

**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; PAUL SEIDENWAR;  
and ROBERT BUCCI,

Defendants.

---

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

December 2, 2013

**SETTLEMENT AGREEMENT AND STIPULATION OF SETTLEMENT**

This Settlement Agreement and Stipulation of Settlement dated as of December 2, 2013 (the "Stipulation"), is made and entered into by and among: (i) Lead Plaintiff, Poptech, L.P. and proposed class representative, William A. Meyer ("Meyer") (collectively, "Lead Plaintiffs"); (ii) Terence Isakov, M.D. ("Isakov") (Isakov and Lead Plaintiffs shall collectively be referred to as "Plaintiffs" unless otherwise noted); (iii) the Class (as defined herein); and (iv) Defendant, Robert Bucci ("Settling Defendant" or "Bucci"), by and through their counsel of record in this action (the "Litigation"). This Stipulation is intended by the Plaintiffs and the Settling Defendant (the "Settling Parties") to fully, finally and forever resolve, discharge and settle the Released Claims and Released Defendant's Claims (as defined herein), upon and subject to the terms and conditions hereof, and subject to the approval of the Court.

## **I. THE LITIGATION**

### **A. The Commencement and Progress of the Action**

On June 18, 2010, Poptech, L.P. initiated the Litigation in the United States District Court of Connecticut, Civil Action No. 3:10-cv-00967-SRU. Following publication of notice of this action in accordance with the Private Securities Litigation Reform Act of 1995 (“PSLRA”), the Court heard Lead Plaintiffs’ motion for appointment of Lead Plaintiffs and approval of Lead Plaintiffs’ counsel. By Order dated October 28, 2010, the Court appointed Poptech, L.P. as the Lead Plaintiff, while indicating that Meyer and Isakov could file an Amended Complaint with Poptech, L.P., in which they could seek to serve as Class representatives (without prejudice to the rights of Meyer and Isakov to later seek appointment as additional lead plaintiffs should they so choose), and appointed the law firm of Shepherd, Finkelman, Miller & Shah, LLP as lead counsel (“Lead Counsel”).

Plaintiffs filed their First Amended Class Action Complaint (“FAC”) on December 13, 2010, naming Defendants, Stewardship Credit Arbitrage Fund, LLC (the “Fund” or the “Stewardship Fund”), Stewardship Investment Advisors (“Advisors”), Acorn Capital Group, LLC (“Acorn”), Marlon Quan (“Quan”), Gustav E. Escher, III (“Escher”), Paul Seidenwar (“Seidenwar”) and Bucci (collectively, “Defendants”) and subsequently filed their Second Amended Class Action Complaint (“SAC”) on May 2, 2011 by leave of the Court. In both the FAC and the SAC, Plaintiffs asserted claims on behalf of themselves and all other persons who invested or otherwise contributed to the Stewardship Fund during the class period, which was defined as between February 6, 2006 and September 25, 2008 (the “Class Period”). The parties

fully briefed Defendants' Motions to Dismiss the FAC. Following the briefing, Defendants consented to the filing of the SAC by Plaintiffs and Defendants' Motions to Dismiss were denied without prejudice. On May 2, 2011, Plaintiffs filed the SAC (Dkt. No. 101), and each Defendant moved to dismiss the SAC (Dkt. Nos. 102, 110, 111, 114, 115, and 121). On May 26, 2011, the Court denied defendant Seidenwar's motion to dismiss. The Court granted in part and denied in part the motions to dismiss of the remaining defendants on March 19, 2012 (with Isakov being dismissed as a proposed Class representative), and with none of the claims asserted against Bucci being dismissed. Since that time, Bucci has produced documents and the Settling Parties have engaged in extensive, arm's-length negotiations in an effort to resolve this dispute. The Settling Parties ultimately were able to reach an agreement to settle the Litigation. As a result of a series of full and frank discussions between both sides, the Settling Parties ultimately reached an agreement-in-principle to settle the Litigation, with the Settling Defendant relinquishing a significant portion of the assets that could ultimately be collected by Plaintiffs if they were successful in the Litigation. Plaintiffs, on behalf of the Class, and the Settling Defendant have agreed to file this Stipulation and all other documents necessary to obtain preliminary and final approval of the settlement provided for herein. The Settling Parties have negotiated as adverse parties and believe they have reached an agreement which fairly and reasonably resolves the claims asserted against Bucci. The Settling Parties have engaged in protracted, arm's-length negotiations designed to bring a conclusion to Plaintiffs' claims against the Settling Defendant, as well as save litigation expenses, to the benefit of Plaintiffs and the Settling Defendant. The Settling Parties have taken into consideration the allegations underlying the claims asserted by

Plaintiffs, and the Class, 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, and the potential sources of any recovery in such suit that may be available from Bucci. The Settling Parties agree that the terms of the Stipulation are fair and reasonable under the circumstances.

**B. The Claims Asserted By Plaintiffs**

The SAC 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 Bucci; and violations of the Connecticut Uniform Securities Act against the Fund, Advisors, Acorn, Quan, Seidenwar, Bucci and Escher.

Plaintiffs allege, on behalf of themselves and the Class, that, *inter alia*, contrary to the Fund's marketing materials and ongoing representations to existing and potential members, risk management safeguards were not put in place, due diligence was never performed and that Defendants were aware (or should have been aware) that the safeguards represented by Defendants did not exist. Plaintiffs also allege, on behalf of themselves and the Class, that they would not have invested, re-invested, or converted their membership interests from one membership class to another in the Fund had the Defendants not engaged in the alleged wrongdoing. Finally, Plaintiffs allege, on behalf of themselves and the Class, that, as a proximate result of the alleged wrongdoing, they suffered damages when their investments in the Fund were rendered essentially without value after the Ponzi scheme operated by Thomas Petters

and related entities, in which a substantial portion of the Fund's assets were effectively invested, was revealed.

## **II. SETTling DEFENDANT'S DENIAL OF WRONGDOING AND LIABILITY**

Bucci denies any and all of the claims and contentions alleged by Plaintiffs. The Settling Defendant expressly denies all charges of wrongdoing or liability against him arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Bucci also denies, *inter alia*, the allegations that Plaintiffs or the Class have suffered damage as a result of any act or omission for which the Settling Defendant could be adjudged legally responsible. Further, the Settling Defendant denies that the action could properly be certified as a class action. Nevertheless, the Settling Defendant has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Bucci has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Litigation. Bucci has, therefore, determined that it is desirable and beneficial to him that the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

## **III. CLAIMS OF THE PLAINTIFFS AND BENEFITS OF SETTLEMENT**

Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports those claims. Additionally, Lead Counsel have researched the applicable law with respect to their claims and believe they could successfully refute any defenses to their claims raised by Bucci. However, Lead Plaintiffs and Lead Counsel recognize

and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against the Settling Defendant through trial and through appeals. Plaintiffs and Lead Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiffs and Lead Counsel are particularly mindful of the inherent problems in collecting the limited assets subject to potential collection from the Settling Defendant, even if the Litigation ultimately proved successful.

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

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, and each of them, and Bucci, 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 Settling Parties from the settlement set forth herein, the Litigation, Released Claims and Released Defendant's Claims (as defined below) shall be finally and fully compromised, settled and released, and the Litigation shall be dismissed, with prejudice, as to all Parties, upon and subject to the terms and conditions of this Stipulation.

##### **A. Definitions**

As used in this Stipulation, the following terms have the meanings specified below.

1.0. "Acorn" means Acorn Capital Group, LLC, all of Acorn's past, present and future members, managers, parent companies, successors in interest, predecessors, subsidiaries, affiliates, divisions, and related entities.

1.1. “Authorized Claimant(s)” means any Class Member whose claim for recovery has been allowed pursuant to the terms of this Stipulation.

1.2. “Bucci” means Defendant, Robert Bucci.

1.3. “Claimant” means any Class Member(s) who files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.4. “Claims Administrator” means the settlement administration firm, Strategic Claims Services, 600 North Jackson Street - Suite 3, Media, PA 19063, and/or any successor to that firm.

1.5. “Class” means all persons who invested in or otherwise contributed to the Stewardship Fund during the Class Period (*i.e.*, between February 6, 2006 and September 25, 2008). Excluded from the Class are Defendants, their officers, subsidiaries and affiliates, any entities in which they have a controlling interest, the legal representatives, heirs, successors, predecessors in interest, affiliates or assigns of any of the Defendants, the members of each Individual Defendant’s immediate family, the Judge(s) to whom this case is assigned and those persons who submit a valid request to be excluded from the Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action.

1.6. “Class Member(s)” or “Member(s) of the Class” means any Person(s) who falls within the definition of the Class, as set forth in ¶ 1.5 above, and who has not filed a valid request to be excluded from the Class.

1.7. “Court” means the United States District Court for the District of Connecticut.

1.8. “Defendants” means the Fund, Advisors, Acorn, Quan, Escher, Seidenwar and Bucci.

1.9. “Effective Date” means the first date by which all of the events and conditions specified in ¶ 7.1 of the Stipulation have been met and have occurred.

1.10. “Escrow Agent” means the Claims Administrator, as set forth in ¶ 1.4 above.

1.11. “Financial Affidavit” means the Affidavit that Bucci executed on June 25, 2013 and delivered to Lead Counsel, which discloses all of his material personal assets, whether held directly or indirectly.

1.12. “Individual Defendants” means Bucci, Escher, Quan and Seidenwar.

1.13. “Lead Plaintiffs” means Poptech, L.P. and William A. Meyer.

1.14. “Net Settlement Fund” means the remaining balance of the Settlement Fund after the payment of the following items: (a) taxes and tax expenses described in ¶ 2.7 herein; (b) payment for Notice and Administration Expenses; (c) payment for Lead Counsel’s attorneys’ fees, expenses and costs with interest thereon; and (d) payment of Plaintiffs’ expenses incurred in representing the Class if and to the extent allowed by the Court.

1.15. “Notice” means the Notice of Pendency and Proposed Settlement of Class Action, which is to be sent to Members of the Class substantially in the form attached hereto as Exhibit “A-1.”

1.16. “Parties” or “Settling Parties” means Plaintiffs and the Class and the Settling Defendant.



1.17. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust unincorporated association, government or any political subdivision or agency thereof, or any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.18. "Plaintiffs" means Lead Plaintiffs and Isakov.

1.19. "Plaintiffs' Counsel" or "Lead Counsel" means the law firm Shepherd, Finkelman, Miller & Shah, LLP.

1.20. "Plan of Allocation" means a plan of allocation of the Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of Notice and administration of the settlement, taxes and tax expenses and such attorneys' fees, costs, expenses and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation and Bucci shall have no responsibility or liability with respect thereto.

1.21. "Preliminary Order" or "Preliminary Approval Order" or "Notice Order" means the order preliminarily approving the settlement and directing Notice to the Class, substantially in the form attached hereto as Exhibit "A."

1.22. "Proof of Claim" means the Proof of Claim and Release to be submitted by Claimants, substantially in the form attached as Exhibit "A-2."

1.23. "Quan" means Defendant, Marlon Quan.

1.24. "Released Claims" collectively means any and all claims (including "Unknown Claims" as defined in ¶ 1.32 below), demands, rights, causes of action or liabilities,

of every nature and description whatsoever, whether based in law or equity, on federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by Plaintiffs or the Class, or any of them, or the successors or assigns of any of them, whether directly, indirectly, derivatively, representatively or in any other capacity against any of the Released Parties, which arise out of, or relate in any way, directly or indirectly, to any of the allegations, transactions, facts, events, matters, occurrences, acts, representations or omissions involved, set forth, referred to, or that could have been asserted in the SAC or otherwise in the Litigation, including, without limitation, claims for negligence, gross negligence, breach of duty of care, breach of duty of loyalty, breach of duty of candor, fraud, negligent misrepresentation, and breach of fiduciary duty, arising out of, based upon or related in any way to the purchase, acquisition, sale, retention, conversion or disposition of interests in the Fund by any Class Member during the Class Period. Nothing in this paragraph shall preclude members of the Class from receiving benefits from the action captioned, *SEC v. Marlon Quan, et al.*, Civil Action No. 11-723 (ADM-JSM) (D. Minn.).

1.25. “Released Defendant’s Claims” collectively means all claims (including “Unknown Claims” as defined in ¶ 1.32 below), demands, rights, causes of action or liabilities, of every nature and description, whether based in law or equity, on federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by Bucci, or his successors or assigns, whether directly, indirectly, representatively, or in any other capacity against the

Plaintiffs, the Class, Lead Counsel, or any of them, which arise out of, or are related in any way, directly or indirectly, to the Litigation or its institution, prosecution, or settlement (except for claims to enforce the Stipulation).

1.26. “Released Parties” means Plaintiffs, the Class, Lead Counsel, Bucci, Bucci’s Counsel, and their respective past or present members, managers and their family members, affiliates, subsidiaries, representatives, shareholders, creditors, partners, principals, officers, directors, employees, insurers, reinsurers, professional advisors, attorneys, agents, successors in interest, including, but not limited to a trustee appointed in a chapter 7 or 11 proceeding, a receiver, an assignee for the benefit of creditors, or any similar successors who were not named as parties in the Complaint. Released Parties shall not include any Defendants in the Litigation besides Bucci.

1.27. “Settled Claims” means all of the Released Claims and Released Defendant’s Claims against the Released Parties.

1.28. “Settlement Fund” means all funds and other assets paid by Bucci pursuant to ¶ 2.1 of the Stipulation and delivered to the Escrow Agent, plus any accrued interest.

1.29. “Settling Defendant” means Bucci.

1.30. “Settling Defendant’s Counsel” means the Law Office of Ian E. Bjorkman, LLC.

1.31. “SIA” or “Advisors” means Stewardship Investment Advisors, LLC, all of SIA’s past, present and future parent companies, members, managers, successors-in-interest, predecessors, subsidiaries, affiliates, divisions, and related entities.

1.32. "Unknown Claims" means any Released Claims that any of the Plaintiffs or Class Members do not know or suspect to exist in their favor at the time of the release of the Released Parties and any Released Defendant's Claims that any of the Released Parties do 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 settlement with and release of the Released Parties, or might have affected his, her, or its decision(s) not to object to this settlement. Upon the Effective Date and unless otherwise expressly provided herein, the Settling Parties, and all other Persons and entities whose claims are being released, shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of §1542 of the California Civil Code, which provides as follows:

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

Unless otherwise expressly provided herein, Plaintiffs, Bucci and the Released Parties have, and each of the Class Members shall be deemed to 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 and equivalent to California Civil Code §1542. Plaintiffs, Bucci and the Released Parties may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and/or the Released Defendant's Claims, but, unless otherwise specifically provided herein, each of the Plaintiffs and Bucci shall expressly and each Class Member and each of the Released Parties, upon the Effective Date, shall be deemed to

have fully, finally, and forever settled and released any and all Released Claims and Released Defendant's Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, or are known to exist, or heretofore have existed upon any theory of law or equity not existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

**2. The Settlement**

**a. The Settlement Payments And Fund**

2.1. By no later than ten (10) business days after the entry of a Preliminary Order or as otherwise provided below, Bucci will cause to be paid \$15,000.00 to the Escrow Agent, which shall be held by the Escrow Agent for the benefit of Plaintiffs and the Class and Bucci pending the Effective Date and any Orders of the Court permitting distribution or partial distribution of the Settlement Fund.

2.2. The Escrow Agent shall invest the Settlement Fund deposits pursuant to ¶ 2.1, in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates.

2.3. The Escrow Agent shall not disburse the Settlement Fund except by or pursuant to an Order of the Court for which application is to be made on notice to all Settling Parties.

2.4. Subject to further Orders and/or directions as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Class Members as are consistent with the terms of the Stipulation and to collect any funds available from these Assets and/or liquidate any securities to secure funds for distribution to the Class.

2.5. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further Order(s) of the Court.

2.6. The Escrow Agent may pay from the Settlement Fund, following approval by the Court, the actual amount of costs and expenses in an amount approved by the Court for costs reasonably and actually incurred in connection with providing Notice to the Class, locating Class Members, soliciting Class claims, assisting with the filing of claims, administering and distributing the Settlement Fund to Authorized Claimants, processing Proof of Claim forms and paying escrow fees and costs, if any (“Notice and Administration Expenses”).

**b. Tax Expenses**

2.7. (a) Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 2.7, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It

shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶ 2.7(a) hereof) shall be consistent with this ¶ 2.7 and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the cash portion of the Settlement Fund shall be paid out of the Settlement Fund (“Taxes”).

(c) All (a) Taxes and (b) expenses and costs incurred in connection with the operation and implementation of this ¶ 2.7 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 2.7) (“Tax Expenses”) shall be paid out of the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall timely be paid by the Escrow Agent out of the Settlement Fund without prior Order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required

to be withheld under Treas. Reg. §1.468B-2(1)(2)). The Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 2.7.

**c. Termination of Settlement**

2.8. Plaintiffs, on behalf of the Class, or Bucci shall have the right to terminate the settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other Parties hereto within thirty (30) days of: (i) the Court’s declining to enter the Preliminary Approval Order in any material respect; or (ii) the Court’s refusal to approve this Stipulation or any material part of it. In addition, Bucci shall have the right to terminate this Stipulation if Persons falling within the definition of the Class, whose aggregate investment or other contribution to the Stewardship Fund during the Class period equaled \$20 million or more, are excluded from the Class pursuant to ¶5.3(a) of this Stipulation.

**3. Notice Order and Settlement Hearing**

3.1. Promptly after execution of the Stipulation, Lead Counsel shall submit the Stipulation, together with its Exhibits, to the Court and shall apply for entry of the Preliminary Order, substantially in the form of Exhibit “A” attached hereto, requesting, *inter alia*, the certification of the Class for settlement purposes only, preliminary approval of the settlement set forth in the Stipulation, and approval for the mailing of the Notice, substantially in the form of Exhibits “A-1” and “A-2” attached hereto. The Notice shall include the general terms of the settlement set forth in the Stipulation, the proposed Plan of Allocation, the general terms of the Fee and Expense Application as defined in ¶ 6.1 below and the date of the Settlement Hearing as



defined below.

3.2. Lead Counsel shall request that after Notice is given, the Court hold a hearing (the “Settlement Hearing”) and approve the settlement as set forth herein. At or after the Settlement Hearing, Lead Counsel also will request that the Court approve the proposed Fee and Expense Application.

**4. Releases and Released Claims**

4.1. The obligations incurred pursuant to this Stipulation shall be a full and final disposition of the Litigation, any and all Released Claims and any and all Released Defendant’s Claims as against all Released Parties.

4.2. Upon the Effective Date, Plaintiffs and the Class, on behalf of themselves, shall be deemed to have fully, finally, and forever released, relinquished and discharged all Released Claims against Defendant, and any and all of the Released Parties, whether or not any individual Class Member executes and delivers the Proof of Claim. Delivery of a Proof of Claim executed by a Class Member, substantially in the form contained in Exhibit “A-2” attached hereto, shall release all Released Claims against the Defendant and all of the Released Parties.

4.3. The Parties agree to entry of the Final Order of Dismissal With Prejudice in the form contained in Exhibit “B” attached hereto, providing that Plaintiffs and members of the Class, on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall, with respect to each and every Released Claim, release and forever discharge, and shall forever be enjoined from prosecuting either directly, indirectly, representatively, or in any other capacity, all Released Claims against any of the Released Parties, whether or not such Class

Member executes and delivers the Proof of Claim, or otherwise shares in the Settlement Fund.

4.4. Upon the Effective Date, as defined in ¶ 1.9, Defendants and the Released Parties, and each of them, shall be deemed to have fully, finally, and forever released, relinquished and discharged all Released Defendant's Claims against Plaintiffs, all Class Members, and their Released Parties, and will release and assign any and all claims to Plaintiffs, as to (i) any claims against the Fund, and (ii) any funds or monies that otherwise could be payable to Bucci.

4.5. The Parties agree to an entry of the Final Order of Dismissal With Prejudice in the form contained at Exhibit "B" attached hereto, providing that, to the full extent provided by Section 21D(f)(7) of the Exchange Act, 15 U.S.C. 78u-4(f)(7), any other applicable law or regulation, and the common law of the U.S. Court of Appeals for the Second Circuit, any and all future claims for contribution arising out of the Litigation brought, by (i) any Person against Bucci; and (ii) by Bucci against any Person, other than a Person whose liability to the Class has been extinguished by a settlement or judgment, shall be barred (the "Bar Order").

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

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

5.2. The Net Settlement Fund shall be applied as follows:

- (a) To pay the Taxes and Tax Expenses described in ¶ 2.7 hereof;

(b) To pay the Notice and Administration Expenses;

(c) To pay Lead Counsel's attorneys' fees, expenses and costs with interest thereon (the "Fee and Expense Award"), and Plaintiffs' expenses incurred in representing the Class if and to the extent allowed by the Court; and

(d) To distribute the Net Settlement Fund to Authorized Claimants as allowed by the Stipulation or the Court.

5.3. Upon the Effective Date and thereafter, and in accordance with the terms of the Stipulation, or such further approval and further Order(s) of the Court, as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

(a) Any Person falling within the definition of the Class may be excluded from the Class by submitting to the Claims Administrator a request for exclusion ("Request for Exclusion") which complies with the requirements set forth in the Preliminary Order, Exhibit "A" hereto, and is timely postmarked pursuant to the terms of the Preliminary Order. All Persons who submit valid and timely Requests for Exclusion 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. However, a Class Member may submit a written revocation of a Request for Exclusion up until the Bar Date (defined below) and receive payments pursuant to this Stipulation provided the Class Member also submits a valid Proof of Claim, as set forth in subparagraph 5.3(b), below, prior to the Bar Date (defined below);

(b) Within one hundred-twenty (120) days of the mailing of the Notice

(or the first business day thereafter if the 120<sup>th</sup> day falls on a weekend day or national holiday), or such other time as may be set by the Court (the “Bar Date”), each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim substantially in the form of Exhibit “A-2” attached hereto, signed under penalty of perjury and supported by such documents as specified in the Proof of Claim, or such other documents or proof, as are reasonably available to the Authorized Claimant, as Lead Counsel, in their discretion, may deem acceptable; and

(c) Except as otherwise ordered by the Court, all Class Members who fail to timely submit a Proof of Claim by the Bar Date, or such other period as may be ordered by the Court, or otherwise allowed, or who file a Proof of Claim that is rejected, shall be forever barred from receiving any payments pursuant to this Stipulation, but will in all other respects be subject to and bound by the provisions of this Stipulation, the releases contained herein and will be barred and enjoined from bringing any action against the Released Parties concerning the Released Claims. Notwithstanding the foregoing, Lead Counsel may, in their discretion, accept for processing late filed claims so long as the distribution of the Net Settlement Fund is not materially delayed.

5.4. This is not a claims-made Settlement. Bucci may not recoup any portion of the Settlement Fund in the event the Court enters the Final Judgment and Order of Dismissal with Prejudice approving the settlement, except as provided for in this Stipulation. The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with the Notice and approved by the Court. However, if there is any balance remaining in the

Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Lead Counsel shall reallocate such balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any balance which still remains in the Net Settlement Fund shall be donated to an appropriate non-profit organization, designated by Lead Counsel.

5.5. Bucci and his counsel shall have no responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Net Settlement Fund, the determination, administration, or calculation of claims, the payment or withholding of Taxes, or any losses incurred in connection therewith.

5.6. No Person shall have any claim against Lead Counsel, the Claims Administrator, the Escrow Agent, or any other Person, based on the distributions made substantially in accordance with this Stipulation and the Settlement contained therein, or further Orders of the Court.

5.7. It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in the Stipulation, shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's Order approving the Stipulation and the settlement set forth therein, or any other Orders entered pursuant to the Stipulation.

**6. Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of Expenses**

6.1. The Plaintiffs or Lead Counsel will submit an application or applications (the "Fee and Expense Application") for distribution to Lead Counsel from the Settlement Fund (a) an award of attorney's fees payable from the Settlement Fund of up to thirty-three percent (33%) of the value of the Settlement Fund; plus (b) reimbursement of actual expenses, including the fees and expenses of any experts or consultants, incurred in connection with prosecuting the Litigation, plus any interest on such attorneys' fees, costs and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. Bucci will not oppose the Fee and Expense Application, so long as it is in accordance with this Stipulation. Lead Counsel reserves the right to make additional applications for fees and expenses incurred, as collection of the Settlement Fund assets occurs in anticipation of distribution or partial distribution to the Class.

6.2. The attorneys' fees, expenses and costs, including the fees and expenses of experts and consultants, as awarded by the Court, shall be paid to Lead Counsel from the Settlement Fund, as ordered, immediately after the Court enters the Final Order of Dismissal With Prejudice, notwithstanding the existence of any timely-filed objections, or potential appeal therefrom, or collateral attack on the Settlement or any part thereof. In the event Lead Counsel receives notice (from a court of appropriate jurisdiction) that the attorney fee or expense award is reduced or reversed for any reason, Lead Counsel shall make repayment with accrued interest to the Settlement Fund within ten (10) business days from receiving such notice. Furthermore, Lead Counsel (including their respective partners, shareholders and/or firms) agree that they remain subject to the continuing jurisdiction of the Court for the purpose of enforcing their obligation to

repay required attorneys' fees and expenses to the Settlement Fund as provided in this paragraph.

6.3. The procedure for and the allowance or disallowance by the Court of any applications by Lead Counsel for attorneys' fees and expenses, including the fees and expenses of experts and consultants, to be paid out of the Settlement Fund, are not part of the Settlement set forth in the Stipulation, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Stipulation, and any Order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Final Order of Dismissal With Prejudice approving the Stipulation and the settlement of the Litigation set forth therein.

6.4. Bucci and the Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment to Lead Counsel or any other counsel or Person who receives payment from the Settlement Fund.

6.5. Bucci and the Released Parties shall have no responsibility for, and no liability whatsoever with respect to the allocation among Lead Counsel and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Settlement, and Bucci and the Released Parties take no position with respect to such matters.

7. **Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

7.1. The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

- (a) Bucci has made his contribution to the Settlement Fund as required

by ¶ 2.1;

(b) The Court has entered the Preliminary Order, substantially in the form attached hereto as Exhibit "A";

(c) The Court has approved the Settlement, following Notice to the Class and a hearing, as provided in Rule 23 of the Federal Rules of Civil Procedure, and the Court has entered the Final Order of Dismissal With Prejudice or a dismissal order materially in the form of Exhibit "B" attached hereto; and

(d) No Parties have elected to terminate this Stipulation in accordance with its terms and the time in which any Parties may so terminate has elapsed.

7.2. Upon the occurrence of all of the events referenced in ¶ 7.1 hereof, any and all remaining interest or right of Bucci in or to the Settlement Fund, if any, shall be absolutely and forever extinguished.

7.3. If some or all of the conditions specified in ¶ 7.1 are not met, or in the event that this Stipulation is not approved by the Court, or the Settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, then this Stipulation shall be canceled and terminated unless Lead Counsel and Bucci's Counsel mutually agree in writing to proceed with the Stipulation. None of the Settling Parties, or any of them, shall have any obligation whatsoever to proceed under any terms other than provided for and agreed herein. If any Party engages in a material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Stipulation, may terminate this Stipulation on notice to all of the Settling Parties.



7.4. Unless otherwise ordered by the Court, if this Stipulation is terminated or fails to become effective for the reasons set forth in ¶¶ 7.1 and 7.3 above, the Settling Parties shall be restored to their respective positions in the Litigation as of January 1, 2013. In such event:

(a) Any Order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*;

(b) The Settlement Fund and any amounts paid or allocated to Plaintiffs' Counsel for attorneys' fees, less any Taxes or Tax Expenses due with respect to any interest earned by the Settlement Fund and less expenses (other than attorneys' fees) actually incurred and disbursed, pursuant to ¶¶ 2.6 or 2.7 hereof, or due and owing in connection with Notice costs and administration of the settlement provided herein shall be returned to counsel for Bucci, Law Office of Ian E. Bjorkman, LLC, by the Escrow Agent within ten (10) business days after written notification of such event is sent by counsel for Bucci. At the written request of Settling Defendant's Counsel, the Escrow Agent or its designee shall apply for any Tax refund owed to the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to Bucci's Counsel.

7.5. No Order of the Court or modification or reversal on appeal of any Order of the Court concerning the amount of any attorneys' fees, expenses and interest awarded by the Court or the Lead Plaintiffs or to Lead Plaintiffs' Counsel shall constitute grounds for cancellation or termination of the Stipulation, unless the Court otherwise orders.

## **8. Miscellaneous Provisions**

8.1. The Settling Parties: (a) acknowledge that it is their intent to consummate this Stipulation; and (b) agree, subject to their fiduciary and other obligations, to cooperate to the

extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Stipulation, including Bucci will reasonably cooperate and assist Plaintiffs in resolving any issues that may arise related to his payment to the Settlement Fund. Bucci's obligation to provide reasonable cooperation shall not include any obligation to pay or incur out-of-pocket expenses. In the event Bucci fails to reasonably cooperate with Plaintiffs and the Class in collecting upon the interests transferred and/or assigned, as outlined in ¶ 2.1, Plaintiffs on behalf of the Class may assert claims against Bucci for any damages proximately caused by Bucci's failure to reasonably cooperate. Lead Counsel and Bucci's Counsel agree to cooperate with one another in seeking 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 of the settlement.

8.2. One of the elements considered by the Parties in arriving at the terms of the conditions of this Stipulation is the losses claimed relative to the limited resources of Bucci. It is, however, only one of the factors, all of which are recited above. In connection with this Stipulation, Plaintiffs evaluated the financial condition of Bucci based on representations provided by Bucci as contained in the Financial Affidavit. Bucci acknowledges that if he fails to reasonably cooperate with Plaintiffs and the Class as required by this Stipulation, it would be considered a material breach of this Stipulation, entitling Lead Plaintiffs and the Class to void this Stipulation and restore the Parties to their rights as they existed prior to the signing of this Stipulation, on the condition that Plaintiffs, the Class, and Lead Counsel return to Bucci all consideration paid by him pursuant to this Stipulation, including any amounts awarded as

attorneys' fees.

8.3. The Parties intend this Stipulation to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. While retaining their right to deny that the claims advanced in the Litigation were meritorious, Bucci, in any statement made to any media (whether or not for attribution), will not deny that the Litigation was filed in good faith and is being settled voluntarily after consultation with competent legal counsel. The Final Order of Dismissal will contain a statement that, during the course of the Litigation, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement were negotiated at arm's length and in good faith by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties agree not to assert in any forum that the Litigation was brought by Plaintiffs and the Class, or each or any of them, or defended by any of the Defendants, or each or any of them, in bad faith. However, the Settling Parties, and each of them, reserve their right to rebut, in a manner that such Party or Parties determine(s) to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith.

8.4. Whether or not the Effective Date occurs or this Stipulation is terminated, neither this Stipulation nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement:

(a) Is, may be deemed, or shall be used, offered or received against Bucci, or any of the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiffs and the Class, or any of them, the deficiency of any defense that has been or could have been asserted in the Litigation, or of any alleged wrongdoing, liability, negligence, fault of Bucci or any of the Released Parties, or any of them;

(b) Is, may be deemed, or shall be used, offered or received against Bucci, as an admission, concession or evidence of, any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant and by any of the Released Parties;

(c) Is, may be deemed, or shall be used, offered or received against Plaintiffs and the Class, or each or any of them, as an admission, concession or evidence of, the validity of any of the Released Defendant's Claims, the infirmity of any claims raised in the Litigation, the truth of any fact alleged by the Settling Defendant, or the availability of meritorious defenses to the claims raised in the Litigation;

(d) Is, may be deemed, or shall be used, offered or received against Plaintiffs and the Class and, or each or any of them, or against Bucci, or any of the Released Parties, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Parties to the Stipulation, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal, other than in such proceedings as may be necessary to effectuate the provisions of this Stipulation. However, if this Stipulation is approved by the Court, any Released Party may file this Stipulation in any action that may be

brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(e) Is, may be deemed, or shall be construed against Plaintiffs and the Class or against any of the Released Parties as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount which could have or would have been recovered after trial; and

(f) Is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, and the Class, or each and any of them, that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the cash settlement amount.

8.5. The headings used herein are for convenience only and are not meant to have legal effect.

8.6. The provisions of the Stipulation are not severable.

8.7. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Stipulation.

8.8. All of the Exhibits to this Stipulation are material and integral parts thereof and are fully incorporated herein by this reference.

8.9. This Stipulation may be amended or modified only by written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8.10. The Stipulation and the Exhibits attached hereto constitute the entire agreement among the Parties hereto and no representations, warranties or inducements have been made to any Party concerning the Stipulation or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided therein, each Party shall bear its own costs.

8.11. Lead Counsel, on behalf of the Class, are expressly authorized by Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to the Stipulation to effectuate its terms and also are expressly authorized to enter into any modification or amendments to the Stipulation on behalf of the Class which they deem appropriate.

8.12. Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any Party hereto hereby warrants that such Person has the full authority to do so.

8.13. The Stipulation may be executed in one or more counterparts. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

8.14. The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and their Released Parties.

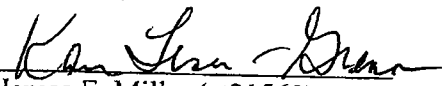
8.15. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

8.16. The Stipulation and the Exhibits thereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Connecticut, and the rights and obligations of the Parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Connecticut without giving effect to that State's choice-of-law principles.

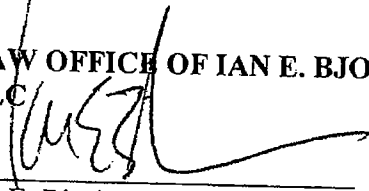
8.17. This Stipulation is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Stipulation, it shall not be construed more strictly against one Party than another.

IN WITNESS WHEREOF, the Parties hereto have executed the Stipulation and have caused the Stipulation to be executed, by their duly authorized attorneys, as of the date on the first page of the Stipulation.

**SHEPHERD, FINKELMAN, MILLER  
& SHAH, LLP**

  
James E. Miller (ct21560)  
Laurie Rubinow (ct27243)  
Karen M. Leser-Grenon (ct23587)  
Shepherd, Finkelman, Miller & Shah, LLP  
65 Main Street  
Chester, CT 06412  
(Telephone) 860/526-1100  
(Facsimile) 860/526-1120  
(Email): [jmiller@sfmslaw.com](mailto:jmiller@sfmslaw.com)

**LAW OFFICE OF IAN E. BJORKMAN,  
LLC**

  
Ian E. Bjorkman  
Law Office of Ian E. Bjorkman, LLC  
900 Chapel Street, Suite 621  
New Haven, CT 06510  
(Telephone) 203/773-9110  
(Facsimile) 203/516-2364  
(Email): [ian@ibjorkman.com](mailto:ian@ibjorkman.com)

*Attorney for Defendant, Robert Bucci*

lrubinow@sfmslaw.com  
kleser@sfmslaw.com

Scott R. Shepherd  
James C. Shah  
Shepherd Finkelman Miller & Shah, LLP  
35 East State Street  
Media, PA 19063  
(Telephone) 610/891-9880  
(Facsimile) 610/891-9883  
(Email): sshepherd@sfmslaw.com  
jshah@sfmslaw.com

***Attorneys for Plaintiffs and the Class***