

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: AMARANTH NATURAL GAS  
COMMODITIES LITIGATION

MASTER FILE NO. 07 Civ. 6377 (SAS)

ECF CASE

This Document Relates To:

ALL ACTIONS

**STIPULATION AND AGREEMENT OF SETTLEMENT**

THIS STIPULATION AND AGREEMENT OF SETTLEMENT (together with the annexed exhibits, the “Settlement Agreement”) is made and entered into on December 22, 2011, and is submitted to the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure. This Settlement Agreement is entered into on behalf of the Class Representatives and the Class (as defined in Section 1(c) hereof), by and through Class Counsel (as defined in Section 1(f) hereof), and defendants ALX Energy, Inc. (“ALX”) and James DeLucia (“DeLucia”) (collectively the “Settling Defendants”), by and through their counsel of record in this action, and non-party Vincent Rufa (“Rufa”).

WHEREAS, the Settling Defendants and Rufa entered into an agreement in principle with Plaintiffs on or about June 6, 2011; and

WHEREAS, the Settling Defendants represent that, to their knowledge, no claims other than the Action (as defined in Section 1(a) hereof) have been filed against them purportedly on behalf of futures traders that purchased, sold, or held New York Mercantile Exchange (“NYMEX”) natural gas futures or options on futures contracts between February

16, 2006 and September 28, 2006 (the “Class Period”) (as more fully defined in Section 1(c) hereof); and

WHEREAS, Rufa represents that, to his knowledge, no claims have been filed against him purportedly on behalf of futures traders that purchased, sold, or held NYMEX natural gas futures or options on futures contracts during the Class Period; and

WHEREAS, Plaintiffs have prepared and filed an extensive Corrected Consolidated Class Action Complaint, which has been substantially upheld on motions to dismiss, have obtained an Order of the Court certifying a class, interlocutory appeal of which was denied by December 30, 2010 Order of the United States Court of Appeals for the Second Circuit, have obtained an Order of the Court attaching approximately \$72.4 million held by Defendant Amaranth LLC, have engaged in fact investigation, document and deposition discovery, and have taken other steps to prosecute and develop the claims herein; and

WHEREAS, as a result of all the foregoing, Class Counsel believe that they are well advised of the facts and have carefully considered the circumstances of the Action, as well as the applicable law; and

WHEREAS, Class Counsel believe that, in their best judgment, obtaining from Defendant ALX, which served during the Class Period as a NYMEX natural gas floor broker to the Amaranth entities (*see* Section 1(d) hereof), Defendant DeLucia, who served during the Class Period as President of ALX, and Rufa, a clerk for ALX during the Class Period, the performance of their obligations pursuant to the terms and conditions of this agreement is a sufficient and valuable consideration for the Release of the Claims provided hereinafter; and

WHEREAS, no proffer or promise of substantive testimony or other similar indication by ALX, DeLucia or Rufa, or any of them, has been made to Plaintiffs at any time prior to the June 6, 2011 agreement in principle between Plaintiffs and Settling Defendants; and

WHEREAS, Class Counsel consider the settlement set forth herein to be fair, reasonable, adequate and in the best interests of the Class, and have determined that it is in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to provide the benefit to the Class of the performance by Defendants ALX and DeLucia, and by Rufa, of their obligations hereunder; and

WHEREAS, the Settling Defendants and Rufa have concluded that they will enter into this Settlement Agreement to avoid the further expense, inconvenience, burden, distraction and diversion of this litigation, and to put to rest this controversy, and to avoid the expense and risks inherent in this litigation; and

WHEREAS, arm's-length settlement negotiations have taken place between Class Counsel and counsel for the Settling Defendants, and between Class Counsel and Rufa during the negotiation of this Settlement Agreement which has been reached, subject to preliminary and final approval of the Court;

NOW, THEREFORE, it is agreed by the undersigned, on behalf of the Settling Defendants, Rufa and the Class Representatives and the Class, that the Released Claims and the Action (as defined herein) be settled, compromised and dismissed on the merits and with prejudice as to the Settling Defendants and Rufa, and without costs as to Plaintiffs or the Settling Defendants and Rufa, subject to the approval of the Court, on the following terms and conditions:

**1. Terms Used In This Agreement.**

The words and terms used in this Settlement Agreement expressly defined below shall have the meaning ascribed to them.

(a) “Action” shall mean *In re Amaranth Natural Gas Commodities Litigation*, United States District Court for the Southern District of New York, Docket No. 07 Civ. 6377 (SAS) and all actions consolidated therewith.

(b) “Any” shall mean one or more.

(c) The “Class” shall mean All persons (other than Defendants, their employees, affiliates and co-conspirators), who satisfy any one of the following conditions:

(1) Purchased, between February 16, 2006 and September 28, 2006 (“Class Period”), New York Mercantile Exchange (“NYMEX”) natural gas futures contracts<sup>1</sup> for December 2006, January 2007, February 2007, or March 2007 either (i) to liquidate prior to September 1, 2006, a short<sup>2</sup> position in the contract, or (ii) as a long<sup>3</sup> position in such contract which was not liquidated until after May 10, 2006;

(2) Purchased, during the Class Period, a NYMEX natural gas futures contract for March 2006, April 2006, May 2006, June 2006, July 2006, August 2006, September 2006, October 2006, or November 2006 (“the 2006 Contracts”) or April 2007 as a long position in such contract, and liquidated such position after May 10, 2006;

(3) Purchased a 2006 Contract as a long position in such contract, held such a position as of the start of or acquired such a position during any of the following time periods, and sold all or a portion of such position during or after the end of such time period and on or prior to September 28, 2006. *Time Periods:* (i) 2:00

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<sup>1</sup> In this class definition, the terms “NYMEX natural gas futures contracts” or “natural gas futures contracts” include the miNY Henry Hub natural gas futures contracts.

<sup>2</sup> As used in this class definition, a short position in a given contract expiration (*e.g.*, March 2006) means a position in which the class member’s open sales of that expiration exceed the class member’s open purchases of that expiration. This is so regardless of whether the short position is a standalone position or is part of a spread with a long position in a different contract expiration.

<sup>3</sup> As used in this class definition, a long position in a given expiration (*e.g.*, April 2006) means a position in which the class member’s open purchases of that expiration exceed the class member’s open sales of that contract expiration. This is so regardless of whether the long position is a standalone position or is part of a spread with a short position in a different contract expiration (*e.g.*, March 2006).

p.m.-2:30 p.m. on February 24; (ii) 2:00 p.m.-2:30 p.m. on March 29; or (iii) 2:00 p.m.-2:30 p.m. on April 26, 2006.

(d) “Other Defendants” shall mean Amaranth LLC, Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC, Amaranth Partners LLC, Amaranth Capital Partners LLC, Amaranth International Limited, Amaranth International Advisors L.L.C., Amaranth Management Limited Partnership, Amaranth Group, Inc., Nicholas M. Maounis, Brian Hunter, Matthew Donohoe, J.P. Morgan Futures, Inc., J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, Inc., TFS Energy Futures LLC, and Gotham Energy Brokers, Inc., as well as any other persons who or which may hereafter be named as defendants in the Action.

(e) “Effective Date” means the first business day upon which all of the following three conditions have been satisfied:

(1) The Court has finally approved the Settlement as set forth in this Settlement Agreement in all respects as required by Rule 23(e) of the Federal Rules of Civil Procedure;

(2) Entry has been made of the Final Order and Judgment substantially in the form of Exhibit B hereto; and (i) no objections have been made or any objections that were made, have been withdrawn, and thirty days have passed from the date of entry of the Final Order and Judgment; or (ii) the time for appeal or the time to seek permission to appeal from the Court’s entry of the Final Order and Judgment has expired with no notice of appeal having been filed with the Court; and

(3) The Final Order and Judgment is appealed, then either (i) the Final Order and Judgment has been affirmed in its entirety by the reviewing court to which any appeal has been taken or petition for review has been presented and the time for further

appeal or review of such affirmance has expired, or (ii) the withdrawal or dismissal with prejudice of all such appeals.

(f) “Class Counsel” shall mean Lovell Stewart Halebian Jacobson LLP, Lowey Dannenberg Cohen & Hart, P.C., and Louis F. Burke, P.C., acting pursuant to the authority conferred in the Opinion and Order of the Court dated September 27, 2010.

(g) “Class Representative” shall mean plaintiffs Roberto E. Calle Gracey, John F. Special and Gregory H. Smith.

(h) “Released Claims” shall mean those claims identified in Section 5 of this Settlement Agreement.

(i) “Class members” shall mean all persons who are members of the Class and who do not opt out of the Class.

(j) “Released Parties” shall mean ALX, DeLucia and Rufa and their heirs and successors, but shall not mean any of the Other Defendants, and no release shall be provided to any of the Other Defendants by this agreement or the judgment or other documents contemplated by this Agreement.

(k) The “Court” means the court in which the Action is pending.

(l) “Person” means any individual, firm, partnership, corporation, joint venture, association, joint stock company, trust, unincorporated association, government entity, or any other legal entity.

**2. Class.**

Solely for the purposes of this Settlement Agreement, and without prejudice to the parties’ positions in the event the Settlement Agreement is terminated for any reason, the Settling Defendants hereby consent to the certification of the Class.

**3. Interviews, Documents, And Confidentiality.**

(a) DeLucia hereby promises, agrees and undertakes as follows:

(i) DeLucia will make himself available to meet with Class Counsel in person or (at Class Counsel's option) by telephone for up to fifteen (15) hours. All statements made under this paragraph shall be deemed to be made in negotiations and inadmissible under Rule 408 of the Federal Rules of Evidence. DeLucia will receive at least forty-eight (48) hours notice of requests for meetings, and no meetings will last longer than six (6) hours on any given day. No meeting days will be requested for consecutive work days unless agreeable to DeLucia. In the event DeLucia schedules a vacation, he will let Class Counsel know within a reasonable period of time of his plans. Both parties agree to give each other as much notice and to be as reasonable with one another as practicable.

(ii) In addition to the foregoing, DeLucia will make himself available to meet with Class Counsel for up to four (4) hours in the aggregate in connection with any summary judgment motions filed by any of the Other Defendants, or expert reports submitted by any of the Other Defendants. DeLucia will provide such assistance by meetings or by telephone conferences as determined by Class Counsel.

(iii) In addition to the foregoing, DeLucia will make himself available to meet with Class Counsel for up to three and one-half (3½) hours in the aggregate in connection with Plaintiffs' preparation for trial. DeLucia will provide such assistance by meetings or telephone conferences as determined by Class Counsel.

(iv) In sum, DeLucia hereby agrees to make himself available to meet with Class Counsel in person or (at Class Counsel's option) by telephone for a grand total of up to twenty-two and one-half (22½) hours as defined in (a)(i)-(iii) above.

(b) DeLucia and ALX hereby promise, agree and undertake as follows:

(i) DeLucia and ALX will produce to Plaintiffs all documents in their possession, custody or control relating to the Action, except for Privileged Documents. Privileged Documents include, without limitation, documents or material subject to protection from disclosure as attorney work product, made in contemplation of litigation and/or subject to a joint defense privilege. If DeLucia or ALX later comes into possession, custody or control of responsive, non-privileged documents, they shall provide them then. All documents and cooperation materials shall be governed by the terms of the Protective Order and shall be used only in connection with the Action, and shall not be disclosed to any other party except as required by law.

(ii) DeLucia and ALX will appear at trial and testify truthfully on all matters.

(iii) DeLucia and ALX shall make their counsel available, in addition to any meeting with DeLucia referenced in Section 3(a) above, to meet or speak by telephone with Class Counsel (at Class Counsel's option) for not more than six (6) additional hours to provide information relating to facts or evidence or documents known to or possessed by DeLucia or ALX, or to assist in interpreting any of the documents provided by DeLucia or ALX.

(c) ALX hereby promises, agrees and undertakes to make Rufa available to cooperate with Plaintiffs.

(d) Rufa hereby promises, agrees and undertakes as follows:

(i) Rufa will sign affidavits reflecting truthful testimony.

(ii) Rufa will appear at trial in New York to testify truthfully. His expenses reasonably incurred in connection with such appearance will be split by Plaintiffs and ALX.

(iii) Rufa will otherwise cooperate with Plaintiffs.



(iv) Rufa will make himself available to meet (if such meeting takes place where Rufa resides) or to confer by telephone with Class Counsel as follows:

(aa) up to four (4) hours at Class Counsel's discretion;

(bb) up to one (1) hour in connection with any summary judgment motions filed by any of the Other Defendants, or expert reports submitted by any of the Other Defendants; and

(cc) up to two (2) hours in connection with Plaintiffs' trial preparation.

(v) Except for Rufa's appearance at trial, which the parties hereto acknowledge is beyond Plaintiffs' control to schedule, Plaintiffs' shall use their best efforts to minimize interference with Rufa's employment commitments in scheduling Rufa's performance of the obligations he has undertaken herein.

(e) DeLucia, ALX and their counsel, and Rufa, shall keep confidential and not divulge or communicate to others (with the exception of any other legal counsel for DeLucia, ALX or Rufa) the questions put, information supplied to him or subjects mentioned by Class Counsel as well as the documents or information that DeLucia and ALX supply to Class Counsel (including during the interviews required by or conducted pursuant to this Section 3), unless and until DeLucia, ALX or Rufa is compelled by Court order or rule of Court to do so, or DeLucia, ALX or Rufa obtains a waiver in writing of this confidentiality requirement from Class Counsel. The foregoing shall not be construed so as to prevent DeLucia, ALX or Rufa from truthfully responding to appropriate questions propounded by counsel during any deposition in this or any other action, or at trial.

(f) DeLucia, ALX and their counsel, and Rufa, agree to be bound by the terms of the Stipulated Protective Order entered by the Court in this Action on August 13, 2008.

(g) If this Settlement Agreement is not approved by the Court, Plaintiffs will destroy all information provided hereunder, including any information shared with Plaintiffs' experts, and will not use such information or any information provided by DeLucia or ALX or their counsel against DeLucia or ALX.

**4. All Claims Satisfied.**

ALX, DeLucia and Rufa shall not be required to pay any money in order to obtain the Release set forth herein, but Class Representatives and Class members shall look solely to the Settling Defendants' and Rufa's performance of their obligations set forth in this Settlement Agreement as satisfaction against the Settling Defendants and Rufa of all claims that are released hereunder, and there shall be no other condition to the effectiveness of the release provided in Section 5. Without limiting the generality of the foregoing, the obligations of Class Representatives and the Class members to release the Settling Defendants and Rufa and to seek approval of the Settlement Agreement and entry of the ALX Final Judgment and Order shall in no way be conditioned upon the nature or substance of any truthful information or testimony provided by the Settling Defendants and Rufa in the course of their full, complete, and truthful cooperation, or on the quantity, nature, or substance of any documents produced by the Settling Defendants and Rufa. Class Representatives acknowledge that the principal consideration for the Settling Defendants' and Rufa's agreement to enter into this Settlement Agreement is the full and final compromise, settlement and release of all Released Claims by Class Representatives and Class members and the dismissal with prejudice of the Action as to them. As of the Effective Date, the releases given herein shall be absolute and unconditional except that, and the Settling Defendants and Rufa agree and acknowledge that, the condition to the release hereunder and its continued effectiveness is their performance of their obligations.

**5. Release.**

(a) In addition to the effect of any final judgment entered in accordance with this Settlement Agreement, and provided that the Court approves this Settlement Agreement, effective upon the Effective Date each and every Class member hereby releases and forever discharges, to the fullest extent permitted by law, the Released Parties from and against any and all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature and kind whatsoever, including without limitation costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that each and every Class member (including any of their past, present or future parents, subsidiaries, divisions, affiliates, stockholders, and each and any of their respective stockholders, officers, directors, insurers, general or limited partners, agents, attorneys, employees, legal representatives, trustees, associates, heirs, executors, administrators, purchasers, predecessors, successors and assigns, acting in their capacity as such), whether or not they object to the Settlement (the "Releasing Parties"), ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising in any way from any transactions involving or relating to NYMEX natural gas futures contracts for the months of March 2006 through April 2007, inclusive, however made, between February 16, 2006, and September 28, 2006, inclusive, resulting from the nucleus of operative facts alleged or at issue or underlying the Action, whether or not asserted in the Action or from any losses incurred, in whole or in part, as a result of such transactions (collectively, the "**Released Claims**"). Each Releasing Party hereby covenants and agrees that he/she/it shall not sue or otherwise seek to establish or impose liability against any Released Party based, in whole or in part, on any of the

Released Claims. The Final Order and Judgment shall expressly enjoin the Releasing Parties from asserting any such claims against any of the Released Parties.

(b) In addition, each Releasing Party hereby expressly waives and releases any and all provisions, rights, and benefits conferred by §1542 of the California Civil Code, which reads:

Section 1542. General release extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor[.]

Each Releasing Party also hereby expressly waives and releases any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code. Each Releasing Party may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this Section but each Releasing Party, through this Settlement Agreement, and with the ability to seek independent advice of counsel, hereby expressly waives and fully, finally and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The releases herein given by the Releasing Parties shall be and remain in effect as full and complete releases of the claims set forth in the Actions, notwithstanding the later discovery or existence of any such additional or different facts relative hereto or the later discovery of any such additional or different claims that would fall within the scope of the release provided in Section 5 of this Settlement Agreement, as if such facts or claims had been known at the time of this release.

**6. Protection Against Contribution**

Lead Counsel shall request that the following sub-section be included in the Final Order and Judgment:

(a) Claims by any Other Defendant against any Released Party for contribution or indemnity (however denominated) for all or a portion of any amounts any such Other Defendant has paid or may pay in the Action, or in any action brought by or on behalf of the Class arising from or related to the claims or allegations asserted in the Action, by way of settlement, judgment, or otherwise, are hereby barred.

**7. Motion For Preliminary Approval.**

(a) Within thirty (30) calendar days of the date hereof, Class Counsel shall file with the Court this Settlement Agreement for preliminary approval of the settlement, by filing within such time a formal notice of motion and supporting papers. Class Representatives and Class Counsel shall use their best efforts to ensure that preliminary approval of the settlement is granted.

(b) Class Counsel shall request that a decision be made promptly on such motion, or that a hearing on the motion for preliminary approval of the settlement be held within 30 days of the date of such motion.

(c) The proposed form of order preliminarily approving the settlement shall be substantially in the form attached hereto as Exhibit A.

**8. Combination Of Class Notice And Settlement Notice.**

(a) Class Counsel will ask the Court to combine the notice of this settlement with the class notice to be given generally, pursuant to Rule 23 (c), (d) and (e) of the Federal Rules of Civil Procedure. The Settling Defendants and Rufa shall consent to such request.

(b) Class Counsel shall recommend to the Court, and the Settling Defendants and Rufa shall not oppose, a program and form of notice to the Class consistent with the goals of providing economical, efficacious and expeditious notice consistent with Rule 23 and due process. Persons who validly opt-out of the Class shall not be Class members herein.

(c) It is anticipated that notice of the Settlement herein will be provided in conjunction with notice of Plaintiffs' settlement with certain of the Other Defendants. All costs and expenses associated with sending of any class notices associated with this Settlement shall be borne solely by the Class and Settling Defendants and Rufa shall not be required to contribute such costs or expenses.

**9. Motion For Entry Of Final Judgment.**

If the Court preliminarily approves this Settlement Agreement by entry of an Order substantially in the form of Exhibit A, then, following notice to the Class, Class Counsel shall seek entry of the ALX Final Judgment and Order, in substantially the form attached hereto as Exhibit B, and the Settling Defendants and Rufa shall consent to the entry of such an order:

- (a) certifying solely for settlement purposes the Class as defined in Section 1(c) hereof;
- (b) approving this settlement as final and its terms as being a fair, reasonable and adequate settlement of the Class' claims under Rule 23 of the Federal Rules of Civil Procedure;
- (c) directing that, as to ALX, DeLucia and Rufa, the Action be dismissed with prejudice and without costs as against the Class members;
- (d) including the language in 6(a) above concerning protection against contribution; and;
- (e) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and appealable.

**10. Best Efforts To Effectuate This Settlement.**

Subject to the condition of the Settling Defendants' and Rufa's performance of their obligations set forth in Section 3, the parties hereto agree to recommend approval of this Settlement Agreement by the Court, and to exercise their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, pursuant to order of the Court or otherwise, to obtain Court approval of this settlement and to carry out the terms of this Settlement Agreement.

**11. Finality.**

This Settlement Agreement shall become final upon the Effective Date as defined in Section 1 hereof.

**12. Plan Of Distribution.**

ALX, DeLucia and Rufa, and their counsel on behalf of ALX, DeLucia and Rufa, shall take no position on the distribution of any Settlement Fund that may be created in the Action.

**13. This Settlement Is Not An Admission.**

(i) This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by ALX, DeLucia and/or Rufa or other defendants, or of the truth of any of the claims or allegations alleged in the Action which the Settling Defendants and Rufa deny and disclaim any wrongdoing or liability whatsoever. In the event that the Settlement Agreement does not become final or is terminated in accordance with the terms hereof, then this Settlement Agreement, and the release set forth herein, shall be of no force or effect and the terms of this Settlement Agreement shall not be offered to the Court for any purpose or received in evidence for any purpose in any proceeding.

(ii) The parties hereto agree that this Settlement Agreement, including its exhibits, whether or not it shall become final, and any and all negotiations, documents and discussions associated with it, shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by ALX, DeLucia or Rufa, or of the truth of any of the claims or allegations, nor of the truth of any alleged defense, or of any absence of wrongdoing or of limitation of damage or injury, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding PROVIDED that this shall not affect in any way the documents, information and evidence supplied by the Settling Defendants and Rufa pursuant to Section 3 herein. The Settling Defendants, Rufa and the Class Representatives expressly reserve all of their rights if the settlement does not become final in accordance with the terms of this Settlement Agreement. Moreover, in the event this Settlement Agreement is either rejected by either party or terminated for any reason or is not approved by the Court, the parties further agree that ALX, DeLucia and Rufa have not waived any right they have or may have to oppose class certification. In addition, Class Representatives agree not to assert any claim of estoppel or preclusion based upon this Settlement Agreement.

**14. Binding Effect.**

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of ALX, DeLucia, Rufa, their heirs, Class Representatives, and Class members.



**15. Integrated Agreement.**

This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties and is not subject to any condition not provided for herein. This Settlement Agreement shall not be modified in any respect except by a writing that is executed by all the parties hereto or their counsel.

**16. No Conflict Intended.**

Any inconsistency between this Settlement Agreement and the exhibits attached hereto shall be resolved in favor of this Settlement Agreement. Any inconsistency between the headings used in this Settlement Agreement and the text of the sections of this Settlement Agreement shall be resolved in favor of the text.

**17. Neither Party Is The Drafter.**

None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that might cause any provision to be construed against the drafter hereof.

**18. Choice Of Law.**

All terms of this Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the substantive laws of the United States and the State of New York without regard to any choice of law or conflict of law principles.

**19. Execution In Counterparts.**

This Settlement Agreement may be executed in counterparts. Facsimile and pdf signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement.

**20. Submission To And Retention Of Exclusive Jurisdiction.**

ALX, DeLucia, Rufa and each Class member hereby irrevocably submit, to the fullest extent permitted by law, to the exclusive jurisdiction of the United States District Court for the Southern District of New York for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement, or to the applicability of this Settlement Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent permitted by law, the parties hereto and each Class member irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is, in any way, an improper venue or an inconvenient forum, or that the Court lacked power to approve this Settlement Agreement or enter any of the orders contemplated hereby.

**21. Notices.**

All notices under this Settlement Agreement shall be sent to counsel for the parties to this Settlement Agreement at their addresses set forth on the signature page hereof, *viz*, if to plaintiffs, then to Christopher Lovell, Esq., Lovell Stewart Halebian Jacobson LLP, 61 Broadway, Suite 501, New York, New York 10006, if to ALX and DeLucia, then to Steven R. Goldberg, Esq., One North End Avenue, Suite 1201, New York, New York 10282, and if to Rufa, then to Vincent Rufa, c/o Steven R. Goldberg, One North End Avenue, Suite 1201, New York 10282, or such other address as a party to this Settlement Agreement may designate, from time to time, in accordance with this Settlement Agreement.

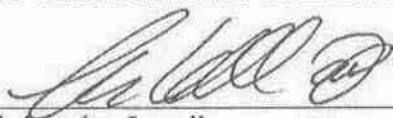
**22. Authority.**

In executing this Settlement Agreement, Class Counsel represent and warrant that they have been fully empowered to execute this Settlement Agreement on behalf of the Plaintiffs and that all actions necessary for the execution of this Settlement Agreement have been taken. Counsel of record for ALX and DeLucia represents and warrants that he has

been fully empowered to execute the Settlement Agreement on behalf of ALX and DeLucia, and that all actions necessary for this execution of this Settlement Agreement have been taken. Rufa represents and warrants that he is a natural person of sound mind capable of understanding and executing the Settlement Agreement on his own behalf, and that all actions necessary for this execution of this Settlement Agreement have been taken.

Dated: New York, New York  
December 22, 2011

LOVELL STEWART HALEBIAN JACOBSON LLP

By:   
Christopher Lovell  
61 Broadway, Suite 501  
New York, New York 10006  
(212) 608-1900

LOWEY DANNENBERG COHEN &  
HART, P.C.

By: \_\_\_\_\_  
Vincent Briganti  
White Plains Plaza, Suite 509  
One North Broadway  
White Plains, NY 10601  
(914) 997-0500

LOUIS F. BURKE, PC

By: \_\_\_\_\_  
Louis F. Burke  
460 Park Avenue, 21st Floor  
New York, NY 10022  
(212) 682-1700

*Plaintiffs' Class Counsel*


been fully empowered to execute the Settlement Agreement on behalf of ALX and DeLucia, and that all actions necessary for this execution of this Settlement Agreement have been taken. Rufa represents and warrants that he is a natural person of sound mind capable of understanding and executing the Settlement Agreement on his own behalf, and that all actions necessary for this execution of this Settlement Agreement have been taken.

Dated: New York, New York  
December 22, 2011

LOVELL STEWART HALEBIAN JACOBSON LLP

By: \_\_\_\_\_  
Christopher Lovell  
61 Broadway, Suite 501  
New York, New York 10006  
(212) 608-1900

LOWEY DANNENBERG COHEN &  
HART, P.C.

By:  \_\_\_\_\_  
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(914) 997-0500

LOUIS F. BURKE, PC

By: \_\_\_\_\_  
Louis F. Burke  
460 Park Avenue, 21<sup>st</sup> Floor  
New York, NY 10022  
(212) 682-1700

*Plaintiffs' Class Counsel*

been fully empowered to execute the Settlement Agreement on behalf of ALX and DeLucia, and that all actions necessary for this execution of this Settlement Agreement have been taken. Rufa represents and warrants that he is a natural person of sound mind capable of understanding and executing the Settlement Agreement on his own behalf, and that all actions necessary for this execution of this Settlement Agreement have been taken.

Dated: New York, New York  
December 22, 2011


LOVELL STEWART HALEBIAN JACOBSON LLP

By: \_\_\_\_\_  
Christopher Lovell  
61 Broadway, Suite 501  
New York, New York 10006  
(212) 608-1900

LOWEY DANNENBERG COHEN &  
HART, P.C.

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LOUIS F. BURKE, PC

By:  \_\_\_\_\_  
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New York, NY 10022  
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