

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

YAO-YI LIU, TUNG-HUNG HSIEH, and
CHIU-PAO TSAI Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

Civil No. 6:14-cv-06631-EAW-MJP

WILMINGTON TRUST COMPANY, and
WILMINGTON TRUST, NATIONAL
ASSOCIATION,

Defendants.

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”) is made and entered into by and between (i) Plaintiffs Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai (collectively, “Plaintiffs”), individually and as class representatives on behalf of the Settlement Class, and (ii) Defendants Wilmington Trust Company and Wilmington Trust, National Association (collectively, “Wilmington” or “Defendants”) (each referred hereinafter as “Party” and together as the “Parties”) as of the latest date that all signatories below have executed the agreement. The Parties intend and agree to resolve, discharge, and settle fully, finally, and forever the claims of the Settlement Class asserted in the class action captioned *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631, pending in the United States District Court for the Western District of New York, subject to approval of the Court.

WHEREAS:

A. All words or terms used herein that are capitalized shall have the meanings ascribed to those words or terms herein and in ¶ 1 hereof entitled “Definitions.”

B. On November 11, 2014, Plaintiffs filed a class action complaint alleging Wilmington knowingly assisted a Ponzi scheme conceived by non-party Michael Wang through his company, Velocity Investment Group, Inc. (the “Bio Profit Scheme”). Plaintiffs’ complaint asserted claims for: (1) aiding and abetting fraud; (2) aiding and abetting conversion; (3) aiding and abetting breach of fiduciary duty; (4) breach of fiduciary duty; and (5) gross negligence. (ECF 1).

C. Wilmington moved to dismiss Plaintiffs’ Complaint (ECF 15), and Plaintiffs filed an Amended Complaint in response thereto. (ECF 16).

D. Wilmington moved to dismiss the Amended Complaint (ECF 19). The Court denied Wilmington’s motion as to Plaintiffs’ aiding and abetting a breach of fiduciary duty, gross negligence and breach of fiduciary duty claims, and granted Wilmington’s motion as to Plaintiffs’ claims for aiding and abetting fraud and aiding and abetting conversion. (ECF 45).

E. On November 15, 2017, the Parties participated in a Court Ordered mediation pursuant to the Court’s Alternative Dispute Resolution Plan. That mediation was not successful. (ECF 52).

F. The Parties have engaged in substantial discovery concerning Plaintiffs’ claims and Wilmington’s defenses, including exchanging document discovery, responding to requests for interrogatories and requests for admissions, and depositions of the Plaintiffs and Defendants’ witnesses. The Parties have also briefed many of the issues in this matter through motion practice and mediation statements.

G. On February 13, 2020, the Parties participated in an all-day arm’s length mediation before Michael D. Young of JAMS in an attempt to resolve the Action. The Parties were unable to resolve the Action at that time. The Parties resumed discovery.

H. On March 23, 2021, the Court issued an Order directing the Parties to participate in a settlement conference before the Honorable Mark W. Pederson. (ECF 199).

I. On April 30, 2021, the Parties participated in a settlement conference before Judge Pederson. (ECF 203). The Parties were unable to resolve the Action at that time and resumed discovery.

J. The Parties reengaged the assistance of the mediator to resume settlement discussions in November 2021. Based upon the Parties' discovery, investigation, and evaluation of the facts and law relating to the matters in the pleadings, and the mediation and further negotiations before Mr. Young, the Parties have agreed to settle this Action pursuant to the provisions of this Stipulation.

K. Wilmington has denied and continues to deny each allegation of liability, wrongdoing, and damages, and asserts that it has factual and legal defenses to all of the claims and class allegations asserted in the Action. Wilmington maintained, and continues to maintain, that it has acted in accordance with governing law. Defendants have nonetheless concluded that continuing the Action would be protracted, expensive, and disruptive to its business. Defendants therefore desire to fully and finally settle the Action on the terms and conditions set forth herein to avoid the further expense, inconvenience, and distraction of the Action and to dispel any related uncertainty.

L. Pursuant to this Stipulation, and recognizing the consideration provided for by this Stipulation, the Class Representatives and Class Counsel intend to fully and finally resolve the claims against Wilmington in connection with the Action, as more fully set forth herein.

M. The Class Representatives and Class Counsel believe that the claims asserted in the Action have merit and that the information developed to date supports the claims asserted.

However, they recognize the expense and length of proceedings necessary to continue the litigation through further discovery, motion practice, trial, and any possible appeals. They have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. They are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto.

N. Based upon their evaluation, the Class Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interests of the Class Representatives and the Class, and is fair, adequate and reasonable based upon the substantial benefits that the Settlement bestows upon the Settlement Class. Specifically, Wilmington will pay \$4,350,000 into a Settlement Fund for the benefit of the Settlement Class, which includes but is not limited to, payments to Settlement Class Members, payments for costs and expenses related to Class Notice as well as the implementation and administration of the Settlement, payment of Attorneys' Fees and Expenses for Class Counsel, and payment of the Service Awards for the Class Representatives, as approved by the Court.

O. This Stipulation and all associated exhibits or attachments are made for the sole purpose of attempting to consummate settlement of this Action on a class-wide basis. This Stipulation and the Settlement it evidences are made in compromise of disputed claims. Because the Action was brought as a class action, this Settlement must receive preliminary and final approval by the Court. Accordingly, the Class Representatives and Wilmington enter into this Agreement and associated Settlement on a conditional basis. In the event that Wilmington or the Class Representatives exercise a right herein to terminate or rescind this Stipulation, the Court does not execute and enter the Final Approval Order, or the associated Judgment does not become Final for any reason, this Stipulation shall be deemed null and void *ab initio*, shall be of no force

or effect whatsoever, shall not be referred to or utilized for any purpose whatsoever by anyone, and the negotiation, terms and entry of the Stipulation shall remain subject to the provisions of Federal Rule of Evidence 408, any and all state statutes of a similar nature, and the mediation privilege.

P. The Parties expressly reserve all rights, claims, and defenses, and do not waive any such rights, claims or defenses in the event that the Stipulation is not approved for any reason. The Parties agree that they each retain and reserve all rights, and agree not to take a position to the contrary.

NOW THEREFORE, without any concession by Class Representatives that the Action lacks merit, and without any concession by the Defendants of any liability or wrongdoing or lack of merit in its defenses, it is hereby **STIPULATED AND AGREED**, by and among the parties to this Stipulation (the “Parties”), through their respective attorneys, subject to approval by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties hereto, all Released Claims and all Released Defendants’ Claims, as against all Released Parties, shall be fully, finally, and forever compromised, settled, released, discharged, and dismissed with prejudice, and without costs, upon and subject to the following terms and conditions:

DEFINITIONS

1. As used in this Stipulation, the following terms shall have the meanings set forth below. In the event of any inconsistency between any definition set forth below and any definition in any other document related to the Settlement, the definition set forth below shall control.

(a) “Action” means the civil action captioned *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631 pending in the United

States District Court for the Western District of New York before the Honorable Elizabeth A. Wolford, United States District Judge.

(b) “Alternative Judgment” means a form of final judgment that may be entered by the Court but in a form other than the form of Judgment provided for in this Stipulation and where none of the Parties hereto elects to terminate this Settlement by reason of such variance.

(c) “Amended Complaint” means the Amended Class Action Complaint for aiding and abetting fraud, aiding and abetting a breach of fiduciary duty, aiding and abetting conversion, breach of fiduciary duty, and gross negligence filed on May 22, 2015.

(d) “Authorized Claimant” means a Settlement Class Member who submits a valid Proof of Claim and Release form to the Claims Administrator that is accepted for payment.

(e) “Bio Profit Funds” means the promissory notes offered and sold by California-based Velocity Investment Group, Inc. managed by Michael Wang through securities offerings by BPS I, BPS II, BPS III, BPS V, and Velocity Valley & Grand.

(f) “Bio Profit Scheme” means the Ponzi scheme perpetrated by Michael Wang whereby investors in the Bio Profit Funds were purportedly investing in real estate loans, when in reality all or some of new investors’ investments in one BPS Fund were being used to make “interest payments” and “redemption payments” to existing investors.

(g) “Claims Administrator” means the firm Strategic Claims Services, subject to Court approval, to provide all notices approved by the Court to potential Settlement Class Members, to process proofs of claim, and to administer the Settlement.

(h) “Class” means all persons and entities who invested in the Bio Profit Scheme and were damaged thereby.

(i) “Class Counsel” means Rosca Scarlato, LLC.

(j) “Class Representatives” mean Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai, the named Plaintiffs and proposed class representatives in the Action, identified in the first paragraph of this Stipulation.

(k) “Defendants” means Wilmington Trust Company and/or Wilmington Trust, National Association.

(l) “Defendants’ Counsel” means the law firm of Hodgson Russ LLP.

(m) “Effective Date” means the date upon which the Settlement shall have become effective, as set forth in ¶ 42 below.

(n) “Escrow Account” means the separate escrow account at Huntington Bank, established to receive the Settlement Amount for the benefit of the Settlement Class pursuant to this Stipulation and subject to the jurisdiction of the Court.

(o) “Escrow Agent” means Strategic Claims Services.

(p) “Fee and Expense Application” means Class Counsel’s application, on behalf of all Plaintiffs’ Counsel, for an award of attorneys’ fees and payment of litigation expenses incurred in prosecuting the case, and Service Awards to Class Representatives.

(q) “Final,” with respect to a court order, including a judgment, means the later of: (i) if there is an appeal from a court order, the date of final affirmance on appeal and the expiration of the time for any further judicial review whether by appeal, reconsideration, or a petition for a *writ of certiorari* and, if *certiorari* is granted, the date of final affirmance of the order following review pursuant to the grant; or (ii) the date of final dismissal of any appeal from the order or the final dismissal of any proceeding on *certiorari* to review the order; or (iii) the expiration of the time for the filing or noticing of any appeal or petition for *certiorari* from the order (or, if the date for taking an appeal or seeking review of the order shall be extended beyond

this time by order of the issuing court, by operation of law or otherwise, or if such extension is requested, the date of expiration of any extension if any appeal or review is not sought), without any such filing or noticing being made.

(r) “Immediate Family Members” means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law.

(s) “Judgment” means the proposed judgment to be entered by the Court approving the Settlement, substantially in the form attached hereto as Exhibit B.

(t) “Mediator” means Mr. Michael D. Young of JAMS.

(u) “Net Settlement Fund” means the Settlement Fund less: (i) Court-awarded attorneys’ fees and expenses to Plaintiffs’ Counsel; (ii) any Service Awards that may be awarded by the Court to the Class Representatives; (iii) Notice and Administration Expenses; (iv) Taxes; and (v) any other fees or expenses approved by the Court.

(v) “Notice” means the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses to be sent to potential Settlement Class Members, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit 1 to Exhibit A hereto.

(w) “Notice and Administration Expenses” means all costs, fees, and expenses incurred in connection with providing notice to the Settlement Class and the administration of the Settlement, including but not limited to: (i) providing notice of the proposed Settlement by mail, publication, and other means to potential Settlement Class Members; (ii) receiving and reviewing claims for payment from the Settlement Fund; (iii) applying the Plan of Allocation; (iv) communicating with Persons regarding the proposed Settlement and claims administration

process; (v) distributing the proceeds of the Settlement; and (vi) fees related to the Escrow Account and investment of the Settlement Fund.

(x) “Person(s)” means any individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity.

(y) “Plaintiffs’ Counsel” means Labaton Sucharow LLP, Goldman Scarlato & Penny, P.C., Peiffer, Wolf, Carr & Kane, APLC, and Rosca Scarlato, LLC.

(z) “Plan of Allocation” means the proposed Plan of Allocation for the distribution of the Net Settlement Fund, which, subject to the approval of the Court, shall be substantially in the form described in the Notice.

(aa) “Preliminary Approval Order” means the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, which, subject to the approval of the Court, shall be substantially in the form attached hereto as Exhibit A.

(bb) “Proof of Claim” or “Claim Form” means the Proof of Claim and Release form for submitting a claim, which, subject to approval of the Court, shall be substantially in the form attached as Exhibit 2 to Exhibit A hereto.

(cc) “Released Claims” means any and all claims and causes of action of every nature and description, whether known or Unknown (as defined below), contingent or absolute, mature or not mature, discoverable or undiscoverable, liquidated or unliquidated, accrued or not accrued, including those that are concealed or hidden, regardless of legal or equitable theory and

whether arising under federal, state, common, or foreign law, that Plaintiffs or any other member of the Settlement Class (a) asserted in the Action; or (b) could have asserted in any forum that arise out of, are based upon, or relate to, directly or indirectly, in whole or in part: (1) the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Action and that relate to an investment in the Bio Profit Funds; or (2) Defendants' and/or their attorneys' defense or settlement of the Action and/or the claims alleged therein. For the avoidance of doubt, Released Claims does not include claims to enforce the Settlement.

(dd) "Released Defendant Parties" means (1) Wilmington; (2) each of Wilmington's past, present, or future parents, holding companies, subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns, and each of their respective present, former, or future officers, directors, shareholders, employees, representatives, consultants, accountants, and attorneys. Releasees will not include any retail brokers, investment advisors, broker-dealers, and/or investment advisory firms not affiliated with Wilmington, or any of its respective subsidiaries or affiliates, that may have recommended, suggested, brought to the attention of any investor, offered, and/or sold the Bio Profit Funds investments to investors.

(ee) "Released Defendants' Claims" means all claims and causes of action of every nature and description, including both known and Unknown (as defined below), whether arising under federal, state, common or foreign law, or any other law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims in the Action, except for claims relating to the enforcement of the Settlement or any claims against any person who submits a request for exclusion that is accepted by the Court.

(ff) “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

(gg) “Released Plaintiff Parties” means Settlement Class Members, Class Representatives, Plaintiffs’ Counsel, and each of their respective past or present trustees, officers, directors, partners, employees, affiliates, contractors, auditors, principals, agents, attorneys, predecessors, successors, assigns, insurers, parents, subsidiaries, general or limited partners or partnerships, and limited liability companies; and the spouses, Immediate Family Members, representatives, and heirs of any Released Plaintiff Party who is an individual, as well as any trust of which any Released Plaintiff Party is the settlor or that is for the benefit of any of their Immediate Family Members. Released Plaintiff Parties does not include any Person who timely and validly seeks exclusion from the Settlement Class.

(hh) “Service Award” means such funds described in ¶¶ 18-24 of the Agreement as may be awarded by the Court to the Class Representatives in recognition of their time, effort, and service to the Class, expended in pursuing the Action and in fulfilling their obligations and responsibilities as the Class Representatives.

(ii) “Settlement” means the resolution of the Action in accordance with the terms and provisions of this Stipulation.

(jj) “Settlement Amount” means four million and three hundred and fifty thousand U.S. dollars (\$4,350,000) in cash.

(kk) “Settlement Class” or “Settlement Class Member” means all persons and entities that purchased or acquired the Bio Profit Funds and were allegedly damaged thereby. Excluded from the Settlement Class are (i) Defendants; (ii) any person who was an officer or director of Defendants; (iii) any firm or entity in which any Defendants have or had a controlling

interest; (iv) the parents or subsidiaries of Defendants; (v) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in their respective capacity as such; and (vi) any persons or entities who or which exclude themselves by submitting a valid request for exclusion that is accepted by the Court.

(ll) “Settlement Fund” means the Settlement Amount and any interest earned thereon.

(mm) “Settlement Hearing” means the hearing to be held by the Court to determine, *inter alia*, whether the proposed Settlement is fair, reasonable, and adequate and should be approved.

(nn) “Stipulation” means this Stipulation and Agreement of Settlement.

(oo) “Summary Notice” means the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses, and request for a Service Awards, for publication, which, subject to approval of the Court, shall be substantially in the form attached as Exhibit 3 to Exhibit A hereto.

(pp) “Taxes” means all federal, state, or local taxes of any kind on any income earned by the Settlement Fund and the expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the reasonable expenses of tax attorneys and accountants).

(qq) “Unknown Claims” means any and all Released Claims that Class Representatives or any other Settlement Class Member do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any and all Released Defendants’ Claims that Defendants does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her, or it might

have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Settlement Class. With respect to any and all Released Claims and Released Defendants' Claims, the Parties stipulate and agree that, upon the Effective Date, Class Representatives and Defendants shall expressly, and each Settlement Class Member shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or foreign law, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Class Representatives, all Settlement Class Members, or Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows, suspects, or believes to be true with respect to the Action, the Released Claims, or the Released Defendants' Claims, but Class Representatives and Defendants shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member shall be deemed to have fully, finally, and forever settled and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendants' Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Class Representatives and Defendants acknowledge, and all Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the

definition of Released Claims and Released Defendants' Claims was separately bargained for and was a material element of the Settlement.

SCOPE AND EFFECT OF SETTLEMENT

2. The obligations incurred pursuant to this Stipulation are (a) subject to approval by the Court and the Judgment, or Alternative Judgment, reflecting such approval becoming Final; and (b) in full and final disposition of the Action with respect to the Released Parties and any and all Released Claims and Released Defendants' Claims.

3. For purposes of this Settlement only, the Parties agree to: (i) certification of the Action as a class action, under Federal Rules of Civil Procedure 23(a) and 23(b)(3); (ii) the appointment of Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai as Class Representatives for the Settlement Class; and (iii) the appointment of Rosca Scarlato, LLC as Class Counsel for the Settlement Class pursuant to Federal Rule of Civil Procedure 23(g).

4. By operation of the Judgment or Alternative Judgment, as of the Effective Date, Class Representatives and each and every other Settlement Class Member, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendant Parties.

5. By operation of the Judgment or Alternative Judgment, as of the Effective Date, Defendants, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one

of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Defendants' Claims against any and all of the Released Plaintiff Parties.

THE SETTLEMENT CONSIDERATION

6. In full settlement of the claims asserted in the Action against Defendants and in consideration of the releases specified in ¶¶ 4–5, above, all of which the Parties agree are good and valuable consideration, Defendants shall pay the Settlement Amount into the Escrow Account within twenty (20) business days of the later of (i) the date of entry of the Preliminary Approval Order and (ii) Class Counsel providing, in writing, to Hodgson Russ LLP the information necessary to effectuate a transfer of funds to the Escrow Account, including, but not limited to, wire transfer instructions, payment address, and a complete and executed Form W-9 for the Settlement Fund that reflects a valid tax identification number.

7. With the sole exception of Defendants' obligation to pay the Settlement Amount into the Escrow Account as provided for in ¶ 6, and Wilmington's obligations under ¶ 26, Defendants and Defendants' Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any federal, state, or local tax returns.

8. Other than the obligation of Defendants to cause the payment of the Settlement Amount pursuant to ¶ 6, Defendants shall have no obligation to make or cause to be made any other payments into the Escrow Account or to any Settlement Class Member or Plaintiffs' Counsel in settlement of the Action or pursuant to this Stipulation.

USE AND TAX TREATMENT OF SETTLEMENT FUND

9. The Settlement Fund shall be used: (i) to pay any Taxes; (ii) to pay Notice and Administration Expenses; (iii) to pay any attorneys' fees and expenses of Plaintiffs' Counsel awarded by the Court; (iv) to pay any Service Awards that may be awarded by the Court to the Class Representatives; (v) to pay any other fees and expenses awarded by the Court; and (vi) to pay the claims of Authorized Claimants.

10. The Net Settlement Fund shall be distributed to Authorized Claimants as provided in ¶¶ 27-39 hereof. The Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held in the Escrow Account, and all earnings thereon, shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall have been disbursed or returned, pursuant to the terms of this Stipulation, and/or further order of the Court. The Escrow Agent shall invest funds in the Escrow Account in instruments backed by the full faith and credit of the United States Government (or a mutual fund invested solely in such instruments), or deposit some or all of the funds in non-interest-bearing transaction account(s) that are fully insured by the Federal Deposit Insurance Corporation ("FDIC") in amounts that are up to the limit of FDIC insurance. Defendants and Defendants' Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Escrow Agent. All investment risks of the Settlement Fund shall be borne solely by the Settlement Fund.

11. After the Settlement Amount has been paid into the Escrow Account, the Parties agree to treat the Settlement Fund as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. All provisions of this Stipulation shall be interpreted in a manner that is consistent with the Settlement Amount being a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1. In addition, the Escrow Agent shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph 11, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election 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, or cause to be prepared and delivered, the necessary documentation for signature by all necessary parties, and thereafter take all such actions as may be necessary or appropriate to cause the appropriate filing(s) to timely occur. Consistent with the foregoing:

(a) For the purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the “administrator” shall be the Escrow Agent or its successors, who shall timely and properly file, or cause to be filed, all federal, state, or local tax returns and information returns (together, “Tax Returns”) necessary or advisable with respect to the earnings on the funds deposited in the Escrow Account (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such Tax Returns (as well as the election described above) shall be consistent with this subparagraph and in all events shall reflect that all Taxes (including any estimated taxes, earnings, or penalties) on the income earned on the funds deposited in the Escrow Account shall be paid out of such funds as provided in subparagraph (c) of this paragraph 11.

(b) All Taxes shall be paid out of the Settlement Fund. In all events, Defendants and Defendants' Counsel shall have no liability or responsibility whatsoever for the Taxes or the filing of any Tax Return or other document with the Internal Revenue Service or any other state or local taxing authority or any expenses associated therewith. Defendants shall have no liability or responsibility for the Taxes of the Escrow Account with respect to the Settlement Amount nor the filing of any Tax Returns or other documents with the Internal Revenue Service or any other taxing authority. In the event any Taxes are owed by the Defendants on any earnings on the funds on deposit in the Escrow Account, such amounts shall also be paid out of the Settlement Fund.

(c) Taxes with respect to the Settlement Amount and the Escrow Account shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid, or caused to be paid, by the Escrow Agent out of the Settlement Fund without prior order from the Court or approval by Defendants. 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 (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties agree to cooperate with each other, and their tax attorneys and accountants to the extent reasonably necessary, to carry out the provisions of this paragraph 11.

12. This is not a claims-made settlement. As of the Effective Date, Defendants, and/or any other Person funding the Settlement on a Defendants' behalf, shall not have any right to the return of the Settlement Fund or any portion thereof for any reason.

ATTORNEYS' FEES AND EXPENSES

13. Class Counsel, on behalf of all Plaintiffs' Counsel, will apply to the Court for an award from the Settlement Fund of attorneys' fees and payment of expenses incurred in prosecuting the Action, including any earnings on such amounts at the same rate and for the same

periods as earned by the Settlement Fund. Defendants shall take no position with respect to any Fee and Expense Application.

14. The amount of attorneys' fees and expenses awarded by the Court is within the sole discretion of the Court. Any attorneys' fees and expenses awarded by the Court shall be paid from the Settlement Fund to Class Counsel immediately after entry of the order awarding such attorneys' fees and expenses and entry of the Judgment or Alternative Judgment, notwithstanding the existence of any timely filed objections thereto or to the Settlement, or potential for appeal therefrom, or collateral attack on the Fee and Expense Application, the Settlement, or any part thereof. Class Counsel shall allocate any Court-awarded attorneys' fees and expenses among Plaintiffs' Counsel.

15. Any payment of attorneys' fees and expenses pursuant to ¶¶ 13-14 above shall be subject to Class Counsel's obligation to make refunds or repayments to the Settlement Fund of any paid amounts, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or fails to become effective for any reason, or if, as a result of any appeal or further proceedings on remand or successful collateral attack, the award of attorneys' fees and/or expenses is reduced or reversed by Final non-appealable court order. Class Counsel agree that they are subject to the jurisdiction of the Court for the purpose of enforcing this paragraph. Class Counsel shall make the appropriate refund or repayment in full no later than twenty (20) business days after receiving notice of the termination of the Settlement pursuant to this Stipulation, notice from a court of appropriate jurisdiction of the disapproval of the Settlement by Final non-appealable court order, or notice of any reduction or reversal of the award of attorneys' fees and/or expenses by Final non-appealable court order.

16. With the sole exception of Defendants' obligation to cause the payment of the Settlement Amount into the Escrow Account as provided for in ¶ 6, Defendants shall have no responsibility for, and no liability whatsoever with respect to, any payment whatsoever to Plaintiffs' Counsel in the Action that may occur at any time.

17. Defendants shall have no responsibility for, and no liability whatsoever with respect to, any allocation of any attorneys' fees or expenses among Plaintiffs' Counsel in the Action, or to any other Person who may assert some claim thereto, or any fee or expense awards the Court may make in the Action.

SERVICE AWARD

18. In recognition of the time and effort the Class Representatives expended in pursuing the Action and fulfilling their obligations and responsibilities as Class Representatives, and of the benefits conferred on all Class Members by the Settlement, Class Counsel may ask the Court for the payment of Service Awards to the Class Representatives to be paid from the Settlement Fund. No amount has been guaranteed or promised to the Class Representatives. The Court shall determine the final amount of any Service Award to the Class Representatives, in its discretion, based upon the request by or on behalf of the Class Representatives.

19. Any Service Award approved by the Court shall be paid from the Settlement Fund by the Settlement Administrator.

20. The ability of the Class Representatives to apply to the Court for a Service Award is not conditioned on their respective support of the Settlement.

21. Further, the allowance or disallowance by the Court of an award of any Service Award will be considered and determined by the Court separately from the Court's consideration and determination of the fairness, reasonableness, and adequacy of the Settlement.

22. Within thirty (30) days of the Effective Date and upon the Class Representatives' submission of a Form W-9 to Class Counsel, the Escrow Agent shall remit service awards to the Class Representatives from the Settlement Fund in the amount awarded by the Court.

23. Defendants shall have no responsibility for, and no liability whatsoever with respect to, any attorneys' fees, costs, or expenses incurred by or on behalf of Settlement Class Members, or Service Award whether or not paid from the Escrow Account. The Settlement Fund will be the sole source of payment from Defendants for any award of attorneys' fees, expenses, and Service Award ordered by the Court.

24. The procedure for and the allowance or disallowance by the Court of any Fee and Expense Application or Application for Service Awards are not part of the Settlement set forth in this Stipulation, and any order or proceeding relating to any Fee and Expense Application, or an Application for Service Awards, including an award of attorneys' fees or expenses in an amount less than the amount requested by Class Counsel, 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 Judgment or Alternative Judgment approving the Stipulation and the Settlement set forth herein, including, but not limited to, the release, discharge, and relinquishment of the Released Claims against the Released Defendant Parties, or any other orders entered pursuant to the Stipulation. Class Representatives or Class Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 43 or otherwise based on any objection or appeal with respect to fees, expenses or Service Awards awarded in the Action or the Court's or an appellate court's ruling with respect to fees, expenses and Service Awards awarded in the Action.

NOTICE AND ADMINISTRATION EXPENSES

25. Except as otherwise provided herein, the Net Settlement Fund shall be held in the Escrow Account until the Effective Date.

26. Prior to the Effective Date of the Settlement, without further approval from Defendants or further order of the Court, Class Counsel may pay Notice and Administration Expenses reasonably and actually incurred, to the extent that the Notice and Administration Expenses do not exceed one hundred thousand dollars (\$100,000.00). Additional sums for this purpose prior to the Effective Date may be paid from the Settlement Fund upon order of the Court. Taxes and fees related to the Escrow Account and investment of the Settlement Fund may be paid as incurred, without further approval of Defendants or further order of the Court. After the Effective Date of the Settlement, without further approval of Defendants or further order of the Court, Notice and Administration Expenses may be paid as incurred. Defendants shall be responsible for providing any required notice under the Class Action Fairness Act of 2005, if any, at their own expense.

DISTRIBUTION TO AUTHORIZED CLAIMANTS

27. The Claims Administrator, subject to such supervision and direction of Class Counsel and/or the Court as may be necessary or as circumstances may require, shall administer the Settlement in accordance with the terms of this Stipulation, the Court-approved Plan of Allocation, and subject to the jurisdiction of the Court. Defendants and Defendants' Counsel shall have no responsibility for (except as stated in ¶ 6 hereof), interest in, or liability whatsoever with respect to the administration of the Settlement or the actions or decisions of the Claims Administrator, and shall have no liability to the Settlement Class in connection with such administration.

28. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's recognized loss, as defined in the Plan of Allocation included in the Notice, or in such other plan of allocation as the Court may approve.

29. Defendants have no role in the development of, and will take no position with respect to, the Plan of Allocation. The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of Allocation is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Class Representatives and Class Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 43 or otherwise based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in the Action. Defendants and Defendants' Counsel shall have no responsibility or liability for reviewing or challenging claims on the Net Settlement Fund, the allocation of the Net Settlement Fund, or the distribution of the Net Settlement Fund.

30. Upon the Effective Date and thereafter, and in accordance with the terms of the Stipulation, the Plan of Allocation, 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.

31. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses,

and Service Awards, if any, redistribute such balance among Authorized Claimants who have cashed their checks, consistent with the Court approved Plan of Allocation. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after re-distribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be contributed to a non-profit and non-sectarian organization(s) agreed to by the parties and approved by the Court.

ADMINISTRATION OF THE SETTLEMENT

32. Any Settlement Class Member who fails to submit a valid Proof of Claim (substantially in the form of Exhibit 2 to Exhibit A) will not be entitled to receive any of the proceeds from the Net Settlement Fund, except as otherwise ordered by the Court, but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternative Judgment to be entered in the Action and all releases provided for herein, and will be barred from bringing any action against the Released Defendant Parties concerning the Released Claims.

33. Class Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund by the Claims Administrator. Class Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Class Counsel deem to be *de minimis* or formal or technical defects in any Proof of Claim submitted. Defendants and Defendants' Counsel shall have no liability, obligation or responsibility for the administration of the Settlement, the allocation of the Net Settlement Fund, or the reviewing or challenging claims on the Net Settlement Fund. Class Counsel shall be solely responsible for designating the Claims Administrator, subject to approval by the Court.

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

(a) Each claimant shall be required to submit a Proof of Claim, substantially in the form attached hereto as Exhibit 2 to Exhibit A, supported by such documents as are designated therein, including proof of the claimant's loss, or such other documents or proof as the Claims Administrator or Class Counsel, in their discretion, may deem acceptable;

(b) All Proofs of Claim must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Class Counsel in their discretion or by Order of the Court. Any Settlement Class Member who fails to submit a Proof of Claim by such date shall be barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court or the discretion of Class Counsel, late-filed Proofs of Claim are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternative Judgment and all releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Defendant Party. A Proof of Claim shall be deemed to be submitted when mailed, if received with a postmark on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Class Counsel, which shall determine in accordance with this Stipulation the extent, if any, to which each claim shall be allowed;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejecting a Proof of Claim in whole or in part, the Claims Administrator shall communicate with the claimant in writing to give the claimant the chance to remedy any curable

deficiencies in the Proof of Claim submitted. The Claims Administrator, under supervision of Class Counsel, shall notify, in writing, all claimants whose claims the Claims Administrator proposes to reject in whole or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (e) below; and

(e) If any claimant whose timely claim has been rejected in whole or in part for curable deficiency desires to contest such rejection, the claimant must, within twenty (20) calendar days after the date of mailing of the notice required in subparagraph (d) above, or a lesser period of time if the claim was untimely, 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 for review to the Court.

35. Each claimant who submits a Proof of Claim shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, including but not limited to, all releases provided for herein and in the Judgment or Alternative Judgment, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the claimant's status as a Settlement Class Member and the validity and amount of the claimant's claim. In connection with processing the Proofs of Claim, no discovery shall be allowed on the merits of the Action or the Settlement.

36. Payment pursuant to the Stipulation and Court-approved Plan of Allocation shall be deemed final and conclusive against any and all claimants. All Settlement Class Members

whose claims are not approved shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternative Judgment to be entered in the Action and the releases provided for herein and therein, and will be barred from bringing any action against the Released Defendant Parties concerning the Released Claims.

37. All proceedings with respect to the administration, processing and determination of claims described by this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court, but shall not in any event delay or affect the finality of the Judgment or Alternative Judgment.

38. No Person shall have any claim of any kind against the Released Defendant Parties or Defendants' Counsel with respect to the matters set forth in this section (*i.e.*, ¶¶ 32-39) or any of its subsections, or otherwise related in any way to the administration of the Settlement, including without limitation the processing of claims and distributions.

39. No Person shall have any claim against Class Representatives, Plaintiffs' Counsel, or the Claims Administrator, or other agent designated by Class Counsel, based on the distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

TERMS OF THE PRELIMINARY APPROVAL ORDER

40. Concurrently with their application for preliminary approval by the Court of the Settlement contemplated by this Stipulation and promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for entry of the Preliminary Approval Order, which shall be substantially in the form annexed hereto as Exhibit A. The Preliminary Approval Order will, *inter alia*, preliminarily approve the Settlement, set the date for the Settlement Hearing, approve the

form of notice, and prescribe the method for giving notice of the Settlement to the Settlement Class.

TERMS OF THE JUDGMENT

41. If the Settlement contemplated by this Stipulation is approved by the Court, Class Counsel and Defendants' Counsel shall jointly request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit B.

EFFECTIVE DATE OF SETTLEMENT

42. The Effective Date of this Settlement shall be the first business day on which all of the following shall have occurred or been waived:

(a) Defendants have not exercised its option to terminate the Settlement under ¶ 43.

(b) entry of the Preliminary Approval Order, which shall be in all material respects substantially in the form set forth in Exhibit A annexed hereto;

(c) payment of the Settlement Amount into the Escrow Account;

(d) approval by the Court of the Settlement, following notice to the Settlement Class and the Settlement Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(e) a Judgment, which shall be in all material respects substantially in the form set forth in Exhibit B annexed hereto, has been entered by the Court and has become Final; or in the event that an Alternative Judgment has been entered, the Alternative Judgment has become Final.

WAIVER OR TERMINATION

43. Defendants and Class Representatives shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination

Notice”), through counsel, to all other Parties hereto within fourteen (14) calendar days of: (i) the Court’s Final refusal to enter the Preliminary Approval Order in any material respect; (ii) the Court’s Final refusal to approve this Stipulation or any material part of it; (iii) the Court’s Final refusal to enter (a) the Judgment in any material respect or (b) an Alternative Judgment; or (iv) the date upon which the Judgment or Alternative Judgment is modified or reversed in any material respect by a Final order of the Court, the United States Court of Appeals, or the Supreme Court of the United States. For the avoidance of doubt, Class Representatives shall not have the right to terminate the Settlement due to any decision, ruling, or order respecting the Fee and Expense Application, Application for Service Awards, or any plan of allocation.

44. In addition to all of the rights and remedies that Class Representatives have under the terms of this Stipulation, Class Representatives shall also have the right to terminate the Settlement in the event that (i) the Settlement Amount has not been paid in the time period provided for in ¶ 6 above, by providing written notice of the election to terminate to all other Parties and, thereafter, if there is a failure to pay the Settlement Amount within fourteen (14) calendar days of such written notice; or (ii) the additional due diligence being conducted by Class Representatives does not confirm the reasonableness of the Settlement, by providing written notice of the election to terminate to all other Parties at least fourteen (14) calendar days before the Settlement Hearing.

45. If, before the Settlement becomes Final, Defendants file for protection under the Bankruptcy Code, or any similar law, or a trustee, receiver, conservator, or other fiduciary is appointed under Bankruptcy, or any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money or any portion thereof to the Settlement Fund by or on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount

is not promptly deposited into the Settlement Fund by others, then, at the election of Class Representatives, the Parties shall jointly move the Court to vacate and set aside the releases given and the Judgment or Alternative Judgment entered in favor of Defendants, and the Parties shall be restored to their litigation positions on August 12, 2022.

46. Wilmington warrants, as to itself and the payments made on its behalf, that, at the time of such payment, it will not be insolvent, nor will payment render it insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including Sections 101 and 547 thereof.

47. If an option to withdraw from and terminate this Stipulation and Settlement arises under any of ¶¶ 43-46 above: (i) neither Defendants nor Class Representatives (as the case may be) will be required for any reason or under any circumstance to exercise that option; and (ii) any exercise of that option shall be made in good faith, but in the sole and unfettered discretion of Defendants or Class Representatives, as applicable.

48. With the exception of the provisions of ¶¶ 48-51 which shall continue to apply, in the event the Settlement is terminated as set forth herein or cannot become effective for any reason, then the Settlement shall be without prejudice, and none of its terms shall be effective or enforceable except as specifically provided herein; the Parties shall be deemed to have reverted to their respective litigation positions in the Action on August 12, 2022; and, except as specifically provided herein, the Parties shall proceed in all respects as if this Stipulation and any related order had not been entered. In such event, this Stipulation, and any aspect of the discussions or negotiations leading to this Stipulation shall not be admissible in this Action and shall not be used against or to the prejudice of Defendants or against or to the prejudice of Class Representatives, in any court filing, deposition, at trial, or otherwise, and any judgment or order entered by the Court

in accordance with the terms of this Stipulation, including any order or judgment certifying the Settlement Class, shall be treated as vacated *nunc pro tunc*.

49. In the event the Settlement is terminated or fails to become effective for any reason, any portion of the Settlement Amount previously paid and any attorneys' fees that have been advanced or paid to Class Counsel in accordance with ¶¶ 13–15, together with any earnings thereon, less any Taxes paid or due, less Notice and Administration Expenses actually incurred and paid or payable from the Settlement Amount, shall be returned to those who funded the Settlement Amount within twenty (20) business days after written notification of such event in accordance with instructions provided by Defendants' Counsel to Class Counsel. At the request of Defendants' Counsel, the Escrow Agent or its designees shall apply for any tax refund owed on the amounts in the Escrow Account and pay the proceeds, after any deduction of any fees or expenses incurred in connection with such application(s), of such refund to the Person(s) that made the deposits or as otherwise directed.

NO ADMISSION

50. Except as set forth in ¶ 51 below, this Stipulation, whether or not consummated, and whether or not approved by the Court, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of any of the Parties or their respective counsel, for any purpose other than in an action to enforce the terms hereof, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of the Defendants or the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or the Released Defendant Parties with respect to the truth of any allegation by Class Representatives

and the Settlement Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants or any person or entity whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants or the Released Defendant Parties as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Defendants, or against or to the prejudice of Class Representatives, or any other member of the Settlement Class, as evidence of any infirmity in the claims of Class Representatives, or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of the Defendants or the Released Defendant Parties, Class Representatives, any other member of the Settlement Class, or their respective counsel, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against or to the prejudice of the Defendants or the Released Defendant Parties, Class Representatives, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(d) do not constitute, and shall not be construed against the Defendants or the Released Defendant Parties, Class Representatives, or any other member of the Settlement Class, as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

(e) do not constitute, and shall not be construed as or received in evidence as an admission, concession, or presumption against Class Representatives, or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

51. Notwithstanding ¶ 50 above, the Parties, and their respective counsel, may file this Stipulation and/or the Judgment or Alternative Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, statute of limitations, statute of repose, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate any liability protection granted them under any applicable insurance policy. The Parties may file this Stipulation and/or the Judgment or Alternative Judgment in any action that may be brought to enforce the terms of this Stipulation and/or the Judgment or Alternative Judgment. All Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

MISCELLANEOUS PROVISIONS

52. All of the exhibits to the Stipulation, except any plan of allocation to the extent incorporated in those exhibits, and the Supplemental Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

53. The Parties intend the Settlement to be the full, final, and complete resolution of all claims asserted or that could have been asserted by the Parties with respect to the Released Claims and Released Defendants' Claims. Accordingly, the Parties agree not to assert in any forum that the Action was brought, prosecuted, or defended in bad faith or without a reasonable basis. The Parties shall not assert or pursue any action alleging that any other Party or its counsel has violated Rule 11 of the Federal Rules of Civil Procedure in connection with the maintenance, prosecution,

defense, and settlement of the Action and shall not make any application for sanctions, pursuant to Rule 11 or other court rule or statute, with respect to any claim or defense in this Action. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length and in good faith by the Parties and their respective counsel and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel.

54. This Stipulation, along with its exhibits and the Supplemental Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by counsel for the Parties hereto, or their successors.

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

56. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees, any expenses, and a Service Award, and implementing and enforcing the terms of this Stipulation.

57. Any failure by one Party to insist on the strict performance by any other party of any provision of this Stipulation shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

58. This Stipulation, its exhibits, and the Supplemental Agreement constitute the entire agreement among the Parties concerning the Settlement as against the Defendants, and no representation, warranty, or inducement has been made by any Party concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

59. Nothing in the Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney-client privilege, joint defense privilege, or work product protection.

60. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

61. All agreements by, between, or among the Parties and their counsel as to the confidentiality of information exchanged between or among them shall remain in full force and effect and any designations made, or orders entered, during the course of the Action relating to the confidentiality of documents or information shall survive the execution and any termination of this Stipulation and the final consummation of the Settlement, if finally consummated, without regard to any of the conditions of the Settlement.

62. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signatures sent by facsimile or via e-mail in pdf format shall be deemed originals.

63. This Stipulation shall be binding when signed, but the Settlement shall be effective upon the entry of the Judgment or Alternative Judgment and the payment in full of the Settlement Amount, subject only to the condition that the Effective Date will have occurred.

64. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

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

66. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations among the Parties, and all Parties have contributed substantially and materially to the preparation of this Stipulation.

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

68. The Parties and their respective counsel agree to cooperate fully with one another in promptly applying for preliminary approval by the Court of the Settlement and for the scheduling of a hearing for consideration of Final approval of the Settlement and Class Counsel's Fee and Expense Application, and to agree promptly upon and execute all such other documentation as reasonably may be required to obtain Final approval by the Court of the Settlement.

69. If any disputes arise out of the finalization of the settlement documentation or the Settlement itself prior to joint submission to the Court of the application for preliminary approval of the Settlement as set forth in ¶ 40 above, those disputes will be resolved by the Mediator first by way of expedited telephonic mediation and if unsuccessful, then by way of final, binding, non-appealable arbitration.

70. Except as otherwise provided herein, each Party shall bear its own costs.

IN WITNESS WHEREOF, the Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of August 12, 2022.

ROSCA SCARLATO, LLC

By: s/ Paul J. Scarlato

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

YAO-YI LIU, TUNG-HUNG HSIEH, and
CHIU-PAO TSAI Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

Civil No. 6:14-cv-06631-EAW-MJP

WILMINGTON TRUST COMPANY, and
WILMINGTON TRUST, NATIONAL
ASSOCIATION,

Defendants.

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE, AND
SETTING DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**

WHEREAS, as of _____, Plaintiffs Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai (collectively, “Plaintiffs”), on behalf of themselves and all other members of the proposed Settlement Class (defined below), on the one hand, and Wilmington Trust Company and Wilmington Trust, National Association (“Wilmington” or “Defendants”), on the other, entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure, and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the Action and the claims alleged in the Amended Complaint filed on May 22, 2015, on the merits and with prejudice (the “Settlement”); and

WHEREAS, the Court has reviewed and considered the Stipulation and the accompanying exhibits; and

WHEREAS, the Parties to the Stipulation have consented to the entry of this order; and

WHEREAS, all capitalized terms used in this order that are not otherwise defined herein have the meanings defined in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this _____ day of _____, 2022 that:

1. The Court has reviewed the Stipulation and preliminarily finds, pursuant to Fed. R. Civ. P. 23(e)(1), that the Court will likely be able to approve the proposed Settlement as fair, reasonable, and adequate under Federal Rule of Civil Procedure 23(e)(2), subject to further consideration at the Settlement Hearing described below.

(a) Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby preliminarily certifies, for the purposes of the Settlement only, the Settlement Class of: all persons and entities who invested in the Bio Profit Scheme and were damaged thereby. Excluded from the Settlement Class are (i) Defendants; (ii) any person who was an officer or director of Defendants; (iii) any firm or entity in which any Defendants have or had a controlling interest; (iv) the parents or subsidiaries of Defendants; (v) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in their respective capacity as such; and (vi) any persons or entities who or which exclude themselves by submitting a valid request for exclusion in accordance with the requirements set forth below and in the Notice will also be excluded.

2. The Court finds and preliminarily concludes that the prerequisites of class action certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedures have been satisfied for the Settlement Class defined herein and for the purposes of the Settlement only, in that:

(a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members is impracticable;

(b) there are questions of law and fact common to the Settlement Class Members;

(c) the claims of Class Representatives are typical of the Settlement Class's claims;

(d) Class Representatives and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class;

(e) the questions of law and fact common to Settlement Class Members predominate over any individual questions; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering that the claims of Settlement Class Members in the Action are substantially similar and would, if tried, involve substantially identical proofs and may therefore be efficiently litigated and resolved on an aggregate basis as a class action; the amounts of the claims of many of the Settlement Class Members are too small to justify the expense of individual actions; and it does not appear that there is significant interest among Settlement Class Members in individually controlling the litigation of their claims.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai are preliminarily certified as Class Representatives for the Settlement Class. The law firm of Rosca Scarlato, LLC is preliminarily appointed Class Counsel for the Settlement Class.

4. A hearing (the "Settlement Hearing"), pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, is hereby scheduled to be held before the Court, at 2120 Kenneth B. Keating

Federal Building, 100 State Street, Rochester, NY 14614, in Courtroom [REDACTED], on _____, 2022, at __:_____.m. for the following purposes:

(a) to determine whether the proposed Settlement is fair, reasonable and adequate, and should be approved by the Court;

(b) to determine whether the proposed Final Order and Judgment (“Judgment”) as provided under the Stipulation should be entered, and to determine whether the release by the Settlement Class of the Released Claims, as set forth in the Stipulation, should be provided to the Released Defendant Parties;

(c) to determine, for purposes of the Settlement only, whether the Settlement Class should be finally certified; whether Plaintiffs should be finally certified as Class Representatives for the Settlement Class; and whether the law firm of Rosca Scarlato, LLC should be finally appointed as Class Counsel for the Settlement Class;

(d) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved by the Court;

(e) to consider Class Counsel’s application for an award of attorneys’ fees and expenses (“Fee and Expense Application”) (which may include an application for a Service Award to Class Representatives in connection with their efforts representing the interests of the Class); and

(f) to rule upon such other matters as the Court may deem appropriate.

5. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Settlement Class of any kind. The Court further reserves the right to enter the Judgment approving the Settlement regardless of whether it will approve the proposed Plan of Allocation or award attorneys’ fees and/or expenses, or a Service Award. The

Court may also adjourn the Settlement Hearing or modify any of the dates herein without further notice to members of the Settlement Class.

6. The Court approves the form, substance and requirements of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Notice") and the Proof of Claim and Release form ("Proof of Claim"), substantially in the forms annexed hereto as Exhibits 1 and 2, respectively.

7. The Court approves the retention of Strategic Claims Services as the Claims Administrator. The Claims Administrator shall cause the Notice and the Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first-class mail, postage prepaid, on or before thirty (30) days after entry of this Preliminary Approval Order ("Notice Date"), to all Settlement Class Members who can be identified with reasonable effort.

8. The Claims Administrator shall use reasonable efforts to give notice to the brokerage firm or firms through which the investments in the Bio Profit Funds were sold.

(a) Such nominees SHALL EITHER: (i) WITHIN TEN (10) CALENDAR DAYS of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice to forward to all such beneficial owners and WITHIN TEN (10) CALENDAR DAYS of receipt of those Notices from the Claims Administrator forward them to all such beneficial owners; or (ii) WITHIN TEN (10) CALENDAR DAYS of receipt of the Notice, provide a list of the names and addresses of all such beneficial owners to the Claims Administrator and the Claims Administrator is ordered to send the Notice promptly to such identified beneficial owners.

(b) Nominees shall also provide email addresses for all such beneficial owners to the Claims Administrator, to the extent they are available.

(c) Nominees who elect to send the Notice to their beneficial owners SHALL ALSO send a statement to the Claims Administrator confirming that the mailing was made and shall retain their mailing records for use in connection with any further notices that may be provided in the Action.

(d) Upon full and timely compliance with these directions, such nominees may seek reimbursement of their reasonable out-of-pocket expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. The Claims Administrator shall, if requested, reimburse nominees out of the Settlement Fund solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners in an amount not to exceed \$0.05 plus postage at the current pre-sort rate used by the Claims Administrator per Notice Packet mailed; or \$0.05 per name, mailing address, and email address (to the extent available) provided to the Claims Administrator. Any disputes as to the reasonableness or documentation of expenses incurred will be subject to review by the Court.

9. Class Counsel shall, at or before the Settlement Hearing, file with the Court proof of mailing of the Notice and Proof of Claim.

10. The Court approves the form of the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses ("Summary Notice") substantially in the form annexed hereto as Exhibit 3, and directs that Class Counsel shall cause the Summary Notice be transmitted over an international news wire within thirty (30) days of the Notice Date. Class Counsel shall, at or before the Settlement Hearing, file with the Court proof of publication of the Summary Notice.

11. The form and content of the notice program described herein, and the methods set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, and due process; constitute the best notice practicable under the circumstances; and shall constitute due and sufficient notice to all persons and entities entitled thereto.

12. In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the terms and conditions set forth in the Stipulation, each claimant shall take the following actions and be subject to the following conditions:

(a) A properly executed Proof of Claim, substantially in the form annexed hereto as Exhibit 2, must be submitted to the Claims Administrator, as directed in the Notice, no later than seven (7) calendar days before the Settlement Hearing. Such deadline may be further extended by Court order or by Class Counsel in their discretion. Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first-class or overnight mail, postage prepaid). Any Proof of Claim submitted in any other manner, including online using the web-page for the Settlement, or via email shall be deemed to have been submitted when it was actually received by the Claims Administrator. Any Settlement Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by the Court or allowed by Class Counsel, but shall remain bound by all determinations and judgments in this Action concerning the Settlement, as provided by paragraph 15 of this Order.

(b) The Proof of Claim submitted by each claimant must satisfy the following conditions, unless otherwise allowed pursuant to the Stipulation: (i) it must be properly

completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of subscription agreements, account statements, an authorized statement from the broker containing the transactional information found in the broker's records, or such other documentation as is deemed adequate by the Claims Administrator and/or Class Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his or her current authority to act on behalf of the claimant must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Proof of Claim, each claimant shall submit to the jurisdiction of the Court with respect to the claim submitted.

13. Any Settlement Class Member may enter an appearance in this Action, at his, her or its own expense, individually or through counsel of his, her or its own choice. If any Settlement Class Member does not enter an appearance, he, she or it will be represented by Class Counsel.

14. Settlement Class Members shall be bound by all orders, determinations and judgments in this Action concerning the Settlement, whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A putative Settlement Class Member wishing to make such an exclusion request shall mail the request in written form by first-class mail to the Claims Administrator at the address designated in the Notice for such exclusions, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing. Such request for exclusion must state the name, address, e-mail, and telephone number of the Person seeking exclusion, must state that the sender

requests to be “excluded from the Settlement Class in *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631 (W.D.N.Y.)” and must be signed by such Person. Such Persons requesting exclusion are also directed to: (i) state the name, address, e-mail, and telephone number of the person or entity requesting exclusion; (ii) state the amount of each investment in the Bio Profit Funds, as well as the dates and prices of each such investment; (iii) state the amount received as interest payments for each investment in the Bio Profit Funds, as well as the dates and prices of each interest payment; (iv) the amount of each sale of an investment in the Bio Profit Funds, as well as the dates and prices of each such sale; and (v) be signed by the Person requesting exclusion or an authorized representative. Alternatively, such Persons may submit copies of documentation showing this information. Persons seeking exclusion with large holdings may be required by Class Counsel to submit copies of documentation to the Claims Administrator. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

15. Putative Settlement Class Members requesting exclusion from the Settlement Class shall not be eligible to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

16. The Court will consider any Settlement Class Member’s objection to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys’ fees or expenses only if such Settlement Class Member has served by hand or by mail his, her or its written objection and supporting papers, such that they are received on or before twenty-one (21) calendar days before the Settlement Hearing, upon Class Counsel: Alan Rosca and Paul Scarlato, Rosca Scarlato, LLC, 161 Washington Street, Suite 1025, Conshohocken, PA 19428; and Defendant’s

Counsel Representative: Melissa N. Subjeck, Hodgson Russ LLP, 140 Pearl Street, Buffalo, NY 14202; and has filed said objections and supporting papers with the Clerk of the Court, United States District Court, 100 State Street, Rochester, NY 14614. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, to the Plan of Allocation, or to the request for attorneys' fees and expenses, and Service Award unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Attendance at the hearing is not necessary, however, persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and other expenses and Service Award are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses and Service Award and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.

17. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

18. Pending final determination of whether the Settlement should be approved, Class Representatives, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Claims against the Released Defendant Parties.

19. All papers in support of the Settlement, Plan of Allocation, and Class Counsel's request for an award of attorneys' fees and expenses and a Service Award shall be filed with the Court and served on or before [REDACTED] calendar days prior to the date set herein for the Settlement Hearing. If reply papers are necessary, they are to be filed with the Court and served no later than [REDACTED] calendar days prior to the Settlement Hearing.

20. The passage of title and ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Stipulation is approved. No person who is not a Settlement Class Member or Class Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

21. All funds held in escrow 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 disbursed pursuant to the Stipulation and/or further order of the Court.

22. Neither Defendants nor their counsel shall have any responsibility for the Plan of Allocation or any application for attorney's fees or expenses or Service Award submitted by Class Counsel or Class Representatives, and such matters shall be considered separately from the fairness, reasonableness and adequacy of the Settlement.

23. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then both the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties

shall be deemed to have reverted to their respective litigation positions in the Action as of
 .

DATED this _____ day of _____, 2022

BY THE COURT:

Honorable Elizabeth A. Wolford
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

YAO-YI LIU, TUNG-HUNG HSIEH, and
CHIU-PAO TSAI Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

Civil No. 6:14-cv-06631-EAW-MJP

WILMINGTON TRUST COMPANY, and
WILMINGTON TRUST, NATIONAL
ASSOCIATION,

Defendants.

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT,
MOTION FOR ATTORNEYS' FEES AND EXPENSES, AND SERVICE AWARDS**

If you invested money in the Bio Profit Funds (BPS I, BPS II, BPS III, BPS V, or Velocity Valley & Grand) offered by Velocity Investment Group, Inc., and lost money as a result of your investment (the "Class"), you may be entitled to a payment from a class action settlement.

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

- The purpose of this Notice is to inform you of the pendency of this class action lawsuit (the "Action"), the proposed settlement of the Action (the "Settlement"),¹ and a hearing to be held by the Court to consider: (i) whether the Settlement should be approved; (ii) whether the proposed plan for allocating the proceeds of the Settlement (the "Plan of Allocation") should be approved; (iii) Class Counsel's application for attorneys' fees and expenses, and (iv) Class Counsel's application for Service Awards to the Class Representatives (*see* pages 3-4 and 15-16 below). This Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement, wish to object, or wish to be excluded from the Settlement Class.
- If approved by the Court, the Settlement will create a \$4.35 million cash fund, plus earned interest, for the benefit of eligible Settlement Class Members, after the deduction of attorneys' fees and expenses, any Service Awards awarded by the Court, Notice and Administration Expenses, and Taxes.

¹ The terms of the Settlement are in the Stipulation and Agreement of Settlement, dated August 12, 2022 (the "Stipulation"), which can be viewed at www.strategicclaims.net/BioProfit. All capitalized terms not defined in this Notice have the same meanings as defined in the Stipulation.

- The Settlement resolves claims by Court-appointed Class Representatives Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai (collectively, “Plaintiffs” or “Class Representatives”) that have been asserted on behalf of the Settlement Class (defined below) against Wilmington Trust Company and Wilmington Trust, National Association (“Wilmington” or “Defendants”). It avoids the costs and risks of continuing the litigation; pays money to eligible investors; and releases the Released Defendant Parties (defined below) from liability.

If you are a Settlement Class Member, your legal rights will be affected by this Settlement whether you act or do not act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY _____, 2022	The <u>only</u> way to get a payment. <i>See</i> Question 8 below for details.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY _____, 2022	Get no payment. This is the only option that, assuming your claim is timely brought, might allow you to ever bring or be part of any other lawsuit against Defendants and/or the other Released Defendant Parties concerning the Released Claims. <i>See</i> Question 11 below for details.
OBJECT BY _____, 2022	Write to the Court about why you do not like the Settlement, the Plan of Allocation, and/or Class Counsel’s Fee and Expense Application, and application for Service Awards. If you object, you will still be a member of the Settlement Class. <i>See</i> Question 16 below for details.
GO TO A HEARING ON _____, 2022 AND FILE A NOTICE OF INTENTION TO APPEAR BY _____, 2022	Ask to speak in Court at the Settlement Hearing about the Settlement. <i>See</i> Question 20 below for details.
DO NOTHING	Get no payment. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made to all Settlement Class Members who timely submit valid Claim Forms, if the Court approves the Settlement and after any appeals are resolved. Please be patient.

SUMMARY OF THE NOTICE

Summary of the Settlement Terms

1. Wilmington will pay \$4.35 million (the “Settlement Fund”) to resolve the claims of Plaintiffs and the Class. The Settlement Class and each member of the Class is limited solely to the Settlement Fund for satisfaction of all Released Claims against the Released Defendant Parties.

Reasons for the Settlement

2. For Plaintiffs, the principal reason for the Settlement is the guaranteed cash benefit to the Settlement Class. This benefit must be compared to the uncertainty of being able to survive contested motions for class certification; prove the allegations in the Amended Complaint, particularly with respect to Wilmington’s actual knowledge of the Bio Profit Scheme and/or Michael Wang’s breach of fiduciary duty; obtaining certification of the Class and maintaining certification through trial; the risk that the Court may grant some or all of Defendants’ likely motion for summary judgment; the uncertainty of a greater recovery after a trial and appeals; the risks of litigation, especially in complex actions like this; as well as the difficulties and delays inherent in such litigation (including any trial and appeals).

3. For Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that the Settlement Class Members were damaged, the principal reason for entering into the Settlement is to end the burden, expense, uncertainty, and risk of further litigation.

Statement of Attorneys’ Fees and Expenses Sought

4. Class Counsel, on behalf of itself and other Plaintiffs’ Counsel, will apply to the Court for an award of attorneys’ fees from the Settlement Fund in an amount not to exceed 30% of the Settlement Fund, which includes any accrued interest. Class Counsel will also apply for payment of litigation expenses incurred by Plaintiffs’ Counsel in prosecuting the Action in an amount not to exceed \$700,000.00, plus accrued interest, and an application for Service Awards

for the Class Representatives to compensate them for their efforts in representing the interests of the Class not to exceed \$96,000 in the aggregate. A copy of the Fee and Expense Application will be posted on www.strategicclaims.net/BioProfit after it has been filed with the Court.

Identification of Attorneys' Representatives

5. Class Representatives and the Settlement Class are represented by Class Counsel, Alan Rosca and Paul Scarlato, Rosca Scarlato, LLC, 161 Washington Street, Suite 1025, Conshohocken, PA 19428, (888) 998-0530, www.rscounsel.law.

6. Further information regarding this Action, the Settlement, and this Notice may be obtained by contacting the Bio Profit Litigation, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063 or info@strategicclaims.net or visit the website at www.strategicclaims.net/BioProfit.

Please Do Not Call the Court with Questions About the Settlement.

BASIC INFORMATION

1. Why did I get this Notice?

7. You or someone in your family may have invested money in the Bio Profit Funds (BPS I, BPS II, BPS III, BPS V, or Velocity Valley & Grand) offered by Velocity Investment Group, Inc. and lost money as a result of your investment. **Receipt of this Notice does not mean that you are a Member of the Settlement Class or that you will be entitled to receive a payment. If you wish to be eligible for a payment, you are required to submit the Claim Form that is being distributed with this Notice. See Questions 5 and 8 below.**

8. The Court directed that this Notice be sent to Settlement Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement.

9. The Court in charge of the Action is the United States District Court for the Western District of New York, and the case is known as *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631. The Action is assigned to the Honorable Elizabeth A. Wolford, Chief United States District Judge.

2. What is this case about and what has happened so far?

10. Wilmington is a United States-based financial institution that provides wealth management and trust services. Plaintiffs allege that Wilmington served as the escrow agent and custodian for each of the BPS Funds.

11. On November 11, 2014, Plaintiffs Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai filed a class action complaint in the United States District Court for the Western District of New York alleging that Wilmington knowingly assisted in a Ponzi scheme conceived by Michael Wang through his company, Velocity Investment Group, Inc., during the time period of June 2005 and October 2013 (the “Bio Profit Scheme”). Plaintiffs’ Complaint asserted claims for: 1) aiding and abetting fraud; 2) aiding and abetting conversion; 3) aiding and abetting breach of fiduciary duty; 4) breach of fiduciary duty; and 5) gross negligence.

12. Wilmington filed a motion to dismiss Plaintiffs’ Complaint, and Plaintiffs filed an Amended Complaint in response thereto on May 22, 2015.

13. Wilmington moved to dismiss the Amended Complaint and the Court denied Wilmington’s motion as to Plaintiffs’ aiding and abetting a breach of fiduciary duty, gross negligence and breach of fiduciary duty claims, and granted Wilmington’s motion as to Plaintiffs’ claims for aiding and abetting fraud and aiding and abetting conversion, thus dismissing those claims.

14. The May 22, 2015 Amended Complaint is the operative complaint in the Action.

15. On October 23, 2017, Wilmington filed an Answer denying all allegations asserted in the Amended Complaint, and filed an Amended Answer on November 14, 2017.

16. On November 15, 2017, the Parties participated in a Court-Ordered mediation pursuant to the Court's Alternative Dispute Resolution Plan. That mediation was not successful.

17. Class Representatives, through Plaintiffs' Counsel, have conducted a robust investigation relating to the claims, defenses, and underlying events and transactions that are the subject of the Action, as set forth below. The Parties have engaged in substantial discovery concerning Plaintiffs' claims and Wilmington's defenses, including exchanging tens of thousands of pages of documents, obtaining several million pages of documents from the court-appointed Receiver in the action captioned *Securities and Exchange Commission v. Yin Nan "Michael" Wang, et al.*, Case No. CV 13-7553 (C.D. Cal. Oct. 15, 2013) (the "SEC Action"), conducting depositions of each of the named Plaintiffs and Defendants' witnesses. The Class Representatives traveled from Taiwan to Buffalo, New York to have their depositions taken. The Parties have also briefed many of the issues in this matter through motion practice and mediation statements.

18. On February 13, 2020, the Parties participated in an all-day arm's length mediation before Michael D. Young of JAMS to attempt resolve the Action. The Parties were unable to resolve the Action at that time. The Parties resumed discovery.

19. On March 23, 2021, the Court issued an Order directing the Parties to participate in a settlement conference before the Honorable Mark W. Pederson. (ECF 199).

20. On April 30, 2021, the Parties participated in a settlement conference before Judge Pederson. (ECF 203). The Parties were unable to resolve the Action at that time and resumed discovery.

21. The Parties reengaged the assistance of Mr. Young to resume settlement discussions in November 2021. Based upon the Parties' discovery, investigation, and evaluation

of the facts and law relating to the matters in the pleadings, and the mediation and further negotiations before Mr. Young, the Parties have agreed to settle this Action pursuant to the provisions of this Agreement.

3. Why is this a class action?

22. In a class action, one or more persons or entities (in this case, Class Representatives Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai), sue on behalf of people and entities who have similar claims. Together, these people and entities are a “class,” and each is a “class member.” Class actions allow the adjudication of many individuals’ similar claims that might be too small economically to bring as individual actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or “opt-out,” from the class.

4. What are the reasons for the Settlement?

23. The Court did not finally decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. Plaintiffs and Class Counsel believe that the claims asserted in the Action have merit. They recognize, however, the expense and length of continued proceedings needed to pursue the claims through trial and appeals, as well as the difficulties in establishing liability. For example, Defendants have raised a number of arguments and defenses (which they would likely raise in opposition to a motion to certify a class, in their affirmative motion for summary judgment, and at trial) countering Plaintiffs’ allegations, such as this case did not meet the rigorous standards for certification of a litigation class, that Plaintiffs would be unable to establish Wilmington’s actual knowledge that the Bio Profit Scheme was a Ponzi scheme, or that Wilmington substantially assisted the Scheme, or that Wilmington’s conduct was the cause of the Bio Profit investors’ losses. In addition, Wilmington would be expected to advance an argument that the relationship between the Class Members and Velocity was that of a borrower/lender, and

thus Velocity and its manager Michael Wang did not owe a fiduciary duty to the BPS investors. In the absence of a settlement, the Parties would present factual and expert testimony on each of these issues, and there is a substantial risk that the Court or jury would resolve these issues unfavorably against Plaintiffs and the Settlement Class. Class Representatives and Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

24. Defendants have denied and continue to deny each and every one of the claims alleged by Plaintiffs in the Action, including all claims in the Amended Complaint. Nonetheless, Defendants have concluded that continuation of the Action would be protracted and expensive, and have taken into account the uncertainty and risks inherent in any litigation, especially a complex case like this Action, and believe that the Settlement is in the best interests of Defendants.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the Settlement Class?

25. The Court directed, for the purposes of the proposed Settlement, that everyone who fits the following description is a Settlement Class Member and subject to the Settlement unless they are an excluded person (*see* Question 6 below) or take steps to exclude themselves from the Settlement Class (*see* Question 11 below):

All persons and entities who invested in the Bio Profit Scheme and were damaged thereby.

26. You are a Settlement Class Member if you invested money in any of the Bio Profit Funds, BPS I, BPS II, BPS III, BPS V, or Velocity Valley & Grand, and lost money on your investment. You are not a Class Member if you received interest payments equal to or greater than the amount of money you invested. Check your investment records or contact your broker to see if you have any eligible investments.

6. Are there exceptions to being included?

27. Yes. There are some individuals and entities who are excluded from the Settlement Class by definition. Excluded from the Settlement Class are (i) Defendants; (ii) any person who was an officer or director of Defendants; (iii) any firm or entity in which any Defendants have or had a controlling interest; (iv) the parents or subsidiaries of Defendants; (v) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in their respective capacity as such; and (vi) any persons or entities who or which exclude themselves by submitting a valid request for exclusion that is accepted by the Court. Also excluded from the Settlement Class is anyone who timely and validly seeks exclusion from the Settlement Class in accordance with the procedures described in Question 11 below.

THE SETTLEMENT BENEFITS**7. What does the Settlement provide?**

28. In exchange for the Settlement and the release of the Released Claims against the Released Defendant Parties (*see* Question 10 below), Defendants have agreed to pay \$4,350,000 (U.S.), which, along with any interest earned, will be distributed after deduction of Court-awarded attorneys' fees and litigation expenses, Notice and Administration Expenses, Taxes, any Service Awards, and any other fees or expenses approved by the Court (the "Net Settlement Fund"), to Settlement Class Members who send in valid and timely Claim Forms that are eligible for a payment.

8. How can I receive a payment?

29. To qualify for a payment from the Net Settlement Fund, you must submit a timely and valid Claim Form. A Claim Form is included with this Notice. **Please note that for most Class Members, the Claim Form you received has been pre-populated with the information**

you submitted in connection with the claims process conducted by the Receiver in the SEC Action. If you agree with that information, please sign and return the pre-populated Claim Form to receive a payment from the Settlement. If you disagree with that information, please provide corrected information along with supporting documentation to prove the amount of your claim. You may also obtain blank (not pre-populated) Claim Forms from the website of the Claims Administrator: www.strategicclaims.net/BioProfit. You can also request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at 1-866-274-4004, or by emailing the Claims Administrator at info@strategicclaims.net.

30. Please read the instructions in the Claim Form carefully. **If you have received a pre-populated Claim Form and you agree with that information, you simply need to sign the Claim Form and return it by mail to receive a payment from the Settlement. Otherwise,** fill out the Claim Form, include all the documents the form requests, sign it, and either mail it to the Claims Administrator using the address listed in the Claim Form or submit it by email at info@strategicclaims.net. Claim Forms must be **postmarked (if mailed) or received no later than _____, 2022.** You may also file a claim online at www.strategicclaims.net/BioProfit.

9. When will I receive my payment?

31. The Court will hold a Settlement Hearing on _____, **2022** to decide, among other things, whether to finally approve the Settlement. Even if the Court approves the Settlement, there may be appeals which can take time to resolve, perhaps more than a year. It also takes a long time for all of the Claim Forms to be accurately reviewed and processed. Please be patient.

10. What am I giving up to receive a payment and by staying in the Settlement Class?

32. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the “Effective Date” of the Settlement, you will release all “Released Claims” against the “Released Defendant Parties.”

(a) **“Released Claims”** means any and all claims and causes of action of every nature and description, whether known or Unknown (as defined below), contingent or absolute, mature or not mature, discoverable or undiscoverable, liquidated or unliquidated, accrued or not accrued, including those that are concealed or hidden, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that Plaintiffs or any other member of the Settlement Class (a) asserted in the Action; or (b) could have asserted in any forum that arise out of, are based upon, or relate to, directly or indirectly, in whole or in part: (1) the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Action and that relate to an investment in the Bio Profit Funds; or (2) Defendants’ and/or their attorneys’ defense or settlement of the Action and/or the claims alleged therein. For the avoidance of doubt, Released Claims does not include claims to enforce the Settlement.

(b) **“Released Defendant Parties”** means , collectively, (1) Wilmington; (2) each of Wilmington’s past, present, or future parents, holding companies, subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns, and each of their respective present, former, or future officers, directors, shareholders, employees, representatives, consultants, accountants, and attorneys. Releasees will not include any retail brokers, investment advisors, broker-dealers, and/or investment advisory firms not affiliated with Wilmington, or any

of its respective subsidiaries or affiliates, that may have recommended, suggested, brought to the attention of any investor, offered, and/or sold the Bio Profit Funds investments to investors.

(c) “**Unknown Claims**” means any and all Released Claims that Class Representatives or any other Settlement Class Member do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any and all Released Defendants’ Claims that any Defendants do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Settlement Class. With respect to any and all Released Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon the Effective Date, Class Representatives and Defendants shall expressly, and each Settlement Class Member shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or foreign law, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Class Representatives, all Settlement Class Members, or Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows, suspects, or believes to be true with respect to the Action, the Released Claims, or the Released Defendant’s Claims, but Class Representatives and Defendants shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member shall be deemed to have fully, finally,

and forever settled and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendant's Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Class Representatives and Defendants acknowledge, and all Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was separately bargained for and was a material element of the Settlement.

33. The "Effective Date" will occur when an Order entered by the Court approving the Settlement becomes Final and is not subject to appeal. If you remain a member of the Settlement Class, all of the Court's orders, whether favorable or unfavorable, will apply to you and legally bind you.

34. Upon the "Effective Date," Defendants will also provide a release of any claims against Class Representatives and the Settlement Class arising out of or related to the institution, prosecution, or settlement of the claims in the Action.

EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

35. If you want to keep any right you may have to sue or continue to sue Defendants and the other Released Defendant Parties on your own concerning the Released Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or "opting out." **Please note:** If you decide to exclude yourself, there is a risk that any lawsuit you may file to pursue claims alleged in the Action may be dismissed, **including because the suit is not filed within the applicable time periods required for filing suit.**

11. How do I exclude myself from the Settlement Class?

36. To exclude yourself from the Settlement Class, you must mail a signed letter stating that you request to be “excluded from the Settlement Class in *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631 (W.D.N.Y.)” You cannot exclude yourself by telephone or e-mail. Each request for exclusion must also: (i) state the name, address, e-mail, and telephone number of the person or entity requesting exclusion; (ii) state the amount of each investment in the Bio Profit Funds, as well as the dates and prices of each such investment; (iii) state the amount received as interest payments for each investment in the Bio Profit Funds, as well as the dates and prices of each interest payment; (iv) the amount of each sale of an investment in the Bio Profit Funds, as well as the dates and prices of each such sale; and (v) be signed by the Person requesting exclusion or an authorized representative. Alternatively, you can submit copies of documentation showing this information. Depending on the size of your holdings, you may be required to submit such documentation. A request for exclusion must be submitted so that it is **received no later than _____, 2022** to: *Bio Profit Litigation, EXCLUSIONS*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063.

37. This information is needed to determine whether you are a member of the Settlement Class and the amount of your potential losses. Your exclusion request must comply with these requirements in order to be valid. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, you cannot object to the Settlement because you will not be a Settlement Class Member. However, if you submit a valid exclusion request, you will not be legally bound by anything that happens in the Action, and you may be able to sue (or continue to sue) Defendants and the other Released Defendant Parties in the future.

12. If I do not exclude myself, can I sue Defendant and the other Released Defendant Parties for the same thing later?

38. No. Unless you properly exclude yourself, you will give up any rights to sue Defendants and the other Released Defendant Parties for any and all Released Claims. If you have a pending lawsuit against any of the Released Defendant Parties, **speak to your lawyer in that case immediately**. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is _____, **2022**.

13. If I exclude myself, can I get money from the proposed Settlement?

39. No, only Settlement Class Members are eligible to recover money from the Settlement.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

40. Rosca Scarlato, LLC is Class Counsel in the Action and represents all Settlement Class Members. You will not be separately charged for these lawyers. The Court will determine the amount of attorneys' fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers be paid?

41. Class Counsel have been prosecuting the Action, along with other Plaintiffs' Counsel, on a contingent basis and have not been paid for any of their work. Class Counsel will apply to the Court, on behalf of themselves and all other Plaintiffs' Counsel, for an award of attorneys' fees of no more than 30% of the Settlement Fund, which will include any accrued interest. Class Counsel was assisted in this case by Labaton Sucharow LLP ("Labaton"), Goldman Scarlato & Penny, P.C., and Peiffer, Wolf, Carr & Kane, APLC (collectively with Class Counsel, "Plaintiffs' Counsel"). Class Counsel have agreed to share the awarded attorneys' fees with other

Plaintiffs' Counsel, except as to Labaton as explained below, and payment to them will in no way increase the fees that are deducted from the Settlement Fund. Labaton will not be seeking attorney's fees in connection with the Action, but does intend to seek payment of its expenses which amounts are included in the expense number below. Class Counsel will also seek payment of litigation expenses incurred by Plaintiffs' Counsel in the prosecution and settlement of the Action of no more than \$700,000.00, plus accrued interest, and in addition will make an application for Service Awards for the Class Representatives of no more than \$96,000.00 in the aggregate to compensate them for their considerable efforts in representing the interests of the Settlement Class. Any attorneys' fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**OBJECTING TO THE SETTLEMENT, THE PLAN OF ALLOCATION, OR THE FEE
AND EXPENSE APPLICATION**

16. How do I tell the Court that I do not like something about the proposed Settlement?

42. If you are a Settlement Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation of the Net Settlement Fund, and/or Class Counsel's Fee and Expense Application, and application for Service Awards. You may write to the Court about why you think the Court should not approve any or all of the Settlement terms or related relief. If you would like the Court to consider your views, you must file a proper objection within the deadline, and according to the following procedures.

43. To object, you must send a signed letter stating that you object to the proposed Settlement, the Plan of Allocation, the Fee and Expense Application, and/or the application for Service Awards in *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631 (W.D.N.Y.). Your objection must state why you are objecting and whether your objection applies only to you, a subset of the Settlement Class, or the entire

Settlement Class. The objection must also state: (i) the name, address, telephone number, and e-mail address of the objector and must be signed by the objector; (ii) contain a statement of the Settlement Class Member's objection or objections and the specific reasons for each objection, including any legal and evidentiary support (including witnesses) the Settlement Class Member wishes to bring to the Court's attention; and (iii) include information sufficient to prove the objector's membership in the Settlement Class, including the amount of investment in the BPS Funds as well as the dates of each such investment and sale. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be forever foreclosed from making any objection to the proposed Settlement, the Plan of Allocation, and/or Class Counsel's Fee and Expense Application, and application for Service Awards. Your objection must be filed with the Court **no later than** _____, **2022** **and** be mailed or delivered to the following counsel so that it is **received no later than** _____, **2022**:

<u>Court</u>	<u>Class Counsel</u>	<u>Defendants' Counsel Representatives</u>
Clerk of the Court United States District Court United States Courthouse 100 State Street Rochester, NY 14614	Rosca Scarlato, LLC Alan L. Rosca, Esq. Paul J. Scarlato, Esq. 161 Washington Street, Suite 1025 Conshohocken, PA 19428	Hodgson Russ LLP Melissa N. Subjeck, Esq. 140 Pearl Street, Suite 100 Buffalo, NY 14202

44. You do not need to attend the Settlement Hearing to have your written objection considered by the Court. However, any Settlement Class Member who has complied with the procedures described in this Question 16 and below in Question 20 may appear at the Settlement Hearing and be heard, to the extent allowed by the Court. An objector may appear in person or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Settlement Hearing.

17. What is the difference between objecting and seeking exclusion?

45. Objecting is telling the Court that you do not like something about the proposed Settlement, Plan of Allocation, or Class Counsel's Fee and Expense Application, or application for Service Awards. You can still recover money from the Settlement. You can object *only* if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself from the Settlement Class, you have no basis to object because the Settlement and the Action no longer affect you.

THE SETTLEMENT HEARING**18. When and where will the Court decide whether to approve the proposed Settlement?**

46. The Court will hold the Settlement Hearing on _____, 2022 at _____.m., in Courtroom [REDACTED] at Kenneth B. Keating Federal Building, 100 State Street, Rochester, NY 14614.

47. At this hearing, the Court will consider whether: (i) the Settlement is fair, reasonable, adequate, and should be approved; (ii) the Plan of Allocation is fair and reasonable, and should be approved; and (iii) the application of Class Counsel for an award of attorneys' fees, payment of litigation expenses, and for a Service Award is reasonable and should be approved. The Court will take into consideration any written objections filed in accordance with the instructions in Question 11 above. We do not know how long it will take the Court to make these decisions.

48. You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Class Counsel or visit the websites www.strategicclaims.net/BioProfit beforehand to be sure that the hearing date and/or time has not changed.

19. Do I have to come to the Settlement Hearing?

49. No. Class Counsel will answer any questions the Court may have. But, you are welcome to attend at your own expense. If you submit a valid and timely objection, the Court will consider it and you do not have to come to Court to discuss it. You may have your own lawyer attend (at your own expense), but it is not required. If you do hire your own lawyer, he or she must file and serve a Notice of Appearance in the manner described in the answer to Question 20 below **no later than** , **2022**.

20. May I speak at the Settlement Hearing?

50. You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must, **no later than** _____, **2022**, submit a statement that you, or your attorney, intend to appear in “in *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, No. 6:14-cv-06631 (W.D.N.Y.)” Persons who intend to present evidence at the Settlement Hearing must also include in their objections (prepared and submitted in accordance with the answer to Question 16 above) the identities of any witnesses they may wish to call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing. You may not speak at the Settlement Hearing if you exclude yourself from the Settlement Class or if you have not provided written notice of your intention to speak at the Settlement Hearing in accordance with the procedures described in this Question 11 and Question 16 above.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

51. If you do nothing and you are a member of the Settlement Class, you will receive no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against Defendants and the other Released Defendant

Parties concerning the Released Claims. To share in the Net Settlement Fund, you must submit a Claim Form (*see* Question 8 above). To start, continue, or be a part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Claims, you must exclude yourself from the Settlement Class (*see* Question 11 above).

GETTING MORE INFORMATION

22. Are there more details about the Settlement?

52. This Notice summarizes the proposed Settlement. More details are contained in the Stipulation. You may review the Stipulation filed with the Court or other documents in the case during business hours at the Office of the Clerk of the United States District Court, Western District of New York, Kenneth B. Keating Federal Building, 100 State Street, Rochester, NY 14614. Subscribers to PACER, a fee-based service, can also view the papers filed publicly in the Action through the Court's on-line Case Management/Electronic Case Files System at <https://www.pacer.gov>.

53. You can also get a copy of the Stipulation, and other documents related to the Settlement, as well as additional information about the Settlement by visiting the Claims Administrator's website, www.strategicclaims.net/BioProfit. You may also call the Claims Administrator toll free at (866) 274-4004 or write to the Claims Administrator at *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063. **Please do not call the Court with questions about the Settlement.**

PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

23. How will my claim be calculated?

54. The Plan of Allocation (the "Plan of Allocation" or "Plan") set forth below is the plan that is being proposed by Plaintiffs and Class Counsel to the Court for approval. The Court

may approve this Plan of Allocation or modify it without additional notice to the Settlement Class. Any order modifying the Plan will be posted on the Claims Administrator website at: www.strategicclaims.net/BioProfit.

55. The Settlement Amount and the interest it earns is the “Settlement Fund.” The Settlement Fund, after deduction of Court-approved attorneys’ fees and expenses, Service Awards, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court is the “Net Settlement Fund.” The Net Settlement Fund will be distributed to members of the Settlement Class who timely submit valid Claim Forms that show a Recognized Claim according to the Plan of Allocation approved by the Court.

56. The objective of this Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants who suffered economic losses allegedly as a result of the asserted violations of law set forth in Plaintiffs’ Amended Complaint that survived Defendants’ motion to dismiss.

57. Under the proposed Plan of Allocation, the Claims Administrator will first calculate each Authorized Claimant’s Alleged Loss.

58. The Alleged Loss shall mean the principal amount each Authorized Claimant paid for their BPS Fund investments, less any amounts received in return as either payments of interest, or return of principal.

59. The Claims Administrator will then calculate each Authorized Claimant’s recovery under the Settlement by multiplying the Net Cash Settlement Amount by a fraction, (a) the numerator of which is the Class Member’s Alleged Loss and (b) the denominator of which is the sum of each and every claiming Class Member’s Alleged Loss.

60. The Plan is not a part of or a condition of approval of the Settlement. Under the Agreement, the Net Settlement Fund may be distributed in accordance with the proposed Plan or such other plan as the Court may approve.

61. The calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund. An individual Settlement Class Member's recovery will depend on, for example: (a) the total number and value of claims submitted; (b) how much interest a Settlement Class Member received in return, if any; and (c) whether and when the claimant sold his, her, or its investment(s) in the BPS Funds.

62. Because the Net Settlement Fund is less than the total losses alleged to be suffered by Settlement Class Members, the formulas described below for calculating Recognized Losses are not intended to estimate the amount that will actually be paid to Authorized Claimants. Rather, these formulas provide the basis on which the Net Settlement Fund will be distributed among Authorized Claimants on a *pro rata* basis. An Authorized Claimant's "Recognized Claim" shall be the amount used to calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of the Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

63. Defendants, their respective counsel, and all other Released Defendant Parties will have no responsibility or liability for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation or the payment of any claim. Plaintiffs, Class Counsel,

and anyone acting on their behalf, likewise will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

64. The Claims Administrator will calculate a “Recognized Loss Amount,” as set forth below, for each investment in the BPS Funds that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a Claimant’s Recognized Loss Amount results in a negative number, that number shall be set to zero.

65. For each investment in the BPS Funds, an “Out of Pocket Loss” will be calculated. Out of Pocket Loss is defined as the purchase price (excluding all fees, taxes, and commissions) minus the sale price (excluding all fees, taxes, and commissions). To the extent that the calculation of the Out of Pocket Loss results in a negative number, that number shall be set to zero.

66. The sum of a claimant’s Recognized Loss Amounts will be the claimant’s “Recognized Claim.”

ADDITIONAL PROVISIONS

67. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and a distribution will not be made to that Authorized Claimant.

68. Payment according to this Plan of Allocation will be deemed conclusive against all Authorized Claimants. Recognized Claims will be calculated as defined herein by the Claims Administrator and cannot be less than zero.

69. Distributions will be made to eligible Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or

otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute such balance among Authorized Claimants who have cashed their initial checks in an equitable and economic fashion. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after re-distribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, and a Service Award, if any, shall be contributed to the Council of Institutional Investors, or such other non-profit and non-sectarian organization(s) approved by the Court.

70. Payment pursuant to the Plan of Allocation or such other plan as may be approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Plaintiffs, Plaintiffs' Counsel, Defendants, Defendants' respective counsel, the Claims Administrator, or any agent designated by Class Counsel, arising from determinations or distributions to claimants made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. Plaintiffs, Defendants, their respective counsel, and all other Released Parties shall have no responsibility for or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation or the determination, administration, calculation, or payment of any Claim Form or non-performance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund or any losses incurred in connection therewith.

71. Each claimant is deemed to have submitted to the jurisdiction of the United States District Court for the Western District of New York with respect to his, her, or its claim.

SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES

72. If you are aware of the names and contact information of persons who invested in the BPS Funds, you are requested to **WITHIN TEN (10) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, EITHER:** (a) provide to the Claims Administrator the name and last known address of each person or entity who invested in the BPS Funds; or (b) request copies of this Notice and the Claim Form from the Claims Administrator, which will be provided to you free of charge, and **WITHIN TEN (10) CALENDAR DAYS** of receipt, mail the Notice and Claim Form directly to all the beneficial owners of those securities. You are entitled to reimbursement from the Settlement Fund of your reasonable out-of-pocket expenses incurred in providing notice to beneficial owners in an amount not to exceed \$0. [redacted] plus postage, at the current pre-sort rate used by the Claims Administrator, per Notice Packet you mail; or \$0. [redacted] per name, mailing address, and email address (to the extent available) provided to the Claims Administrator. Expenses will be paid upon request and submission of appropriate supporting documentation and timely compliance with the above directives. Any disputes as to the reasonableness or documentation of expenses incurred will be subject to review by the Court. All communications concerning the foregoing should be addressed to the Claims Administrator:

Strategic Claims Services,
P.O. Box 230,
600 N. Jackson Street, Suite 205,
Media, PA 19063

Dated: _____, 2022

BY ORDER OF THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Bio Profit Litigation
 c/o Strategic Claims Services
 600 North Jackson Street, Suite 205
 Media, PA 19063

Toll Free Number: 1-866-274-4004
 Website: www.strategicclaims.net/bioprofit
 Email: info@strategicclaims.net
 Deadline to File a Claim: _____, 2022

Mail ID:
 Name
 Address
 City State Zip

CLAIM FORM AND RELEASE

DEADLINE FOR FILING THE CLAIM FORM: This Claim Form must be postmarked for mailing no later than _____, 2022. The Claim Form can be mailed to *Bio Profit Litigation*, c/o Strategic Claims Services, 600 North Jackson Street, Suite 205, Media, Pennsylvania 19063, or scanned and emailed to info@strategicclaims.net.

Failure to timely submit a claim shall result in a waiver of any rights to participate in any distribution of proceeds from the settlement in the action called *Bio Profit Litigation*, Civil Action No. 14 CV 6631 (the “Class Action”), currently pending in the United States District Court of the Western District of New York (the “Settlement”).

Before completing this Claim Form, please read the Notice of Pendency of Class Action, Proposed Settlement, Motion for Attorneys’ Fees and Expenses, and Service Awards (“Notice”).

Providing false, misleading or incomplete information/documentation may delay any disbursement from this Settlement and could jeopardize your right to a distribution.

DEFINITIONS

1. “Settlement Class” or “Settlement Class Member” means all persons and entities that purchased or acquired the Bio Profit Funds and were allegedly damaged thereby. Excluded from the Settlement Class are (i) Defendants; (ii) any person who was an officer or director of Defendants; (iii) any firm or entity in which any Defendants have or had a controlling interest; (iv) the parents or subsidiaries of Defendants; (v) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in their respective capacity as such; and (vi) any persons or entities who or which exclude themselves by submitting a valid request for exclusion that is accepted by the Court.

2. “Defendants” means Wilmington Trust Company and/or Wilmington Trust National Association.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company
Case No. 6:14-cv-06631

Must Be Postmarked No Later Than:

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

If the name and address information printed on the reverse side of this form is correct, you do NOT need to provide your contact information in this section. If the name and address information on the reverse side is incorrect, you must check this box and provide your correct contact information below:

- My name and address information is NOT correct. Please note, if you need to change the name on this claim, you MUST provide documentation that the new named claimant is eligible to receive the award on behalf of the Beneficial Owner.

Beneficial Owner's Name (First, Middle, Last)

Record Owner's Name (First, Middle, Last) (if different from beneficial owner listed above)

Street Address

City

State

Zip Code

Foreign Province

Foreign Country

Social Security Number

Tax ID

Telephone (work)

Telephone (home)

Email

PART II: SCHEDULE OF INVESTMENTS IN BIO PROFIT FUNDS

The following information, if filled, comes from the claim form you submitted to the Receiver in the SEC Action and forms the basis of this claim:

Beneficial Owner Name: _____

Please check **ONE** box:

- The investment information listed above on this form regarding the Bio Profit Funds is correct. If you check this box, you do not need to provide any additional support.
- The investment information listed above on this form regarding the Bio Profit Funds is NOT correct OR there is no information listed above. **PLEASE NOTE, if You select this box, you must provide documentation to prove that the information provided is incorrect, such as your brokerage or bank statement showing your investments in Bio Profit Funds. Failure to provide this information may result in the denial of your claim.**

YOU MUST READ AND SIGN THE RELEASE ON PAGE __.**PART III: SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (We) submit this Claim Form and Release under the terms of the Settlement dated as of August 12, 2022 described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Western District of New York, with respect to my claim as a Settlement Class Member (as defined above) and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator or Plaintiffs' Class Counsel to support this claim if required to do so. I (We) have not submitted any other claim covering the investment or contribution to the Bio Profit Funds during the time period and know of no other Person having done so on my (our) behalf.

PART IV: RELEASE AND CERTIFICATION

1. Class Representatives and the Settlement Class do hereby forever release and discharge the Defendants from any and all claims and causes of action of every nature and description, whether known or Unknown (as defined below), contingent or absolute, mature or not mature, discoverable or undiscoverable, liquidated or unliquidated, accrued or not accrued, including those that are concealed or hidden, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that Plaintiffs or any other member of the Settlement Class (a) asserted in the Action; or (b) could have asserted in any forum that arise out of, are based upon, or relate to, directly or indirectly, in whole or in part: (1) the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Action and that relate to an investment in the Bio Profit Funds; or (2) Defendants' and/or their attorneys' defense or settlement of the Action and/or the claims alleged therein.

2. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release, relinquish and discharge, all of the released claims against the Defendants and each of Wilmington's past, present, or future parents, holding companies, subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns, and each of their respective present, former, or future officers, directors, shareholders, employees, representatives, consultants, accountants, and attorneys.

3. This release shall be of no force or effect unless and until the Court issues a Final Judgment approving the Settlement Agreement and it becomes effective on the Effective Date.

4. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

5. I (We) hereby warrant and represent that I (we) have reviewed the investment information above and/or included transaction information about all of my (our) investments in Bio Profit Funds that occurred during the time period covered by the Claim Form and Release, and any sales of my (our) investments in Bio Profit Funds during the time period.

6. UNDER THE PENALTY OF PERJURY, I (WE) CERTIFY THAT:

(a) the number shown on this form is the correct social security/tax identification number; and

(b) I (we) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because: (i) I am (we are) exempt from backup withholding; or (ii) I (we) have not been notified by the Internal Revenue Service that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (iii) the Internal Revenue Service has notified me (us) that I am (we are) no longer subject to

backup withholding. .

NOTE: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, you must cross out b. above.

The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding.

I (We) declare and certify that I (we) understand that, by executing this Release and Certification, I (we) are specifically releasing and giving up forever all of the Released Claims against the Released Parties.

I (We) declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this _____ day of _____, in _____,
(Month/Year) (City)

(State/County)

(Sign your name here)

(Sign your name here – joint owner)

(Type or print your name here)

(Type or print your name here)

(Capacity of person(s) signing, e.g.,
Beneficial Purchaser, Executor,
Administrator, Trustee, etc.)

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.

THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above release and certification.
2. Remember to attach supporting documentation, if needed.
3. Do not send original documents of any kind.
4. Keep a copy of your Claim Form and Release form and supporting documentation (if needed) for your records.
5. If you desire an acknowledgment of receipt of your Claim Form and Release form, please send it Certified Mail, Return Receipt Requested.
6. If you move, please send us your new address.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

YAO-YI LIU, TUNG-HUNG HSIEH, and
CHIU-PAO TSAI Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

Civil No. 6:14-cv-06631-EAW-MJP

WILMINGTON TRUST COMPANY, and
WILMINGTON TRUST, NATIONAL
ASSOCIATION,

Defendants.

**SUMMARY NOTICE OF PENDENCY OF CLASS ACTION AND
PROPOSED SETTLEMENT; MOTION FOR ATTORNEYS'
FEES AND EXPENSES, AND SERVICE AWARDS**

TO: All persons and entities who invested money in the Bio Profit Funds (BPS I, BPS II, BPS III, BPS V, or Velocity Valley & Grand) offered by Velocity Investment Group, Inc., and lost money as a result of your investment (the "Class").

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY A CLASS-ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Western District of New York (the "Court"), that the above-captioned class action lawsuit (the "Action") is pending in the Court.

YOU ARE ALSO NOTIFIED that the Plaintiffs have reached a proposed settlement of the Action for \$4,350,000 in cash (the "Settlement"), which, if approved, will resolve all claims in the Action.

A hearing will be held on _____, 2022, at __:__ .m. (ET), before the Honorable Elizabeth A. Wolford, Chief United States District Judge, either in-person at the United States District Court for Western District of New York, United States Courthouse, 100 State Street, Rochester, NY 14614, Courtroom __, or by telephone or videoconference, to determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether, solely for purposes of the Settlement, the Action should be certified as a class action on behalf of the Class, Plaintiffs should be certified as representatives for the Class, and Plaintiffs' counsel should be appointed as Class Counsel; (iii) whether the Action should be

dismissed with prejudice against Defendants and whether the releases specified in the Stipulation and Agreement of Settlement dated August 12, 2022 (and in the Notice) should be granted; (iv) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (v) whether Class Counsel's motion for an award of attorneys' fees and expenses and Plaintiffs' application for Service Awards should be approved. If the hearing is held by telephone or videoconference, information on how to participate will be posted at www.strategicclaims.net/BioProfit.

If you are a Class Member, your rights will be affected by the pending Action and the Settlement, and you might be entitled to a payment from the Settlement. If you have not yet received the Notice and Claim Form, you may get copies of them by contacting the Claims Administrator, *Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v. Wilmington Trust Company, et al.*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063; telephone 1-866-274-4004; or info@strategicclaims.net. You also can file claims online or download copies of the Notice and Claim Form from the Settlement website, www.strategicclaims.net/BioProfit.

If you are a Class Member, you must **file a claim** online or submit a Claim Form **no later than _____, 2022** to be eligible to receive a payment from the Settlement. If you are a Class Member and do not submit a proper Claim Form, you will not be eligible for a payment, but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a Class Member and wish to **exclude yourself** from the Class, you must submit a request for exclusion that is **received no later than _____, 2022**, in accordance with the instructions in the Notice. If you properly exclude yourself from the Class, you will not be bound by any judgments or orders entered by the Court in the Action, and you will not be eligible to receive a payment from the Settlement. Excluding yourself is the only option that might allow you to be part of any other current or future lawsuit against Defendants or any of the other released parties concerning the claims being resolved by the Settlement, even if you have pending or later file another lawsuit or other proceeding against the Releasees related to the claims covered by the Settlement.

Any **objections** to the proposed Settlement, the proposed Plan of Allocation, Plaintiffs' Counsel's motion for attorneys' fees and litigation expenses, and Plaintiffs' application for Service Awards must be filed with the Court and delivered to Plaintiffs' counsel and Defendants' Counsel such that they are **received no later than _____, 2022**, in accordance with the instructions in the Notice.

All questions about this notice, the Settlement, or your eligibility to participate in it should be directed to the Claims Administrator or Plaintiffs' counsel. Please do not contact the Court, the Clerk's office, Defendants, or their lawyers about this notice.

Requests for the Notice and Claim Form should be made to:

*Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai v.
Wilmington Trust Company, et al.,
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson Street, Suite 205
Media, PA 19063
Tel.: 866-274-4004
Fax: 610-565-7985
Email: info@strategicclaims.net
www.strategicclaims.net/BioProfit*

Inquiries other than requests for the Notice and Claim Form should be made to counsel for the Class:

ROSCA SCARLATO, LLC
Alan L. Rosca, Esq.
23250 Chagrin Blvd., Suite 100
Beachwood, OH 44122
(216) 946-7070
arosca@rscounsel.law

Paul J. Scarlato
161 Washington Street, Suite 1025
Conshohocken, PA 19428
(216) 946-7070
pscarlato@rscounsel.law

By Order of the Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

YAO-YI LIU, TUNG-HUNG HSIEH, and
CHIU-PAO TSAI Individually and on Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

Civil No. 6:14-cv-06631-EAW-MJP

WILMINGTON TRUST COMPANY, and
WILMINGTON TRUST, NATIONAL
ASSOCIATION,

Defendants.

[PROPOSED] FINAL ORDER AND JUDGMENT

WHEREAS:

A. As of August 12, 2022, Plaintiffs Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai (collectively, “Plaintiffs”), individually and as class representatives on behalf of the Settlement Class, and (defined below), on the one hand, and Wilmington Trust Company and Wilmington Trust, National Association (“Wilmington” or “Defendants”), on the other, entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of this Action, and the claims asserted therein, filed on May 22, 2015, on the merits and with prejudice (the “Settlement”);

B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered 2022 (the “Preliminary Approval Order”), the Court scheduled a

hearing for [REDACTED] 2022, at [REDACTED]: [REDACTED].m. (the “Settlement Hearing”) to, among other things: (i) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether a judgment as provided for in the Stipulation should be entered; and (iii) rule on Class Counsel’s Fee and Expense Application, and a request for a Service Award to the Class Representatives;

C. The Court ordered that the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses and Service Award (the “Notice”) and a Proof of Claim and Release form (“Proof of Claim”), substantially in the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid, on or before thirty (30) days after the date of entry of the Preliminary Approval Order (“Notice Date”) to all potential Settlement Class Members (defined below) who could be identified through reasonable effort, and that a Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Summary Notice”), substantially in the form attached to the Preliminary Approval Order as Exhibit 3, be transmitted over [REDACTED] within thirty (30) days of the Notice Date;

D. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the Parties such that they were received by [REDACTED], 2022;

E. The provisions of the Preliminary Approval Order as to notice were complied with;

F. On [REDACTED], 2022, the Class Representatives moved for final approval of the Settlement, as set forth in the Preliminary Approval Order. The Settlement Hearing was duly held

before this Court on [REDACTED], 2022, at which time all interested Persons were afforded the opportunity to be heard; and

G. This Court has duly considered the Class Representatives' motion, the affidavits, declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the submissions and arguments presented with respect to the proposed Settlement;

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates and makes a part hereof: (i) the Stipulation filed with the Court on August 12, 2022; and (ii) the Notice, which was filed with the Court on August 12, 2022. Capitalized terms not defined in this Judgment shall have the meanings set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class Members.

3. The Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies, for purposes of the Settlement only, pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Settlement Class of: all persons and entities who invested in the Bio Profit Scheme and were damaged thereby. Excluded from the Settlement Class are: (i) Defendants; (ii) any person who was an officer or director of Defendants; (iii) any firm or entity in which any Defendants have or had a controlling interest; (iv) the parents or subsidiaries of Defendants; (v) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in their respective capacity as such; and (vi) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded

person or entity, in their respective capacity as such. No investors have requested exclusion from the Settlement Class.

4. Pursuant to Fed. R. Civ. P. 23, and for purposes of the Settlement only, the Court hereby re-affirms its determinations in the Preliminary Approval Order and finally certifies Yao-Yi Liu, Tung-Hung Hsieh, and Chiu-Pao Tsai as Class Representatives for the Settlement Class; and finally appoints the law firm of Rosca Scarlato, LLC as Class Counsel for the Settlement Class.

5. The Court finds that the mailing and publication of the Notice, Summary Notice, and Proof of Claim: (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise Settlement Class Members of the effect of the Settlement, of the proposed Plan of Allocation, of Class Counsel's request for an award of attorney's fees and payment of litigation expenses incurred in connection with the prosecution of the Action, of Class Counsel's request for a Service Award to the Class Representatives for their representation of the Class, of Settlement Class Members' right to object or seek exclusion from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, and the United States Constitution (including the Due Process Clause).

6. There have been no objections to the Settlement.

7. Pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement and finds that in light of the benefits to the Settlement Class, the complexity and expense of further litigation, and the costs of continued litigation, said Settlement is, in all respects, fair, reasonable, and adequate, having considered and found that: (a) Class

Representatives and Class Counsel have adequately represented the Settlement Class; (b) the proposal was negotiated at arm's-length; (c) the relief provided for the Settlement Class is adequate, having taken into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the Settlement Class, including the method of processing Settlement Class Member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; (iv) the request for a Service Award; (v) any agreement required to be identified under Rule 23(e)(3); and (d) the proposed Plan of Allocation treats Settlement Class Members equitably relative to each other. Accordingly, the Settlement is hereby approved in all respects and shall be consummated in accordance with the terms and provisions of the Stipulation.

8. This Action, and all claims asserted therein, is **DISMISSED IN ITS ENTIRETY, WITH PREJUDICE** without costs to any Party.

9. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

10. The releases set forth in the Stipulation, together with the definitions contained in the Stipulation relating thereto, are expressly incorporated herein in all respects and are effective as of the Effective Date. Each Settlement Class Member, whether or not such Settlement Class Member executes and delivers a Proof of Claim, is bound by this Judgment, including, without limitation, the release of claims as set forth in the Stipulation.

11. Upon the Effective Date, Class Representatives and each and every other Settlement Class Member, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully,

finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendant Parties.

12. Upon the Effective Date, Defendants, on behalf of themselves and each of their past, present, or future parents, holding companies, subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns, and each of their respective present, former, or future officers, directors, shareholders, employees, representatives, consultants, accountants, and attorneys, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Defendants' Claims against any and all of the Released Plaintiff Parties.

13. This Judgment and the Stipulation, whether or not consummated, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of any of the Parties or their respective counsel, for any purpose other than in an action to enforce the terms hereof, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants or the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or the

Released Defendant Parties with respect to the truth of any allegation by Class Representatives and the Settlement Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants or any person or entity whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants or the Released Defendant Parties as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants, or against or to the prejudice of Class Representatives, or any other member of the Settlement Class, as evidence of any infirmity in the claims of Class Representatives, or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendants or the Released Defendant Parties, Class Representatives, any other member of the Settlement Class, or their respective counsel, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against or to the prejudice of Defendants or the Released Defendant Parties, Class Representatives, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(d) do not constitute, and shall not be construed against Defendants or the Released Defendant Parties, Class Representatives, or any other member of the Settlement Class, as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

(e) do not constitute, and shall not be construed as or received in evidence as an admission, concession, or presumption against Class Representatives, or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Amount.

14. Notwithstanding the foregoing, any of the Parties may file or refer to this Judgment, the Stipulation, and/or any Proof of Claim: (i) to effectuate the liability protections granted hereunder, including without limitation to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (ii) to enforce any applicable insurance policies and any agreements relating thereto; or (iii) to enforce the terms of the Stipulation and/or this Judgment.

15. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

17. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

18. The Parties are hereby directed to consummate the Stipulation and to perform its terms.

19. Plaintiffs and Class Counsel, on behalf of all Plaintiffs' Counsel, have moved for an award of attorneys' fees, costs and expenses. The Court, having separately considered Class Counsel's application, hereby awards attorneys' fees in the amount of _____, plus interest at the same rate earned by the Settlement Fund and \$ _____ in payment of litigation expenses, plus accrued interest, which sums the Court finds to be fair and reasonable. Class Counsel shall allocate the attorneys' fee award amongst Plaintiffs' Counsel.

20. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:

A. The Settlement has created a fund of \$4,350,000.00 in cash that has been paid into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of counsel;

B. The fee sought by Class Counsel has been reviewed and approved as reasonable by the Class Representatives, the investors that oversaw the prosecution and resolution of the Action;

C. The Notice mailed to potential Settlement Class Members and nominees stated that Class Counsel would apply for attorneys' fees in an amount not to exceed 30% of the Settlement Fund and litigation expenses in an amount not to exceed \$700,000.00;

D. The Action raised a number of complex issues;

E. Had Class Counsel not achieved the Settlement there would remain a significant risk that Class Representatives and the other members of the Settlement Class may have recovered less or nothing from Defendant;

F. Class Counsel conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

G. The amount of attorneys' fees awarded and litigation expenses to be paid from the Settlement Fund are fair and reasonable and consistent with awards in similar cases;

H. Public policy concerns favor the award of attorneys' fees and expenses in securities class action litigation; and

I. Plaintiffs' Counsel expended [REDACTED] hours, with a lodestar value of \$ [REDACTED], to achieve the Settlement.

21. Class Counsel has moved for a Service Award payable to the Class Representatives out of the Settlement Fund for in recognition of their time and efforts in prosecuting the Action for the benefit of the Settlement Class. Those efforts included, among other things, taking a week's leave from work and traveling half-way around the world from Taipei, Taiwan to Buffalo, New York to have their depositions taken by Defendant. Moreover, they produced several thousand pages of documents in discovery. The Court finds that service awards for the Class Representatives in the amount of \$ [REDACTED] are fair and reasonable and the Court approves of the Service Awards in this amount. The Court directs the Claims Administrator to disburse this award to the Class Representatives as provided in the Stipulation and Agreement of Settlement.

22. The Class Representatives and Class Counsel have moved for approval of the proposed Plan of Allocation set forth in the Notice. The Court hereby finds and concludes that the Plan of Allocation for the calculation of the claims of claimants that is set forth in the Notice disseminated to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the Net Settlement Fund among Settlement Class Members.

23. The Court hereby finds and concludes that the Plan of Allocation, as set forth in the Notice, is, in all respects, fair, reasonable, and adequate and the Court hereby approves the Plan of Allocation.

24. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application, a Service Award, or the Plan of Allocation shall in no way disturb or affect the finality of the Judgment.

25. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement; (ii) the allowance, disallowance or adjustment of any Settlement Class Member's claim on equitable grounds; (iii) disposition of the Settlement Fund; (iv) any applications for attorneys' fees, costs, interest and payment of expenses in the Action; (v) any application for a Service Award to the Class Representatives for their efforts in representing the interests of the Class; (vi) all Parties for the purpose of construing, enforcing and administering the Settlement and this Judgment; and (vii) other matters related or ancillary to the foregoing. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

DATED this _____ day of _____, 2022

BY THE COURT:

Honorable Elizabeth A. Wolford
CHIEF UNITED STATES DISTRICT JUDGE