

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANDREA BARRON, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

ROMAN IGOLNIKOV, SHELDON S.
GORDON, MATTHEW STADTMAUER,
UNION BANCAIRE PRIVÉE, UNION
BANCAIRE PRIVÉE ASSET
MANAGEMENT LLC, UBPI HOLDINGS,
INC., DANIEL DE PICCIOTTO, MICHAEL
DE PICCIOTTO, GUY DE PICCIOTTO, and
CHRISTOPHE BERNARD,

Defendants.

Civil Action No. 09-CV-4471 (TPG)

ECF Case

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”) is entered into by and among plaintiff Andrea Barron (“Plaintiff”), on behalf of herself and the Settlement Class (as hereinafter defined), and defendants Union Bancaire Privée, UBP SA (“UBP”), Union Bancaire Privée Asset Management LLC (“UBPAM”), UBPI Holdings, Inc. (“UBPIH”), Roman Igolnikov (“Igolnikov”), Sheldon S. Gordon (“Gordon”), Matthew Stadtmauer (“Stadtmauer”), Daniel de Picciotto (“D. de Picciotto”), Michael de Picciotto (“M. de Picciotto”), Guy de Picciotto (“G. de Picciotto”), and Christophe Bernard (“Bernard”) (collectively, the “Individual Defendants”; and together with UBP, UBPAM and UBPIH, the “Defendants”; and together with Plaintiff, the “Parties”), by and through their respective counsel. This Stipulation is submitted

pursuant to Rule 23 of the Federal Rules of Civil Procedure, and is subject to approval of the Court.¹

WHEREAS:

A. On May 8, 2009, Plaintiff, an investor in Selectinvest ARV LP, filed the Class Action Complaint (the “Complaint”) asserting claims of breach of fiduciary duty, gross negligence and unjust enrichment against Defendants on behalf of a putative class of persons and entities who acquired and/or held limited partnership interests or other investment interests in the UBP Funds (as defined in paragraph 1(eee) herein) as of December 11, 2008 and were damaged thereby (the “Putative Litigation Class”).² The Complaint alleges that Defendants mismanaged the UBP Funds by investing a portion of the collective assets of each of the UBP Funds with certain “feeder” hedge funds, including Ascot Partners L.P. (the “Ascot Fund”), which in turn placed their assets solely or primarily under management with Bernard L. Madoff Investment Securities LLC (“BMIS”), an investment advisory service founded by Bernard L. Madoff (“Madoff”). The Complaint alleges that Defendants were grossly negligent and breached their fiduciary obligations to the Putative Litigation Class by failing to perform adequate due diligence into BMIS and failing to monitor the UBP Funds’ investments with BMIS.

B. On June 1, 2009, Defendants UBPAM, Igolnikov, Gordon, and Stadtmauer filed a motion to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in paragraph 1 herein.

² Excluded from the Putative Litigation Class were Defendants and certain other persons and entities as set forth in paragraph 44 of the Complaint.

12(b)(6) (the “Motion to Dismiss”). On June 9, 2009, Defendant UBP filed a motion to quash service of process on UBP pursuant to Rule 12(b)(5), or, in the alternative, to dismiss the Action pursuant to Rules 12(b)(1) and 12(b)(6). On June 18, 2009, Plaintiff filed her memorandum of law in opposition to the Motion to Dismiss, and on June 29, 2009, Defendants UBP, UBPAM, Igolnikov, Gordon, and Stadtmauer filed their reply memorandum of law in further support of the Motion to Dismiss. On July 6, 2009 and July 13, 2009, Defendant M. de Picciotto and Defendants G. de Picciotto, D. de Picciotto, and Bernard filed their respective motions to dismiss pursuant to Rules 12(b)(1) and 12(b)(6), thereby joining the Motion to Dismiss filed on June 1, 2009.

C. On July 9, 2009, Plaintiff filed a motion for appointment of her counsel, Bernstein Litowitz Berger & Grossmann LLP (“BLB&G” or “Plaintiff’s Counsel”), as counsel for the Putative Litigation Class on an interim basis pursuant to Federal Rule of Civil Procedure 23(g), and for consolidation of all pending and subsequently filed related actions pursuant to Federal Rule of Civil Procedure 42(a) (the “Motion for Appointment of Interim Counsel and Consolidation”). On July 24, 2009, Defendants filed their memorandum of law in opposition to the Motion for Appointment of Interim Counsel and Consolidation, and on August 3, 2009, Plaintiff filed her memorandum of law in further support of the Motion for Appointment of Interim Counsel and Consolidation.

D. On March 10, 2010, the Court issued an Opinion granting the Motion to Dismiss, dismissing the Action in its entirety on the grounds that Plaintiff’s claims were precluded by the Securities Litigation Uniform Standards Act (“SLUSA”), 15 U.S.C. §§ 78bb, 77p, and were preempted by New York’s Martin Act, N.Y. Gen. Bus. Law §352 *et seq.* The

Judgment granting Defendants' Motion to Dismiss was entered by the Clerk of the Court on March 15, 2010 (the "Dismissal Order").

E. The Putative Litigation Class was never certified by the Court.

F. On April 13, 2010, Plaintiff filed a Notice of Appeal of the Dismissal Order to the United States Court of Appeals for the Second Circuit (the "Second Circuit"). On August 6, 2010, Plaintiff filed her appellant's brief in the Second Circuit; on December 2, 2010, Defendants filed their appellees' brief; and on January 7, 2011, Plaintiff filed her reply brief. On March 1, 2011, the Second Circuit heard oral argument on Plaintiff's appeal of the Dismissal Order. The appeal was *sub judice* at the time the agreement in principle to settle was reached.

G. On February 27, 2012, the Parties reached an agreement in principle to settle the Action on terms that will release the claims of Plaintiff and other investors in Selectinvest ARV LP on the terms set forth in this Stipulation.

H. On February 27, 2012, the Parties filed with the Second Circuit a stipulation to suspend the appeal without prejudice pursuant to Local Appellate Rule 42.1, and to remand the Action to the Court for the sole purpose of providing the Court with jurisdiction to review the proposed Settlement, without prejudice to Plaintiff's right to reinstate the appeal if the Settlement does not become final for any reason. On February 29, 2012, the Parties sent a joint letter to the Court requesting an indicative ruling that the Court would adjudicate the Parties' motion for approval of the proposed Settlement upon remand of the Action to the Court by the Second Circuit. The Parties' request was granted by the Court on March 2, 2012. On March 6, 2012, the Parties filed with the Second Circuit their joint notice of the Court's indicative ruling to adjudicate the motion for approval of the Settlement and their motion for

limited remand of the Action to the Court. On March 9, 2012, the Second Circuit granted the motion for limited remand of the Action to the Court.

I. Plaintiff, through Plaintiff's Counsel, has conducted an investigation into the claims asserted in the Complaint, including researching UBP's partnership agreements, public filings and press releases, and hundreds of news stories related to Bernard Madoff, the Ascot Fund and UBP's role in investments with Madoff, as well as interviewing former employees of UBP regarding the allegations set forth in the Complaint. Plaintiff's Counsel has analyzed the evidence adduced during its investigation, and has researched the applicable law with respect to the claims of Plaintiff and the Putative Litigation Class against Defendants and the potential defenses thereto.

J. Based upon their investigation and prosecution of the Action, Plaintiff and Plaintiff's Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiff and the other members of the Settlement Class, and in their best interests. Based on Plaintiff's direct oversight of the prosecution of this matter along with the input of Plaintiff's Counsel, Plaintiff has agreed to settle the claims of the Settlement Class on the terms set forth in this Stipulation, after considering (a) the substantial benefits that Plaintiff and the other members of the Settlement Class will receive from the Settlement, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation. This Stipulation shall in no event be construed as or deemed to be evidence of or an admission or concession by Plaintiff of any infirmity in the claims asserted in the Action, or any infirmity in the merits of Plaintiff's position on appeal that dismissal of the Action in the entirety by the Court was not proper; or

any infirmity in Plaintiff's position that maintaining the Action as a class action for all purposes is proper.

K. Each of the Defendants expressly denies any wrongdoing, and this Stipulation shall in no event be construed as or deemed to be evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever; or any infirmity in the defenses that Defendants have, or could have asserted; or any infirmity in the merits of Defendants' position on appeal that the Court properly dismissed the Action in its entirety; or of the appropriateness of maintaining the Action as a class action for any purpose other than implementing the Settlement. Defendants expressly deny that Plaintiff has asserted a valid claim as to any of them and deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever. Defendants state that they are entering into this Stipulation and the Settlement to avoid the costs, uncertainty, and distraction of further litigation.

L. The Parties recognize, however, that the litigation has been filed and prosecuted by Plaintiff in good faith and defended by Defendants in good faith, that the litigation is being voluntarily settled on behalf of the Settlement Class on the terms set forth in this Stipulation with the advice of counsel, and that the terms of the Settlement are fair, adequate and reasonable to the Settlement Class.

NOW THEREFORE, without any admission or concession on the part of Plaintiff of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among Plaintiff and Defendants, through their respective counsel, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil

Procedure, in consideration of the benefits flowing to the Parties from the Settlement, that the Action shall be settled and compromised on the terms and conditions set forth in this Stipulation:

DEFINITIONS

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Action” means the action captioned *Barron v. Igolnikov, et al.*, Civil Action No. 09-CV-4471 (TPG) pending in this Court.

(b) “Alternative Judgment” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Stipulation.

(c) “Ascot Fund” means Ascot Partners L.P.

(d) “Authorized Claimant” means a Settlement Class Member who submits a properly executed Claim Form to the Claims Administrator, in accordance with the requirements established by the Court, that is approved for payment from the Net Settlement Fund.

(e) “Barred Excluded Persons” means all persons or entities who held limited partnership interests in Selectinvest ARV LP as of December 11, 2008 and who have been designated by Defendants as having executed a release of claims against UBPAM and/or one or more of the other Released Defendant Persons concerning Selectinvest ARV LP’s investments in the Ascot Fund (an “Ascot Prior Release”).

(f) “Barred Excluded Persons Notice” means the notice advising Barred Excluded Persons that they have been identified by Defendants as having executed an Ascot Prior Release and, therefore, they are not members of the Settlement Class and thus not eligible to participate in the Settlement, substantially in the form annexed hereto as Exhibit 4 to Exhibit

A, which is to be sent along with the Settlement Notice to Barred Excluded Persons pursuant to the terms of paragraph 18 below.

(g) “Claim” means a Claim Form submitted to the Claims Administrator.

(h) “Claimant” means a person or entity who submits a Claim Form to the Claims Administrator seeking to share in the proceeds of the Settlement Fund.

(i) “Claim Form” means the form, substantially in the form annexed hereto as Exhibit 2 to Exhibit A, that a Claimant must complete, execute and submit to the Claims Administrator in order for that Claimant to be eligible to share in a distribution of the Net Settlement Fund.

(j) “Claims Administrator” means the claims administration firm retained by Plaintiff and Plaintiff’s Counsel, subject to approval of the Court, to provide all notices approved by the Court to potential Settlement Class Members and to Barred Excluded Persons and to administer the Settlement.

(k) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(l) “Complaint” means the Class Action Complaint filed by Plaintiff in the Action on May 8, 2009.

(m) “Court” means the United States District Court for the Southern District of New York.

(n) “Defendant Excluded Persons” means Defendants, the members of each Individual Defendant’s Immediate Family; any affiliate or subsidiary of UBP or UBPAM including each of the UBP Funds; the executive officers and directors of UBP; the executive

officers and directors of each of UBP's affiliates and subsidiaries (including, but not limited to, UBPAM and each of the UBP Funds); the fund managers of each of the UBP Funds; any entity in which any of the foregoing excluded persons or entities has or had a controlling interest; and the legal representatives, heirs, beneficiaries, successors and assigns of any such excluded person or entity; provided, however, that Defendant Excluded Persons does not include any Defendant and/or any affiliate or subsidiary of any Defendant acting as a nominee, a fiduciary, or an investment vehicle on behalf of any person or entity that is not a Defendant Excluded Person, Barred Excluded Person or person or entity who has been excluded from the Settlement Class pursuant to request, but only to the extent that it is acting as such.

(o) "Defendants" means Union Bancaire Privée, UBP SA, Union Bancaire Privée Asset Management LLC, UBPI Holdings, Inc., Roman Igolnikov, Sheldon S. Gordon, Matthew Stadtmayer, Daniel de Picciotto, Michael de Picciotto, Guy de Picciotto, and Christophe Bernard.

(p) "Defendants' Counsel" means the law firm of Wachtell, Lipton, Rosen & Katz.

(q) "Effective Date" means the first date by which all of the events and conditions specified in paragraph 37 of this Stipulation have been met and have occurred.

(r) "Escrow Account" means an account maintained at Valley National Bank to hold the Settlement Fund, which account, subject to the Court's supervisory authority, shall be under the control of Plaintiff's Counsel.

(s) "Escrow Agent" means Valley National Bank.

(t) “Escrow Agreement” means the agreement between Plaintiff’s Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(u) “Final,” with respect to any order or judgment, including the Judgment or, if applicable, the Alternative Judgment means: (a) if no appeal is filed, the expiration date of the time provided for filing or noticing of any appeal under the Federal Rules of Civil Procedure, *i.e.*, thirty (30) days after entry of the order or judgment; or (b) if there is an appeal from the order or judgment, the date of (i) final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise to review the order or judgment, or (ii) the date the order or judgment is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review of the order or judgment, and, if certiorari or other form of review is granted, the date of final affirmance of the order or judgment following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (a) attorneys’ fees, costs, or expenses, or (b) the plan of allocation, shall not in any way delay or preclude the Judgment or, if applicable, the Alternative Judgment from becoming Final.

(v) “Identified Settlement Class Members” means all persons and entities identified by Defendants as being members of the Settlement Class.

(w) “Immediate Family” means an individual’s spouse, parents, siblings, children, grandparents, grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In

this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union.

(x) “Individual Defendants” means Roman Igolnikov, Sheldon S. Gordon, Matthew Stadtmauer, Daniel de Picciotto, Michael de Picciotto, Guy de Picciotto, and Christophe Bernard.

(y) “Investment Amount” means the amount provided by Defendants for each Settlement Class Member that Defendants represent reflects, subject to the proviso in paragraph 15 below, such person’s or entity’s equity investment in Selectinvest ARV LP as of November 1, 2008.

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

(aa) “Litigation Expenses” means costs and expenses incurred in connection with commencing and prosecuting the Action for which Plaintiff’s Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

(bb) “Loss Amount” means the amount calculated by Defendants, in the manner described in paragraph 15 below, for each Settlement Class Member that Defendants represent reflects such person’s or entity’s *pro rata* portion of Selectinvest ARV LP’s total exposure to the Ascot Fund as of November 1, 2008, the date as of which Selectinvest ARV LP wrote down its position in the Ascot Fund to zero.

(cc) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and (iv) any attorneys’ fees awarded by the Court.

(dd) “Notice and Administration Costs” means the costs, fees and expenses that are incurred by the Claims Administrator and/or Plaintiff’s Counsel in connection with (i) providing notice to the Settlement Class and to the Barred Excluded Persons; and (ii) administering the Claims process, as well as the costs, fees and expenses incurred in connection with the Escrow Account.

(ee) “Notice of Discontinuance” means the Notice of Discontinuance of Class Action, substantially in the form annexed hereto as Exhibit 6 to Exhibit A, which is to be disseminated to the Other Notice Recipients pursuant to the terms of paragraph 21 below.

(ff) “Notice of Settlement” or “Settlement Notice” means the Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form annexed hereto as Exhibit 1 to Exhibit A, which is to be sent to the Settlement Class Members and the Barred Excluded Persons.

(gg) “Other Funds” means all UBP Funds other than Selectinvest ARV LP.

(hh) “Other Notice Funds” means Selectinvest ARV II Ltd. and Selectinvest ABF Ltd., which Defendants have represented that to their knowledge constitute all Other Funds to whose investors UBP, UBPAM, or the Other Funds have previously sent a written communication apprising them of the pendency of the Action.

(ii) “Other Notice Recipients” means all persons and entities who held limited partnership or other investment interests in any of the Other Notice Funds as of December 11, 2008.

(jj) “Parties” means Defendants and Plaintiff, on behalf of herself and the Settlement Class.

(kk) “Plaintiff” means Andrea Barron.

(ll) “Plaintiff’s Counsel” means the law firm of Bernstein Litowitz Berger & Grossmann LLP.

(mm) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Settlement Notice.

(nn) “Preliminary Approval Order” means the order, substantially in the form annexed hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing notice be provided to the Settlement Class, the Barred Excluded Persons and the Other Notice Recipients pursuant to the terms of paragraphs 16, 18, 19 and 21 below.

(oo) “Putative Litigation Class” means all persons and entities who acquired and/or held limited partnership interests or other investment interests in the UBP Funds as of December 11, 2008 and were damaged thereby except for Defendants and certain other persons and entities as set forth in paragraph 44 of the Complaint.

(pp) “Released Defendant Claims” means all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments and suits of every nature and description, whether contingent or absolute, suspected or unsuspected, disclosed or undisclosed, including both known claims and Unknown Claims, whether arising under federal, state, common or foreign law, that any Defendant or any other Released Defendant Person has or may have arising out of or relating in any way to the institution, prosecution, or settlement of the claims asserted in the Action, except for claims relating to the enforcement of the Settlement.

(qq) “Released Defendant Persons” means Defendants, the UBP Funds, any other investment fund distributed, managed and/or advised by UBP or UBPAM, and each of their respective past or present affiliates, parents, members, and subsidiaries, and each and all of

their officers, directors, employees, managers, indirect or direct shareholders, partners, principals, attorneys, agents, insurers, representatives, accountants, predecessors, successors and assigns; and with respect to the Individual Defendants, their respective Immediate Family members, heirs, executors, administrators, and assigns.

(rr) “Released Plaintiff Claims” means all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments and suits of every nature and description, whether contingent or absolute, suspected or unsuspected, disclosed or undisclosed, including both known claims and Unknown Claims, whether arising under federal, state, common or foreign law, whether class or individual in nature, to the fullest extent that the law permits their release in this Action, that Plaintiff or any other Settlement Class Member (a) asserted in the Complaint, or (b) ever had or now has, or may have by reason of, arising out of, relating to or in connection with the allegations, facts, events, transactions, acts, occurrences, statements, representations, misrepresentations or omissions, that were set forth or referred to in the Complaint and that relate to a Settlement Class Member’s investment in any UBP Fund.

(ss) “Released Plaintiff Persons” means Plaintiff, the other Settlement Class Members, and each of their respective past or present affiliates, parents, members, and subsidiaries, and each and all of their officers, directors, employees, managers, indirect or direct shareholders, partners, principals, attorneys, agents, representatives, accountants, predecessors, successors, and assigns; and with respect to individuals, their respective Immediate Family members, heirs, executors, administrators, and assigns.

(tt) “Settlement” means the proposed settlement as set forth in this Stipulation.

(uu) “Settlement Amount” means the sum of Six Million Nine Hundred Thousand Dollars (\$6,900,000) in cash.

(vv) “Settlement Class” means all persons and entities who held limited partnership interests in Selectinvest ARV LP as of December 11, 2008 and were damaged thereby. Excluded from the Settlement Class are (i) all Defendant Excluded Persons; (ii) all Barred Excluded Persons; and (iii) any persons or entities that exclude themselves from the Settlement Class by filing a request for exclusion that is accepted by the Court.

(ww) “Settlement Class Member” means a person or entity that is a member of the Settlement Class and does not exclude himself, herself or itself by filing a request for exclusion that is accepted by the Court.

(xx) “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

(yy) “Settlement Hearing” means the hearing to be set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(zz) “Summary Settlement Notice” means the Summary Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form annexed hereto as Exhibit 5 to Exhibit A.

(aaa) “Taxes” means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the expenses and costs incurred by Plaintiff’s Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(bbb) “UBP” means Union Bancaire Privée, UBP SA.

(ccc) “UBPAM” means Union Bancaire Privée Asset Management LLC.

(ddd) “UBPIH” means UBPI Holdings, Inc.

(eee) “UBP Funds” means the following investment funds: Selectinvest ARV LP, Selectinvest ARV II Ltd., Selectinvest ABF Ltd., UBP Multi-Strategy Alpha Fund, DINVEST – Total Return, DINVEST – Concentrated Opportunities, DINVEST – Select I, DINVEST – Select II, DINVEST – Select III, DINVEST – Concentrated Opportunities III Equity, and TrendSquare I.

(fff) “Unknown Claims” means any Released Plaintiff Claims which Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendant Claims which any Defendant or any other Released Defendant Person does not know or suspect to exist in his, her or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Plaintiff Claims and Released Defendant Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiff and each of the Defendants shall expressly waive, and each of the other Settlement Class Members and each of the other Released Defendant Persons shall be deemed to have waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiff and each of the Defendants acknowledge, and each of the other Settlement Class Members and each of the other Released Defendant Persons shall be deemed by operation of law

to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

CLASS CERTIFICATION

2. Solely for purposes of the Settlement and for no other purpose, the Parties stipulate and agree to: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) certification of Plaintiff as Class Representative for the Settlement Class; and (c) appointment of Plaintiff's Counsel as Class Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

PRELIMINARY APPROVAL OF SETTLEMENT

3. Plaintiff will move for preliminary approval of the Settlement and certification of the Settlement Class for settlement purposes only, which motion shall be unopposed by Defendants. In connection with the motion for preliminary approval, Plaintiff shall apply to the Court for, and Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A. Additionally, in connection with the motion for preliminary approval, Plaintiff shall request that the date for the Settlement Hearing be set no sooner than ninety (90) days after the filing of the motion for preliminary approval.

RELEASE OF CLAIMS

4. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of (a) any and all Released Plaintiff Claims as against all Released Defendant Persons and (b) any and all Released Defendant Claims as against all Released Plaintiff Persons.

5. Pursuant to the Judgment, upon the Effective Date, Plaintiff and each of the other members of the Settlement Class, on behalf of themselves, their respective heirs, executors,

administrators, predecessors, successors, and assigns, shall be deemed by operation of law to have released, waived, discharged, and dismissed each and every Released Plaintiff Claim, and shall forever be enjoined from prosecuting any or all of the Released Plaintiff Claims, against any Released Defendant Person.

6. Pursuant to the Judgment, upon the Effective Date, Defendants and each of the other Released Defendant Persons, on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors, and assigns, shall be deemed by operation of law to have released, waived, discharged, and dismissed each and every Released Defendant Claim, and shall forever be enjoined from prosecuting any or all of the Released Defendant Claims, against any Released Plaintiff Person.

7. Nothing in this Settlement creates or limits rights, if any, of any Settlement Class Member to funds that may be received by the UBP Funds on account of the Ascot Fund's investment in BMIS.

DISMISSAL OF APPEAL; CONTINUING FORCE OF DISMISSAL ORDER

8. Within ten (10) business days of the Effective Date, the Parties shall file with the Second Circuit a stipulation dismissing the appeal of this Action with prejudice. The Dismissal Order shall thereafter remain in effect as a final judgment of the Court.

THE SETTLEMENT CONSIDERATION

9. In consideration of the Settlement of the Released Plaintiff Claims against Defendants and the other Released Defendant Persons, UBP and/or UBPAM shall pay or cause to be paid the Settlement Amount, such amount to be deposited into the Escrow Account within five (5) business days of entry of the Preliminary Approval Order. Notwithstanding anything herein to the contrary, in no event shall Defendants be obligated to pay Plaintiff or any other

Settlement Class Member any amount over and above the Settlement Amount in connection with the settlement of this Action, and neither Plaintiff nor any other Settlement Class Member shall have any recourse against any Defendant for any amount allegedly due under the Settlement other than the Settlement Amount to be deposited into the Escrow Account pursuant to this paragraph.

USE OF SETTLEMENT FUND

10. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any Litigation Expenses awarded by the Court; and (d) any attorneys' fees awarded by the Court. The balance remaining in the Settlement Fund, after making the deductions for the items referred to in clauses (a) through (d) of this paragraph, shall be the "Net Settlement Fund." The Net Settlement Fund shall be distributed to Authorized Claimants as provided below. Only Settlement Class Members or their successors in interest may receive payments on a Claim from the proceeds of the Settlement. Barred Excluded Persons are not eligible for any payment from the proceeds of the Settlement.

11. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent 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 be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances of less than \$250,000 may be invested in an account that is fully insured by the United States Government or any agency thereof, including the FDIC. In the

event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in a non-interest bearing account that is fully insured by the United States Government or any agency thereof, including the FDIC.

12. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Plaintiff's Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and in all events shall reflect that all taxes on the income earned on the Settlement Fund shall be paid out of the Settlement Fund as provided below. Plaintiff's Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Upon written request, Defendants will provide promptly to Plaintiff's Counsel the statement described in Treasury Regulation § 1.468B-3(e). Plaintiff's Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

13. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement,

and without prior Order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

14. This is not a claims-made settlement. Upon the occurrence of the Effective Date, neither Defendants, their insurance carriers, nor any other person or entity who or which paid any portion of the Settlement Amount on Defendants' behalf, shall have any right to the return of the Settlement Fund or any portion thereof irrespective of the number of Claims filed, the collective losses of Authorized Claimants, the percentage of recovery of losses, or the amounts paid to Authorized Claimants from the Net Settlement Fund.

IDENTIFICATION OF SETTLEMENT CLASS MEMBERS AND BARRED EXCLUDED PERSONS; NOTICE TO SETTLEMENT CLASS MEMBERS AND BARRED EXCLUDED PERSONS; NOTICE AND ADMINISTRATION COSTS

15. Defendants shall provide to Plaintiff's Counsel (at no cost to the Settlement Fund, Plaintiff, Plaintiff's Counsel or the Claims Administrator) no later than five (5) days after the execution of this Stipulation a list of persons and entities and the last known addresses for each such person and entity, in an electronic format suitable to the Claims Administrator, that Defendants have represented to be the universe of all persons and entities that are included in the Settlement Class as well as the Investment Amount and Loss Amount provided by Defendants for each such person and entity. Defendants have represented to Plaintiff's Counsel that such Investment Amounts were obtained by UBPAM from the books and records of Selectinvest ARV LP and represent each Settlement Class Member's equity investment in Selectinvest ARV LP as of November 1, 2008, the date as of which Selectinvest ARV LP wrote down its position in the Ascot Fund to zero; provided, however, that the Investment Amounts of those Settlement

Class Members that are funds managed by UBPAM have been reduced in proportion to certain releases previously provided by investors in such funds. Defendants have represented to Plaintiff's Counsel that such Loss Amounts reflect each Settlement Class Member's *pro rata* portion of Selectinvest ARV LP's total exposure to the Ascot Fund as of November 1, 2008 and were calculated by UBPAM in the following manner: each Settlement Class Member's percentage interest in Selectinvest ARV LP was determined by dividing the Settlement Class Member's Investment Amount by the total equity of Selectinvest ARV LP as of November 1, 2008, as reflected in the books and records of Selectinvest ARV LP; that percentage for each Settlement Class Member was then multiplied by Selectinvest ARV LP's total exposure to the Ascot Fund as of November 1, 2008, as reflected in the books and records of Selectinvest ARV LP, to determine that Settlement Class Member's Loss Amount.

16. Plaintiff's Counsel shall cause the Claims Administrator to mail the Settlement Notice and Claim Form to each Identified Settlement Class Member at the addresses provided by Defendants.

17. Defendants shall provide to Plaintiff's Counsel (at no cost to the Settlement Fund, Plaintiff, Plaintiff's Counsel or the Claims Administrator) no later than five (5) days after the execution of this Stipulation a list of persons and entities and the last known addresses for each such person and entity, in an electronic format suitable to the Claims Administrator, that Defendants have represented to be the universe of all persons and entities that are Barred Excluded Persons by virtue of having executed an Ascot Prior Release.

18. Plaintiff's Counsel shall cause the Claims Administrator to mail the Barred Excluded Persons Notice and the Settlement Notice to each of the Barred Excluded Persons at the addresses provided by Defendants. The Barred Excluded Persons Notice shall advise Barred

Excluded Persons that they have been identified by Defendants as having executed an Ascot Prior Release and, therefore, they are not members of the Settlement Class and thus not eligible to participate in the Settlement.

19. Plaintiff's Counsel will cause to be published the Summary Settlement Notice pursuant to the terms of the Preliminary Approval Order or in whatever manner might be ordered by the Court.

20. Plaintiff's Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all Notice and Administration Costs actually incurred. Such costs, fees and expenses shall include, without limitation, the actual costs of printing and mailing the Settlement Notice to Settlement Class Members and Barred Excluded Persons and publishing the Summary Settlement Notice, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice to the Settlement Class and Barred Excluded Persons and processing the submitted Claims, and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants or to any other person or entity who or which paid any portion of the Settlement Amount on their behalf.

21. Defendants shall (at no cost to the Settlement Fund, Plaintiff, Plaintiff's Counsel or the Claims Administrator) cause the Notice of Discontinuance to be mailed to each of the Other Notice Recipients at their last known addresses as set forth in the records of the Other Funds in which such Other Notice Recipients invested no later than forty-five (45) days before the Settlement Hearing. The Notice of Discontinuance may be included within a document or

documents to be sent by UBP or UBPA to investors in the Other Notice Funds in the ordinary course of business.

PLAN OF ALLOCATION

22. After the Effective Date occurs, the Net Settlement Fund shall be distributed to Authorized Claimants in accordance with the plan of allocation approved by the Court. The proposed Plan of Allocation of the Net Settlement Fund is set forth in the Settlement Notice. The Plan of Allocation proposed in the Settlement Notice 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. Neither Defendants nor Plaintiff may cancel or terminate this Stipulation or the Settlement based on the Court's or any appellate court's rulings with respect to the Plan of Allocation or any other plan of allocation in this Action.

23. Subject to the approval of the Court, under the proposed Plan of Allocation set forth in the Settlement Notice, each Authorized Claimant's *pro rata* share of the Net Settlement Fund shall be based upon each Authorized Claimant's Investment Amount in comparison to the total Investment Amounts of all Authorized Claimants. Attached as an Exhibit to the Settlement Notice is a Table setting forth the Settlement Class Members' respective Investment Amounts and Loss Amounts that were calculated by Defendants. The Table attached to the notice identifies each Settlement Class Member only by a unique identifying number, but a separate cover letter accompanying the Settlement Notice to be provided to each Settlement Class Member shall advise the recipient Settlement Class Member which identification number on the Table corresponds to the Settlement Class Member to which the cover letter is directed. Any Settlement Class Member that does not request exclusion from the Settlement Class may challenge his, her or its Investment Amount set forth on the Table attached to the Settlement

Notice by submitting a Claim Form on which the Settlement Class Member shall indicate, in accordance with the instructions in the Claim Form, that he, she or it challenges the assigned Investment Amount together with evidence (such as account statements provided to him, her or it by UBPAM) demonstrating that his, her or its Investment Amount set forth on the Table is incorrect (“Investment Amount Challenge”). Any Investment Amount Challenges shall be handled in accordance with paragraph 30 below.

ADMINISTRATION OF SETTLEMENT

24. Each person or entity who wishes to share in the distribution of the Net Settlement Fund shall be required to submit a Claim Form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, to the Claims Administrator by the date set by the Court in the Preliminary Approval Order and specified in the Settlement Notice, unless such deadline is extended by further Order of the Court. Any Settlement Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court, late-filed Claims 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, if applicable, the Alternative Judgment and the 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 Person concerning any Released Plaintiff Claim.

25. Provided that it is received before the motion for the Class Distribution Order is filed, a Claim Form shall be deemed to be submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been

submitted when actually received by the Claims Administrator.

26. Plaintiff's Counsel shall be responsible for supervising the administration of the Settlement, including the Claims process and the allocation and disbursement of the Net Settlement Fund. The Parties shall cooperate with each other in the administration of the Settlement to the extent necessary to effectuate its terms.

27. Each submitted Claim shall be processed in accordance with the provisions of paragraph 29 below, pursuant to which the Claims Administrator shall determine if the Claim is a valid Claim or if it should be recommended for rejection by the Court because it is deficient as submitted or ineligible for recovery from the Net Settlement Fund. If a submitted Claim contains an Investment Amount Challenge, the validity of such challenge shall be determined in accordance with the provisions of paragraph 30 below.

28. The Claims Administrator shall administer the process of receiving, reviewing and approving or denying Claims under Plaintiff's Counsel's supervision and subject to the jurisdiction of the Court. Plaintiff's Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

29. For purposes of determining whether a Settlement Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Claim Form shall be reviewed by the Claims Administrator, under the supervision of Plaintiff's Counsel, who shall determine in accordance with this Stipulation whether the Claim shall be allowed, subject to review pursuant to subparagraph (c) below;

(b) Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a Claim, the Claims Administrator shall communicate with the

Settlement Class Member (or person(s) acting on behalf of the Settlement Class Member) in writing, to give the Settlement Class Member (or person(s) acting on behalf of the Settlement Class Member) the chance to remedy the deficiencies in the Claim Form submitted. The Claims Administrator, under supervision of Plaintiff's Counsel, shall notify, in a timely fashion and in writing, all Settlement Class Members (or person(s) acting on behalf of the Settlement Class Member) whose Claim the Claims Administrator proposes to reject, 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 of this determination by the Court if the Claimant so desires and complies with the requirements of subparagraph (c) below;

(c) If any Settlement Class Member (or person(s) acting on behalf of the Settlement Class Member) whose Claim has been rejected desires to contest such rejection, such Claimant must, within twenty (20) days after the date of mailing of the notice informing the Claimant of such rejection, 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 rejected Claim cannot be otherwise resolved, Plaintiff's Counsel shall thereafter present the request for review to the Court pursuant to paragraph 31 below; and

(d) The administrative determinations of the Claims Administrator concerning the acceptance and rejection of Claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

Investment Amount Challenges

30. Pursuant to paragraph 23 above, any Settlement Class Member that does not request exclusion from the Settlement Class has the right to submit an Investment Amount

Challenge in his, her or its Claim Form contesting his, her or its Investment Amount set forth on the Table attached to the Settlement Notice. For purposes of determining whether an Investment Amount Challenge is valid, the following conditions shall apply:

(a) The Claims Administrator shall review any Claim Forms containing Investment Amount Challenges and forward such Claim Forms and any supporting documentation to Plaintiff's Counsel. Defendants shall, upon request, provide Plaintiff's Counsel and the Claims Administrator with the documentation used to calculate the challenged Investment Amounts at no cost to the Settlement Fund, Plaintiff, Plaintiff's Counsel or the Claims Administrator and shall work cooperatively with Plaintiff's Counsel and the Claims Administrator in an effort to resolve any Investment Amount Challenges. Defendants shall bear their own costs in connection with any such assistance in connection with the Investment Amount Challenges.

(b) The Claims Administrator shall notify, in a timely fashion and in writing, any Settlement Class Member who has submitted an Investment Amount Challenge whether (or to what extent) his, her or its Investment Amount Challenge has been accepted. The notice to be provided to each contesting Claimant whose Investment Amount Challenge is rejected or is not accepted in full shall state that the Claimant has the right to a review of any such determination by the Court if the Claimant so desires and complies with the requirements of subparagraph (c) below.

(c) If any Settlement Class Member whose Investment Amount Challenge has been rejected or has not been accepted in full desires to contest this determination, the Claimant must, within twenty (20) days after the date of mailing of the notice informing the Claimant of the determination, serve upon the Claims Administrator a notice and statement of reasons

indicating the Claimant's grounds for contesting the determination along with any supporting documentation, and requesting a review thereof by the Court. The Claims Administrator shall promptly forward any such requests for Court review and all supporting documentation to Plaintiff's and Defendants' Counsel. If a dispute concerning an Investment Amount Challenge cannot otherwise be resolved, Plaintiff's Counsel shall submit such dispute to the Court for resolution pursuant to paragraph 31 below. Defendants shall cooperate with Plaintiff's Counsel in providing any documentation relevant to resolving any Investment Amount Challenges submitted to the Court and Defendants shall be responsible for providing responses, if any, to any Investment Amount Challenge that is submitted to the Court.

CLASS DISTRIBUTION ORDER

31. After the Claims processing is completed and all persons and entities whose Claims or Investment Amount Challenges have been rejected have had the opportunity to object to such rejection, Plaintiff's Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) resolving any outstanding disputes concerning the rejection of Claims or Investment Amount Challenges; (c) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Escrow Account; and (d) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

32. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Settlement Class Members. All Settlement Class Members whose Claims are not approved by the Court 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, if applicable, the Alternative Judgment to be entered in this Action and the releases provided for therein, and will be permanently barred and enjoined from bringing any action against any and all Released Defendant Persons concerning any and all of the Released Plaintiff Claims.

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

ATTORNEYS' FEES AND LITIGATION EXPENSES

34. Plaintiff's Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund to be paid out of the Settlement Fund. Plaintiff's Counsel also will apply to the Court for reimbursement of Litigation Expenses to be paid out of the Settlement Fund. Neither Defendants nor any other Released Defendant Person shall take any position with respect to Plaintiff's Counsel's application for an award of attorneys' fees and/or Litigation Expenses. Plaintiff's Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Plaintiff beyond what is set forth in this Stipulation.

35. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Plaintiff's Counsel out of the Settlement Fund immediately upon award, notwithstanding the existence of any timely filed objections thereto, or the potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiff's Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, 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 if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed. Plaintiff's Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after receiving from Defendants' Counsel or from a court of appropriate jurisdiction notice of the termination of the Settlement or notice of any reduction of the award of attorneys' fees and/or Litigation Expenses. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation and is not a condition of this Stipulation. Neither Plaintiff nor Plaintiff's Counsel may cancel or terminate the Stipulation or the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

TERMS OF THE JUDGMENT

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

CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION

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

(a) the Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A annexed hereto;

(b) the Settlement Amount has been deposited in the Escrow Account in accordance with the provisions of paragraph 9 above;

(c) Defendants have not exercised their right to terminate the Settlement pursuant to paragraphs 38 or 39 below;

(d) Plaintiff has not exercised her right to terminate the Settlement pursuant to paragraphs 38 or 39 below; and

(e) the Court has entered a Judgment, substantially in the form set forth in Exhibit B annexed hereto, and the Judgment has become Final, or the Court has entered an Alternative Judgment, and none of the Parties has elected to terminate the Settlement and the Alternative Judgment has become Final.

38. Either Defendants, provided all Defendants so agree, or Plaintiff shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to the other Parties to this Stipulation within thirty (30) days of: (a) the Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the Court’s refusal to approve this Stipulation or any part of it that materially affects any Party’s rights or obligations hereunder; (c) the Court’s declining to enter the Judgment in any material respect; (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. However, any decision with respect to an application for attorneys’ fees or Litigation Expenses, or with respect to any plan of allocation, shall not be considered material to the Settlement, shall not affect the finality of the Judgment or Alternative Judgment, and shall not be grounds for termination.

39. Simultaneously herewith, the Parties, by and through their respective counsel, are executing a “Supplemental Agreement” setting forth certain conditions under which the

Settlement may be terminated at the discretion of Defendants if Settlement Class Members who meet certain criteria exclude themselves from the Settlement Class and at the discretion of Plaintiff if persons and entities other than Identified Settlement Class Members who meet certain criteria are determined to be Settlement Class Members. The Supplemental Agreement shall not be filed with the Court except that the substantive contents of the Supplemental Agreement may be brought to the attention of the Court, *in camera*, if so requested by the Court or as otherwise ordered by the Court. The Parties will keep the terms of the Supplemental Agreement confidential, except if compelled by judicial process to disclose the Supplemental Agreement.

40. Except as otherwise provided herein, in the event that the Settlement is terminated pursuant to the terms of this Stipulation or the Supplemental Agreement, the Settlement and this Stipulation shall be null and void, none of their terms shall be effective or enforceable, neither the fact of the Settlement nor the contents of the Stipulation shall be admissible in any trial of this Action, and the Parties and the Putative Litigation Class shall be deemed to have reverted to their respective statuses in this Action immediately prior to February 27, 2012, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and any portion of the Settlement Amount previously paid or caused to be paid by Defendants (together with any interest earned thereon, but less any Taxes paid or due with respect to such interest income, and less any Notice and Administration Costs actually incurred and paid or payable) shall be returned to Defendants (or to such other persons or entities as Defendants may direct) within fifteen (15) business days after joint written notification of such event by Defendants' Counsel and Plaintiff's Counsel to the Escrow Agent. The foregoing provision requiring return of the Settlement Amount shall survive any termination of the Settlement.

NO ADMISSION OF WRONGDOING

41. This Stipulation, whether or not consummated, and any negotiations, statements, or proceedings in connection therewith:

(a) shall not be offered or received against any of the Released Defendant Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendant Persons with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that was or could have been asserted against any of the Released Defendant Persons in this Action or in any litigation; or of any infirmity in the defenses that Defendants have, or could have asserted; or any infirmity in the merits of Defendants' position on appeal that the Court properly dismissed the Action in its entirety; or of the appropriateness of maintaining the Action as a class action for any purpose other than implementing the Settlement; or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendant Persons;

(b) shall not be offered or received against any of the Released Defendant Persons 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 Released Defendant Persons, or against any of the Released Plaintiff Persons, as evidence of or an admission or concession by Plaintiff of any infirmity in the claims of Plaintiff or the other Settlement Class Members in the Action, or any infirmity in the merits of Plaintiff's position on appeal that dismissal of the Action in the entirety by the Court was not proper; or any infirmity in Plaintiff's position that maintaining the Action as a class action for all purposes is proper;

(c) shall not be offered or received against any of the Released Defendant Persons, or against any of the Released Plaintiff Persons, as evidence of a presumption, concession or

admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Defendant Persons, or against any of the Released Plaintiff Persons, 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; provided, however, that if this Stipulation is approved by the Court, Defendants, any other Released Defendant Persons, Plaintiff, and/or any other Released Plaintiff Persons may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement;

(d) shall not be construed against any of the Released Defendant Persons or any of the Released Plaintiff Persons as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) shall not be construed against Plaintiff or any of the other Settlement Class Members as an admission, concession, or presumption that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

MISCELLANEOUS PROVISIONS

42. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

43. As to the payment(s) made or to be made by Defendants or on their behalf under the Settlement, each Defendant making such payment or causing such payment to be made warrants as of the date of entering into this Stipulation (and further agrees that he or it shall be deemed to have warranted as of the date of the actual making of such payment(s)) that he or it is

not insolvent and that any payment made or required to be made by or on his or its behalf has not and/or will not render him or it insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by each Defendant paying or causing the payment of any part of the Settlement Amount to be made and not by his or its counsel.

44. If a case is commenced in respect of any of the Defendants or any other person or entity contributing to the payment of the Settlement Amount to the Escrow Account on behalf of Defendants under Title 11 of the United States Code (Bankruptcy), or if a trustee, receiver, conservator or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the payment of the Settlement Amount to the Escrow Account or any portion thereof 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 an equivalent amount is not deposited to the Escrow Account by another entity or individual within ten (10) business days, then, at the election of Plaintiff, the Parties shall jointly move the Court to vacate and set aside the releases given and the Judgment or, if applicable, the Alternative Judgment, entered in favor of Defendants and the other Released Defendant Persons pursuant to this Stipulation, which releases and Judgment, or Alternative Judgment, shall be null and void, and the Parties and the Putative Litigation Class shall be restored to their respective positions in the Action immediately prior to February 27, 2012, and any cash amounts in the Settlement Fund shall be returned as provided in paragraph 40 above.

45. The Parties intend this Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiff or any other Settlement Class Member against all Released Defendant Persons with respect to all Released Plaintiff Claims.

Accordingly, Plaintiff and Defendants agree not to assert in any forum that this Action was brought by Plaintiff or defended by Defendants in bad faith or without a reasonable basis. No Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or settlement of this Action. The Parties agree that the amount to be paid by Defendants and the other terms of this Settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily with the benefit of the advice of experienced legal counsel on both sides.

46. While retaining their right to deny that the claims asserted in the Action were meritorious, Defendants and their counsel, in any statement made to any media representative (whether or not for attribution), will not assert that the Action was commenced or prosecuted in bad faith nor will they deny that the Action was commenced and prosecuted in good faith or that it is being settled voluntarily after consultation with experienced and competent legal counsel. Likewise, Plaintiff and her counsel, in any statement made to any media representative (whether or not for attribution), will not assert that the Action was defended in bad faith nor will they deny that it was defended in good faith or that it is being settled voluntarily after consultation with experienced and competent counsel. In all events, Plaintiff and her counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by either side concerning the prosecution, defense and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

47. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all signatories hereto or their successors-in-interest.

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

49. The administration and consummation of this 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 and Litigation Expenses to Plaintiff's Counsel and enforcing the terms of this Stipulation.

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

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

52. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile or by a .pdf or .tif image of the signature transmitted via electronic mail. Signatures exchanged via facsimile or electronic mail shall have the same force and effect as originally signed signature pages.

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

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

55. 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 the Stipulation is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

56. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, 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.

57. If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiff
or Plaintiff's Counsel:

Bernstein Litowitz Berger & Grossmann LLP
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444
Email: jerry@blbglaw.com
lauren@blbglaw.com
Attn: Gerald H. Silk, Esq.
Lauren A. McMillen, Esq.

If to Defendants:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000
Email: SRDiPrima@WLRK.com
EAKleinhaus@WLRK.com
GWMeli@WLRK.com
Attn: Stephen R. DiPrima, Esq.
Emil A. Kleinhaus, Esq.
Graham W. Meli, Esq.

58. Plaintiff and her counsel, and Defendants and their counsel, agree to cooperate fully with one another in seeking entry of the Preliminary Approval Order and the Judgment, and to use best efforts to take such other steps as may be reasonably required to consummate the Settlement in accordance with the terms of this Stipulation.

DATED: September 12, 2012

**BERNSTEIN LITOWITZ BERGER &
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