

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

JOHN PAULSON,)
Individually and on Behalf of all Others)
Similarly Situated,)

Plaintiff)

v.)

Civil Action No. 19-cv-02639-PAB-NYW

TWO RIVERS WATER AND)
FARMING COMPANY, JOHN R.)
MCKOWEN, WAYNE HARDING and)
TIMOTHY BEALL,)

Defendants)

SETTLEMENT AGREEMENT

This Settlement Agreement is made pursuant to Rule 23 of the Federal Rules of Civil Procedure in the above-titled litigation (the “Class Action,” or “Action”). Subject to the approval of the United States District Court for the District of Colorado (the “Court”), this Settlement Agreement is entered into among Plaintiff John Paulson (“Paulson” or “Plaintiff”), on behalf of himself and each of the Class Members (as defined below), and Defendants Two Rivers Water and Farming Company (“Two Rivers”), John R. McKowen (“McKowen”), Wayne Harding (“Harding”) and Timothy Beall (“Beall”) (Two Rivers, McKowen, Harding and Beall are referred to collectively as “Defendants”). Plaintiff and Defendants are referred to here as the “Settling Parties” or “Parties” and each individually as a “Party.” The Parties intend this Settlement Agreement to resolve, discharge, and settle the Released Claims finally and forever according to the terms and conditions set forth below.

I. RECITALS

WHEREAS, the Parties state the following:

A. The Class Action Litigation

The Class Action was initiated on August 13, 2019, with the filing of a class action complaint captioned *John Paulson, individually and on behalf of all others similarly situated v. Two Rivers Water and Farming Company, John R. McKowen, Wayne Harding, and Timothy Beall*, Case No. 2019CV33099, in the District Court for the City and County of Denver, Colorado. The complaint asserted claims for violations of the Colorado Securities Act, C.R.S. §§ 11-51-101 *et seq.*, common law negligence, and negligent misrepresentations and omissions against Defendants arising out of the sales of securities of GrowCo, Inc. (“GrowCo”) to Plaintiff and members of the proposed Class and the use of the sales proceeds. GrowCo was not named in the Class Action and has filed for Chapter 11 bankruptcy, *In Re GrowCo, Inc.*, Case No. 19-10512-JGR (D. Colo. Bankr.) (the “GrowCo Bankruptcy Action”).

On September 16, 2019 Defendant McKowen removed the Class Action to this Court. (ECF 1).

On February 5, 2020, Plaintiff filed an amended complaint (the “Amended Complaint”). (ECF 57). Defendants McKowen and Beall moved for dismissal of the Amended Complaint. (ECF 73, 96).

Defendants dispute Plaintiff’s allegations and deny all liability in the Class Action.

While the case was pending before this Court, the Parties filed and opposed various motions and engaged in discovery.

B. Settlement Negotiations

In June 2020, the Parties agreed to explore a possible settlement of the Action. The Parties scheduled a mediation session with the Honorable William Meyer (Ret.) of the Judicial Arbitrator Group, Inc. for July 21, 2020. On June 16, 2020, the Parties filed a Joint Motion to Stay Proceedings and Extend Certain Deadlines pending the results of the mediation (ECF 98), which request was granted by the Court. (ECF 100–103).

On July 21, 2020, the Parties and their insurer participated in a one-day mediation session before Judge Meyer. Although substantial progress was made, the Class Action did not settle on that date. The Parties sought, and the Court granted, additional extensions of case deadlines in order for the Parties to continue discussing settlement. (ECF 104-113). Settlement discussions continued with Judge Meyer’s assistance. On August 7, 2020, the Parties reached an agreement in principle to settle the Class Action and executed a Confidential Settlement Term Sheet.

On August 7, 2020, the Parties filed a joint Status Report with the Court and a joint Motion to Stay Proceedings so the Parties could finalize the settlement. (ECF 114-115). On August 11, 2020, the Court entered an Order staying all proceedings except those related to approval of the class action settlement until further order of the Court, and also ordered the Parties to file a motion for preliminary approval of the settlement or otherwise inform the Court of the status of settlement by September 11, 2020, (ECF 119), which date was continued until October 6, 2020.

C. Materiality of Recitals

Each of the foregoing Recitals represents an integral and material component of this Settlement Agreement and is incorporated by reference into this Agreement.

II. TERMS OF THE SETTLEMENT

IT IS HEREBY STIPULATED AND AGREED, by and among the Representative

Plaintiff, individually and on behalf of the Class Members, by and through his counsel and by and through each Defendant and their respective counsel, that this Class Action and all matters that have been, could have been, and/or could be raised between the Plaintiff on the one hand and the Defendants on the other hand in the Class Action are hereby settled and compromised. This Action will be dismissed on the merits and with prejudice as to Defendants, and the Released Claims will be released as to Defendants and all other Releasees based upon the terms and conditions set out in this Settlement Agreement (including the Release), subject to the Court's approval, and such approval becoming Final.

A. Definitions

1. As used in this Settlement Agreement, the following capitalized terms have the following meanings:

a. "Alleged Losses" means the principal amount paid for the GrowCo securities.

b. "Approval Date" means the date on which the Court enters the Final Order Approving Settlement.

c. "Attorneys' Fees, Expenses and Service Award Application" means the application for fees, expenses, and Service Award to be made by Class Counsel pursuant to paragraphs 12, *et seq.* below.

d. "Attorneys' Fees and Expenses Award" means the fees and expenses awarded by the Court to Class Counsel and Additional Plaintiff's Counsel.

e. "Authorized Claim" means a claim for recovery of Alleged Losses from an Authorized Claimant that has been found to be timely and valid under the terms of this Settlement Agreement.

f. “Authorized Claimant” means a Class Member (or the representative of such Class Member, including, without limitation, agents, administrators, executors, heirs, predecessors, successor, affiliates or assigns) whose claim for recovery of Alleged Losses has been found to be timely and valid under the terms of this Settlement Agreement.

g. “Claim” or “Claims” means any and all tort-based claims, contract-based claims, or claims in equity that were or could have been asserted in the Class Action between the Plaintiffs and Class Members on the one hand and the Defendants on the other. The Parties agree, however, that the Class Members shall retain their GrowCo securities and are not releasing the limited claim for payment of their securities, including claims in the event of a GrowCo liquidation, including in the GrowCo Bankruptcy Action.

h. “Claim Form” means the form that Class Members must submit to the Claims Administrator in order to receive relief for their Alleged Losses pursuant to Section D of this Settlement Agreement, which will, subject to Court approval, be substantially in the form set out in Exhibit C.

i. “Class Members” or “Settlement Class” or “Settlement Class Members” means all persons or entities that currently hold claims based on securities in GrowCo, and purchased or otherwise acquired the securities through Offerings during the period of October 2014 through December 2017 (the “Class Period”), and suffered Alleged Losses as defined above. For the avoidance of doubt, persons or entities who purchased or otherwise acquired the securities during the Class Period and who have assigned the securities to VitaNova Partners, LLC are not excluded as Class Members by virtue of such assignment. Excluded from the Class are (1) the Defendants; (2) the officers and directors of Two Rivers and GrowCo during the Class Period as set forth in the attached Exhibit E for securities purchased at the time or after they were officers

or directors; (3) any judge or judicial officer who may hear any aspect of this Class Action and his or her law clerks; and (4) except as provided in clause (2) of this paragraph above, all persons or entities released in the Settlement. Also excluded from the Settlement Class are the persons and/or entities who request exclusion from the Settlement Class within the time period set by the Court in the Preliminary Approval Order.

j. “Class Counsel” means the following attorneys and law firms: Paul Scarlato and Alan Rosca of Goldman Scarlato & Penny, P.C., and J. Barton Goplerud and Brian Marty of Shindler, Anderson, Goplerud & Weese, P.C. “Additional Plaintiff’s Counsel” means Steve Miller of Steve A. Miller, P.C.

k. “Class Notice” or “Notice” means the notice described in Section D of this Settlement Agreement that will be disseminated to Settlement Class Members to inform them of the proposed Settlement, which notice shall, subject to Court approval, be substantially in the form set out in Exhibit B to this Settlement Agreement.

l. “Complete Bar Order” means the order described in Section I of this Settlement Agreement.

m. “Effective Date” means the first date by which all of the events and conditions specified hereafter occur: (i) execution of this Settlement Agreement and such other documents as may be required to obtain final Court approval of this Settlement Agreement in a form satisfactory to the Settling Parties, (ii) the Settlement Administration Account has been established as provided below, (iii) Defendants have not exercised their option to terminate the Settlement Agreement pursuant to Section M hereof, (iv) the Court has approved the Class Notice, substantially in the form of Exhibit B hereto, (v) the Court has entered the Final Order Approving

Settlement that, *inter alia*, dismisses with prejudice the Class Action and (vi) the Final Order Approving Settlement has become Final, as defined in Section A, paragraph “o” hereof.

n. “Fairness Hearing” means the hearing at or after which the Court will make a decision (i) whether to approve the Settlement as fair, reasonable and adequate; (ii) whether to certify the Settlement Class; and (iii) whether to grant the Attorneys’ Fees, Expenses and Service Award Application.

o. “Final” means, when used in connection with any court order, that the order will be final: (1) if no appeal is taken, or the date on which the time to appeal from the order (including any potential extension of time) has expired; or (2) if any appeal is taken from the order, the date on which all such appeals—including any petitions for rehearing *en banc*, petitions for certiorari or any other form of review and any related appeals or petitions, including as to any appeal bond—have been finally disposed of, such that the time to appeal therefrom (including any potential extensions of time) has expired, in a manner resulting in an affirmance of the relevant order.

p. “Net Cash Settlement Amount” means the balance remaining in the Settlement Administration Account (including any interest that has accrued) after the payments described in Section H, paragraph 15 below are made from the Settlement Administration Account.

q. “Notice and Administrative Expenses” means all expenses associated with administration and implementation of this Settlement, including the Claims Administrator’s fees and expenses; provided, however, that Notice and Administrative Expenses shall not include the Attorneys’ Fees and Expenses.

r. “Objection Date” means the date by which objections to the Settlement proposed in this Settlement Agreement must be filed with the Court and served on counsel as set out in the Preliminary Approval Order.

s. “Offerings” means the GrowCo securities offerings identified in the GrowCo Bankruptcy Action as follows:

Name	Type	Approximate Amount Raised	Date Range
GrowCo Partners 1, LLC	Equity	\$3,349,151	December 2014-January 2015
\$4 Million Note	Debt	\$4,000,000	March 2015-September 2015
GCP Super Units LLC	Equity	\$5,297,157	July 2015-October 2017
\$1.5 Million Note	Debt	\$100,000	April 2016
\$6 Million Note	Debt	\$6,000,000	March 2016-July 2016
\$7 Million Note	Debt	\$2,977,000	January 2016- January 2017
\$2 Million Note	Debt	\$1,080,000	February 2017-September 2017
\$2 Million Note	Debt	\$440,000	June 2017

t. “Order Approving Settlement” means the order to be entered by the Court approving the Settlement and this Settlement Agreement as contemplated in Section K herein, which order shall be substantially in the form set out in Exhibit D to this Settlement Agreement.

u. “Plan of Allocation” means the terms and procedures for allocating the Net Cash Settlement Amount among, and distributing the Net Cash Settlement Amount to, Authorized Claimants, which shall be subject to Court approval.

v. “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

w. “Preliminary Approval Hearing” means the hearing at or after which the Court preliminarily approves the proposed Settlement.

x. “Preliminary Approval Order” means the order to be entered by the Court concerning notice, administration, and the Fairness Hearing as contemplated in Section J of this Settlement Agreement.

y. “Settlement Agreement” means this Settlement Agreement and its Exhibits attached hereto, including any subsequent written amendments agreed to by all Settling Parties.

z. “Recognized Claim” shall have the meaning attributed to it in the Plan of Allocation.

aa. “Recognized Alleged Loss” is the Alleged Loss amount of a claim under the Plan of Allocation and is the number used to calculate an Authorized Claimant’s Recognized Claim.

bb. “Release” means the release set forth in Section I of this Settlement Agreement.

cc. “Released Claims” means any and all Claims of or by the Releasors, as against the Releasees, and any and all Claims of or by the Defendants as against the Releasors, that were asserted, could have been asserted, or could in the future be asserted, arising from, based on, or relating to allegations in the Class Action. The term “Released Claims” does not include any claims for collection of any amounts due under the GrowCo securities pursuant to the terms of the securities, including claims in the event of a GrowCo liquidation, including in the GrowCo Bankruptcy Action.

dd. “Releasee” means each and every one of, and “Releasees” means all of, (i) Defendants and their attorneys in the Class Action, (ii) the past and present officers, directors, managers, attorneys, insurers, and/or employees of Two Rivers and GrowCo, as set forth in the attached Exhibit E for securities purchased at the time or after they were officers or directors, and

(iii) non-Defendants GrowCo, GrowCo Partners 1, LLC, GrowCo Partners 2, LLC, GCP Super Units, LLC, McGrow LLC, and TR Capital Partners, LLC.

ee. “Releasor” means each and every one of, and “Releasors” means all of (i) the Representative Plaintiff, (ii) all other Class Members, (iii) their respective past or present parents, predecessors, successors, current and former affiliates, divisions, business units, joint ventures, subsidiaries, assigns, any entities in which any Releasor has or had a controlling interest or that has or had a controlling interest in him, her, or it, and any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of Representative Plaintiff or any other Class Member and (iv) their respective past and present officers, directors, employees, officials, members, partners, and attorneys.

ff. “Service Award” means an application filed by Plaintiff for compensation for the Plaintiff’s efforts devoted to this Class Action and reimbursement of Plaintiff’s expenses.

gg. “Settlement” means the settlement terms, conditions and other provisions that are memorialized in this Settlement Agreement.

hh. “Claims Administrator” or the “Settlement Administration Agent” means Strategic Claims Services, 600 North Jackson Street, Suite 205, Media, PA 19063.

ii. “Settlement Administration Account” means the escrow account to be established by Class Counsel at Huntington Bank, which shall be an interest-bearing account into which the Settlement Payment will be paid pursuant to Section C of this Settlement Agreement.

jj. “Settlement Administration Account Agent” means Strategic Claims Services; the escrow agent for the Settlement Administration Account.

kk. “Settling Parties” means all Parties to this Settlement Agreement.

ll. “Settlement Payment” means \$1,500,000.

mm. “Termination Date” means that date on which any of the Settling Parties provides notice that he, she or it is exercising a right to terminate this Settlement Agreement under Section M of this Settlement Agreement.

B. Class Certification

2. For purposes of this Settlement only, and subject to approval of the Court in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, the Settling Parties stipulate to the certification of the Settlement Class, as defined herein; the appointment of John Paulson as Class Representative; and the appointment of Paul Scarlato and Alan Rosca of Goldman Scarlato & Penny, P.C., and J. Barton Goplerud and Brian Marty of Shindler, Anderson, Goplerud & Weese, P.C., as Class Counsel, and Steve Miller of Steve A. Miller, P.C. as Additional Plaintiff’s Counsel.

C. Settlement Consideration

3. Prior to or upon entry of the Preliminary Approval Order, Class Counsel shall cause to be established the Settlement Administration Account at a financial institution selected by Class Counsel. In consideration of the settlement of claims asserted in this Class Action, and subject to the terms and conditions of the Settlement Agreement, Defendants shall cause their Insurer, Starstone Specialty Insurance Company (the “Insurer”), to deposit the Settlement Payment into the Settlement Administration Account by wire transfer within thirty days (30) days following the date of entry of the Preliminary Approval Order and receipt by Defendants of the name, address and wire payment information for both the payee and recipient of the Settlement Payment and a properly completed Form W-9 for the payee of the Settlement Payment, which Class Counsel agrees to provide upon execution of the Settlement Agreement.

D. Notice to Class Members

4. Subject to the requirements of the Preliminary Approval Order, Class Counsel shall cause the Class Notice and the Claim Form, substantially in the forms annexed hereto as Exhibits B and C, respectively, to be sent by first class mail, postage prepaid, and via email, within seven (7) days after the entry of the Preliminary Approval Order, to all Settlement Class Members at the address and email addresses set forth in the records of GrowCo. Plaintiff's Counsel shall use reasonable efforts to obtain from counsel in the GrowCo Bankruptcy Action to provide to the Claims Administrator, no later than five (5) business days after entry of the Preliminary Approval Order, a list of potential Settlement Class Members (consisting of names, addresses, and email addresses), in electronic form. Class Counsel shall, at least fourteen (14) days before the Fairness Hearing, file with the Court proof of mailing of the Class Notice and Claim Form. The date upon which Notice is first sent out shall be the "Notice Date."

E. Notice and Administrative Expenses

5. Notice and Administrative Expenses shall be paid out of the Settlement Fund.

F. Procedures for Objections to the Settlement and Exclusions from the Class

6. Any Class Member who wishes to object to the fairness, reasonableness or adequacy of this Settlement Agreement, to any term(s) of this Agreement or to the proposed Attorneys' Fees and Expenses Award or Service Award may do so no later than fourteen (14) days before the Fairness Hearing, and subject to the requirements set out in the Preliminary Approval Order. Class Members who fail to file and serve timely written objections in the manner specified in the Preliminary Approval Order shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement.

7. Attorneys representing Class Members who object to this Settlement Agreement must file notice(s) of appearance.

8. Potential Class Members who wish to exclude themselves from the Class must submit a written statement requesting exclusion from the Class no later than twenty-one (21) days after the Notice Date (the “Opt-Out Deadline”). Such written request for exclusion must contain the name, address, and telephone number of the person requesting exclusion, must be returned by mail to the Claims Administrator at a specified address, must be postmarked on or before the Exclusion Deadline, and must otherwise be submitted in accordance with the Class Notice. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any individual who opts out of the Class will not be entitled to any recovery under the Settlement Agreement and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon. Class Members who do not submit a valid and timely request for exclusion on or before the Exclusion Deadline shall be bound by all terms of the Settlement Agreement if the Settlement is approved by the Court. Within five (5) days after the Opt-Out Deadline, the Claims Administrator shall provide Defendants with a list of the Class Members who have requested exclusion from the Class.

G. Attorneys’ Fees, Expenses and Service Awards

9. Class Counsel shall file and serve the Attorneys’ Fees, Expenses and Service Award Application not later than twenty-one (21) days prior to the Fairness Hearing.

10. Any Attorneys’ Fees, Expenses and Service Award will be subject to approval by the Court.

11. The Attorneys' Fees, Expenses and Service Award shall be paid from the Settlement Administration Account established pursuant to Section A, paragraph "ii" above within seven (7) days from the date on which the Court enters a Final order approving such award.

H. Claims Administrator

12. The Claims Administrator shall be selected by Class Counsel and approved by the Court.

13. The Claims Administrator shall administer the process of receiving, reviewing and approving or denying claims under Class Counsel's supervision and subject to the jurisdiction of the Court.

14. The Claims Administrator shall receive Claims and determine first, whether the Claim is an Authorized Claim, in whole or in part; and second, each Authorized Claimant's pro rata share of the Net Cash Settlement Amount based upon each Authorized Claimant's Recognized Alleged Loss amount.

15. The Settlement Fund shall be applied as follows:

(1) to pay Class Counsel's Attorneys' Fees and Expenses, and the Service Award and expenses of Plaintiff (the "Attorneys' Fees, Expenses and Service Award"), if and to the extent allowed by the Court;

(2) to pay all the costs and expenses reasonably and actually incurred in connection with providing notice, locating Settlement Class Members, soliciting Settlement Class claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing Claim Forms, and paying escrow fees and costs, if any;

(3) to pay any taxes and tax expenses; and

(4) to distribute the balance of the Settlement Fund to Authorized Claimants as allowed by the Settlement Agreement, the Plan of Allocation, or order of the Court.

16. The Plan of Allocation is not a necessary term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that any particular Plan of Allocation be approved.

17. Each Authorized Claimant shall be allocated a pro rata share of the Net Cash Settlement Amount based on his, her or its Recognized Alleged Loss compared to the total Recognized Alleged Losses of all Authorized Claimants. Defendants shall not be entitled to any of the Settlement consideration once the Effective Date has occurred.

18. Any Class Member who does not submit a valid Claim Form will not be entitled to receive any distribution from the Net Cash Settlement Amount, but will otherwise be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Final Order Approving Settlement to be entered in the Class Action and the Releases provided for herein, and will be barred and enjoined from bringing any action against the Releasees concerning the Released Claims.

19. Class Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Cash Settlement Amount by the Claims Administrator. Defendants shall have no liability, obligation, involvement, or responsibility for the administration of the Settlement or disbursement of the Net Cash Settlement Amount. Class Counsel shall have the right, but not the obligation, to waive what they deem to be non-substantive or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

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

a. Each Class Member shall be required to submit a Claim Form setting forth the Class Member's Alleged Losses, substantially in the form attached hereto as Exhibit C, supported by such documents as are designated therein, or as the Claims Administrator or Class Counsel, in their discretion, may deem acceptable.

b. All Claim Forms must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice, which the Parties will request to be sixty (60) days after mailing, unless such deadline is extended by Order of the Court. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Cash Settlement Amount or payment pursuant to this Settlement Agreement (unless, by Order of the Court, late-filed Claim Forms are accepted), but shall in all other respects be bound by all of the terms of this Settlement Agreement and the Settlement including the terms of the Final Order Approving Settlement and the Releases provided for herein, and will be barred and enjoined from bringing any action against the Releasees concerning the Released Claims. A Claim Form shall be deemed to be submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in as per the instructions thereon.

c. Each Claim Form shall be submitted to and reviewed by the Claims Administrator, under the supervision of Class Counsel, who shall determine in accordance with this Settlement Agreement, the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph "f" below;

d. Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, email or by telephone to give the Claimant the chance to remedy any

curable deficiencies in the Claim Form submitted. The Claims Administrator, under the supervision of Class Counsel, shall notify, in a timely fashion and in writing, all Claimants whose Claim they propose to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the Claimant whose claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below.

e. If any Claimant whose claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty-one (21) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Class Counsel shall thereafter present the request to the Court.

f. The administrative determinations of the Claims Administrator in accepting and rejecting Claims shall be presented for approval by the Court.

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

22. Class Counsel will apply to the Court for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any administration fees and expenses

associated with the administration of the Settlement from the Settlement Administration Account; and (c) if the Effective Date has occurred, directing payment of the Net Cash Settlement Amount to the Authorized Claimants.

23. The Net Cash Settlement Amount shall be distributed to Authorized Claimants substantially in accordance with the Plan of Allocation set forth in the Class Notice and approved by the Court. Any such Plan of Allocation is not a part of this Settlement Agreement. No funds from the Net Cash Settlement Amount shall be distributed to Authorized Claimants until the Effective Date. If there is any balance remaining in the Net Cash Settlement Amount after six (6) months from the date of distribution of the Net Cash Settlement Amount, Class Counsel shall, if feasible, reallocate such balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any remaining balance shall be donated to one or more secular §501(c)(3) organization(s) selected by Class Counsel, not related or controlled by any Party or their counsel.

24. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Class Members who are Authorized Claimants.

25. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

26. The Claims Administrator is to be charged with, among other things, distribution of the Class Notice, setting up and running a toll-free center to respond to calls, receipt and handling of requests for information, receipt of requests for exclusion and distribution of settlement relief to Class Members in the Settlement.

I. Releases and Waivers

27. Pursuant to the Order Approving Settlement, without further action by anyone, and whether or not a Claim Form has been executed and/or delivered by or on behalf of any such Settlement Class Member, on and after the Effective Date, Representative Plaintiff and all other Settlement Class Members, on behalf of themselves and their other Releasors, for good and sufficient consideration, and all Releasors shall be deemed to have, and by operation of law and of the Order Approving Settlement shall have, fully, finally, and forever released, relinquished, settled, and discharged:

- a. all Released Claims;
- b. all Claims, damages, and liabilities against each and every one of the Releasees to the extent that any such Claims, damages, or liability relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences, or oral or written statements or representations in connection with, or directly or indirectly relating to (i) the prosecution, defense, or settlement of the Class Action, (ii) the Settlement Agreement, (iii) the Settlement terms and their implementation, (iv) the provision of notice in connection with the proposed Settlement, and/or (v) the resolution of any Claim Forms filed in connection with the Settlement; and
- c. all Claims against any of the Releasees for attorneys' fees, costs, or disbursements incurred by Plaintiff's counsel, the settlement of the Class Action, or the administration of the Settlement, except as otherwise specified in the Settlement Agreement.

28. The Settling Parties agree and acknowledge that this Settlement Agreement is intended to resolve and satisfy any and all claims that the Releasors have made or could have made against any of the Releasees arising out of the issuance or sale of GrowCo securities. The Parties

agree and acknowledge that they shall seek as part of the Final Order Approving Settlement an order prohibiting further lawsuits and claims against the Defendants arising out of the issuance and sale of GrowCo securities which the Parties intend to operate as a complete bar to any lawsuits or claims against the Defendants arising out of the issuance or sale of GrowCo securities (the “Complete Bar Order”). The Complete Bar Order will not bar claims for collection of any amounts due under the GrowCo securities pursuant to the terms of the securities, including claims in the event of a GrowCo liquidation including in the GrowCo Bankruptcy Action.

29. Nothing in the Final Order Approving Settlement shall bar any action or Claim by the Settling Parties or their counsel to enforce the terms of the Settlement Agreement or the Order Approving Settlement.

30. The Releasors and each of them agree and covenant not to sue or prosecute, institute or cooperate in the institution, commencement, filing, or prosecution of any suit or proceeding in any forum based upon or related to any Released Claims against any Releasee.

31. Each of the releases, waivers, and covenants not to sue contained in this Section was separately bargained for and is an essential element of the Settlement Agreement.

J. Preliminary Approval Hearing and Preliminary Approval Order

Within five (5) business days or sooner following the execution of this Settlement Agreement but no later than October 6, 2020, Representative Plaintiff shall file a motion for Preliminary Approval of the Settlement requesting, among other things, that the Court preliminarily approve the Settlement as fair, reasonable and adequate, approve the form and manner of providing Notice to the Class, set a deadline for Class Members to object to the Settlement, set a deadline for Class Members to opt-out of the Class (the “Opt-Out Deadline”), set a deadline for submission of papers in support of the Final Order Approving Settlement, and set a

deadline for filing the request for Attorneys' Fees, Expenses and Service Award, which motion Defendants shall not oppose as long as the request is reasonable and consistent with the Settlement Agreement.

K. Fairness Hearing, Final Order Approving Settlement

32. The Settling Parties shall request that the Court schedule a Fairness Hearing within sixty (60) days after the entry of the Preliminary Approval Order, unless otherwise ordered by the Court, at which to consider whether (i) to approve this Agreement as fair, reasonable and adequate and in the best interest of the Settlement Class; (ii) to finally certify the Settlement Class; and (iii) to approve Class Counsels' request for an Attorneys' Fees and Expenses Award and Service Award.

L. No Admissions

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

a. shall not be offered or received against the Parties as evidence of, or construed as or deemed to be evidence of, any presumption, concession or admission by Party with respect to the truth of any fact alleged in the Amended Complaint or the validity of any claim that had been or could have been asserted against the Defendants in the Class Action, or in any litigation, or of any liability, negligence, fault or wrongdoing of the Defendants;

b. shall not be construed by any Party as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

c. shall not be construed as or received in evidence as an admission, concession or presumption that class certification is appropriate in this Class Action.

M. Modification or Termination of This Settlement Agreement

34. This Settlement Agreement may not be altered, amended or modified, nor may any of its provisions be waived, except in writing signed by all Settling Parties.

35. Any Settling Party shall have the right to terminate the Settlement if the Court does not approve the Settlement Agreement. If the Court modifies the Settlement Agreement in any way that a Settling Party in good faith determines is material, any Settling Party shall have the right to terminate the Settlement only after first conferring with the other Settling Parties in good faith in an effort to resolve the concern.

36. Representative Plaintiff may not terminate the Settlement based on any Attorneys' Fees, Expenses and Services Awards.

37. Each Defendant in the Class Action shall have the option (but not the obligation) to terminate the Settlement if valid exclusion requests with Alleged Losses totaling more than \$750,000 are received from eligible Class Members. However, that if any Defendant is declaring the Settlement null and void, (a) he or it shall inform the other Defendants and Starstone in writing within ten (10) f days after the expiration of the Opt-Out Deadline; (b) the Defendants and Starstone shall meet and confer in person or telephonically in an attempt to come to an agreement; (c) if there is no agreement, the Defendants and Starstone will mediate before Judge Meyer; and (d) if there is no agreement after mediation, any Defendant may declare the Settlement null and void within ten (10) days after mediation by sending notification of such termination to all Parties via their counsel.

38. Unless otherwise ordered by the Court, in the event the Settlement Agreement shall terminate, or be canceled, or shall not become effective for any reason, within five (5) business days after written notification of such event is sent by Defendants' counsel, the Settlement

Payment (including accrued interest), less reasonable notice and administration expenses which have either been incurred or disbursed pursuant to Section H hereof, shall be refunded to Starstone pursuant to written instructions from Defendants' counsel. Representative Plaintiff has the right to terminate the Settlement if Defendants fail to timely and completely fund the Settlement in accordance with this Settlement Agreement.

N. Additional Provisions

37. As part of this Settlement, Plaintiff agrees to file a notice (a) withdrawing his Notice of Intent to Oppose Defendant Beall's motion to set aside clerk's default (ECF 95), (b) withdrawing his Response to Defendant Beall's Motion to Set Aside Clerk's Default (ECF 97), and (c) unconditionally and without qualification consenting to Defendant Beall's Motion to Set Aside Clerk's Default (ECF 94), and (d) stating that for the reasons set forth in Defendant Beall's Motion to Set Aside Clerk's Default, good cause exists under Fed. R. Civ. P. 55(c) to vacate the Clerk's default. Plaintiff agrees to use his best efforts to seek to vacate the Clerk's default against Defendant Beall. Plaintiff will file the notice contemporaneously with the motion for Final Approval of the Settlement. While the Parties understand only the Court can vacate a default, it is the Parties' intention and desire that the Court will vacate the default as part of the Settlement.

Miscellaneous Provisions

39. The Parties and their counsel agree to use their best efforts to obtain Court approval of this Settlement Agreement.

40. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. In the event of any difference between the terms of the Settlement Agreement and any of the exhibits, the terms of the Settlement Agreement shall control.

41. The Parties to this Settlement Agreement intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Representative Plaintiff, any other Class Members and their attorneys against the Releasees with respect to the Released Claims. The Parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense or settlement of the Class Action. The Parties agree that the amount paid by the Insurance Carrier and the other terms of the Settlement were negotiated at arm's-length and in good faith, including during a mediation conducted by a professional mediator, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

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

43. The waiver by one Party of any provision or breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other provision or any other prior or subsequent breach of this Settlement Agreement.

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

45. This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

46. The construction, interpretation, operation, effect and validity of this Settlement Agreement, and all documents necessary to effectuate it, shall be governed by the laws of the State of Colorado, except to the extent that federal law requires that federal law govern.

47. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that all Parties have contributed substantially and materially to the preparation of this Settlement Agreement.

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

Dated this 7th day of October, 2020.

John Paulson

John Paulson

Wayne Harding

John McKowen

Two Rivers Water and Farming Company

Timothy Beall

By _____

Its _____

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Dated this ___ day of October, 2020.

John Paulson

Wayne Harding

DocuSigned by:
John McKowen 10/6/2020
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John McKowen

Two Rivers Water and Farming Company

By *Greg Harding*

Its *CEO*

Timothy Beall

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John Paulson

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Timothy Beall

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Its _____