

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

v.

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

Defendants.

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

ECF Case

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~~PROPOSED~~ JUDGMENT APPROVING CLASS ACTION SETTLEMENT

WHEREAS plaintiff Andrea Barron (“Plaintiff”), on behalf of herself and the Settlement Class (as hereinafter defined), and defendants Union Bancaire Privée, UBP SA (“UBP”), Union Bancaire Privée Asset Management LLC (“UBPAM”), UBPI Holdings, Inc. (“UBPIH”), Roman Igolnikov, Sheldon S. Gordon, Matthew Stadtmauer, Daniel de Picciotto, Michael de Picciotto, Guy de Picciotto, and Christophe Bernard (collectively, the “Individual Defendants”; and together with UBP, UBPAM and UBPIH, the “Defendants”; and together with Plaintiff, the “Parties”) have entered into a Stipulation and Agreement of Settlement dated September 12, 2012 (the “Stipulation”), that, subject to the terms and conditions of the Stipulation and the approval of this Court, provides for the settlement and release of all claims asserted against

Defendants in the above-captioned action (the “Action”) on behalf of the Settlement Class (the “Settlement”);

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

WHEREAS, by Order dated October 1, 2012 (the “Preliminary Approval Order”), this Court, among other things, (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members and to Barred Excluded Persons and that notice of the discontinuance of the Action be provided to certain investors in the Other Funds; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class and other affected persons;

WHEREAS, the Court conducted a hearing on December 12, 2012 (the “Settlement Hearing”) to consider, among other things, (a) whether the proposed Settlement on the terms and conditions provided for in the Stipulation was fair, reasonable, adequate and should be approved, and (b) whether a Judgment substantially in the form annexed as Exhibit B to the Stipulation should be entered settling the claims asserted against Defendants in the Action on behalf of the Settlement Class; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments

received regarding the proposed Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction:** The Court has jurisdiction over Plaintiff's claims on behalf of the Settlement Class, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents:** This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on September 12, 2012; and (b) the Settlement Notice, Summary Settlement Notice, and Barred Excluded Persons Notice, which were filed with the Court on November 7, 2012, and Notice of Discontinuance, which was filed with the Court on November 29, 2012.

3. **Class Certification for Settlement Purposes:** The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all persons and entities who held limited partnership interests in Selectinvest ARV LP as of December 11, 2008 and were damaged thereby (the "Settlement Class"). Excluded from the Settlement Class are (a) all Defendant Excluded Persons (*i.e.*, Defendants; the members of each Individual Defendant's Immediate Family; any affiliate or subsidiary of UBP or UPBAM including each of the UBP Funds; the executive officers and directors of UBP; the executive officers and directors of each of UBP's affiliates and subsidiaries (including, but not limited to, UBPAM and each of the UBP Funds); the fund managers of each of the UBP Funds; any entity in which any of the foregoing excluded persons or entities has or had a controlling interest; and the legal representatives, heirs, beneficiaries, successors and

assigns of any such excluded person or entity; provided, however, that Defendant Excluded Persons does not include any Defendant and/or any affiliate or subsidiary of any Defendant acting as a nominee, a fiduciary, or an investment vehicle on behalf of any person or entity that is not a Defendant Excluded Person, Barred Excluded Person or person or entity who has been excluded from the Settlement Class pursuant to request, but only to the extent that it is acting as such); and (b) all Barred Excluded Persons (*i.e.*, all persons or entities who held limited partnership interests in Selectinvest ARV LP as of December 11, 2008 and who have been designated by Defendants as having executed a release of claims against UBPAM and/or one or more of the other Released Defendant Persons concerning Selectinvest ARV LP's investments in the Ascot Fund), other than any such persons or entities as to whom it may be determined that they should be included in the Settlement Class in connection with the motion that will be made authorizing the distribution of the Net Settlement Fund.

4. **Adequacy of Representation:** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiff as Class Representative for the Settlement Class and appointing Plaintiff's Counsel as Class Counsel for the Settlement Class. Plaintiff and Plaintiff's Counsel have fully and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

5. **Notice to Settlement Class Members:** The Court finds that the dissemination of the Settlement Notice and the publication of the Summary Settlement Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice

practicable to Settlement Class Members under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of the effect of the Settlement (including the releases provided for therein), of Plaintiff's Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, of their right to object to the Settlement, the Plan of Allocation and/or Plaintiff's Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Notice to Barred Excluded Persons:** The Court finds that dissemination of the Settlement Notice and the Barred Excluded Persons Notice to Barred Excluded Persons: (a) was implemented in accordance with the Preliminary Approval Order; and (b) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure to the extent applicable, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

7. **Notice of Discontinuance:** The Court finds that the dissemination of the Notice of Discontinuance to Other Notice Recipients: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted due, adequate and sufficient notice of the discontinuance of the Action as a class action to the potentially affected persons and entities; and (c) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure to the extent

applicable, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

8. **Final Settlement Approval and Release of Claims:** Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation, the amount of the Settlement; the releases provided for therein, including the release of the Released Plaintiff Claims as against the Released Defendant Persons), and finds that the Settlement is, in all respects, fair, reasonable and adequate, and is in the best interests of Plaintiff and the Settlement Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions of the Stipulation.

9. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

10. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, Plaintiff and all Settlement Class Members (regardless of whether or not any individual Settlement Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective successors and assigns.

11. **Releases:** The releases as set forth in Paragraphs 5 and 6 of the Stipulation (the "Releases"), together with the definitions contained in Paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that, as of the Effective Date:

(a) Plaintiff and each of the other members of the Settlement Class on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors, and

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

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

12. **Rule 11 Findings:** The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense and settlement of the Action.

13. **No Admissions:** Neither this Judgment, the Stipulation, any of their terms and provisions, any of the negotiations, proceedings or agreements connected therewith, nor any matters arising in connection with the settlement negotiations, proceedings, or agreement:

(a) shall be offered or received against any of the Released Defendant Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendant Persons with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that was or could have been asserted against any of the Released Defendant Persons in this Action or in any litigation; or of any infirmity in the defenses that Defendants have, or could have asserted; or any infirmity in the merits of Defendants' position on appeal that the Court properly dismissed the Action in its entirety; or of the appropriateness of maintaining the Action as a class action for any purpose other than

implementing the Settlement; or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendant Persons;

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

(c) shall be offered or received against any of the Released Defendant Persons, or against any of the Released Plaintiff Persons, as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Defendant Persons, or against any of the Released Plaintiff Persons, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants, any other Released Defendant Persons, Plaintiff and/or any other Released Plaintiff Persons may refer to the Stipulation to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement;

(d) shall be construed against any of the Released Defendant Persons or any of the Released Plaintiff Persons as an admission, concession, or presumption that the

consideration to be given under the Settlement represents the amount which could be or would have been recovered after trial; nor

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

14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys' fees and/or Litigation Expenses by Plaintiff's Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve the Plan of Allocation; (e) any motion to approve the Class Distribution Order; and (f) the Settlement Class Members for all matters relating to the Action.

15. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Plaintiff's Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

16. **Modification of Settlement Agreement:** Without further approval from the Court, Plaintiff and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate this Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the

Court, Plaintiff and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.


17. **Termination:** If the Effective Date does not occur or the Settlement is terminated as provided in the Stipulation, then this Judgment (and any orders of the Court relating to the Settlement) shall be vacated, rendered null and void and be of no further force or effect, except as otherwise provided by the Stipulation.

18. **Notification of Second Circuit and Dismissal of Appeal:** Within fourteen (14) days of the entry of this Judgment, the Parties shall notify the Clerk of the Second Circuit of this Court's decision with respect to the Settlement, as required by the Order of the Second Circuit dated March 9, 2012. Within ten (10) business days of the Effective Date, the Parties shall file with the Second Circuit a stipulation dismissing the appeal of this Action with prejudice.

19. **Continuing Force of Dismissal Order:** This Court's Opinion in the Action dated March 10, 2010 and the Judgment entered in the Action by the Clerk of Court on March 15, 2010 (collectively, the "Dismissal Order"), which granted Defendants' Motion to Dismiss and dismissed the Action in its entirety, shall remain in effect to the extent not inconsistent herewith; provided that, if the Effective Date does not occur or the Settlement is terminated as provided in the Stipulation, Plaintiff may reinstate her appeal of the Dismissal Order.

20. **Entry of Final Judgment:** There is no just reason to delay entry of this Judgment as a final judgment as against Defendants. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment as against Defendants and to close this case.

SO ORDERED this 12th day of December, 2012.



The Honorable Thomas P. Griesa
United States District Judge