

**ENTERED**

September 25, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

Sorrento Therapeutics, Inc., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 23-90085 (CML)

(Jointly Administered)

**ORDER GRANTING LIQUIDATION TRUST'S  
MOTION (1) TO ESTABLISH PROCEDURES TO RESOLVE  
LITIGATION REGARDING AVOIDABLE TRANSFERS OF  
SCILEX STOCK DISTRIBUTED TO THE DEBTORS' SHAREHOLDERS AND (2) TO  
EXTEND TRADING RESTRICTION TO IMPLEMENT SETTLEMENT**

Upon the motion (the "Motion")<sup>2</sup> of the Liquidation Trust for entry of an order (this "Order") establishing procedures to resolve litigation regarding potential avoidance actions relating to the common shares of Scilex Holding Company ("Scilex") previously held by Sorrento and distributed to the Debtors' shareholders (the "Distributed Stock") in a distribution on or about January 19, 2023 (the "Distribution"), and to extend the Distribution Share Stay, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested

<sup>1</sup>The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity's federal tax identification number, are: Sorrento Therapeutics, Inc. ("Sorrento") (4842) and Scintilla Pharmaceuticals, Inc. (7956). The Debtors' service address is: 4955 Directors Place, San Diego, CA 92121.

<sup>2</sup>Capitalized terms used but not otherwise defined have the meanings ascribed to them in the Motion.

therein at a hearing before this Court, if any; and this Court having determined that the legal and factual bases set forth in support of the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **ORDERED THAT**:

1. The Liquidation Trust may resolve any Distributed Stock Avoidance Action in accordance with the following Settlement Procedures:

- a. **Demand Letter.** The Liquidation Trust shall distribute to each holder of Distributed Stock, through the brokerages and other means a demand letter substantially in the form annexed hereto as **Annex A** (the “Form Demand Letter”).
- b. **Settlement Agreement.** The Liquidation Trust and each holder of Distributed Stock that agrees to settled on the proposed terms shall settle a Distributed Stock Avoidance Action on the terms set forth in the Form of Settlement Agreement annexed hereto as **Annex B** (the “Form Settlement Agreement”).
- c. **Notice of Settlement.** The Liquidation Trust shall file notice of the settlement of a Distributed Stock Avoidance Action with the Court in the form of the Form of Notice of Settlement annexed hereto as **Annex C** (the “Form Notice of Settlement”).
- d. **Notice Recipients.** The Liquidation Trust shall effectuate service of the notice of the above on the following parties (each, a “Notice Recipient”):
  - (i) counsel to the Liquidation Trust, Norton Rose Fulbright US LLP, 1550 Lamar, Suite 2000 Houston, TX 77010 Attn: Ryan Manns (ryan.manns@nortonrosefulbright.com) and Julie Harrison (julie.harrison@nortonrosefulbright.com);
  - (ii) the Office of the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, TX, 77002, Attn: Hector Duran Jr. (Hector.Duran.Jr@usdoj.gov); and
  - (iii) any party that has requested notice pursuant to Bankruptcy Rule 2002.

2. Resolution of a Distributed Stock Avoidance Action pursuant to the Settlement Procedures shall be final upon the filing of a Notice of Settlement without further hearing or order from the Court.

3. Each settling party shall receive a subordinated unsecured claim against the Liquidating Trust equal to the sum paid in settlement or the sum of \$1.00 per share for each returned share of Distributed Stock if that option is chosen (regardless of whether the Liquidating Trust changes the settlement price in the future).

4. The Liquidation Trust may settle Distributed Stock Avoidance Actions on terms other than those set forth in the Settlement Procedures subject to standard law and motion procedures; and, should the Liquidation Trust in its sole discretion change the go forward terms of a settlement involving the payment of sums, the Liquidation Trust may do so simply by filing a notice of amended settlement terms with the Court.

5. Notice of the Motion shall be deemed good and sufficient notice. For the avoidance of doubt, notice of the Motion to the Brokerages and all known record holders shall be deemed good and sufficient notice and no other notice need be provided.

6. Neither providing cash consideration to retain the Distributed Stock nor returning the Distributed Stock to the Liquidation Trust, nor any other settlement relating to the Distributed Stock shall violate the stay imposed by the Bankruptcy Code or order from this Court.


7. The Liquidation Trust is authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

8. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. The Distributed Stock Stay is extended to January 31, 2025.

10. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: September 25, 2024

  
\_\_\_\_\_  
Christopher Lopez  
United States Bankruptcy Judge

**Annex A**

**Form of Demand Letter**



Norton Rose Fulbright US LLP  
2200 Ross Avenue, Suite 3600  
Dallas, Texas 75201-7932  
United States of America

August 28, 2024

Via [●]

[Addressee]

Re: Sorrento Therapeutics, Inc., *et al.*  
Case No.: 23-90085 (CML) (Bankr. S.D. Tex.)

To Whom It May Concern:

On February 13, 2023 (the "Petition Date"), Sorrento Therapeutics, Inc. ("Sorrento") and Scintilla Pharmaceuticals, Inc. (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court Southern District of Texas (the "Court"). I write on behalf of the liquidation trust (the "Liquidation Trust").

It has come to the Liquidation Trust's attention that, on or about January 19, 2023, Sorrento distributed (the "Distribution") to you shares of common stock (the "Distributed Stock") in Scilex Holding Company ("Scilex"). An investigation performed by the Creditors' Committee appointed in the Debtors' chapter 11 cases and the Liquidating Trust revealed that Sorrento appears to have been insolvent at the time of the Distribution. The investigation also determined that you did not provide any consideration for the Distributed Stock.

Accordingly, the Liquidating Trust believes it may bring the following causes of action against you (the "Distributed Stock Avoidance Actions"):

1. **Actual Fraudulent Transfer Under 11 U.S.C. § 548(a)(1)(A).** A claim to avoid the Distribution of the Distributed Stock as an actual fraudulent transfer under section 548(a)(1)(A) of the Bankruptcy Code. Under this Bankruptcy Code section, the bankruptcy estate may avoid a transfer made within two years before the petition date if the transfer was made with actual intent to hinder, delay, or defraud a past or future creditor. *In re Cipolla*, 476 Fed. Appx. 301, 306 (5th Cir. 2012).
2. **Constructive Fraudulent Transfer Under 11 U.S.C. § 548(a)(1)(B).** A claim to avoid the Distribution of the Distributed Stock as a constructive fraudulent transfer under section 548(a)(1)(B) of the Bankruptcy Code. Under this Bankruptcy Code section, the bankruptcy

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estate may avoid a transfer made or obligation incurred within two years of a bankruptcy filing if (a) the debtor received less than “reasonably equivalent value in exchange for such transfer or obligation” and (b) one of three financial condition tests are met: the debtor (i) “was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation”; (ii) was engaged, or about to engage, “in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital”; or (iii) “intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor’s ability to pay as such debts matured.” 11 U.S.C. § 548(a)(1)(B).

3. **Avoidable Fraudulent Transfers Under 11 U.S.C. § 544.** Section 544(b) of the Bankruptcy Code gives the estate the rights under state law to avoid fraudulent transfers. Like sections 548(a)(1)(A) and (a)(1)(B) of the Bankruptcy Code, most state laws authorize the avoidance of both actual and fraudulent transfers.

The Liquidating Trust, on behalf of the Estates, hereby makes a formal demand for repayment or return of the amounts received by you.

To encourage you to resolve this matter and provide assets to the Estates promptly, the Court has entered the *Order Granting Liquidation Trust’s Motion (1) to Establish Procedures to Resolve Litigation Regarding Avoidable Transfers of Scilex Stock Distributed to the Debtors’ Shareholders and (2) to Extend Trading Restriction to Implement Settlement* [Docket No. •] (the “Settlement Procedures Order”). Under the Settlement Procedures Order, the Liquidation Trust is authorized to settle the Distributed Stock Avoidance Action for either:

- (i) \$1.00 per share and/or
- (ii) Return of 2 shared of Distributed Stock for every 3 shares you received.

In exchange for the consideration set forth above, all claims held by the Estates against you relating to your receipt of the Distributed Stock will be forever released as set forth in the Settlement Agreement attached hereto as Annex A.

As a further incentive to you to settle, you would receive a subordinated unsecured claim against the Liquidating Trust equal to the sum paid in settlement or the sum of \$1.00 per share for each returned share of Distributed Stock if that option is chosen (regardless of whether the Liquidating Trust changes the settlement price in the future). In this manner, you may recover the amount or value paid in settlement ahead of non-settling parties if unsecured creditors are paid in full in the future.

Please note that your acceptance of this settlement offer would not violate the stay issued by the Court pursuant to the *Order (I) Approving Sale of Scilex Stock to Scilex Holding Company Free and Clear of All Liens, Claims, Interests, and Encumbrances, (II) Conditionally Vacating the Oramed Sale Order, and (III) Granting Related Relief* [Docket No. 1316] (the “Order”). The Order restricts trading of the Distributed Stock through March 31, 2024. All holders of the Distributed Stock may trade their Distributed Stock beginning on April 1, 2024.

 NORTON ROSE FULBRIGHT

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To accept this offer, complete the Settlement Agreement attached hereto as Annex A and return the executed Settlement Agreement along with proof of payment and/or return of the Distributed Stock on or before [●], 2024 to:

**Liquidating Trustee of the Sorrento Therapeutics, Inc. et al.,  
Liquidating Trust**

David Weinoffer  
3560 Old Spanish Trl,  
Houston, Texas 77021  
Email: SorrentoTrust@macco.group

with a copy to

**Norton Rose Fulbright US LLP**

Attn. Ryan E. Manns  
2200 Ross Avenue, Suite 3600,  
Dallas, Texas 75201

**IF THIS SETTLEMENT PROPOSAL IS NOT TIMELY AND PROPERLY ACCEPTED BY YOU, THE LIQUIDATING TRUST MAY HAVE NO OTHER CHOICE BUT TO PURSUE THE FULL VALUE OF THE DISTRIBUTED STOCK AVOIDANCE ACTION AGAINST YOU WITH INTEREST.**

Please recognize this settlement proposal as your opportunity to resolve this matter at a discount without the costs and risks inherent in litigation.

If no payment or response is received from you on or before [●], 2024 litigation may be commenced against you for the full amount of the Distribution, plus costs and interest.

Thank you in advance for your prompt attention. We look forward to hearing from you and resolving this matter.

Sincerely,

Ryan E. Manns



**Annex A**

**Settlement Agreement**

**Annex B**

**Form of Settlement Agreement**

## **FORM OF SETTLEMENT AGREEMENT**

This **SETTLEMENT AGREEMENT** (as may be amended, supplemented, or otherwise modified from time to time, this “Settlement Agreement”) is made and entered into as of [●], 2024, by and among the following parties (collectively, the “Parties” and each, a “Party”):<sup>1</sup>

- (i) The Sorrento Liquidation Trust (the “Liquidation Trust” or the “Estates’ Representative”); and
- (ii) the undersigned beneficial holder, broker, investment advisor or manager of beneficial holder of the Distributed Stock (as defined in the Motion) (the “Consenting Distributed Stockholder” and, collectively with the Estates’ Representative, the “Parties”).

### **RECITALS**

A. **WHEREAS**, on February 13, 2023, Sorrento Therapeutics, Inc. (“Sorrento”) and Scintilla Pharmaceuticals, Inc. (collectively, the “Debtors”) each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532, in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”).

B. **WHEREAS**, commencing in 2016, Sorrento acquired an ownership stake in Scilex Holding Company (“Scilex”), culminating in Sorrento owning 100% of Scilex common stock by January of 2021.

C. **WHEREAS**, as of November of 2022 and following the March 18, 2022 merger between Scilex and Vickers Vantage Corp. I through a SPAC transaction, Sorrento owned approximately 136 million of the approximately 141 million shares of Scilex common stock then outstanding (roughly 96% of the total Scilex common stock).

D. **WHEREAS**, as of December 31, 2022, Sorrento’s annual report reflected a deficit in equity value of negative \$21.7 million.

E. **WHEREAS**, on December 30, 2022, Sorrento announced that its board of directors had approved a dividend of 76 million shares of Scilex common stock to Sorrento shareholders, with anticipated payment date of January 19, 2023, comprising over half of Sorrento’s own holdings of Scilex common stock, or approximately 54% of the total outstanding shares of Scilex common stock.

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<sup>1</sup> Capitalized terms used but not otherwise defined in this Settlement Agreement shall have the meanings ascribed to them in the *Modified Joint Plan of Liquidation of Sorrento Therapeutics, Inc. and Scintilla Pharmaceuticals, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 1562] (the “Plan”) or the *Liquidation Trust’s Motion (1) to Establish Procedures to Resolve Litigation Regarding Avoidance Transfers of Scilex Stock Distributed to the Debtors’ Shareholders and (2) to Extend Trading Restriction to Implement Settlement* [Docket No. ●] (the “Motion”).

F. **WHEREAS**, on or about January 19, 2023, Sorrento issued the Distribution, reducing Sorrento’s common ownership of Scilex to approximately 42.5% without receiving any consideration for such transfer of assets.

G. **WHEREAS**, on [●] 2024, the Bankruptcy Court entered the *Order Approving Official Committee of Unsecured Creditors’ Motion to Establish Procedures to Resolve Litigation Regarding Avoidable Transfers of Scilex Stock Distributed to the Debtors’ Shareholders* [Docket No. ●] (the “Settlement Procedures Order”), whereby the Bankruptcy Court authorized the Estates’ Representative to settle potential avoidance actions relating to the Distributed Stock without further Bankruptcy Court approval subject to the procedures therein.

H. **WHEREAS**, the Estates’ Representative has been engaged in settlement discussions with the Consenting Distributed Stockholder regarding the recovery of the Distributed Stock or equivalent value to the Estates (the “Distributed Stock Avoidance Action”).

I. **WHEREAS**, following good-faith and arm’s-length negotiations, the Parties have reached agreement on a settlement resolving the Distributed Stock Avoidance Action on the terms set forth in this Settlement Agreement and consistent with the Settlement Procedures Order.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby contract, covenant, and agree that all disputes, claims, and causes of action relating to the Distributed Stock Avoidance Action be fully resolved, settled, compromised, extinguished and dismissed with prejudice, as applicable, subject to the approval of the Bankruptcy Court, on the following terms and conditions:

## **AGREEMENT**

1. **For Settlement Purposes Only.** This Settlement Agreement is for settlement purposes only. Except as explicitly set forth in this Settlement Agreement, the fact of this Settlement Agreement or any provision herein, the negotiations or proceedings related hereto, and any actions taken hereunder shall not constitute or be construed as (a) any admission of the validity of any claim or any fact alleged by any of the Parties, (b) any admission of any wrongdoing, fault, violation of law, breach of contract, or liability of any kind on the part of any of the Parties, (c) any admission as to any claim or allegation made in any demand of, action against, or proceeding against any of the Parties, and/or (d) a waiver of any applicable defense by any of the Parties. This Settlement Agreement shall not be offered as or be admissible as evidence against any Party in any action or proceeding in any forum for any purpose whatsoever, except as evidence of its existence or terms or in any action or proceeding brought to enforce its terms.

2. **Approval.** This Settlement Agreement shall be effective on the date that the Estates receive the consideration elected by the Consenting Distributed Stockholder in Section 3.

3. **Settlement Consideration.** The undersigned elects to provide the following consideration to resolve the Distributed Stock Avoidance Action (the “Settlement Consideration”):

- The undersigned elects to return two shares of the Distributed Stock for every three shares received.
- The undersigned elects to pay \$1.00 for each share of Distributed Stock they will retain.

Number of Shares held: \_\_\_\_\_

Total Payment (if applicable): \_\_\_\_\_

Total Number of Shares Returned: \_\_\_\_\_

4. **Settlement Consideration Distributions.** The Parties agree that the Consenting Distributed Stockholder shall, depending on its election, (x) return the Distributed Stock and/or (y) provide payment for such Distributed Stock in accordance with the wire and/or delivery instructions, as applicable, set forth on Schedule 1. Settling party shall receive a subordinated unsecured claim against the Liquidating Trust equal to the sum paid in settlement or the sum of \$1.00 per share for each returned share of Distributed Stock if that option is chosen (regardless of whether the Liquidating Trust changes the settlement price in the future). For the avoidance of doubt, all distributions of Settlement Consideration to the Estates in accordance with this Settlement Agreement shall be irrevocable and not subject to claw-back under any circumstances.

5. **Mutual Release.** In exchange for good and valuable consideration, the adequacy of which is hereby confirmed, to the fullest extent allowed by applicable law, the Estates' Representative on one hand, and the Consenting Distributed Stockholder on the other, on behalf of themselves, their successors, and their assigns, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever mutually released and discharged the Consenting Distributed Stockholder on one hand, and the Estates' Representative on the other, from any and all claims arising from the Consenting Distributed Stockholder's receipt of the Distributed Stock.

6. **Fees & Expenses.** Each party shall bear its own fees and costs in connection with the negotiation and execution of this Settlement Agreement.

7. **Notice.** All notices, demands, instructions, and other communications required or permitted under the Settlement Agreement to any Party (a "Notice") must be in writing, will be effective upon receipt, and must be delivered by hand delivery, overnight courier, or e-mail.

**Liquidating Trustee of the Sorrento Therapeutics, Inc. et al.,**  
**Liquidating Trust**  
David Weinhoffer  
3560 Old Spanish Trl,  
Houston, Texas 77021  
Email: [SorrentoTrust@macco.group](mailto:SorrentoTrust@macco.group)

with a copy

**Norton Rose Fulbright US LLP**

Attn. Ryan E. Manns

2200 Ross Avenue, Suite 3600,

Dallas, Texas 75201

Email: ryan.manns@nortonrosefulbright.com

8. **Governing Law.** This Settlement Agreement, and any disputes related thereto, shall be governed by and be construed in accordance with the laws of the state of New York without regard to the rule of conflict of laws of the state of New York or any other jurisdiction that would require the application of the law of another jurisdiction. The Parties hereto consent to submit to the jurisdiction of the Bankruptcy Court. For the avoidance of any doubt, during the pendency of the Chapter 11 Cases, all proceedings shall be brought in the Bankruptcy Court.

9. **Authority.** Each of the Parties hereto represents and warrants that it has the authority to enter into this Settlement Agreement and to undertake the transactions contemplated hereunder, subject only to the Bankruptcy Court's approval.

10. **Successors and Assigns.** The rights and obligations of each of the Parties under this Settlement Agreement shall be binding upon, and inure to the benefit of, any successor or assign of each such Party.

11. **Non-Severability.** Each of the terms of this Settlement Agreement is a material and integral part hereof. Should any provision of this Settlement Agreement be held to be unenforceable or contrary to law, the entire Settlement Agreement shall be deemed null and void.

12. **Entire Understanding.** This Settlement Agreement constitutes the entire understanding of the Parties hereto in connection with the matters covered herein, and may not be amended, modified, or altered except by an agreement in writing signed by each of the Parties.

13. **No Party Deemed Drafter.** The signatories to this Settlement Agreement are competent persons, each of whom is experienced in business and represented by counsel. Therefore, any ambiguous language in this Settlement Agreement will not be construed against any particular Party as the drafter of such language.

14. **Failure to Enforce.** The failure of any Party to enforce a provision of this Settlement Agreement will not constitute a waiver of such Party's right to enforce that provision.

15. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same document. Delivery of an executed counterpart of this Settlement Agreement by electronic mail to the contacts listed herein shall be equally effective as delivery of an original executed counterpart.

[Signature Pages Follow]

**ESTATE REPRESENTATIVE**

By: \_\_\_\_\_  
Name:  
Title:



**CONSENTING DISTRIBUTED  
STOCKHOLDER**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**Schedule 1**

**Wire and Delivery Instructions**

**Annex C**

**Form of Notice of Settlement**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

Sorrento Therapeutics, Inc., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 23-90085 (CML)

(Jointly Administered)

**FORM OF OMNIBUS NOTICE OF SETTLEMENT  
RE: DISTRIBUTED STOCK AVOIDANCE ACTION**

**PLEASE TAKE NOTICE** that on February 13, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

**PLEASE TAKE FURTHER NOTICE** that on [●], 2024, the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) entered the *Order Granting Liquidating Trust’s Motion (1) to Establish Procedures to Resolve Litigation Regarding Avoidable Transfers of Scilex Stock Distributed to the Debtors’ Shareholders and (2) to Extend Trading Restriction to Implement Settlement* [Docket No. ●] (the “Settlement Procedures Order”), whereby the Bankruptcy Court authorized the Liquidation Trust<sup>2</sup> to settle potential avoidance actions relating to the Distributed Stock without further Bankruptcy Court approval subject to the procedures therein.

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<sup>1</sup> The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: Sorrento Therapeutics, Inc. (“Sorrento”) (4842) and Scintilla Pharmaceuticals, Inc. (7956). The Debtors’ service address is: 4955 Directors Place, San Diego, CA 92121.

<sup>2</sup> Capitalized terms but not defined shall have the meanings given to them in the *Liquidating Trust’s Motion (1) to Establish Procedures to Resolve Litigation Regarding Avoidable Transfer of Scilex Stock Distributed to the Debtors’ Shareholders (2) Extend Trading Restriction to Implement Settlement* [Docket No. ●].

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2024, in accordance with the Settlement Procedures Order, the Liquidation Trust entered into the following Settlement Agreements, attached hereto as Exhibit A, during the preceding quarter.

[Remainder of page intentionally left blank.]

**Exhibit A**

**Settlement Agreements**