

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

POPTECH, L.P., individually, and on behalf of a
class of others similarly situated,

Plaintiff,

v.

STEWARDSHIP CREDIT ARBITRAGE FUND,
LLC; STEWARDSHIP INVESTMENT
ADVISORS, LLC; ACORN CAPITAL GROUP,
LLC; MARLON QUAN; GUSTAV E. ESCHER,
III; PAUL SEIDENWAR and ROBERT BUCCI,

Defendants.

Civil Action No. 3:10-cv-967 (SRU)

August 7, 2013

SETTLEMENT AND ASSIGNMENT AGREEMENT

This Settlement and Assignment Agreement (“Settlement Agreement” or “Agreement”) is made and entered into by and between the Representative Plaintiffs, Poptech, L.P. and William A. Meyer (“Representative Plaintiffs”), on behalf of themselves and the Settlement Class (defined below), and Defendant, Paul Seidenwar (“Seidenwar”) (together, the “Parties”), to settle and compromise the Claims asserted against Seidenwar in the Litigation, as those terms are defined below, according to the terms and conditions herein.

RECITALS

1. The Stewardship Credit Arbitrage Fund (the “Stewardship Fund” or “Fund”), organized as a Delaware limited liability company in 2001, is a hedge fund based in Greenwich, Connecticut that focused primarily on investing its members’ monies in asset-based lending transactions;

2. The Managing Member of the Stewardship Fund was Stewardship Investment Advisors, LLC (“Advisors”), an SEC-registered investment advisor that was also a Delaware limited liability company based in Greenwich, Connecticut, while the other members such as Representative Plaintiffs had no managing rights;

3. The Stewardship Fund purchased loans originated by Acorn Capital Group, LLC (“Acorn”), a finance company and loan originator specializing in asset-based lending that was also a Delaware limited liability company based in Greenwich, Connecticut;

4. The Stewardship Fund, Advisors and Acorn were created and controlled by Marlon Quan (“Quan”), an individual resident of Connecticut;

5. Seidenwar is an individual residing in New York and, during the Class Period (from February 6, 2006 to September 25, 2008), Seidenwar was President of Acorn, and previously served as Acorn’s Chief Credit Officer and as its Managing Director;

6. In 2001, the Stewardship Fund began investing in entities controlled by Tom Petters (“Petters”), who, it was discovered in 2008, was using those entities to operate a massive Ponzi scheme involving over \$40 billion and resulting in losses of more than \$3 billion and later convicted of securities fraud in 2009;

7. By October 2008, after the federal government began investigating Petters, Representative Plaintiffs and other members of the Fund were informed that the loans to the Petters entities were in default;

8. On June 18, 2010, the Representative Plaintiffs initiated the Litigation in the United States District Court for the District of Connecticut, Case 3:10-cv-00967-SRU, against Advisors, Acorn, Quan and others. Seidenwar was added as a defendant to the action on

December 13, 2010 after the Complaint was amended. The current iteration of the Complaint asserts, *inter alia*, claims for securities fraud under Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 against the Fund, Advisors, Acorn and Quan; control person liability under Section 20(a) of the Securities and Exchange Act of 1934 against Advisors, Acorn, Quan, Seidenwar and another, violation of the Connecticut Uniform Securities Act against the Fund, Advisors, Acorn and Quan; and aiding and abetting violations of the Connecticut Uniform Securities Act against Advisors, Acorn, Quan, Seidenwar and others. There is no allegation of fraud against Seidenwar;

9. Representative Plaintiffs allege, on behalf of themselves and similarly situated Fund members, that, contrary to the Fund's marketing materials and ongoing representations to existing and potential members, the risk management safeguards and due diligence were never performed and that the defendants were aware that the safeguards and due diligence were never performed;

10. Representative Plaintiffs further allege, on behalf of themselves and similarly situated Fund members, that they would not have invested, re-invested, or converted their interests from one class to another in the Fund had the defendants not engaged in the alleged wrongdoing;

11. Representative Plaintiffs further allege, on behalf of themselves and similarly situated Fund members, that, as a proximate result of the alleged wrongdoing, they suffered damages when their investments in the Fund were devalued after the Petters' Ponzi scheme was revealed;

12. The Parties are aware of related actions with claims arising out of the same allegations asserted against the Fund, Acorn, SIA, Quan and other defendants in *Quinn v. Stewardship Credit Arbitrage Fund, LLC*, 2009-cv-00380, filed in the United States District Court for the District of Connecticut on March 9, 2009, and *SSR Capital Partners, LP v. Arrowhead Capital Partners II, LP*, DC-09-08239, filed in the District Court of Dallas County, Texas on June 30, 2009. Seidenwar was not named as a defendant in either of these actions.

13. The pleadings in Representative Plaintiffs' action closed on March 20, 2012 and is currently in discovery;

14. Seidenwar has denied and continues to deny that he committed any acts or failed to fulfill any duties with respect to the claims asserted by Representative Plaintiffs against him;

15. While Seidenwar denies liability and believes he will prevail at trial, he is confronted with the necessity of expending substantial sums to continue to defend the action and recognizes the risk of a possible adverse outcome if he loses any of the claims brought against him and he therefore would like to settle all claims;

16. While Representative Plaintiffs believe that their claims against Seidenwar are meritorious and will prevail in Court, Representative Plaintiffs are confronted with the necessity of expending further time and expense to prosecute the action for a recovery that is likely to be uncertain, and recognize the risk of no recovery in the event of an adverse outcome;

17. Because the risk of catastrophic loss is always present in operating a finance company, Acorn purchased an insurance policy to protect it and its officers from loss in the event, rightly or wrongly, it was caught up in claims such as those asserted against it and Seidenwar by Representative Plaintiffs;

18. Seidenwar was insured by American International Specialty Lines Insurance Company (“AISLIC”) under Policy Number 01-242-34-63 (the “Policy”) with a liability limit of \$3 million;

19. AISLIC received notice of related claims against Acorn prior to the expiration of the Policy Period;

20. Seidenwar sought coverage for this matter under the Policy on July 12, 2011, but AISLIC denied coverage for the claims asserted by Representative Plaintiffs;

21. Seidenwar provided Representative Plaintiffs with copies of all insurance policies in his possession, custody or control;

22. Representative Plaintiffs made a demand for settlement that would resolve the claims of Representative Plaintiffs asserted against Seidenwar on behalf of themselves and the Settlement Class;

23. Seidenwar has communicated Representative Plaintiffs’ demand to AISLIC and asked that AISLIC fulfill its obligations under the policy;

24. AISLIC has been provided with all information it requested, but declined coverage;

25. AISLIC has declined to participate in and consent to a settlement with Representative Plaintiffs within the limits of the Policy or otherwise, despite being provided with an opportunity to effectuate such a settlement;

26. Seidenwar could potentially be liable, jointly and severally, for damages to Representative Plaintiffs and the Settlement Class if the matter is not resolved, as these suits and claims present the risk of damages far greater than the policy limit;

27. The Parties have evaluated the damages award that could be established if the claims of Representative Plaintiffs proceed to trial and in the event liability was established;

28. The rights of the Settlement Class are best protected through a class settlement of the Claims, and Seidenwar was unwilling to negotiate unless it was on a class-wide basis;

29. The Parties have negotiated as adverse parties and believe they have reached an agreement which fairly and reasonably resolves the claims of liability of Seidenwar arising from the Fund;

30. The Parties engaged in protracted, arm's-length negotiations designed to bring a conclusion to Representative Plaintiffs' claims against Seidenwar, save litigation expenses, and prevent uncertain but potentially substantial liability on the part of Seidenwar;

31. The Parties have taken into consideration the allegations underlying the claims asserted by Representative Plaintiffs and the Settlement Class Members and any applicable defenses thereto, the amount of their collective claims, the evidence in the case, the potential verdict range represented by such suits, as well as the public interest and related factors;

32. An award against Seidenwar in the action for all the damages sought would be catastrophic for Seidenwar and might likely result in an uncertain recovery for Representative Plaintiffs and Settlement Class Members;

33. Regardless of his belief in his innocence, Seidenwar has assets that might be subject to execution in the event that a verdict in excess of insurance policy limits is entered against him, and Seidenwar is desirous of protecting himself from additional liability, as allowed by law and specifically authorized under Connecticut and New York law. *See Black v. Goodwin, Loomis & Britton, Inc.*, 239 Conn. 144, 154 (1996); *Ostrowski v. Am. Safety Indem. Co.*, No. 07-

CV-3977 (DLI)(VVP), 2010 WL 3924679, at *7 (E.D.N.Y. Sept. 30, 2010).

34. In consideration of, as a condition to, and integral to the Agreement, Seidenwar requires Representative Plaintiffs to obtain an Order from the District Court approving this Agreement as provided herein as a full and complete settlement of any and all claims asserted or which could be asserted by Representative Plaintiffs and Settlement Class Members.

35. The necessity of a Class-wide resolution of the claims against Seidenwar approved by the District Court, which arise from Seidenwar's role as an officer of Acorn and in connection with the Fund's investments, is demonstrated by the number of Settlement Class Members, the size of their claims, and the limited assets available to satisfy those claims, which would impair, if not eliminate, the District Court's ability to resolve among competing claimants the appropriate interests to which each Settlement Class Member would be entitled if resolved individually;

36. Class Counsel has reviewed sufficient information and documents to reasonably believe that the benefits conferred on Representative Plaintiffs and Settlement Class Members under this Agreement are the maximum that could be achieved on behalf of any and all Settlement Class Members directly against Seidenwar in a settlement;

37. Counsel for Seidenwar has studied the evidence supporting the Litigation and is in possession of information and documents sufficient to allow Seidenwar and his counsel to reasonably evaluate the damages sought, and the risk of liability;

38. The amount of damages and liability exposures have been negotiated and evaluated by and between counsel for the Parties and the Parties themselves, and all have approved the evaluations and found the evaluations to be reasonable; and

39. The Parties agree that the terms of the Agreement are fair and reasonable under the circumstances.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises, Recitals and undertakings provided herein, the undersigned Parties agree as follows:

1. **THE RECITALS.** The foregoing “Recitals” clauses are confirmed, warranted, and ratified by the Parties as being true and correct and are hereby incorporated herein.

2. **DEFINITIONS.**

As used in this Agreement, the following terms have the meanings set forth below:

- a. “Claims” means all the claims asserted by Representative Plaintiffs against Seidenwar, on behalf of themselves and the Settlement Class in the Litigation, specifically a claim for control person liability under Section 20(a) of the Securities and Exchange Act of 1934 and an aiding and abetting claim under the Connecticut Uniform Securities Act.
- b. “Class Counsel” means Shepherd, Finkelman, Miller & Shah, LLP.
- c. “Court” means the United States District Court for the District of Connecticut.
- d. “Counsel for Mr. Seidenwar” means Seidenwar’s counsel of record in this Litigation, the Law Office of David Gourevitch.
- e. “Individual Defendants” means the natural persons who remain Defendants in the Litigation - Quan, Robert Bucci (“Bucci”), and Seidenwar.

- f. “Litigation” means the instant case captioned *Poptech, L.P. v. Stewardship Investment Advisors, LLC v. Stewardship Investment Advisors, LLC, et al.*, Case 3:10-cv-00967-(SRU) in the District of Connecticut.
- g. “Policy” means the liability insurance provided to Acorn and its managers and employees by AISLIC under Policy Number 01-242-34-63.
- h. “Representative Plaintiffs” means the named plaintiffs in this Litigation, *i.e.*, Poptech, L.P. and William Meyer.
- i. “Settlement Class” means all investors who became members of the Fund by converting interests or otherwise invested in the Fund between February 6, 2006 and September 25, 2008. Excluded from the Settlement Class are:
 - i. Persons who validly and timely exclude themselves from the Settlement Class, using the procedure set forth in Section 13;
 - ii. Persons who have settled with and released Seidenwar from individual claims substantially similar to those alleged in the Litigation or Persons who have had adjudicated claims substantially similar to those alleged in this Litigation;
 - iii. Current and former officers, directors, or employees of the Fund, SIA, Acorn, or the subsidiaries, and affiliates of the Fund, SIA, and Acorn;
 - iv. The Honorable Judge Stefan R. Underhill; and

- v. Members of the Individual Defendants' immediate families.
- j. "Settlement Class Member" means a person who falls within the definition of the Settlement Class.
- k. "Settlement Fund" means all funds paid by Seidenwar and recovered from the Policy pursuant to this Agreement, plus any accrued interest, to be placed in an escrow account for later distribution to Representative Plaintiffs and the Settlement Class.
- l. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

3. **DENIAL OF WRONGDOING AND LIABILITY.** Seidenwar denies the material factual allegations and Claims asserted by the Representative Plaintiffs in the Litigation, including, but not limited to, any and all charges of wrongdoing arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation.

4. **THE BENEFITS OF SETTLEMENT.** Class Counsel has satisfied its due diligence duty to the Settlement Class, and conducted a thorough examination and investigation of the law and facts, including partial discovery. Class Counsel and the Representative Plaintiffs recognize and acknowledge the expense and length of continued proceeds that would be necessary to prosecute the Litigation against Seidenwar through discovery, trial and possible appeals. Class Counsel and the Representative Plaintiffs also took into account the uncertain outcome and the risk of any litigation, especially in complex securities actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel and the Representative Plaintiffs are mindful of the inherent problems of proof of, and possible defenses

to, the Claims asserted in the Litigation. Class Counsel and the Representative Plaintiffs believe that the proposed Agreement confers substantial benefits upon the Settlement Class. Based on their evaluation of all of these factors, the Representative Plaintiffs and Class Counsel have determined that the Agreement is in the best interests of the Representative Plaintiffs and the Settlement Class. Arm's-length, adversarial settlement negotiations have taken place between the Representative Plaintiffs and Seidenwar over an extended period and, as a result, this Agreement has been reached, subject to Court approval.

5. **SETTLEMENT CONSIDERATION.** In consideration for the settlement of Representative Plaintiffs' claims, and within thirty (30) days following the entry of the Approval Order further described herein, the cash sum of \$17,500.00 (the "Initial Settlement Sum") shall be paid into the Settlement Fund directly from Seidenwar. In addition, within five (5) days following the entry of the Order approving this Agreement, Seidenwar will permit entry of a "Final Judgment" against him in the amount of \$3.075 million in the form annexed hereto as Exhibit A, representing a negotiated amount reasonably reflecting the exposure and risk of loss for any and all of Representative Plaintiffs' Claims if Seidenwar was to lose such Claims, provided, however, that the Final Judgment shall not be recorded. In addition, Seidenwar shall assign his rights to the Policy.

6. **ASSIGNMENT OF CAUSES OF ACTION.**

a. Seidenwar hereby assigns to Representative Plaintiffs and the Settlement Class all of his rights, title, and interest in any and all causes of action he may have against AISLIC under the policy, including, but not limited to, common law, bad faith or similar law, and the Connecticut Unfair Insurance Practice Act ("CUIPA"), Conn. Gen.

Stat. § 38a-815, *et seq.* and Connecticut Unfair Trade Practices Act (“CUPTA”), Conn. Gen. Stat. § 42-110a, *et seq.*, as a result of, arising out of or in connection with AISLIC’s refusal to:

- i. provide Seidenwar with the full benefits due under the Policy; and
- ii. consent to a settlement within the limits of the Policy, including as requested by Seidenwar and Representative Plaintiffs and the Settlement Class, as Assignees.

Seidenwar makes no representations regarding the merits of any such cause of action.

b. Seidenwar hereby assigns to Representative Plaintiffs all of his rights, titles, and interests in any and all causes of action he may have against AISLIC relating to the judgment of \$3.075 million against Seidenwar in favor of Representative Plaintiffs and the Settlement Class.

c. Seidenwar assigns one hundred percent (100%) of his interest in any damages recovered by Representative Plaintiffs for the Settlement Class relating to the assignments of rights and actions specified in this section against AISLIC. Seidenwar shall have no interest in nor shall he be responsible for any of the attorneys’ fees or costs incurred or awarded in connection with any such action.

d. Representative Plaintiffs and the Settlement Class have complete discretion on whether to pursue litigation against AISLIC in connection with the assignments or rights and actions specified in this section, and complete authority to compromise as they deem appropriate, appeal an adverse decision, or to defend any appeal taken by AISLIC.

e. In the event the Approval Order does not become a Final, Non-Appealable Order, the assignments of the rights and actions specified in this section shall be void.

f. Upon the Court's preliminary approval of this Agreement, Representative Plaintiffs and the Settlement Class may initiate any action or proceeding against AISLIC in connection with the assignments or rights and actions specified in this section.

However, final resolution of such action or proceeding shall be stayed pending the Court's final approval of this Agreement.

7. **NO RELEASE OF CARRIER LIABILITY.** The Parties have reviewed the Connecticut Supreme Court case of *Black v. Goodwin, Loomis and Britton, Inc.*, 681 A.2d 293 (Conn. 1996) and the New York Supreme Court, Appellate Division, Second Department case of *Westchester Fire Ins. Co. v. Utica First Ins. Co.*, 40 A.D.3d 978 (N.Y.A.D. 2d Dept. 2007) and each agrees that it is not the intention of Seidenwar, Representative Plaintiffs, or the Settlement Class to release or discharge AISLIC from any of its liability to Seidenwar, Representative Plaintiffs, or the Settlement Class by way of the Policy or any other policies, nor is it the intent of Representative Plaintiffs and the Settlement Class to release or discharge Seidenwar from his obligations to satisfy the Final Judgment except as expressly provided for under the terms of this Agreement.

8. **ASSIGNMENT PRIOR TO DISCHARGE OF LIABILITY AND COVENANT NOT TO EXECUTE.** The assignment of rights and actions specified in Section 6 of the Agreement was given by Seidenwar prior to the discharge of any liability for payment on the Final Judgment and this Agreement. Furthermore, the assignments of rights and actions specified in Section 6 of the Agreement was given in consideration of Representative Plaintiffs'

and the Settlement Class' grant of a covenant not to sue to recover or attempt to collect from Seidenwar the amount of the Final Judgment until after the conclusion of litigation relating to the assignments of the rights and actions specified in Section 6 of the Agreement (settlement, final dismissal, with prejudice, and/or no further appellate review sought of available).

9. **COURT APPROVAL.** This Agreement is subject to the final approval of the Court in the Litigation. As part of the Court's approval of any settlement, the Court would enter a bar order pursuant to 15 U.S.C. § 78u-4(f)(7)(A), thereby extinguishing any claims by or against Seidenwar for contribution vis-à-vis any person. In the event that the Court does not approve any part of this Agreement, the Parties agree that the entire Agreement shall be null and void and the Parties shall proceed with the Claims. Further, upon final approval by the Court of this Agreement, any and all persons who have held or asserted, who hold or assert, or who in the future may hold or assert any claims against Seidenwar, individually and/or jointly based upon, relating to, arising under or out of or attributable in any way to the claims asserted in the instant action, asserted or unknown, contingent or fixed, matured or unmatured, liquidated or unliquidated, whenever or wherever arising or asserted (including all in the nature of tort, contract, warranty and/or any other theory of common law or statutory law, or equity, shall be and hereby are permanently stayed, restrained and enjoined from asserting any such interests, causes of action and/or claims against Seidenwar, individually and/or jointly, and from continuing, commencing or otherwise proceeding or taking any action against Seidenwar to enforce such interests and/or claims, asserting such interests, causes of action, and/or claims for the purpose of directly or indirectly collecting recovering or receiving any future payment from Seidenwar, individually and/or jointly with respect to any such interest and/or claims as to the

instant action.

10. **SATISFACTION OF JUDGMENT AND FINAL RELEASE.**

(a) Representative Plaintiffs and the Settlement Class do hereby forever release and discharge Seidenwar from any and all claims, causes of action, damages, losses, debts, obligations, agreements, liabilities, attorneys' fees, costs and expenses, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, and whether arising under state law, federal law, common law or otherwise, which arise directly or indirectly out of any facts, events, or transactions that occurred from the beginning of time through the effective date of this Agreement relating to the Fund and the Fund-related claims; (b) the Final Judgment shall be deemed satisfied and Representative Plaintiffs shall deliver a Satisfaction of Judgment to Seidenwar within thirty (30) days; and (c) the Parties shall have no further obligations or liabilities between them, except as provided herein, upon the satisfaction of all four (4) of the following conditions:

(i) the Approval Order becomes a Final Non-Appealable Order;

(ii) Seidenwar is in compliance with the other terms of this Agreement;

(iii) the conclusion of any litigation relating to the assignments of the rights and actions specified in Section 6 of the Agreement (settlement, final dismissal, with prejudice, and/or no further appellate review sought of available); and

(iv) Representative Plaintiffs and the Settlement Class do not proceed to recover the remaining balance of the Final Judgment against Seidenwar within three (3) months after the conclusion of any litigation relating to the assignments of the rights and actions specified in Section 6 of the Agreement (settlement, final dismissal, with prejudice, and/or no further appellate review sought of available).

Notwithstanding any other provision in this Agreement to the contrary, after the conclusion of any litigation relating to the assignments or rights specified in Section 6 of the Agreement, in the event that Seidenwar files a petition for bankruptcy pursuant to Chapter 7, 11 or 13 of title 11 of the United States Code or an involuntary petition is filed against Seidenwar under Chapter 7, 11 or 13 of title 11 of the United States Code, or a receivership petition or application under state or federal law is filed against Seidenwar, the debt due the Representative Plaintiffs and the Final Judgment will not be enforced and no claim of any kind or nature whatsoever shall be asserted or alleged in any bankruptcy case filed by or against Seidenwar or in any receivership action. Moreover, the Representative Plaintiffs hereby waive any right to any distribution in any bankruptcy case filed by or against Seidenwar or in any receivership action. Further, the Representative Plaintiffs' debt, claim, rights or Final Judgment against Seidenwar shall not be assigned, hypothecated or transferred and such transfer shall be of no force or effect. In the event of any such transfer, assignment or hypothecation, the debt due the Representative Plaintiffs and the Judgment will be deemed satisfied and discharged.

Upon satisfaction of the four (4) conditions provided in this Section and contingent upon the delivery of a satisfaction of judgment to Seidenwar by the Representative Plaintiffs, Seidenwar forever releases and discharges Representative Plaintiffs, Class Members, and Class Counsel, from any and all claims, causes of action, damages, losses, debts, obligations, agreements, liabilities, attorneys' fees, costs and expenses, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, and whether arising under state law, federal law, common law or otherwise, which arise directly or indirectly out of any facts, events, or transactions that occurred from the beginning of time through the effective date of this Agreement

relating to the Fund and the Fund-related claims or relating to this Agreement or resolution of the Litigation.

11. **DIVISION OF SETTLEMENT CONSIDERATION, ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS.** Any recovery resulting from litigation relating to the assignment of the rights and actions specified in Section 6 of the Agreement, shall be placed in a trust account along with any recovery from all other defendants in the Litigation. Division of the Settlement consideration, Class Counsel's attorneys' fees and potential incentive awards for the Representative Plaintiffs shall not be decided or allocated until the final resolution of the Litigation as to all Defendants. Any request for attorneys' fees shall not exceed thirty-three percent (33%) of the total amount recovered on behalf of the Settlement Class, plus any other reasonable costs and expenses approved by the Court (which shall not exceed \$200,000 in any event).

12. **NOTICE AND OBJECTIONS AND REQUESTS FOR EXCLUSIONS BY SETTLEMENT CLASS MEMBERS.** Upon the Court's preliminary approval of this Agreement, Class Counsel shall be responsible for arranging notice to the Settlement Class Members of this Agreement via first-class U.S. mail.

a. Any Settlement Class Member who intends to object to the fairness, reasonableness and adequacy of the Agreement ("Objection(s)") must send a written Objection to the Court and mail a copy to Class Counsel and Seidenwar's Counsel by first-class mail with postage paid. Objections must be postmarked not later than thirty (30) days after the date of the mailing of Notice. In his/her/its Objection, the objecting Settlement Class Member must: (i) set forth his/her/its

full name, current address and telephone number; (ii) state that the objector has reviewed the Settlement Class definition and understands that he/she/it is a Settlement Class Member, and has not opted out of the Settlement Class; (iii) set forth a complete statement of all legal and factual bases for any Objection that the objector wishes to assert; and (iv) provide copies of any documents that the objector wishes to submit relating to his/her/its position. Objections must be sent to the Court, Mr. Seidenwar's Counsel at 875 Third Avenue, 28th Floor, New York, NY 10022, and Class Counsel at Shepherd, Finkelman, Miller & Shah, LLP, 65 Main Street, Chester, CT 06412.

b. In addition to subsection 13(a), objecting Settlement Class Members must state in writing whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without separate counsel. No Settlement Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the Agreement, and no written objections or briefs submitted by any Settlement Class member shall be received or considered by the Court at the Final Approval Hearing unless written Notice of the Settlement Class Member's intention to appear at the Final Approval Hearing and copies of any written objections or briefs have been filed with the Court and served on Class Counsel and Seidenwar's Counsel at the addresses set forth in subsection 13(a) on or before thirty (30) days after the date of the mailing of the Notice. Settlement Class members who fail to file and serve timely written objections in the manner

specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Agreement.

c. Settlement Class Members may elect to exclude themselves from this Agreement, relinquishing their rights to benefits under this Agreement.

Settlement Class Members who exclude themselves from this Agreement will not release their individual Claims or other claims arising from Seidenwar's involvement with Acorn. A Settlement Class Member wishing to exclude himself/herself/itself from the Agreement must send to Class Counsel and Seidenwar's Counsel a letter including: (i) his/her/its name, current address, and telephone number and (ii) provide a clear statement communicating that he/she/it elects to be excluded from the Settlement Class, does not wish to be a Settlement Class Member and elects to be excluded from any judgment entered pursuant to this Agreement. Any request for exclusion must be postmarked on or before thirty (30) days after the date of the mailing of the Notice. The date of the postmark on the return mailing envelope shall be the exclusive means to determine whether a request for exclusion has been timely submitted. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the date specified in the Preliminary Approval Order and Notice, or on such other date set by the Court, shall be bound by all terms of the Agreement and the Final Order and Judgment, regardless of whether they have requested exclusion from the Settlement.

d. Any Settlement Class Member who timely submits a request for exclusion may not file an objection to the Agreement and shall be deemed to have waived any rights or benefits under this Agreement.

e. If any person(s) who are within the Settlement Class elect to be excluded from the Settlement Class and submits a valid request for exclusion as set forth in subsection 13(c), Seidenwar shall have the right to withdraw from the Agreement, upon written notice to Class Counsel.

f. Following the expiration of the deadline for objections and/or requests for exclusion from the Agreement, as approved by the Court and set forth in the Notice, or other such date set by the Court, a Final Approval hearing shall be conducted to determine the final approval of the Agreement. Upon final approval of the Agreement by the Court at or after the Final Approval hearing, the Parties shall present the Final Order and Judgment in a form agreed upon by the Parties.

13. **CONSTRUCTION OF AGREEMENT.** This Agreement, its effect, interpretation, and enforceability shall be construed under the laws of the State of Connecticut.

14. **EXECUTION OF AGREEMENT.** The Parties have expressly agreed that this Agreement may be executed in counterparts. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or any electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement.

15. **ENTIRE AGREEMENT.** Each Party affirms that in deciding to enter this Agreement, he/she/it has not relied on any statement or act except the considerations,

inducements, promises, and representations expressly set forth herein.

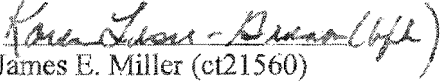
16. **RETENTION OF JURISDICTION.** The Parties hereto agree that the United States District Court for the District of Connecticut shall retain jurisdiction to enforce the terms and conditions of this Agreement and to otherwise resolve any disputes under or pertaining to this Agreement and all Parties hereto consent and submit to the jurisdiction of the United States District Court for the District of Connecticut for all such matters.

17. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

18. **HEADINGS.** The headings of the sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

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IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys, dated as of August 7, 2013.


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