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20 Attorneys for Receiver
21 THOMAS HEBRANK

22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**

24 SECURITIES AND EXCHANGE
25 COMMISSION,

26 Plaintiff,

27 v.

28 PACIFIC WEST CAPITAL GROUP,
INC.; ANDREW B CALHOUN IV;
PWC TRUST; BRENDA CHRISTINE
BARRY; BAK WEST, INC.; ANDREW B
CALHOUN JR.; ERIC CHRISTOPHER
CANNON; CENTURY POINT, LLC;
MICHAEL WAYNE DOTTA; and
CALEB AUSTIN MOODY (dba SKY
STONE),

Defendants.

Case No. 2:15-cv-02563-DDP-FFM

**DECLARATION OF THOMAS
HEBRANK IN SUPPORT OF
MOTION FOR ORDER
APPROVING AND AUTHORIZING
SETTLEMENT OF CERTAIN
CLAWBACK CLAIMS**

Date: January 11, 2021

Time: 10:00 a.m.

Ctrm: 9C

Judge Hon. Dean D. Pregerson

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1 received profits, I offered such investors an opportunity to settle the Clawback
2 Claims against them for an amount: (1) equal to 70% of the profits they received, to
3 be paid in one lump sum in accordance with the terms of the Settlement Agreements
4 ("Option A"); or (2) equal to 75% of the profits they received, to be paid over the
5 course of a year in 12 monthly installments ("Option B"). In the event a Net Winner
6 selected Option B as opposed to Option A, the Net Winner was required to execute
7 and deliver to me a Stipulation for Entry of Judgment, which I may file in the event
8 that Net Winner fails to make timely monthly installment payments or otherwise
9 defaults on his or her settlement payments.

10 5. In response to my settlement offers, the Net Winners have individually
11 executed settlement agreements (the "Agreements") relating to their respective
12 Voidable Transfers, pursuant to which they have agreed to individually settle the
13 Clawback Claims against them. In the aggregate, the Voidable Transfers against the
14 six (6) Net Winners total \$335,189.69. In the aggregate, the settlement payments
15 memorialized by the Agreements amounts to \$208,175.62. Each of the Net
16 Winners, with the exception of one, have agreed to pay the 70% amount pursuant to
17 Option A or the 75% amount pursuant to Option B, as described above. I have
18 agreed to settle with one Net Winner, subject to Court approval, at an amount less
19 than the 70% amount, but that Net Winner will make a substantial lump sum
20 settlement payment (\$100,000) and I have determined, in my reasonable business
21 judgment, that it is unlikely litigation would result in a greater net recovery.

22 6. In my reasonable business judgment, the payments contemplated in the
23 Agreements reflect an appropriate compromise of the Clawback Claims against the
24 Net Winners and are in the best interests of the receivership estate.

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7. Attached hereto collectively as **Exhibit A** are true and correct copies of the Agreements.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 10th day of December 2020, at San Diego, California.

Thomas C Hebrank
THOMAS HEBRANK

EXHIBIT A

SETTLEMENT & RELEASE AGREEMENT

This SETTLEMENT & RELEASE AGREEMENT ("**Agreement**"), dated as of October 12, 2020, is made by and between Thomas C. Hebrank ("**Receiver**"), in his capacity as Court-appointed permanent receiver for PWCG TRUST and Bernard Michael Berlin ("**Transferee**") (collectively, Receiver and Transferee are referred to herein as the "**Parties**").

RECITALS

A. On April 7, 2015, the Securities and Exchange Commission (the "**Commission**") filed a Complaint (Dkt. No. 1) in the United States District Court for the Central District of California ("**District Court**") against Defendants Pacific West Capital Group, Inc., Andrew B. Calhoun IV, PWCG Trust, Brenda Christine Barry, Bak West, Inc., Andrew B. Calhoun, Jr., Eric Christopher Cannon, Century Point, LLC, Michael Wayne Dotta, and Caleb Austin Moody (dba Sky Stone) in the action styled *SEC v. Pacific West Capital Group, Inc., et al.*, Case No. 2:15-cv-02563 FMO (FFMx) (the "**Action**").

B. On February 12, 2018, Defendant PWCG Trust consented to the entry of judgment in the Action without admitting or denying the allegations of the Complaint, waived findings of fact and conclusions of law, and waived any right to appeal from the judgment, by virtue of the Consent of Defendant PWCG Trust (Dkt. No. 143). Subsequently thereafter, the Court entered its Judgment as to Defendant PWCG Trust (the "Appointment Order") (Dkt. No. 145), pursuant to which the Receiver was appointed and assumed control of PWCG Trust, its bank accounts, assets, and books and records.

C. Pursuant to the District Court's orders, including the Appointment Order, the Receiver has conducted an investigation and accounting of funds transferred into and out of PWCG Trust, including amounts received from and paid to investors. The Receiver has confirmed, based upon his investigation and accounting, that during the last seven years, Transferee received \$182,500.00 ("**Profit Amount**") from PWCG Trust in excess of any amounts paid or value provided to PWCG Trust ("**Transfers**"). The Receiver has demanded return of the Profit Amount from Transferee. Transferee acknowledges receipt of the Profit Amount from PWCG Trust.

D. The Receiver and Transferee have agreed to settle and resolve all disputes, and release all claims arising from the Transfers from PWCG Trust to Transferee, under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Court Approval. This Agreement, and all terms and conditions hereof, shall be subject to approval by an order entered by the District Court ("**Court Approval**"). The Receiver shall file a motion for approval of the Agreement after execution by both Parties.

2. Payment. Transferee has elected to pay the amounts owed under this Agreement, pursuant to the terms set forth herein.

Transferee shall pay to the Receiver a total of \$100,000.00 in one lump sum, in accordance with the terms set forth herein. Payment shall be due, in full, within three (3) business days of Court Approval. Payment shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

3. Mutual Release. On the condition that all payments due under Section 2 above have been fully made and effective only upon satisfaction of such condition, the Receiver, on the one hand, and Transferee, on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors and assigns, forever, irrevocably and unconditionally release and discharge one another, and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys, and employees, of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards and judgments arising from the Transfers, all of which are hereinafter called "**Released Claims.**"

Each of the Receiver and Transferee acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the Parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Receiver and Transferee expressly waive and release any rights and benefits that they have or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the Parties through this Agreement and with the advice of counsel to fully, finally, and forever settle and release the claims and disputes existing between them as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

4. Voluntary Signing. Each of the Parties to this Agreement has executed this Agreement without any duress or undue influence.

5. Independent Counsel. Each of the Parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

6. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of California, and federal equity receivership law, and subject to the exclusive jurisdiction of the District Court.

7. Waiver/Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

8. Fax and Counterparts. This Agreement may be executed by fax and/or in counterparts and, if so executed, each fax and/or counterpart shall have the full force and effect of an original.

9. Attorneys' Fees and Costs. The Parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, and the Parties' efforts to obtain District Court approval thereof. If any proceeding, action, suit, or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

10. Notices. Notices to be provided hereunder shall be effective if sent to the following:

To Transferee:

Bernard Michael Berlin
5442 S. Farmhouse Place
Boise, ID 83716

To the Receiver:

Thomas C. Hebrank
501 West Broadway, Suite 290
San Diego, CA 92101

With a copy to:

Norman Aspis, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543

[SIGNATURES ON FOLLOWING PAGE]

TRANSFeree:


Bernard Michael Berlin

THOMAS C. HEBRANK, SOLELY IN HIS
CAPACITY AS COURT-APPOINTED
PERMANENT RECEIVER FOR PWCG TRUST

By: _____
Thomas C. Hebrank, Receiver

SETTLEMENT & RELEASE AGREEMENT

This SETTLEMENT & RELEASE AGREEMENT ("**Agreement**"), dated as of Aug 28th, 2020, is made by and between Thomas C. Hebrank ("**Receiver**"), in his capacity as Court-appointed permanent receiver for PWCG TRUST and Richard and Diane Brown ("**Transferee**") (collectively, Receiver and Transferee are referred to herein as the "**Parties**").

RECITALS

A. On April 7, 2015, the Securities and Exchange Commission (the "**Commission**") filed a Complaint (Dkt. No. 1) in the United States District Court for the Central District of California ("**District Court**") against Defendants Pacific West Capital Group, Inc., Andrew B. Calhoun IV, PWCG Trust, Brenda Christine Barry, Bak West, Inc., Andrew B. Calhoun, Jr., Eric Christopher Cannon, Century Point, LLC, Michael Wayne Dotta, and Caleb Austin Moody (dba Sky Stone) in the action styled *SEC v. Pacific West Capital Group, Inc., et al.*, Case No. 2:15-cv-02563 FMO (FFMx) (the "**Action**").

B. On February 12, 2018, Defendant PWCG Trust consented to the entry of judgment in the Action without admitting or denying the allegations of the Complaint, waived findings of fact and conclusions of law, and waived any right to appeal from the judgment, by virtue of the Consent of Defendant PWCG Trust (Dkt. No. 143). Subsequently thereafter, the Court entered its Judgment as to Defendant PWCG Trust (the "Appointment Order") (Dkt. No. 145), pursuant to which the Receiver was appointed and assumed control of PWCG Trust, its bank accounts, assets, and books and records.

C. Pursuant to the District Court's orders, including the Appointment Order, the Receiver has conducted an investigation and accounting of funds transferred into and out of PWCG Trust, including amounts received from and paid to investors. The Receiver has confirmed, based upon his investigation and accounting, that during the last seven years, Transferee received \$36,139.47 ("**Profit Amount**") from PWCG Trust in excess of any amounts paid or value provided to PWCG Trust ("**Transfers**"). The Receiver has demanded return of the Profit Amount from Transferee. Transferee acknowledges receipt of the Profit Amount from PWCG Trust.

D. The Receiver and Transferee have agreed to settle and resolve all disputes, and release all claims arising from the Transfers from PWCG Trust to Transferee, under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Court Approval. This Agreement, and all terms and conditions hereof, shall be subject to approval by an order entered by the District Court ("**Court Approval**"). The Receiver shall file a motion for approval of the Agreement after execution by both Parties.

2. Payment. Transferee may select **Option A** or **Option B**, as set forth below, to pay the amounts owed under this Agreement.

A. **Option A:**

Transferee shall pay to the Receiver a total of \$25,297.63 in one lump sum, in accordance with the terms set forth herein, which amount represents 70% of the Profit Amount. Payment shall be due, in full, within three (3) business days of Court Approval. Payment shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option A:** DB

B. **Option B:**

Transferee shall pay to the Receiver a total of \$27,104.60 over the course of one year, divided into twelve (12) equal monthly installments of \$2,258.72, in accordance with the terms set forth herein, which total amount represents 75% of the Profit Amount. The first installment payment shall be due within three (3) business days of Court Approval, and thereafter, the monthly installment payments shall be due on the 15th day of each month. In the event that the first installment payment is due on or before the 15th of the month, the second installment payment shall not be due until the 15th day of the following month. Payments shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option B:** _____

Transferee may not select both Option A and Option B.

3. Stipulated Judgment. In the event that Transferee elects to make payments under this Agreement pursuant to **Option B**, Transferee shall sign the Stipulation for Entry of Judgment attached hereto as **Exhibit A**, which shall be held by the Receiver and not filed with the District Court, or otherwise enforced, except in the case of a default by Transferee. In the case of a default by Transferee, the Receiver may file and seek entry of the Stipulation for Entry of Judgment by the District Court and take all legally available steps to enforce it. In such event, all payments made by Transferee to the Receiver hereunder, if any, shall be credited toward the stipulated judgment.

4. Mutual Release. On the condition that all payments due under Section 2 above have been fully made and effective only upon satisfaction of such condition, the Receiver, on the one hand, and Transferee, on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors and assigns, forever, irrevocably and unconditionally release and discharge one another, and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys, and employees, of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards and judgments arising from the Transfers, all of which are hereinafter called "**Released Claims.**"

Each of the Receiver and Transferee acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the Parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Receiver and Transferee expressly waive and release any rights and benefits that they have or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the Parties through this Agreement and with the advice of counsel to fully, finally, and forever settle and release the claims and disputes existing between them as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

5. Voluntary Signing. Each of the Parties to this Agreement has executed this Agreement without any duress or undue influence.

6. Independent Counsel. Each of the Parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

7. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of California, and federal equity receivership law, and subject to the exclusive jurisdiction of the District Court.

8. Waiver/Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

9. Fax and Counterparts. This Agreement may be executed by fax and/or in counterparts and, if so executed, each fax and/or counterpart shall have the full force and effect of an original.

10. Attorneys' Fees and Costs. The Parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, and the Parties' efforts to obtain District Court approval thereof. If any proceeding, action, suit,

or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

11. Notices. Notices to be provided hereunder shall be effective if sent to the following:

To Transferee:

Richard & Diane Brown
5729 Wheelsman Place
San Jose, CA 95123

To the Receiver:

Thomas C. Hebrank
501 West Broadway, Suite 290
San Diego, CA 92101

With a copy to:

Norman Aspis, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543

[SIGNATURES ON FOLLOWING PAGE]

TRANSFEREE:


Richard Brown & Diane Brown

THOMAS C. HEBRANK, SOLELY IN HIS
CAPACITY AS COURT-APPOINTED
PERMANENT RECEIVER FOR PWCG TRUST

By: _____
Thomas C. Hebrank, Receiver

SETTLEMENT & RELEASE AGREEMENT

This SETTLEMENT & RELEASE AGREEMENT ("**Agreement**"), dated as of Sept 2, 2020, is made by and between Thomas C. Hebrank ("**Receiver**"), in his capacity as Court-appointed permanent receiver for PWCG TRUST and Norine S. Elliott ("**Transferee**") (collectively, Receiver and Transferee are referred to herein as the "**Parties**").

RECITALS

A. On April 7, 2015, the Securities and Exchange Commission (the "**Commission**") filed a Complaint (Dkt. No. 1) in the United States District Court for the Central District of California ("**District Court**") against Defendants Pacific West Capital Group, Inc., Andrew B. Calhoun IV, PWCG Trust, Brenda Christine Barry, Bak West, Inc., Andrew B. Calhoun, Jr., Eric Christopher Cannon, Century Point, LLC, Michael Wayne Dotta, and Caleb Austin Moody (dba Sky Stone) in the action styled *SEC v. Pacific West Capital Group, Inc., et al.*, Case No. 2:15-cv-02563 FMO (FFMx) (the "**Action**").

B. On February 12, 2018, Defendant PWCG Trust consented to the entry of judgment in the Action without admitting or denying the allegations of the Complaint, waived findings of fact and conclusions of law, and waived any right to appeal from the judgment, by virtue of the Consent of Defendant PWCG Trust (Dkt. No. 143). Subsequently thereafter, the Court entered its Judgment as to Defendant PWCG Trust (the "**Appointment Order**") (Dkt. No. 145), pursuant to which the Receiver was appointed and assumed control of PWCG Trust, its bank accounts, assets, and books and records.

C. Pursuant to the District Court's orders, including the Appointment Order, the Receiver has conducted an investigation and accounting of funds transferred into and out of PWCG Trust, including amounts received from and paid to investors. The Receiver has confirmed, based upon his investigation and accounting, that during the last seven years, Transferee received \$31,779.93 ("**Profit Amount**") from PWCG Trust in excess of any amounts paid or value provided to PWCG Trust ("**Transfers**"). The Receiver has demanded return of the Profit Amount from Transferee. Transferee acknowledges receipt of the Profit Amount from PWCG Trust.

D. The Receiver and Transferee have agreed to settle and resolve all disputes, and release all claims arising from the Transfers from PWCG Trust to Transferee, under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Court Approval. This Agreement, and all terms and conditions hereof, shall be subject to approval by an order entered by the District Court ("**Court Approval**"). The Receiver shall file a motion for approval of the Agreement after execution by both Parties.

2. Payment. Transferee may select **Option A** or **Option B**, as set forth below, to pay the amounts owed under this Agreement.

A. **Option A:**

Transferee shall pay to the Receiver a total of \$22,245.95 in one lump sum, in accordance with the terms set forth herein, which amount represents 70% of the Profit Amount. Payment shall be due, in full, within three (3) business days of Court Approval. Payment shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option A:** he

B. **Option B:**

Transferee shall pay to the Receiver a total of \$23,834.95 over the course of one year, divided into twelve (12) equal monthly installments of \$1,986.25, in accordance with the terms set forth herein, which total amount represents 75% of the Profit Amount. The first installment payment shall be due within three (3) business days of Court Approval, and thereafter, the monthly installment payments shall be due on the 15th day of each month. In the event that the first installment payment is due on or before the 15th of the month, the second installment payment shall not be due until the 15th day of the following month. Payments shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option B:** _____

Transferee may not select both Option A and Option B.

3. **Stipulated Judgment.** In the event that Transferee elects to make payments under this Agreement pursuant to **Option B**, Transferee shall sign the Stipulation for Entry of Judgment attached hereto as **Exhibit A**, which shall be held by the Receiver and not filed with the District Court, or otherwise enforced, except in the case of a default by Transferee. In the case of a default by Transferee, the Receiver may file and seek entry of the Stipulation for Entry of Judgment by the District Court and take all legally available steps to enforce it. In such event, all payments made by Transferee to the Receiver hereunder, if any, shall be credited toward the stipulated judgment.

4. **Mutual Release.** On the condition that all payments due under Section 2 above have been fully made and effective only upon satisfaction of such condition, the Receiver, on the one hand, and Transferee, on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors and assigns, forever, irrevocably and unconditionally release and discharge one another, and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys, and employees, of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards and judgments arising from the Transfers, all of which are hereinafter called "**Released Claims.**"

Each of the Receiver and Transferee acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected

or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the Parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Receiver and Transferee expressly waive and release any rights and benefits that they have or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the Parties through this Agreement and with the advice of counsel to fully, finally, and forever settle and release the claims and disputes existing between them as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

5. Voluntary Signing. Each of the Parties to this Agreement has executed this Agreement without any duress or undue influence.

6. Independent Counsel. Each of the Parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

7. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of California, and federal equity receivership law, and subject to the exclusive jurisdiction of the District Court.

8. Waiver Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

9. Fax and Counterparts. This Agreement may be executed by fax and/or in counterparts and, if so executed, each fax and/or counterpart shall have the full force and effect of an original.

10. Attorneys' Fees and Costs. The Parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, and the Parties' efforts to obtain District Court approval thereof. If any proceeding, action, suit, or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

11. Notices. Notices to be provided hereunder shall be effective if sent to the following:

To Transferee:

Norine S. Elliott
13595 San Antonio Rd.
Atascadero, CA 93422

To the Receiver:

Thomas C. Hebrank
501 West Broadway, Suite 290
San Diego, CA 92101

With a copy to:

Norman Aspis, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543

[SIGNATURES ON FOLLOWING PAGE]

TRANSFeree:

Norine S. Elliott
Norine S. Elliott

THOMAS C. HEBRANK, SOLELY IN HIS
CAPACITY AS COURT-APPOINTED
PERMANENT RECEIVER FOR PWCG TRUST

By: _____
Thomas C. Hebrank, Receiver

|

SETTLEMENT & RELEASE AGREEMENT

This SETTLEMENT & RELEASE AGREEMENT ("**Agreement**"), dated as of September 19th, 2020, is made by and between Thomas C. Hebrank ("**Receiver**"), in his capacity as Court-appointed permanent receiver for PWCG TRUST and Haitao Jiang and Qing Yan ("**Transferee**") (collectively, Receiver and Transferee are referred to herein as the "**Parties**").

RECITALS

A. On April 7, 2015, the Securities and Exchange Commission (the "**Commission**") filed a Complaint (Dkt. No. 1) in the United States District Court for the Central District of California ("**District Court**") against Defendants Pacific West Capital Group, Inc., Andrew B. Calhoun IV, PWCG Trust, Brenda Christine Barry, Bak West, Inc., Andrew B. Calhoun, Jr., Eric Christopher Cannon, Century Point, LLC, Michael Wayne Dotta, and Caleb Austin Moody (dba Sky Stone) in the action styled *SEC v. Pacific West Capital Group, Inc., et al.*, Case No. 2:15-cv-02563 FMO (FFMx) (the "**Action**").

B. On February 12, 2018, Defendant PWCG Trust consented to the entry of judgment in the Action without admitting or denying the allegations of the Complaint, waived findings of fact and conclusions of law, and waived any right to appeal from the judgment, by virtue of the Consent of Defendant PWCG Trust (Dkt. No. 143). Subsequently thereafter, the Court entered its Judgment as to Defendant PWCG Trust (the "Appointment Order") (Dkt. No. 145), pursuant to which the Receiver was appointed and assumed control of PWCG Trust, its bank accounts, assets, and books and records.

C. Pursuant to the District Court's orders, including the Appointment Order, the Receiver has conducted an investigation and accounting of funds transferred into and out of PWCG Trust, including amounts received from and paid to investors. The Receiver has confirmed, based upon his investigation and accounting, that during the last seven years, Transferee received **\$28,913.54** ("**Profit Amount**") from PWCG Trust in excess of any amounts paid or value provided to PWCG Trust ("**Transfers**"). The Receiver has demanded return of the Profit Amount from Transferee. Transferee acknowledges receipt of the Profit Amount from PWCG Trust.

D. The Receiver and Transferee have agreed to settle and resolve all disputes, and release all claims arising from the Transfers from PWCG Trust to Transferee, under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Court Approval. This Agreement, and all terms and conditions hereof, shall be subject to approval by an order entered by the District Court ("**Court Approval**"). The Receiver shall file a motion for approval of the Agreement after execution by both Parties.

2. Payment. Transferee may select **Option A** or **Option B**, as set forth below, to pay the amounts owed under this Agreement.

A. **Option A:**

Transferee shall pay to the Receiver a total of \$20,239.48 in one lump sum, in accordance with the terms set forth herein, which amount represents 70% of the Profit Amount. Payment shall be due, in full, within three (3) business days of Court Approval. Payment shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option A:**

B. **Option B:**

Transferee shall pay to the Receiver a total of \$21,685.16 over the course of one year, divided into twelve (12) equal monthly installments of \$1,807.10, in accordance with the terms set forth herein, which total amount represents 75% of the Profit Amount. The first installment payment shall be due within three (3) business days of Court Approval, and thereafter, the monthly installment payments shall be due on the 15th day of each month. In the event that the first installment payment is due on or before the 15th of the month, the second installment payment shall not be due until the 15th day of the following month. Payments shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option B:**

Transferee may not select both Option A and Option B.

3. Stipulated Judgment. In the event that Transferee elects to make payments under this Agreement pursuant to **Option B**, Transferee shall sign the Stipulation for Entry of Judgment attached hereto as **Exhibit A**, which shall be held by the Receiver and not filed with the District Court, or otherwise enforced, except in the case of a default by Transferee. In the case of a default by Transferee, the Receiver may file and seek entry of the Stipulation for Entry of Judgment by the District Court and take all legally available steps to enforce it. In such event, all payments made by Transferee to the Receiver hereunder, if any, shall be credited toward the stipulated judgment.

4. Mutual Release. On the condition that all payments due under Section 2 above have been fully made and effective only upon satisfaction of such condition, the Receiver, on the one hand, and Transferee, on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors and assigns, forever, irrevocably and unconditionally release and discharge one another, and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys, and employees, of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards and judgments arising from the Transfers, all of which are hereinafter called "**Released Claims.**"

Each of the Receiver and Transferee acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the Parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Receiver and Transferee expressly waive and release any rights and benefits that they have or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the Parties through this Agreement and with the advice of counsel to fully, finally, and forever settle and release the claims and disputes existing between them as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

5. Voluntary Signing. Each of the Parties to this Agreement has executed this Agreement without any duress or undue influence.

6. Independent Counsel. Each of the Parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

7. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of California, and federal equity receivership law, and subject to the exclusive jurisdiction of the District Court.

8. Waiver/Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

9. Fax and Counterparts. This Agreement may be executed by fax and/or in counterparts and, if so executed, each fax and/or counterpart shall have the full force and effect of an original.

10. Attorneys' Fees and Costs. The Parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, and the Parties' efforts to obtain District Court approval thereof. If any proceeding, action, suit,

or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

11. Notices. Notices to be provided hereunder shall be effective if sent to the following:

To Transferee:

Haitao Jiang and Qing Yan
6205 Woodvale Terrace
Dublin, CA 94568

To the Receiver:

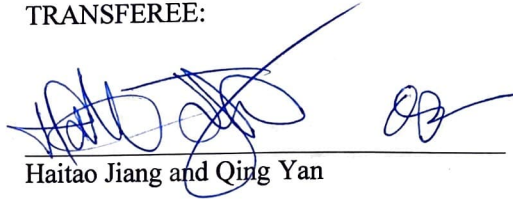
Thomas C. Hebrank
501 West Broadway, Suite 290
San Diego, CA 92101

With a copy to:

Norman Aspis, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543

[SIGNATURES ON FOLLOWING PAGE]

TRANSFeree:

Two handwritten signatures in blue ink are positioned above a horizontal line. The signature on the left is more complex and stylized, while the one on the right is simpler and more compact.

Haitao Jiang and Qing Yan

THOMAS C. HEBRANK, SOLELY IN HIS
CAPACITY AS COURT-APPOINTED
PERMANENT RECEIVER FOR PWCG TRUST

By: _____
Thomas C. Hebrank, Receiver

SETTLEMENT & RELEASE AGREEMENT

This SETTLEMENT & RELEASE AGREEMENT ("**Agreement**"), dated as of SEPT. 1, 2020, is made by and between Thomas C. Hebrank ("**Receiver**"), in his capacity as Court-appointed permanent receiver for PWCG TRUST and Randall King ("**Transferee**") (collectively, Receiver and Transferee are referred to herein as the "**Parties**").

RECITALS

A. On April 7, 2015, the Securities and Exchange Commission (the "**Commission**") filed a Complaint (Dkt. No. 1) in the United States District Court for the Central District of California ("**District Court**") against Defendants Pacific West Capital Group, Inc., Andrew B. Calhoun IV, PWCG Trust, Brenda Christine Barry, Bak West, Inc., Andrew B. Calhoun, Jr., Eric Christopher Cannon, Century Point, LLC, Michael Wayne Dotta, and Caleb Austin Moody (dba Sky Stone) in the action styled *SEC v. Pacific West Capital Group, Inc., et al.*, Case No. 2:15-cv-02563 FMO (FFMx) (the "**Action**").

B. On February 12, 2018, Defendant PWCG Trust consented to the entry of judgment in the Action without admitting or denying the allegations of the Complaint, waived findings of fact and conclusions of law, and waived any right to appeal from the judgment, by virtue of the Consent of Defendant PWCG Trust (Dkt. No. 143). Subsequently thereafter, the Court entered its Judgment as to Defendant PWCG Trust (the "Appointment Order") (Dkt. No. 145), pursuant to which the Receiver was appointed and assumed control of PWCG Trust, its bank accounts, assets, and books and records.

C. Pursuant to the District Court's orders, including the Appointment Order, the Receiver has conducted an investigation and accounting of funds transferred into and out of PWCG Trust, including amounts received from and paid to investors. The Receiver has confirmed, based upon his investigation and accounting, that during the last seven years, Transferee received **\$25,856.75** ("**Profit Amount**") from PWCG Trust in excess of any amounts paid or value provided to PWCG Trust ("**Transfers**"). The Receiver has demanded return of the Profit Amount from Transferee. Transferee acknowledges receipt of the Profit Amount from PWCG Trust.

D. The Receiver and Transferee have agreed to settle and resolve all disputes, and release all claims arising from the Transfers from PWCG Trust to Transferee, under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Court Approval. This Agreement, and all terms and conditions hereof, shall be subject to approval by an order entered by the District Court ("**Court Approval**"). The Receiver shall file a motion for approval of the Agreement after execution by both Parties.

2. Payment. Transferee may select **Option A** or **Option B**, as set forth below, to pay the amounts owed under this Agreement.


A. **Option A:**

Transferee shall pay to the Receiver a total of \$18,099.73 in one lump sum, in accordance with the terms set forth herein, which amount represents 70% of the Profit Amount. Payment shall be due, in full, within three (3) business days of Court Approval. Payment shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option A:** _____

B. **Option B:**

Transferee shall pay to the Receiver a total of \$19,392.56 over the course of one year, divided into twelve (12) equal monthly installments of \$1,616.05, in accordance with the terms set forth herein, which total amount represents 75% of the Profit Amount. The first installment payment shall be due within three (3) business days of Court Approval, and thereafter, the monthly installment payments shall be due on the 15th day of each month. In the event that the first installment payment is due on or before the 15th of the month, the second installment payment shall not be due until the 15th day of the following month. Payments shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option B:** _____ 

Transferee may not select both Option A and Option B.

3. **Stipulated Judgment.** In the event that Transferee elects to make payments under this Agreement pursuant to **Option B**, Transferee shall sign the Stipulation for Entry of Judgment attached hereto as **Exhibit A**, which shall be held by the Receiver and not filed with the District Court, or otherwise enforced, except in the case of a default by Transferee. In the case of a default by Transferee, the Receiver may file and seek entry of the Stipulation for Entry of Judgment by the District Court and take all legally available steps to enforce it. In such event, all payments made by Transferee to the Receiver hereunder, if any, shall be credited toward the stipulated judgment.

4. **Mutual Release.** On the condition that all payments due under Section 2 above have been fully made and effective only upon satisfaction of such condition, the Receiver, on the one hand, and Transferee, on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors and assigns, forever, irrevocably and unconditionally release and discharge one another, and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys, and employees, of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards and judgments arising from the Transfers, all of which are hereinafter called "**Released Claims.**"

Each of the Receiver and Transferee acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected

or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the Parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Receiver and Transferee expressly waive and release any rights and benefits that they have or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the Parties through this Agreement and with the advice of counsel to fully, finally, and forever settle and release the claims and disputes existing between them as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

5. Voluntary Signing. Each of the Parties to this Agreement has executed this Agreement without any duress or undue influence.

6. Independent Counsel. Each of the Parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

7. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of California, and federal equity receivership law, and subject to the exclusive jurisdiction of the District Court.

8. Waiver/Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

9. Fax and Counterparts. This Agreement may be executed by fax and/or in counterparts and, if so executed, each fax and/or counterpart shall have the full force and effect of an original.

10. Attorneys' Fees and Costs. The Parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, and the Parties' efforts to obtain District Court approval thereof. If any proceeding, action, suit, or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

11. Notices. Notices to be provided hereunder shall be effective if sent to the following:

To Transferee:

Randall King
2125 Summerfield Ln.
Harlingen, TX 78550

To the Receiver:


Thomas C. Hebrank
501 West Broadway, Suite 290
San Diego, CA 92101

With a copy to:

Norman Aspis, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543

[SIGNATURES ON FOLLOWING PAGE]

TRANSFeree:



Randall King

THOMAS C. HEBRANK, SOLELY IN HIS
CAPACITY AS COURT-APPOINTED
PERMANENT RECEIVER FOR PWCG TRUST

By: _____
Thomas C. Hebrank, Receiver

1 DAVID R. ZARO (BAR NO. 124334)
TIM C. HSU (BAR NO. 279208)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
thsu@allenmatkins.com

6 EDWARD G. FATES (BAR NO. 227809)
7 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
8 One America Plaza
600 West Broadway, 27th Floor
9 San Diego, California 92101-0903
Phone: (619) 233-1155
10 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

11 Attorneys for Receiver
12 THOMAS C. HEBRANK

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 THOMAS C. HEBRANK, in his
capacity as Court-appointed permanent
17 receiver for PWCG Trust,

18 Plaintiff,

19 v.

20 RANDALL KING,

21 Defendant.
22
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24
25
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27
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Case No. _____

Ctrm: 9C
Judge Dean D. Pregerson

**STIPULATION FOR ENTRY OF
JUDGMENT**

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1 1. In the event of a default under the Settlement Agreement, judgment
2 shall be entered against Transferee in the Profit Amount, less any payments made by
3 Transferee to the Receiver in satisfaction of this amount;

4 2. A declaration by the Receiver or his designee, successor, or assign shall
5 be deemed sufficient evidence of an uncured default under the Settlement
6 Agreement and of any payments made by Transferee for purposes of determining
7 the amount of judgment to be entered;

8 3. Transferee further agrees to waive notice of entry of judgment, any
9 right to contest entry and enforcement of the judgment, and any notice of motion or
10 application for issuance of writs of execution pursuant to said judgment;

11 4. Transferee further agrees to waive any findings of fact and conclusions
12 of law;

13 5. Transferee further waives its right to appeal, its right to bring any
14 motions for new trial, and any and all rights it may have to set aside or overturn any
15 judgment entered on this stipulation; and

16 6. The undersigned parties to this stipulation have read the foregoing
17 terms and provisions for the stipulation. The undersigned parties hereby
18 acknowledge that they understand the foregoing terms and provisions of the
19 stipulation, their respective rights thereunder, and that the foregoing terms and
20 provisions are hereby agreed to and accepted.

21
22 **IT IS SO STIPULATED.**

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24 [SIGNATURES ON FOLLOWING PAGE]
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Dated: _____, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
EDWARD G. FATES
TIM C. HSU

By: _____
EDWARD G. FATES
Attorneys for Receiver
THOMAS C. HEBRANK

Dated: _____, 2020

COUNSEL

By: _____
Attorneys for Transferee

APPROVED AS TO FORM AND CONTENT.

Dated: Sept 1, 2020

TRANSFeree

By: 
RANDALL KING

Dated: _____, 2020

RECEIVER, THOMAS C. HEBRANK

By: _____
THOMAS C. HEBRANK
Court-appointed permanent receiver

SETTLEMENT & RELEASE AGREEMENT

This SETTLEMENT & RELEASE AGREEMENT ("**Agreement**"), dated as of 8-26-20, 2020, is made by and between Thomas C. Hebrank ("**Receiver**"), in his capacity as Court-appointed permanent receiver for PWCG TRUST and Ernest Lavorini ("**Transferee**") (collectively, Receiver and Transferee are referred to herein as the "**Parties**").

RECITALS

A. On April 7, 2015, the Securities and Exchange Commission (the "**Commission**") filed a Complaint (Dkt. No. 1) in the United States District Court for the Central District of California ("**District Court**") against Defendants Pacific West Capital Group, Inc., Andrew B. Calhoun IV, PWCG Trust, Brenda Christine Barry, Bak West, Inc., Andrew B. Calhoun, Jr., Eric Christopher Cannon, Century Point, LLC, Michael Wayne Dotta, and Caleb Austin Moody (dba Sky Stone) in the action styled *SEC v. Pacific West Capital Group, Inc., et al.*, Case No. 2:15-cv-02563 FMO (FFMx) (the "**Action**").

B. On February 12, 2018, Defendant PWCG Trust consented to the entry of judgment in the Action without admitting or denying the allegations of the Complaint, waived findings of fact and conclusions of law, and waived any right to appeal from the judgment, by virtue of the Consent of Defendant PWCG Trust (Dkt. No. 143). Subsequently thereafter, the Court entered its Judgment as to Defendant PWCG Trust (the "Appointment Order") (Dkt. No. 145), pursuant to which the Receiver was appointed and assumed control of PWCG Trust, its bank accounts, assets, and books and records.

C. Pursuant to the District Court's orders, including the Appointment Order, the Receiver has conducted an investigation and accounting of funds transferred into and out of PWCG Trust, including amounts received from and paid to investors. The Receiver has confirmed, based upon his investigation and accounting, that during the last seven years, Transferee received **\$30,000.00** ("**Profit Amount**") from PWCG Trust in excess of any amounts paid or value provided to PWCG Trust ("**Transfers**"). The Receiver has demanded return of the Profit Amount from Transferee. Transferee acknowledges receipt of the Profit Amount from PWCG Trust.

D. The Receiver and Transferee have agreed to settle and resolve all disputes, and release all claims arising from the Transfers from PWCG Trust to Transferee, under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Court Approval. This Agreement, and all terms and conditions hereof, shall be subject to approval by an order entered by the District Court ("**Court Approval**"). The Receiver shall file a motion for approval of the Agreement after execution by both Parties.

2. Payment. Transferee may select **Option A** or **Option B**, as set forth below, to pay the amounts owed under this Agreement.

A. **Option A:**

Transferee shall pay to the Receiver a total of \$21,000.00 in one lump sum, in accordance with the terms set forth herein, which amount represents 70% of the Profit Amount. Payment shall be due, in full, within three (3) business days of Court Approval. Payment shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option A:** EL

B. **Option B:**

Transferee shall pay to the Receiver a total of \$22,500.00 over the course of one year, divided into twelve (12) equal monthly installments of \$1,875.00, in accordance with the terms set forth herein, which total amount represents 75% of the Profit Amount. The first installment payment shall be due within three (3) business days of Court Approval, and thereafter, the monthly installment payments shall be due on the 15th day of each month. In the event that the first installment payment is due on or before the 15th of the month, the second installment payment shall not be due until the 15th day of the following month. Payments shall be made payable to: PWCG Trust and delivered, on or before the date it is due, to the attention of Norman Aspis, Allen Matkins Leck Gamble Mallory & Natsis LLP, 865 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017-2543.

Transferee to initial here if selecting **Option B:** _____

Transferee may not select both Option A and Option B.

3. **Stipulated Judgment.** In the event that Transferee elects to make payments under this Agreement pursuant to **Option B**, Transferee shall sign the Stipulation for Entry of Judgment attached hereto as **Exhibit A**, which shall be held by the Receiver and not filed with the District Court, or otherwise enforced, except in the case of a default by Transferee. In the case of a default by Transferee, the Receiver may file and seek entry of the Stipulation for Entry of Judgment by the District Court and take all legally available steps to enforce it. In such event, all payments made by Transferee to the Receiver hereunder, if any, shall be credited toward the stipulated judgment.

4. **Mutual Release.** On the condition that all payments due under Section 2 above have been fully made and effective only upon satisfaction of such condition, the Receiver, on the one hand, and Transferee, on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors and assigns, forever, irrevocably and unconditionally release and discharge one another, and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys, and employees, of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards and judgments arising from the Transfers, all of which are hereinafter called "**Released Claims.**"

Each of the Receiver and Transferee acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected

or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the Parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Receiver and Transferee expressly waive and release any rights and benefits that they have or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the Parties through this Agreement and with the advice of counsel to fully, finally, and forever settle and release the claims and disputes existing between them as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

5. Voluntary Signing. Each of the Parties to this Agreement has executed this Agreement without any duress or undue influence.

6. Independent Counsel. Each of the Parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

7. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of California, and federal equity receivership law, and subject to the exclusive jurisdiction of the District Court.

8. Waiver/Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

9. Fax and Counterparts. This Agreement may be executed by fax and/or in counterparts and, if so executed, each fax and/or counterpart shall have the full force and effect of an original.

10. Attorneys' Fees and Costs. The Parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, and the Parties' efforts to obtain District Court approval thereof. If any proceeding, action, suit, or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

11. Notices. Notices to be provided hereunder shall be effective if sent to the following:

To Transferee:

Ernest Lavorini
648 Buzzie Ct.
Lafayette, CA 94549

To the Receiver:

Thomas C. Hebrank
501 West Broadway, Suite 290
San Diego, CA 92101

With a copy to:

Norman Aspis, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543

[SIGNATURES ON FOLLOWING PAGE]

TRANSFeree:

A handwritten signature in black ink, appearing to read 'Ernest Lavorini', written over a horizontal line.

Ernest Lavorini

THOMAS C. HEBRANK, SOLELY IN HIS
CAPACITY AS COURT-APPOINTED
PERMANENT RECEIVER FOR PWCG TRUST

By: _____

Thomas C. Hebrank, Receiver

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20 Attorneys for Receiver
21 THOMAS HEBRANK

22 UNITED STATES DISTRICT COURT
23 CENTRAL DISTRICT OF CALIFORNIA
24 WESTERN DIVISION

25 SECURITIES AND EXCHANGE
26 COMMISSION,

27 Plaintiff,

28 vs.

29 PACIFIC WEST CAPITAL GROUP,
30 INC.; ANDREW B. CALHOUN IV;
31 PWCG TRUST; BRENDA CHRISTINE
32 BARRY; BAK WEST, INC.; ANDREW
33 B. CALHOUN JR.; ERIC
34 CHRISTOPHER CANNON; CENTURY
35 POINT, LLC; MICHAEL WAYNE
36 DOTTA; and CALEB AUSTIN
37 MOODY (dba SKY STONE),

38 Defendants.

Case No. 2:15-cv-02563-DDP-FFM

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER APPROVING
AND AUTHORIZING SETTLEMENT
OF CERTAIN CLAWBACK CLAIMS**

Date: January 11, 2021

Time: 10:00 a.m.

Ctrm: 9C

Judge Hon. Dean D. Pregerson

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 By this Motion, Thomas Hebrank, the Court-appointed permanent receiver
4 ("Receiver") for PWCG Trust pursuant to the Judgment as to Defendant PWCG
5 Trust ("Appointment Order") (Dkt. No. 145), seeks Court approval of negotiated
6 settlements of clawback claims the Receiver holds against certain profiting investors
7 ("Net Winners") in the fraudulent scheme that is the subject of the above-captioned
8 Securities and Exchange Commission ("Commission") enforcement action. The
9 terms and conditions of the negotiated settlements for which the Receiver seeks
10 approval are reflected in the settlement agreements (the "Agreements") attached to
11 the Receiver's Declaration in support of the instant Motion. As set forth herein, the
12 Receiver respectfully requests that the Court enter an order approving the
13 settlements, as reflected in the Agreements, pursuant to which the Receiver expects
14 to secure a total of \$208,175.62 from the Net Winners, for the benefit of the
15 receivership estate.

16 As detailed herein, the Receiver has weighed the costs and benefits of
17 prospective litigation with the Net Winners and has determined, in his reasonable
18 business judgment, that the settlements, as reflected in the Agreements, are in the
19 best interest of the receivership estate because they: (1) result in the near-term
20 recovery of \$208,175.62, upon performance of the Agreements, for the benefit of
21 the receivership estate; and (2) avoid potentially lengthy, costly, and uncertain
22 litigation. The Receiver therefore respectfully submits that the Agreements are
23 appropriate and beneficial for the receivership estate, and requests that the Court
24 authorize and approve the Agreements, copies of which are attached to the
25 concurrently filed Declaration of Thomas Hebrank ("Hebrank Decl.") collectively as

26 **Exhibit A.**

1 **II. RELEVANT FACTUAL BACKGROUND.**

2 By way of background, and as alleged in the Commission's Complaint (Dkt.
3 No. 1), this case involves fraud in the unregistered offer and sale of securities
4 consisting of fractionalized interests in universal life insurance policies by
5 Defendants Pacific West Capital Group, Inc. ("Pacific West") and Andrew B
6 Calhoun IV ("Calhoun"). (Complaint, Dkt. No. 1.) Pacific West and Calhoun sold
7 investments structured around when life insurance policies "mature" (the insured
8 individual dies) and the benefits are paid. Since Calhoun started Pacific West in
9 2004, they allegedly raised approximately \$99.9 million from over 3,200 investors
10 who purchased life settlements in approximately 125 life insurance policies. (Id.)
11 As alleged by the Commission in its Complaint, since at least 2012, Pacific West
12 and Calhoun have perpetrated a scheme to defraud investors by using money
13 received from investors from the sale of new life settlements to pay premiums on
14 life settlement investments sold years earlier which had not matured and had
15 exhausted the "premium reserves" created by Pacific West and Calhoun to keep the
16 policies in force. (Id.)

17 The Receiver was appointed on February 16, 2018 by virtue of the
18 Appointment Order, pursuant to which the Receiver assumed control of PWCG
19 Trust, its bank accounts, assets, and books and records. (Appointment Order, Dkt.
20 No. 145.) In accordance with the powers, authority, and directives contained in the
21 Appointment Order, the Receiver has diligently pursued his duties thereunder,
22 including by preserving and protecting the assets of PWCG Trust, including its life
23 insurance policies and cash reserves. (Hebrank Decl., ¶ 2.) Critically for purposes
24 of this Motion, the Receiver was empowered and directed to: (1) "take such action
25 as is necessary and appropriate to preserve and take control of and to prevent the
26 dissipation, concealment, or disposition of any Assets"; and (2) "institute,
27 compromise, adjust, appear in, intervene in, or become party to such actions or
28 proceedings in state, federal, or foreign courts, which (i) the Receiver deems

1 necessary and advisable to preserve or recover any Assets, or (ii) the Receiver
2 deems necessary and advisable to carry out the Receiver's mandate under this
3 [Appointment] Order." (Appointment Order, Dkt. No. 145.)

4 Based upon the powers and authority conveyed upon him by virtue of the
5 Appointment Order, the Receiver has conducted an investigation and accounting of
6 funds transferred into and out of PWCG Trust, including amounts received from and
7 paid to investors. (Hebrank Decl., ¶ 3.) The Receiver has confirmed, based upon
8 his investigation and accounting, that during the last seven years, the Net Winners,
9 collectively and individually, received amounts from PWCG Trust in excess of any
10 amounts paid or value provided to PWCG Trust (collectively, the "Voidable
11 Transfers"). (*Id.*) The assets of the receivership estate include claims to recover
12 these Voidable Transfers, which include investor profits, *i.e.*, amounts PWCG Trust
13 paid to the Net Winners above and beyond their total investments with PWCG Trust
14 ("Clawback Claims"). The law is clear that the Receiver has standing to pursue
15 Clawback Claims to recover these Voidable Transfers under the California Uniform
16 Voidable Transactions Act. Donell v. Kowell, 533 F.3d 762, 772 (9th Cir. 2008)
17 ("If investors received more than they invested, 'payments in excess of amounts
18 invested are considered fictitious profits because they do not represent a return on
19 legitimate investment activity.' . . . [A]ll payments of fictitious profits are avoidable
20 as fraudulent transfers.") (internal citation omitted); see also In re United Energy
21 Corp., 944 F.2d 589 (9th Cir. 1991).

22 In order to recover and return as much as possible to those investors who
23 suffered net losses in connection with their transactions with PWCG Trust, it is
24 necessary to pursue recovery of the Voidable Transfers to the Net Winners.
25 Accordingly, and before filing Clawback actions against investors who received
26 profits, the Receiver offered such investors an opportunity to settle the Clawback
27 Claims against them for an amount: (1) equal to 70% of the profits they received, to
28 be paid in one lump sum in accordance with the terms of the Settlement Agreements

1 ("Option A"); or (2) equal to 75% of the profits they received, to be paid over the
2 course of a year in 12 monthly installments ("Option B"). In the event that a Net
3 Winner selected Option B as opposed to Option A, the Net Winner was required to
4 execute and deliver to the Receiver a Stipulation for Entry of Judgment, which the
5 Receiver may file in the event that the subject Net Winner fails to make timely
6 monthly installment payments or otherwise defaults on his or her settlement
7 payments. (Id., ¶ 4.)

8 In response to the Receiver's settlement offers, the Net Winners have
9 individually executed the Agreements relating to their respective Voidable
10 Transfers, pursuant to which they have agreed to individually settle the Receiver's
11 Clawback Claims against them. In the aggregate, the Voidable Transfers against the
12 six (6) Net Winners total \$335,189.69. In the aggregate, the settlement payments
13 memorialized by the Agreements amounts to \$208,175.62. Each of the Net
14 Winners, with the exception of one, have agreed to pay the 70% amount pursuant to
15 Option A or the 75% amount pursuant to Option B, as described above. The
16 Receiver agreed to settle with one Net Winner, subject to Court approval, at an
17 amount less than the 70% amount, but that Net Winner will make a substantial lump
18 sum settlement payment (\$100,000) and the Receiver determined, in his reasonable
19 business judgment, that it is unlikely litigation would result in a greater net
20 recovery. (Id., ¶ 5.)

21 In the Receiver's reasonable business judgment, the payments contemplated in
22 the Agreements reflect an appropriate compromise of the Receiver's Clawback
23 Claims against the Net Winners and are in the best interests of the receivership
24 estate. (Id., ¶ 6.) The Receiver therefore respectfully requests that the Court
25 approve the settlements as memorialized by the Agreements.

26 **III. ARGUMENT.**

27 A federal receiver's power to compromise claims is subject to court approval.
28 As noted by the Ninth Circuit Court of Appeals in SEC v. Hardy, 803 F.2d 1034,

1 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity receivership
2 and to determine the appropriate action to be taken in the administration of the
3 receivership is extremely broad." With regard to settlements entered into by a
4 federal receiver, the Court's supervisory role includes reviewing and approving
5 those settlements in light of a federal policy generally favoring settlements before
6 trial. See Fed. R. Civ. P. 16(c), Advisory Committee Notes.

7 Courts often look to bankruptcy for guidance in the administration of
8 receivership estates. See SEC v. Capital Consultants, LLC, 397 F.3d 733, 745
9 (9th Cir. 2005); SEC v. Am. Capital Inv., Inc., 98 F.3d 1133, 1140 (9th Cir. 1996);
10 SEC v. Basic Energy & Affiliated Res., 273 F.3d 657, 665 (6th Cir. 2001); see also
11 Local Civil Rule 66-8 ("a receiver shall administer the estate as nearly as possible in
12 accordance with the practice in the administration of estates in bankruptcy"). A
13 bankruptcy court may approve a compromise of claims asserted by or against the
14 estate if the compromise is "fair and equitable." Woodson v. Fireman's Fund
15 Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). The approval of a
16 proposed compromise negotiated by a court-appointed fiduciary "is an exercise of
17 discretion that should not be overturned except in cases of abuse leading to a result
18 that is neither in the best interest of the estate nor fair and equitable for the
19 creditors." In re MGS Mktg., 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

20 The Court has great latitude in approving compromises. In passing on the
21 proposed compromise, the Court should consider the following:

- 22 a. The probability of success in litigation;
- 23 b. The difficulties, if any, to be encountered in the
24 matter of collection;
- 25 c. The complexity of the litigation involved and the
26 expense, inconvenience, and delay necessarily
attending; and
- 27 d. The paramount interest of the creditors and a proper
deference to their reasonable views in the premises.

28 In re Woodson, 839 F.2d at 620.

1 Here, the Receiver has weighed the costs and benefits of litigation and
2 settlement of the Clawback Claims against the Net Winners and has determined, in
3 his reasonable business judgement, that the settlements, as memorialized by the
4 Agreements, are in the best interests of the receivership estate. Given the risk and
5 uncertainty inherent in pursuing litigation against the Net Winners, the potentially
6 significant cost of litigation, and the immediate-term benefit to the receivership
7 estate from the anticipated receipt of \$208,175.62 in settlement payments, the
8 Receiver has concluded, in his reasonable business judgment, that the proposed
9 settlements are in the best interests of the receivership estate. The Receiver
10 therefore requests that this Court approve the settlements, as memorialized in the
11 Agreements.

12 **IV. CONCLUSION.**

13 Based on the foregoing, the Receiver respectfully requests an order approving
14 the settlements, as memorialized in the Agreements.

15
16 Dated: December 11, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
EDWARD G. FATES
NORMAN M. ASPIS

19 By: /s/Edward G. Fates

20 EDWARD G. FATES
21 Attorneys for Receiver
22 THOMAS HEBRANK
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