, or it was not insolvent nor will the payment required to be made by or on behalf of him, her, or it render such Defendant insolvent within the

meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof.

37. The parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or that could be or could have been asserted by the Class members against the Released Parties with respect to the Released Claims. Accordingly, Lead Plaintiffs and Defendants agree not to assert in any forum that the litigation was brought by Lead Plaintiffs and the Class or defended by Defendants in bad faith or without a reasonable basis. The parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action. The parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

38. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all parties hereto or their successors-in-interest.

39. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

40. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation.

41. The waiver by one 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.

42. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits and the Supplemental Agreement other than those contained and memorialized in such documents.

43. This 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 provided that counsel for the parties to this Stipulation shall exchange among themselves original signed counterparts.

44. Notwithstanding anything to the contrary contained herein, the undersigned, for themselves and any other persons claiming by, through, or on behalf of them, acknowledge and agree that (i) in no event shall the Administrator of Andersen, any member of the Administrative Board of Andersen (or any officer, director, members or shareholder of any Administrative Board), any present or former directors, officers, managers, partners, participating principals, national directors or similar persons of Andersen or any of their respective agents or representatives (collectively, the "Andersen Covered Persons") have any personal liability with respect to Andersen's obligations arising out of or relating to this Agreement; and (ii) no Andersen Covered Person shall be obligated to make, and no Andersen Covered Person in fact will make, any capital contribution or other payment of any kind to Andersen in order for Andersen to satisfy its obligations arising out of or relating to this Agreement.

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

46. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

47. 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 the parties and all parties have contributed substantially and materially to the preparation of this Stipulation.

48. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

49. Plaintiffs' Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking prompt Court approval of the Preliminary Approval Order, the Stipulation and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. Nothing in this Stipulation of Settlement, the Settlement or the negotiations relating thereto, or the process and content of confirmatory discovery, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the attorney-client privilege or work product immunity.

50. Notwithstanding any provision above, claims held by AWSC are released only to the extent that Arthur Andersen, LLP has the authority to release such claims.

DATED: January 24, 2005

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