UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JONATHAN ALFORD, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFF, VS. UNITED COMMUNITY BANKS, INC., JIMMY C. TALLENT, GUY W. FREEMAN, ROBERT L. HEAD, JR., W.C. NELSON, JR., ROBERT BLALOCK, CATHY COX, HOYT O. HOLLOWAY, JOHN D. STEPHENS, TIM WALLIS, BENEFITS ADMINISTRATIVE COMMITTEE OF UNITED COMMUNITY BANKS, INC., CATHERINE HAMBY, BRAD MILLER, REX SCHUETTE, BILL GILBERT, SUSIE HOOPER, AND DOES 1-10, DEFENDANTS.	CIVIL ACTION NO. 2:11-CV-00309-WCO

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF CLASS NOTICE, AND SCHEDULING OF A FINAL APPROVAL HEARING

Plaintiff Jonathan Alford ("Named Plaintiff" or "Plaintiff"), a participant in the United Community Banks, Inc. Profit Sharing Plan (the "Plan"), respectfully submits this Unopposed Motion for Preliminary Approval of the Proposed Settlement ("Motion for Preliminary Approval") entered into with Defendants,[1] and respectfully moves this Court for an Order (1) granting preliminary approval to the proposed Settlement Agreement And Release (the "Settlement" or "Settlement Agreement"), (2) preliminarily certifying the Settlement Class, (3) approving the form and manner of providing notice of the Settlement to the proposed Settlement Class (the "Notice Plan"), and (4) scheduling of a Final Approval Hearing. In support of this unopposed motion, Plaintiff submits a memorandum of law filed contemporaneously herewith.

For the reasons set forth in the accompanying memorandum of law, Plaintiff submits that the proposed Settlement is fair, reasonable, and adequate. Additionally, the proposed Settlement Class satisfies the requirements of Federal

[1] The Settlement Agreement is attached as Exhibit A to the memorandum of law filed contemporaneously herewith and itself has several exhibits. These exhibits include the proposed Preliminary Approval Order proposed by the Parties to the Settlement Agreement, which is appended to the Settlement Agreement as Exhibit 1, and is attached hereto. The provisions of the Settlement Agreement, including all definitions and defined terms, are incorporated by reference herein. Thus, all capitalized terms not otherwise defined in the instant memorandum shall have the same meaning as ascribed to them in the Settlement Agreement.

Rule of Civil Procedure 23(a) and (b)(1), thereby warranting preliminary certification of the proposed Settlement Class for the purposes of this Settlement. Moreover, the proposed plan for sending notice of the Settlement to Settlement Class Members (the "Notice Plan") satisfies the requirements of due process and is consistent with that used in analogous actions. Accordingly, Plaintiff respectfully submits that preliminary approval of the Settlement should be granted, the Settlement Class should be certified, the Notice Plan should be approved, and a Final Approval Hearing should be scheduled.

A form of [Proposed] Order is attached hereto.

DATED: July 23, 2013

Respectfully submitted,

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LOCAL RULE 7.1D CERTIFICATION

Undersigned counsel hereby certifies that this brief has been prepared in Times New Roman 14 point, which is one of the font and point selections approved by this Court under Local Rules 5.1B.

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CERTIFICATE OF SERVICE

The Undersigned hereby certifies that on this 23rd day of July 2013, a true and accurate copy of Plaintiff's Unopposed Motion For Preliminary Approval of Class Action Settlement, Preliminary Certification of the Settlement Class, Approval of Class Notice, And Scheduling of a Final Approval Hearing was filed electronically with the Clerk of Court using the CM/ECF system, which will send electronic notification to all counsel of record.

/s/ Mark K. Gyandoh

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
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JONATHAN ALFORD, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFF, VS. UNITED COMMUNITY BANKS, INC., JIMMY C. TALLENT, GUY W. FREEMAN, ROBERT L. HEAD, JR., W.C. NELSON, JR., ROBERT BLALOCK, CATHY COX, HOYT O. HOLLOWAY, JOHN D. STEPHENS, TIM WALLIS, BENEFITS ADMINISTRATIVE COMMITTEE OF UNITED COMMUNITY BANKS, INC., CATHERINE HAMBY, BRAD MILLER, REX SCHUETTE, BILL GILBERT, SUSIE HOOPER, AND DOES 1-10, DEFENDANTS.	CIVIL ACTION NO. 2:11-CV-00309-WCO

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF CLASS NOTICE, AND SCHEDULING OF A FINAL APPROVAL HEARING

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Plaintiff Jonathan Alford ("Named Plaintiff" or "Plaintiff"), a participant in the United Community Banks, Inc. Profit Sharing Plan (the "Plan"), submits this Memorandum of Law in Support of his Unopposed Motion for Preliminary Approval of the Proposed Settlement ("Motion for Preliminary Approval") entered into with Defendants,[1] and respectfully moves this Court for an Order (1) granting preliminary approval to the proposed Settlement Agreement And Release (the "Settlement" or "Settlement Agreement"),[2] (2) preliminarily certifying the Settlement Class, (3) approving the form and manner of providing notice of the Settlement to the proposed Settlement Class (the "Notice Plan"), and (4) scheduling of a Final Approval Hearing.

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[1] "Defendants" refers, collectively, to United Community Banks, Inc. ("UCBI" or the "Company"), the "Director Defendants" which includes Jimmy C. Tallent, Guy W. Freeman, Robert L. Head, Jr., W.C. Nelson, Jr., Robert Blalock, Cathy Cox, Hoyt O. Holloway, John D. Stephens, and Tim Wallis, and the "Administrative Committee Defendants" which includes Defendant Freeman, Catherine Hamby, Brad Miller, Rex Schuette, Bill Gilbert, Susie Hooper and the Administrative Committee of United Community Banks, Inc. (the "Administrative Committee)."

[2] The Settlement Agreement, attached as Exhibit A hereto, itself has several exhibits. These exhibits include the proposed Preliminary Approval Order submitted by the Parties to the Settlement Agreement, which is appended to the Settlement Agreement as Exhibit 1, and the proposed Final Approval Order and Judgment appended to the Settlement Agreement as Exhibit 2. The provisions of the Settlement Agreement, including all definitions and defined terms, are incorporated by reference herein. Thus, all capitalized terms not otherwise defined in the instant memorandum shall have the same meaning as ascribed to them in the Settlement Agreement.

I. INTRODUCTION

Plaintiff and Defendants (collectively, the "Parties") reached a proposed Settlement of this Action asserting claims under the Employee Retirement Income Security Act of 1974 ("ERISA") that provides for a monetary payment of $3,500,000.00 (the "Settlement Amount"), yielding substantial benefits to members of the Settlement Class (defined below) and resolving all claims asserted by Plaintiff on behalf of the Plan and Settlement Class. In light of the facts, governing law and substantial risks of continued litigation, Plaintiff and Class Counsel[3] believe the proposed Settlement is fair, reasonable and adequate, and in the best interest of the proposed Settlement Class as it provides for an immediate and meaningful recovery. The Parties agreed to the proposed Settlement only after arm's length negotiations by experienced counsel during a full-day mediation session, overseen and facilitated by David Geronemus of JAMS, a well-respected mediator, demonstrating the absence of fraud or collusion. Resolving this case at this juncture allows the Parties to avoid continued and costly litigation that could ultimately result in a judgment less than the recovery obtained under the Settlement Agreement – or no recovery at all.

[3] "Class Counsel" means Kessler Topaz Meltzer & Check, LLP, referred to also as KTMC.

There is no doubt that lawsuits of this type brought pursuant to Sections 409 and 502 of ERISA face significant litigation and trial risks. KTMC tried an analogous case to verdict, *Brieger v. Tellabs, Inc.*, 659 F. Supp. 2d 967 (N.D. Ill. 2009), and is particularly qualified to realistically evaluate the risks of continued litigation. This Action was settled prior to Plaintiff seeking class certification. Thus, as part of the Settlement Agreement, the Parties request the certification of the Settlement Class for settlement purposes only. Finally, the proposed Notice Plan which consists of individualized direct-mail, and a dedicated, Internet settlement website, is consistent with the forms of notice approved in directly analogous actions and satisfies due process concerns. Such notice will inform Settlement Class Members of the terms of the Settlement, how to object to the Settlement, and the date of the Final Approval Hearing.

As set forth below in detail, all prerequisites for preliminary approval have been met and the proposed Settlement should be preliminarily approved allowing Plaintiff to provide notice to the Settlement Class.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Description of the Action

On August 5, 2011, Plaintiff commenced litigation with the filing of an initial class action complaint in the U.S. District Court for the Northern District of

Georgia, Atlanta division. Dkt. No. 1. Plaintiff named as defendants UCBI and certain UCBI officers, directors, and employees, alleging violations of §§ 409 and 502 of ERISA, 29 U.S.C. §§ 1109 and 1132 relating to the Plan's investment in UCBI Stock. In particular, the initial complaint alleged that the fiduciaries of the Plan violated ERISA by allowing the Plan to continue to invest in UCBI Stock at a time when it was not a prudent investment for a retirement plan. Subsequently, on September 12, 2011, Defendants filed an unopposed Motion to Transfer the action. Dkt. No. 13. On November 15, 2011, the case was transferred to the Gainesville division.

After the case was transferred, Plaintiff filed his First Amended Class Action Complaint (the "Complaint") on November 30, 2011, *see* Dkt. No. 21. The Complaint alleged the same violations of ERISA as the initial complaint filed by Plaintiff. Specifically, Count I alleged that certain Defendants, each having responsibilities regarding the management and investment of Plan assets, breached their fiduciary duties to the Plan, Plaintiff, and proposed Class by failing to prudently and loyally manage the Plan's investment in Company securities by: (1) continuing to offer UCBI Stock as a Plan investment option when it was imprudent to do so; (2) failing to provide complete and accurate information to Plan participants regarding the Company's financial condition and the prudence of

investing in Company Stock; and (3) maintaining the Plan's pre-existing significant investment in UCBI Stock when it was no longer a prudent investment for the Plan.

Plaintiff also alleged, in Count II, that specific Defendants breached their duty to avoid conflicts of interest because of their divided interest in maintaining UCBI Stock in the Plan even though it was an imprudent investment because their compensation was tied to the performance of Company Stock.

In Count III Plaintiff alleged that certain Defendants breached their fiduciary duties by failing to adequately monitor other persons to whom management/administration of Plan assets was delegated, despite the fact that such Defendants knew or should have known that such other fiduciaries were imprudently allowing the Plan to continue offering UCBI Stock as an investment option and continued investing Plan assets in UCBI Stock when it was no longer prudent to do so. Plaintiff also alleged in Count III that these Defendants should have provided and ensured that the fiduciary appointees possessed complete and accurate information so they could properly perform their fiduciary duties.

B. Investigation of Claims

Before filing the initial complaint in this matter, Class Counsel reviewed voluminous public records regarding the Company, reviewed relevant and recent

case law, and considered potential legal claims. Additional investigation and research was performed for the filing of the Complaint which included this additional investigative material. The Complaint also incorporated citation of material produced by Defendants, including documents received in response to Plaintiff's request made pursuant to ERISA § 104(b), that included: (i) the Plan and Plan-related material such as Investment Policies; (ii) additional publicly-available materials related to the Company and the Plan such as Forms 10-Ks and 11-Ks filed with the Securities and Exchange Commission (SEC); (iii) annual returns that disclose the Plan's financial information; and (iv) the Plan's trust agreements.

The above efforts enabled Plaintiff to delve into the merits of the Action including identifying the Defendants and other persons and entities believed to have discretionary fiduciary authority or control regarding the Plan and its assets.

C. Summary of the Litigation

On June 12, 2012, Defendants moved to dismiss Plaintiff's Complaint (Dkt. No. 35). This was in accordance with the Scheduling Order entered on June 5, 2012 (Dkt. No. 34), after a Scheduling Conference was held. On July 24, 2012, Plaintiff filed their opposition to Defendants' Motion to Dismiss (Dkt. No.40) and Defendants filed their Reply memorandum on August 14, 2012 (Dkt. No. 44).

Thereafter, on November 30, 2012, Plaintiff filed a Notice of Supplemental Authority (Dkt. No. 45) which Defendants responded to on December 5, 2012 (Dkt. No. 46). Ultimately, on January 31, 2013, the Court denied Defendants' Motion to Dismiss in large part (the "Motion to Dismiss Decision") (Dkt. No. 47), allowing the core of Plaintiff's allegations to proceed to the discovery phase. In particular, the Court upheld Counts I and II of the Complaint and dismissed Count III.

On March 7, 2013, the Parties filed an agreed motion with the Court seeking to stay the litigation so the Parties could select an appropriate mediator and participate in a formal mediation session. Dkt. No. 49. The Court granted the motion on March 11, 2013, and stayed the Action for ninety days. Dkt. No. 50.

D. Settlement Negotiations

The settlement negotiations in this Action were intense and certainly arm's-length. As noted above, on May 15, 2013, the Parties mediated in New York City before David Geronemus of JAMS. In advance of that session, the Parties submitted to Mr. Geronemus, and exchanged with each other, extensive, written, mediation memoranda. In preparation, Class Counsel also consulted with appropriate experts concerning damage calculations. During the mediation the Parties engaged in spirited debate as to critical legal and factual issues concerning

liability and damages. Following a full day of intense negotiations, the Parties agreed in principle to the Settlement. The parties then worked over the next two months to finalize the terms of the settlement and memorialize those terms in the settlement document, resulting in the Settlement now submitted for approval.

Throughout both the litigation and the mediation process, Class Counsel was cognizant of the strengths and weaknesses of the proposed Settlement Class's claims and Defendants' defenses. The arm's-length nature of the mediation, involving an experienced mediator, and skilled advocates for the Parties, strongly support the conclusion that the proposed Settlement is fair, reasonable, and adequate.

E. The Proposed Settlement

The Settlement provides that the Defendants will pay $3,500,000.00 to the Plan to be allocated to Settlement Class Members pursuant to a Court-approved Plan of Allocation.[4] In exchange, Plaintiff and the Plan will dismiss their claims, as set forth more fully in the Settlement Agreement. The Settlement Agreement

[4] The Plan of Allocation is attached to the Settlement Agreement as Exhibit 3. The Plan of Allocation is premised on calculating a Plan participant's pro rata distribution based upon the individual's balance in the Plan on the first day of the Class Period plus any acquisitions of UCBI Stock during the Class Period, and then subtracting all dispositions of UCBI Stock during the Class Period and the balance, if any, of UCBI Stock remaining on the last day of the Class Period.

also sets forth the proposed Notice Plan to Settlement Class Members, and provides for the payment of attorneys' fees and Plaintiff's Case Contribution Award, both of which are subject to Court approval. Further, the Settlement Agreement provides for an Independent Fiduciary to review the terms and conditions of the Settlement and render an opinion as to its fairness.[5]

F. Reasons for the Settlement

Plaintiff entered into this Settlement with a full and comprehensive understanding of the strengths and weaknesses of the claims, which are based on Class Counsel's extensive experience with ERISA litigation, the investigation performed in connection with filing both the initial complaint and Complaint, and the Court's Motion to Dismiss Decision. Class Counsel, in negotiating the proposed Settlement, considered the risks and uncertainties of proceeding with the litigation and ultimately prevailing at trial in light of various factors, which were debated during the mediation process. Defendants have and certainly would continue to argue in dispositive motions and/or at trial, among other things, that even if UCBI Stock were determined to be an imprudent investment option at some point in time, by the time it would have been deemed imprudent, the price of UCBI

[5] Per the Settlement Agreement and Preliminary Approval Order, the Independent Fiduciary has until fourteen (14) days before the Final Approval Hearing to render an opinion as to the Settlement's fairness.

Stock would have been so low that the amount of damages suffered and/or recoverable by the Plan would be minimal. To be sure, there is no assurance Plaintiff would prevail if litigation were to continue – much less, that he would recover more than $3,500,000.00.

In sum, based upon their extensive investigation both before and during the litigation, their analysis of the risks inherent in continuing litigation and establishing liability and damages, and the likelihood of appeals associated with any trial verdict, Class Counsel support the proposed Settlement and the certain and immediate benefit to the Settlement Class Members it provides.

G. Proposed Timetable

The Parties request the Court schedule a Final Approval Hearing at least ninety (90) days from the date Defendants mail notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA Notice"), and at least sixty (60) days from the mailing of the Class Notice. To effectuate this schedule, the Parties request the Court to schedule a Final Approval Hearing no earlier than October 31, 2013 which would be 90 days from the date the CAFA Notice is sent. The Parties consented to the following generalized scheduling assuming the Court preliminarily approves the Settlement:

Event	Time for Compliance
Deadline for mailing of Class Notice to Settlement Class Members.	30 days after entry of the Preliminary Approval Order (*see* Preliminary Approval Order, ¶ 5).
Deadline for posting Notice on the dedicated Settlement website.	30 days after entry of the Preliminary Approval Order (*see* Preliminary Approval Order, ¶ 5).
Filing of Motion for Attorney's Fees, Reimbursement of Expenses, and for Case Contribution Award to Named Plaintiff.	31 days prior to the date of the Final Approval Hearing (*see* Preliminary Approval Order, ¶ 7).
Filing of Motion in Support of Final Approval of Settlement.	31 days prior to the date of the Final Approval Hearing (*see* Preliminary Approval Order, ¶ 8).
Deadline for filing all Objections to the Settlement, including Objections by CAFA Notice Recipients.	21 days prior to the date of the Final Approval Hearing (*see* Preliminary Approval Order, ¶ 9).
Deadline for filing Appearance of Counsel regarding all Objections, including Objections by CAFA Notice Recipients.	21 days prior to the date of the Final Approval Hearing (*see* Preliminary Approval Order, ¶ 9).
Deadline for filing Intention to Appear at Final Approval Hearing regarding all Objections, including Objections by CAFA Notice Recipients.	21 days prior to the date of the Final Approval Hearing (*see* Preliminary Approval Order, ¶ 11).
Deadline for Defendants to advise Class Counsel whether the Independent Fiduciary has approved the Settlement.	14 days prior to the date of the Final Approval Hearing (*see* Preliminary Approval Order, ¶ 6)
Deadline for filing response to any Objections.	7 days prior to the date of the Final Approval Hearing (*see* Preliminary Approval Order, ¶ 9).
Deadline for filing any supplemental brief in support of the Settlement.	7 days prior to the date of the Final Approval Hearing (*see* Preliminary Approval Order, ¶ 10).
Deadline for filing the Independent Fiduciary's report regarding the Settlement with the Court.	7 days prior to the date of the Final Approval Hearing, (*see* Preliminary Approval Order, ¶ 6).

Final Approval Hearing date.	On or after 90 days after CAFA Notice sent, or at the Court's convenience, but not less than 90 days after CAFA Notice sent [which is October 31, 2013] (*see* Preliminary Approval Order, ¶ 4).

III. THE PROPOSED NOTICE PLAN SHOULD BE APPROVED

A. The Proposed Notice Plan Meets the Requirements of Due Process

As courts have noted, "[b]ecause individuals may bring class actions to remedy breaches of fiduciary duty only on behalf of the plan, rather than themselves, the court cannot allow absent participants or beneficiaries to opt out of this class." *Piazza Jr. v. EBSCO Industries, Inc.*, 273 F.3d 1341, 1353 (11th Cir. 2001) (quoting *Specialty Cabinets & Fixtures, Inc. v. Am. Equitable Life Ins. Co.*, 140 F.R.D. 474, 479 (S.D. Ga. 1991)). Nonetheless, courts typically require notice to absent class members in ERISA breach of fiduciary duty actions and the opportunity for absent class members to object to the proposed settlement. In order to satisfy the due process considerations of the Federal Rules of Civil Procedure, notice to Settlement Class Members must be "reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *In re CP Ships Ltd. Securities Litig.*, 578 F.3d 1306, 1317 (11th Cir. 2009) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

As set forth below, Plaintiff's proposed means of Class Notice readily satisfies this standard and the mandate of due process. The combination of direct mail and Internet website posting along with a Settlement-dedicated telephone number with an Interactive Voice Response ("IVR") system, discussed in greater detail below, should cause actual notice to reach a high percentage of affected Plan participants and beneficiaries.

B. Description of the Notice Plan

The proposed Notice Plan will fully inform Settlement Class Members about the Action, the proposed Settlement, and the facts they need to make informed decisions about their rights. The Notice Plan includes multiple components designed to reach the largest number of Settlement Class Members possible. First, the Class Notice, attached as Exhibit 1A to the Settlement Agreement will be sent by first-class mail to the last known address of the Settlement Class Members at least 60 days prior to the Final Approval Hearing. Additionally, by that same date, the Class Notice, along with other documents related to the litigation such as the Settlement Agreement with all of its exhibits and a list of frequently asked questions, will be posted on a dedicated Settlement website established by Class Counsel. As noted above, Class Counsel will also establish and monitor a dedicated, toll-free settlement telephone number with an Interactive Voice

Response ("IVR") system which will have answers to frequently asked questions and also provide potential Settlement Class Members with contact information for Class Counsel should they have any additional questions regarding the Settlement.

The Notice Plan agreed to by the Parties satisfies all due process considerations and meets the requirements of FED. R. CIV. P. 23(e). The proposed notices describe in plain English: (i) the terms and operations of the Settlement; (ii) the nature and extent of the release of claims; (iii) the maximum attorneys' fees and Plaintiff's Case Contribution Awards that may be sought; (iv) the procedure and timing for objecting to the Settlement; and (v) the date and place for the Final Approval Hearing. Courts within this jurisdiction have approved as fair similar notices and/or notice plans. *See, e.g.*, *In re Colonial Bancorp, Inc. ERISA Litig.*, No. 09-cv-792, Order Granting Preliminary Approval of Class Action Settlement (M.D. Ala. June 28, 2012); *In re Beazer Homes, USA, Inc. ERISA Litig.*, No. 07-cv-952, Order Granting Preliminary Approval of Class Action Settlement (N.D. Ga. Aug. 11, 2010); *Spivey v. S. Co.*, No. 04-cv-1912 (N.D. Ga. Aug. 14, 2007) (order granting final approval for similar notice plan); *In re HealthSouth Corp. ERISA Litig.*, No. 03-cv-1700, 2006 WL 2109484, at *3 (N.D. Ala. June 28, 2006) (same); *In re Mirant Corp. ERISA Litig.*, No. 03-cv-1027 (N.D. Ga. Nov. 16, 2006) (same).

In sum, the proposed Notice Plan satisfies the requirements of due process. *See* 4 Newberg on Class Actions § 11:53 (4th ed. 2010) ("The notice need not be unduly specific. The notice of the Proposed Settlement, to satisfy both Rule 23(e) requirements and constitutional due process protections, need only be reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections."); 7B Charles Alan Wright, Arthur W. Miller & Mary Kay Kane, FED. PRAC. & PROC. § 1797.6 (3d ed. 2010) (noting that courts have approved notices "as long as sufficient contact information is provided to allow the class members to obtain more detailed information about those matters").

IV. THE PROPOSED SETTLEMENT SATISFIES THE ELEVENTH CIRCUIT'S STANDARD FOR PRELIMINARY APPROVAL

A. The Settlement Meets the Judicial Standards for Preliminary Approval Under Federal Rule of Civil Procedure 23

There is a "strong judicial policy favoring settlement." *Nelson v. Johnson & Johnson Co.*, 484 Fed. Appx. 429, 434 (11th Cir. 2012) (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)). At the preliminary approval stage, the court's task is to evaluate whether the settlement is within the "range of reasonableness." *In re Checking Account Overdraft Litig.*, No. 09-md-02036, 2012 WL 4174502, at *4 (S.D. Fla. Sept. 19, 2012) (citing 4 Newberg on Class Actions

§ 11.26 (4th ed. 2010)). "Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason." *Id.* (citing *Smith v. Wm. Wrigley Jr. Co.*, No. 09-cv-60646, 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010)). Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *Id*. (citing *Manual for Complex Litig.* (Third) § 30.42 (1995) ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.")).

Settlements of class actions are "particularly favored" and are not to be lightly rejected. *Hillis v. Equifax Consumer Services, Inc.*, Nos. 104-cv-3400, 107-cv-314, 2007 WL 1953464, at *9 (N.D. Ga. June 12, 2007) ("Settlements in class action cases are also favored because they 'conserve judicial resources by avoiding the expense of a complicated and protracted litigation process….'"). Rule 23 of the Federal Rules of Civil Procedure governs settlements of class action lawsuits. Although the procedure for approval of a class action settlement is not specifically delineated in Rule 23, in granting preliminary approval, "the district court must find that it 'is fair, adequate and reasonable and is not the product of collusion

between the parties.'" *Bennett*, 737 F.2d at 986 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

B. The Settlement Satisfies the Eleventh Circuit's Six-Prong Test of Fairness

The Eleventh Circuit sets forth six factors to consider in determining whether the proposed settlement is fair, reasonable, and adequate:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which the settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved.

Nelson, 484 Fed. Appx. at 434; *Bennett*, 737 F.2d at 986 (collecting cases).

1. Likelihood of Plaintiff's Success at Trial

As the Court found in its motion to dismiss decision, Plaintiff sufficiently alleged in this Action that UCBI was an imprudent investment for the Plan during the Class Period. Plaintiff is optimistic about ultimately succeeding in this matter at trial, particularly when evaluating the case at the global level. *See Borcea v. Carnival Corp.*, 238 F.R.D. 664, 673 (S.D. Fla. 2006) (when assessing this factor, the Court's role is to evaluate the proposed settlement in its totality, not to engage in a claim-by-claim, dollar by dollar evaluation). Nonetheless, Plaintiff and Class Counsel also recognize the risks of continued litigation and the possibility of an

adverse outcome. *See Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1319 (S.D. Fla. Dec. 20, 2005) (likelihood of success on the merits is weighed against the amount and form of relief contained in the settlement). Plaintiff acknowledges that many of the factual and legal issues involved in this Action are contested, and both Parties would proffer evidence to support their competing views of the case. Class Counsel are particularly mindful of the intrinsic difficulty of establishing liability and damages in this evolving area of ERISA law and the obstacles to recover damages posed by Defendants' defenses in this Action. In particular, to the best of Class Counsel's knowledge, only four similar ERISA class actions concerning publicly traded company stock have gone to trial, and in each instance, the defendants prevailed.[6] Accordingly, the overall strength of the case when coupled with the expense and risk of trying the matter, preliminarily support approval of the proposed Settlement.

[6] *See Brieger v. Tellabs, Inc.*, 659 F. Supp. 2d 967 (N.D. Ill. 2009); *Nelson v. Hodowal (IPALCO)*, 512 F.3d 347 (7th Cir. 2008): *DiFelice v. U.S. Airways, Inc.*, 436 F. Supp. 2d 756 (E.D. Va. 2006); *Landgraff v. Columbia HCA Healthcare Corp.*, No. 98-cv-90, 2000 WL 33726564 (M.D. Tenn. May 24, 2000).

2. Possible Range of Recovery at Trial in Relation to the Settlement Amount[7]

Here, whereas the amount of the Settlement is fixed at $3.5 million, Plaintiff's potential range of recovery is uncertain and, indeed, hotly disputed in this Action. In order to calculate the appropriate standard of damages, the focus is first on the possible recovery at trial. "A district court must first determine the appropriate standard of damages (in order to calculate the range of recovery), and then determine where in this range of recovery a fair, adequate and reasonable settlement amount lies." *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1380-81 (S.D. Fla. July 26, 2007) (citing *Behrens*, 118 F.R.D. at 541). Although not uniformly adopted in all Circuits (and to the best of Plaintiff's knowledge the Eleventh Circuit has not addressed this issue), Plaintiff believes the appropriate measure of damages under ERISA is the "make-whole" rules of damage causation and computation. *See* ERISA § 409(a), 29 U.S.C. § 1109(a). Application of these principles here would require the trier of fact to look to the prudent investment alternatives that the Plan offered during the Class Period to determine what the participants would have earned but for Defendants' breaches of fiduciary duty. *See*

[7] These two factors, (i) the range of possible recoveries, and (ii) the point on or below the range of possible recovery at which the settlement is fair, adequate and reasonable, "are easily combined." *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 541 (S.D. Fla. 1988).

Harzewski v. Guidant Corp., 489 F.3d 799, 807 (7th Cir. 2007) ("[I]n a defined-contribution plan [benefits] are the value of the retirement account when the employee retires, and a breach of fiduciary duty that diminishes that value gives rise to a claim for benefits measured by the difference between what the retirement account was worth when the employee retired and cashed it out and what it would have been worth then had it not been for the breach of fiduciary duty."); *Graden v. Conexant Sys., Inc.*, 496 F.3d 291, 301 (3d Cir. 2007) ("the measure of damages is the amount that affected accounts would have earned if prudently invested") (citing *Donovan v. Bierwirth*, 754 F.2d 1049, 1056 (2d Cir. 1985)); *see also Vaughn v. Bay Env. Mgmt., Inc.*, 544 F.3d 1008, 1012 (9th Cir. 2008) ("[Plaintiff] seeks the difference between the benefit he received and what he would have received if the Plan's assets had been prudently invested. This amount is ascertainable through expert testimony or other evidence regarding investment returns during the relevant period.").

In determining the range of recovery in this Action, at one extreme is the possibility that Defendants might prevail on one or more of their legal or factual arguments to defeat liability entirely. While Plaintiff is confident of the strength of the claims asserted, he recognizes this possibility cannot be discounted completely. Assuming liability was established, several variables would affect the

determination of the actual amount of recoverable damages. Key among these is the determination of the date (the "breach date") on which Defendants' failure to divest the Plan's holdings of UCBI Stock and/or to discontinue acquisition of UCBI Stock constitute a breach of fiduciary duty. The Complaint alleged that Defendants knew or should have known that UCBI Stock was imprudent by October 6, 2008 (which could result in damages as much as $30 million), but there is no guarantee this date would ultimately prevail, and Plaintiff's ability to sustain his burden as of this date, admittedly, would be far more difficult than a date later in the Class Period when significant additional adverse events had occurred at the Company. Defendants, for example, contended at mediation that if UCBI Stock ever became imprudent, it was not imprudent until much later in the Class Period, after the Company Stock's price stopped fluctuating. The use of a later breach date would result in a much smaller recovery, well below $3.5 million, given the continuous decline in the value of UCBI Stock over the course of the Class Period, plummeting at one point during the Class Period by over 90% from the start of the Class Period.

Given this wide range of potential damage outcomes at trial and the uncertainty of the Plan's actual losses, the $3.5 million monetary Settlement is fair

and reasonable. Using the gross Settlement Amount, each of the roughly 2,000 Settlement Class Members will receive approximately $1,750, on average.

3. The Complexity, Expense, and Likely Duration of Continued Litigation

"Particularly in class action suits, there is an overriding public interest in favor of settlement [because it] is common knowledge that class action suits have a well deserved reputation as being most complex." *Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 698 (M.D. Fla. 2005) (citing *Cotton*, 559 F.2d at 1331). This is particularly true and has been noted by courts across the country in ERISA breach of fiduciary duty cases such as the one before the Court. *See e.g.*, *Hargrove v. Eaglepicher Corp.*, No. 10-cv-10946, 2012 WL 1668152, at *2 (E.D. Mich. May 10, 2012) ("An ERISA case involves highly-specialized and complex areas of law"); *Smith v. Krispy Kreme Doughnut Corp.*, No. 05-cv-00187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007) (recognizing that "ERISA law is a highly complex and quickly-evolving area of the law"); *In re Enron Corp. Sec., Derivative and "ERISA" Litig.*, 228 F.R.D. 541, 565 (S.D. Tex. 2005) (finding the "complexity, expense and likely duration of the litigation . . . are self evident and exceptional"); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004) ("Fiduciary status, the scope of fiduciary responsibility, the appropriate fiduciary response to the Plans' concentration in company stock and

[Global Crossing's] business practices would be issues for proof, and numerous legal issues concerning fiduciary liability in connection with company stock in 401(k) plans remain unresolved. These uncertainties would substantially increase the ERISA cases' complexity, duration, and expense—and thus militate in favor of settlement approval.").

Settlement in this Action came at a fairly early and opportune time, and will provide immediate benefits to the class. *Borcea*, 238 F.R.D. at 674 ("The Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, '[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush.'") (quoting *In re Shell Oil Refinery*, 155 F.R.D. 552, 560 (E.D. La. 1993). On the other hand if litigation were to continue, there would be substantial expense to the Parties through the use of necessary factual and expert discovery, as well as assorted motion practice. A great deal of discovery and litigation lie ahead for the Parties in the absence of Settlement, including the depositions of Defendants, key third party witnesses, and expert witnesses on the issue of liability and damages. Plaintiff would also move for class certification and both Parties would likely file motions for summary judgment. Ultimately, a trial in this Action would be

complex given the factual and legal issues relevant to Defendants' decision to continue offering Company Stock as a Plan investment option during the Class Period and Plaintiff's arguments as to why such conduct was imprudent. Even if Plaintiff prevailed at trial, it would be years before any putative Settlement Class Member received any benefit in light of the likely appeals to follow. On balance, the immediate, guaranteed benefit to the Settlement Class provided by this Settlement outweighs the uncertainty of continued, costly, and time-consuming litigation.

4. Opposition to the Settlement

Although the Plaintiff, who is a Settlement Class Member, approves the Settlement, this factor cannot be fully analyzed until notice has been sent to the Settlement Class. Accordingly, if the Court preliminarily approves the Settlement and authorizes the Class Notice to be sent to the Settlement Class, Class Counsel will address any opposition to the Settlement in its final approval papers before the Final Approval Hearing in accordance with the schedule discussed *supra* in Section II.G.

5. Stage of the Proceeding in which Settlement was Achieved

"With respect to the stage of the proceedings and the amount of discovery completed, '[t]here is no precise yardstick to measure the amount of litigation that

the parties should conduct before settling.'" *Williams v. Nat. Sec. Ins. Co.*, 237 F.R.D. 685, 695 (M.D. Ala. 2006) (quoting *In re Rio Hair Naturalizer Prods. Liab. Litig.*, No. MDL 1055, 1996 WL 780512, at *13 (E.D. Mich. Dec. 20, 1996)). Indeed, "[e]ven settlements reached at a very early stage and prior to formal discovery may be approved where the settlement represents substantial concessions by both sides and there is no evidence of collusion." *Id.* (citing *D'Amato v. Deutsche Bank*, 236 F.3d 78, 87 (2d Cir. 2001)); *Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) (holding that early settlements are to be encouraged; only a reasonable amount of discovery is required to determine the fairness of the settlement).

The Parties recognized at an early stage of the process that a Settlement in this Action was particularly appropriate. Although formal discovery had not yet commenced, Plaintiff conducted extensive economic and factual investigations to adequately evaluate the merits of the case and weigh the benefits of the Settlement against further litigation. *See Cotton*, 559 F.2d at 1332 (approving settlement over objection that not enough discovery was done, finding the plaintiff was adequately informed despite the fact that "very little discovery was conducted and that there is no voluminous record in the case.") Plaintiff entered into the Settlement with a clear understanding of the strengths and weaknesses of the claims in this Action

based on: (i) an extensive investigation, including the detailed review of numerous pages of publicly available documents regarding the Plan and an in-depth analysis of UCBI's business practices and financial condition; (ii) research of the law with regard to the claims asserted in the Action and the possible defenses thereto; (iii) consultation with a damages expert; (iv) briefing related to Defendants' motion to dismiss; and (v) arm's-length negotiations with Defendants before an experienced mediator. At the time of Settlement, Plaintiff was fully cognizant of the strength of the claims and risks faced, and believed without hesitation that the Settlement is in the best interests of the Settlement Class. Thus, under the totality of the circumstances, Plaintiff respectfully submits that the Settlement is fair, reasonable, and adequate, and should be preliminarily approved.

V. CLASS CERTIFICATION OF PLAINTIFF'S CLAIMS IS APPROPRIATE

It is well established that "[a] class may be certified solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue." *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 659 (S.D. Fla. 2011) (citing *Borcea*, 238 F.R.D. at 671). In deciding whether to certify a settlement class, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied. *Id.* As described in detail below, the proposed Settlement Class meets all four prerequisites of Rule 23(a): numerosity, commonality, typicality,

and adequacy. Rule 23(b)(1) is also satisfied, making the Settlement Class appropriate for class certification.

Plaintiff respectfully requests the Court make appropriate findings and certify the following Settlement Class, for settlement purposes only:

> All Persons (excluding Defendants and their Plan beneficiaries) who were participants in or beneficiaries (including alternate payees) of the Plan at any time between October 6, 2008 and July 22, 2013 (the "Class Period") and whose individual Plan account included investments in UCBI Stock during the Class Period.

In the Complaint, the end of the proposed Class Period was "to the present." For purposes of settlement, Plaintiff requests, and Defendants do not oppose, that the Court certify the Settlement Class so that the end date for the Class Period is July 22, 2013, the date the Settlement Agreement was executed. Having an end date to the Class Period will allow an orderly allocation of the Settlement proceeds because the Parties now know the universe of Plan participants eligible to partake in this Settlement, *i.e.*, all participants in the Plan from October 6, 2008 to July 22, 2013.

A. The Proposed Class Satisfies the Requirements of Federal Rule 23(a)

1. Numerosity

To warrant certification under Rule 23(a)(1), a proposed class must be "so numerous that joinder of all class members is impracticable." FED. R. CIV. P. 23(a)(1). Plaintiff need not show that the number of class members is so large that it would be impossible to join every class member, only that it is impracticable. *Ruderman ex. rel. Schwartz v. Washington Nat. Ins. Co.*, 263 F.R.D. 670, 678-79 (S.D. Fla. 2010); *In re Theragenics Corp. Sec. Litig.*, 205 F.R.D. 687, 694 (N.D. Ga. 2002) ("'Impracticable' is not synonymous with 'impossible.'") (quoting FED. R. CIV. P. 23(a)(1)). Parties seeking class certification do not need to know the precise number of class members, but must make a reasonable estimate. *Id.* The Eleventh Circuit has held that "[g]enerally, 'less than twenty-one is inadequate, more than forty adequate.'" *Ruderman ex. Rel. Schwartz*, 263 F.R.D. at 679 (citing *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 490 (S.D. Fla. 2003) (quoting *Cox v. Am. Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986))).

Here, the Class easily satisfies the numerosity requirement because there are approximately 2,000 members of the Settlement Class,[8] amply satisfying the impracticability standard. *See Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (finding numerosity requirement satisfied in class of "at least thirty-one individual class members").

2. Commonality

The threshold for commonality under Rule 23(a)(2) is not high. *In re Checking Account Overdraft Litig.*, 275 F.R.D. at 659. "[C]ommonality requires that there be at least one issue whose resolution will affect all or a significant number of the putative class members." *Id.* (citing *Williams v. Mohawk Industries, Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009)). Common questions abound in ERISA breach of fiduciary duty cases because plaintiffs and class members are similarly affected by defendants' plan-wide conduct. Consequently, in the ERISA context, courts routinely find that Rule 23(a)'s commonality requirement is satisfied. *See, e.g.*, *Moore v. Comcast Corp.*, No. 08-cv-0773, 2010 WL 1375462, at *5 (E.D. Pa. Apr. 6, 2010) ("[Plaintiff] has established, as well, that a number of common issues pervade this case, including whether defendants were fiduciaries of the Plan and

[8] *See* Complaint at ¶ 44 n.2 (noting that according to the 2009 Form 5500 filed with the Department of Labor and Department of Treasury, there were over 2,000 Plan participants as of December 31, 2009).

whether defendants breached their fiduciary duties by allowing the Plan to invest in the Company Stock Fund. A plaintiff need show only one common issue to fulfill the commonality requirement."); *In re CMS Energy ERISA Litig.*, 225 F.R.D. 539, 543-44 (E.D. Mich. 2004) (finding in ERISA company stock case that plaintiffs "have persuaded the court that common issues, the resolution of which would advance the litigation, certainly exist among members of the proposed class," including, as plaintiffs noted "whether CMS stock was an imprudent investment for the Plan.")

The paramount issue shared by all Settlement Class Members is whether Defendants breached their fiduciary duties owed to the Plan and the Plan's participants by allowing the Plan to invest and remain invested in UCBI Stock when it was no longer prudent to do so. This query is sufficient to meet the commonality requirement of Rule 23(a)(2). In addition, the following common questions of law and fact, among others, exist as to all members of the Settlement Class and predominate over any questions affecting solely individual potential Settlement Class members:

- whether Defendants were fiduciaries of the Plan;
- whether Defendants breached their fiduciary duties;
- whether the Plan and its participants were injured by such breaches; and
- whether the class is entitled to damages as a result.

In this matter, the questions common to the Settlement Class concern common issues of fiduciary responsibilities owed to the Plan's participants, "[a]ll of these questions are sufficient to satisfy plaintiffs' burden under Rule 23(a)(2)." *Von Moore v. Simpson*, No. 96-cv-2971, 1997 WL 570769, at *4 (N.D. Ill. Sept. 10, 1997).

3. Typicality

Under Rule 23(a)(3), Plaintiff's claims must be "typical" of those of the Class. FED. R. CIV. P. 23(a)(3). Claims are typical if they "arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). Typicality is not defeated by slight factual differences between the representatives and the rest of the class. *Strube*, 226 F.R.D. at 695 (citing *Elkins v. Equitable Life Ins. Co. of Iowa*, No. 96-cv-296, 1998 WL 133741, at *11 (M.D. Fla. 1998)).

In the instant case, Plaintiff was a participant in the Plan during the Class Period and held UCBI Stock as an investment in his individual Plan account. Under ERISA § 502(a)(2), Plaintiff alleges harm to the Plan as a whole which arises out of Defendants' breach of fiduciary duties. Based on these facts and allegations, Plaintiff undoubtedly satisfies the typicality requirement. *See In re Checking Account Overdraft Litig.*, 275 F.R.D. at 659 (citing *Murray v. Auslander*,

244 F3d 807, 811 (11th Cir. 2001)) (plaintiffs are typical of the class where they "possess the same interest and suffer the same injury as the class members") and *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d at 1332 (typicality satisfied where claims "arise from the same event or pattern or practice and are based on the same legal theory").

4. Adequacy

Rule 23(a)(4) requires the representative party in a class action to "adequately protect the interests of those he purports to represent." *David v. American Suzuki Motor Corp.*, No. 08-cv-22278, 2010 WL 1628362, at *4 (S.D. Fla. Apr. 15, 2010) (citing *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003)); *see also* FED. R. CIV. P. 23(a)(4). "The adequacy-of-representation requirement 'encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action.'" *Waters v. Cook's Pest Control, Inc.*, No. 07-cv-394, 2012 WL 2923542, at *10 (N.D. Ala. July 17, 2012) (citing *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1323 (11th Cir. 2008) (quoting *Valley Drug Co.*, 350 F.3d at 1189)).

The law governing the adequacy of representatives is well settled: "[O]nly a conflict that goes to the very subject matter of the litigation will defeat a party's

claim of representative status." 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 1768 at 390 (3d ed. 2005). Here, the interest of Plaintiff is completely aligned with, not antagonistic to, the interests of the proposed Settlement Class as all Settlement Class Members hope to achieve the maximum possible financial recovery. *See Strube*, 226 F.R.D. at 696 (citing *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981)) (where adequacy of representation is considered in the settlement context, "so long as all class members are united in asserting a common right, such as achieving the maximum possible recovery for the class, the class interests are not antagonistic for representation purposes.").[9] Each member of the proposed Settlement Class, just like Plaintiff, has an interest in recovering losses suffered by the Plan as a result of the decimation of the price of UCBI Stock.

Furthermore, Plaintiff has vigorously prosecuted the Settlement Class Members' claims in motion practice and during settlement negotiations through its Counsel. Traditionally, analysis of a plaintiff's ability to adequately prosecute the

[9] Fifth Circuit cases decided before October 1, 1981 are binding precedent in the Eleventh Circuit. *See, e.g.*, *U.S. v. Pritt*, No. 11-cv-10909, 2012 WL 265927, at *3 n.5 (11th Cir. Jan. 31, 2012) ("In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (*en banc*), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981"); *see also State Treasurer v. Barry*, 168 F.3d 8, n.7 (11th Cir. 1999) (citing *Bonner*, 661 F.2d at 1209.)

action on behalf of a class also included analysis of the adequacy of plaintiff's counsel. As a result of the 2003 amendments to the Federal Rules of Civil Procedure, the adequacy of counsel is governed not by Rule 23(a)(4) but by Rule 23(g). *Eslava v. Gulf Telephone Co.*, No. 04-cv-297, 2007 WL 2298222, at n.3 (S.D. Ala. Aug. 7, 2007) (citing FED. R. CIV. P. 23; *Advisory Committee Comments*). Plaintiff addresses the adequacy of counsel below in his discussion of Rule 23(g). *See* Section VI, *infra*.[10]

Accordingly, Plaintiff's interests in the lawsuit are aligned with the interests of the absent class members and Plaintiff satisfies Rule 23(a)(4).

B. The Proposed Class Meets the Requirements of Rule 23(b)(1)

In addition to demonstrating the requirements of Rule 23(a) are met, Plaintiff must also establish that at least one subsection of Rule 23(b) is satisfied. Here, certification is proper under Rule 23(b)(1), which states that a class may be certified if:

> (1) prosecuting of separate actions by or against individual class members would create a risk of:
>
> > (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the

[10] As discussed therein, Plaintiff has retained qualified, experienced attorneys who are at the forefront of this type of ERISA breach of fiduciary duty class action litigation.

> party opposing the class, or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests[.]

FED. R. CIV. P. 23(b)(1). Thus, Rule 23(b)(1)(A) "considers possible prejudice to the defendants, while 23(b)(1)(B) looks to possible prejudice to the putative class members." *In re Ikon Office Solutions, Inc. Sec. Litig.*, 191 F.R.D. 457, 466 (E.D. Pa. 2000).

1. Certification Under Rule 23(b)(1)(B) is Most Appropriate

Many courts rely upon subsection (b)(1)(B) of Rule 23 in certifying class actions based upon allegations that defendants breached their fiduciary obligations to plaintiffs. Indeed, the Third Circuit held that "[i]n light of the derivative nature of ERISA § 502(a)(2) claims, breach of fiduciary duty claims brought under § 502(a)(2) are paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class, as numerous courts have held." *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 604 (3d Cir. 2009) (citations omitted). Courts across the nation, including within this Circuit, have echoed that holding. *See, e.g.*, *In re Colonial Bancorp, Inc. ERISA Litig.*, No. 09-cv-792, Order Approving Final Judgment (M.D. Ala. Oct. 12, 2012) (granting final approval of certified settlement

class in ERISA imprudent investment action); *In re Beazer Homes USA, Inc. ERISA Litig.*, No. 07-cv-952, Order Granting Preliminary Approval (N.D. Ga. Aug. 11, 2010) (granting preliminary approval of certified settlement class in ERISA imprudent investment action); *Eslava*, 2007 WL 2298222, at *6 (certifying ERISA class under Rule 23(b)(1)(B)). Because Plaintiff pursues the instant ERISA claims in a representative capacity in accordance with ERISA's remedial provisions, this Action is particularly appropriate for class action treatment under Rule 23(b)(1)(B).

2. This Action Also May Be Certified Under Rule 23(b)(1)(A)

In the alternative, certification under subsection (b)(1)(A) is also appropriate. In fact, it is not uncommon for courts to certify ERISA class actions under both subsections of Rule 23(b)(1). *See, e.g.*, *Dalton v. Old Second Bancorp, Inc.*, No. 11-cv-1112, slip op. (N.D. Ill. Sept. 20, 2011) (certifying class where plaintiffs moved for certification under Rule 23(b)(1)(A) and 23(b)(1)(B)); *Yost v. First Horizon*, No. 08-cv-2293, 2011 WL 2182262, at *13-14 (W.D. Tenn. June 3, 2011) (certifying class under Rule 23(b)(1)(A) and 23(b)(1)(B)); *Abbott v. Lockheed Martin Corp.*, No. 06-cv-0701, 2009 WL 969713, at *9 (S.D. Ill. Apr. 3, 2009) (same). A number of district courts recognize the nature of the case, which challenges defendants' plan-wide conduct, makes this result particularly

appropriate. *See, e.g.*, *In re Merck & Co., Inc. Sec., Der. & ERISA Litig.*, No. MDL 1658, 2009 WL 331426, at *10-12 (D.N.J. Feb. 10, 2009) (certifying class under Rule 23(b)(1)(A) and noting "the risk of establishing inconsistent standards under ERISA is particularly strong where, as here, a central element of the prudence claims is not an individual matter: the fiduciary duties are owed to the plan"); *Rankin v. Rots*, 220 F.R.D. 511, 523 (E.D. Mich. 2004) ("A failure to certify a class could expose defendants to multiple lawsuits and risk inconsistent decisions"). Accordingly, the Court may also certify the Settlement Class under Rule 23(b)(1)(A).

VI. KTMC AND HOLZER HOLZER AND FISTEL, LLC SHOULD BE APPOINTED AS COUNSEL FOR THE SETTLEMENT CLASS

Federal Rule 23(g) specifies that unless a statute provides otherwise, a court that certifies a class must appoint class counsel, and an attorney appointed to serve as class counsel "must fairly and adequately represent the interests of the class." *Donovan v. St. Joseph County Sheriff*, No. 11-cv-133, 2012 WL 1601314, at *8 (N.D. Ind. May 3, 2012) (quoting FED. R. CIV. P. 23(g)(4)); *Hornsby v. Macon County Greyhound Park, Inc.*, No. 10-cv-680, 2013 WL 173003, at *2 (M.D. Ala. Jan. 16, 2013) (finding class counsel fairly and adequately represented the interests of the settlement class in preliminarily approving settlement). In making this determination "the court must consider the following: '(i) the work counsel has

done in investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.'" *Donovan*, 2012 WL 1601314, at *8 (citing FED. R. CIV. P. 23(g)(1)(A)).

Plaintiff retained attorneys that are highly qualified, experienced, and able to litigate this matter. Kessler Topaz Meltzer & Check, LLP ("KTMC"), Class Counsel in this Action has substantial experience litigating similar ERISA class action cases, along with other complex litigation, and are well-qualified to weigh the risks and benefits of continued litigation as compared to the relief provided by the Settlement. KTMC, headed by Joseph H. Meltzer, Chair of the ERISA Litigation Department, and his partners Edward W. Ciolko and Peter A. Muhic, are highly qualified ERISA class action attorneys and unequivocally recommend this Settlement.[11] KTMC has been named Lead or Co-Lead Counsel in numerous breach of fiduciary duty class actions within this District and across the nation.[12]

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[11] *See* firm resume of KTMC attached hereto as Exhibit B.

[12] Actions in which KTMC was appointed Lead or Co-Lead counsel include *In re Chesapeake Energy Corp. 2012 ERISA Class Litig.*, 286 F.R.D. 621 (W.D. Okla. 2012) (order appointing KTMC interim class counsel); *Harris v. First Regional Bancorp*, No. 10-cv-07164 (C.D. Cal. Jan. 6, 2011) (Order appointing KTMC interim class counsel); *Shane, et al. v. Amcore, et al.*, No. 10-cv-50089

Recently, in appointing KTMC interim lead class counsel in another ERISA breach of fiduciary duty class action, a fellow district court stated:

> [T]he Court finds that KTMC is one of the most experienced ERISA litigation firms in the country, with particular expertise in the area of ERISA breach of fiduciary class actions. Further, KTMC's litigation efforts have resulted in favorable court opinions in a number of ERISA decisions denying motions to dismiss and motions for summary judgment. KTMC has also prevailed in appeals before the First, Third, Sixth, and Ninth Circuits resulting in seminal decisions that have helped shape this relatively new area of ERISA jurisprudence. Moreover, KTMC is one of only a very few firms in the country with trial experience in ERISA "company stock" fiduciary breach class actions. Finally, in addition to its extensive litigation experience, KTMC has also successfully engaged in extensive, intricate and

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(N.D. Ill. Mar. 24, 2011) (order appointing KTMC Co-Lead Class Counsel for the Plaintiffs); *In re Advanta Corp. ERISA Litig.*, No. 09-cv-04974 (E.D. Pa. June 4, 2010); *In re R.H. Donnelley ERISA Litig.*, No. 09-cv-07571 (N.D. Ill. Mar. 16, 2010); *Dann v. Lincoln Nat'l Corp.*, No. 08-cv-5740 (E.D. Pa. June 4, 2009) (order appointing KTMC as Interim Class Counsel for the putative plaintiff class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure); *In re SunTrust Banks, Inc. ERISA Litig.*, No. 08-cv-3384 (N.D. Ga. Oct. 5, 2009) (appointing KTMC Interim Co-Lead Class Counsel); *In re: SLM Corp. ERISA Litig.*, No. 08-cv-4334 (S.D.N.Y. Sept. 30, 2008); *In re First American Corp. ERISA Litig*, No. 07-cv-01357 (C.D. Cal. Feb. 1, 2008); *In re National City Corp. Securities, Derivative and Employee Retirement Income Security Act (ERISA) Litig.*, No. 08-cv-70000 (N.D. Ohio May 12, 2008); *In re Beazer Homes USA, Inc. ERISA Litig.*, No. 07-cv-00952-RWS (N.D. Ga. Oct. 11, 2007); *Nowak v. Ford Motor Co.*, 240 F.R.D. 355 (E.D. Mich. 2006); *In re Lear ERISA Litig.*, No. 06-cv-11735 (E.D. Mich. June 30, 2006); *In re Raytheon ERISA Litig.*, No. 03-cv-10940 (D. Mass. Sept. 18, 2003); *In re Westar Energy Inc. ERISA Litig.*, No. 03-cv-4032 (D. Kan. Sept. 23, 2003).

> successful settlement negotiations and mediations involving complex legal and factual issues involving ERISA claims, resulting in large recoveries for affected classes.

In re Chesapeake Energy Corp. 2012 ERISA Class Litig., 286 F.R.D. at 624 (order appointing KTMC interim class counsel). In addition, Liaison Class Counsel, Holzer Holzer & Fistel, LLC, has extensive experience in complex litigation, including ERISA class actions and cases involving financial institutions, and also recommends this Settlement.[13]

VII. CONCLUSION

Based on the foregoing, Plaintiff respectfully moves this Court to grant his Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, Approval of Class Notice, and Scheduling of a Final Approval Hearing.

DATED: July 23, 2013

Respectfully submitted,

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[13] The firm resume of Holzer Holzer & Fistel, LLC is attached as Exhibit C.

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LOCAL RULE 7.1D CERTIFICATION

Undersigned counsel hereby certifies that this brief has been prepared in Times New Roman 14 point, which is one of the font and point selections approved by this Court under Local Rules 5.1B.

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CERTIFICATE OF SERVICE

The Undersigned hereby certifies that on this 23rd day of July 2013, a true and accurate copy of Plaintiff's Memorandum of Law In Support of Unopposed Motion For Preliminary Approval of Class Action Settlement, Conditional Certification of the Settlement Class, Approval of Class Notice, And Scheduling of a Final Approval Hearing was filed electronically with the Clerk of Court using the CM/ECF system, which will send electronic notification to all counsel of record.

/s/ Mark K. Gyandoh

EXHIBIT A

Settlement Agreement

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JONATHAN ALFORD, individually and on behalf of all others similarly situated, Plaintiff, vs. UNITED COMMUNITY BANKS, INC., JIMMY C. TALLENT, GUY W. FREEMAN, ROBERT L. HEAD, JR., W.C. NELSON, JR., ROBERT BLALOCK, CATHY COX, HOYT O. HOLLOWAY, JOHN D. STEPHENS, TIM WALLIS, BENEFITS ADMINISTRATIVE COMMITTEE OF UNITED COMMUNITY BANKS, INC., CATHERINE HAMBY, BRAD MILLER, REX SCHUETTE, BILL GILBERT, SUSIE HOOPER, and DOES 1-10, Defendants.	CIVIL ACTION FILE NO. 2:11-cv-00309-WCO

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("*Settlement Agreement*") is entered into by and between: (i) the *Named Plaintiff* in the above-captioned *Action*, for himself and on behalf of the *Settlement Class* and the *Plan*, and the (ii) *Defendants* (collectively, the "*Parties*") pursuant to Rule 23 of the Federal Rules of Civil Procedure and subject to court approval.

WHEREAS, the *Named Plaintiff* in the above-captioned *Action* asserts various *Claims* for relief under *ERISA* against *Defendants*, all of which *Claims* are disputed by *Defendants*; and

WHEREAS, the *Parties* desire to fully resolve and settle with finality this *Action*;

NOW, THEREFORE, the *Parties*, in consideration of the promises, covenants, and agreements herein described, and acknowledged by each of them to be fair and reasonable, and intending to be legally bound, do hereby mutually agree as follows:

1. DEFINITIONS

As used in this *Settlement Agreement*, italicized and capitalized terms and phrases not otherwise defined herein have the meanings provided below:

1.1 "*Action*" shall mean Alford v. United Community Banks, Inc., et al., No. 11-cv-00309 (N.D. Ga.).

1.2 "*Administrative Committee Defendants*" shall mean the Administrative Committee of *UCBI* and its individual members, named as defendants in the *Action*.

1.3 "*Affiliate*" shall mean, with respect to a *Person*, any entity which owns or controls, is owned or controlled by, or is under common ownership or control with that *Person*.

1.4 "*Agreement Execution Date*" shall mean the date on which the final signature of the *Parties* is affixed to this *Settlement Agreement*.

1.5 "*CAFA*" shall mean the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711-1715.

1.6 "*CAFA Notice*" shall mean notice of this proposed *Settlement* to the appropriate federal and state officials, as provided by *CAFA*. The cost and expense associated with providing *CAFA Notice* shall be borne by *Defendants* and/or *Defendants' Insurers*.

1.7 "*CAFA Notice Recipients*" shall have the meaning set forth in Section 2.1.4.

1.8 "*Case Contribution Award*" shall mean the monetary amount awarded by the *Court* to be paid from the *Settlement Amount* to the *Named Plaintiff* in recognition of *Named Plaintiff's* assistance in the prosecution of this *Action*, for which *Class Counsel* may seek an amount not exceeding $5,000. Any such *Case Contribution Award* shall be subject to the approval of the *Court* as set forth in Section 11.3 below.

1.9 "*Claims*" shall mean any and all claims, counterclaims, crossclaims, complaints, charges, demands, actions, causes of action, judgments, debts, expenses, losses, liabilities, and obligations, including attorneys' fees, expenses, and costs.

1.10 "*Class Counsel*" shall mean Kessler Topaz Meltzer & Check, LLP.

1.11 "*Class Notice*" shall mean the form of notice appended as Exhibit A to the form of *Preliminary Approval Order*, attached hereto as Exhibit 1.

1.12 "*Class Period*" shall mean the period from October 6, 2008 to the *Agreement Execution Date*.

1.13 "*Company*" or "*UCBI*" shall mean United Community Banks, Inc., each of its *Affiliates*, and each of its predecessors and *Successors-In-Interest*.

1.14 "*Company Stock Fund*" or "*UCBI Stock Fund*" shall mean the investment fund within the *Plan* that invested primarily in shares of *UCBI Stock*.

1.15 "*Court*" shall mean the United States District Court of the Northern District of Georgia.

1.16 "*Defendants*" shall mean *UCBI*, the *Administrative Committee Defendants, Director Defendants*, and the *Individual Defendants*, collectively.

1.17 "*Defendants' Insurers*" shall mean Illinois National Insurance Company, which insured *Defendants* under Policy No. 01-602-47-09, at all relevant times in connection with this *Action*.

1.18 "*Defendants' Released Claims*" are any potential or asserted *Claims* or demands against the *Named Plaintiff*, *Class Counsel*, *Liaison Class Counsel*, or the *Settlement Class Members* by the *Defendants* or the *Defendants' Insurers* that arise from the institution or prosecution of this *Action* or relating to the settlement of any of *Plaintiff's Released Claims*.

1.19 "*Defendants' Released Persons*" shall mean the *Named Plaintiff*, the *Settlement Class*, *Class Counsel*, and *Liaison Class Counsel*.

1.20 "*Director Defendants*" shall mean Jimmy C. Tallent, Guy W. Freeman, Robert L. Head, Jr., W.C. Nelson, Jr., Robert Blalock, Cathy Cox, Hoyt O. Holloway, John D. Stephens, and Tim Wallis, collectively.

1.21 "*Effective Date*" shall mean the date upon which the *Final Approval Order and Judgment* becomes *Final*.

1.22 "*ERISA*" shall mean the Employee Retirement Income Security Act of 1972, as amended, 29 U.S.C. § 1001, *et seq*.

1.23 "*Escrow Account*" shall mean an account at an established financial institution selected by the *Settlement Administrator* and approved by *Class Counsel*, that is established for the deposit of any amounts relating to the Settlement as funded by *Defendants* and/or *Defendants' Insurers* in accordance with Section 8.1.

1.24 "*Final*" shall mean, with respect to any judicial ruling or order, an order that is final for purposes of 28 U.S.C. § 1291, and that: (a) the time has expired to file an appeal, motion for reargument, motion for rehearing, petition for a writ of certiorari or other writ ("*Review Proceeding*") with respect to such judicial ruling or order with no such *Review Proceeding* having been filed; or (b) if a *Review Proceeding* has been filed with respect to such judicial ruling or order, (i) the judicial ruling or order has been affirmed without modification and with no further right of review, or (ii) such *Review Proceeding* has been denied or dismissed with no further right of review.

1.25 "*Final Approval Hearing*" shall have the meaning set forth in Section 2.1.1.1.

1.26 "*Final Approval Order and Judgment*" shall mean an order by the *Court* which approves the fairness, reasonableness, and adequacy of the *Settlement* as set forth in Section 2.1.5 and is substantially in the form attached hereto as Exhibit 2.

1.27 "*Financial institution*" shall have the meaning set forth in Section 8.1.1.

1.28 "*First Amended Class Action Complaint*" shall mean the First Amended Class Action Complaint filed in this *Action* on November 30, 2011.

1.29 "*Independent Fiduciary"* shall collectively mean a *Plan* fiduciary retained by one or more of the *Defendants,* in *their* sole discretion and at *Defendants' a*nd/or *Defendants' Insurers'* expense, to evaluate the fairness of the *Settlement* to the *Plan* and approve the terms of the release contemplated herein on the *Plan's* behalf. The *Independent Fiduciary* shall have no relationship with or interest in *Named Plaintiff* or *Defendants* that might affect such *Person's* best judgment as a fiduciary.

1.30 "*Individual Defendants*" shall mean Jimmy C. Tallent, Guy W. Freeman, Robert L. Head, Jr., W.C. Nelson, Jr., Robert Blalock, Cathy Cox, Hoyt O. Holloway, John D. Stephens, Tim Wallis, Catherine Hamby, Brad Miller, Rex Schuette, Bill Gilbert, and Susie Hooper.

1.31 "*Liaison Class Counsel*" shall mean Holzer Holzer & Fistel, LLC.

1.32 "*Mediator*" shall mean David Geronemus, Esq.

1.33 "*Named Plaintiff*" shall mean Jonathan Alford.

1.34 "*Net Settlement Fund*" shall mean the *Settlement Fund* less the costs for provision of *Class Notice*, *Settlement* administration costs, taxes, *Court*-approved attorneys' fees and litigation costs, any *Case Contribution Award* to the *Named Plaintiff* and other costs the *Court* deems payable from the *Settlement Fund*.

1.35 "*Objection*" shall have the meaning set forth in 2.1.5.3.

1.36 "*Party(ies)*" shall mean the *Named Plaintiff* and *Defendants*, collectively.

1.37 "*Person*" shall mean any individual, partnership, corporation, governmental entity, or any other form of legal entity or organization.

1.38 "*Plaintiff's Released Claims*" shall mean any and all *Claims* of any nature whatsoever, whether individual, representative, or derivative, known or unknown, accrued or unaccrued, in law or equity, by or on behalf of the *Plan*, the *Named Plaintiff* and the *Settlement Class*, including respective heirs, beneficiaries, executors, administrators, *Successors-In-Interest* and assigns that: (a) were brought or could have been brought in the *Action* and arise out of any or all of the same or substantially similar acts, omissions, facts, matters, circumstances, situations, transactions or occurrences as those alleged in the *Action* during the *Class Period,* including but not limited to claims that *Defendant*s and/or any fiduciaries of the *Plan* breached fiduciary duties during the *Class Period* in connection with (1) the acquisition and holding of *UCBI Stock* by the *Plan* or the *Plan's* participants during the *Class Period*, (2) the appointment and/or monitoring of the *Plan's* fiduciaries with regard to *UCBI* or *UCBI Stock* during the *Class Period*, (3) the provision of information to the *Plan's* fiduciaries or participants and beneficiaries of the *Plan* during the *Class Period*, or (4) the loyalty of the *Plan's* fiduciaries regarding *UCBI* or the *UCBI Stock* during the *Class Period*; (b) were brought or could have been brought under *ERISA* based on or relating to the investment of *Plan* assets in *UCBI Stock* by or through the *Plan* during the *Class Period*; and/or (c) are related to the prosecution, defense or settlement of the *Action*. Notwithstanding any other provision of this *Settlement Agreement*, Plaintiff and members of the *Settlement Class* shall not be deemed to have barred, waived, or released any *Claim* by any individual *Plan* participant concerning his or her eligibility for benefits under the

Plan or to contest the correct amount of such benefit except to the extent that such claim may relate to the *Claims* asserted in the *First Amended Class Action Complaint*.

1.39 "*Plaintiff's Released Persons*" shall mean: (a) *UCBI* and its parents, *Affiliates*, subsidiaries, predecessors, *Successors-In-Interest*, assigns, and past or present directors, officers, controlling persons, attorneys, counselors, insurers, reinsurers, financial or investment advisors, consultants, accountants, representatives or agents, (b) each of the other *Defendants* and their heirs, executors, trustees, personal representatives, estates or administrators, attorneys, counselors, insurers, reinsurers, financial or investment advisors, consultants, accountants, advisors, representatives or agents, and (c) any and all other fiduciaries of the *Plan* during the *Class Period*.

1.40 "*Plan*" shall mean the United Community Banks, Inc. Profit Sharing Plan.

1.41 "*Plan of Allocation*" shall mean the Plan of Allocation approved by the *Court* as contemplated by Section 2.1.5, and as described in Section 9.3.3 and in the form attached hereto as *Exhibit* 3.

1.42 "*Plan Recordkeeper(s)*" shall mean the *Plan's* current and past recordkeepers, including present recordkeeper INTRUST Bank, N.A.

1.43 "*Preliminary Approval Motion*" shall have the meaning set forth in Section 2.1.1.1.

1.44 "*Preliminary Approval Order*" shall have the meaning set forth in Section 2.1.1.1 and be substantially in the form attached hereto as Exhibit 1.

1.45 "*PTCE 2003-39*" refers to the ERISA Prohibited Transaction Class Exemption 2003-39, "Class Exemption for the Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75632-40, as amended.

1.46 "*Released Claims*" refers collectively to the *Plaintiff's Released Claims* and *Defendants' Released Claims* as defined in Sections 1.38 and 1.18, respectively.

1.47 "*Released Persons*" refers collectively to *Plaintiff's Released Persons* and *Defendants' Released Persons.*

1.48 "*Review Proceeding*" shall have the meaning set forth in Section 1.23.

1.49 "*Settlement*" shall mean the settlement to be consummated under this *Settlement Agreement*.

1.50 "*Settlement Administrator*" shall mean the third-party vendor retained by *Class Counsel* to assist with all administrative matters related to the *Settlement* as described in Sections 2.1.4, 2.1.4.1, 5.1, 9.3.3, and 9.3.4. The *Settlement Administrator's* fees and expenses shall be paid out of the *Settlement Amount*.

1.51 "*Settlement Agreement*" shall refer to this *Settlement Agreement,* including any modifications or amendments adopted pursuant to Section 12.5.

1.52 "*Settlement Amount*" shall mean the sum of three million five hundred thousand U.S. dollars ($3,500,000.00).

1.53 "*Settlement Class*" shall mean all *Persons* (excluding *Defendants* and their *Plan* beneficiaries) who were participants in or beneficiaries (including alternate payees) of the *Plan* at any time between October 6, 2008 and the *Agreement Execution Date* (the "*Class Period*") and whose individual *Plan* account included investments in *UCBI Stock* during the *Class Period*.

1.54 "*Settlement Class Member*" shall mean a member of the *Settlement Class*.

1.55 "*Settlement Condition #1*" shall have the meaning set forth in Section 2.1.

1.56 "*Settlement Condition #2*" shall have the meaning set forth in Section 2.2.

1.57 "*Settlement Condition #3*" shall have the meaning set forth in Section 2.3.

1.58 "*Settlement Condition #4*" shall have the meaning set forth in Section 2.4.

1.59 "*Settlement Fund*" shall mean the *Settlement Amount* deposited in the *Escrow Account* in accordance with Section 8.1 and all subparts thereof.

1.60 "*Successors*" or "*Successors-In-Interest*" shall mean a *Party* or *Person's* estate, executor, legal representative, heirs, successors, or assigns, including successors or assigns that result from corporate mergers or other structural changes, and any other *Person* who can make a legal claim by or through such *Party* or *Person*.

1.61 "*Terminate*" or "*Termination*" shall have the meaning set forth in Section 10.1.

1.62 "*Terminating Party*" shall have the meaning set forth in Section 10.1.

1.63 "*UCBI Stock*" shall mean the common stock of United Community Banks, Inc.

1.64 "*UCBI Stock Fund*" shall mean the fund in the *Plan* that was invested in *UCBI Stock*.

2. CONDITIONS AND OBLIGATIONS RELATING TO THE EFFECTIVENESS OF THE SETTLEMENT

The *Settlement* shall not become effective unless and until each and every one of the conditions and obligations in Sections 2.1 through 2.4 (the "*Settlement Conditions*") has been either satisfied or waived in writing by the *Party* entitled to the benefit of the condition or obligation. Except as otherwise provided in this *Settlement Agreement*, the *Parties* will use reasonable, good faith, best efforts to cause each of the *Settlement Conditions* to occur, including supporting the *Settlement Agreement* through any *Review Proceeding*.

2.1 Condition #1: *Final Court* Approval and Class Certification. The *Court* must approve the *Settlement* and certify a *Settlement Class* for settlement purposes, and the *Court's* approval of the *Settlement* must become *Final*, in accordance with the following steps:

2.1.1 Motion for Preliminary Approval of *Settlement*.

2.1.1.1 The *Parties* will, in good faith, use reasonable efforts consistent with ordinary commercial practice to enable the *Named Plaintiff* to file as soon as practicable a motion ("*Preliminary Approval Motion*") with the *Court* for an order (the "*Preliminary Approval Order*") substantially in the form annexed hereto as Exhibit 1, including the exhibits thereto, and the *Parties* shall, in good faith, take reasonable steps to (a) secure expeditious entry of the *Preliminary Approval Order* by the *Court*, and (b) seek a date for a hearing to finally determine whether the *Settlement* is fair, reasonable, and adequate pursuant to FED. R. CIV. P. 23(e) of the Federal Rules of Civil Procedure (the "*Final Approval Hearing*"), at least ninety (90) calendar days following the mailing of the *CAFA* Notice and sixty (60) days following the mailing of the *Class Notice*, or at such other time set by the *Court*.

2.1.1.2 Class Certification. In connection with the proceedings for preliminary and final approval of the proposed *Settlement*, *Named Plaintiff* shall, through *Class Counsel*, seek orders (preliminary and final, respectively) certifying the *Settlement Class* pursuant to FED. R. CIV. P. 23(b)(1). For *Settlement* purposes only, and to effectuate this *Settlement Agreement*, *Defendants* shall consent to such certification of the *Settlement Class*.

2.1.2 Entry of *Preliminary Approval Order*. The *Court* shall enter a *Preliminary Approval Order* substantially in the form annexed hereto as Exhibit 1. If the *Court* does not enter the *Preliminary Approval Order* (either initially, or if a *Review Proceeding* has been initiated, then after the conclusion of a *Review Proceeding*) then (a) there shall be no obligation by the *Defendants* or *Defendants' Insurers* to pay any portion of the *Settlement Amount*, and (b) any *Party* may *Terminate* this *Settlement Agreement* pursuant to Section 10.

2.1.3 Issuance of *Class Notice*. Pursuant to the *Preliminary Approval Order* to be entered by the *Court*, the *Settlement Administrator* shall cause the *Class Notice* to be disseminated to the *Settlement Class* in the same or substantially the same form attached as Exhibit A to the *Preliminary Approval Order*.

2.1.4 Pursuant to *CAFA*, *Defendants* shall prepare and provide *CAFA Notices* to the Federal Deposit Insurance Corporation, the Office of the Comptroller of Currency, the Georgia Department of Banking and Finance, and the Attorneys General of the United States and all states in which members of the *Settlement Class* reside (the "*CAFA Notice Recipients*") within ten (10) calendar days after filing of the *Preliminary Approval Motion*. In the event that the *Preliminary Approval Order* provides for any modifications to the *CAFA Notices*, then *Defendants* shall prepare and issue supplemental or amended *CAFA Notices* as appropriate.

2.1.5 Final Approval Order and Judgment.

2.1.5.1 The *Named Plaintiff* shall file a motion seeking final approval of the *Settlement* (the "*Final Approval Motion*") with the *Court* no later than 31 days before the *Final Approval Hearing*. In the *Final Approval Motion*, the *Named Plaintiff* will

request that the *Court*, on or after the *Final Approval Hearing*: (a) enter a *Final Approval Order and Judgment*, substantially in the form attached as Exhibit 2, granting final approval of the *Settlement* and dismissing the *Action* with prejudice; (b) approve the distribution of the *Net Settlement Fund* as provided in the *Plan of Allocation*; (c) determine the amount of legal fees and expenses to be awarded to *Class Counsel* as contemplated by Section 11 of this *Settlement Agreement*; and (d) determine the *Case Contribution Award*, if any, to be awarded to the *Named Plaintiff*.

2.1.5.2 The *Final Approval Motion* also shall ask the *Court* to permanently enjoin: (i) the members of the *Settlement Class* from bringing in any forum any of *Plaintiff's Released Claims* against any of *Plaintiff's Released Persons* and (ii) *Defendants* from bringing in any forum any of *Defendants' Released Claims* against any of *Defendants' Released Persons*.

2.1.5.3 At the *Final Approval Hearing*, the *Named Plaintiff* and *Defendants* shall request that the *Court* rule on any objections to the *Settlement* ("*Objections*") by any *Class Members* or *CAFA Notice* recipients ("*CAFA Notice Recipients*") and find that the *Settlement* is fair, reasonable and adequate, and enter the *Final Approval Order and Judgment*.

2.1.5.4 The *Parties* agree to support entry of the *Final Approval Order and Judgment*, including through the conclusion of any *Review Proceeding*. Further, *Defendants* shall not take any adverse position with respect to the matters described in clauses b, c, or d of Section 2.1.5.1, so long as disposition of those matters is substantially in accordance with the provisions of Section 9 and Section 11 of this *Settlement Agreement*. The *Parties* otherwise covenant and agree to reasonably cooperate with one another and to take all actions reasonably necessary to effectuate the *Settlement Agreement* and to obtain a *Final Approval Order and Judgment*.

2.1.5.5 The *Settlement* provided for in this *Settlement Agreement* is expressly conditioned upon the entry of the *Final Approval Order and Judgment* by the *Court*, and the *Final Approval Order and Judgment* becoming *Final* in accordance with Sections 2.1.5.1, 2.1.5.2, 2.1.5.3, 2.1.5.4, and 2.1.5.5. In the event that the *Court* denies approval to any material term of the *Settlement*, at the conclusion of any *Review Proceeding*, any *Party* may *Terminate* the *Settlement* pursuant to Section 10.

2.2 Condition #2: Funding of *Settlement Amount*. *Defendants* and/or *Defendants' Insurers* must have caused the *Settlement Amount* to be deposited into the *Settlement Fund* in accordance with Section 8.1.2.

2.3 Condition #3: Resolution of *CAFA Objections* (If any). In the event that any of the *CAFA Notice Recipients* object to and request material modifications to the Settlement, *Named Plaintiff* agrees to cooperate and work with *Defendants* to overcome such *Objection(s)* and requested material modifications but have no obligation to alter any material term or condition of the *Settlement*. In the event such *Objection(s)* or requested material modifications are not overcome, *Defendants* shall have the right to *Terminate* the *Settlement Agreement* pursuant to Section 10.

2.4 Condition #4: *Independent Fiduciary's* Approval.

2.4.1 Approval by the *Independent Fiduciary*.

(a) The *Independent Fiduciary* must approve the *Settlement* in accordance with this Section 2.4.1. Subject to *Defendants'* right to waive this condition, as described in Section 2.4.2, the *Settlement* shall be contingent upon the *Independent Fiduciary*: (a) approving the *Settlement,* including the *Plan of Allocation*; (b) approving the release of *Plaintiff's Released Claims* to *Plaintiff's Released Persons* on behalf of the *Plan* under Section 3.1; and (c) making a determination that the *Settlement* complies with the terms of *PTCE 2003-39*, including a finding that the *Settlement* does not constitute a prohibited transaction under *ERISA* § 406. The *Independent Fiduciary* shall make these findings in a written report. The *Parties* shall cooperate in providing information to the *Independent Fiduciary*, as he or she may request. Further, the *Parties* agree to meet and confer in good faith to attempt to resolve any concerns or objections raised by the *Independent Fiduciary*. The *Independent Fiduciary* shall have no authority to renegotiate any terms set forth in this *Settlement Agreement* without the *Parties'* consent.

(b) *Defendants* and/or *Defendants' Insurers* shall bear all costs and expenses associated with the *Independent Fiduciary* and incurred by the *Independent Fiduciary* or *Defendants'* counsel. In no event shall any fees or expenses of the *Independent Fiduciary* be chargeable to the *Settlement Fund*, *Named Plaintiff*, *Class Counsel*, *Liaison Class Counsel*, or the *Settlement Class*.

2.4.2 Waiver of Approval by the *Independent Fiduciary*. *Defendants* shall determine in their sole discretion whether the *Settlement* shall be contingent on any, some, or all of the conditions identified in Section 2.4.1(a). Any waiver of any of those conditions by *Defendants* shall be effective only if in writing and signed by *Defendants* or an authorized officer or representative of *Defendants*.

2.4.3 Notice of Approval by the *Independent Fiduciary* or Waiver. *Defendants* shall notify *Class Counsel* no later than fourteen (14) days prior to the *Final Approval Hearing* as to whether the *Independent Fiduciary* has provided the requisite approval, authorization, or finding, or whether *Defendants* have elected to waive the conditions identified in Section 2.4.1(a). In the event that the *Independent Fiduciary* provides the requisite approval, authorization, or finding, the *Parties* shall cooperate in filing the report of the *Independent Fiduciary* approving the *Settlement* with the *Court* no later than seven (7) days prior to the *Final Approval Hearing*.

3. RELEASES

3.1 *Named Plaintiff*, the *Settlement Class*, and the *Plan's* Releases. Upon the *Effective Date*, the *Named Plaintiff* (or his *Successors*) shall and hereby do conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge, and the *Plan* and the *Settlement Class* shall, by operation of the *Final Approval Order and Judgment*, be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged the *Plaintiff's Released Persons* from all of *Plaintiff's Released Claims*.

3.2 *Defendants'* Releases. Upon the *Effective Date*, *Defendants* shall conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge *Defendants' Released Persons* from all of *Defendants' Released Claims*.

3.3 Scope of Releases. The releases and discharges set forth in Sections 3.1 and 3.2 shall not include the release or discharge of any rights or duties of the *Parties* arising out of this *Settlement Agreement*, including the express warranties and covenants contained herein.

3.4 *Named Plaintiff*, on his own behalf and on behalf of the *Settlement Class* and the *Plan,* and *Defendants* hereby expressly waive and relinquish, to the fullest extent permitted by law, any and all provisions, rights and benefits respectively conferred upon him and them by Section 1542 of the California Civil Code and any and all similar provisions of the statutory or common laws, rules, regulations and principles of any other state, territory, or other jurisdiction. Section 1542 reads in pertinent part:

> 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.

This express waiver is made with the understanding that *Named Plaintiff*, on his own behalf and on behalf of the *Settlement Class* and the *Plan,* and *Defendants* may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the *Released Claims* with respect to any *Released Persons*, but nonetheless hereby expressly waive and fully and finally settle and release any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claims that fall under the definition of *Plaintiff's Released Claims*, without regard to the subsequent discovery or existence of such other or different facts.

3.5 In the event that any court with original or appellate jurisdiction over this *Action* determines that any portion of Section 3 of this *Settlement Agreement* is not enforceable, the *Parties* may (but shall not be required to) jointly agree in writing to modify Section 3 to conform with such determination.

4. COVENANTS

4.1 Covenants Not to Sue.

4.1.1 From and after the *Effective Date*, *Named Plaintiff*, on his own behalf and on behalf of the *Settlement Class*, the *Plan*, *Class Counsel* and *Liaison Class Counsel,* covenant and agree: (a) not to file any *Claim* (whether individually, derivatively, on behalf of a class, or in any other capacity) released under Section 3 against any of *Plaintiff's Released Persons*; and (b) that the foregoing covenant and agreement shall be a complete defense to any such *Claims* against any of *Plaintiff's Released Persons*. Nothing herein, however, shall preclude any action or claim related to the interpretation and/or enforcement of this *Settlement Agreement*.

4.1.2 From and after the *Effective Date*, *Defendants* covenant and agree: (a) not to file any *Claim* released under Section 3 against any of *Defendants' Released Persons* or any

other *Defendant*; and (b) that the foregoing covenants and agreements shall be a complete defense to any such *Claims* against any of *Defendants' Released Persons* or any *Defendant*.

4.2 Taxation of *Settlement Amount*. *Named Plaintiff* acknowledges on his behalf, and on behalf of the *Settlement Class*, that none of the *Plaintiff's Released Persons* has any responsibility to pay any income or other taxes due on funds deposited in the *Settlement Fund*, including those funds that *Class Counsel* receives from the *Settlement Amount*, should any be awarded pursuant to Section 11 of this *Settlement Agreement*. Nothing herein shall constitute an admission or representation that any income or other taxes will or will not be due on the *Settlement Amount*. *Named Plaintiff* and the *Settlement Class* intend that the amounts allocated pursuant to the *Plan of Allocation* will be used to restore claimed losses to the *Plan* on account of the investment in *UCBI Stock* and are intended by *Named Plaintiff* and the *Settlement Class* to be "restorative payments" within the meaning of Revenue Ruling 2002-45.

5. PROVISION OF PARTICIPANT DATA TO SETTLEMENT ADMINISTRATOR

5.1 *Defendants* shall use reasonable efforts consistent with ordinary commercial practice to provide the *Settlement Administrator*, in electronic format, within thirty (30) days following the *Agreement Execution Date*, the names, last four digits of Social Security Numbers, and last known addresses of the *Settlement Class Members* that were/are on file with the *Plan Recordkeeper(s)* and timely respond to any reasonable written requests for reasonably accessible data in the *Plan Recordkeeper(s)'* possession, custody or control necessary to effectuate *Class Notice* (such as the full Social Security Number for any *Settlement Class Member* in order to obtain a valid mailing address) and implement the *Plan of Allocation*. *Defendants* will provide confirmation from or on behalf of the *Plan Recordkeeper(s)* that such information or data provided accurately reflects what is stored on the *Plan Recordkeeper(s)'* systems. Further, no charge against the *Settlement Fund* or to *Named Plaintiff*, *Class Counsel*, or *Liaison Class Counsel*, or the *Settlement Class* shall be made, directly or indirectly, for the gathering or the provision of such information or assistance.

6. REPRESENTATIONS AND WARRANTIES

6.1 *Named Plaintiff's* Representations and Warranties.

6.1.1 *Named Plaintiff* represents and warrants, as of the date hereof and as of the *Effective Date*, that he has not sold, assigned, transferred, hypothecated, pledged or encumbered, in whole or in part, voluntarily or involuntarily, any of *Plaintiff's Released Claims* against any of *Plaintiff's Released Persons.*

6.1.2 *Named Plaintiff*, on his own behalf, and on behalf of the *Plan* and the *Settlement Class*, represent and warrant that, from and after the *Effective Date*, he and the *Settlement Class* shall have no surviving *Claim* against any of the *Plaintiff's Released Persons* with respect to the *Plaintiff's Released Claims*.

6.2 *Parties'* Representations and Warranties. Each of the *Parties* represents and warrants, severally and not jointly, to each of the other *Parties*:

6.2.1 That he, she, or it is voluntarily entering into this *Settlement Agreement* as a result of arms'-length negotiations among his, her or its counsel, with the assistance of the *Mediator*; that in executing this *Settlement Agreement* he, she, or it is relying solely upon his, her or its own judgment, belief and knowledge, and the advice and recommendations of his, her, or its own independently selected counsel, concerning the nature, extent and duration of his, her, or its rights and *Claims* hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as expressly provided herein, he, she, or it has not been influenced to any extent whatsoever in entering into this *Settlement Agreement* by any representations, warranties, or statements, or omissions pertaining to any of the foregoing matters by any *Party* or by any *Person* representing any *Party*.

6.2.2 That he, she, or it assumes the risk of mistake as to facts or law and the *Settlement Agreement* shall not be subject to termination, modification, or rescission by reason of any mistake as to facts or law.

6.2.3 That he, she, or it has carefully read the contents of this *Settlement Agreement*, and that he, she, or it has freely entered into this *Settlement Agreement*.

6.2.4 That he, she, or it has made such investigation of the facts pertaining to the *Settlement*, this *Settlement Agreement* and all of the matters pertaining thereto, as he, she, or it deems necessary.

6.3 Signatories' Representations and Warranties. Each individual executing this *Settlement Agreement* on behalf of any other *Person* or the *Settlement Class* does hereby personally represent and warrant to the other *Parties* that he or she has the authority to execute this *Settlement Agreement* on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

7. NO ADMISSION OF LIABILITY

7.1 No Decision on the Merits. Each of the *Parties* understands and agrees that: (a) this *Settlement Agreement* embodies a compromise settlement of disputed claims for the purpose of avoiding the costs, disruptions, and uncertainties associated with further litigation; (b) nothing in this *Settlement Agreement*, including the furnishing of consideration for this *Settlement*, shall be deemed to constitute any finding of fiduciary status under *ERISA* or wrongdoing by any of the *Defendants*, or give rise to any inference of fiduciary status under *ERISA* or wrongdoing or admission of wrongdoing or liability in the *Action* or any other proceeding; and (c) this *Settlement Agreement* and the payments made hereunder do not constitute a ruling on the merits, an admission as to any issue of fact or principle at law, or an admission of any liability or wrongdoing of any kind. *Defendants* specifically and expressly deny any liability or wrongdoing of any kind.

7.2 Reliance on Federal Rule of Evidence 408. This *Settlement Agreement* has been executed in reliance upon the provisions of Rule 408 of the Federal Rules of Evidence and all similar state rules precluding the introduction of evidence regarding settlement negotiations or agreements and neither the fact nor the terms of this *Settlement Agreement* shall be offered or received in evidence, or otherwise introduced in any action or proceeding, for any purpose,

except (a) in an action or proceeding seeking to enforce or interpret the terms of this *Settlement Agreement* or arising out of or relating to the *Preliminary Approval Order* or the *Final Approval Order and Judgment*, or (b) in an action or proceeding where the releases or covenants not to sue provided pursuant to Sections 3 and 4 of this *Settlement Agreement* may serve as a bar to recovery.

8. THE CREATION OF THE SETTLEMENT FUND

8.1 The Settlement Fund.

8.1.1 No later than five (5) business days after the entry of the *Preliminary Approval Order* by the *Court*, *Class Counsel* shall establish at a federally-insured financial institution (the "*Financial Institution*") the *Escrow Account* for the purpose of holding the *Settlement*; and (b) provide notice to *Defendants* and *Defendants' Insurers* pursuant to section 8.1.2 of the information needed to deposit the *Settlement Amount* into the *Settlement Fund*. The *Escrow Account* shall be governed by an escrow agreement and subject to the jurisdiction of the *Court*. The monies in the *Settlement Fund* shall be considered a common fund created as a result of the *Action*.

8.1.2 In consideration of, and expressly in exchange for, all of the promises and agreements set forth in this *Settlement Agreement*, *Defendants* and/or *Defendants' Insurers* shall deliver the *Settlement Amount* by check, to be deposited into the *Settlement Fund*, within thirty (30) days after entry of the *Preliminary Approval Order* by the *Court*.

8.1.3 The *Settlement Fund* shall accrue and retain interest and income earned thereon for the benefit of the *Settlement Class* and shall be invested at the direction of *Class Counsel* only in (a) United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury with a maturity period not to exceed thirty (30) days, (b) repurchase agreements collateralized by such securities, and/or (c) mutual funds or money market accounts, provided that such funds or accounts invest exclusively in United States Treasury securities and/or securities of United States agencies. Funds in the *Escrow Account* shall not be commingled with any other accounts or monies.

8.1.4 The *Settlement Administrator* shall structure and manage the *Settlement Fund* to qualify as a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code (the "*Code*") and U.S. Treasury regulations promulgated thereunder. It is intended that the *Settlement Fund* be structured and administered to ensure, to the maximum degree possible, that the portion of the *Settlement Fund* that is contributed to the *Plan* for distribution to *Settlement Class Members* pursuant to the *Plan of Allocation* will qualify for the favorable tax treatment available for tax-qualified plans and trusts under Sections 401(a) and 501(a) of the *Code*. The *Parties* shall not take a position in any filing or before any tax authority inconsistent with such treatment. The *Final Approval Motion* shall request that the *Final Approval Order and Judgment* provide that once the *Net Settlement Fund* is allocated to the *Settlement Class Members*' accounts pursuant to the *Plan of Allocation*, the *Net Settlement Fund* shall be considered "plan assets" of the *Plan* within the meaning of *ERISA*.

8.1.5 For purposes of Section 486B of the *Code* and the regulations promulgated thereunder, the "administrator" of the *Settlement Fund* shall be the *Settlement Administrator*. The *Settlement Administrator*, or any accounting firm that it may retain, shall timely and properly prepare, deliver to all necessary parties for signature, and file all necessary documentation for any elections required under Section 486B of the *Code* and regulations promulgated thereunder.

8.1.6 All income and other taxes on the income of the *Settlement Fund* and tax-related expenses incurred in connection with the taxation of the *Settlement Fund* shall be paid out of the *Settlement Fund*. Reasonable fees and expenses incurred for or by any third-party vendor appointed by *Class Counsel* for calculation, allocation, and distribution pursuant to the *Plan of Allocation* shall also be paid from the *Settlement Fund*.

8.1.7 *Class Counsel* shall have signature authority over the *Settlement Fund*, and shall direct the *Financial Institution* to pay from the *Settlement Fund* all reasonable costs of administering the *Settlement Fund* without further order of the *Court*, which expenses shall include: (a) reasonable expenses associated with the preparation and filing of all income and other tax reports and income and other tax returns required to be filed by the *Settlement Fund*; (b) payment of any income and other taxes owed by the *Settlement Fund*; (c) reasonable expenses associated with the preparation and issuance of any required Form(s) 1099 associated with payments from the *Settlement Fund*; and (d) fees charged and expenses incurred by the *Financial Institution*, the *Settlement Administrator* or any accounting firm they may retain.

8.1.8 *Class Counsel* shall instruct the *Financial Institution* to set aside appropriate reserves from the *Settlement Fund* for income and other taxes and for the purpose of satisfying future or contingent expenses or obligations, including expenses of *Settlement Fund* administration, before any disbursement is made as provided in Section 9.3 of this *Settlement Agreement*. *Defendants* shall take no position, directly or indirectly, with respect to such matters, unless the *Independent Fiduciary* objects to such matters.

8.1.9 Except as provided in Sections 8, 9, and 11 of the *Settlement Agreement*, no monies shall be paid to *Class Counsel*, *Liaison Class Counsel*, *Named Plaintiff*, the *Settlement Class*, or the *Plan* from the *Settlement Fund*, and neither *Class Counsel* nor *Liaison Class Counsel* shall seek or obtain any monies from the *Settlement Fund*.

8.1.10 The *Parties* acknowledge and agree that *Defendants* and the *Defendants' Insurers* shall have no authority, control, or liability in connection with the design, management, administration, investment, maintenance, or control of the *Settlement Fund*, for any expenses the *Settlement Fund* may incur, or for any income and other taxes that may be payable by the *Settlement Fund* or any direct or indirect distributee therefrom.

8.2 The *Settlement Amount* is the Sole Monetary Contribution. The *Settlement Amount* shall be the full and sole monetary obligation of *Defendants* and *Defendants' Insurers* in connection with the *Settlement* and under this *Settlement Agreement*, and shall be paid into the *Settlement Fund* by *Defendants' Insurers*. The *Settlement Amount* specifically covers any claims for any reasonable costs or expenses associated with or related to disseminating the *Class Notice*. Except as otherwise specified in this *Settlement Agreement*, *Named Plaintiff*, the *Settlement*

Class, *Class Counsel*, and *Liaison Class Counsel* shall bear their own costs and expenses (including attorneys' fees) in connection with the *Settlement*, the negotiation and documentation of this *Settlement Agreement*, and securing all necessary court orders and approvals with respect to the same. Except as otherwise provided for herein, the *Named Plaintiff*, *Defendants*, and their respective counsel shall not charge any fees or expenses to the *Settlement Fund*.

9. PAYMENTS FROM THE SETTLEMENT FUND

9.1 *Parties'* Expenses. Except as otherwise provided herein, *Defendants* and their counsel shall not charge any fees or expenses to the *Settlement Fund*. All other costs not provided for herein that *Defendants* incur relating to the *Settlement* shall be borne by *Defendants* or *Defendants' Insurers*. All other costs not provided for herein that the *Named Plaintiff* or the *Settlement Class* incur relating to the *Settlement* shall be borne by *Named Plaintiff*.

9.2 Expenses of the *Class Notice*. *Class Counsel* shall direct the *Financial Institution* in writing to disburse from the *Settlement Fund* the payment of reasonable costs of disseminating the *Class Notice*.

9.3 Disbursements from the *Settlement Fund*. *Class Counsel* shall direct the *Financial Institution* to disburse money from the *Settlement Fund* as follows:

9.3.1 For any *Case Contribution Award*, as provided in Section 10.3.

9.3.2 For income and other taxes and expenses of the *Settlement Fund* as provided in Sections 8.1.7 and 8.1.8.

9.3.3 For the *Plan of Allocation*, *Class Counsel* shall propose to the *Court* a *Plan of Allocation* in substantial conformity to the one attached hereto as Exhibit 3, which shall provide for the calculation, allocation, and distribution of the *Net Settlement Fund*. Such *Plan of Allocation* shall provide the method for calculating the specific dollar amount to be allocated by the *Plan* to the *Plan* account for each member of the *Settlement Class*. The *Plan of Allocation* proposed by *Class Counsel* shall be sufficiently specific to allow the *Settlement Administrator* to perform the calculations called for in the *Plan of Allocation*. The *Settlement Administrator* shall be exclusively responsible and liable for calculating the amounts payable to the members of the *Settlement Class* pursuant to the *Plan of Allocation*, except to the extent any liability or claims relating to the calculation of amounts payable arise from inaccurate or incomplete data as provided by *Defendants* and/or the *Plan's Recordkeeper(s)*.

9.3.4 The data reasonably necessary to perform calculations pursuant to the *Plan of Allocation* shall be provided by *Defendants*, or the *Plan* trustee/*Plan Recordkeepers* within 5 (five) days of entry of the *Final Approval Order*. As soon as is reasonably practicable after the *Effective Date*, *Class Counsel* shall direct the *Financial Institution* to disburse the *Net Settlement Fund* to the *Plan* in accordance with the *Plan of Allocation*. The *Plan Recordkeeper(s)* shall promptly notify former *Plan* participants of the amount due to them from the *Net Settlement Fund*, and provide such former *Plan* participants the opportunity to elect whether to receive such amount on a pre-tax basis, pursuant to a form notice that shall be provided. *Defendants* shall then direct the *Plan* to distribute the *Net Settlement Fund* to members of the *Settlement Class* who remain *Plan* participants at that time by depositing such funds in

their *Plan* account in any default investment option(s) designated by the *Plan*, and if the *Plan* has not designated any default investment option(s), in a stable value fund or similar fund under the *Plan*. The *Plan,* or at the *Plan's* discretion, the *Plan's Recordkeeper*, shall be exclusively responsible for distributing the *Net Settlement Fund* to the members of the *Settlement Class* as described above, based on the calculations of the *Settlement Administrator*. Distribution of the *Net Settlement Fund* to members of the *Settlement Class* shall be completed by the *Plan,* or at the *Plan's* discretion, the *Plan's Recordkeeper(s)* within 60 (sixty) days after allocation and distribution of the *Net Settlement Fund* from the *Escrow Account.* *Class Counsel* and *Defendants* shall have no responsibility or liability for the *Settlement Administrator's* calculations or the distribution of the *Net Settlement Fund* to the members of the *Settlement Class*. The *Plan* or the *Plan's Recordkeeper(s)* shall be responsible for taking reasonable steps to provide accurate data that is utilized in performing the calculations under the *Plan of Allocation*. *Defendants* and their *Plan* beneficiaries, to the extent they were participants or beneficiaries of the *Plan* at any time during the *Class Period*, will be excluded from the *Settlement Class* and the *Plan of Allocation*.

9.3.5 For attorneys' fees and expenses, as described in Section 11.

9.3.6 The *Case Contribution Award*, *Plan of Allocation*, and award of attorneys' fees and expenses as described in Section 11 are matters separate and apart from the *Settlement* between the *Parties*, and no decision by the *District Court* or any other court concerning the *Case Contribution Award*, *Plan of Allocation* or award of attorneys' fees and expenses shall affect the validity of the *Settlement Agreement*, the releases or covenants granted herein, or the finality of the *Settlement* provided that the *Defendants* and *Defendants' Insurers* shall not be responsible to pay *Named Plaintiff* or the *Settlement Class* any amount in excess of the *Settlement Amount*.

10. TERMINATION OF THE SETTLEMENT AGREEMENT

10.1 Termination. A *Party* may terminate this *Settlement* as set forth in this Section 10, and the *Settlement Agreement* shall thereupon become null and void ("*Terminate*" or "*Termination*"), if any of the *Settlement Conditions* are not satisfied, unless the *Parties* mutually agree otherwise or the *Party* entitled to the benefit of the unsatisfied *Settlement Condition* waives that *Settlement Condition*. A *Party* seeking to *Terminate* the *Settlement* (the "*Terminating Party*") must give notice of its intent to *Terminate* this *Settlement* to the other *Parties* in writing within fifteen (15) business days following the event giving rise to *Termination*. Within thirty (30) business days after such notice is given by the *Terminating Party*, the *Parties* may mutually agree to modify this *Settlement Agreement*. If the *Parties* do not mutually agree to modify this *Settlement Agreement* within thirty (30) business days after a *Terminating Party* gives notice of *Termination* to the other *Parties*, then the *Termination* shall become effective and the provisions of Section 10.2 will apply. If the *Settlement Agreement* is *Terminated*, the *Settlement* shall be null and void, except the provisions set forth in Sections 10.1 and 10.2, and any other Section expressly incorporated therein, shall survive any such *Termination*.

10.2 Consequences of *Termination* of the *Settlement Agreement*. If the *Settlement Agreement* is *Terminated* and thus rendered null and void for any reason specified in Section 10.1, the following shall occur:

10.2.1 Within fifteen (15) business days following the *Termination* of the *Settlement Agreement*, *Class Counsel* shall return to *Defendants' Insurers* the amounts contributed to the *Settlement Fund*, with all interest and income earned thereon, except that neither *Class Counsel* nor any other *Person* shall have an obligation to reimburse to the *Settlement Fund* for the reasonable costs of the *Class Notice*, or other reasonable costs and expenses of the *Settlement Fund* charged to the *Settlement Fund* under Sections 8.1.6 and 8.1.7 of the *Settlement Agreement*.

10.2.2 The *Action* shall for all purposes with respect to the *Parties* revert to its status as of the day immediately before the *Agreement Execution Date*.

10.2.3 Neither the fact nor the terms of this *Settlement Agreement* shall be offered or received in evidence in this *Action* or any action or proceeding for any purpose, except in an action or proceeding arising under, or to give effect to a provision of, this *Settlement Agreement*. The understandings and agreements contained in Sections 7.1 and 7.2 shall survive any termination of this *Settlement Agreement*.

11. ATTORNEYS' FEES AND EXPENSES

11.1 Motion for Attorneys' Fees and Expenses. *Class Counsel* may move the *Court* for an award of attorneys' fees not to exceed one-third of the *Settlement Amount* (a maximum amount of $1,155,000.00) and for reimbursement of expenses associated with the *Action*, to be paid from the *Settlement Fund*, including fees incurred in securing all necessary court orders and approvals with respect to the *Settlement Agreement*. *Defendants* will not oppose any fee motion submitted by *Class Counsel*, provided that *Class Counsel* does not move for an award of attorneys' fees in excess of one-third of the *Settlement Amount*, and *Defendants* will not oppose any motion for reimbursement of expenses reasonably incurred in prosecuting the *Action*.

11.2 Disbursement of Attorneys' Fees and Expenses. *Class Counsel* may direct payment of any *Court*-approved award of fees and expenses from the *Settlement Fund* within five (5) days upon entry of the *Final Approval Order and Judgment* by the *Court* and (if separate) an order approving *Class Counsel's* and *Liaison Class Counsel's* petition for fees and expenses.

11.2.1 In the event that the *Settlement* fails to become *Final* or for any reason *Terminates* despite the good faith efforts of the *Parties*, *Class Counsel* and *Liaison Class Counsel* shall redeposit into the *Settlement Fund* the attorneys' fees and expenses originally paid out of the *Settlement Fund*, plus interest and income accrued thereon for the period from payment from the *Settlement Fund* to *Class Counsel* at a rate equal to the compounded rate of interest earned by the *Settlement Fund* during the same period. Such a repayment will be due within thirty (30) days of the event that caused the *Settlement* to fail to obtain *Final Approval* or *Terminate*.

11.3 Motion for *Named Plaintiff's Case Contribution Award*. *Class Counsel* may move the *Court* for a *Case Contribution Award*, which shall not exceed $5,000 for *Named Plaintiff* Jonathan Alford, payable to the *Named Plaintiff* solely from the *Settlement Amount*.

Unless the *Independent Fiduciary* has an objection, *Defendants* will not oppose any motion for a *Case Contribution Award*.

11.4 Disbursement of *Named Plaintiff's Case Contribution Award*. On the *Effective Date*, *Class Counsel* may instruct the *Financial Institution* in writing to disburse payment to the *Named Plaintiff* in the amount awarded by the *Court* (or as modified, as necessary, following any appeal) as a *Case Contribution Award* from the *Settlement Fund*.

11.5 Post-Award Expenses. *Class Counsel* may make a supplemental motion to the *Court* for an award of reasonable expenses with respect to post-*Settlement* proceedings and administration, and any such award shall be payable only from the *Settlement Fund* and not by *Defendants* or the *Defendants' Insurers*.

12. MISCELLANEOUS PROVISIONS

12.1 Advice of Counsel. In entering into this *Settlement Agreement*, each *Party* represents and warrants that it has relied upon the advice of its attorneys, that it has completely read the terms of this *Settlement*, and that the terms of this *Settlement* have been explained to it by its attorneys. Each *Party* further represents and warrants that it fully understands and voluntarily accepts the terms of the *Settlement*.

12.2 Authority. Each *Person* executing this *Settlement Agreement* hereby represents and warrants that he or she has the full authority to do so. Each *Party* further represents and warrants that it has not assigned or transferred to any person any *Claim* released in this *Settlement Agreement*, in whole or in part.

12.3 Governing Law. This *Settlement Agreement* shall be governed by the laws of the United States of America, to the extent applicable, and otherwise in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Georgia relating to contracts made and to be performed in Georgia.

12.4 Severability. In the event that any court with original or appellate jurisdiction over this *Action* issues a *Final* determination that any portion of Section 3 of this *Settlement Agreement* is not enforceable, the *Parties* may (but shall not be required to) jointly agree in writing to modify Section 3 to conform with such determination. With the sole exception set forth in the preceding sentence, the provisions of this *Settlement Agreement* are not severable.

12.5 Amendment. Before entry of the *Final Approval Order and Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties* with notice to be given to the *Court* of the agreed modification or amendment. Following entry of the *Final Approval Order and Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties*, and approved by the *Court*. Amendments and modifications may be made without notice to the *Settlement Class* unless notice is required by law or the *Court*.

12.6 Waiver. The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving party. The waiver by any of the *Parties* of any

breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this *Settlement Agreement*.

12.7 Construction. None of the *Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. Rather, for the purposes of construing or interpreting this *Settlement Agreement*, the *Parties* agree that the *Settlement Agreement* is to be deemed to have been drafted equally by all *Parties* hereto and shall not be construed for or against any of the *Parties*.

12.8 Principles of Interpretation. The following principles of interpretation apply to this *Settlement Agreement*.

12.8.1 Headings. The headings of this *Settlement Agreement* are for reference purposes only and do not affect in any way the meaning or interpretation of this *Settlement Agreement*.

12.8.2 Singular and Plural. Definitions apply to the singular and plural forms of each defined term.

12.8.3 Gender. Definitions apply to the masculine, feminine, and neuter genders of each defined term.

12.8.4 References to a *Person*. References to a *Person* are also to the *Person's Successors-In-Interest*.

12.8.5 Terms of Inclusion. Whenever the words "include," "includes," or "including" are used in this *Settlement Agreement*, they shall not be limiting but rather shall be deemed to be followed by the words "but not limited to."

12.9 Dispute Resolution. Disputes over the construction or interpretation of the *Settlement* shall be decided by the *Mediator* with each *Party* to bear their own and equal portions of any fees and expenses of the *Mediator*, unless otherwise agreed by the *Parties*.

12.10 Further Assurances. Each of the *Parties* agrees, without further consideration and as part of effectuating the *Settlement*, that it will in good faith execute and deliver such other documents and take such other actions as may be reasonably necessary to consummate and effectuate the subject matter and purpose of this *Settlement Agreement*.

12.11 Notices. Any notice, demand or other communication under this *Settlement Agreement* (other than the *Class Notice* or other notices given at the direction of the *Court*) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid) or delivered by reputable express overnight courier, with a copy by email.

IF TO *NAMED PLAINTIFF* OR THE *SETTLEMENT CLASS*:

KESSLER TOPAZ
MELTZER & CHECK, LLP
Mark K. Gyandoh
Email: mgyandoh@ktmc.com
Donna Siegel Moffa
Email: dmoffa@ktmc.com
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

IF TO *DEFENDANTS:*

KILPATRICK TOWNSEND
& STOCKTON LLP
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Email: shudson@kilpatricktownsend.com
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
Telephone: (404) 815-6500
Facsimile: (404) 815-6555

ALSTON & BIRD
H. Douglas Hinson, Esq.
Email: doug.hinson@alston.com
1201 West Peachtree Street
Suite 4200
Atlanta, Georgia 30309-4530
Telephone: (404) 881-7590
Facsimile: (404) 881-8663

12.12 Entire Agreement. This *Settlement Agreement* contains the entire agreement among the *Parties* relating to this *Settlement*. This *Settlement Agreement* supersedes any settlement terms or settlement agreements relating to the *Parties* which were previously agreed upon orally or in writing by any of the *Parties*.

12.13 Counterparts. This *Settlement Agreement*, and any amendments thereto, and waivers of conditions, may be executed by exchange of executed signature pages by facsimile or Portable Document Format ("PDF") as an electronic mail attachment, and any signature transmitted by facsimile or PDF via electronic mail for the purpose of executing this *Settlement Agreement* shall be deemed an original signature for purposes of this *Settlement Agreement*. This *Settlement Agreement* may be executed in several counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

12.14 Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors and *Successors*.

12.15 Agreement Execution Date. The date on which the final signature is affixed below shall be the *Agreement Execution Date*.

12.16 No Benefits to Non-Parties. Except as otherwise expressly provided herein, this *Settlement Agreement* is not intended to confer any benefits upon any *Person*.

12.17 Integration of Exhibits. The exhibits to this *Settlement Agreement* are an integral and material part of the *Settlement* and are hereby made a part of the *Settlement Agreement*.

12.18 Deadlines Falling on Weekends or Holidays. To the extent that any deadline set forth in this *Settlement Agreement* falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

IN WITNESS WHEREOF, the *Parties* have executed this *Settlement Agreement* on the dates set forth below.

FOR *NAMED PLAINTIFF* AND ON BEHALF OF THE *SETTLEMENT CLASS*:

Dated: 7/22/13

By: _____

KESSLER TOPAZ MELTZER & CHECK, LLP
Edward W. Ciolko
Donna Siegel Moffa
Mark K. Gyandoh
Julie Siebert-Johnson
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706

Class Counsel

HOLZER HOLZER & FISTEL, LLC
Corey D. Holzer
Michael I. Fistel, Jr.
200 Ashford Center North
Suite 300
Atlanta, Georgia 30338
Telephone: (770) 392-0090

Liaison Class Counsel

FOR *DEFENDANTS*:

Dated: 7/22/13

By: _____

KILPATRICK TOWNSEND & STOCKTON LLP
Stephen E. Hudson, Esq.
John P. Jett, Esq.
Ross Andre, Esq.
1100 Peachtree Street
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Telephone: (404) 881-7590

Counsel for Defendants

EXHIBITS

Group Exhibit 1: *Preliminary Approval Order*
Exhibit A to *Preliminary Approval Order: Class Notice*

Exhibit 2: *Final Approval Order and Judgment*

Exhibit 3: *Plan of Allocation*

EXHIBIT 1

Preliminary Approval Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JONATHAN ALFORD, individually and on behalf of all others similarly situated, Plaintiff, vs. UNITED COMMUNITY BANKS, INC., JIMMY C. TALLENT, GUY W. FREEMAN, ROBERT L. HEAD, JR., W.C. NELSON, JR., ROBERT BLALOCK, CATHY COX, HOYT O. HOLLOWAY, JOHN D. STEPHENS, TIM WALLIS, BENEFITS ADMINISTRATIVE COMMITTEE OF UNITED COMMUNITY BANKS, INC., CATHERINE HAMBY, BRAD MILLER, REX SCHUETTE, BILL GILBERT, SUSIE HOOPER, and DOES 1-10, Defendants.	CIVIL ACTION FILE NO. 2:11-cv-00309-WCO

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PRELIMINARILY CERTIFYING A CLASS FOR SETTLEMENT PURPOSES, APPROVING FORM AND MANNER OF CLASS NOTICE, AND SCHEDULING OF A FINAL APPROVAL HEARING

This *Action* involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("*ERISA*"), with respect to the United Community Banks, Inc. Profit Sharing Plan (the "*Plan*").[1] The terms of the *Settlement* are set out in the Settlement Agreement and Release, fully executed as of July 22, 2013 (the "*Settlement Agreement*"), by counsel on behalf of the *Named Plaintiff* and *Defendants*, respectively.

Pursuant to the *Named Plaintiff's* Motion for Preliminary Approval of the Settlement filed on July 23, 2013, the *Court* preliminarily considered the *Settlement* to determine, among other things, whether the *Settlement* is sufficient to warrant the issuance of notice to proposed *Settlement Class Members*. Upon reviewing the *Settlement Agreement* and the matter having come before the *Court* at the _____, 2013 hearing, and the *Court* having been fully advised in the premises, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. ***Settlement Class*** Findings – Solely for the purposes of the *Settlement*, the *District Court* preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the *Court* and any other applicable law have been met as to the *Settlement Class* defined below, in that:

[1] All italicized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the *Settlement Agreement*.

(a) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(a)(1), the *Settlement Class* is ascertainable from records kept with respect to the *Plan* and from other objective criteria, and the *Settlement Class Members* are so numerous that their joinder before the *Court* would be impracticable.

(b) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(a)(2), there are one or more questions of fact and/or law common to the *Settlement Class*.

(c) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(a)(3), the claims of the *Named Plaintiff* are typical of the claims of the *Settlement Class*.

(d) The *Court* preliminarily finds, for purposes of settlement only, as required by FED. R. CIV. P. 23(a)(4), that the *Named Plaintiff* will fairly and adequately protect the interests of the *Settlement Class* in that: (i) the interests of the *Named Plaintiff* and the nature of the alleged claims are consistent with those of the *Settlement Class Members*; and (ii) there appear to be no conflicts between or among the *Named Plaintiff* and the *Settlement Class*.

(e) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(b)(1), the prosecution of separate actions by individual members of the *Settlement Class* would create a risk of: (i) inconsistent

or varying adjudications as to individual *Settlement Class Members* that would establish incompatible standards of conduct for the parties opposing the claims asserted in this *Action*; or (ii) adjudications as to individual *Settlement Class Members* that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications, or substantially impair or impede the ability of such persons to protect their interests.

(f) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(g), *Class Counsel* is capable of fairly and adequately representing the interests of the *Settlement Class*, and that *Class Counsel*: (i) have done appropriate work identifying or investigating potential claims in the *Action*; (ii) are experienced in handling class actions; and (iii) have committed the necessary resources to represent the *Settlement Class*.

2. **Class Certification** – The *Court*, in conducting the settlement approval process required by FED. R. CIV. P. 23, preliminarily certifies solely for purposes of settlement the following class under FED. R. CIV. P. 23(b)(1) (the "*Settlement Class*"):

(a) All *Persons*, except *Defendants* and their *Plan* beneficiaries, who were participants in or beneficiaries of the *Plan*, at any time between October 6, 2008 and July 22, 2013 (the "*Class Period*") and whose *Plan* accounts included investments in *UCBI Stock*.

(b) The *Court* appoints the *Named Plaintiff* as the representative for the *Settlement Class* and *Class Counsel* and *Liaison Class Counsel* as counsel for the *Settlement Class*. Any certification of a preliminary *Settlement Class* pursuant to the terms of the *Settlement Agreement* shall not constitute and does not constitute, and shall not be construed or used as an admission, concession, or declaration by or against *Defendants* that (except for the purposes of the *Settlement*) this *Action* or any other action is appropriate for class treatment under FED. R. CIV. P. 23, or any similar federal or state class action statute or rule, for litigation purposes.

3. **Preliminary Approval of *Settlement*** – The *Settlement Agreement* is hereby preliminarily approved as fair, reasonable, and adequate. This *Court* preliminarily finds that: (a) the proposed *Settlement* resulted from serious, informed, extensive and arms'-length negotiations with the assistance of an experienced *Mediator*; (b) the *Settlement Agreement* was executed only after *Class Counsel* and *Liaison Class Counsel* had conducted appropriate investigation and discovery regarding the strengths and weaknesses of *Named Plaintiff's* claims; (c) *Class Counsel* and *Liaison Class Counsel* represent that they have concluded that the proposed *Settlement* is fair, reasonable, and adequate; and (d) the proposed *Settlement* is in the best interest of the *Named Plaintiff* and the *Settlement Class*. The *Court* finds that those whose claims would be settled, compromised,

dismissed, or released pursuant to the *Settlement* should be given notice and an opportunity to be heard regarding final approval of the *Settlement* and other matters.

4. ***Final Approval Hearing*** – A hearing is scheduled for _____ ("*Final Approval Hearing*") to make a final determination, concerning among other things:

- Whether the *Settlement* merits final approval as fair, reasonable and adequate;
- Whether the *Settlement Class* satisfies the requirements of FED. R. CIV. P. 23, and should be finally certified as preliminarily found by the *Court*;
- Whether the *Action* should be dismissed with prejudice pursuant to the terms of the *Settlement*;
- Whether the *Final Approval Order and Judgment* attached to the *Settlement Agree*ment should be entered and whether the *Released Persons* should be released of and from the *Released Claims*, as provided in the *Settlement Agreement*;
- Whether the notice method proposed by the *Parties* and preliminarily approved herein: (i) constitutes the best practicable notice; (ii) constitutes notice reasonably calculated,

under the circumstances, to apprise members of the *Class* of the pendency of the litigation, their right to object to the *Settlement*, and their right to appear at the *Final Approval Hearing*; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice; and (iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

- Whether *Class Counsel* adequately represented the *Settlement Class* for purposes of entering into and implementing the *Settlement*;
- Whether the negotiation and consummation of the *Settlement Agreement* by the *Named Plaintiff* on behalf of the *Plan* and the *Settlement Class* does not constitute a "prohibited transaction" as defined by ERISA §§ 406(a) or (b) and/or qualifies for a class exemption from the prohibited transaction rules, specifically Prohibited Transaction Class Exemption 2003-39, as amended;
- Whether the proposed *Plan of Allocation* should be approved; and

- Whether the application for attorneys' fees and expenses and *Case Contribution Award* to the *Named Plaintiff* is fair and reasonable and should be approved.

5. ***Class Notice*** – The *Parties* have presented to the *Court* a proposed form of *Class Notice*, attached hereto as Exhibit A. The *Court* finds that such form of notice fairly and adequately: (a) describes the terms and effects of the *Settlement Agreement*, the *Settlement*, and the *Plan of Allocation*; (b) notifies the *Settlement Class* that *Class Counsel* and *Liaison Class Counsel* will seek attorneys' fees and reimbursement of expenses from the *Settlement Fund*, payment of the costs of administering the *Settlement* out of the *Settlement Fund*, and for a *Case Contribution Award* of $5,000 for *Named Plaintiff* Jonathan Alford for his service in such capacity; (c) gives notice to the *Settlement Class* of the time and place of the *Final Approval Hearing*; and (d) describes how the recipients of the *Class Notice* may object to any of the relief requested. The *Parties* have proposed the following manner of communicating the *Class Notice* to members of the *Settlement Class*, and the *Court* finds that such proposed manner is the best notice practicable under the circumstances. Accordingly, the *Court* directs that *Class Counsel* shall:

- By no later than _____, cause the *Class Notice*, with such non-substantive modifications thereto as may be agreed upon by the *Parties*, to be provided by first-class mail,

postage prepaid, to the last known address of each member of the *Settlement Class* who can be identified through reasonable effort.

- By no later than _____, cause the *Class Notice* to be published on the website identified in the *Class Notice*, www.UCBIERISAsettlement.com, which will also host and make available copies of all *Settlement*-related documents, including the *Settlement Agreement*.

6. **Independent Fiduciary.**

(a) One or more of the *Defendants*, on behalf of the *Plan*, shall retain an independent fiduciary of the *Plan* ("*Independent Fiduciary*") to determine whether the *Settlement Agreement* should be authorized for the *Plan* and to make any other determinations called for by the Department of Labor's Class Exemption for the Release of Claims and Extensions of Credit in Connection with Litigation, PTCE 2003-39 ("*PTCE 2003-39*").

(b) The *Independent Fiduciary* shall make the determinations called for by *PTCE 2003-39* on or before _____. In the event the *Independent Fiduciary* provides the requisite approval, authorization or finding pursuant to *PTCE 2003-39*, the report of the *Independent Fiduciary* shall be filed with the *Court* on or before _____.

7. **Petition for Attorneys' Fees and Litigation Costs and *Case Contribution Award*** – Any petition by *Class Counsel* for attorney's fees, reimbursement of litigation costs and *Case Contribution Award* to the *Named Plaintiff*, and all briefs in support thereof, shall be filed no later than _____.

8. **Briefs in Support of Final Approval of the *Settlement*** – Briefs and other documents in support of *Final Approval* of the *Settlement* shall be filed no later than _____.

9. **Objections to *Settlement*** – Any *Settlement Class Member* or authorized recipient of the *CAFA Notice* may file an objection to the fairness, reasonableness, or adequacy of the *Settlement*, to any term of the *Settlement Agreement*, to the *Plan of Allocation*, to the proposed award of attorneys' fees and reimbursement of litigation expenses, the payment of costs of administering the *Settlement* out of the *Settlement Fund*, or to the request for a *Case Contribution Award* for the *Named Plaintiff*. An objector must file with the *Court* a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that the objector wishes to bring to the *Court's* attention or introduce in support of the objection(s). The objector must also mail copies of the objection(s) and any supporting law and/or evidence

to *Class Counsel* and counsel for the *Defendants*. The addresses for filing objections with the *Court* and serving objections on counsel are as follows:

For Filing:

Clerk of the Court
United States District Court for the Northern District of Georgia,
Gainesville Division
121 Spring Street SE Room 201
Gainesville, Georgia 30501

Re: *Alford v. United Community Banks, Inc. et al.*,
Civil Action No. 2:11-cv-309 (N.D. Ga.).

To Class Counsel:

Donna Siegel Moffa
Mark K. Gyandoh
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, Pennsylvania 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

To Defendants' Counsel

Stephen E. Hudson, Esq.
KILPATRICK TOWNSEND & STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
Telephone: (404) 815-6500
Facsimile: (404) 815-6555

H. Douglas Hinson, Esq.
ALSTON & BIRD
1201 West Peachtree Street
Suite 4200
Atlanta, Georgia 30309-4530

Telephone: (404) 881-7590
Facsimile: (404) 881-8663

The objector or his, her, or its counsel (if any) must serve copies of the objection(s) (together with any supporting materials) on counsel listed above so that the objection(s) are received by _____and must file the objection(s) and supporting materials with the *Court* by the same date. If an objector hires an attorney to represent him, her, or it for the purposes of making an objection pursuant to this paragraph, the attorney must also serve a notice of appearance on counsel listed above so that the notice of appearance is received by _____and must file it with the *Court* by the same date. Any member of the *Settlement Class* or other *Person* who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the *Settlement*, and any untimely objection shall be barred. Any responses to objections shall be filed with the *Court* and served on opposing counsel no later than _____. There shall be no reply briefs.

10. **Additional *Settlement* Briefs –** Any additional briefs the *Parties* may wish to file in support of the *Settlement* shall be filed no later than _____.

11. **Appearance at *Final Approval Hearing*** – Any objector who files and serves a timely, written objection in accordance with paragraph 10 above may

also appear at the *Final Approval Hearing* either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the *Final Approval Hearing* must serve a notice of intention to appear (and include, if applicable, the name, address, and telephone number of the objector's attorney) on *Class Counsel* and *Liaison Class Counsel* and *Defendants'* counsel (at the addresses set out above) so that the notice of intention to appear is received by _____and filed with the *Court* by the same date. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the *Final Approval Hearing*, except for good cause shown.

12. **Notice Expenses** – The expenses of printing, mailing, and posting of the *Class Notice* required herein shall be paid from the *Settlement Fund*.

13. **Service of Objections on Opposing Counsel** – *Defendants'* counsel and *Class Counsel* shall promptly furnish each other with copies of any and all *Objections* to the *Settlement* that come into their possession.

14. ***Termination* of *Settlement*** – This Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the *Parties*, all of whom shall be restored to their respective positions as of May 14, 2013, the day immediately before the *Parties* reached agreement to settle the *Action*, if the *Settlement* is terminated in accordance with the terms of the *Settlement Agreement*.

15. **Use of Order** – This Order is not admissible as evidence for any purpose against *Defendants* in any pending or future litigation. This Order shall not be construed or used as an admission, concession, or declaration by or against *Defendants* of any finding of fiduciary status, fault, wrongdoing, breach, omission, mistake, or liability. This Order shall not be construed or used as an admission, concession, or declaration by or against *Named Plaintiff* or the *Settlement Class* that their claims lack merit, or that the relief requested in the *Action* is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any *Party* of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by *Defendants* to class certification, in the event that the *Settlement Agreement* is terminated. Moreover, the *Settlement Agreement* and any proceedings taken pursuant to the *Settlement Agreement* are for settlement purposes only. Neither the fact of, nor any provision contained in, the *Settlement Agreement* or its exhibits, nor any actions taken thereunder, shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any claim or defense that has been, could have been, or in the future might be asserted.

16. **Injunction** – Pending final determination of whether the *Settlement* should be approved, all *Settlement Class Members* and the *Plan* are hereby BARRED and ENJOINED from instituting or prosecuting any action that asserts any *Released Claim* against any *Released Person*.

17. **Jurisdiction** – The *Court* hereby retains jurisdiction for purposes of implementing the *Settlement*, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the *Settlement* as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

18. **Continuance of *Final Approval Hearing*** – The *Court* reserves the right to continue the *Final Approval Hearing* without further written notice.

SO ORDERED this ____ day of _____, 2013.

_____
Hon. William C. O'Kelley
United States District Judge

EXHIBIT A
To the Preliminary Approval Order

Class Notice

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JONATHAN ALFORD, individually and on behalf of all others similarly situated,	
Plaintiff,	
vs.	**CIVIL ACTION FILE**
UNITED COMMUNITY BANKS, INC., et al, **Defendants.**	**NO. 2:11-cv-00309-WCO**

NOTICE OF CLASS ACTION SETTLEMENT

YOUR LEGAL RIGHTS MIGHT BE AFFECTED IF YOU ARE A MEMBER OF THE FOLLOWING CLASS:

All Persons (excluding Defendants and their Plan beneficiaries) who were participants in or beneficiaries (including alternate payees) of the United Community Banks, Inc. Profit Sharing Plan ("Plan") at any time between October 6, 2008 and July 22, 2013 (the "Class Period") and whose individual Plan accounts included investments in UCBI Stock during the Class Period.

PLEASE READ THIS NOTICE CAREFULLY. A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER. YOU HAVE NOT BEEN SUED.

Judge William C. O'Kelley of the United States District Court for the Northern District of Georgia (the "Court") has preliminarily approved a proposed settlement (the "Settlement") of a class action lawsuit brought pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"). The Settlement will provide for a payment to the Plan and for allocation of the payment to members of the Settlement Class who had portions of their Plan accounts invested in the United Community Banks, Inc. ("UCBI") Stock Fund ("Company Stock Fund"). The terms of the Settlement are summarized below. The Court has scheduled a hearing (the "Final Approval Hearing") to consider Named Plaintiff's motion for final approval of the Settlement and Class Counsel's petition for attorneys' fees and reimbursement of litigation expenses and for a Case Contribution Award to the Named Plaintiff. The Final Approval Hearing before U.S. District William C. O'Kelley has been scheduled for _____, at _____ _.m., in the United States District Court for the Northern District of Georgia, Gainesville Division, 121 Spring Street SE, Room 300 Gainesville, Georgia 30501, or such other courtroom as the Court may designate.

Any objections to the Settlement or the petition for attorneys' fees, reimbursement of expenses for Case Contribution Awards to the Named Plaintiff must be served in writing on Class Counsel and on Defendants' attorneys, as identified on Page 7 of this Notice of Class Action Settlement ("Notice"). The procedure for objecting is described below.

This Notice contains summary information with respect to the Settlement. The complete terms and conditions of the Settlement are set forth in a Settlement Agreement and Release ("Settlement Agreement"). Capitalized terms used in this Notice, but not defined in this Notice, have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement, and additional information with respect to this lawsuit and the Settlement is available at an Internet site dedicated to the Settlement, www.UCBIERISASettlement.com.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT BY FOLLOWING THE PROCEDURES DESCRIBED BELOW.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
YOU ARE NOT REQUIRED TO FILE A CLAIM IF YOU ARE ENTITLED TO A PAYMENT UNDER THE SETTLEMENT AGREEMENT.	If the Settlement is approved by the Court and you are a Settlement Class Member, you will not need to file a claim to receive a Settlement Amount if you are entitled to receive a payment under the Settlement Agreement.
HOW SETTLEMENT PAYMENTS WILL BE DISTRIBUTED.	If you are currently participating in the Plan at the time the Net Settlement Fund is distributed and you are a Settlement Class Member, any share of the Net Settlement Fund to which you are entitled will be deposited into your Plan account. If you are no longer a Plan participant at at the time the Net Settlement Fund is distributed but are a Settlement Class Member, any share of the Net Settlement

	Fund to which you are entitled will be available to you on a pre-tax basis, if you so indicate in response to a notice to be provided to you at that time.
YOU MAY OBJECT TO THE SETTLEMENT BY _____.	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement.
YOU MAY ATTEND THE FINAL APPROVAL HEARING TO BE HELD ON _____.	If you submit a written objection to the Settlement to the Court and counsel before the Court-approved deadline, you may (but do not have to) attend the Final Approval Hearing about the Settlement and present your objections to the Court. You may attend the Final Approval Hearing even if you do not file a written objection, but you will only be allowed to speak at the Final Approval Hearing if you file a written objection in advance of the Final Approval Hearing AND you file a Notice of Intention To Appear, as described in the answer to Question 16 in this Notice.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and that approval is upheld in the event of any appeal.

Further information regarding this litigation and this Notice may be obtained by contacting Class Counsel:

Donna Siegel Moffa
Mark K. Gyandoh
Julie Siebert-Johnson
KESSLER TOPAZ
MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: 610-667-7706
Facsimile: 610-667-7056

Class Counsel has established a toll-free phone number to receive your comments and questions: xxx-xxx-xxxx. You may also send an email to UCBIERISASettlement@ktmc.com. You should contact Class Counsel with any questions regarding this Settlement, not the Court.

WHAT THIS NOTICE CONTAINS

SUMMARY OF SETTLEMENT

This litigation (the "Action") is a class action in which Named Plaintiff alleges that the Defendants breached fiduciary duties owed to the participants in and beneficiaries of the Plan under ERISA arising from the Plan's investments in the Company Stock Fund during the Class Period. Copies of the latest version of the complaint, the First Amended Clas Action Complaint, and other pertinent documents filed in the Action are available at www.UCBIERISASettlement.com or from Class Counsel.

A Settlement Fund consisting of $3,500,000.00 (three million five hundred thousand U.S. dollars) in cash (the "Settlement Amount") is being established in the Action. The Settlement Amount will be deposited into an Escrow Account, and the Settlement Amount, together with any interest earned, will constitute the Settlement Fund. Payment of any taxes, expenses, approved attorneys' fees and litigation costs and payment of a Case Contribution Award to the Named Plaintiff, and costs of administering the Settlement will be paid out of the Settlement Fund. After the payment of such fees, costs, and awards, the amount that remains will constitute the Net Settlement Fund. The Net Settlement Fund will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court.

STATEMENT OF POTENTIAL OUTCOME OF THE ACTION

Defendants strongly dispute the claims asserted in the Action. Further, the Named Plaintiff would face an uncertain outcome if the Action were to continue. Continued litigation could result in a judgment greater or less than $3.5 million, or in no recovery at all.

The Named Plaintiff and the Defendants disagree on liability and do not agree on the amount that would be recoverable even if the Named Plaintiff was to prevail at trial. The Defendants deny all claims and contentions by the Named Plaintiff. The Defendants deny that they are liable to the Settlement Class and that the Settlement Class or the Plan has suffered any damages for which the Defendants could be held legally responsible. Having considered the uncertainty and risks inherent in any litigation, particularly in a complex case such as this, the Named Plaintiff and Defendants have concluded that it is desirable that the Action be fully and finally settled on the terms and conditions set forth in the Settlement Agreement.

STATEMENT OF ATTORNEYS' FEES AND COSTS SOUGHT IN THE ACTION

Class Counsel will apply to the Court for an order awarding attorneys' fees not in excess of one third (33 1/3%) of the Settlement Amount (a maximum amount of $1,155,000), plus reimbursement of litigation expenses. Any amount awarded will be paid from the Settlement Fund. Defendants have no responsibility for payment of such fees and expenses.

WHAT WILL THE NAMED PLAINTIFF GET?

The Named Plaintiff will share in the allocation of the Net Settlement Fund on the same basis as all other members of the Settlement Class. In addition, Class Counsel will ask the Court to award $5,000 to the Named Plaintiff as a Case Contribution Award for his participation in the Action and representation of the Settlement Class during the Action. Any such award will be paid solely from the Settlement Fund.

BASIC INFORMATION

1. WHY DID I GET THIS NOTICE PACKAGE?

You or someone in your family may have been a participant in or a beneficiary of the Plan during **the period from October 6, 2008 to July 22, 2013**, during which time the Plan account included an investment in the Company Stock Fund.

The Court directed that this Notice be sent to you because if you fall within the definition of the Settlement Class, you have a right to know about the Settlement and the options available to you regarding the Settlement before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Fund will be paid to the Plan and then allocated among eligible Settlement Class Members according to a Court-approved Plan of Allocation. This Notice describes the Action, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this case is the United States District Court for the Northern District of Georgia, Gainesville Division. The person who sued on behalf of himself and the Plan is called the "Named Plaintiff," and the people he sued are called "Defendants." The Defendants are United Community Banks, Inc. (the "Company"), the Administrative Committee of UCBI and its individual members, and the directors of the Company during the period at issue. The Action is known as *Alford v. United Community Banks, Inc. et al.*, No. 2:11-CV-00309 (N.D. Ga.).

2. WHAT IS THE ACTION ABOUT?

The Action claims that under ERISA, the Defendants owed fiduciary duties of loyalty, care, and prudence to the Plan and that they violated those duties in connection with the Plan's investments in UCBI Stock.

During the Class Period, participants in the Plan were able to allocate their account balances among various investment funds, including the Company Stock Fund, a fund primarily invested in UCBI Stock. Many Plan participants chose to have contributions to the Plan invested in the Company Stock Fund.

Named Plaintiff alleges that Defendants violated ERISA by, among other things, permitting the Plan to hold shares of UCBI Stock during the Class Period when they knew or should have known it was imprudent to do so. Named Plaintiff alleges that Defendants knew or should have known that such investment was imprudent for the reasons explained in more detail in the First Amended Class Action Complaint, including that UCBI Stock was an overly risky Plan investment option for the Plan during the Class Period given the Company's financial situation.

THE DEFENSES IN THE ACTION

The Defendants deny all of the claims made in this Action including that allowing the Plan to hold UCBI Stock was imprudent or that they have liability to the Plan or its participants or beneficiaries. If the Action were to continue, the Defendants would raise numerous defenses to liability, including:

- Defendants did not engage in any of the allegedly improper conduct charged in the Complaint;
- Defendants were not fiduciaries of the Plan, or if they were fiduciaries, their fiduciary duties did not extend to the matters at issue in the Action;
- UCBI Stock was at all times a prudent investment for the Plan and its participants;
- To the extent that they were fiduciaries as to the matters at issue in the Action, Defendants fully and prudently discharged all of their fiduciary duties under ERISA;

- Even if a court were to determine that Defendants failed to discharge any duty under ERISA, any such breach of fiduciary duty did not cause the Plan or its participants to suffer any loss.

THE ACTION HAS BEEN AGGRESSIVELY LITIGATED

Class Counsel has extensively investigated the allegations in the Action. Class Counsel obtained and reviewed hundreds of pages of documents, including Plan-governing documents and materials, communications with Plan participants, Securities and Exchange Commission filings, press releases, public statements, news articles and other publications, and other documents regarding the matters that the Named Plaintiff alleges made UCBI Stock an imprudent Plan investment.

This Action was litigated by the Named Plaintiff and Class Counsel for almost two years before the Parties agreed on settlement terms. The initial complaint in this matter was filed against Defendants on August 5, 2011, by Named Plaintiff. On November 30, 2011, Named Plaintiff filed the First Amended Class Action Complaint. Defendants moved to dismiss ("Motion to Dismiss") the First Amended Class Action Complaint on June 12, 2012. Named Plaintiff filed a brief in opposition to Defendants' Motion to Dismiss on July 24, 2012. Defendants filed a reply brief in support of their Motion to Dismiss on August 14, 2012. On January 31, 2013, Judge O'Kelley issued an opinion granting in part and denying in part Defendants' Motion to Dismiss. Following the Court's Order, Defendants filed their answer to the First Amended Class Action Complaint on February 21, 2013.

SETTLEMENT DISCUSSIONS

The proposed Settlement is the product of hard-fought, lengthy negotiations between Class Counsel and the Defendants' counsel. On May 15, 2013, the Parties mediated before an independent Mediator. Prior to the May 15, 2013 mediation session, the Parties both submitted comprehensive mediation memoranda to the Mediator. Following arm's-length negotiations during the mediation session, Named Plaintiff and Defendants, through their respective attorneys, reached an agreement to settle the Action subject to the execution of definitive settlement documentation. Throughout the negotiations, Class Counsel was advised by various consultants and experts, including individuals with expertise in ERISA fiduciary liability issues and damages in cases involving ERISA fiduciary liability.

3. WHY IS THIS CASE A CLASS ACTION?

In a class action, one or more plaintiffs, called "class representatives" or "named plaintiffs," sue on behalf of people who have similar claims. All of these people who have similar claims collectively make up the "class" and are referred to individually as "class members." One case resolves the issues for all class members together. Because the wrongful conduct alleged in this Action is claimed to have affected a large group of people – participants in the Plan during the Class Period – in a similar way, the Named Plaintiff filed this case as a class action.

4. WHY IS THERE A SETTLEMENT?

As in any litigation, all parties face an uncertain outcome. On the one hand, continuation of the case against the Defendants could result in a judgment greater than this Settlement. On the other hand, continuing the case could result in no recovery at all or in a recovery that is less than the amount of the Settlement. Based on these factors, the Named Plaintiff and Class Counsel have concluded that the proposed Settlement is in the best interests of all Settlement Class Members.

5. HOW DO I KNOW WHETHER I AM PART OF THE SETTLEMENT?

You are a Settlement Class Member if you fall within the definition of the Settlement Class preliminarily approved by Judge William C. O'Kelley:

> All Persons (excluding the Defendants and their Plan beneficiaries) who were participants in or beneficiaries of the Plan at any time between October 6, 2008 and July 22, 2013, inclusive (the "Class Period"), and whose accounts included investments in UCBI Stock in their accounts at any point during the Class Period.

If you are a Settlement Class Member, the amount of money you will receive, if any, will depend upon the Plan of Allocation, described below.

THE SETTLEMENT BENEFITS—WHAT YOU GET

6. WHAT DOES THE SETTLEMENT PROVIDE?

A Settlement Fund consisting of $3.5 million is being established in the Action. The amount of money that will be allocated among members of the Settlement Class, after the payment of any taxes and Court-approved costs, fees, and expenses, including attorneys' fees and litigation expenses of Class Counsel, any Court-approved Case Contribution Award to be paid to the Named Plaintiff, and payment of expenses incurred in calculating the Settlement payments and administering the Settlement is called the Net Settlement Fund. The amount of the Net Settlement Fund will not be known until these amounts are quantified and deducted. The Net Settlement Fund will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court. The Plan of Allocation describes how Settlement payments will be distributed to Settlement Class Members who receive a payment. Not every Settlement Class Member will receive a Settlement payment.

If the Settlement is approved by the Court, all Settlement Class Members and anyone claiming through them shall be deemed to fully release Plaintiff's Released Persons from Plaintiff's Released Claims. The Plaintiff's Released Persons include (a) UCBI and its parents, Affiliates, subsidiaries, predecessors, Successors, assigns, and past or present directors, officers, controlling persons, attorneys, counselors, insurers, reinsurers, financial or investment advisors, consultants, accountants, representatives or agents, and (b) each of the other Defendants and their heirs, executors, trustees, personal representatives, estates or administrators, attorneys, counselors, insurers, reinsurers, financial or investment advisors, consultants, accountants, advisors, representatives or agents. The Released Claims are defined in the Settlement Agreement and include all claims that were or could have been asserted in the Action. This means that Settlement Class Members will not have the right to sue Plaintiff's Released Persons for anything related to the investment of Plan assets in UCBI Stock or related matters during the Class Period.

The above description of the proposed Settlement is only a summary. The complete terms, including the definitions of Plaintiffs' Released Persons and Plaintiff's Released Claims, are set forth in the Settlement Agreement (including its exhibits), which may be obtained at a dedicated Settlement Internet site, www.UCBIERISALitigation.com or by contacting Class Counsel listed on Page 2 above.

7. HOW MUCH WILL MY PAYMENT BE?

Your share (if any) of the Net Settlement Fund will depend on your alleged loss, compared to other Settlement Class Members' alleged losses, related to Plan investments in UCBI Stock during the period from October 6, 2008 and July 22, 2013. Each Settlement Class Member's share will be calculated by a third-party vendor ("Settlement Administrator") designated by Class Counsel according to a Court-approved Plan of Allocation. Because the Settlement Amount and Net Settlement Fund are less than the total losses alleged by the Settlement Class, each Settlement Class Member's portion of the Settlement Amount will be less than his or her alleged loss on their investment in the Company Stock Fund. You are not required to calculate the amount you may be entitled to receive under the Settlement. In general, your proportionate share of the Settlement will be calculated as follows:

- For each Settlement Class member, his or her approximate alleged net loss ("Net Loss") will be equal to (A) the dollar value, if any, of his or her account balance invested in the UCBI Stock Fund on the first day of the Class Period (October 6, 2008); plus (B) the dollar value, if any, of all contributions or purchases of interests in the UCBI Stock Fund for his or her account during the Class Period, as of the time of the contribution(s) or purchase(s); minus (C) the dollar value, if any, of all dispositions of interests in UCBI Stock in his or her account during the Class Period, as of the time of the sale(s); minus (D) the dollar value, if any, of the balance in UCBI Stock Fund remaining in his or her account on the close of the market on the last day of the Class Period (July 22, 2013), or if a Settlement Class Member terminated his or her participation in the Plan before the end of the Class Period, the last day the Settlement Class Member was invested in the Company Stock Fund.
- All Net Losses will be aggregated to yield the total loss over the Class Period and each Class Member's percentage of that total loss will be calculated.
- Applying that percentage to the Net Settlement Fund, the Settlement Administrator will calculate each Class Member's share of those proceeds on a preliminary basis.
- All participants whose preliminary share is greater than $5.00 (five dollars) but less than or equal to $50.00 (fifty dollars) will be deemed to have a final share equal to $50.00. Any participant with a preliminary share value $5.00 or less will not receive a Settlement distribution. The Settlement Administrator will then recalculate the Net Loss percentage of those Class Members whose preliminary share was greater than $50.00, so as to arrive at each such Class Member's final share.

You will not be required to produce records that show your Plan activity. If you are entitled to a share of the Settlement Fund, your share of the Settlement will be determined based on the Plan's records for your account. If you have questions regarding the allocation of the Settlement proceeds, please contact Class Counsel listed on Page 2 above.

8. HOW MAY I RECEIVE A PAYMENT?

You do not need to file a claim. If you are a Class Member entitled to receive a share of the Settlement proceeds and you are a current Plan participant, your share will be deposited in your Plan account. If you are a Class Member entitled to receive a share of the Settlement proceeds but you are no longer a Plan participant, you will be notified of your option to receive these proceeds on a pre-tax basis and how to do so. If you are a former Plan participant and have not provided the Plan with your current address, please contact Class Counsel listed on Page 2 above.

9. WHEN WOULD I GET MY PAYMENT?

The Settlement cannot be completed unless and until several events occur. These events include final approval of the Settlement by the Court, approval of the Settlement by an Independent Fiduciary to the Plan, transfer of the Net Settlement Fund to the Plan, and calculation of the amount of the Settlement owed to each Settlement Class Member. If objections are made to the Settlement or appeals are taken by objectors who oppose the approval of the Settlement, this process may take a long time to complete, possibly several years. The Settlement Fund, however, will be invested in secure, interest-bearing securities, and the interest income that is attributable to the Net Settlement Fund will be included in the amount paid to the Plan and allocated to Settlement Class Members.

There will be no payments if the Settlement Agreement is terminated.

The Settlement Agreement may be terminated for several reasons, including if (1) the Court does not approve, or materially modifies the Settlement Agreement, or (2) the Court approves the Settlement Agreement but the approval is reversed or materially modified by an appellate court. If the Settlement Agreement is terminated, the Action will proceed as if the Settlement Agreement had not been entered into. The Settlement is not conditioned upon the Court's approval of attorneys' fees and the reimbursement of expenses sought by Class Counsel and any appeal solely related thereto.

10. CAN I GET OUT OF THE SETTLEMENT?

You do not have the right to exclude yourself from the Settlement. The Settlement Agreement provides for certification of the Settlement Class as a non-opt-out class action under Federal Rule of Civil Procedure 23(b)(1), and the Court has preliminarily determined that the requirements of that rule have been satisfied. Thus, it is not possible for any Settlement Class Members to exclude themselves from the Settlement. As a Settlement Class Member, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action or are otherwise released under the Settlement.

Although you cannot opt out of the Settlement, you can object to the Settlement and ask the Court not to approve it. For more information on how to object to the Settlement, see the answer to Question 13 below.

THE LAWYERS REPRESENTING YOU

11. DO I HAVE A LAWYER IN THE CASE?

The Court has preliminarily appointed the law firm of Kessler Topaz Meltzer & Check, LLP as Class Counsel, along with the firm of Holzer Holzer & Fistel, LLC as Liaison Class Counsel for the Named Plaintiff in the Action. You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. HOW WILL THE LAWYERS BE PAID?

Class Counsel will file a motion for the award of attorneys' fees of not more than one third (33 1/3%) of the Settlement Amount, plus reimbursement of expenses incurred in connection with the prosecution of the Action. This motion will be considered at the Final Approval Hearing described below. Defendants do not have any position on that matter before the Court.

OBJECTING TO THE ATTORNEYS' FEES

By following the procedures described in the answer to Question 13, you can tell the Court that you do not agree with the fees and expenses the attorneys intend to seek and ask the Court to deny their motion or limit the award.

13. HOW DO I TELL THE COURT IF I DO NOT LIKE THE SETTLEMENT?

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. To object, you must send a letter or other writing saying that you object to the Settlement in *Alford v. United Community Banks, Inc., et al.*, Case No. 11-cv-00309. Be sure to include your name, address, telephone number, signature, and a full explanation of all the reasons why you object to the Settlement. **Your written objection must be received by the following counsel no later than _____, 2013.**

CLASS COUNSEL
Donna Siegel Moffa
Mark K. Gyandoh
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: 610-667-7706
Facsimile: 610-667-7056

DEFENDANTS' COUNSEL
Stephen E. Hudson, Esq.
KILPATRICK TOWNSEND & STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
Telephone: (404) 815-6500
Facsimile: (404) 815-6555

H. Douglas Hinson, Esq.
ALSTON & BIRD
1201 West Peachtree Street
Suite 4200
Atlanta, Georgia 30309-4530
Telephone: (404) 881-7590
Facsimile: (404) 881-8663

You must also file your objection with the Clerk of the Court of the United States District Court for the Northern District of Georgia, Gainesville Division no later than _____. The address is:

Clerk of the Court
United States District Court for the Northern District of Georgia, Gainesville Division
121 Spring Street SE
Room 201
Gainesville, Georgia 30501

The objection must refer prominently to *Alford v. United Community Banks, Inc. et al.*, Case No. 11-cv-00309.

THE FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement as fair, reasonable, and adequate. You may attend the Final Approval Hearing, at your expense, and you may ask to speak, but you do not have to attend.

14. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold the Final Approval Hearing at _____ __m. on _____, 2013 at the United States District Court for the Northern District of Georgia, Gainesville Division, 121 Spring Street SE, Room 300, Gainesville, Georgia 30501, or such other courtroom as the Court may designate. **The Court may adjourn the Final Approval Hearing without further notice to the Settlement Class, so if you wish to attend, you should confirm the date and time of the Final Approval Hearing with Class Counsel before doing so.** At that hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If objections have been filed, the Court will consider them. The Court will also rule on the motions for attorneys' fees and reimbursement of expenses and for a Case Contribution Award for the Named Plaintiff. The Parties do not know how long these decisions will take or whether appeals will be taken.

15. DO I HAVE TO COME TO THE HEARING?

No, but you are welcome to come at your own expense. If you file an objection, you do not have to come to Court to talk about it. As long as your written objection is received on time, it will be before the Court when the Court considers whether to approve the Settlement. You also may pay your own lawyer to attend the Final Approval Hearing, but such attendance is also not necessary.

16. MAY I SPEAK AT THE HEARING?

If you submit a written objection to the Settlement to the Court and counsel before the Court-approved deadline, you may (but do not have to) attend the Final Approval Hearing and present your objections to the Court. You may attend the Final Approval Hearing even if you

do not file a written objection, but you will only be allowed to speak at the Final Approval Hearing if you file a written objection in advance of the Final Approval Hearing AND you file a Notice of Intention To Appear, as described in this paragraph. To do so, you must file with the Court a letter or other paper called a "Notice of Intention To Appear at Final Approval Hearing in *Alford v. United Community Banks, Inc. et al.*, Case No. 11-cv-00309." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention To Appear must be received by the attorneys listed in the answer to Question 13 above no later than _____, 2013, and must be filed with the Clerk of the Court at the address listed in the answer to Question 13.

IF YOU DO NOTHING

17. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing and you are a Settlement Class Member, you will participate in the Settlement of the Action as described above in this Notice.

GETTING MORE INFORMATION

18. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

Yes. This Notice summarizes the proposed Settlement. The complete terms are set forth in the Settlement Agreement. You may obtain a copy of the Settlement Agreement by making a written request to Class Counsel listed on Page 2 above. Copies may also be obtained at the dedicated Settlement website, www.UCBIERISASettlement.com, by calling the toll-free number, xxx-xxx-xxxx, or by sending an email to UCBIERISASettlement@ktmc.com. You are encouraged to read the complete Settlement Agreement.

DATED: _____, 2013

DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, THE COMPANY, OR DEFENDANTS REGARDING THIS NOTICE. THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS.

EXHIBIT 2

Final Approval Order and Judgment

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JONATHAN ALFORD, individually and on behalf of all others similarly situated, Plaintiff, vs. UNITED COMMUNITY BANKS, INC., JIMMY C. TALLENT, GUY W. FREEMAN, ROBERT L. HEAD, JR., W.C. NELSON, JR., ROBERT BLALOCK, CATHY COX, HOYT O. HOLLOWAY, JOHN D. STEPHENS, TIM WALLIS, BENEFITS ADMINISTRATIVE COMMITTEE OF UNITED COMMUNITY BANKS, INC., CATHERINE HAMBY, BRAD MILLER, REX SCHUETTE, BILL GILBERT, SUSIE HOOPER, and DOES 1-10, Defendants.	CIVIL ACTION FILE NO. 2:11-cv-00309-WCO

FINAL APPROVAL ORDER AND JUDGMENT

This *Action* came for hearing on _____, 2013 to determine the fairness of the proposed settlement (the "*Settlement*") presented to the *Court* and the subject of this *Court's Order Granting Preliminary Approval of Class Action Settlement, Preliminarily Certifying a Class for Settlement Purposes, Approving Form and Manner of Class Notice, and Scheduling of a Final Approval Hearing*.

Due notice having been given and the *Court* having been fully advised in the premises, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

Except as otherwise defined herein, all capitalized and/or italicized terms used in this *Final Approval Order and Judgment* shall have the same meanings as ascribed to them in the *Settlement Agreement* executed by *Named Plaintiff* and *Defendants*.

1. The *Court* has jurisdiction over the subject matter of the *Action* and over all *Parties* to the *Action*, including all *Settlement Class Members*.

2. For the sole purpose of settling and resolving the *Action*, the *Court* certifies this *Action* as a class action under FED. R. CIV. P. 23(a) and 23(b)(1). The *Settlement Class* is defined as:

> All *Persons* (excluding *Defendants* and their *Plan* beneficiaries) who were participants in or beneficiaries (including alternate payees) of the *Plan* at any time between October 6, 2008 and July 22, 2013 (the "*Class Period*") and whose individual *Plan* accounts included investments in *UCBI Stock* during the *Class Period*.

3. Jonathan Alford (the "*Named Plaintiff*") is appointed as class representative for the *Settlement Class*, Kessler Topaz Meltzer & Check, LLP, is appointed as *Class Counsel* and Holzer Holzer & Fistel, LLC is appointed as *Liaison Class Counsel* pursuant to FED. R. CIV. P. 23(g).

4. The *Court* hereby approves the *Settlement Agreement* and orders that the *Settlement Agreement* shall be consummated and implemented in accordance with its terms and conditions.

5. The *Court* finds that the *Settlement* embodied in the *Settlement Agreement* is fair, reasonable and adequate, adopts the *Settlement Agreement* as its Judgment herein, orders that the *Settlement Agreement* shall be effective, binding and enforced according to its terms and conditions, and more particularly finds:

(a) The *Settlement* was negotiated vigorously and at arm's-length by counsel for the *Defendants*, on the one hand, and the *Named Plaintiff* and *Class Counsel* on behalf of the *Class*, on the other hand;

(b) This *Action* settled after *Defendants'* motion to dismiss, which was granted in part and denied in part by the *Court*. The *Settlement* was reached following arm's-length negotiations among counsel, all of whom were thoroughly familiar with this litigation, under the auspices of a *Mediator*. *Named Plaintiff* and *Defendants* had sufficient information to evaluate the settlement value of the *Action*;

(c) If the *Settlement* had not been achieved, *Named Plaintiff* and *Defendants* faced the expense, risk, and uncertainty of extended litigation;

(d) The amount of the *Settlement* is fair, reasonable, and adequate. The *Settlement Amount* is within the range of settlement values obtained in similar cases;

(e) At all times, the *Named Plaintiff* has acted independently of *Defendants* and in the interest of the *Settlement Class,* the *Settlement* arises from a genuine controversy between the *Parties* and is not the result of collusion, and the *Settlement* was not procured by fraud or misrepresentation;

(f) The *Plan's* participation in the *Settlement* is on terms no less favorable than the *Named Plaintiff's* and the *Settlement Class Members'*, and the *Plan* does not have any additional claims above and beyond those asserted by the *Named Plaintiff* that are released as a result of this *Settlement*;

(g) The *Settlement* is not part of an agreement, arrangement or understanding designed to benefit a party in interest, but rather is designed and intended to, and does, benefit the *Plan*, and its participants and beneficiaries;

(h) Accordingly, the negotiation and consummation of the *Settlement* does not constitute a "prohibited transaction" as defined by ERISA §§ 406(a) or (b). Further, in light of the analysis and report prepared by the *Independent Fiduciary*, to the extent any of the transactions required or contemplated by the *Settlement* constitute a transaction prohibited by such sections of *ERISA*, such transactions satisfy the provisions of *PTCE 2003-39*, as amended.

(i) The *Court* has duly considered and denied any objections to the *Settlement* that were filed.

(j) The *Plan of Allocation* is approved as fair and reasonable.

6. *Class Counsel* shall direct distribution of the *Net Settlement Fund* in accordance with the *Plan of Allocation* and the *Settlement Agreement*.

7. The *Court* has approved the following releases as set forth in Sections 1.18-1.19, 1.38-1.39, and 3.1-3.5 of the *Settlement Agreement*:

(a) "*Defendants' Released Claims*" are any potential or asserted claims or demands against the *Named Plaintiff*, *Class Counsel*, *Liaison Class Counsel*, or the *Settlement Class Members* by the *Defendants* or the *Defendants' Insurers* that arise from the institution or prosecution of this *Action* or relating to the settlement of any of *Plaintiff's Released Claims*.

(b) "*Plaintiff's Released Claims*" shall mean any and all *Claims* of any nature whatsoever, whether individual, representative, or derivative, known or unknown, accrued or unaccrued, in law or equity, by or on behalf of the *Plan*, the *Named Plaintiff* and the *Settlement Class*, including respective heirs, beneficiaries, executors, administrators, *Successors-In-Interest* and assigns that: (a) were brought or could have been brought in the *Action* and arise out of any or all of the same or substantially similar acts, omissions, facts, matters, circumstances, situations, transactions or occurrences as those alleged in the *Action* during the

Class Period, including but not limited to claims that *Defendant*s and/or any fiduciaries of the *Plan* breached fiduciary duties during the *Class Period* in connection with (1) the acquisition and holding of *UCBI Stock* by the *Plan* or the *Plan's* participants during the *Class Period*, (2) the appointment and/or monitoring of the *Plan's* fiduciaries with regard to *UCBI* or *UCBI Stock* during the *Class Period*, (3) the provision of information to the *Plan's* fiduciaries or participants and beneficiaries of the *Plan* during the *Class Period*, or (4) the loyalty of the *Plan*'s fiduciaries regarding *UCBI* or the *UCBI Stock* during the *Class Period*; (b) were brought or could have been brought under *ERISA* based on or relating to the investment of *Plan* assets in *UCBI Stock* by or through the *Plan* during the *Class Period*; and/or (c) are related to the prosecution, defense or settlement of the *Action*. Notwithstanding any other provision of this *Settlement Agreement*, *Named Plaintiff* and members of the *Settlement Class* shall not be deemed to have barred, waived, or released any *Claim* by any individual *Plan* participant concerning his or her eligibility for benefits under the *Plan* or to contest the correct amount of such benefit except to the extent that such claim may relate to the *Claims* asserted in the *First Amended Class Action Complaint*.

(c) *Named Plaintiff*, the *Settlement Class*, and the *Plan's* Releases. Upon the *Effective Date*, the *Named Plaintiff* (or his *Successors-In-Interest*) shall and hereby do conclusively, absolutely, unconditionally, irrevocably, and forever

release and discharge, and the *Plan* and the *Settlement Class* shall, by operation of the *Final Approval Order and Judgment*, be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged the *Plaintiff's Released Persons* from all *Plaintiff's Released Claims*.

(d) Defendants' Releases. Upon the *Effective Date*, *Defendants* shall conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge *Defendants' Released Persons* from all of *Defendants' Released Claims*.

(e) Scope of Releases.

8. The releases set forth in this section are not intended to include the release of any rights or duties of the parties arising out of this *Settlement Agreement*, including the express warranties and covenants contained therein, except as expressly provided in the *Settlement Agreement*.

9. The *Action* is hereby dismissed with prejudice, each party to bear his, her, or its own costs, except as expressly provided herein.

10. The *Court* shall retain exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance of the *Settlement Agreement* or any challenges as to the performance, validity, interpretation, administration, enforcement, or enforceability of the *Class Notice*, *Plan of Allocation*, this *Final Approval Order and Judgment*, or the *Settlement Agreement* or the termination of

the *Settlement Agreement*. The *Court* shall also retain exclusive jurisdiction and rule by separate Order with respect to all applications for awards of attorneys' fees and a *Case Contribution Award* to the *Named Plaintiff*, and reimbursements of expenses, submitted pursuant to the *Settlement Agreement*.

11. In the event of *Termination* of the *Settlement Agreement*, in accordance with its terms, this *Final Approval Order and Judgment* shall be rendered null and void, *ab initio,* and shall be vacated *nunc pro tunc*, and this *Action* shall for all purposes with respect to the *Parties* revert to its status as of the day immediately before May 14, 2013, the day the agreement was reached. The *Parties* shall be afforded a reasonable opportunity to negotiate a new case management schedule.

12. This *Final Approval Order and Judgment* shall not be construed or used as an admission, concession, or declaration of any fault, wrongdoing, breach or liability. This *Final Approval Order and Judgment* is not admissible as evidence for any purpose against *Defendants* in any pending or future litigation involving any of the *Parties*. This *Final Approval Order and Judgment* shall not be construed or used as an admission, concession, or declaration by or against *Defendants* of any fault, wrongdoing, breach, or liability and *Defendants* specifically deny any such fault, breach, liability or wrongdoing. This *Final Approval Order and Judgment* shall not be construed or used as an admission,

concession, or declaration by or against *Named Plaintiff* or the *Settlement Class* that their claims lack merit or that the relief requested in the *Action* is inappropriate, improper or unavailable. This *Final Approval Order and Judgment* shall not be construed or used as an admission, concession, declaration or waiver by any *Party* of any arguments, defenses, or claims he, she, or it may have in the event of *Termination* of the *Settlement Agreement*. Moreover, the *Settlement Agreement* and any proceedings taken pursuant to the *Settlement Agreement* are for settlement purposes only. Neither the fact of, nor any provision contained in the *Settlement Agreement* or its exhibits, nor any actions taken thereunder shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any defense that has been, could have been, or in the future might be asserted.

IT IS SO ORDERED.

DATED: _____, 2013

_____
Hon. William C. O'Kelley
United States District Judge

EXHIBIT 3

Plan of Allocation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JONATHAN ALFORD, individually and on behalf of all others similarly situated, Plaintiff, vs. UNITED COMMUNITY BANKS, INC., JIMMY C. TALLENT, GUY W. FREEMAN, ROBERT L. HEAD, JR., W.C. NELSON, JR., ROBERT BLALOCK, CATHY COX, HOYT O. HOLLOWAY, JOHN D. STEPHENS, TIM WALLIS, BENEFITS ADMINISTRATIVE COMMITTEE OF UNITED COMMUNITY BANKS, INC., CATHERINE HAMBY, BRAD MILLER, REX SCHUETTE, BILL GILBERT, SUSIE HOOPER, and DOES 1-10, Defendants.	CIVIL ACTION FILE NO. 2:11-cv-00309-WCO

PLAN OF ALLOCATION

I. DEFINITIONS.

Except as indicated in this *Plan of Allocation*, the capitalized and italicized terms used herein shall have the meaning ascribed to them in the *Settlement Agreement*.

II. CALCULATION OF ALLOCATION AMOUNTS.

A. Prior to disbursement of the *Net Settlement Fund* to the *Plan*, the *Company* or the *Company's Record Keeper* shall provide the *Settlement Administrator* with the data reasonably necessary to determine the amount of the *Net Settlement Fund* to be distributed to each *Settlement Class Member* in accordance with this *Plan of Allocation*.

B. For each *Settlement Class Member*, the *Settlement Administrator* shall determine the approximate net loss ("*Net Loss*") as follows: *Net Loss* = A + B – C – D, where, for each *Settlement Class Member's* account:

1. A = the dollar value, if any, of the balance invested in the *Company Stock Fund* on the first day of the *Class Period*;[1]

2. B = the dollar value, if any, of all acquisitions of the *Company Stock Fund* after the first day of the *Class Period* and during the *Class Period* as of the time of purchase(s);

3. C = the dollar value, if any, of all dispositions of the *Company Stock Fund* during the *Class Period* as of the time of the sale(s); and

4. D = the dollar value, if any, of the *Company Stock Fund* remaining on the last day of the *Class Period*.

[1] To the extent data is not available to determine the account balances of *Settlement Class Members* at the beginning or end of the *Class Period*, the calculations may be performed using data as of the nearest date for which data is available after the beginning or end of the applicable event, unless such different amount was actually distributed, in which case the actual distribution amount shall be used.

In the event that a participant's account was transferred, in whole or in part, to a beneficiary (including an alternate payee) during the *Class Period*, the participant and the transferee beneficiary shall be treated as a single *Settlement Class Member* for the purpose of determining a *Net Loss*. The *Net Loss* shall then be allocated between the participant and beneficiary according to the proportion of the *Net Loss* attributable to the holdings of the participant and beneficiary.

C. The *Net Losses* of the *Settlement Class Members* as calculated in Section II.B above will be totaled to yield the loss of the *Plan* as a whole over the *Class Period* (the "*Plan's Loss*").

D. The *Settlement Administrator* shall calculate for each *Settlement Class Member* his or her "*Preliminary Fractional Share*" of the *Plan's Loss* by dividing each S*ettlement Class Member's Net Loss* by the *Plan's Loss*.

E. The *Settlement Administrator* shall then calculate for each *Settlement Class Member* his or her "*Preliminary Dollar Recovery*" of the *Net Settlement Fund* by multiplying the *Settlement Class Member's Preliminary Fractional Share* by the *Net Settlement Fund*.

F. The *Settlement Administrator* shall identify all *Settlement Class Members* whose *Preliminary Dollar Recovery* is greater than zero dollars ($0.00) but less than or equal to a minimum amount of five dollars ($5.00). All such *Settlement Class Members* shall be identified as the "*Non-Recipients*" and will not

receive an allocation from the *Net Settlement Fund*. The *Preliminary Dollar Recovery* otherwise allocable to the *Non-Recipients* shall be reallocated among the other *Settlement Class Members* proportionately in accordance with their *Net Losses*.

G. The *Settlement Administrator* shall then identify all *Settlement Class Members* whose *Preliminary Dollar Recovery* is greater than five dollars ($5.00) but less than or equal to a minimum amount of fifty dollars ($50.00) (the "*Minimum Amount*"). All such *Settlement Class Members* shall receive an allocation from the *Net Settlement Fund* of the *Minimum Amount*.

H. The *Settlement Administrator* shall then, after subtracting out the amounts allocated to *Settlement Class Members* who receive the *Minimum Amount*, recalculate the *Preliminary Fractional Shares* and the *Preliminary Dollar Recoveries* so as to arrive at the "*Final Fractional Share*" and the "*Final Dollar Recovery*" for each *Settlement Class Member*. The sum of the *Final Dollar Recoveries* must equal the *Net Settlement Fund*.

III. DISTRIBUTION OF THE ALLOCATED AMOUNTS.

A. As soon as practicable after the calculations pursuant to Section II above, the *Settlement Administrator* shall forward to the *Plan Recordkeeper(s)* a file showing each *Settlement Class Member's Final Dollar Recovery* as calculated above for purposes of distributing the *Net Settlement Fund* to *Settlement Class*

Members. As promptly as reasonably possible after provision of the *Final Dollar Recovery* file to the *Plan Recordkeeper(s)*, *Class Counsel* shall direct the *Financial Institution* to deposit into the *Plan* the *Net Settlement Fund*. The funds deposited into the *Plan* shall be assets of the *Plan* for all purposes.

B. ***Settlement Class Members* With Accounts Under the *Plan*.**

For *Settlement Class Members* with accounts under the *Plan*, the portion of the deposited *Net Settlement Fund* attributable to them shall be invested by the *Plan Recordkeeper(s)*, for each such *Settlement Class Member*, in any default investment option(s) designated by the *Plan*, and if the *Plan* has not designated any default investment option(s), in a stable value fund or similar fund under the *Plan*.

C. ***Settlement Class Members* Without Accounts Under the *Plan*.**

With respect to *Settlement Class Members* who withdrew their accounts under the *Plan* after the beginning of the *Class Period* or whose accounts were transferred to a beneficiary (including an alternate payee), each such *Settlement Class Member* will be notified by the *Plan Recordkeeper(s)* of the amount of their payment, along with further instructions on how to receive this amount on a pre-tax basis if they chose to do so. If no instructions are received from any such *Settlement Class Member* by the deadline established in the notice provided, the *Plan Recordkeeper(s)* shall distribute such *Settlement Class Member(s)*' share of

the *Net Settlement Fund* to the *Plan* to be administered in accordance with the procedures of the *Plan* regarding participants who cannot be located.

D. If any *Settlement Class Member* with a *Final Dollar Recovery* cannot be located despite reasonable efforts, such *Settlement Class Member's Final Dollar Recovery* shall be administered in accordance with the procedures of the *Plan* regarding participants who cannot be located. If any *Settlement Class Member* with a *Final Dollar Recovery* is deceased, such *Settlement Class Member's Final Dollar Recovery* shall be administered in accordance with the procedures of the *Plan* regarding deceased participants.

IV. QUALIFICATIONS AND CONTINUING JURISDICTION

A. Depending on the manner in which the data is kept and the ease with which it can be manipulated, it may be appropriate to simplify some of the features of these calculations. Such simplifications are acceptable as long as the two basic features of the distribution of the *Net Settlement Fund* are preserved: (1) that each *Settlement Class Member* receives a proportionate share of the *Net Settlement Fund* based approximately on the decline in the value of the *Company Stock Fund* held in the *Settlement Class Member's* account over the *Class Period* in comparison with the decline in value of the *Company Stock Fund* held by all other *Settlement Class Members*; and (2) that the individual's share of the *Net Settlement Fund* is added to the *Settlement Class Member* or beneficiary's account under the *Plan*

and/or distributed so as to realize any potential tax advantage of investment in the *Plan*. Any such changes will be presented to the *Court* for approval pursuant to Section 5.B below.

B. The *Court* will retain jurisdiction over the *Plan of Allocation* to the extent necessary to ensure that it is fully and fairly implemented.

SO ORDERED this ____ day of _____, 2013.

_____
Hon. William O'Kelley
United States District Judge

EXHIBIT B

KTMC Firm Resume

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FIRM PROFILE

Since 1987, Kessler Topaz Meltzer & Check, LLP has specialized in the prosecution of securities class actions and has grown into one of the largest and most successful shareholder litigation firms in the field. With offices in Radnor, Pennsylvania and San Francisco, California, the Firm is comprised of 94 attorneys as well as an experienced support staff consisting of over 80 paralegals, in-house investigators, legal clerks and other personnel. With a large and sophisticated client base (numbering over 180 institutional investors from around the world -- including public and Taft-Hartley pension funds, mutual fund managers, investment advisors, insurance companies, hedge funds and other large investors), Kessler Topaz has developed an international reputation for excellence and has extensive experience prosecuting securities fraud actions. For the past several years, the National Law Journal has recognized Kessler Topaz as one of the top securities class action law firms in the country. In addition, the Legal Intelligencer recently awarded Kessler Topaz with its Class Action Litigation Firm of The Year award. Lastly, Kessler Topaz and several of its attorneys are regularly recognized by Legal500 and Benchmark: Plaintiffs as leaders in our field.

Currently, Kessler Topaz is serving as lead or co-lead counsel in many of the largest and most significant securities class actions pending in the United States, including actions against: Bank of America, Duke Energy, Lehman Brothers, Hewlett Packard, Johnson & Johnson, JPMorgan Chase, Morgan Stanley, Pfizer, and MGM Mirage, among others. As demonstrated by the magnitude of these high-profile cases, we take seriously our role in advising clients to seek lead plaintiff appointment in cases, paying special attention to the factual elements of the fraud, the size of losses and damages, and whether there are viable sources of recovery.

Kessler Topaz has recovered billions of dollars in the course of representing defrauded shareholders from around the world and takes pride in the reputation we have earned for our dedication to our clients. Kessler Topaz devotes significant time to developing relationships with its clients in a manner that enables the Firm to understand the types of cases they will be interested in pursuing and their expectations. Further, the Firm is committed to pursuing meaningful corporate governance reforms in cases where we suspect that systemic problems within a company could lead to recurring litigation and where such changes also have the possibility to increase the value of the underlying company. The Firm is poised to continue protecting rights worldwide.

NOTEWORTHY ACHIEVEMENTS

During the Firm's successful history, Kessler Topaz has recovered billions of dollars for defrauded stockholders and consumers. The following are among the Firm's notable achievements:

Securities Fraud Litigation

***In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MDL 2058:**

Kessler Topaz, as Co-Lead Counsel, asserted claims for violations of the federal securities laws against Bank of America Corp. ("BoA") and certain of BoA's officers and board members relating to BoA's merger with Merrill Lynch & Co. ("Merrill") and its failure to inform its shareholders of billions of dollars of losses which Merrill had suffered before the pivotal shareholder vote, as well as an undisclosed agreement allowing Merrill to pay up to $5.8 billion in bonuses before the acquisition closed, despite these losses. On September 28, 2012, the Parties announced a $2.425 billion case settlement with BoA to settle all claims asserted against all defendants in the action which has since received final approval from the Court. BoA also agreed to implement significant corporate governance improvements. The settlement, reached after almost four years of litigation with a trial set to begin on October 22, 2012, amounts to 1) the sixth largest securities class action lawsuit settlement ever; 2) the fourth largest securities class action settlement ever funded by a single corporate defendant; 3) the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; 4) the single largest securities class action settlement ever resolving a Section 14(a) claim (the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation); and 5) by far the largest securities class action settlement to come out of the subprime meltdown and credit crisis to date.

***In re Tyco International, Ltd. Sec. Litig.*, No. 02-1335-B (D.N.H. 2002):**

Kessler Topaz, which served as Co-Lead Counsel in this highly publicized securities fraud class action on behalf of a group of institutional investors, achieved a record $3.2 billion settlement with Tyco International, Ltd. ("Tyco") and their auditor PricewaterhouseCoopers ("PwC"). The $2.975 billion settlement with Tyco represents the single-largest securities class action recovery from a single corporate defendant in history. In addition, the $225 million settlement with PwC represents the largest payment PwC has ever paid to resolve a securities class action and is the second-largest auditor settlement in securities class action history.

The action asserted federal securities claims on behalf of all purchasers of Tyco securities between December 13, 1999 and June 7, 2002 ("Class Period") against Tyco, certain former officers and directors of Tyco and PwC. Tyco is alleged to have overstated its income during the Class Period by $5.8 billion through a multitude of accounting manipulations and shenanigans. The case also involved allegations of looting and self-dealing by the officers and directors of the Company. In that regard, Defendants L. Dennis Kozlowski, the former CEO and Mark H. Swartz, the former CFO have been sentenced to up to 25 years in prison after being convicted of grand larceny, falsification of business records and conspiracy for their roles in the alleged scheme to defraud investors.

As presiding Judge Paul Barbadoro aptly stated in his Order approving the final settlement, "[i]t is difficult to overstate the complexity of [the litigation]." Judge Barbadoro noted the extraordinary effort required to pursue the litigation towards its successful conclusion, which included the review of more than 82.5 million pages of documents, more than 220 depositions and over 700 hundred discovery requests and responses. In addition to the complexity of the litigation, Judge Barbadoro also highlighted the great risk undertaken by Co-Lead Counsel in pursuit of the litigation, which he indicated was greater than in other multi-billion dollar securities cases and "put [Plaintiffs] at the cutting edge of a rapidly changing area of law."

In sum, the Tyco settlement is of historic proportions for the investors who suffered significant financial losses and it has sent a strong message to those who would try to engage in this type of misconduct in the future.

***In re Tenet Healthcare Corp. Sec. Litig.*, No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002):**

Kessler Topaz served as Co-Lead Counsel in this action. A partial settlement, approved on May 26, 2006, was comprised of three distinct elements: (i) a substantial monetary commitment of $215 million by the company; (ii) personal contributions totaling $1.5 million by two of the individual defendants; and (iii) the enactment and/or continuation of numerous changes to the company's corporate governance practices, which have led various institutional rating entities to rank Tenet among the best in the U.S. in regards to corporate governance. The significance of the partial settlement was heightened by Tenet's precarious financial condition. Faced with many financial pressures — including several pending civil actions and federal investigations, with total contingent liabilities in the hundreds of millions of dollars — there was real concern that Tenet would be unable to fund a settlement or satisfy a judgment of any greater amount in the near future. By reaching the partial settlement, we were able to avoid the risks associated with a long and costly litigation battle and provide a significant and immediate benefit to the class. Notably, this resolution represented a unique result in securities class action litigation — personal financial contributions from individual defendants. After taking the case through the summary judgment stage, we were able to secure an additional $65 million recovery from KPMG – Tenet's outside auditor during the relevant period – for the class, bringing the total recovery to $281.5 million.

***In re Wachovia Preferred Securities and Bond/Notes Litigation*, Master File No. 09 Civ. 6351 (RJS) (S.D.N.Y.):**

Kessler Topaz, as court-appointed Co-Lead Counsel, asserted class action claims for violations of the Securities Act of 1933 on behalf of all persons who purchased Wachovia Corporation ("Wachovia") preferred securities issued in thirty separate offerings (the "Offerings") between July 31, 2006 and Mary 29, 2008 (the "Offering Period"). Defendants in the action included Wachovia, various Wachovia related trusts, Wells Fargo as successor-in-interest to Wachovia, certain of Wachovia's officer and board members, numerous underwriters that underwrote the Offerings, and KPMG LLP ("KPMG"), Wachovia's former outside auditor. Plaintiffs alleged that the registration statements and prospectuses and prospectus supplements used to market the Offerings to Plaintiffs and other members of the class during the Offerings Period contained materially false and misleading statements and omitted material information. Specifically, the Complaint alleged that in connection with the Offerings, Wachovia: (i) failed to reveal the full extent to which its mortgage portfolio was increasingly impaired due to dangerously lax underwriting practices; (ii) materially misstated the true value of its mortgage-related assets; (iii) failed to disclose that its loan loss reserves were grossly inadequate; and (iv) failed to record write-downs and impairments to those assets as required by Generally Accepted Accounting Principles ("GAAP"). Even as Wachovia faced insolvency, the Offering Materials assured investors that Wachovia's capital and liquidity positions were "strong," and that it was so "well capitalized" that it was actually a "provider of liquidity" to the market. On August 5, 2011, the Parties announced a $590 million cash settlement with Wells Fargo (as successor-in-interest to Wachovia) and a $37 million cash settlement with KPMG, to settle all claims asserted against all defendants in the action. This settlement was approved by the Hon. Judge Richard J. Sullivan by order issued on January 3, 2012.

In re Initial Public Offering Sec. Litig., Master File No. 21 MC 92(SAS):

This action settled for $586 million on January 1, 2010, after years of litigation overseen by U.S. District Judge Shira Scheindlin. Kessler Topaz served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

***Operative Plasterers and Cement Masons International Association Local 262 Annuity Fund v. Lehman Brothers Holdings, Inc.*, No. 1:08-cv-05523-LAK (S.D.N.Y.):**

Kessler Topaz has asserted claims against certain individual defendants and underwriters of Lehman securities arising from misstatements and omissions regarding Lehman's financial condition, and its exposure to the residential and commercial real estate markets in the period leading to Lehman's unprecedented bankruptcy filing on September 14, 2008. In July 2011, the Court sustained the majority of the amended Complaint finding that Lehman's use of Repo 105, while technically complying with GAAP, still rendered numerous statements relating to Lehman's purported Net Leverage Ration materially false and misleading. The Court also found that Defendants' statements related to Lehman's risk management policies were sufficient to state a claim. With respect to loss causation, the Court also failed to accept Defendants' contention that the financial condition of the economy led to the losses suffered by the Class. As the case was being prepared for trial, a $517 million settlement was reached on behalf of shareholders --- $426 million of which came from various underwriters of the Offerings, representing a significant recovery for investors in this now bankrupt entity. In addition, $90 million came from Lehman's former directors and officers, which is significant considering the diminishing assets available to pay any future judgment.

The settlement was approved by order issued on November 20, 2012. The litigation continues against Lehman's auditor, Ernst & Young, LLP.

***Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al.* Case No. 0:08-cv-06324-PAM-AJB (D. Minn.):**

Plaintiffs alleged that the company failed to disclose its reliance on illegal "off-label" marketing techniques to drive the sales of its INFUSE Bone Graft ("INFUSE") medical device. While physicians are allowed to prescribe a drug or medical device for any use they see fit, federal law prohibits medical device manufacturers from marketing devices for any uses not specifically approved by the United States Food and Drug Administration. The company's off-label marketing practices have resulted in the company becoming the target of a probe by the federal government which was revealed on November 18, 2008, when the company's CEO reported that Medtronic received a subpoena from the United States Department of Justice which is "looking into off-label use of INFUSE." After hearing oral argument on Defendants' Motions to Dismiss, on February 3, 2010, the Court issued an order granting in part and denying in part Defendants' motions, allowing a large portion of the action to move forward. The Court held that Plaintiff successfully stated a claim against each Defendant for a majority of the misstatements alleged in the Complaint and that each of the Defendants knew or recklessly disregarded the falsity of these statements and that Defendants' fraud caused the losses experienced by members of the Class when the market learned the truth behind Defendants' INFUSE marketing efforts. While the case was in discovery, on April 2, 2012, Medtronic agreed to pay shareholders an $85 million settlement. The settlement was approved by the Court by order issued on November 8, 2012.

***In re Brocade Sec. Litig*., Case No. 3:05-CV-02042 (N.D. Cal. 2005) (CRB):**

The complaint in this action alleges that Defendants engaged in repeated violations of federal securities laws by backdating options grants to top executives and falsified the date of stock option grants and other information regarding options grants to numerous employees from 2000 through 2004, which ultimately caused Brocade to restate all of its financial statements from 2000 through 2005. In addition, concurrent SEC civil and Department of Justice criminal actions against certain individual defendants were commenced. In August, 2007 the Court denied Defendant's motions to dismiss and in October, 2007 certified a class of Brocade investors who were damaged by the alleged fraud. Discovery is currently proceeding and the case is being prepared for trial. Furthermore, while litigating the securities class action Kessler Topaz and its co-counsel objected to a proposed settlement in the Brocade derivative action. On March 21, 2007, the parties in *In Re Brocade Communications Systems, Inc. Derivative Litigation*, No. C05-02233 (N.D. Cal. 2005) (CRB) gave notice that they had obtained preliminary approval of their settlement. According to the notice, which was buried on the back pages of the Wall Street Journal, Brocade shareholders were given less than three weeks to evaluate the settlement and file any objection with the Court. Kessler Topaz client Puerto Rico Government Employees' Retirement System ("PRGERS") had a large investment in Brocade and, because the settlement was woefully inadequate, filed an objection. PRGERS, joined by fellow institutional investor Arkansas Public Employees Retirement System, challenged the settlement on two fundamental grounds. First, PRGERS criticized the derivative plaintiffs for failing to conduct any discovery before settling their claims. PRGERS also argued that derivative plaintiff's abject failure to investigate its own claims before providing the defendants with broad releases from liability made it impossible to weigh the merits of the settlement. The Court agreed, and strongly admonished derivative plaintiffs for their failure to perform this most basic act of service to their fellow Brocade shareholders. The settlement was rejected and later withdrawn. Second, and more significantly, PRGERS claimed that the presence of the well-respected law firm Wilson, Sonsini Goodrich and Rosati, in this case, created an incurable conflict of interest that corrupted the entire settlement process. The conflict stemmed from WSGR's dual role as counsel to Brocade and the Individual Settling Defendants, including WSGR Chairman and former Brocade Board Member Larry Sonsini. On this point, the Court also agreed and advised WSGR to remove itself from the case entirely. On May 25, 2007, WSGR complied and withdrew as counsel to Brocade. The case settled for $160 million and was approved by the Court.

***In re Satyam Computer Services, Ltd. Sec. Litig*., No. 09 MD 02027 (BSJ) (S.D.N.Y.):**

Kessler Topaz served as Co-Lead Counsel in this securities fraud class action in the Southern District of New York. The action asserts claims for violations of the federal securities laws against Satyam Computer Services Limited ("Satyam" or the "Company") and certain of Satyam's former officers and directors and its former auditor PricewaterhouseCoopers International Ltd. ("PwC") relating to the Company's January 7, 2009, disclosure admitting that B. Ramalinga Raju ("B. Raju"), the Company's former chairman, falsified Satyam's financial reports by, among other things, inflating its reported cash balances by more than $1 billion. The news caused the price of Satyam's common stock (traded on the National Stock Exchange of India and the Bombay Stock Exchange) and American Depository Shares ("ADSs") (traded on the New York Stock Exchange ("NYSE")) to collapse. From a

closing price of $3.67 per share on January 6, 2009, Satyam's common stock closed at $0.82 per share on January 7, 2009. With respect to the ADSs, the news of B. Raju's letter was revealed overnight in the United States and, as a result, trading in Satyam ADSs was halted on the NYSE before the markets opened on January 7, 2009. When trading in Satyam ADSs resumed on January 12, 2009, Satyam ADSs opened at $1.14 per ADS, down steeply from a closing price of $9.35 on January 6, 2009. Lead Plaintiffs filed a consolidated complaint on July 17, 2009, on behalf of all persons or entities, who (a) purchased or otherwise acquired Satyam's ADSs in the United States; and (b) residents of the United States who purchased or otherwise acquired Satyam shares on the National Stock Exchange of India or the Bombay Stock Exchange between January 6, 2004 and January 6, 2009. Co-Lead Counsel secured a settlement for $125 million from Satyam on February 16, 2011. Additionally, Co-Lead Counsel was able to secure a $25.5 million settlement from PwC on April 29, 2011, who was alleged to have signed off on the misleading audit reports.

***In re BankAtlantic Bancorp, Inc. Sec. Litig.*, Case No. 07-CV-61542 (S.D. Fla. 2007):**

On November 18, 2010, a panel of nine Miami, Florida jurors returned the first securities fraud verdict to arise out of the financial crisis against BankAtlantic Bancorp. Inc., its chief executive officer and chief financial officer. This case was only the tenth securities class action to be tried to a verdict following the passage of the Private Securities Litigation Reform Act of 1995, which governs such suits. Following extensive post-trial motion practice, the District Court upheld all of the Jury's findings of fraud but vacated the damages award on a narrow legal issue and granted Defendant's motion for a judgment as a matter of law. Plaintiffs appealed to the U.S. Court of Appeals for the Eleventh Circuit. On July 23, 2012, a three-judge panel for the Appeals Court found the District Court erred in granting the Defendant's motion for a judgment as a matter of law based in part on the Jury's findings (perceived inconsistency of two of the Jury's answers to the special interrogatories) instead of focusing solely on the sufficiency of the evidence. However, upon its review of the record, the Appeals Court affirmed the District Court's decision as it determined the Plaintiffs did not introduce evidence sufficient to support a finding in its favor on the element of loss causation. The Appeals Court's decision in this case does not diminish the five years of hard work which Kessler Topaz expended to bring the matter to trial and secure an initial jury verdict in the Plaintiffs' favor. This case is an excellent example of the Firm's dedication to our clients and the lengths it will go to try to achieve the best possible results for institutional investors in shareholder litigation.

***In re AremisSoft Corp. Sec. Litig.*, C.A. No. 01-CV-2486 (D.N.J. 2002):**

Kessler Topaz is particularly proud of the results achieved in this case before the Honorable Joel A. Pisano. This case was exceedingly complicated, as it involved the embezzlement of hundreds of millions of dollars by former officers of the Company, one of whom remains a fugitive. In settling the action, Kessler Topaz, as sole Lead Counsel, assisted in reorganizing AremisSoft as a new company to allow for it to continue operations, while successfully separating out the securities fraud claims and the bankrupt Company's claims into a litigation trust. The approved Settlement enabled the class to receive the majority of the equity in the new Company, as well as their pro rata share of any amounts recovered by the litigation trust. During this litigation, actions have been initiated in the Isle of Man, Cyprus, as well as in the United States as we continue our efforts to recover assets stolen by corporate insiders and related entities.

***In re CVS Corporation Sec. Litig.*, C.A. No. 01-11464 JLT (D.Mass. 2001):**

Kessler Topaz, serving as Co-Lead Counsel on behalf of a group of institutional investors, secured a cash recovery of $110 million for the class, a figure which represents the third-largest payout for a securities action in Boston federal court. Kessler Topaz successfully litigated the case through summary judgment before ultimately achieving this outstanding result for the class following several mediation sessions, and just prior to the commencement of trial.

***In re Marvell Technology, Group, Ltd. Sec. Lit., Master* File No. 06-06286 RWM:**

Kessler Topaz served as Co-Lead Counsel in this securities class action brought against Marvell Technology Group Ltd. ("Marvell") and three of Marvell's executive officers. This case centered around an alleged options backdating scheme carried out by Defendants from June 2000 through June 2006, which enabled Marvell's executives and employees to receive options with favorable option exercise prices chosen with the benefit of hindsight, in direct violation of Marvell's stock option plan, as well as to avoid recording hundreds of millions of dollars in compensation expenses on the Marvell's books. In total, the restatement conceded that Marvell had understated the cumulative effect of its compensation expense by $327.3 million, and overstated net income by $309.4 million, for the period covered by the restatement. Following nearly three years of investigation and prosecution of the Class' claims as well as a protracted and contentious mediation process, Co-Lead Counsel secured a settlement for $72

million from defendants on June 9, 2009. This Settlement represents a substantial portion of the Class' maximum provable damages, and is among the largest settlements, in total dollar amount, reached in an option backdating securities class action.

***In re Delphi Corp. Sec. Litig.*, Master File No. 1:05-MD-1725 (E.D. Mich. 2005):**
In early 2005, various securities class actions were filed against auto-parts manufacturer Delphi Corporation in the Southern District of New York. Kessler Topaz its client, Austria-based mutual fund manager Raiffeisen Kapitalanlage-Gesellschaft m.b.H. ("Raiffeisen"), were appointed as Co-Lead Counsel and Co-Lead Plaintiff, respectively. The Lead Plaintiffs alleged that (i) Delphi improperly treated financing transactions involving inventory as sales and disposition of inventory; (ii) improperly treated financing transactions involving "indirect materials" as sales of these materials; and (iii) improperly accounted for payments made to and credits received from General Motors as warranty settlements and obligations. As a result, Delphi's reported revenue, net income and financial results were materially overstated, prompting Delphi to restate its earnings for the five previous years. Complex litigation involving difficult bankruptcy issues has potentially resulted in an excellent recovery for the class. In addition, Co-Lead Plaintiffs also reached a settlement of claims against Delphi's outside auditor, Deloitte & Touche, LLP, for $38.25 million on behalf of Delphi investors.

***In re Royal Dutch Shell European Shareholder Litigation*, No. 106.010.887, Gerechtshof Te Amsterdam (Amsterdam Court of Appeal):**
Kessler Topaz was instrumental in achieving a landmark $352 million settlement on behalf non-US investors with Royal Dutch Shell plc relating to Shell's 2004 restatement of oil reserves. This settlement of securities fraud claims on a class-wide basis under Dutch law was the first of its kind, and sought to resolve claims exclusively on behalf of European and other non-United States investors. Uncertainty over whether jurisdiction for non-United States investors existed in a 2004 class action filed in federal court in New Jersey prompted a significant number of prominent European institutional investors from nine countries, representing more than one billion shares of Shell, to actively pursue a potential resolution of their claims outside the United States. Among the European investors which actively sought and supported this settlement were Alecta pensionsförsäkring, ömsesidigt, PKA Pension Funds Administration Ltd., Swedbank Robur Fonder AB, AP7 and AFA Insurance, all of which were represented by Kessler Topaz.

***In re Computer Associates Sec. Litig.*, No. 02-CV-1226 (E.D.N.Y. 2002):**
Kessler Topaz served as Co-Lead Counsel on behalf of plaintiffs, alleging that Computer Associates and certain of its officers misrepresented the health of the company's business, materially overstated the company's revenues, and engaged in illegal insider selling. After nearly two years of litigation, Kessler Topaz helped obtain a settlement of $150 million in cash and stock from the company.

***In re The Interpublic Group of Companies Sec. Litig.*, No. 02 Civ. 6527 (S.D.N.Y. 2002):**
Kessler Topaz served as sole Lead Counsel in this action on behalf of an institutional investor and received final approval of a settlement consisting of $20 million in cash and 6,551,725 shares of IPG common stock. As of the final hearing in the case, the stock had an approximate value of $87 million, resulting in a total settlement value of approximately $107 million. In granting its approval, the Court praised Kessler Topaz for acting responsibly and noted the Firm's professionalism, competence and contribution to achieving such a favorable result.

***In re Digital Lightwave, Inc. Sec. Litig.*, Consolidated Case No. 98-152-CIV-T-24E (M.D. Fla. 1999):**
The firm served as Co-Lead Counsel in one of the nation's most successful securities class actions in history measured by the percentage of damages recovered. After extensive litigation and negotiations, a settlement consisting primarily of stock was worth over $170 million at the time when it was distributed to the Class. Kessler Topaz took on the primary role in negotiating the terms of the equity component, insisting that the class have the right to share in any upward appreciation in the value of the stock after the settlement was reached. This recovery represented an astounding approximately two hundred percent (200%) of class members' losses.

***In re Transkaryotic Therapies, Inc. Sec. Litig.*, Civil Action No.: 03-10165-RWZ (D. Mass. 2003):**
After five years of hard-fought, contentious litigation, Kessler Topaz as Lead Counsel on behalf of the Class, entered into one of largest settlements ever against a biotech company with regard to non-approval of one of its drugs by the U.S. Food and Drug Administration ("FDA"). Specifically, the Plaintiffs alleged that Transkaryotic

Therapies, Inc. ("TKT") and its CEO, Richard Selden, engaged in a fraudulent scheme to artificially inflate the price of TKT common stock and to deceive Class Members by making misrepresentations and nondisclosures of material facts concerning TKT's prospects for FDA approval of Replagal, TKT's experimental enzyme replacement therapy for Fabry disease. With the assistance of the Honorable Daniel Weinstein, a retired state court judge from California, Kessler Topaz secured a $50 million settlement from the Defendants during a complex and arduous mediation.

***In re PNC Financial Services Group, Inc. Sec. Litig.*, Case No. 02-CV-271 (W.D. Pa. 2002):**
Kessler Topaz served as Co-Lead Counsel in a securities class action case brought against PNC bank, certain of its officers and directors, and its outside auditor, Ernst & Young, LLP ("E&Y"), relating to the conduct of Defendants in establishing, accounting for and making disclosures concerning three special purpose entities ("SPEs") in the second, third and fourth quarters of PNC's 2001 fiscal year. Plaintiffs alleged that these entities were created by Defendants for the sole purpose of allowing PNC to secretly transfer hundreds of millions of dollars worth of non-performing assets from its own books to the books of the SPEs without disclosing the transfers or consolidating the results and then making positive announcements to the public concerning the bank's performance with respect to its non-performing assets. Complex issues were presented with respect to all defendants, but particularly E&Y. Throughout the litigation E&Y contended that because it did not make any false and misleading statements itself, the Supreme Court's opinion in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1993) foreclosed securities liability for "aiding or abetting" securities fraud for purposes of Section 10(b) liability. Plaintiffs, in addition to contending that E&Y did make false statements, argued that Rule 10b-5's deceptive conduct prong stood on its own as an independent means of committing fraud and that so long as E&Y itself committed a deceptive act, it could be found liable under the securities laws for fraud. After several years of litigation and negotiations, PNC paid $30 million to settle the action, while also assigning any claims it may have had against E&Y and certain other entities that were involved in establishing and/or reporting on the SPEs. Armed with these claims, class counsel was able to secure an additional $6.6 million in settlement funds for the class from two law firms and a third party insurance company and $9.075 million from E&Y. Class counsel was also able to negotiate with the U.S. government, which had previously obtained a disgorgement fund of $90 million from PNC and $46 million from the third party insurance carrier, to combine all funds into a single settlement fund that exceeded $180 million and is currently in the process of being distributed to the entire class, with PNC paying all costs of notifying the Class of the settlement.

In re SemGroup Energy Partners, L.P., Sec. Litig., No. 08-md-1989 (DC) (N.D. Okla.)
Kessler Topaz, which was appointed by the Court as sole Lead Counsel, litigated this matter, which ultimately settled for $28 million. The defense was led by 17 of the largest and best capitalized defense law firms in the world. On April 20, 2010, in a fifty-page published opinion, the United States District Court for the Northern District of Oklahoma largely denied defendants' ten separate motions to dismiss Lead Plaintiff's Consolidated Amended Complaint. The Complaint alleged that: (i) defendants concealed SemGroup's risky trading operations that eventually caused SemGroup to declare bankruptcy; and (ii) defendants made numerous false statements concerning SemGroup's ability to provide its publicly-traded Master Limited Partnership stable cash-flows. The case was aggressively litigated out of the Firm's San Francisco and Radnor offices and the significant recovery was obtained, not only from the Company's principals, but also from its underwriters and outside directors.

***In re Liberate Technologies Sec. Litig.*, No. C-02-5017 (MJJ) (N.D. Cal. 2005):**
Kessler Topaz represented plaintiffs which alleged that Liberate engaged in fraudulent revenue recognition practices to artificially inflate the price of its stock, ultimately forcing it to restate its earning. As sole Lead Counsel, Kessler Topaz successfully negotiated a $13.8 million settlement, which represents almost 40% of the damages suffered by the class. In approving the settlement, the district court complimented Lead Counsel for its "extremely credible and competent job."

***In re Riverstone Networks, Inc. Sec. Litig.*, Case No. CV-02-3581 (N.D. Cal. 2002):**
Kessler Topaz served as Lead Counsel on behalf of plaintiffs alleging that Riverstone and certain of its officers and directors sought to create the impression that the Company, despite the industry-wide downturn in the telecom sector, had the ability to prosper and succeed and was actually prospering. In that regard, plaintiffs alleged that defendants issued a series of false and misleading statements concerning the Company's financial condition, sales and prospects, and used inside information to personally profit. After extensive litigation, the parties entered into formal mediation with the Honorable Charles Legge (Ret.). Following five months of extensive mediation, the parties reached a settlement of $18.5 million.

Shareholder Derivative Actions

***In re Southern Peru Copper Corp. Derivative Litigation, Consol.* CA No. 961-CS (Del. Ch.):**
On October 14, 2011, Kessler Topaz and its Delaware co-counsel secured the largest damage award in Delaware Chancery Court history, a $1.3 billion derivative judgment against copper mining company Southern Peru's majority shareholder Grupo Mexico. The litigation stemmed from Southern Peru's 2005 acquisition of Minera Mexico, a private mining company owned by Grupo Mexico, for more than $3 billion in Southern Peru stock. Plaintiff alleged that the private company was worth more than a billion dollars less, but that Southern Peru's board had approved this conflicted transaction in deference to its majority shareholder's interests. In his trial opinion, Chancellor Leo Strine agreed, writing that Grupo Mexico "extracted a deal that was far better than market, and got real, market-tested value of over $3 billion for something that no member of the special committee, none of its advisors, and no trial expert was willing to say was worth that amount of actual cash." He concluded that Southern Peru's "non-adroit act of commercial charity toward the controller resulted in a manifestly unfair transaction." Discovery in the case spanned years and continents, with depositions in Peru and Mexico. Defendants appealed the historic verdict to the Delaware Supreme Court, which affirmed the Court of Chancery's judgment on August 27, 2012. The final judgment, with interest, amounted to $2.1 billion.

***In re Comverse Technology, Inc. Derivative Litigation*, 601272/2006 (Supreme Court, NY 2006):**
Kessler Topaz attorneys negotiated a settlement that required the Company's founder/Chairman/CEO and other executives to disgorge more than $62 million in ill-gotten gains from backdated stock options back to the Company and overhauled the Company's corporate governance and internal controls, including replacing a number of members on the board of directors and corporate executives, splitting the Chairman and CEO positions, and instituting majority voting for directors.

***Wanstrath v. Doctor R. Crants, et. al. Shareholders Litigation*, No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999):**
Kessler Topaz served as Lead Counsel in a derivative action filed against the officers and directors of Prison Realty Trust, Inc., challenging the transfer of assets from the Company to a private entity owned by several of the Company's top insiders. Numerous federal securities class actions were pending against the Company at this time. Through the derivative litigation, the Company's top management was ousted, the composition of the Board of Directors was significantly improved, and important corporate governance provisions were put in place to prevent future abuse. Kessler Topaz, in addition to achieving these desirable results, was able to effectuate a global settlement of all pending litigation against the backdrop of an almost certain bankruptcy. The case was resolved in conjunction with the federal securities cases for the payment of approximately $50 million by the Company's insurers and the issuance of over 46 million shares to the class members.

***In re Viacom, Inc. Shareholder Derivative Litig.*, Index No. 602527/05 (New York County, NY 2005):**
Kessler Topaz represented the Public Employees' Retirement System of Mississippi and served as Lead Counsel in a derivative action alleging that the members of the Board of Directors of Viacom, Inc. paid excessive and unwarranted compensation to Viacom's Executive Chairman and CEO, Sumner M. Redstone, and co-COOs Thomas E. Freston and Leslie Moonves, in breach of their fiduciary duties. Specifically, we alleged that in fiscal year 2004, when Viacom reported a record net loss of $17.46 billion, the board improperly approved compensation payments to Redstone, Freston, and Moonves of approximately $56 million, $52 million, and $52 million, respectively. Judge Ramos of the New York Supreme Court denied Defendants' motion to dismiss the action as we overcame several complex arguments related to the failure to make a demand on Viacom's Board; Defendants then appealed that decision to the Appellate Division of the Supreme Court of New York. Prior to a decision by the appellate court, a settlement was reached in early 2007. Pursuant to the settlement, Sumner Redstone, the company's Executive Chairman and controlling shareholder, agreed to a new compensation package that, among other things, substantially reduces his annual salary and cash bonus, and ties the majority of his incentive compensation directly to shareholder returns.

***In re Family Dollar Stores, Inc. Derivative Litig.*, Master File No. 06-CVS-16796 (Mecklenburg County, NC 2006):**

Kessler Topaz served as Lead Counsel, derivatively on behalf of Family Dollar Stores, Inc., and against certain of Family Dollar's current and former officers and directors. The actions were pending in Mecklenburg County Superior Court, Charlotte, North Carolina, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of these shareholder derivative actions, Kessler Topaz was able to achieve substantial relief for Family Dollar and its shareholders. Through Kessler Topaz's litigation of this action, Family Dollar agreed to cancel hundreds of thousands of stock options granted to certain current and former officers, resulting in a seven-figure net financial benefit for the company. In addition, Family Dollar has agreed to, among other things: implement internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; appoint two new independent directors to the board of directors; maintain a board composition of at least 75 percent independent directors; and adopt stringent officer stock-ownership policies to further align the interests of officers with those of Family Dollar shareholders. The settlement was approved by Order of the Court on August 13, 2007.

***In re Barnes & Noble, Inc. Derivative Litig.*, Index No. 06602389 (New York County, NY 2006):**
Kessler Topaz served as Lead Counsel, derivatively on behalf of Barnes & Noble, Inc., and against certain of Barnes & Noble's current and former officers and directors. This action was pending in the Supreme Court of New York, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of this shareholder derivative action, Kessler Topaz was able to achieve substantial relief for Barnes & Noble and its shareholders. Through Kessler Topaz's litigation of this action, Barnes & Noble agreed to re-price approximately $2.64 million unexercised stock options that were alleged improperly granted, and certain defendants agreed to voluntarily repay approximately $1.98 million to the Company for the proceeds they received through exercise of alleged improperly priced stock options. Furthermore, Barnes & Noble has agreed to, among other things: adopt internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; at least once per calendar year, preset a schedule of dates on which stock options will be granted to new employees or to groups of twenty (20) or more employees; make final determinations regarding stock options at duly-convened committee meetings; and designate one or more specific officer(s) within the Company who will be responsible for, among other things, compliance with the Company's stock option plans. The settlement was approved by Order of the Court on November 14, 2007.

***In re Sepracor, Inc. Derivative Litig.*, C.A. NO.: SUCV2006-04057-BLS:**
Kessler Topaz served as Lead Counsel, derivatively on behalf of Sepracor Inc., and against certain of Sepracor's current and former officers and directors. This action was pending in the Superior Court of Suffolk County, Massachusetts, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of this shareholder derivative action, Kessler Topaz was able to achieve substantial relief for Sepracor and its shareholders. Through Kessler Topaz's litigation of this action, Sepracor agreed to cancel or reprice more than 2.7 million unexercised stock options that were alleged to have been improperly granted. Furthermore, Sepracor has agreed to, among other things: adopt internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; not alter the exercise prices of stock options without shareholder approval; hire an employee responsible for ensuring that the Company's complies with its stock option plans; and appoint a director of internal auditing. The settlement was approved by Order of the Court on January 4, 2008.

***In re Monster Worldwide, Inc. Stock Option Derivative Litigation*, Index No. 1:06-CV-04622 (New York Supreme Court, New York County):**
Kessler Topaz represented Allegheny County in this shareholder derivative action brought on behalf of Monster Worldwide, Inc. ("Monster") against certain of its officers and directors. The action alleged that insiders had breached their fiduciary duties to the company and its shareholders by "backdating" stock options, that is, by granting stock options at artificially low prices by pretending that the options had been granted on earlier, fictitious dates. Kessler Topaz attorneys negotiated a settlement which required the recipients of backdated stock options to disgorge more than $32 million in unlawful gains back to the company, plus agreeing to significant corporate governance measures. These measures included (a) requiring Monster's founder Andrew McKelvey to reduce his voting control over Monster from 31% to 7%, by exchanging super-voting stock for common stock; and (b) implementing new equity granting practices that require greater accountability and transparency in the granting of stock options moving forward. In approving the settlement, the court noted "the good results, mainly the amount of

money for the shareholders and also the change in governance of the company itself, and really the hard work that had to go into that to achieve the results…."

***Denbury Resources, Inc. Shareholder Litigation,* 2008-CP-23-8395 (Greenville County, SC 2008):**
This derivative litigation challenged the Board's decision to award excessive compensation to the Company's outgoing President and CEO, Gareth Roberts. Kessler Topaz negotiated a settlement that included both the disgorgement of ill-gotten compensation by Mr. Roberts as well as numerous corporate governance improvements. In approving the settlement, the Court acknowledged that the litigation was a "hard-fought battle all the way through," and commented, "I know you guys have very vigorous and able counsel on the other side, and you had to basically try to knock your way through the wall at every stage."

***Carbon County Employees Retirement System, et al., Derivatively on Behalf of Nominal Defendant Southwest Airlines Co. v. Gary C. Kelly, et al.* Cause No. 08-08692 (District Court of Dallas County, Texas)**
Kessler Topaz served as Lead Counsel against certain officers and directors of Southwest Airlines Co. alleging breaches of fiduciary duties in connection with Southwest's violations of Federal Aviation Administration safety and maintenance regulations. Plaintiffs alleged that from June 2006 to March 2007, Southwest flew 46 Boeing 737 airplanes on nearly 60,000 flights without complying with a 2004 FAA Airworthiness Directive that required the Company to inspect the planes for fuselage fatigue cracks. As a result, Southwest was forced to temporarily ground 44 planes, and the FAA levied on the Company a record $7.5 million civil penalty. Plaintiffs successfully negotiated numerous reforms targeted not only at ensuring that Southwest's Board is adequately apprised of any issues concerning Southwest's safety and operations, but also at implementing significant measures to strengthen Southwest's safety and maintenance processes and procedures, which will yield positive changes in many areas of Southwest's operations and will have long-lasting effects on Southwest that go far beyond its Board-level practices.

***The South Financial Group, Inc. Shareholder Litigation,* 09-09061 (Dallas County, TX 2009):**
This derivative litigation challenged the Board's decision to accelerate "golden parachute" payments to the Company's CEO Mack Whittle as the Company applied for emergency assistance in 2008 under the Troubled Asset Recovery Plan ("TARP"). Kessler Topaz attorneys sought injunctive relief to block the payments and protect the Company's ability to receive the TARP funds. The litigation was settled, with Whittle giving up a portion of his severance package and agreeing to leave the board, as well as the implementation of important corporate governance changes which were described by one commentator as "unprecedented."

Mergers & Acquisitions Litigation

***In re Genentech, Inc. Shareholders Lit.*, Cons. Civ. Action No. 3991-VCS (Del. Chancery Court):**
Kessler Topaz served as Co-Lead Counsel in this shareholder class action brought against the directors of Genentech and Genentech's former majority owner, Roche Holdings, Inc., in response to Roche's July 21, 2008 attempt to acquire Genentech for $89 per share. We sought to enforce provisions of an Affiliation Agreement between Roche and Genentech and to ensure that Roche fulfilled its fiduciary obligations to Genentech's shareholders through any buyout effort by Roche. After moving to enjoin the tender offer, Kessler Topaz negotiated with Roche and Genentech to amend the Affiliation Agreement to allow a negotiated transaction between Roche and Genentech, which enabled Roche to acquire Genentech for $95 per share, approximately $3.9 billion more than Roche offered in its hostile tender offer. In approving the settlement, Vice Chancellor Leo Strine complimented plaintiffs' counsel, noting that this benefit was only achieved through "real hard-fought litigation in a complicated setting."

***In re GSI Commerce, Inc. Shareholder Litigation, Consolidated* C.A. No. 6346-VCN (Del. Ch. Ct.):**
Kessler Topaz represented Lead Plaintiff Erie County Employees Retirement System ("Erie County") in this consolidated class action matter involving the acquisition of GSI Commerce, Inc. ("GSI") by eBay, Inc., litigated in the Delaware Court of Chancery. Erie County's complaint alleged, among other things, that GSI's founder, chairman of the board and chief executive officer Michael Rubin breached his fiduciary duties to GSI and its stockholders by secretly negotiating with eBay to acquire several of GSI's businesses as a part of a merger with eBay, before the GSI board considered a possible merger with eBay, thereby reducing the price that eBay would pay to GSI's stockholders in the merger. The complaint also alleged that GSI's board breached its fiduciary duties to stockholders by allowing Rubin to acquire the GSI-owned businesses and by failing to make full material disclosure to stockholders in advance of a stockholder vote on the merger. Following expedited discovery and GSI's release of additional factual disclosures less than a week before a scheduled hearing on Erie County's motion to enjoin the

transaction, Erie County agreed to settle the action in exchange for a payment of approximately $23.7 million to GSI stockholders, as well as an agreement to pay attorneys' fees and expenses on top of that sum, without reducing the payment to stockholders. GSI stockholders received the settlement payment in June 2011, upon the closing of the eBay merger.

***In re Amicas, Inc. Shareholder Litigation*, 10-0174-BLS2 (Suffolk County, MA 2010):**
Kessler Topaz served as lead counsel in class action litigation challenging a proposed private equity buy out of Amicas that would have paid Amicas shareholders $5.35 per share in cash while certain Amicas executives retained an equity stake in the surviving entity moving forward. Kessler Topaz prevailed in securing a preliminary injunction against the deal, which then allowed a superior bidder to purchase the Company for an additional $0.70 per share. The court complimented Kessler Topaz attorneys for causing an "exceptionally favorable result for Amicas' shareholders" after "expend[ing] substantial resources."

***In re American Italian Pasta Company Shareholder Litigation*, CA 5610-VCN (Del. Ch 2010):**
This expedited merger litigation challenged certain provisions of a merger agreement, whereby the board had granted the acquiring company a "Top-Up Option" to purchase additional shares in the event that less than 90% of the shares were tendered. Kessler Topaz attorneys asserted that the Top-Up Option was granted in violation of Delaware law and threatened the rights of shareholders to seek appraisal post-closing. In settling the litigation, the parties agreed to substantially rewrite provisions of the merger agreement and issue substantial additional disclosures prior to the closing of the transaction. The Delaware Chancery Court approved the settlement, noting that "the issues were novel and difficult," and that the "litigation was brought under severe time constraints."

Consumer Protection and ERISA Litigation

***CompSource Oklahoma v. BNY Mellon Bank, N.A.*, No. CIV 08-469-KEW (E.D. Okla. October 25, 2012):**
Kessler Topaz served as Interim Class Counsel in this matter alleging that BNY Mellon Bank, N.A. and the Bank of New York Mellon (collectively, "BNYM") breached their statutory, common law and contractual duties in connection with the administration of their securities lending program. The Second Amended Complaint alleged, among other things, that BNYM imprudently invested cash collateral obtained under its securities lending program in medium term notes issued by Sigma Finance, Inc. -- a foreign structured investment vehicle ("SIV") that is now in receivership -- and that such conduct constituted a breach of BNYM's fiduciary obligations under the Employee Retirement Income Security Act of 1974, a breach of its fiduciary duties under common law, and a breach of its contractual obligations under the securities lending agreements. The Complaint also asserted claims for negligence, gross negligence and willful misconduct. The case recently settled for $280 million.

***Transatlantic Holdings, Inc., et al. v. American International Group, Inc., et al.*, American Arbitration Association Case No. 50 148 T 00376 10:**
Kessler Topaz served as counsel for Transatlantic Holdings, Inc., and its subsidiaries ("TRH"), alleging that American International Group, Inc. and its subsidiaries ("AIG") breached their fiduciary duties, contractual duties, and committed fraud in connection with the administration of its securities lending program. Until June 2009, AIG was TRH's majority shareholder and, at the same time, administered TRH's securities lending program. TRH's Statement of Claim alleged that, among other things, AIG breached its fiduciary obligations as investment advisor and majority shareholder by imprudently investing the majority of the cash collateral obtained under its securities lending program in mortgage backed securities, including Alt-A and subprime investments. The Statement of Claim further alleged that AIG concealed the extent of TRH's subprime exposure and that when the collateral pools began experiencing liquidity problems in 2007, AIG unilaterally carved TRH out of the pools so that it could provide funding to its wholly owned subsidiaries to the exclusion of TRH. The matter was litigated through a binding arbitration and TRH was awarded $75 million.

***Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A.* – Consolidated Action No. 09-cv-00686 (SAS) (S.D.N.Y.):**
On January 23, 2009, the firm filed a class action complaint on behalf of all entities that were participants in JPMorgan's securities lending program and that incurred losses on investments that JPMorgan, acting in its capacity as a discretionary investment manager, made in medium-term notes issue by Sigma Finance, Inc. – a now defunct structured investment vehicle. The losses of the Class exceeded $500 million. The complaint asserted claims for

breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA), as well as common law breach of fiduciary duty, breach of contract and negligence. Over the course of discovery, the parties produced and reviewed over 500,000 pages of documents, took 40 depositions (domestic and foreign) and exchanged 21 expert reports. The case settled for $150 million. Trial was scheduled to commence on February 6, 2012.

***In re Global Crossing, Ltd. ERISA Litigation*, No. 02 Civ. 7453 (S.D.N.Y. 2004):**
Kessler Topaz served as Co-Lead Counsel in this novel, complex and high-profile action which alleged that certain directors and officers of Global Crossing, a former high-flier of the late 1990's tech stock boom, breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") to certain company-provided 401(k) plans and their participants. These breaches arose from the plans' alleged imprudent investment in Global Crossing stock during a time when defendants knew, or should have known, that the company was facing imminent bankruptcy. A settlement of plaintiffs' claims restoring $79 million to the plans and their participants was approved in November 2004. At the time, this represented the largest recovery received in a company stock ERISA class action.

***In re AOL Time Warner ERISA Litigation*, No. 02-CV-8853 (S.D.N.Y. 2006):**
Kessler Topaz, which served as Co-Lead Counsel in this highly-publicized ERISA fiduciary breach class action brought on behalf of the Company's 401(k) plans and their participants, achieved a record $100 million settlement with defendants. The $100 million restorative cash payment to the plans (and, concomitantly, their participants) represents the largest recovery from a single defendant in a breach of fiduciary action relating to mismanagement of plan assets held in the form of employer securities. The action asserted claims for breach of fiduciary duties pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") on behalf of the participants in the AOL Time Warner Savings Plan, the AOL Time Warner Thrift Plan, and the Time Warner Cable Savings Plan (collectively, the "Plans") whose accounts purchased and/or held interests in the AOLTW Stock Fund at any time between January 27, 1999 and July 3, 2003. Named as defendants in the case were Time Warner (and its corporate predecessor, AOL Time Warner), several of the Plans' committees, as well as certain current and former officers and directors of the company. In March 2005, the Court largely denied defendants' motion to dismiss and the parties began the discovery phase of the case. In January 2006, Plaintiffs filed a motion for class certification, while at the same time defendants moved for partial summary judgment. These motions were pending before the Court when the settlement in principle was reached. Notably, an Independent Fiduciary retained by the Plans to review the settlement in accordance with Department of Labor regulations approved the settlement and filed a report with Court noting that the settlement, in addition to being "more than a reasonable recovery" for the Plans, is "one of the largest ERISA employer stock action settlements in history."

***In re Honeywell International ERISA Litigation*, No. 03-1214 (DRD) (D.N.J. 2004):**
Kessler Topaz served as Lead Counsel in a breach of fiduciary duty case under ERISA against Honeywell International, Inc. and certain fiduciaries of Honeywell defined contribution pension plans. The suit alleged that Honeywell and the individual fiduciary defendants, allowed Honeywell's 401(k) plans and their participants to imprudently invest significant assets in company stock, despite that defendants knew, or should have known, that Honeywell's stock was an imprudent investment due to undisclosed, wide-ranging problems stemming from a consummated merger with Allied Signal and a failed merger with General Electric. The settlement of plaintiffs' claims included a $14 million payment to the plans and their affected participants, and significant structural relief affording participants much greater leeway in diversifying their retirement savings portfolios.

***Henry v. Sears, et. al.*, Case No. 98 C 4110 (N.D. Ill. 1999):**
The Firm served as Co-Lead Counsel for one of the largest consumer class actions in history, consisting of approximately 11 million Sears credit card holders whose interest rates were improperly increased in connection with the transfer of the credit card accounts to a national bank. Kessler Topaz successfully negotiated a settlement representing approximately 66% of all class members' damages, thereby providing a total benefit exceeding $156 million. All $156 million was distributed automatically to the Class members, without the filing of a single proof of claim form. In approving the settlement, the District Court stated: ". . . I am pleased to approve the settlement. I think it does the best that could be done under the circumstances on behalf of the class. . . . The litigation was complex in both liability and damages and required both professional skill and standing which class counsel demonstrated in abundance."

Antitrust Litigation

***In re Remeron Antitrust Litigation*, No. 02-CV-2007 (D.N.J. 2004):**
Kessler Topaz was Co-Lead Counsel in an action which challenged Organon, Inc.'s filing of certain patents and patent infringement lawsuits as an abuse of the Hatch-Waxman Act, and an effort to unlawfully extend their monopoly in the market for Remeron. Specifically, the lawsuit alleged that defendants violated state and federal antitrust laws in their efforts to keep competing products from entering the market, and sought damages sustained by consumers and third-party payors. After lengthy litigation, including numerous motions and over 50 depositions, the matter settled for $36 million.

OUR PROFESSIONALS

PARTNERS

RAMZI ABADOU, partner-in-charge of the Firm's San Francisco office, received his Bachelor of Arts from Pitzer College in Claremont, California and his Master of Arts from Columbia University in the City of New York. Prior to attending law school, Mr. Abadou was a political science professor at Foothill College in Los Altos Hills, California. Mr. Abadou graduated from Boston College Law School and clerked for the United States Attorney's Office in San Diego, California. Prior to joining the Firm, Mr. Abadou was a partner with Coughlin Stoia Geller Rudman & Robbins LLP in San Diego, California.

Mr. Abadou concentrates his practice on prosecuting securities class actions and is also a member of the Firm's lead plaintiff litigation practice group. Mr. Abadou has been associated with a number of significant recoveries, including: *In re UnitedHealth Group, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 40623 (D. Minn. 2007) (settled - $925.5 million); *In re AT&T Corp. Secs. Litig.*, Case No. 00-cv-5364 (D.N.J.) (settled - $100 million); *In re SemGroup Energy Partners Secs. Litig.*, Case No. 08-md-1989 GFK (N.D. Ok.) (settled - $28 million); *In re Direct Gen. Corp. Sec. Litig.*, 2006 U.S. Dist. LEXIS 56128 (M.D. Tenn. 2006) (settled - $15 million) and *Minneapolis Firefighters v. Medtronic Inc.*, Case No. 08-cv-0624 (D. Minn.) (settlement pending - $ 85 million).

Mr. Abadou was a featured panelist at the American Bar Association's 11th Annual National Institute on Class Actions and is a faculty member for the Practicing Law Institute's Advanced Securities Litigation Workshops. Mr. Abadou was named as one of the Daily Journal's Top 20 lawyers in California under age 40 for 2010, and was selected for inclusion in Super Lawyers – Rising Stars Edition 2011. In 2012, Mr. Abadou was honored by Benchmark as one of the preeminent plaintiffs litigation practitioners in the country. Mr. Abadou has also lectured on securities litigation at various law schools throughout the country – including the Second Annual Director's Program on Corporate Governance at Boston College Law School. He is admitted to the California Bar and is licensed to practice in all California state courts, as well as all of the United States District Courts in California and the United States Court of Appeals for the Ninth Circuit.

NAUMON A. AMJED, a partner of the Firm, has significant experience conducting complex litigation in state and federal courts including federal securities class actions, shareholder derivative actions, suits by third-party insurers and other actions concerning corporate and alternative business entity disputes. Mr. Amjed has litigated in numerous state and federal courts across the country, including the Delaware Court of Chancery, and has represented shareholders in several high profile lawsuits, including: *LAMPERS v. CBOT Holdings, Inc. et al.*, C.A. No. 2803-VCN (Del. Ch.); *In re Alstom SA Sec. Litig.*, 454 F. Supp. 2d 187 (S.D.N.Y. 2006); *In re Global Crossing Sec. Litig.,* 02— Civ. — 910 (S.D.N.Y.); *In re Enron Corp. Sec. Litig.*, 465 F. Supp. 2d 687 (S.D. Tex. 2006); and *In re Marsh McLennan Cos., Inc. Sec. Litig.* 501 F. Supp. 2d 452 (S.D.N.Y. 2006).

Prior to joining the Firm, Mr. Amjed was associated with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A. Mr. Amjed is a graduate of the Villanova University School of Law, *cum laude*, and holds an undergraduate degree in business administration from Temple University, *cum laude*. Mr. Amjed is a member of the Delaware State Bar, the Bar of the Commonwealth of Pennsylvania and is admitted to practice before the United States Court for the District of Delaware.

STUART L. BERMAN, a partner of the Firm, concentrates his practice on securities class action litigation in federal courts throughout the country, with a particular emphasis on representing institutional investors active in litigation. Mr. Berman regularly counsels and educates institutional investors located around the world on emerging legal trends, new case ideas and the rights and obligations of institutional investors as they relate to securities fraud class actions and individual actions. In this respect, Mr. Berman has been instrumental in courts appointing the Firm's institutional clients as lead plaintiffs in class actions as well as in representing institutions individually in direct actions. Mr. Berman is currently representing institutional investors in direct actions against Vivendi and Merck, and took a very active role in the precedent setting Shell settlement on behalf of many of the Firm's European institutional clients.

In connection with these responsibilities, Mr. Berman is a frequent speaker on securities issues, especially as they relate to institutional investors, at events such as The European Pension Symposium in Florence, Italy; the Public Funds Symposium in Washington, D.C.; the Pennsylvania Public Employees Retirement (PAPERS) Summit in Harrisburg, Pennsylvania; the New England Pension Summit in Newport, Rhode Island; the Rights and Responsibilities for Institutional Investors in Amsterdam, Netherlands; and the European Investment Roundtable in Barcelona, Spain.

Mr. Berman is an honors graduate from Brandeis University and received his law degree from George Washington University National Law Center.

MICHAEL J. BONELLA, a partner of the Firm, concentrates his practice on intellectual property litigation and particularly complex patent litigation. He earned his law degree *magna cum laude* from the Duke University School of Law. Michael is one of a few attorneys who is both registered to practice before the Patent and Trademark Office and that also holds an LLM degree in Trial Advocacy, which he obtained from Temple University. In addition, Michael obtained a bachelor of science degree *cum laude* in mechanical engineering from Villanova University. Michael also served five years in the U.S. Naval Submarine program. While serving in the Navy, Michael was certified by the U.S. Navy as a nuclear engineer and received advance training in electrical engineering.

Michael is currently the co-chair of the Firm's intellectual property department. Michael has served as the lead lawyer on patent litigations involved pharmaceutical and consumer products. Michael was the case manager for TruePosition, Inc. and was instrumental in achieving a settlement valued at about $45 million for TruePosition, Inc. in *TruePosition, Inc. v. Allen Telecom, Inc.,* No. 01-0823 (D. Del.). Michael has also been the attorney that was primarily responsible for obtaining favorable settlements for defendants (*e.g.*, *Codman & Shurtleff, Inc. v. Integra LifeSciences Corp.*, No. 06-2414 (D. N.J.) (declaratory judgment action). Michael has litigated patent cases involving a wide range of technologies including balloon angioplasty catheters, collagen sponges, neurosurgery, sutures, shoulder surgery, knee surgery, orthopedic implants, pump technology, immunoassay testing, cellular telephones, computer software, signal processing, and electrical hardware. Michael has also served as a case manager for a plaintiff in a multidistrict patent litigation (MDL) involving multiple defendants and complex signal processing

Michael has written numerous articles and most recently authored an article entitled *Valuing Patent Infringement Actions After the Supreme Court's eBay Decision* (2008). In 2005, Michael was named a Rising Star by Pennsylvania SuperLawyer.

DAVID A. BOCIAN, a partner of the Firm, focuses his practice on whistleblower representation and False Claims Act litigation. Mr. Bocian spent more than ten years as a federal prosecutor in the U.S. Attorney's Office for the District of New Jersey, where he was appointed Senior Litigation Counsel and managed the Trenton U.S. Attorney's office. During his tenure, Mr. Bocian oversaw multifaceted investigations and prosecutions pertaining to government corruption and federal program fraud, commercial and public sector kickbacks, tax fraud, and other white collar and financial crimes. He tried numerous cases before federal juries, and was a recipient of the Justice Department's Director's Award for superior performance by an Assistant U.S. Attorney, as well as commendations from federal law enforcement agencies including the FBI and IRS.

Mr. Bocian has extensive experience in the health care field. As an adjunct professor of law, he teaches Healthcare Fraud and Abuse at Rutgers School of Law – Camden, and previously was employed in the health care industry, where he was responsible for implementing and overseeing a system-wide compliance program for a complex health system.

Mr. Bocian graduated *cum laude* from Princeton University and received his law degree from the University of Virginia School of Law. He is licensed to practice law in New Jersey, New York, and the District of Columbia; his application for admission to the Bar of the Commonwealth of Pennsylvania is pending. Mr. Bocian began his legal career in Washington, D.C., as a litigation associate at Patton Boggs LLP, where his practice included internal corporate investigations, government contracts litigation and securities fraud matters.

GREGORY M. CASTALDO, a partner of the Firm, received his law degree from Loyola Law School, where he received the American Jurisprudence award in legal writing. He received his undergraduate degree from the Wharton School of Business at the University of Pennsylvania. He is licensed to practice law in Pennsylvania and New Jersey.

Mr. Castaldo served as one of Kessler Topaz's lead litigation partners in *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation,* Master File No. 09 MDL 2058, recovering $2.425 billion settlement for the class. Mr. Castaldo also served as the lead litigation partner in *In re Tenet Healthcare Corp*., No. 02-CV-8462 (C.D. Cal. 2002), securing an aggregate recovery of $281.5 million for the class, including $65 million from Tenet's auditor. Mr. Castaldo also played a primary litigation role in the following cases: *In re Liberate Technologies Sec. Litig.*, No. C-02-5017 (MJJ) (N.D. Cal. 2005) (settled — $13.8 million); *In re Sodexho Marriott Shareholders Litig.*, Consol. C.A. No. 18640-NC (Del. Ch. 1999) (settled — $166 million benefit); *In re Motive, Inc. Sec. Litig.*, 05-CV-923 (W.D.Tex. 2005) (settled — $7 million cash, 2.5 million shares); and *In re Wireless Facilities, Inc., Sec. Litig.*, 04-CV-1589 (S.D. Cal. 2004) (settled — $16.5 million).

DARREN J. CHECK, a partner of the Firm, concentrates his practice in the area of securities litigation and institutional investor relations. He is a graduate of Franklin & Marshall College and received his law degree from Temple University School of Law. Mr. Check is licensed to practice in Pennsylvania and New Jersey.

Currently, Mr. Check concentrates his time as the Firm's Director of Institutional Relations and heads up the Firm's Portfolio Monitoring and Business Development departments. He consults with institutional investors from around the world regarding their rights and responsibilities with respect to their investments and taking an active role in shareholder litigation. Mr. Check assists clients in evaluating what systems they have in place to identify and monitor shareholder and consumer litigation that has an effect on their funds, and also assists them in evaluating the strength of such cases and to what extent they may be affected by the conduct that has been alleged. He currently works with clients in the United States, Canada, the Netherlands, United Kingdom, France, Italy, Sweden, Denmark, Finland, Norway, Germany, Austria, Switzerland and Australia.

Mr. Check regularly speaks on the subject of shareholder litigation, corporate governance, investor activism, and recovery of investment losses. Mr. Check has spoken at or participated in panel sessions at conferences around the world, including MultiPensions; the European Pension Symposium; the Public Funds Summit; the European Investment Roundtable; The Rights & Responsibilities of Institutional Investors; the Corporate Governance & Responsible Investment Summit; the Public Funds Roundtable; The Evolving Fiduciary Obligations of Pension Plans: Understanding the New Era of Corporate Governance; the International Foundation for Employee Benefit Plans Annual Conference; the Florida Public Pension Trustees Association Annual Conference, the Pennsylvania Association of Public Employees Retirement Systems Annual Meeting; and the Australian Investment Management Summit.

Mr. Check has also been actively involved in the precedent setting Shell settlement, direct actions against Vivendi and Merck, and the class action against Bank of America related to its merger with Merrill Lynch.

EDWARD W. CIOLKO, a partner of the Firm, received his law degree from Georgetown University Law Center, and an MBA from the Yale School of Management. He is licensed to practice law in the State of New Jersey, and has been admitted to practice before the Supreme Court of the United States, the United States District Court for the District of New Jersey and the United States Courts of Appeals for the First, Fourth, Ninth and Eleventh Circuits. Mr. Ciolko concentrates his practice in the areas of ERISA, Antitrust, RESPA and Consumer Protection.

Mr. Ciolko is counsel in several pending nationwide ERISA breach of fiduciary duty class actions, brought on behalf of retirement plans and their participants alleging, inter alia, imprudent investment of plan assets which caused significant losses to the retirement savings of tens of thousands of workers. These cases include: *In re Beazer Homes USA, Inc. ERISA Litig*., 07-CV-00952-RWS (N.D. Ga. 2007); *Nowak v. Ford Motor Co.*, 240 F.R.D. 355 (E.D. Mich. 2006); *Gee v. UnumProvident Corp*., 03-1552(E.D. Tenn. 2003); *Pettit v. JDS Uniphase Corp. et al.*, C.A. No. 03-4743 (N.D. Ca. 2003); *Hargrave v. TXU, et al.,* C.A. No. 02-2573 (N.D. Tex. 2002); *Evans v. Akers*, C.A. No. 04-11380 (D. Mass. 2004); *Lewis v. El Paso Corp*. No. 02-CV-4860 (S.D. Tex. 2002); and *In re Schering-Plough Corp. ERISA Litig*. No. 03-CV-1204 (D.N.J. 2003).

Mr. Ciolko's efforts have also helped achieve a number of large recoveries for affected retirement plan participants: *In re Sears Roebuck & Co. ERISA Litig.*, C.A. No. 02-8324 (N.D. Ill. 2002) (settled — $14.5 million recovery); and *In re Honeywell Intern'l ERISA Litig.*, No. 03-CV-1214 (DRD) (D.N.J. 2003) (settled — $14 million recovery, as well as significant structural relief regarding the plan's administration and investment of its assets).

Mr. Ciolko has also concentrated part of his practice to the investigation and prosecution of pharmaceutical antitrust actions, medical device litigation, and related anticompetitive and unfair business practices including *In re Wellbutrin SR Antitrust Litigation*, 04-CV-5898 (E.D. Pa. Dec. 17, 2004); *In re Remeron End-Payor Antitrust Litigation,* Master File No. 02-CV-2007 (D.N.J. Apr. 25, 2002); *In re Modafinil Antitrust Litigation*, 06-2020 (E.D. Pa. May 12, 2006); *In re Medtronic, Inc. Implantable Defibrillator Litigation*, 05-CV-2700 (D. Minn. 2005); and *In re Guidant Corp. Implantable Defibrillator Litigation*, 05-CV-2883 (D. Minn. 2005).

Before coming to Kessler Topaz, Mr. Ciolko worked for two and one-half years as a Law Clerk and Attorney Advisor to Commissioner Sheila F. Anthony of the Federal Trade Commission ("FTC"). While at the FTC, Mr. Ciolko reviewed commission actions/investigations and counseled the Commissioner on a wide range of antitrust and consumer protection topics including, in pertinent part: the confluence of antitrust and intellectual property law; research and production of "Generic Drug Entry Prior to Patent Expiration: An FTC Study," and an administrative complaint against, among others, Schering-Plough Corporation regarding allegedly unlawful settlements of patent litigation which delayed entry of a generic alternative to a profitable potassium supplement (K-Dur).

ELI R. GREENSTEIN is a partner in the Firm's San Francisco office and a member of the Firm's federal securities litigation practice group. Mr. Greenstein received his B.A. in Business Administration from the University of San Diego in 1997 where he was awarded the Presidential Scholarship. Mr. Greenstein received his J.D. from Santa Clara University School of Law in 2001, and his M.B.A. from Santa Clara's Leavey School of Business in 2002. Mr. Greenstein also was a judicial extern for the Honorable James Ware, Chief Judge of the United States District Court for the Northern District of California.

Mr. Greenstein's notable federal securities actions and recoveries include:

In re VeriFone Holdings, Inc. Sec. Litig., 2012 U.S. App. LEXIS 26133 (9th Cir. 2012); *Dobina v. Weatherford Int'l*, 2012 U.S. Dist. LEXIS 160663 (S.D.N.Y. 2012); *Minneapolis Firefighters Relief Ass'n v. Medtronic, Inc*., 278 F.R.D. 454 (D. Minn.) ($85 million recovery); *In re Sunpower Secs. Litig*., 2011 U.S. Dist. LEXIS 152920 (N.D. Cal. 2011); *AOL Time Warner* state securities opt-out actions (including *Regents of the Univ. of Cal. v. Parsons* (Cal. Super. Ct.) and *Ohio Pub. Emps. Ret. Sys. v. Parsons* (Franklin County Ct. of Common Pleas) ($618 million in total recoveries); *In re Am. Apparel, Inc. S'holder Litig*., 2013 U.S. Dist. LEXIS 6977 (C.D. Cal. 2013); *In re Am. Serv. Group, Inc*., 2009 U.S. Dist. LEXIS 28237 (M.D. Tenn. 2009) ($15.1 million recovery); *In re Nuvelo, Inc. Sec. Litig*., 668 F. Supp. 2d 1217 (N.D. Cal. 2009) ($8.9 million recovery); *Greater Pa. Carpenters Pension Fund v. Whitehall Jewellers, Inc*., 2005 U.S. Dist. LEXIS 12971 (N.D. Ill. 2005) ($7.5 million recovery); *In re Endocare, Inc. Sec. Litig*., No. CV02-8429 DT (CTX) (C.D. Cal. 2004) ($8.95 million recovery); *In re Terayon Communs. Sys. Sec. Litig*., 2002 U.S. Dist. LEXIS 5502 (N.D. Cal. 2002) ($15 million recovery); *Parnes v. Harris* (*In re Purus*), No. C-98-20449-JF(RS) ($9.95 million recovery).

Prior to joining the Firm, Mr. Greenstein was a partner at Robbins Geller Rudman & Dowd LLP in its federal securities litigation practice group. His relevant background also includes consulting for PricewaterhouseCoopers LLP's International Tax and Legal Services division, and work on the trading floor of the Chicago Mercantile Exchange, S&P 500 futures and options division.

SEAN M. HANDLER, a partner of the Firm and member of Kessler Topaz's Management Committee, currently concentrates his practice on all aspects of new matter development for the Firm including securities, consumer and intellectual property.

As part of these responsibilities, Mr. Handler also oversees the lead plaintiff appointment process in securities class actions for the Firm's clients. In this role, Mr. Handler has achieved numerous noteworthy appointments for clients in reported decisions including *Foley v. Transocean*, 272 F.R.D. 126 (S.D.N.Y. 2011); *In re Bank of America Corp. Sec., Derivative & Employment Ret. Income Sec. Act (ERISA) Litig*., 258 F.R.D. 260 (S.D.N.Y. 2009) and *Tanne v. Autobytel, Inc.,* 226 F.R.D. 659 (C.D. Cal. 2005) and has argued before federal courts throughout the country, including the United States Court of Appeals for the Ninth Circuit.

Mr. Handler was also one of the principal attorneys in *In re Brocade Securities Litigation* (N.D. Cal. 2008), where the team achieved a $160 million settlement on behalf of the class and two public pension fund class representatives. This settlement is believed to be one of the largest settlements in a securities fraud case in terms of the ratio of settlement amount to actual investor damages.

Mr. Handler received his Bachelor of Arts degree from Colby College, graduating *with distinction* in American Studies. Mr. Handler then earned his Juris Doctor, *cum laude*, from Temple University School of Law.

Mr. Handler also lectures and serves on discussion panels concerning securities litigation matters, most recently appearing at American Conference Institute's National Summit on the Future of Fiduciary Responsibility and Institutional Investor's The Rights & Responsibilities of Institutional Investors.

KIMBERLY A. JUSTICE, a partner of the Firm, graduated *magna cum laude* from Temple University School of Law, where she was Articles/Symposium Editor of the Temple Law Review and received the Jacob Kossman Award in Criminal Law. Ms. Justice earned her undergraduate degree, *cum laude* and Phi Beta Kappa, from Kalamazoo College. Upon graduating from law school, Ms. Justice served as a judicial clerk to the Honorable William H. Yohn, Jr. of the United States District Court for the Eastern District of Pennsylvania. Ms. Justice is licensed to practice law in Pennsylvania and admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Ms. Justice joined the Firm after several years serving as a trial attorney and prosecutor in the Antitrust Division of the U.S. Department of Justice where she led teams of trial attorneys and law enforcement agents who investigated and prosecuted domestic and international cartel cases and related violations, and where her success at trial was recognized with the *Antitrust Division Assistant Attorney General Award of Distinction* for outstanding contribution to the protection of American consumers and competition. Since joining Kessler Topaz, Ms. Justice concentrates her practice in the area of securities litigation.

Ms. Justice began her practice as an associate at Dechert LLP where she defended a broad range of complex commercial cases, including antitrust and product liability class actions, and where she advised clients concerning mergers and acquisitions and general corporate matters.

DAVID KESSLER, a partner of the Firm, graduated with distinction from the Emory School of Law, after receiving his undergraduate B.S.B.A. degree from American University. Mr. Kessler is licensed to practice law in Pennsylvania, New Jersey and New York, and has been admitted to practice before numerous United States District Courts. Prior to practicing law, Mr. Kessler was a Certified Public Accountant in Pennsylvania.

Mr. Kessler manages the Firm's internationally recognized securities department and in this capacity, has achieved or assisted in obtaining Court approval for the following outstanding results in federal securities class action cases:

In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058: A $2.425 billion settlement, the sixth largest securities class action lawsuit settlement ever, received final approval from the Court in April 2013.

In re Tyco International, Ltd. Sec. Lit., No. 02-1335-B (D.N.H. 2002): This landmark $3.2 billion settlement on behalf of investors included the largest securities class action recovery from a single corporate defendant in history as well as the second largest auditor settlement in securities class action history at the time.

In re Wachovia Preferred Securities and Bond/Notes Litigation, Master File No. 09 Civ. 6351 (RJS): This recovery of $627 million is one of the most significant recoveries from litigation arising out of the financial crisis and is believed to be the single largest pure Section 11 recovery in securities class action history. The settlement included a $37 million recovery from Wachovia Corporation's outside auditor.

In re: Lehman Brothers Securities and ERISA Litigation, Master File No. 09 MD 2017 (LAK): A $516,218,000 settlement was reached on behalf of purchasers of Lehman securities — $426,218,000 of which came from various underwriters of corporate offerings. In addition, $90 million came from Lehman's former directors and officers, which is significant considering Lehman's bankruptcy meant diminishing assets available to pay any future judgment. The case is continuing against the auditors.

In re Satyam Computer Services Ltd. Sec. Litig., Master File No. 09 MD 02027 (BSJ): This $150.5 million settlement on behalf of investors resulted from allegations that the Company had harmed investors by falsifying numerous financial indicators including company profits, cash flows, cash position, bank balances and related balance sheet data. The settlement included a $25.5 million recovery from the Company's outside auditor and the case is continuing against the Company's officers and directors.

In re Tenet Healthcare Corp. Sec. Litig., No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002): This recovery of over $280 million on behalf of investors included a substantial monetary commitment by the company, personal contributions from individual defendants, the enactment of numerous corporate governance changes, as well as a substantial recovery from the Company's outside auditor.

In re Initial Public Offering Sec. Litig., Master File No. 21 MC 92(SAS): This action settled for $586 million after years of litigation overseen by U.S. District Judge Shira Scheindlin. Mr. Kessler served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

Mr. Kessler is also currently serving as one of the Firm's primary litigation partners in the Citigroup, JPMorgan, Hewlett Packard, Pfizer and Morgan Stanley securities litigation matters.

In addition, Mr. Kessler often lectures and writes on securities litigation related topics and has been recognized as "Litigator of the Week" by the American Lawyer magazine for his work in connection with the Lehman Brothers securities litigation matter in December of 2011 and was honored by Benchmark as one of the preeminent plaintiffs practitioners in securities litigation throughout the country. Most recently Mr. Kessler co-authored *The FindWhat.com Case: Acknowledging Policy Considerations When Deciding Issues of Causation in Securities Class Actions* published in Securities Litigation Report.

JOSEPH H. MELTZER, a partner of the Firm, concentrates his practice in the areas of ERISA, fiduciary and antitrust complex litigation.

Mr. Meltzer leads the Firm's Fiduciary Litigation Group which has excelled in the highly specialized area of prosecuting cases involving breach of fiduciary duty claims. Mr. Meltzer has served as lead or co-lead counsel in numerous nationwide class actions brought under ERISA, including cases against El Paso Corp., Global Crossing, AOL Time Warner, and National City Corp. Since founding the Fiduciary Litigation Group, Mr. Meltzer has helped recover well over $300 million for clients and class members including some of the largest settlements in ERISA fiduciary breach actions.

As part of his fiduciary litigation practice, Mr. Meltzer has been actively involved in actions related to losses sustained in securities lending programs including *Bd. of Trustees of the AFTRA Ret. Fund v. JPMorgan Chase Bank* and *CompSource Okla. v. BNY Mellon*; in addition, Mr. Meltzer is representing a publicly traded company in a large arbitration pending against AIG, Inc. related to securities lending losses. Mr. Meltzer also represents an institutional client in a fiduciary breach action against Wells Fargo for large losses sustained while Wachovia Bank and its subsidiaries, including Evergreen Investments, were managing the client's investment portfolio.

A frequent lecturer on ERISA litigation and employee benefits issues, Mr. Meltzer is a member of the ABA's Section Committee on Employee Benefits and has been recognized by numerous courts for his ability and expertise in this complex area of the law.

Mr. Meltzer also manages the Firm's Antitrust and Pharmaceutical Pricing Groups. Here, Mr. Meltzer focuses on helping clients that have been injured by anticompetitive and unlawful business practices,

including with respect to overcharges related to prescription drug and other health care expenditures. Mr. Meltzer currently serves as co-lead counsel for direct purchasers in the *Flonase Antitrust Litigation* pending in the Eastern District of Pennsylvania and has served as lead or co-lead counsel in numerous nationwide actions, representing such clients as the Pennsylvania Turnpike Commission, the Southeastern Pennsylvania Transportation Authority (SEPTA) and the Sidney Hillman Health Center of Rochester. Mr. Meltzer also serves as a special assistant attorney general for the states of Montana, Utah and Alaska.

Mr. Meltzer lectures on issues related to antitrust litigation and is a member of the ABA's Section Committee on Antitrust Law.

Mr. Meltzer is an honors graduate of the University of Maryland and received his law degree with honors from Temple University School of Law. Honors include being named a Pennsylvania Super Lawyer.

PAUL B. MILCETIC, a partner of the Firm, concentrates his practice in the area of patent and intellectual property litigation. He earned his law degree from the Cornell Law School, received an LLM in trial advocacy from the Temple University School of Law and also holds a degree in Computer Science from Rutgers University, summa cum laude. He is licensed to practice law in Pennsylvania, New York and New Jersey.

Mr. Milcetic is currently co-chair of the Firm's intellectual property litigation department, and has been the lead trial lawyer on multiple patent litigations. In 2007, he achieved a $45 million patent infringement verdict as lead trial lawyer in TruePosition v. Andrew Corp. and in 2009 he successfully argued for a $20 million post verdict punitive damages award. He was quoted in the following articles that spotlighted some recent achievements: "Philadelphia Lawyers Win $45 Mil in Patent Case," The Legal Intelligencer, September 19, 2007 and "Cell Phone Co. Loses Gamble, Ordered to Pay $20 Mil. More in Damages," Delaware Law Weekly, May 20, 2009. According to the IAM 1000 World's Leading Patent Practioners (2012) Mr. Milcetic is "a bright lawyer with a solid combination of technical, legal and commercial skills" that has "enjoyed immense success since joining" the firm "in 2010 and switching to its popular contingency fee model."

Mr. Milcetic is the author of a book about standards related patent litigation that was published in January 2008 entitled "Technology Patent Infringement Case Strategies." In 2009-2012, Mr. Milcetic was named a Pennsylvania Superlawyer. He is also listed in the Chambers USA Guide to America's Leading Lawyers for Business (2009-2012), the Best Lawyers in America® 2012 Edition and more recently he was named a fellow of the Litigation Counsel of America.

PETER A. MUHIC, a partner of the Firm, is a graduate of Syracuse University and an honors graduate of the Temple University School of Law, where he was Managing Editor of the Temple Law Review and a member of the Moot Court Board.

Mr. Muhic has substantial trial and other courtroom experience involving complex actions in federal and state courts throughout the country. In addition to his trial recoveries, he has obtained significant monetary awards and settlements through arbitrations and mediations. In 2009, Mr. Muhic was co-lead trial counsel in one of the few class action ERISA cases ever to be tried, which involved claims against the fiduciaries of the 401k plan of an S&P 500 company for imprudent investment in company stock and misrepresentations to plan participants. Mr. Muhic primarily prosecutes class actions and/or collective actions concerning ERISA, FLSA, FHA, ECOA and numerous state consumer protection statutes and laws. He has served as lead counsel in numerous nationwide actions. He is licensed to practice law in Pennsylvania and New Jersey and also is admitted to the United States Courts of Appeals for the Third, Fifth, Seventh, Ninth and Eleventh Circuits, the United States District Courts for the Eastern and Middle Districts of Pennsylvania, the District of New Jersey and the District of Colorado.

Mr. Muhic serves as a Judge Pro Tem for the Court of Common Pleas of Philadelphia County, is a former Board Member of the SeniorLAW Center in Philadelphia and a past recipient of the White Hat Award for outstanding pro bono contributions to the Legal Clinic for the Disabled, a nonprofit organization in Philadelphia.

MATTHEW L. MUSTOKOFF, a partner of the Firm, is an experienced securities and corporate governance litigator. He has represented clients at the trial and appellate level in numerous high-profile shareholder class actions and other litigations involving a wide array of matters, including financial fraud, market manipulation, mergers and acquisitions, fiduciary mismanagement of investment portfolios, and patent infringement.

Mr. Mustokoff is currently prosecuting several nationwide securities cases, including *In re JPMorgan Chase Securities Litigation* (S.D.N.Y.) arising out of the "London Whale" derivatives trading scandal, and *In re Pfizer Inc. Securities Litigation* (S.D.N.Y.) involving the alleged non-disclosure of adverse clinical results surrounding the pain drugs Celebrex and Bextra. He also serves as lead counsel for six public pension funds in the multi-district securities litigation against BP in Texas federal court stemming from the 2010 *Deepwater Horizon* disaster in the Gulf of Mexico. Mr. Mustokoff played a major role in prosecuting *In re Citigroup Bond Litigation* (S.D.N.Y.), involving allegations that Citigroup concealed $42 billion in exposure to subprime mortgage debt on the eve of the 2008 financial crisis. The $730 million settlement marks the second largest recovery under Section 11 of the Securities Act in the history of the statute. His experience also includes serving as one of the lead trial lawyers for shareholders in the only securities fraud class action arising out of the credit market crisis to be tried to jury verdict.

Prior to joining the Firm, Mr. Mustokoff practiced at Weil, Gotshal & Manges LLP in New York, where he represented public companies and financial institutions in SEC enforcement and white collar criminal matters, shareholder litigation and contested bankruptcy proceedings.

Mr. Mustokoff currently serves as Co-Chair of the American Bar Association's Subcommittee on Securities Class Actions and Derivative Litigation. He was a featured panelist at the ABA Section of Litigation's 2010 Annual Conference on the subject of internal investigations and has lectured on corporate governance issues at the Cardozo School of Law. His publications include: "Proving Securities Fraud Damages at Trial," *Review of Securities & Commodities Regulation* (June 2013); "Is Item 303 Liability Under the Securities Act Becoming a 'Trend'?," *ABA Securities Litigation Journal* (Summer 2012); "The Maintenance Theory of Inflation in Fraud-on-the-Market Cases," *Securities Regulation Law Journal* (Spring 2012); "Delaware and Insider Trading: The Chancery Court Rejects Federal Preemption Arguments of Corporate Directors," *Securities Regulation Law Journal* (Summer 2010); "The Pitfalls of Waiver in Corporate Prosecutions: Sharing Work Product with the Government," *Securities Regulation Law Journal* (Fall 2009); "Scheme Liability Under Rule 10b-5: The New Battleground in Securities Fraud Litigation," *The Federal Lawyer* (June 2006); and "Sovereign Immunity and the Crisis of Constitutional Absolutism: Interpreting the Eleventh Amendment After Alden v. Maine," *Maine Law Review* (2001).

Mr. Mustokoff is a Phi Beta Kappa honors graduate of Wesleyan University. He received his law degree from the Temple University School of Law, where he was the articles and commentary editor of the *Temple Political and Civil Rights Law Review* and the recipient of the Raynes, McCarty, Binder, Ross and Mundy Graduation Prize for scholarly achievement in the law. He is admitted to practice before the state courts of New York and Pennsylvania, the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Pennsylvania and the District of Colorado, and the United States Courts of Appeals for the Eleventh and Federal Circuits.

SHARAN NIRMUL, a partner of the Firm, focuses on securities and corporate governance litigation. He has represented investors successfully in major securities fraud litigation including financial frauds

involving Bank of America, Transatlantic Holdings, Inc., Heckmann Corporation, Global Crossing Ltd, Qwest Communications International, WorldCom Inc., Delphi Corp., Marsh and McLennan Companies, Inc. and Able Laboratories. Mr. Nirmul has also represented shareholders in derivative and direct shareholder litigation in the Delaware Chancery Court and in other state courts around the country. Prior to joining the firm, Mr. Nirmul was associated with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

Sharan Nirmul received his law degree from The George Washington University Law School (J.D. 2001) where he served as an articles editor for the *Environmental Lawyer Journal* and was a member of the Moot Court Board. He was awarded the school's Lewis Memorial Award for excellence in clinical practice. He received his undergraduate degree from Cornell University (B.S. 1996).

Mr. Nirmul is admitted to practice law in the state courts of New York, New Jersey, Pennsylvania and Delaware and in the U.S. District Courts for the Southern District of New York, District of New Jersey, District of Delaware, and District of Colorado.

LEE D. RUDY, a partner of the Firm, manages the Firm's mergers and acquisition and shareholder derivative litigation. Representing both institutional and individual shareholders in these actions, he has helped cause significant monetary and corporate governance improvements for those companies and their shareholders. Most recently, Mr. Rudy served as co-lead trial counsel in the *In re Southern Peru* (Del. Ch. 2011) derivative litigation filed against Southern Peru's majority shareholder, which resulted in a landmark $1.3 billion plaintiff's verdict. Previously, Mr. Rudy served as lead counsel in dozens of high profile derivative actions relating to the "backdating" of stock options, including litigation against the directors and officers of Comverse, Affiliated Computer Services, and Monster Worldwide. Mr. Rudy has significant courtroom experience, both in trial and appellate courts across the country. Prior to civil practice, Mr. Rudy served for several years as an Assistant District Attorney in the Manhattan (NY) District Attorney's Office, and as an Assistant United States Attorney in the US Attorney's Office (DNJ). He received his law degree from Fordham University, and his undergraduate degree, cum laude, from the University of Pennsylvania.

MARC A. TOPAZ, a partner of the Firm, received his law degree from Temple University School of Law, where he was an editor of the *Temple Law Review* and a member of the Moot Court Honor Society. He also received his Master of Law (L.L.M.) in taxation from the New York University School of Law, where he served as an editor of the *New York University Tax Law Review*. He is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania. Mr. Topaz oversees the Firm's derivative, transactional and case development departments. In this regard, Mr. Topaz has been heavily involved in all of the Firm's cases related to the subprime mortgage crisis, including cases seeking recovery on behalf of shareholders in companies affected by the subprime crisis, as well as cases seeking recovery for 401K plan participants that have suffered losses in their retirement plans. Mr. Topaz has also played an instrumental role in the Firm's option backdating litigation. These cases, which are pled mainly as derivative claims or as securities law violations, have served as an important vehicle both for re-pricing erroneously issued options and providing for meaningful corporate governance changes. In his capacity as the Firm's department leader of case initiation and development, Mr. Topaz has been involved in many of the Firm's most prominent cases, including *In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS) (S.D.N.Y. Dec. 12, 2002); *Wanstrath v. Doctor R. Crants, et al.*, No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999); *In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (settled — $3.2 billion); and virtually all of the 80 options backdating cases in which the Firm is serving as Lead or Co-Lead Counsel. Mr. Topaz has played an important role in the Firm's focus on remedying breaches of fiduciary duties by corporate officers and directors and improving corporate governance practices of corporate defendants.

MICHAEL C. WAGNER, a partner of the Firm, handles class-action merger litigation and shareholder derivative litigation for the Firm's individual and institutional clients.

A graduate of Franklin and Marshall College and the University of Pittsburgh School of Law, Mr. Wagner has clerked for two appellate court judges and began his career at a Philadelphia-based commercial litigation firm, representing clients in business and corporate disputes across the United States. Mr. Wagner has also represented Fortune 500 companies in employment matters. He has extensive nationwide litigation experience and is admitted to practice in the courts of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the United States District Courts for the Eastern and Western Districts of Pennsylvania, the Eastern District of Michigan, and the District of Colorado.

Frequently appearing in the Delaware Court of Chancery since joining Kessler Topaz, Mr. Wagner has helped to achieve substantial monetary recoveries for stockholders of public companies in cases arising from corporate mergers and acquisitions, including: In re Genentech, Inc. Shareholders Litigation, Consolidated C.A. No. 3911-VCS (Del. Ch.) (litigation caused Genentech's stockholders to receive $3.9 billion in additional merger consideration from Roche); In re Anheuser Busch Companies, Inc. Shareholders Litigation, C.A. No. 3851-VCP (Del. Ch.) (settlement required enhanced disclosures to stockholders and resulted in a $5 per share increase in the price paid by InBev in its acquisition of Anheuser-Busch); In re GSI Commerce, Inc. Shareholders Litigation, C.A. No. 6346-VCN (Del. Ch.) (settlement required additional $23.9 million to be paid to public stockholders as a part of the company's merger with eBay, Inc.); and In re AMICAS, Inc. Shareholder Litigation, 10-0412-BLS2 (Mass. Super.) (litigation resulted in a third-party acquisition of the company, with stockholders receiving an additional $26 million in merger consideration). Mr. Wagner was also a part of the team that prosecuted In re Southern Peru Copper Corp. Shareholder Derivative Litigation, C.A. No. 961-CS, which resulted in a $1.9 billion post-trial judgment.

Mr. Wagner has also had a lead role in litigation that resulted in enhanced shareholder rights and corporate reforms in merger contexts, including: In re Emulex Shareholder Litigation, Consolidated C.A. No. 4536-VCS (Del. Ch.) (litigation caused company to redeem "poison pill" stock plan and rescind supermajority bylaw); Solomon v. Take-Two Interactive Software, Inc., C.A. No. 3064-VCL (Del. Ch.) (settlement required substantial enhanced disclosures to stockholders regarding executive compensation matters in advance of director elections, and litigation caused company to redeem "poison pill" stock plan); and Olson v. ev3, Inc., C.A. No. 5583-VCL (Del. Ch.) (settlement required a merger's "top-up option" feature to be revised to as to comply with Delaware law).

In shareholder derivative cases involving executive compensation matters, Mr. Wagner has also had a lead role in cases that achieved substantial financial recoveries and reforms for publicly traded companies, such as In re KV Pharmaceutical Co., Inc., Derivative Litigation, Case No. 4:07-cv-00384-HEA (E.D. Mo.) (litigation caused executives to make financial remediation of approximately $3 million and resulted in enhanced internal controls at the company concerning financial reporting); In re Medarex, Inc. Derivative Litigation, Case No. MER-C-26-08 (N.J. Super.) (settlement resulted in approximately $9 million in financial remediation and substantial corporate governance reforms related to executive compensation); Harbor Police Retirement System v. Roberts, Cause No. 09-09061 (95th District Court, Dallas County, Texas) (settlement required substantial modifications to corporate policies, designed to heighten the independence of outside directors in awarding executive compensation); and In re Comverse Technologies, Inc. Derivative Litigation (Index No. 601272/06, N.Y. Supreme Ct.) (settlement required disgorgement of more than $60 million from the company's executive officers for their receipt of backdated stock options).

JOHNSTON de F. WHITMAN, JR., a partner of the Firm, focuses his practice on securities litigation. Mr. Whitman graduated cum laude from Colgate University. He received his law degree from Fordham University School of Law, where he was a member of the Fordham International Law Journal. He is licensed to practice in Pennsylvania and New York as well as before the United States Courts of Appeals

for the Second and Fourth Circuits. Prior to joining the Firm, Mr. Whitman was a partner of Entwistle & Cappucci LLP in New York, where he also concentrated his practice on securities litigation.

Mr. Whitman has represented institutional investors in obtaining substantial recoveries in numerous securities fraud class actions, including *In re Royal Ahold Sec. Litig*, No. 03-md-01539 (D. Md. 2003) (settled -- $1.1 billion); *In re DaimlerChrysler AG Sec. Litig*., No. 00-0993 (D. Del. 2000) (settled -- $300 million); and *In re Dollar General, Inc. Sec. Litig*., No. 01-cv-0388 (M.D. Tenn. 2001) (settled $162 million). Mr. Whitman has also obtained favorable recoveries for institutional investors pursuing direct securities fraud claims, including cases against Qwest Communications International, Inc. and Merrill Lynch & Co., Inc.

ROBIN WINCHESTER, a partner of the Firm, received her Bachelor of Science degree in Finance from St. Joseph's University. Ms. Winchester then earned her Juris Doctor degree from Villanova University School of Law, and is licensed to practice law in Pennsylvania and New Jersey. After law school, Ms. Winchester served as a law clerk to the Honorable Robert F. Kelly in the United States District Court for the Eastern District of Pennsylvania.

After joining KTMC, Ms. Winchester concentrated her practice in the areas of securities litigation and lead plaintiff litigation. Presently, Ms. Winchester concentrates her practice in the area of shareholder derivative actions, and, most recently, has served as lead counsel in numerous high-profile derivative actions relating to the backdating of stock options, including *In re Eclipsys Corp. Derivative Litigation*, Case No. 07-80611-Civ-MIDDLEBROOKS (S.D. Fla.); *In re Juniper Derivative Actions,* Case No. 5:06-cv-3396-JW (N.D. Cal.); *In re McAfee Derivative Litigation,* Master File No. 5:06-cv-03484-JF (N.D. Cal.); *In re Quest Software, Inc. Derivative Litigation,* Consolidated Case No. 06CC00115 (Cal. Super. Ct., Orange County); and *In re Sigma Designs, Inc. Derivative Litigation,* Master File No. C-06-4460-RMW (N.D. Cal.). Settlements of these, and similar, actions have resulted in significant monetary returns and corporate governance improvements for those companies, which, in turn, greatly benefits their public shareholders.

MICHAEL K. YARNOFF, a partner of the Firm, received his law degree from Widener University School of Law. Mr. Yarnoff is licensed to practice law in Pennsylvania, New Jersey, and Delaware and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. In addition to actively litigating and assisting in achieving the historic Tyco settlement, Mr. Yarnoff served as the primary litigating partner on behalf of Kessler Topaz in the following cases: *In re CVS Corporation Sec. Litig.*, C.A. No. 01-11464 JLT (D.Mass. 2001) (settled — $110 million); *In re Transkaryotic Therapies, Inc. Sec. Litig.*, Civil Action No. 03-10165-RWZ (D.Mass. 2003) (settled — $50 million); *In re Riverstone Networks, Inc. Sec. Litig.*, Case No. CV-02-3581 (N.D. Cal. 2002) (settled — $18.5 million); *In re Zale Corporation Sec. Litig.*, 06-CV-1470 (N.D. Tex. 2006) (settled — $5.9 million); *Gebhard v. ConAgra Foods Inc., et al*., 04-CV-427 (D. Neb. 2004) (settled — $14 million); *Reynolds v. Repsol YPF, S.A., et al.,* 06-CV-733 (S.D.N.Y. 2006) (settled — $8 million); and *In re InfoSpace, Inc. Sec. Litig.*, 01-CV-913 (W.D. Wash. 2001) (settled — $34.3 million).

ERIC L. ZAGAR, a partner of the Firm, received his law degree from the University of Michigan Law School, cum laude, where he was an Associate Editor of the *Michigan Law Review.* He has practiced law in Pennsylvania since 1995, and previously served as a law clerk to Justice Sandra Schultz Newman of the Pennsylvania Supreme Court. He is admitted to practice in Pennsylvania, California, and New York.

In addition to his extensive options backdating practice, Mr. Zagar concentrates his practice in the area of shareholder derivative litigation. In this capacity, Mr. Zagar has served as Lead or Co-Lead counsel in numerous derivative actions in courts throughout the nation, including *David v. Wolfen*, Case No. 01-CC-03930 (Orange County, CA 2001) (Broadcom Corp. Derivative Action); and *In re Viacom, Inc. Shareholder Derivative Litig*., Index No. 602527/05 (New York County, NY 2005). Mr. Zagar has

successfully achieved significant monetary and corporate governance relief for the benefit of shareholders, and has extensive experience litigating matters involving Special Litigation Committees. Mr. Zagar is also a featured speaker at Kessler Topaz's annual symposium on corporate governance.

TERENCE S. ZIEGLER, a partner of the Firm, received his law degree from the Tulane University School of Law and received his undergraduate degree from Loyola University. He has concentrated a significant percentage of his practice to the investigation and prosecution of pharmaceutical antitrust actions, medical device litigation, and related anticompetitive and unfair business practice claims. Specific examples include: *In re Flonase Antitrust Litigation; In re Wellbutrin SR Antitrust Litigation; In re Modafinil Antitrust Litigation; In re Guidant Corp. Implantable Defibrillators Products Liability Litigation* (against manufacturers of defective medical devices — pacemakers/implantable defibrillators — seeking costs of removal and replacement); and *In re Actiq Sales and Marketing Practices Litigation* (regarding drug manufacturer's unlawful marketing, sales and promotional activities for non-indicated and unapproved uses).

Mr. Ziegler is licensed to practice law in the State of Louisiana, and has been admitted to practice before several courts including the United States Court of Appeals for the Third Circuit.

ANDREW L. ZIVITZ, a partner of the Firm, received his law degree from Duke University School of Law, and received a Bachelor of Arts degree, with distinction, from the University of Michigan, Ann Arbor.

Mr. Zivitz concentrates his practice in the area of securities litigation and is currently litigating several of the largest federal securities fraud actions in the U.S. including matters against Pfizer, Inc., JPMorgan Chase & Co., UBS AG, Morgan Stanley and Countrywide Financial Corporation. Mr. Zivitz has helped the firm achieve extraordinary results in numerous securities fraud matters in which Kessler Topaz was Lead or Co-Lead Counsel, including In re Tenet Healthcare Corp., 02-CV-8462 (C.D. Cal. 2002) (settled — $281.5 million); In *re Computer Associates Sec. Litig*., No. 02-CV-122 6 (E.D.N.Y. 2002) (settled — $150 million); *In re Medtronic Inc. Sec. Litig*., 08-cv-0624 (D. Minn. 2008) (settlement pending - $ 85 million); *In re McLeod USA Inc. Sec. Litig*., No. C02-0001-MWB (N.D. Iowa 2002) (settled — $30 million); and *In re Barrick Gold Sec. Litig*., 03-cv-04302 (S.D.N.Y.2003) (settled — $24 million).

Mr. Zivitz has litigated cases in federal district and appellate courts throughout the country, including two successful appeals before the United States Court of Appeals for the Ninth Circuit in *In re Merix Sec. Litig.*, 04-cv-00826 (D.Or. 2004) and *In re Leadis Sec. Litig*., 05-cv-00882 (N.D.Ca. 2005). His experience also includes serving as one of the lead trial attorneys for shareholders in the only securities fraud class action arising out of the credit market crisis to be tried to a jury verdict.

Mr. Zivitz also lectures and serves on discussion panels concerning securities litigation matters. Mr. Zivitz recently was a faculty member at the Pennsylvania Bar Institute's workshop entitled, "Securities Liability in Turbulent Times: Practical Responses to a Changing Landscape."

ASSOCIATES AND OTHER PROFESSIONALS

JULES D. ALBERT, an associate of the Firm, concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation. Mr. Albert is licensed to practice law in Pennsylvania, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Mr. Albert has litigated in state and federal courts across the country, and has represented stockholders in numerous actions that have resulted in significant monetary recoveries and corporate governance improvements, including: *In re Sunrise Senior Living, Inc. Deriv. Litig*., No. 07-00143 (D.D.C.); *Mercier v. Whittle, et al.*, No. 2008-CP-23-8395 (S.C. Ct. Com. Pl., 13th Jud. Cir.); *In re K-V Pharmaceutical Co.*

Deriv. Litig., No. 06-00384 (E.D. Mo.); *In re Progress Software Corp. Deriv. Litig.*, No. SUCV2007-01937-BLS2 (Mass. Super. Ct., Suffolk Cty.); *In re Quest Software, Inc. Deriv. Litig.* No 06CC00115 (Cal. Super. Ct., Orange Cty.); and *Quaco v. Balakrishnan, et al.,* No. 06-2811 (N.D. Cal.).

Mr. Albert received his law degree from the University of Pennsylvania Law School, where he was a Senior Editor of the *University of Pennsylvania Journal of Labor and Employment Law* and recipient of the James Wilson Fellowship. Mr. Albert also received a Certificate of Study in Business and Public Policy from The Wharton School at the University of Pennsylvania. Mr. Albert graduated magna cum laude with a Bachelor of Arts in Political Science from Emory University.

STEFANIE ANDERSON, an associate in the Firm's Radnor office, received her law degree from Villanova University School of Law and her Bachelor of Arts degree from Bucknell University. While in law school, Ms. Anderson served as a judicial extern for The Honorable George A. Pagano of the Delaware County Court of Common Pleas. Ms. Anderson also participated in the Civil Justice Clinic, representing indigent clients in civil litigation matters.

Prior to joining Kessler Topaz, Ms. Anderson was a litigation associate at McCann & Geschke, P.C. in Philadelphia, PA. Ms. Anderson is licensed to practice in Pennsylvania and concentrates her practice in mergers and acquisitions litigation and shareholder derivative litigation.

ALI M. AUDI, a staff attorney of the Firm, received his law degree from The Pennsylvania State University, Dickinson School of Law, where he was a member of the Trial and Appellate Moot Court boards. He received his Bachelor of Arts in Journalism from The Pennsylvania State University. Mr. Audi is licensed to practice before the state courts of Pennsylvania and New Jersey, and the United States District Court for the District of New Jersey. He concentrates his practice in the area of securities litigation.

ADRIENNE BELL, an associate of the Firm, received her law degree from Brooklyn Law School and her undergraduate degree in Music Theory and Composition from New York University, where she graduated *magna cum laude.* Prior to joining the Firm, Ms. Bell practiced in the areas of mass tort, commercial and general liability litigation. Ms. Bell is licensed to practice in Pennsylvania and Nevada, and works in the Firm's case development department.

MATTHEW BENEDICT, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Prior to joining the firm, he worked as a staff attorney in the White Collar / Securities Litigation department at Dechert LLP. Mr. Benedict earned his law degree from Villanova University School of Law and his undergraduate degree from Haverford College. He is licensed to practice law in Pennsylvania and New Jersey.

SHANNON O. BRADEN, an associate of the Firm, received her law degree from the University of Pittsburgh School of Law and her undergraduate degree in International Relations and French from Bucknell University. While a law student, Ms. Lack served as a judicial clerk for the Honorable Max Baer of the Supreme Court of Pennsylvania. She also served as a Managing Editor of the University of Pittsburgh *Journal of Law and Commerce*. Ms. Lack has authored "Civil Rights for Trafficked Persons: Recommendations for a More Effective Federal Civil Remedy," University of Pittsburgh School of Law, *Journal of Law and Commerce*, Vol. 26 (2007). Ms. Lack is licensed to practice law in Pennsylvania and New Jersey. She concentrates her practice in the areas of ERISA and consumer protection litigation.

PAUL BREUCOP, an associate in the Firm's San Francisco office, received his Bachelor of Arts from Santa Clara University with majors in Classical Studies and Religious Studies. He received his law degree from the University of California, Hastings College of the Law. While in law school, Mr. Breucop interned for the Securities and Exchange Commission Enforcement Division and the California Teachers Association. He also taught constitutional law to high school students in Oakland as part of the Marshall-

Brennan Program. Mr. Breucop concentrates his practice on prosecuting securities class actions. He is admitted to the California Bar.

BETHANY O'NEILL BYRNE, a staff attorney of the Firm, received her law degree from the Widener University School of Law in Delaware and her undergraduate degree from Villanova University. She is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey. Ms. Byrne concentrates her practice in the area of securities litigation.

ELIZABETH WATSON CALHOUN, a staff attorney of the Firm, focuses on securities litigation. She has represented investors in major securities fraud and has also represented shareholders in derivative and direct shareholder litigation. Prior to joining the Firm, Ms. Calhoun was employed with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

Ms. Calhoun received her law degree from Georgetown University Law Center (*cum laude*), where she served as Executive Editor of the Georgetown Journal of Gender and the Law. She received her undergraduate degree in Political Science from the University of Maine, Orono (*with high distinction*).

Ms. Calhoun is admitted to practice before the state court of Pennsylvania and the U.S. District Court for the Eastern District of Pennsylvania.

SARA E. CAUSEY, a Staff Attorney at the Firm, received her law from Widener University School of Law, and her Bachelor of Arts from the University of Delaware. Ms. Causey is licensed to practice law in the Commonwealth of Pennsylvania, the State of New Jersey, and the State of Maryland.

Prior to joining the Firm, Ms. Causey practiced in the areas of securities, commercial litigation, and real estate transactions. Ms. Causey is also a volunteer Attorney for a number of regional and national Animal Rescue organizations.

Ms. Causey concentrates her practice in the area of Securities litigation.

QUIANA CHAPMAN-SMITH, a staff attorney at the Firm, received her law degree from Temple University Beasley School of Law in Pennsylvania and her Bachelor of Science in Management and Organizations from The Pennsylvania State University. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation. She is licensed to practice law in the Commonwealth of Pennsylvania. Ms. Chapman-Smith concentrates her practice in the area of securities litigation.

EMILY N. CHRISTIANSEN, an associate of the Firm, focuses her practice in securities litigation and international actions in particular. Ms. Christiansen received her Juris Doctor and Global Law certificate, cum laude, from Lewis and Clark Law School in 2012. Ms. Christiansen is a graduate of the University of Portland, where she received her Bachelor of Arts, cum laude, in Political Science and German Studies. While in law school, Ms. Christiansen worked as an intern in Trial Chambers III at the International Criminal Tribunal for the Former Yugoslavia. Ms. Christiansen also spent two months in India as foreign legal trainee with the corporate law firm of Fox Mandal. Ms. Christiansen is a 2007 recipient of a Fulbright Fellowship and is fluent in German.

Ms. Christiansen is currently licensed to practice law in the state of New York.

JOSHUA E. D'ANCONA, an associate of the Firm, received his J.D., magna cum laude, from the Temple University Beasley School of Law in 2007, where he served on the Temple Law Review and as president of the Moot Court Honors Society. Before joining the Firm in 2009, he served as a law clerk to the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania. Mr. D'Ancona graduated with honors from Wesleyan University. He is licensed to practice

in Pennsylvania and New Jersey, and practices in the securities litigation and lead plaintiff departments of the firm.

JONATHAN R. DAVIDSON, an associate of the Firm, concentrates his practice in the area of shareholder litigation and institutional investor relations. He consults with Firm clients regarding their rights and responsibilities with respect to their investments and taking an active role in shareholder litigation. Mr. Davidson also assists clients in evaluating what systems they have in place to identify and monitor shareholder litigation that has an impact on their funds, and also assists them in evaluating the strength of such cases and to what extent they may be affected by the conduct that has been alleged. Mr. Davidson currently works with numerous U.S. institutional investors, including public pension plans at the state, county and municipal level, as well as Taft-Hartley funds across all trades. Mr. Davidson has spoken on the subjects of shareholder litigation, corporate governance, investor activism and recovery of investment losses at conferences around the world, including the International Foundation of Employee Benefit Plans Annual Conference, the California Association of Public Retirement Systems Administrators Roundtable, the Pennsylvania Association of Public Employees Retirement Systems Spring Forum; the Fiduciary Investors Symposium, the Florida Public Pension Trustees Association Trustee School and Wall Street Program, and The Evolving Fiduciary Obligations of Pension Plans. Mr. Davidson is also a member of numerous professional and educational organizations, including the National Association of Public Pension Attorneys.

Mr. Davidson is a graduate of The George Washington University where he received his Bachelor of Arts, *summa cum laude*, in Political Communication. Mr. Davidson received his Juris Doctor and Dispute Resolution Certificate from Pepperdine University School of Law and is licensed to practice law in the state of California.

RYAN T. DEGNAN, an associate of the Firm, received his law degree from Temple University Beasley School of Law in 2010, where he was a Notes and Comments Editor for the Temple Journal of Science, Technology & Environmental Law. Mr. Degnan earned his undergraduate degree in Biology from The Johns Hopkins University in 2004. While a law student, Mr. Degnan served as a Judicial Intern to the Honorable Gene E.K. Pratter of the United States District Court for the Eastern District of Pennsylvania. Mr. Degnan is licensed to practice in Pennsylvania and is a member of the Firm's lead plaintiff litigation practice group.

BENJAMIN J. DE GROOT, an associate of the Firm, received his law degree from Columbia Law School where he was a Stone Scholar. He earned his B.A., with honors, in Philosophy and German Studies from the University of Arizona. Mr. de Groot is licensed to practice law in Pennsylvania and New York.

Following a clerkship with Judge Robert W. Sweet of the Southern District of New York, Mr. de Groot practiced litigation as an associate at Cleary Gottlieb Steen and Hamilton, LLP in New York. Prior to joining Kessler Topaz, he helped found A.I.S.G., a startup security integration firm in New York. Mr. de Groot's practice is currently focused in the case development department and he assists with the Firm's litigation discovery.

DONNA EAGLESON, a staff attorney of the Firm, received her law degree from the University of Dayton School of Law in Dayton, Ohio. Prior to joining Kessler Topaz, Ms. Eagleson worked as an attorney in the law enforcement field, and practiced insurance defense law with the Philadelphia firm Margolis Edelstein. Ms. Eagleson is licensed to practice law in Pennsylvania and concentrates in the area of securities litigation discovery matters.

JENNIFER L. ENCK, an associate of the Firm, received her law degree, cum laude, from Syracuse University College of Law in 2003 and her undergraduate degree in International Politics from The

Pennsylvania State University in 1999. Ms. Enck also received a Masters degree in International Relations from Syracuse University's Maxwell School of Citizenship and Public Affairs.

Prior to joining Kessler Topaz, Ms. Enck was an associate with Spector, Roseman & Kodroff, P.C. in Philadelphia, where she worked on a number of complex antitrust, securities and consumer protection cases. Ms. Enck is licensed to practice law in Pennsylvania. She concentrates her practice in the areas of securities litigation and settlement matters.

MONIQUE MYATT GALLOWAY, an associate with the Firm, concentrates her practice in the areas of ERISA, antitrust, and consumer protection litigation.

Ms. Galloway brings to the Firm ten years of complex defense litigation experience. Prior to joining the Firm, Ms. Galloway was a senior trial attorney for the Department of the Navy, Office of General Counsel in Washington, D.C., and later, an associate at DLA Piper LLP (US) in Philadelphia, Pennsylvania. Ms. Galloway has substantial government and private sector experience in the areas of government contracts, construction, product liability, toxic tort, and antitrust litigation in federal and state courts nationwide. She has extensive successful motion practice on claims involving alleged mass torts, wrongful death, warranties, fraud, unfair business practices and anti-competition violations. Ms. Galloway also has successful first and second chair non-jury trial experience.

In 2012 and 2013, Ms. Galloway was selected as a Pennsylvania Super Lawyers® Rising Star.

Ms. Galloway is a former federal judicial law clerk for the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania. In 2003, Ms. Galloway received her juris doctorate from Thurgood Marshall School of Law, with *cum laude* honors, where she was Managing Editor of the Thurgood Marshall Law Review. In 2008, she received her LL.M. in Trial Advocacy from Temple University, and received her Bachelor of Business Administration in Accounting from Texas Southern University in 2000.

Ms. Galloway is licensed to practice law in Pennsylvania and Texas. She is also admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit Court, the Eastern District of Pennsylvania, and the United States Court of Federal Claims.

Ms. Galloway currently serves as the Vice-President of Administration for the Barristers' Association of Philadelphia, Inc. and is a member of the Board of Directors for the Public Interest Law Center of Philadelphia. In addition to her service to clients and the legal community, she is a member of Alpha Kappa Alpha Sorority, Incorporated, Omega Omega Chapter.

KIMBERLY V. GAMBLE, a staff attorney at the Firm, received her law degree from Widener University, School of Law in Wilmington, DE. While in law school she was a CASA/Youth Advocates volunteer and had internships with the Delaware County Public Defender's Office as well as The Honorable Judge Ann Osborne in Media, Pennsylvania. She received her Bachelor of Arts degree in Sociology from The Pennsylvania State University.

Prior to joining Kessler Topaz, she worked in pharmaceutical litigation and now concentrates her practice in the area of securities litigation. Ms. Gamble is licensed to practice law in the Commonwealth of Pennsylvania.

WARREN GASKILL, a staff attorney at the Firm, received his law degree from the Widener University School of Law, Wilmington, DE and his undergraduate degree from Rutgers, the State University of New Jersey, New Brunswick, NJ. Immediately following law school, Mr. Gaskill served as a law clerk for The Honorable Valerie H. Armstrong, A.J.S.C., New Jersey Superior Court, in Atlantic City, NJ. Prior to

joining Kessler Topaz, Mr. Gaskill was an associate at the Atlantic City, NJ based law firm of Cooper, Levenson, April, Neidelman, and Wagenheim PA. Mr. Gaskill concentrates in the area of securities law and is admitted to bar in Pennsylvania, New Jersey and the U.S. District Court, District of New Jersey.

MATTHEW A. GOLDSTEIN, an associate of the Firm, received his law degree from Rutgers School of Law – Camden and his Bachelor of Arts degree, *magna cum laude*, from The George Washington University. While in law school, Mr. Goldstein served as Associate Editor of Business and Marketing for the Rutgers Journal of Law and Religion. Mr. Goldstein also participated in the Children's Justice Clinic, representing indigent minors in criminal matters.

Prior to joining Kessler Topaz, Mr. Goldstein was an associate in the commercial litigation department of Zarwin Baum DeVito Kaplan Schaer & Toddy, P.C. in the Philadelphia office. There, Mr. Goldstein concentrated his practice in commercial, corporate and real estate litigation.

Mr. Goldstein is licensed to practice law in Pennsylvania and New Jersey and concentrates his practice in mergers and acquisitions litigation and shareholder derivative litigation.

TYLER S. GRADEN, an associate of the Firm, received undergraduate degrees in Economics and International Relations from American University, and his Juris Doctor degree from Temple Law School. Mr. Graden is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before numerous United States District Courts. Mr. Graden concentrates his practice in the areas of ERISA, employment law and consumer protection litigation.

Mr. Graden currently represents plaintiffs in a number of putative class actions brought nationwide alleging that certain mortgage servicers engaged in improper and unlawful kickback schemes with force-placed insurance providers.

Prior to joining Kessler Topaz, Mr. Graden practiced with a Philadelphia law firm where he litigated various complex commercial matters and served as an investigator with the Chicago District Office of the Equal Employment Opportunity Commission.

MARK K. GYANDOH, an associate of the Firm, concentrates his practice in the area of ERISA and consumer protection litigation. Mr. Gyandoh litigates ERISA fiduciary breach class actions across the country and was part of one of the few trial teams that have ever tried a "company stock" imprudent investment case to verdict in Brieger et al. v. Tellabs, Inc., No. 06-CV-01882 (N.D. Ill.).

Mr. Gyandoh received his undergraduate degree from Haverford College (B.A. 1996) and his J.D. (2001) and LLM in trial advocacy (2011) from Temple University School of Law. While attending law school, Mr. Gyandoh served as the research editor for the Temple International and Comparative Law Journal. He also interned as a judicial clerk for the Honorable Dolores K. Sloviter of the U.S. Court of Appeals for the Third Circuit and the Honorable Jerome B. Simandle of the U.S. District Court for New Jersey.

After graduating from law school Mr. Gyandoh was employed as a judicial clerk for the Honorable Dennis Braithwaite of the Superior Court of New Jersey Appellate Division. Mr. Gyandoh is the author of "Foreign Evidence Gathering: What Obstacles Stand in the Way of Justice?" 15 Temp. Int'l & Comp. L.J. (2001) and "Incorporating the Principle of Co-Equal Branches into the European Constitution: Lessons to Be Learned from the United States" found in Redefining Europe (2005).

Mr. Gyandoh is licensed to practice in New Jersey and Pennsylvania.

SUFEI HU, a staff attorney of the Firm, received her J.D. from Villanova University School of Law, where she was a member of the Moot Court Board. Prior to joining the Firm, Ms. Hu worked in

pharmaceutical, anti-trust, and securities law. Ms. Hu received her undergraduate degree from Haverford College in Political Science, with honors. She is licensed to practice law in Pennsylvania and New Jersey, and is admitted to the United States District Court of the Eastern District of Pennsylvania. She concentrates her practice in the area of securities litigation.

SAMANTHA E. JONES, an associate of the Firm, received her Juris Doctor from Temple University Beasley School of Law in 2011. While at Temple, Ms. Jones was the president of the Moot Court Honor Society and a member of Temple's Trial Team. Upon graduating from Temple, Ms. Jones was awarded the Philadelphia Trial Lawyers Association James A. Manderino Award. Ms. Jones received her undergraduate degrees in Political Science and Spanish from The Pennsylvania State University in 2007. Ms. Jones is licensed to practice in Pennsylvania and New Jersey. She concentrates her practice in the ERISA department of the Firm.

JENNIFER L. JOOST, an associate in the Firm's San Francisco office, received her law degree, cum laude, from Temple University Beasley School of Law, where she was the Special Projects Editor for the *Temple International and Comparative Law Journal.* Ms. Joost earned her undergraduate degree in History, with honors, from Washington University in St. Louis in 2003. She is licensed to practice in Pennsylvania and New Jersey and admitted to practice before the United States Courts of Appeals for the Second, Fourth, Ninth, and Eleventh Circuits, and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. She concentrates her practice at Kessler Topaz in the area of securities litigation.

Ms. Joost has served as an associate on the following matters: *In re Wireless Facilities, Inc.*, No. 04-CV-1589-JAH (NLS) (S.D. Cal.) and *In re ProQuest Inc. Securities Litigation*, No. 2:06-cv-10619 (E.D. Mich.). Additionally, she is currently serving as an associate on the following matters: *In re UBS AG Securities Litigation*, No. 1:07-cv-11225-RJS, currently pending in the United States District Court for the Southern District of New York; *Luther, et al. v. Countrywide Financial Corp.*, No. BC 380698, currently pending in the Superior Court of the State of California, County of Los Angeles; and *In re Citigroup, Inc. Bond Litig.*, No. 08 Civ. 9522 (SHS), currently pending in the United States District Court for the Southern District of New York.

STACEY KAPLAN, an associate in the Firm's San Francisco office, received her Bachelor of Business Administration from the University of Notre Dame in 2002, with majors in Finance and Philosophy. Ms. Kaplan received her J.D. from the University of California at Los Angeles School of Law in 2005.

During law school, Ms. Kaplan served as a Judicial Extern to the Honorable Terry J. Hatter, Jr., United States District Court, Central District of California. Prior to joining the firm, Ms. Kaplan was an associate with Robbins Geller Rudman & Dowd LLP in San Diego, California.

Ms. Kaplan concentrates her practice on prosecuting securities class actions. She is admitted to the California Bar and is licensed to practice in all California state courts, as well as the United States District Courts for the Northern and Central Districts of California.

D. SEAMUS KASKELA, an associate of the Firm, received his B.S. in Sociology from Saint Joseph's University, his M.B.A. from The Pennsylvania State University, and his law degree from Rutgers School of Law – Camden. Mr. Kaskela is licensed to practice law in Pennsylvania and New Jersey, and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey. Mr. Kaskela works in the Firm's case development department.

JOHN Q. KERRIGAN, an associate of the Firm, received his J.D. in 2007 from the Temple University Beasley School of Law. Before joining the firm in 2009, he was an associate in the litigation department of Curtin and Heefner LLP in Morrisville, Pennsylvania. Mr. Kerrigan graduated Phi Beta Kappa from

Johns Hopkins University and received an MA in English from Georgetown University. He is licensed to practice law in Pennsylvania and New Jersey and concentrates his practice in the areas of mergers and acquisitions and shareholder derivative actions.

JESSE C. KLAPROTH, an associate of the Firm, received his undergraduate degree from the University of Delaware and his law degree from Tulane University School of Law where he served as an editor for the Tulane Journal of International and Comparative Law. Mr. Klaproth is licensed to practice law in Pennsylvania, New York and New Jersey. Mr. Klaproth is also licensed to practice in the United States District Courts for the Southern District of New York and the District of New Jersey. Mr. Klaproth concentrates his practice in the areas of ERISA and consumer protection litigation.

Prior to joining Kessler Topaz, Mr. Klaproth practiced with the New Jersey law firm, Kirsch Gartenberg Howard, where he litigated various complex matters, including securing a victory as lead trial counsel in a copyright dispute in the United States District Court for the District of New Jersey. Mr. Klaproth is the author of *Published Decision by the Arbitrator United States Continued Dumping and Subsidy Offset Act of 2000: Payback is for the Byrds*, 13 TUL. J. INT'L & COMP. L. 401 (2005).

Mr. Klaproth has had the honor of being selected by his peers as a New Jersey Super Lawyers Rising Star, a distinction bestowed annually on no more than 2.5% of New Jersey lawyers under the age of 40.

TOD A. KUPSTAS, an associate of the Firm, concentrates his practice in the field of Intellectual Property Litigation. Mr. Kupstas is a graduate of the University of Pennsylvania where he earned degrees in Physics and Anthropology. He earned his law degree from the top IP law ranked George Washington University School of Law. He is licensed to practice in Pennsylvania and before the United States Patent and Trademark Office.

Mr. Kupstas started his career at the United States Patent and Trademark Office where he examined patent applications to determine if they met legal standards. He focused on optic and computer networking systems technologies. While there, he received outstanding performance, special achievement and productivity awards.

Since being in private practice, Mr. Kupstas has handled matters in a variety of technological fields, including mechanical devices, electrical devices, green technology, complex systems, software, advanced physics and material science. He has represented clients in all matters of Intellectual Property, including patent litigation, patent prosecution, trademark matters and copyright. Before joining the Firm, Mr. Kupstas practiced at an Intellectual Property boutique and T Wolf Block Schorr Solis-Cohen.

MEREDITH LAMBERT, an associate of the Firm, received her law degree in 2010 from Temple University Beasley School of Law, where she was an Associate Editor for the Temple International and Comparative Law Journal. Ms. Lambert earned a Bachelors of Arts degree in History and a Certificate of Proficiency in Spanish Language and Culture from Princeton University in 2006. While a law student, Ms. Lambert served as Judicial Extern to the Honorable Judge Leonard P. Stark of the U.S. District Court for the District of Delaware. Ms. Lambert is licensed to practice in Pennsylvania and concentrates her practice in the area of securities litigation.

SETH A. LINEHAN, a staff attorney of the Firm, received his law degree from the Widener University School of Law. Mr. Linehan received his Bachelor of Arts degree, magna cum laude, from Rider University. He served as law clerk to the Honorable Stephen B. Rubin, J.S.C., in both Somerset and Hunterdon Counties in New Jersey. Mr. Linehan is licensed to practice law in Pennsylvania and New Jersey and is admitted to practice before the United States District Court, District of New Jersey. He concentrates his practice in the area of securities litigation.

JAMES A. MARO, JR., an associate of the Firm, received his law degree from the Villanova University School of Law. He received a B.A. in Political Science from the Johns Hopkins University. Mr. Maro is licensed to practice law in Commonwealth of Pennsylvania and New Jersey. He is admitted to practice in the United States Court of Appeals for the Third Circuit and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

Mr. Maro concentrates his practice in the Firm's case development department. He also has experience in the areas of consumer protection, ERISA, mergers and acquisitions, and shareholder derivative actions.

JOSHUA A. MATERESE, an associate of the Firm, received his Juris Doctor from Temple University Beasley School of Law in 2012, graduating *cum laude*. He received his undergraduate degree from the Syracuse University Newhouse School of Communications. While attending Temple, Mr. Materese was a member of the Moot Court Honor Society and was the President of the Justinian Society. Mr. Materese is licensed to practice in Pennsylvania. He concentrates his practice in the area of securities litigation.

KATRICE TAYLOR MATHURIN, a staff attorney of the Firm, received her law degree from the University of Richmond School of Law. She received her undergraduate degree from The Johns Hopkins University. During law school, Ms. Mathurin practiced as an intern in the office of the United States Attorney for the Eastern District of Virginia, where she represented the United States in matters before the District Court. She also practiced in the University of Richmond Children's Law Center Disability Clinic. Prior to joining Kessler Topaz, Ms. Mathurin practiced in the areas of real estate and construction litigation. Ms. Mathurin is licensed to practice law in Pennsylvania and concentrates in the area of securities litigation.

PATRICK J. MATTUCCI, a staff attorney at the Firm, received his law degree from the University of Pennsylvania Law School, and his undergraduate degree in History from Yale University. Mr. Mattucci is licensed to practice law in Pennsylvania, and concentrates his practice in the area of securities litigation.

DAVID E. MILLER, a staff attorney of the Firm, received his law degree from the Villanova School of Law, where he was an Associate Editor of the Villanova Sports and Entertainment Journal. Mr. Miller received his undergraduate degree, from Franklin and Marshall College, with a B.A. in Biological Foundations of Behavior, with a concentration in Neuroscience. Prior to joining Kessler Topaz, he worked in both pharmaceutical and construction litigation.

Mr. Miller is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey, and concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation.

JAMES H. MILLER, an associate of the Firm, received his J.D. in 2005 from Villanova University School of Law, where he was enrolled in Villanova University's JD/MBA program. Mr. Miller received his Master of Business Administration from Villanova University in 2005, and received his Bachelor of Chemical Engineering from Villanova University in 2002. Mr. Miller is licensed to practice law in Pennsylvania and concentrates his practice in the areas of mergers and acquisitions and shareholder derivative actions.

KRYSTN E. MUNDY, a staff attorney of the Firm, received her law degree from the University of Miami School of Law and her undergraduate degree in Political Science and Spanish, cum laude, from Mount Saint Mary's University.

Prior to joining Kessler Topaz, Ms. Mundy practiced employment law and was in-house counsel at Philadelphia Corporation for Aging. Ms. Mundy is licensed to practice law in Pennsylvania and Nevada and is admitted to practice in the United States District Court for the Eastern District of Pennsylvania. She now concentrates her practice in the area of securities litigation.

CASANDRA A. MURPHY, an associate of the Firm, received her law degree from Widener University School of Law and her undergraduate from Gettysburg College. Prior to joining Kessler Topaz, Ms. Murphy was an associate at Post & Schell, P.C. where she practiced general casualty litigation. Ms. Murphy is licensed to practice in Pennsylvania and New Jersey, and has been admitted to practice before the United State District Court for the Eastern District of Pennsylvania. Ms. Murphy has lectured for the Pennsylvania Bar Institute and the Philadelphia Judicial Conference. She concentrates her practice in the areas of consumer protection, ERISA, pharmaceutical pricing and antitrust litigation.

MICHELLE M. NEWCOMER, an associate of the Firm, received her law degree from Villanova University School of Law in 2005. Ms. Newcomer received her undergraduate degrees in Finance and Art History from Loyola College in Maryland in 2002. Throughout her legal career, Ms. Newcomer has concentrated her practice in the area of securities litigation, representing individual and institutional investors and helping them to recover millions against corporate and executive defendants for violations of the federal securities laws. In this respect, Ms. Newcomer helped secure the following recoveries for investors: *In re Tenet Healthcare Corp. Sec. Litig.,* No. 02-8462 (C.D. Cal.) (settled – $281.5 million); *In re Acclaim Entertainment, Inc. Sec. Litig.*, No. 2:03-CV-1270 (JS) (ETB) (E.D.N.Y.) (settled – $13.65 million); *In re Zale Corp. Sec. Litig.,* No. 3:06-CV-01470-N (settled – $5.9 million); and *In re Leadis Tech., Inc. Sec. Litig.*, No. C-05-0882-CRB (N.D. Cal.) (settled – $4.2 million). Ms. Newcomer is also currently involved in several high profile securities fraud suits, including: *In re Lehman Brothers Sec. & ERISA Litig*., No. 09 MD 2017 (LAK) (S.D.N.Y.) and *In re SemGroup Energy Partners, L.P. Sec. Litig.*, No. 08-MD-1989-GFK-FHM (N.D. Olka.).

Ms. Newcomer is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey and has been admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the Ninth and Tenth Circuits, and the United States District Court for the District of New Jersey.

MARGARET E. ONASCH, an associate of the Firm, received her law degree, cum laude, from Temple University Beasley School of Law. While at Temple, Ms. Onasch was a Beasley Scholar and a staff editor for the Temple Journal of Science, Technology, and Environmental Law. Ms. Onasch earned her undergraduate degree with honors in Sociology and Spanish from Franklin and Marshall College in 2007. During law school, Ms. Onasch served as a judicial Intern to the Honorable Glynnis D. Hill of the Philadelphia Court of Common Pleas. Ms. Onasch is licensed to practice in Pennsylvania and New Jersey. She concentrates her practice in the area of securities litigation.

WILLIAM F. O'SHEA, III, a staff attorney of the Firm, received his law degree from the Villanova University School of Law in 1998 and received his undergraduate degree in English from Villanova University in 1991. During law school, Mr. O'Shea was a member of the Northeast Regional Champion team in the Philip C. Jessup International Moot Court Competition.

Prior to joining the Firm, Mr. O'Shea practiced in the areas of commercial litigation and business transactions, representing a broad range of clients, including individuals, entrepreneurs, financial institutions, Fortune 500 corporations and major league sports teams, and has experience dealing with various municipal, state, federal and international governmental entities and regulatory agencies. Mr. O'Shea is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. Mr. O'Shea concentrates his practice in the area of securities litigation.

JENNA M. PELLECCHIA, an associate of the Firm, received her law degree, cum laude, from Villanova University School of Law in 2010 and her undergraduate degrees in Physics and Mathematics from Duke University in 2007. Ms. Pellecchia is licensed to practice law in Pennsylvania and New Jersey. She concentrates her practice in the areas of Intellectual Property law and Patent Litigation.

JUSTIN O. RELIFORD, an associate of the Firm, concentrates his practice on mergers and acquisition litigation and shareholder derivative litigation. Mr. Reliford graduated from the University of Pennsylvania Law School in 2007. While earning his J.D., Mr. Reliford was a member of the University of Pennsylvania Mock Trial Team and a member of the Keedy Cup Moot Court Board. Mr. Reliford received his B.A. from Williams College in 2003, majoring in Psychology with a concentration in Leadership Studies. Prior to joining the firm, Mr. Reliford was an associate in the labor and employment practice group of Morgan Lewis & Bockius, LLP. There, Mr. Reliford concentrated his practice on employee benefits, fiduciary, and workplace discrimination litigation. Mr. Reliford has extensive experience representing clients in connection with nationwide class and collective actions.

Mr. Reliford is a member of the Pennsylvania and New Jersey bars, and he is admitted to practice in the Third Circuit Court of Appeals, the Eastern District of Pennsylvania, and the District of New Jersey.

C. PATRICK RENEGAR, a staff attorney at the Firm, received his law degree from Widener University School of Law in Wilmington, Delaware. Mr. Renegar received his Bachelor of Arts degree in Political Science from Widener University in Chester, Pennsylvania. Prior to joining Kessler Topaz, he worked in pharmaceutical and securities litigation.

Mr. Renegar is licensed to practice Law in the Commonwealth of Pennsylvania and the State of New Jersey. Mr. Renegar concentrates his practice in the area of securities litigation.

KRISTEN L. ROSS, an associate of the Firm, concentrates her practice in shareholder derivative actions. Ms. Ross received her J.D., with honors, from the George Washington University Law School, and B.A., *magna cum laude*, from Saint Joseph's University, with a major in Economics and minors in International Relations and Business.

Ms. Ross is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Courts for the District of New Jersey and the Eastern District of Pennsylvania. Prior to joining Kessler Topaz, Ms. Ross was an associate at Ballard Spahr LLP, where she focused her practice in commercial litigation, particularly foreclosure and bankruptcy proceedings. She also has experience in commercial real estate transactions. During law school, Ms. Ross served as an intern with the United States Attorney's Office for the Eastern District of Pennsylvania.

ALLYSON M. ROSSEEL, a staff attorney of the Firm, received her law degree from Widener University School of Law. She earned her B.A. in Political Science from Widener University and is licensed to practice law in Pennsylvania and New Jersey.

Prior to joining the Firm, Ms. Rosseel was employed as general counsel for a boutique insurance consultancy/brokerage focused on life insurance sales, premium finance and structured settlements. She concentrates her practice at Kessler Topaz in the area of securities litigation.

RICHARD A. RUSSO, JR., an associate of the Firm, received his law degree, cum laude, from the Temple University Beasley School of Law, where he was a member of the Temple Law Review. Mr. Russo received his Bachelor of Science in Business Administration, cum laude, from Villanova University. He is licensed to practice law in Pennsylvania and New Jersey, and is admitted to practice before the United States Courts of Appeals for the First and Tenth Circuits. He concentrates his practice at Kessler Topaz in the area of securities litigation.

Mr. Russo recently helped secure a $516 million recovery for investors in *In re Lehman Brothers Sec. & ERISA Litig.*, No. 09 MD 2017 (LAK), and is currently pursuing claims against Lehman Brothers' auditor in the United States District Court for the Southern District of New York. In addition, Mr. Russo currently serves as an associate on the following matters: *In re Bank of America Corp. Sec., Deriv. & ERISA Litig.*, No. 09 MD 2058 (PKC), pending in the United States District Court for the Southern

District of New York; *In re Citigroup, Inc. Bond Litig.*, No. 08 Civ. 9522 (SHS), pending in the United States District Court for the Southern District of New York; *In re Heckmann Corp. Sec. Litig*., No. 10 Civ. 00378-LPS-MPT, pending in the United States District Court for the District of Delaware; *Stratte-McClure v. Morgan Stanley*, No. 09 Civ. 2017 (DAB), pending in the United States District Court for the Southern District of New York; and *In re UBS AG Sec. Litig.*, No. 07 Civ.11225-RJS, pending in the United States District Court for the Southern District of New York.

TRACEY A. SHREVE, a staff attorney of the Firm, earned her Economics degree from Syracuse University where she was recognized as an International Scholar. Ms. Shreve received her law degree from California Western School of Law and was a member of the Pro Bono Honor Society. She is licensed to practice law in Pennsylvania and has been admitted to practice before the United States Supreme Court. Prior to joining Kessler Topaz, Ms. Shreve worked at a boutique litigation firm located in Center City Philadelphia, and worked as an Assistant Public Defender in Lehigh County. She now concentrates her practice in the area of ERISA and consumer rights.

JULIE SIEBERT-JOHNSON, an associate of the Firm, received her law degree from Villanova University School of Law in 2008. She graduated cum laude from the University of Pennsylvania in 2003. Ms. Siebert-Johnson is licensed to practice law in Pennsylvania and New Jersey. She concentrates her practice in the area of ERISA and consumer protection litigation.

MATTHEW T. STONE, an associate of the Firm, concentrates his practice in area of consumer protection litigation. Mr. Stone received his undergraduate degree from the University of Pennsylvania in 2003 and his law degree from Rutgers School of Law – Camden in 2007.

Following law school, Mr. Stone clerked for the Honorable Eduardo C. Robreno in the United States District Court for the Eastern District of Pennsylvania.

Mr. Stone is licensed to practice law in Pennsylvania, New Jersey and the District of Columbia, and is admitted to practice in the United States Court of Appeals for the Third Circuit, the Eastern District of Pennsylvania and the District of New Jersey.

Prior to joining Kessler Topaz, Mr. Stone practiced with the firm of Cohen Placitella & Roth, P.C. in the fields of complex litigation and medical malpractice.

Mr. Stone has also been elected to the Executive Committee of the Young Lawyers Division for the Philadelphia Bar Association. He is also a pro-bono volunteer for the Eastern District of Pennsylvania's Prisoner Civil Rights Litigation panel.

Mr. Stone has been selected as a Pennsylvania Super Lawyers Rising Star, a distinction for no more than 2.5% of Pennsylvania lawyers under the age of 40, in 2012 and 2013.

JULIE SWERDLOFF, a staff attorney of the Firm, received her undergraduate degree in Real Estate and Business Law from The Pennsylvania State University and received her law degree from Widener University School of Law. While attending law school, she interned as a judicial clerk for the Honorable James R. Melinson of the United States District Court for the Eastern District of Pennsylvania. She is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

Prior to joining Kessler Topaz, Ms. Swerdloff managed environmental claims litigation for a Philadelphia-based insurance company and prior to that was an associate at a general practice firm in Montgomery County, PA. At Kessler Topaz, she has been involved in the Firm's derivative and securities class action cases, including the historic Tyco case (*In re Tyco International, Ltd. Sec. Lit*., No.

02-1335-B (D.N.H. 2002) (settled -- $3.2 billion)) and many options backdating cases. Currently she concentrates her practice in federal and state wage and hour litigation.

ALEXANDRA H. TOMICH, a staff attorney of the Firm, received her law degree from Temple Law School and her undergraduate degree, from Columbia University, with a B.A. in English. She is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, she worked as an associate at Trujillo, Rodriguez, and Richards, LLC in Philadelphia. Ms. Tomich volunteers as an advocate for children through the Support Center for Child Advocates in Philadelphia and at Philadelphia VIP. She concentrates her practice in the area of securities litigation.

AMANDA R. TRASK, an associate of the Firm, received her law degree from Harvard Law School and her undergraduate degree, cum laude, from Bryn Mawr College, with honors in Anthropology. She is licensed to practice law in Pennsylvania and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Prior to joining Kessler Topaz, she worked as an associate at a Philadelphia law firm where she represented defendants in consumer product litigation. Ms. Trask has served as an advocate for children with disabilities and their parents and taught special education law. She currently serves on the Board of the Bryn Mawr College Club of Philadelphia. She concentrates her practice in the areas of ERISA, consumer protection and stockholder derivative actions.

JASON M. WARE, a staff attorney at the Firm, received his law degree from Villanova University School of Law. He received his Bachelor of Arts in English from Millersville University. Mr. Ware is licensed to practice law in the Commonwealth of Pennsylvania.

Prior to joining the Firm, Mr. Ware was a Legal Coordinator in the Jackson Cross Partners Advisory Services Group. He was responsible for the legal and title review of commercial real estate portfolios and abstraction of commercial leases. With the Firm, Mr. Ware concentrates his practice in the area of securities litigation.

ZAKIYA WASHINGTON, a staff attorney at the Firm, received her law degree from Temple University Beasley School of Law in Pennsylvania and her Bachelor of Science degree in Entrepreneurship from Hampton University in Virginia. Prior to joining Kessler Topaz, she worked in pharmaceutical and anti-trust litigation. She is licensed to practice law in the Commonwealth of Pennsylvania. Ms. Washington concentrates her practice in the area of securities litigation.

STACEY WAXMAN, a staff attorney at the Firm, received her undergraduate degree in Business Administration from George Washington University and received her law degree from Widener University School of Law. While in law school, she was a law clerk for a general practice firm in Bucks County. Prior to joining Kessler Topaz, she worked as an associate for a Bucks County law firm. Ms. Waxman is licensed to practice in Pennsylvania, and she concentrates her practice in the area of securities litigation.

KURT WEILER, a staff attorney of the Firm, received his law degree from Duquesne University School of Law, where he was a member of the Moot Court Board and McArdle Wall Honoree. He received his undergraduate degree from the University of Pennsylvania.

Prior to joining Kessler Topaz, Mr. Weiler was associate corporate counsel for a Philadelphia-based mortgage company, where he specialized in the area of foreclosures and bankruptcy. Mr. Weiler is licensed to practice law in Pennsylvania and currently concentrates his practice in the area of securities litigation.

DIANA J. ZINSER, a staff attorney of the Firm, received her J.D. from Temple University Beasley School of Law in 2006. She received her B.A., *cum laude*, in political science with a minor in economics from Saint Joseph's University in 2003 and was a member of the Phi Beta Kappa honor society.

Prior to joining the firm, Ms. Zinser was a project attorney at Pepper Hamilton LLP in Philadelphia, where she worked in the health effects litigation practice group. Ms. Zinser is licensed to practice law in Pennsylvania, and concentrates her practice in the area of consumer protection, ERISA, pharmaceutical pricing and antitrust litigation.

OF COUNSEL

IOANA A. BROOKS, Of Counsel in the Firm's San Francisco office, received her law degree from the University of San Francisco School of Law. She received her Bachelor of Science in Economics from Duke University. Ms. Brooks is licensed to practice law in California and concentrates her practice in the area of securities litigation.

DONNA SIEGEL MOFFA, Of Counsel to the Firm, received her law degree, with honors, from Georgetown University Law Center in May 1982. She received her undergraduate degree, cum laude, from Mount Holyoke College in Massachusetts. Ms. Siegel Moffa is admitted to practice before the Third Circuit Court of Appeals, the United States Courts for the District of New Jersey and the District of Columbia, as well as the Supreme Court of New Jersey and the District of Columbia Court of Appeals. Prior to joining the firm, Ms. Siegel Moffa was a member of the law firm of Trujillo, Rodriguez & Richards, LLC, where she litigated, and served as co-lead counsel, in complex class actions arising under federal and state consumer protection statutes, lending laws and laws governing contracts and employee compensation. Prior to entering private practice, Ms. Siegel Moffa worked at both the Federal Energy Regulatory Commission (FERC) and the Federal Trade Commission (FTC). At the FTC, she prosecuted cases involving allegations of deceptive and unsubstantiated advertising. In addition, both at FERC and the FTC, Ms. Siegel Moffa was involved in a wide range of administrative and regulatory issues including labeling and marketing claims, compliance, FOIA and disclosure obligations, employment matters, licensing and rulemaking proceedings.

Ms. Siegel Moffa continues to concentrate her practice in the area of consumer protection litigation. She served as co-lead counsel for the class in *Robinson v. Thorn Americas, Inc.*, L-03697-94 (Law Div. 1995), a case that resulted in a significant monetary recovery for consumers and changes to rent-to-own contracts in New Jersey. Ms. Siegel Moffa was also counsel in *Muhammad v. County Bank of Rehoboth Beach, Delaware,* 189 N.J. 1 (2006), U.S. Sup. Ct. cert. denied, 127 S. Ct. 2032(2007), in which the New Jersey Supreme Court struck a class action ban in a consumer arbitration contract. She has served as class counsel representing consumers pressing TILA claims, e.g. *Cannon v. Cherry Hill Toyota, Inc.,* 184 F.R.D. 540 (D.N.J. 1999), and *Dal Ponte v. Am. Mortg. Express Corp.*, CV- 04-2152 (D.N.J. 2006), and has pursued a wide variety of claims that impact consumers and individuals including those involving predatory and sub-prime lending, mandatory arbitration clauses, price fixing, improper medical billing practices, the marketing of light cigarettes and employee compensation. Ms. Siegel Moffa's practice has involved significant appellate work representing individuals, classes, and non-profit organizations participating as amicus curiae, such as the National Consumer Law Center and the AARP. In addition, Ms. Siegel Moffa has regularly addressed consumer protection and litigation issues in presentations to organizations and professional associations. Ms. Siegel Moffa is a member of the Pennsylvania Bar Association, the New Jersey State Bar Association, the Camden County Bar Association, the District of Columbia Bar Association, the National Association of Consumer Advocates and the Public Justice Foundation.

CONSULTANTS

DAVID RABBINER serves as Kessler Topaz's Director of Investigative Services and leads investigations necessary to further and strengthen the Firm's class action litigation efforts. Although his investigative services are primarily devoted to securities matters, Mr. Rabbiner routinely provides litigation support, conducts due diligence, and lends general investigative expertise and assistance to the Firm's other class action practice areas. Mr. Rabbiner plays an integral role on the Firm's legal team, providing critical investigative services to obtain evidence and information to help ensure a successful litigation outcome. Before joining Kessler Topaz, Mr. Rabbiner enjoyed a broad based, successful career as an FBI Special Agent, including service as an Assistant Special Agent in Charge, overseeing multiple criminal programs, in one of the Bureau's largest field offices. He holds an A.B. in English Language and Literature from the University of Michigan and a Juris Doctor from the University of Miami School of Law.

EXHIBIT C

Holzer Holzer & Fistel, LLC Firm Resume

HOLZER HOLZER & FISTEL LLC
ATTORNEYS AT LAW

FIRM RÉSUMÉ

HOLZER HOLZER & FISTEL LLC is an Atlanta, Georgia complex litigation firm that dedicates its practice to the enforcement of the rights that federal and state laws afford investors, consumers, and businesses harmed by the misconduct of others. Since its inception a decade ago, our firm has established an excellent reputation for innovative representation of its clients through a nationwide practice.

Our attorneys have varied and noteworthy experience prosecuting class action litigation pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, as well as under the federal and Georgia civil Racketeering and Corrupt Organizations Acts. We also maintain an active class action litigation practice on behalf of employees and retirees who have lost retirement investment monies in 401(k) or similar pension plans in violation of the Employee Retirement Income Security Act of 1974, consumers victimized by deceptive business practices, and small businesses harmed by violations of the federal antitrust laws. Our attorneys also have significant experience prosecuting claims in derivative litigation arising from directors' and officers' breaches of fiduciary duties under state law.

We take great pride in our aggressive advocacy, efficiency, and professionalism in the conduct of our clients' cases. We offer our clients a personalized approach to complex litigation which, because of its size and complex nature, can be a daunting prospect to investors, consumers, and businesses. We represent clients in dozens of cases in federal and state courts and have served in court-appointed leadership roles in many of these cases. Through unyielding dedication, hard work, and creativity, we have achieved a number of notable successes on behalf of our clients.

HOLZER HOLZER & FISTEL LLC
ATTORNEYS AT LAW

Examples of Firm's Achievements

Hutchins v. NBTY, Inc. et al. **(NBTY, Inc. Securities Litig.),** Case No. 10-cv-2159 (LDW) (WDW) (E.D.N.Y.) (Firm served as court-appointed Co-Lead Counsel in class action alleging violations of the Securities Exchange Act of 1934 and recovered $6.0 million on behalf of investors)

Sgalambo v. McKenzie et al. **(Canadian Superior Energy, Inc. Securities Litig.)**, Civil Action No. 1:09-cv-10087-SAS (S.D.N.Y.) (Firm served as court-appointed Co-Lead Counsel in securities fraud class action and achieved settlement creating common fund in the amount of $5.2 million)

In re Agria Corp. Sec. Litig., Case No. 08-cv-3536-WHP (S.D.N.Y.) (Firm represented lead plaintiff in securities fraud class action and achieved settlement creating a common fund in the amount of $3.75 million)

Miller v. Anthony et al. **(Synovus Financial Corp. Deriv. Litig.)**, Case No. 09-cv-1811-JOF (N.D. Ga.) (Firm served as court-appointed Co-Lead Counsel in shareholder derivative action and achieved settlement creating dramatic corporate governance reforms)

In re Sequenom, Inc. Deriv. Litig., Lead Case No. 09-cv-1341-LAB (WMC) (S.D. Cal.) (Firm served as court-appointed Co-Lead Counsel in shareholder derivative action and achieved settlement creating dramatic corporate governance reforms)

Mitchell v. Gozani et al. **(Neurometrix Deriv. Litig.)**, Case No. 08-CV-10674-RWZ (D. Mass) (Firm served as Co-Lead Counsel in a derivative action and achieved settlement significantly enhancing the company's internal controls and corporate governance, which included the hiring of a full time Chief Financial Officer)

Brenner et al. v. Future Graphics, LLC et al., Case No. 1:06-CV-0362-CAP (N.D. Ga.) (Firm served as court-appointed Co-Lead Counsel and achieved settlement creating a common fund in the amount of $2.65 million on behalf of Class of victims of a business opportunity scam)

In re Home Depot Inc. Shareholder Deriv. Litigation, Master File No: 1:07-CV-0356-RLV (N.D. Ga.) (Firm served as court-appointed Co-Lead Counsel and achieved settlement creating dramatic corporate governance reforms)

Hall v. Allen et al. **(Coca-Cola Co. Deriv. Litig.)**, Case No. 2004-CV-87325 (Ga. Sup. Ct., Fulton County) (Firm served as Lead Counsel and achieved settlement requiring company to implement substantial corporate governance reforms)

Brody et al. v. Kennedy et al. **(Cox Communications, Inc. Shareholder Litig.)**, Case No. 2004-CV-89198 (Ga. Sup. Ct., Fulton County) (Firm served as court-appointed Co-Lead Counsel and achieved settlement after a Special Committee of company's Board of Directors recommended an increase of $600 million in the consideration to be paid to the company's minority shareholders in connection with proposed management-led buyout)

In re IPO Sec. Litig., Master Docket No.: 21-mc-00092 (S.D.N.Y.) (Firm served on Discovery Steering Committee for 309 separate class actions alleging underwriters manipulated prices of securities coordinated for pretrial purposes that resulted in $586 million global settlement)

Examples of Present Leadership Roles

Lucescu v. Zafirovski et al. **(Nortel Networks Corp. Securities Litig.)**, Case No. 1:09-cv-04691-SAS (S.D.N.Y.) (Firm is serving as court-appointed Co-Lead Counsel in putative class action alleging violations of the anti-fraud provisions of the Securities Exchange Act of 1934)

Androgel Antitrust Litigation (II), MDL Case No. 09-md-2084 (N.D. Ga.) (Firm is serving as liaison counsel in class action alleging violations federal antitrust laws on behalf of end-payors)

Unick v. Eidenberg et al., **(Internap Network Services Corp. Shareholder Deriv. Litig.)**, Case No. 2009-CV-177627 (Ga. Sup. Ct., Fulton County) (Firm is serving as liaison counsel in shareholder derivative litigation alleging breaches of fiduciary duty against members of the company's board of directors)

Alex v. McCullough et al. **(Career Education Corp. Shareholder Deriv. Litig.)**, Case No. 1:12-cv-8834 (N.D. Ill.) (Firm is representing a shareholder in derivative litigation alleging breaches of fiduciary duty against the company's board of directors)

HOLZER HOLZER & FISTEL LLC
ATTORNEYS AT LAW

Attorney Biographies

GILBERT S. HOLZER

Gilbert S. Holzer is co-founder of the firm. Mr. Holzer received a Bachelor of Arts degree with honors in political science and economics from Sir George Williams University (now Concordia University) in Montreal, Quebec. He then obtained his Bachelor of Civil Law from McGill University in Montreal, where he graduated second in his class. Thereafter, Mr. Holzer obtained his Bachelor of Laws from McGill University where he graduated first in his class. Mr. Holzer served on the Editorial Board of the McGill Law Journal and on its Moot Court Board, and also served as counsel to the Judicial Committee, which represented the student body of McGill University.

Upon his graduation from law school, Mr. Holzer co-founded the law firm of Salomon, Holzer & Mager in Montreal, Quebec, concentrating his practice in civil litigation. After he moved to Atlanta, Mr. Holzer practiced law with Arnall Golden & Gregory LLP. He later formed his own general practice, and ultimately co-founded this firm with his son, Corey D. Holzer.

Mr. Holzer is a former member of the Bar of the Province of Quebec and a current member of the State Bar of Georgia. He is admitted to practice before all Georgia State and Superior Courts, the Georgia Court of Appeals and the United States District Court for the Northern District of Georgia. Mr. Holzer serves as a guest lecturer in the School of Public and International Affairs at the University of Georgia.

HOLZER HOLZER & FISTEL LLC
ATTORNEYS AT LAW

COREY D. HOLZER

Corey D. Holzer is co-founder and a partner of the firm. Mr. Holzer graduated *cum laude* from the University of Florida with a Bachelor of Science in Journalism, where he graduated second in his class in the College of Journalism and Communications. Mr. Holzer then obtained his Doctor of Jurisprudence from Emory University School of Law, where he was selected as a finalist in Moot Court competition.

Mr. Holzer represents individuals and institutional investors in litigation alleging violations of the federal securities laws, breaches of fiduciary duties under the laws of various states, and class actions under the federal antitrust laws and state consumer protection laws. Mr. Holzer has an in-depth understanding of the rights and privileges of investors and consumers and is driven by a strong desire to provide personalized representation and counseling to victimized investors and consumers. Mr. Holzer continues to establish his reputation as a corporate watchdog and effective advocate for his clients.

Mr. Holzer is a member of the State Bar of Georgia. Mr. Holzer is admitted to practice before all Georgia State and Superior Courts, the Georgia Court of Appeals, the United States District Court for the Northern District of Georgia, and the United States Court of Appeals for the Eleventh Circuit. He has been admitted to practice in countless other federal and state courts to handle specific cases.

HOLZER HOLZER & FISTEL LLC
ATTORNEYS AT LAW

MICHAEL I. FISTEL, JR.

Michael I. Fistel, Jr. is a partner of the firm. Mr. Fistel attended Florida State University as a Florida Undergraduate Scholar, where he graduated with a degree in English Literature. Mr. Fistel then obtained his Doctor of Jurisprudence from New England Law in Boston, Massachusetts, where he received multiple CALI awards (presented to the student that obtains the highest grade in a specific class) while graduating in the top 20 percent of his class.

Mr. Fistel devotes his practice to representing individuals and businesses. Specifically, Mr. Fistel represents investors in class action litigation asserting claims for violations of the federal securities laws and the Employee Retirement Income Security Act of 1974. Additionally, a significant portion of Mr. Fistel's practice is devoted to shareholder derivative litigation, especially in the corporate governance context. Mr. Fistel also represents shareholders seeking to challenge management misconduct in connection with corporate takeovers. Finally, Mr. Fistel represents consumers and businesses in consumer class actions and class actions alleging violations of the antitrust laws.

Mr. Fistel is a member of the State Bar of Georgia. Mr. Fistel is admitted to practice before all Georgia State and Superior Courts, the Georgia Court of Appeals, the Supreme Court of Georgia, the United States District Courts for the Northern and Middle Districts of Georgia, the United States District Court for the District of Colorado, the United States Court of Appeals for the Eleventh Circuit and the United States Supreme Court. He has been admitted to practice in countless other federal and state courts to handle specific cases. In 2011, Mr. Fistel was recognized as a Georgia Super Lawyers' Rising Star (Attorneys Under 40), an honor bestowed upon less than 2.5% of all attorneys practicing in Georgia.

HOLZER HOLZER & FISTEL LLC
ATTORNEYS AT LAW

MARSHALL P. DEES

Marshall P. Dees is an associate of the firm. Mr. Dees is a *cum laude* graduate of the University of Georgia's Terry College of Business, where he received a Bachelor of Business Administration in Management Information Systems. Mr. Dees is a *cum laude* graduate of Georgia State University's College of Law where he served as a member of its Moot Court Board and Student Trial Lawyers Association, and also served as a court-appointed mediator in the Fulton County Landlord-Tenant Program.

Since 2007, Mr. Dees has devoted his practice to securities class action litigation and has played an integral role in the firm's efforts to recover millions of dollars on behalf of investors pursuant to the federal securities laws. Mr. Dees also represents investors seeking to enforce their rights under federal and state laws governing fiduciary duties in the context of corporate management and has represented consumers seeking to remedy violations of consumer protection laws.

Mr. Dees is admitted to practice law in all Georgia State and Superior Courts, the Georgia Court of Appeals, the Supreme Court of Georgia, the United States District Courts for the Northern and Middle Districts of Georgia and the 11th Circuit Court of Appeals. Mr. Dees also has appeared *pro hac vice* on behalf of investors in litigation pending in courts across the country, and serves as one of the firm's principal liaisons with its clients.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JONATHAN ALFORD, individually and on behalf of all others similarly situated, Plaintiff, vs. UNITED COMMUNITY BANKS, INC., JIMMY C. TALLENT, GUY W. FREEMAN, ROBERT L. HEAD, JR., W.C. NELSON, JR., ROBERT BLALOCK, CATHY COX, HOYT O. HOLLOWAY, JOHN D. STEPHENS, TIM WALLIS, BENEFITS ADMINISTRATIVE COMMITTEE OF UNITED COMMUNITY BANKS, INC., CATHERINE HAMBY, BRAD MILLER, REX SCHUETTE, BILL GILBERT, SUSIE HOOPER, and DOES 1-10, Defendants.	CIVIL ACTION FILE NO. 2:11-cv-00309-WCO

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PRELIMINARILY CERTIFYING A CLASS FOR SETTLEMENT PURPOSES, APPROVING FORM AND MANNER OF CLASS NOTICE, AND SCHEDULING OF A FINAL APPROVAL HEARING

This *Action* involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("*ERISA*"), with respect to the United Community Banks, Inc. Profit Sharing Plan (the "*Plan*").[1] The terms of the *Settlement* are set out in the Settlement Agreement and Release, fully executed as of July 22, 2013 (the "*Settlement Agreement*"), by counsel on behalf of the *Named Plaintiff* and *Defendants*, respectively.

Pursuant to the *Named Plaintiff's* Motion for Preliminary Approval of the Settlement filed on July 23, 2013, the *Court* preliminarily considered the *Settlement* to determine, among other things, whether the *Settlement* is sufficient to warrant the issuance of notice to proposed *Settlement Class Members*. Upon reviewing the *Settlement Agreement* and the matter having come before the *Court* at the _____, 2013 hearing, and the *Court* having been fully advised in the premises, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. ***Settlement Class*** Findings – Solely for the purposes of the *Settlement*, the *District Court* preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the *Court* and any other applicable law have been met as to the *Settlement Class* defined below, in that:

[1] All italicized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the *Settlement Agreement*.

(a) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(a)(1), the *Settlement Class* is ascertainable from records kept with respect to the *Plan* and from other objective criteria, and the *Settlement Class Members* are so numerous that their joinder before the *Court* would be impracticable.

(b) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(a)(2), there are one or more questions of fact and/or law common to the *Settlement Class*.

(c) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(a)(3), the claims of the *Named Plaintiff* are typical of the claims of the *Settlement Class*.

(d) The *Court* preliminarily finds, for purposes of settlement only, as required by FED. R. CIV. P. 23(a)(4), that the *Named Plaintiff* will fairly and adequately protect the interests of the *Settlement Class* in that: (i) the interests of the *Named Plaintiff* and the nature of the alleged claims are consistent with those of the *Settlement Class Members*; and (ii) there appear to be no conflicts between or among the *Named Plaintiff* and the *Settlement Class*.

(e) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(b)(1), the prosecution of separate actions by individual members of the *Settlement Class* would create a risk of: (i) inconsistent

or varying adjudications as to individual *Settlement Class Members* that would establish incompatible standards of conduct for the parties opposing the claims asserted in this *Action*; or (ii) adjudications as to individual *Settlement Class Members* that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications, or substantially impair or impede the ability of such persons to protect their interests.

(f) The *Court* preliminarily finds, for purposes of settlement only, that, as required by FED. R. CIV. P. 23(g), *Class Counsel* is capable of fairly and adequately representing the interests of the *Settlement Class*, and that *Class Counsel*: (i) have done appropriate work identifying or investigating potential claims in the *Action*; (ii) are experienced in handling class actions; and (iii) have committed the necessary resources to represent the *Settlement Class*.

2. **Class Certification** – The *Court*, in conducting the settlement approval process required by FED. R. CIV. P. 23, preliminarily certifies solely for purposes of settlement the following class under FED. R. CIV. P. 23(b)(1) (the "*Settlement Class*"):

(a) All *Persons*, except *Defendants* and their *Plan* beneficiaries, who were participants in or beneficiaries of the *Plan*, at any time between October 6, 2008 and July 22, 2013 (the "*Class Period*") and whose *Plan* accounts included investments in *UCBI Stock*.

(b) The *Court* appoints the *Named Plaintiff* as the representative for the *Settlement Class* and *Class Counsel* and *Liaison Class Counsel* as counsel for the *Settlement Class*. Any certification of a preliminary *Settlement Class* pursuant to the terms of the *Settlement Agreement* shall not constitute and does not constitute, and shall not be construed or used as an admission, concession, or declaration by or against *Defendants* that (except for the purposes of the *Settlement*) this *Action* or any other action is appropriate for class treatment under FED. R. CIV. P. 23, or any similar federal or state class action statute or rule, for litigation purposes.

3. **Preliminary Approval of *Settlement*** – The *Settlement Agreement* is hereby preliminarily approved as fair, reasonable, and adequate. This *Court* preliminarily finds that: (a) the proposed *Settlement* resulted from serious, informed, extensive and arms'-length negotiations with the assistance of an experienced *Mediator*; (b) the *Settlement Agreement* was executed only after *Class Counsel* and *Liaison Class Counsel* had conducted appropriate investigation and discovery regarding the strengths and weaknesses of *Named Plaintiff's* claims; (c) *Class Counsel* and *Liaison Class Counsel* represent that they have concluded that the proposed *Settlement* is fair, reasonable, and adequate; and (d) the proposed *Settlement* is in the best interest of the *Named Plaintiff* and the *Settlement Class*. The *Court* finds that those whose claims would be settled, compromised,

dismissed, or released pursuant to the *Settlement* should be given notice and an opportunity to be heard regarding final approval of the *Settlement* and other matters.

4. ***Final Approval Hearing*** – A hearing is scheduled for _____ ("*Final Approval Hearing*") to make a final determination, concerning among other things:

- Whether the *Settlement* merits final approval as fair, reasonable and adequate;
- Whether the *Settlement Class* satisfies the requirements of FED. R. CIV. P. 23, and should be finally certified as preliminarily found by the *Court*;
- Whether the *Action* should be dismissed with prejudice pursuant to the terms of the *Settlement*;
- Whether the *Final Approval Order and Judgment* attached to the *Settlement Agree*ment should be entered and whether the *Released Persons* should be released of and from the *Released Claims*, as provided in the *Settlement Agreement*;
- Whether the notice method proposed by the *Parties* and preliminarily approved herein: (i) constitutes the best practicable notice; (ii) constitutes notice reasonably calculated,

under the circumstances, to apprise members of the *Class* of the pendency of the litigation, their right to object to the *Settlement*, and their right to appear at the *Final Approval Hearing*; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice; and (iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

- Whether *Class Counsel* adequately represented the *Settlement Class* for purposes of entering into and implementing the *Settlement*;
- Whether the negotiation and consummation of the *Settlement Agreement* by the *Named Plaintiff* on behalf of the *Plan* and the *Settlement Class* does not constitute a "prohibited transaction" as defined by ERISA §§ 406(a) or (b) and/or qualifies for a class exemption from the prohibited transaction rules, specifically Prohibited Transaction Class Exemption 2003-39, as amended;
- Whether the proposed *Plan of Allocation* should be approved; and

- Whether the application for attorneys' fees and expenses and *Case Contribution Award* to the *Named Plaintiff* is fair and reasonable and should be approved.

5. ***Class Notice*** – The *Parties* have presented to the *Court* a proposed form of *Class Notice*, attached hereto as Exhibit A. The *Court* finds that such form of notice fairly and adequately: (a) describes the terms and effects of the *Settlement Agreement*, the *Settlement*, and the *Plan of Allocation*; (b) notifies the *Settlement Class* that *Class Counsel* and *Liaison Class Counsel* will seek attorneys' fees and reimbursement of expenses from the *Settlement Fund*, payment of the costs of administering the *Settlement* out of the *Settlement Fund*, and for a *Case Contribution Award* of $5,000 for *Named Plaintiff* Jonathan Alford for his service in such capacity; (c) gives notice to the *Settlement Class* of the time and place of the *Final Approval Hearing*; and (d) describes how the recipients of the *Class Notice* may object to any of the relief requested. The *Parties* have proposed the following manner of communicating the *Class Notice* to members of the *Settlement Class*, and the *Court* finds that such proposed manner is the best notice practicable under the circumstances. Accordingly, the *Court* directs that *Class Counsel* shall:

- By no later than _____, cause the *Class Notice*, with such non-substantive modifications thereto as may be agreed upon by the *Parties*, to be provided by first-class mail,

postage prepaid, to the last known address of each member of the *Settlement Class* who can be identified through reasonable effort.

- By no later than _____, cause the *Class Notice* to be published on the website identified in the *Class Notice*, www.UCBIERISAsettlement.com, which will also host and make available copies of all *Settlement*-related documents, including the *Settlement Agreement*.

6. **Independent Fiduciary.**

(a) One or more of the *Defendants*, on behalf of the *Plan*, shall retain an independent fiduciary of the *Plan* ("*Independent Fiduciary*") to determine whether the *Settlement Agreement* should be authorized for the *Plan* and to make any other determinations called for by the Department of Labor's Class Exemption for the Release of Claims and Extensions of Credit in Connection with Litigation, PTCE 2003-39 ("*PTCE 2003-39*").

(b) The *Independent Fiduciary* shall make the determinations called for by *PTCE 2003-39* on or before _____. In the event the *Independent Fiduciary* provides the requisite approval, authorization or finding pursuant to *PTCE 2003-39*, the report of the *Independent Fiduciary* shall be filed with the *Court* on or before _____.

7. **Petition for Attorneys' Fees and Litigation Costs and *Case Contribution Award*** – Any petition by *Class Counsel* for attorney's fees, reimbursement of litigation costs and *Case Contribution Award* to the *Named Plaintiff*, and all briefs in support thereof, shall be filed no later than _____.

8. **Briefs in Support of Final Approval of the *Settlement*** – Briefs and other documents in support of *Final Approval* of the *Settlement* shall be filed no later than _____.

9. **Objections to *Settlement*** – Any *Settlement Class Member* or authorized recipient of the *CAFA Notice* may file an objection to the fairness, reasonableness, or adequacy of the *Settlement*, to any term of the *Settlement Agreement*, to the *Plan of Allocation*, to the proposed award of attorneys' fees and reimbursement of litigation expenses, the payment of costs of administering the *Settlement* out of the *Settlement Fund*, or to the request for a *Case Contribution Award* for the *Named Plaintiff*. An objector must file with the *Court* a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that the objector wishes to bring to the *Court's* attention or introduce in support of the objection(s). The objector must also mail copies of the objection(s) and any supporting law and/or evidence

to *Class Counsel* and counsel for the *Defendants*. The addresses for filing objections with the *Court* and serving objections on counsel are as follows:

For Filing:

Clerk of the Court
United States District Court for the Northern District of Georgia,
Gainesville Division
121 Spring Street SE Room 201
Gainesville, Georgia 30501

Re: *Alford v. United Community Banks, Inc. et al.*,
Civil Action No. 2:11-cv-309 (N.D. Ga.).

To Class Counsel:

Donna Siegel Moffa
Mark K. Gyandoh
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, Pennsylvania 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

To Defendants' Counsel

Stephen E. Hudson, Esq.
KILPATRICK TOWNSEND & STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
Telephone: (404) 815-6500
Facsimile: (404) 815-6555

H. Douglas Hinson, Esq.
ALSTON & BIRD
1201 West Peachtree Street
Suite 4200
Atlanta, Georgia 30309-4530

Telephone: (404) 881-7590
Facsimile: (404) 881-8663

The objector or his, her, or its counsel (if any) must serve copies of the objection(s) (together with any supporting materials) on counsel listed above so that the objection(s) are received by _____and must file the objection(s) and supporting materials with the *Court* by the same date. If an objector hires an attorney to represent him, her, or it for the purposes of making an objection pursuant to this paragraph, the attorney must also serve a notice of appearance on counsel listed above so that the notice of appearance is received by _____and must file it with the *Court* by the same date. Any member of the *Settlement Class* or other *Person* who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the *Settlement*, and any untimely objection shall be barred. Any responses to objections shall be filed with the *Court* and served on opposing counsel no later than _____. There shall be no reply briefs.

10. **Additional *Settlement* Briefs –** Any additional briefs the *Parties* may wish to file in support of the *Settlement* shall be filed no later than _____.

11. **Appearance at *Final Approval Hearing*** – Any objector who files and serves a timely, written objection in accordance with paragraph 10 above may

also appear at the *Final Approval Hearing* either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the *Final Approval Hearing* must serve a notice of intention to appear (and include, if applicable, the name, address, and telephone number of the objector's attorney) on *Class Counsel* and *Liaison Class Counsel* and *Defendants'* counsel (at the addresses set out above) so that the notice of intention to appear is received by _____and filed with the *Court* by the same date. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the *Final Approval Hearing*, except for good cause shown.

12. **Notice Expenses** – The expenses of printing, mailing, and posting of the *Class Notice* required herein shall be paid from the *Settlement Fund*.

13. **Service of Objections on Opposing Counsel** – *Defendants'* counsel and *Class Counsel* shall promptly furnish each other with copies of any and all *Objections* to the *Settlement* that come into their possession.

14. ***Termination* of *Settlement*** – This Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the *Parties*, all of whom shall be restored to their respective positions as of May 14, 2013, the day immediately before the *Parties* reached agreement to settle the *Action*, if the *Settlement* is terminated in accordance with the terms of the *Settlement Agreement*.

15. **Use of Order** – This Order is not admissible as evidence for any purpose against *Defendants* in any pending or future litigation. This Order shall not be construed or used as an admission, concession, or declaration by or against *Defendants* of any finding of fiduciary status, fault, wrongdoing, breach, omission, mistake, or liability. This Order shall not be construed or used as an admission, concession, or declaration by or against *Named Plaintiff* or the *Settlement Class* that their claims lack merit, or that the relief requested in the *Action* is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any *Party* of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by *Defendants* to class certification, in the event that the *Settlement Agreement* is terminated. Moreover, the *Settlement Agreement* and any proceedings taken pursuant to the *Settlement Agreement* are for settlement purposes only. Neither the fact of, nor any provision contained in, the *Settlement Agreement* or its exhibits, nor any actions taken thereunder, shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any claim or defense that has been, could have been, or in the future might be asserted.

16. **Injunction** – Pending final determination of whether the *Settlement* should be approved, all *Settlement Class Members* and the *Plan* are hereby BARRED and ENJOINED from instituting or prosecuting any action that asserts any *Released Claim* against any *Released Person*.

17. **Jurisdiction** – The *Court* hereby retains jurisdiction for purposes of implementing the *Settlement*, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the *Settlement* as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

18. **Continuance of *Final Approval Hearing*** – The *Court* reserves the right to continue the *Final Approval Hearing* without further written notice.

SO ORDERED this ____ day of _____, 2013.

_____
Hon. William C. O'Kelley
United States District Judge