

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

GRADY SCOTT WESTON, Individually and  
On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

RCS CAPITAL CORPORATION, RCAP  
HOLDINGS, LLC, RCAP EQUITY, LLC,  
NICHOLAS S. SCHORSCH, BRIAN S.  
BLOCK, EDWARD MICHAEL WEIL,  
WILLIAM M. KAHANE, BRIAN D. JONES,  
PETER M. BUDKO, MARK AUERBACH,  
JEFFREY BROWN, C. THOMAS  
MCMILLEN, and HOWELL WOOD,

Defendants.

Civ. No. 1:14-CV-10136-GBD

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement, dated as of June 2, 2017, (the “Stipulation”) is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation is entered into, by and between Oklahoma Police Pension Fund and Retirement System and City of Providence, Rhode Island (collectively, “Lead Plaintiffs”), on behalf of themselves and the proposed Settlement Class (defined below) and RCS Capital Corporation (“RCAP” or the “Company”), RCAP Holdings, LLC (“RCAP Holdings”), RCAP Equity, LLC (“RCAP Equity”), Nicholas S. Schorsch, Brian S. Block, Edward M. Weil, Jr., William M. Kahane, Brian D. Jones, Peter M. Budko, Mark Auerbach, Jeffrey Brown, C. Thomas McMillen and Howell Wood (collectively, “Defendants”) (each a “Party” and,

collectively, the “Parties”), and embodies the terms and conditions of the resolution of the above-captioned securities class action (the “Action”).<sup>1</sup>

Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended by the Parties hereto to fully, finally and forever compromise, settle, release, resolve, relinquish, waive, discharge and dismiss with prejudice, the Action and all claims asserted against all Defendants therein and all Released Claims (defined below) as against the Releasees (defined below).

**WHEREAS:**

A. On December 29, 2014, a securities class action complaint was filed in the United States District Court for the Southern District of New York (the “Court”) on behalf of investors in RCAP. ECF No. 1.

B. On March 31, 2015, the Court entered an Order appointing Oklahoma Police Pension Fund and Retirement System and the City of Providence, Rhode Island, as Lead Plaintiffs pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”). ECF No. 26. By the same Order, the Court approved Lead Plaintiffs’ selection of Labaton Sucharow LLP and Scott+Scott, Attorneys at Law, LLP as Lead Counsel for the class.

C. On June 1, 2015, Lead Plaintiffs filed an Amended Class Action Complaint for Violations of Federal Securities Laws (ECF No. 35), and, on June 30, 2015, Lead Plaintiffs filed the operative Corrected Amended Class Action Complaint for Violations of Federal Securities Laws (the “Complaint”) (ECF No. 49), asserting claims under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 (17 C.F.R. §240.10b-5) promulgated thereunder.

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in sections I and II herein.

D. On September 11, 2015, Defendants filed motions to dismiss the Complaint (ECF Nos. 65, 67, 70), which Lead Plaintiffs opposed on October 27, 2015 (ECF No. 80). On December 1, 2015, Defendants filed reply papers in further support of their respective motions to dismiss. ECF Nos. 85, 87, 89.

E. On January 31, 2016, voluntary petitions for relief under Chapter 11 of the Bankruptcy Code were filed by RCAP and its affiliated debtors (collectively, the “Debtors”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), and docketed as Case No. 16-10223 (the “Bankruptcy Action”). The Action was automatically stayed as to RCAP. On February 1, 2016, RCAP filed a Notice of Suggestion of Bankruptcy in the Action. ECF No. 94.

F. The Court converted the oral argument on Defendants’ motions to dismiss scheduled for February 2, 2016 into a status conference at which Defendants updated the Court and Lead Plaintiffs regarding RCAP’s bankruptcy petition, including whether it would move the Bankruptcy Court to extend the bankruptcy stay to any non-debtor Defendants. Following the February 2, 2016 status conference, oral argument on Defendants’ motions to dismiss was adjourned to April 21, 2016 to afford Defendants (and the Debtors) the opportunity to determine whether to seek, and then pursue, such relief from the Bankruptcy Court. ECF Nos. 95-97.

G. After Defendants and the Debtors did not seek further relief from the Bankruptcy Court, a day-long hearing on the motions to dismiss was held on April 21, 2016. Immediately following the argument, the Court scheduled a settlement conference for June 30, 2016.

H. On April 25, 2016, Lead Plaintiffs filed a motion in the Bankruptcy Action requesting that the Bankruptcy Court enter an order generally granting limited relief from the automatic bankruptcy stay pursuant to section 326(d) of the Bankruptcy Code with respect to

RCAP and permitting Lead Plaintiffs to prosecute and/or settle the claims asserted in the Action against RCAP.

I. On May 5, 2016, the Bankruptcy Court entered an order partially granting Lead Plaintiffs' motion to lift the automatic bankruptcy stay against RCAP. More specifically, the order lifted the stay and granted Lead Plaintiffs relief from the plan discharge and injunction provisions of a future confirmed chapter 11 plan, "solely to prosecute and/or settle the claims asserted in the Weston Securities Litigation against RCAP. . . solely from any insurance proceeds under any insurance policies that may provide coverage for any liability of RCAP in the Weston Securities Litigation, provided, however, that to the extent any settlement with or judgment against RCAP exceeds any funded insurance payments (an "Excess Claim"), this Court shall, unless hereafter otherwise ordered by this Court, retain jurisdiction with respect to the treatment of such Excess Claim . . . ." The order allowed the Court to consider the pending motion to dismiss filed by RCAP.

J. On May 19, 2016, the Bankruptcy Court entered an order, *inter alia*, confirming the "Fourth Amended Joint Plan Of Reorganization For RCS Capital Corporation And Its Affiliated Debtors Under Chapter 11 Of The Bankruptcy Code" and "Debtors' Second Amended Joint Prepackaged Plan Of Reorganization Under Chapter 11 Of The Bankruptcy Code," which, *inter alia*, permitted Lead Plaintiffs' claims against RCAP in the Action to proceed while limiting recovery for such claims to the proceeds available under RCAP's applicable insurance policies.

K. On June 27, 2016, the Parties informed the Court of their agreement to explore mediation and accordingly requested that the June 30, 2016 settlement conference be adjourned to allow them to engage in settlement negotiations before a mediator. ECF No. 104.

L. In September 2016, the Parties engaged Mr. Robert A. Meyer, a well-respected and highly experienced mediator, to assist them in exploring a potential negotiated resolution of the claims in the Action. On November 14, 2016, the Parties met with Mr. Meyer in an attempt to reach a settlement. The mediation involved an extended effort to settle the claims and was preceded by the exchange of damages analyses and mediation statements. Following arm's-length negotiations under the auspices of Mr. Meyer, on March 20, 2017, the Parties reached an agreement-in-principle to settle the Action.

M. Counsel for Lead Plaintiffs and counsel for Defendants entered into a Settlement Term Sheet for Securities Class Action on May 17, 2017 (the "Term Sheet") to memorialize the material terms of the Settlement, subject to the execution of a stipulation and agreement of settlement and related documents.

N. Lead Plaintiffs, through Lead Counsel, have conducted a thorough investigation of the claims, defenses, and underlying events and transactions that are the subject of the Action. This process included reviewing and analyzing: (i) United States Securities and Exchange Commission ("SEC") filings by RCAP, American Realty Capital Properties, Inc. ("ARCP"), and their affiliates; (ii) the sworn/verified allegations in *McAlister v. American Realty Capital Properties, Inc., et al.*, Index No. 162499/2014 (Sup. Ct. N.Y. Cnty.); (iii) other court filings related to RCAP and ARCP and the issues and events in question, including (a) the amended pleadings and other filings in *In re American Realty Capital Properties, Inc. Litigation*, Civil Action No. 1:15-mc-00040-AKH (S.D.N.Y.); (b) the complaint filed in *RCS Creditor Trust v. Schorsch, et al.*, Case No. 2017-0178 (Del. Ch.); (c) filings in the Bankruptcy Action; and (d) filings in actions and other proceedings brought by the United States Department of Justice ("DOJ") and SEC, including in the actions captioned (1) *U.S. v. Block*, Case No. 16-cr-00595-

JPO (S.D.N.Y); (2) *U.S. v. McAlister*, Case No. 16-cr-00653-AKH (S.D.N.Y); and (3) *S.E.C v. Block et al.*, Case No. 16-cv-07003-LGS (S.D.N.Y); (iv) securities analysts' reports and advisories about the Company and ARCP; (v) press releases, investor presentations, and other public statements issued by the Company, ARCP, and their affiliates; (vi) transcripts of RCAP and ARCP conference calls; and (vii) media reports about RCAP, ARCP, and their affiliates. Lead Counsel also identified approximately 58 former employees of the Company and other persons with relevant knowledge and interviewed 13 of them (three of whom have provided information as confidential witnesses) and consulted with experts on damages issues.

O. This Stipulation (together with the exhibits hereto) has been duly executed by the undersigned signatories on behalf of their respective clients, and reflects the final and binding agreement between the Parties.

P. This Stipulation constitutes a compromise of matters that are in dispute between the Parties. Defendants are entering into this Stipulation solely to eliminate the uncertainty, burden, and expense of further protracted litigation. Defendants dispute all of the pending claims against them and otherwise deny any wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Defendants, with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have, or could have, asserted. Defendants expressly deny that Lead Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever. All of the Parties recognize and acknowledge, however, that the Action is being voluntarily settled with the advice of counsel, and that the terms of the Settlement are fair, adequate, and reasonable.

Q. Based upon their investigation, prosecution, and mediation of the case, Lead Plaintiffs and Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to Lead Plaintiffs and the other members of the Settlement Class, and in their best interests. Lead Plaintiffs have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering the significant risks of continued litigation and trial, the defenses asserted by Defendants throughout the Action, and the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

**NOW THEREFORE**, without any admission or concession whatsoever on the part of Defendants of any liability or wrongdoing, or of any lack of merit in the claims asserted in this Action or the defenses asserted thereto, it is hereby **STIPULATED AND AGREED**, by and among the Parties hereto, through their respective undersigned attorneys and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the PSLRA, that, in consideration of the benefits flowing to the Parties from the Settlement, all Released Claims as against all Released Parties, shall be fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed with prejudice in accordance with and subject to the terms and conditions set forth below.

#### **I. CLASS DEFINITION**

For the sole purpose of the Settlement, and without prejudice to their right to contest class certification if the Settlement is not approved by the Court, is terminated or cancelled, or fails to become effective for any reason, Defendants stipulate, agree, and consent that the “Settlement Class” shall be defined as: all investors that purchased or otherwise acquired the common stock of RCS Capital Corporation (“RCAP”) from February 12, 2014 to December 18, 2014, inclusive, and were allegedly damaged thereby. Excluded from the Settlement Class are: Defendants; the

officers and directors of RCAP, RCAP Holdings and RCAP Equity; members of the Immediate Families of any excluded person and their legal representatives, heirs, successors, affiliates, or assigns; and any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class are any Settlement Class Members who properly exclude themselves by submitting a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

For the sole purpose of the Settlement, Defendants stipulate, agree, and consent that the Settlement Class shall be certified pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and will not oppose such a motion for certification.

For the sole purpose of the Settlement, Defendants further stipulate, agree, and consent to the certification of Lead Plaintiffs as Class Representatives for the Settlement Class.

For the sole purpose of the Settlement, Defendants further stipulate, agree, and consent to the appointment of Lead Counsel as Class Counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

## **II. OTHER DEFINITIONS**

(a) “Action” means the securities action captioned *Weston v. RCS Capital Corporation, et al.*, No. 1:14-CV-10136-GBD, pending in the United States District Court for the Southern District of New York, before the Honorable George B. Daniels.

(b) “Alternative Judgment” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Stipulation, where none of the other Parties elects to terminate the Settlement by reason of such variance.

(c) “Authorized Claimant” means a Settlement Class Member who submits a timely and valid Claim Form to the Claims Administrator that is accepted for payment by the Court.



(d) “Claim Form” means the form for submitting a claim, which, subject to approval of the Court, shall be substantially in the form attached as Exhibit A-2 to Exhibit A hereto, that a Claimant or Class Member must complete and submit should that Claimant or Class Member seek to share in a distribution of the Net Settlement Fund.

(e) “Claimant” means a Person that submits a claim to the Claims Administrator seeking to share in the proceeds of the Net Settlement Fund.

(f) “Claims Administrator” means the administrator to be retained by Lead Counsel subject to Court approval, to provide all notices approved by the Court to potential Settlement Class Members, to process Claims Forms, and to administer the Settlement.

(g) “Class Period” means the period from February 12, 2014 to December 18, 2014, inclusive.

(h) “Complete Bar Order” means the bar order, the text of which is set forth in ¶ 35 below, to be proposed to the Court as part of the Judgment, or Alternative Judgment if applicable.

(i) “Defendants” means RCAP, RCAP Holdings, RCAP Equity, Nicholas S. Schorsch, Brian S. Block, Edward M. Weil, Jr., William M. Kahane, Brian D. Jones, Peter M. Budko, Mark Auerbach, Jeffrey Brown, C. Thomas McMillen and Howell Wood.

(j) “Defendants’ Counsel” means Paul, Weiss, Rifkind, Wharton & Garrison LLP; Winston & Strawn LLP; and Steptoe & Johnson LLP.

(k) “Distribution Order” means an order entered by the Court approving the Claims Administrator’s determinations concerning the acceptance and rejection of claims and approving any fees and expenses not previously paid, including the fees and expenses of the Claims

Administrator, and, if the Effective Date has occurred, directing that the Net Settlement Fund be distributed to Authorized Claimants.

(l) “Effective Date,” with respect to the Settlement, shall occur upon the occurrence or waiver of all of the conditions set forth in ¶ 38, below.

(m) “Escrow Account” means an account maintained at Huntington Bank, which account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds therein are paid out as provided for in this Stipulation, and wherein the Settlement Amount shall be deposited and held in escrow.

(n) “Escrow Agreement” means the agreement between Lead Counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(o) “Escrow Agent” means Huntington Bank.

(p) “Final” with respect to the Judgment, or Alternative Judgment, if applicable, means: (a) if no appeal is filed, the expiration date of the time provided for filing or noticing of any appeal under the Federal Rules of Civil Procedure, i.e., thirty (30) days after entry of the Judgment, or Alternative Judgment, if applicable; or (b) if there is an appeal from the Judgment, or Alternative Judgment, if applicable, the date of (1) final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise to review the Judgment, or Alternative Judgment, if applicable, or (ii) the date the Judgment, or Alternative Judgment, if applicable, is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review of the Judgment, or Alternative Judgment, if applicable, and, if certiorari or other form of review is granted, the date of final affirmance of the Judgment, or Alternative Judgment, if applicable,

following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys' fees, costs or expenses, or (ii) the plan of allocation (as submitted or subsequently modified), shall not in any way delay or preclude the Judgment or Alternative Judgment, if applicable, from becoming Final.

(q) "Immediate Family(ies)" means, as set forth in 17 C.F.R. § 229.404, children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. "Spouse" as used in this definition means a husband, a wife, or a partner in a state-recognized domestic partnership, civil union, or marriage.

(r) "Individual Defendants" means Nicholas S. Schorsch, Brian S. Block, Edward M. Weil, Jr., William M. Kahane, Brian D. Jones, Peter M. Budko, Mark Auerbach, Jeffrey Brown, C. Thomas McMillen and Howell Wood.

(s) "Judgment" means the proposed final judgment and order, substantially in the form attached as Exhibit B hereto, to be entered by the Court approving the Settlement.

(t) "Lead Counsel" means Labaton Sucharow LLP and Scott+Scott, Attorneys at Law, LLP.

(u) "Lead Plaintiffs" means Oklahoma Police Pension Fund and Retirement System and City of Providence, Rhode Island.

(v) "Litigation Expenses" means costs and expenses incurred in connection with commencing, prosecuting, and settling the Action (which may include the costs and expenses of Lead Plaintiffs directly related to their representation of the Settlement Class pursuant to the

PSLRA), for which Lead Counsel intend to apply to the Court for payment from the Settlement Fund.

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

(x) “Mediator” means Robert A. Meyer.

(y) “Notice” means the Notice of Pendency of Class Action, Proposed Settlement, and Motion for an Award of Attorneys’ Fees and Expenses, substantially in the form attached as Exhibit A-1 to Exhibit A hereto, which is to be sent to Settlement Class Members pursuant to the Preliminary Approval Order.

(z) “Notice and Administration Costs” means the costs, fees and expenses that are incurred in connection with (i) providing notice to the Settlement Class (including, but not limited to, providing the Notice and Summary Notice); (ii) administering the claims process; (iii) applying the Plan of Allocation; (iv) communicating with Persons regarding the proposed Settlement and claims administration process, among other things; (v) distributing the proceeds of the Settlement; and (vi) the costs, fees and expenses related to the Escrow Account and investment of the Settlement Fund.

(aa) “Person(s)” means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability corporation, association, affiliate, joint stock company, government and any political subdivision thereof, legal representative, trust, trustee, unincorporated association, or any business or legal entity.

(bb) “Plaintiffs’ Counsel” means Lead Counsel and all other legal counsel who, at the direction and under the supervision of Lead Counsel, performed services on behalf of or for the benefit of the Settlement Class.

(cc) “Plaintiffs’ Releasees” means Lead Plaintiffs and all other Settlement Class Members, Plaintiffs’ Counsel, and their respective present and former parents, subsidiaries, divisions, affiliates, present and former employees, members, general and limited partners and partnerships, principals, officers, directors, attorneys, advisors (including, but not limited to, financial advisors), accountants, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives and assigns of each of them, in their capacity as such.

(dd) “Plan of Allocation” means the proposed Plan of Allocation of Net Settlement Fund, which subject to the approval of the Court, shall be in the form set forth in the Notice.

(ee) “Preliminary Approval Order” means the Order, substantially in the form attached as Exhibit A hereto, to be entered by the Court preliminarily approving the Settlement and directing that notice of the Settlement be provided to the Settlement Class.

(ff) “Released Claims” means all Released Defendants’ Claims and all Released Plaintiffs’ Claims.

(gg) “Released Defendants’ Claims” means any and all claims, demands, losses, rights, and causes of action of any nature whatsoever, known or Unknown, whether arising under federal, state, common, or foreign law, that Defendants could have asserted against Plaintiffs’ Releasees, in any forum, whether foreign or domestic, that relate, in any way, to the institution, prosecution, assertion, settlement or resolution of the Action. Released Defendants’ Claims shall not include claims to enforce the Settlement.

(hh) “Released Defendant Parties” means Defendants and their respective present and former parents, subsidiaries, divisions, affiliates, present and former employees, members, general and limited partners and partnerships, principals, officers, directors, attorneys, advisors (including, but not limited to, financial advisors), accountants, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives and assigns of each of them, in their capacity as such.

(ii) “Released Plaintiffs’ Claims” means any and all claims, demands, losses, rights, and causes of action of any nature whatsoever, known or Unknown, whether arising under federal, state, common, or foreign law, whether brought directly or indirectly, that (a) were asserted in this Action or that could have been asserted in the Action, or in any other action or forum, whether foreign or domestic, and (b) arise out of, are based upon, or relate in any way to both (i) the purchase, sale or acquisition of RCAP common stock during the Class Period and (ii) any of the allegations, acts, transactions, facts, events, matters, occurrences, representations or omissions involved, set forth, alleged or referred to, in the Action. For the avoidance of doubt, the Settlement does not affect: (i) the pending claims asserted by the Securities and Exchange Commission in *SEC v. Brian S. Block and Lisa Pavelka McAlister*, 1:16-cv-07003 (S.D.N.Y.), or by the Department of Justice in *United States v. Lisa McAlister*, 16-cr-00653 (S.D.N.Y.) and *United States v. Brian Block*, 16-cr-00595 (S.D.N.Y.); or (ii) any claims for losses allegedly incurred in connection with the purchase, sale, acquisition or holding of the securities of American Realty Capital Properties, Inc., as asserted in *In re American Realty Capital Properties, Inc. Litigation*, Case No. 1:15-mc-00040-AKH (S.D.N.Y.) (including *Teachers Insurance and Annuity Assoc. of America, et al. v. American Realty Capital Properties, Inc., et*

*al.*, Case No. 15-cv-00421 (S.D.N.Y.) and all other cases consolidated therein or designated as related thereto).

(jj) “Releases” means the releases set forth in ¶¶ 3-5 of this Stipulation.

(kk) “Releasee(s)” means Plaintiffs’ Releasees and Released Defendant Parties.

(ll) “Settlement” means the resolution of the Action between Lead Plaintiffs and Defendants on the terms and conditions set forth in this Stipulation.

(mm) “Settlement Amount” means the total principal amount of Thirty-One Million Dollars (\$31,000,000).

(nn) “Settlement Class Member” means a Person that is a member of the Settlement Class.

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

(pp) “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider, *inter alia*, final approval of the Settlement.

(qq) “Summary Notice” means the Summary Notice, substantially in the form attached as Exhibit A-3 to Exhibit A hereto, to be published as set forth in the Preliminary Approval Order.

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

(ss) “Unknown Claims” means any Released Claims which Lead Plaintiffs or any other Settlement Class Member, Defendants, or any of the other Releasees does not know or

suspect to exist in his, her or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Settlement Class. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members and each of the other Releasees shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law, that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Lead Plaintiffs, other Settlement Class Members, or Defendants, and their respective Releasees may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Released Claims, but the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members and Releasees shall be deemed to have waived, and by operation of the Judgment, or if applicable, the Alternative Judgment, shall have expressly waived any and all Released Claims without regard to subsequent discovery or existence of such different or additional facts. Lead Plaintiffs and Defendants acknowledge, and each of the other Settlement Class Members and each of the other Releasees shall be deemed by operation of law to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Plaintiffs’



Claims and Released Defendants' Claims was separately bargained for and is a key element of the Settlement.

### **III. PRELIMINARY APPROVAL OF SETTLEMENT**

1. Promptly upon execution of this Stipulation, Lead Plaintiffs will move for preliminary approval of the Settlement and for the scheduling of a hearing for consideration of final approval of the Settlement. Concurrently with the motion for preliminary Court approval, Lead Plaintiffs shall apply to the Court for, and Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A. The Preliminary Approval Order will, *inter alia*, set the date for the Settlement Hearing, approve the form of notice, and prescribe the method for giving notice of the Settlement to the Settlement Class. The Preliminary Approval Order shall provide that the Court shall continue to stay proceedings in the Action.

2. Defendant RCAP, to the extent it has not already done so, shall provide, or cause to be provided, to Lead Counsel or the Claims Administrator, at no cost to Lead Plaintiffs or the Settlement Class, no later than five (5) business days following entry of the Preliminary Approval Order, transfer records in electronic searchable form, such as Excel, containing the names and addresses of Persons who purchased or otherwise acquired the common stock of RCAP during the Class Period.

### **IV. RELEASE OF CLAIMS**

3. The obligations incurred pursuant to this Stipulation are subject to approval by the Court and the Judgment, or Alternative Judgment, reflecting such approval becoming Final; and shall be in full and final disposition of the Action as against Defendants and shall fully, finally and forever compromise, settle, release, resolve, relinquish, waive, discharge and dismiss with

prejudice, the Action and any and all Released Claims against each and all of the Releasees upon the occurrence of the Effective Date.

4. Pursuant to the Judgment, or Alternative Judgment, without further action by anyone, upon the Effective Date of the Settlement, Lead Plaintiffs and Settlement Class Members shall be deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every one of the Released Plaintiffs' Claims against Defendants and the other Released Defendant Parties, and shall forever be enjoined from prosecuting any or all of the Released Plaintiffs' Claims against Defendants or any of the other Released Defendant Parties. This Release shall not apply to any Person who submits a request for exclusion from the Settlement Class in connection with the Notice who does not withdraw his, her or its request for exclusion and whose request is accepted by the Court.

5. Pursuant to the Judgment, or Alternative Judgment, without further action by anyone, upon the Effective Date of the Settlement, Defendants and the other Released Defendant Parties shall be deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every one of the Released Defendants' Claim against Lead Plaintiffs, the other Settlement Class Members, and the other Plaintiffs' Releasees, and shall forever be enjoined from prosecuting any or all of the Released Defendants' Claims against Lead Plaintiffs, the other Settlement Class Members, and the other Plaintiffs' Releasees. This Release shall not apply to any Person who submits a request for exclusion from the Settlement Class in connection with the Notice who does not withdraw his, her, or its request for exclusion and whose request is accepted by the Court.

6. Notwithstanding ¶¶ 3-5 above, nothing in the Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or the Judgment.

7. The Releases contained in this section were separately bargained for and are essential elements of the Settlement as embodied in this Stipulation.

8. The Parties will seek to obtain from the Court a Judgment as further described in ¶ 35 below, to be entered simultaneously with or promptly after final approval of the Settlement as embodied in this Stipulation.

#### **V. THE SETTLEMENT CONSIDERATION**

9. In full and complete settlement of the Released Plaintiffs' Claims against Defendants and in consideration of the releases specified in ¶¶ 4-5 above, Defendants shall cause the following insurance policies issued to RCAP to pay, on behalf of all Defendants, \$31,000,000 in cash (the "Settlement Amount"): XL Specialty Insurance Co. (ELU134102-14); Catlin Insurance Co. (XSP-685440-0414); Argonaut Insurance Co. (MLX 7600518-01); Everest National Insurance Co. (FL5DO00113-141); Endurance American Insurance Co. (FIX10004870000); Alterra America Insurance Co. (MAXA6EL0001677); Scottsdale Indemnity Co. (XMI1401024). No Defendant shall pay, or be liable to pay, any part of the Settlement Amount.

10. Defendants shall cause to be paid, as described in ¶ 9, the Settlement Amount into the Escrow Account no later than thirty (30) calendar days after the later of: (1) the Court's entry of the Preliminary Approval Order; or (2) Lead Counsel's provision to Paul, Weiss, Rifkind, Wharton & Garrison LLP of wire transfer instructions for the Escrow Account and a complete and executed Form W-9 for the Settlement Fund that reflects a valid tax identification number. Payment of the Settlement Amount on behalf of Defendants in accordance with the terms of this Stipulation constitutes the entirety of Defendants' payment obligation to the Settlement Class

and Plaintiffs' Counsel with respect to this Stipulation. The payment of the Settlement Amount set forth above includes, among other things, payment for all of Plaintiffs' Counsels' attorneys' fees and Litigation Expenses, Notice and Administration Costs, and reimbursement of Lead Plaintiffs' time and expenses pursuant to the PSLRA.

**VI. USE AND TAX TREATMENT OF THE SETTLEMENT FUND**

11. The Settlement Fund shall be used to pay all fees and expenses awarded by the Court to Plaintiffs' Counsel and/or Lead Plaintiffs; any Taxes; and Notice and Administration Costs. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided herein in Section VIII, below.

12. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills or United States Treasury Notes (or a mutual fund invested solely in instruments backed by the full faith and credit of the United States) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills or Treasury Notes is negative, in lieu of purchasing such Treasury Bills, Treasury Notes, or investing in a qualified mutual fund, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Defendants and the other Released Defendant Parties shall have no

responsibility for, interest in, or liability whatsoever with respect to investment decisions by the Escrow Agent.

13. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing or causing to be filed all federal, state, or local tax returns and information returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Defendants and the other Released Defendant Parties shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make, or cause to be made, such elections as are necessary or advisable to carry out the provisions of this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

14. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by Lead Counsel, and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. Defendants and the other

Released Defendant Parties shall have no responsibility or liability for the acts or omissions of Lead Counsel or its agents with respect to the payment of Taxes, as described herein.

15. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Defendant, nor any other Released Defendant Party, or any other person or entity funding the Settlement on Defendants' behalf, shall have any right to the return of the Settlement Fund or any portion thereof for any reason, irrespective of the number of claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

16. Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all Notice and Administration Costs actually and reasonably incurred. Such costs and expenses shall include, without limitation, the actual costs of publication, printing, and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses actually incurred and fees reasonably charged by the Claims Administrator in connection with providing notice and processing the submitted claims, and the reasonable fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation (including the Supplemental Agreement), all Notice and Administration Costs actually paid or incurred, including any related fees, will not be returned or repaid to Defendants or to any other person or entity who or which paid any portion of the Settlement Amount.

## **VII. ATTORNEYS' FEES AND LITIGATION EXPENSES**

17. Lead Counsel, on behalf of Plaintiffs' Counsel, will apply to the Court for a collective award of attorneys' fees and Litigation Expenses to be paid from the Settlement Fund. Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the

subject of any agreement between Defendants and Lead Plaintiffs other than what is set forth in this Stipulation.

18. Any attorneys' fees and Litigation Expenses that are awarded by the Court (the "Fee and Expense Awards") shall be paid from the Settlement Fund to Lead Counsel immediately after the Court executes an order awarding such fees and expenses, notwithstanding the existence of any timely filed objections thereto or to the Settlement, or any potential for appeal or collateral attack, and subject to Plaintiffs' Counsels' obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Effective Date does not occur or if this Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Awards is reduced or reversed by non-appealable order.

19. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than fifteen (15) business days after receiving notice that the Effective Date will not occur or notice of the termination of the Settlement or notice of any reduction of the Fee and Expense Awards by final non-appealable order. Plaintiffs' Counsel, as a condition of receiving such Fee and Expense Awards, agree that they are subject to the jurisdiction of the Court for purposes of enforcing the provisions of this paragraph and ¶ 18 above.

20. The procedure for and the allowance or disallowance by the Court of any application by Lead Counsel for attorneys' fees and Litigation Expenses is not a necessary term of the Settlement or this Stipulation and is not a condition of the Settlement that any particular application for attorneys' fees or expenses be approved.

21. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action. Defendants shall have no responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Lead Counsel shall be payable solely from the Escrow Account.

### **VIII. CLAIMS ADMINISTRATOR**

22. The Claims Administrator shall discharge its duties under Lead Counsel's supervision and subject to the jurisdiction of the Court.

23. The Claims Administrator shall administer the process of receiving, reviewing, and approving or denying claims subject to the jurisdiction of the Court. None of the Defendants, nor the other Released Defendant Parties, shall have any responsibility whatsoever for the administration of the Settlement or the claims process and shall have no liability whatsoever to any Person, including, but not limited to, Lead Plaintiffs, any other Settlement Class Members or Lead Counsel in connection with such administration. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

24. The Claims Administrator shall receive claims and determine, *inter alia*, whether the claim is valid, in whole or part, and each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's recognized claim compared to the total recognized claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the Court ultimately approves).



25. The Plan of Allocation proposed by Lead Plaintiffs is not a necessary term of the Settlement or of this Stipulation, and it is not a condition of the Settlement or this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiffs and Lead Counsel may not cancel or terminate the Settlement (or the Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in this Action. No Defendant, nor any other Released Defendant Party, shall have any involvement in or responsibility or liability whatsoever for the Plan of Allocation or the allocation of the Net Settlement Fund.

26. Any Settlement Class Member who does not submit a valid Claim Form will not be entitled to receive any distribution from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation, including the terms of the Judgment or Alternative Judgment, if applicable, to be entered in the Action and the Releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Releasees with respect to the Released Claims in the event that the Effective Date occurs with respect to the Settlement.

27. Lead Counsel shall be responsible for supervising the administration of the Settlement Fund and disbursement of the Net Settlement Fund subject to Court approval. No Defendant, or any other Released Defendant Party, shall have any liability, obligation or responsibility whatsoever for the administration of the Settlement or disbursement of the Net Settlement Fund. No Defendant, or any other Released Defendant Party, shall be permitted to review, contest or object to any Claim Form, or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any claim for payment by a Settlement Class Member. Lead Counsel shall have the right, but not the obligation, to waive what they deem to

be formal, *de minimis*, or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

28. For purposes of determining the extent, if any, to which a Settlement Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Claimant shall be required to submit a Claim Form, substantially in the form attached as Exhibit A-2 to Exhibit A hereto, supported by such documents as are designated therein, including proof of the Claimant's alleged loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

(b) All Claim Forms must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Lead Counsel in its discretion or by Order of the Court. Any Settlement Class Member who fails to submit a Claim Form by such date, or such other date as may be ordered by the Court or otherwise allowed by Lead Counsel, shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation and shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Defendant Party with respect to any Released Plaintiffs' Claim.

(c) Provided that it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted on the date

when actually received by the Claims Administrator. Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not an obligation) to accept late-submitted claims for processing by the Claims Administrator so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby;

(d) Each Claim Form shall be submitted to and reviewed by the Claims Administrator who shall determine in accordance with this Stipulation and the plan of allocation the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below as necessary;

(e) Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all Claimants whose claims the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below; and

(f) If any Claimant whose claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) calendar days after the date of mailing of the notice required in subparagraph (d) above, or a lesser period of time if the claim was untimely, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

29. Each Claimant who submits a Claim Form shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity and amount of the Claimant's claim. No discovery shall be allowed on the merits of this Action or of the Settlement in connection with the processing of Claim Forms.

30. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Distribution Order, *inter alia*: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted; (b) approving payment of any administration fees and expenses associated with the distribution of the Net Settlement Fund, and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

31. Payment pursuant to the Distribution Order shall be final and conclusive against all Claimants and Claimants whose claims are not approved by the Court for payment shall be barred from participating in distributions from the Net Settlement Fund. Any such Claimants who are Settlement Class Members shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternative Judgment, if applicable, to be entered in this Action and the Releases provided for therein, and will be permanently barred and enjoined from bringing any action against any and all Releasees concerning any and all of the Released Claims.

32. No Person shall have any claim against Lead Plaintiffs, Plaintiffs' Counsel, the Claims Administrator or any other agent designated by Lead Counsel, or the Released Defendant Parties and/or their respective counsel, arising from distributions made substantially in

accordance with the Stipulation, the Plan of Allocation, or any order of the Court. Lead Plaintiffs, Defendants, their respective counsel, Lead Plaintiffs' damages expert, and all other Released Defendant Parties shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

33. All proceedings with respect to the administration, processing and determination of claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court. All Claimants and Parties to this Settlement waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

34. To the extent that any monies remain in the Net Settlement Fund after the Claims Administrator has caused an initial distribution to be made to Authorized Claimants whether by reason of un-cashed distributions or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have the Authorized Claimants cash their distributions, any balance remaining in the Net Settlement Fund at least six (6) months after the initial distribution of such funds shall be re-distributed to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior distribution checks may occur thereafter in a reasonable and economic fashion if Lead Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after

the deduction of any additional fees and expenses that would be incurred with respect to such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance in the Net Settlement Fund shall be contributed to nonsectarian, not-for-profit 501(c)(3) organization(s), to be recommended by Lead Plaintiffs and approved by the Court.

#### **IX. TERMS OF THE JUDGMENT**

35. If the Settlement embodied in this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form annexed hereto as Exhibit B which shall, among other things, contain a provision providing for a Complete Bar Order in the Action, as follows in subparagraphs (a) – (d):

(a) Except as provided in this ¶ 35, any and all Persons are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting or asserting any and all claims for contribution (or any other claim where the alleged injury to that Person is that Person's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Action) arising out of, based upon, relating to, concerning, or in connection with the Released Plaintiffs' Claims against each and every one of the Defendants, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Action or a separate action, in the Court or in any other court, arbitration proceeding, administration, or other forum in the United States or elsewhere.

(b) Except as provided in this ¶ 35, each and every Defendant is permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution (or any other claim where the alleged injury to that Defendant is that Defendant's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Action) arising out of, based upon, relating to, concerning, or in

connection with the Released Plaintiffs' Claims against any and all Persons, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Action or a separate action, in the Court or in any other court, arbitration proceeding, administration, or other forum in the United States or elsewhere.

(c) Nothing in this Complete Bar Order shall: (i) bar any action to enforce the Settlement; (ii) alter the contractual rights of any Defendant; (iii) have any impact on claims that Defendants, their subsidiaries or their affiliates, have filed in *In re RCS Capital Corp.*, Case No. 16-10223 (MFW) (Bankr. D. Del.); (iv) have any impact on counterclaims or claims for set offs, contribution or indemnification by or among the named defendants in or arising out of *RCS Creditor Trust v. Schorsch, et al.*, Case No. 2017-0178 (Del. Ch.).

(d) If any provision of this Complete Bar Order is subsequently held to be unenforceable or modified, the Parties shall propose to the Court alternative terms so as to afford all of the Released Defendant Parties the fullest protection permitted by law consistent with the Court's view.

36. The Parties agree that the terms of this Stipulation shall be satisfied if either (a) the Complete Bar Order set forth in ¶ 35 above, or (b) a bar order to the fullest extent allowable under the PSLRA, is included in the Judgment (or in the Alternative Judgment, if applicable) that is entered by the Court. Should the Court enter a bar order other than that referenced in (a) or (b) of the preceding sentence (or if a bar order referenced in (a) or (b) of the preceding sentence is entered but its terms are materially modified on appeal, or is vacated on appeal and not subsequently reinstated), and if a dispute arises as to whether the failure to obtain entry of a bar order referenced in (a) or (b) of the preceding sentence provides a basis for Defendants to terminate the Settlement, then the relevant Parties shall submit the dispute to the Court.

37. Notwithstanding anything herein, nothing in this Stipulation shall operate to preclude the Released Defendant Parties from asserting any claims against their own insurers, or their insurers' subsidiaries, predecessors, successors, assigns, affiliates, or representatives.

**X. CONDITIONS OF SETTLEMENT; EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

38. If the Settlement is approved by the Court, the Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events:

(a) the Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A annexed hereto, as required by ¶¶ 1-2 above;

(b) Defendants have caused the Settlement Amount to be paid as required above;

(c) Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation (including the Supplemental Agreement);

(d) Lead Plaintiffs have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation;

(e) the Court has approved the Settlement as described herein, following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final, or the Court has entered an Alternative Judgment and none of the Parties seek to terminate the Settlement and the Alternative Judgment has become Final.

39. Upon the occurrence of all of the events referenced in ¶ 38 above, any and all remaining interest or right of the Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.



40. If (i) Defendants exercise their right to terminate the Settlement as provided in this Stipulation; (ii) Lead Plaintiffs exercise their right to terminate this Settlement as provided in this Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated.

(b) Lead Plaintiffs and Defendants shall be restored to their respective positions in the Action immediately prior to March 20, 2017.

(c) The terms and provisions of this Stipulation, with the exception of this ¶ 40 and ¶ 43 shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment, Alternative Judgment, or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nuns pro tunc*.

(d) Within fourteen (14) business days after joint written notification of termination is sent by the Defendants' Counsel and Lead Counsel to the Escrow Agent pursuant to the terms of the Escrow Agreement, the Settlement Fund (including accrued interest thereon and any funds received by Lead Counsel consistent with ¶¶ 17-19 above), less any Notice and Administration Costs and Taxes paid or due or owing, shall be refunded by the Escrow Agent to Defendants, as instructed in writing by Defendants' Counsel. In the event that the funds received by Lead Counsel consistent with ¶¶ 17-19 above have not been refunded to the Settlement Fund within the fourteen (14) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to Defendants immediately upon their deposit into the Escrow Account consistent with ¶¶ 17-19 above.

(e) Lead Counsel and Plaintiffs' Counsel shall return any attorneys' fees, as set forth in ¶¶ 18 and 19 above.

41. It is further stipulated and agreed that Lead Plaintiffs, provided they unanimously agree, and Defendants, provided a majority of Defendants agrees, shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so ("Termination Notice") to the other Parties to this Stipulation within thirty (30) calendar days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect; (b) the Court's refusal to approve the Settlement or any material part thereof; (c) the Court's declining to enter the Judgment in any material respect as to the Settlement; (d) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the United States Supreme Court; or (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the United States Supreme Court, and the provisions of ¶ 40 shall apply. However, any decision or proceeding, whether in this Court or any appellate court, with respect to an application for attorneys' fees or Litigation Expenses, or with respect to any plan of allocation, shall not be considered material to the Settlement, shall not affect the finality of any Judgment or Alternative Judgment, and shall not be grounds for termination of the Settlement,

42. In addition to the grounds set forth in ¶ 41 above, Defendants shall have the option to terminate the Settlement in the event that Settlement Class Members requesting exclusion from the Settlement Class meet the conditions set forth in their confidential supplemental agreement with Lead Plaintiffs (the "Supplemental Agreement"), in accordance with the terms of that agreement. The Supplemental Agreement, which is being executed

concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises between Lead Plaintiffs and Defendants concerning its interpretation or application. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the applicable Parties will undertake to have the Supplemental Agreement submitted to the Court *in camera*.

#### **XI. NO ADMISSION OF WRONGDOING**

43. Neither the Settlement Term Sheet, this Stipulation (whether or not consummated), nor its negotiation, nor any proceedings taken pursuant to it:

(a) shall be offered against any of the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendant Parties with respect to the truth of any fact alleged by Lead Plaintiffs, or the validity of any claim that was or could have been asserted, or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind by any of the Released Defendant Parties;

(b) shall be offered against any of the Plaintiffs' Releasees, 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 Plaintiffs' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, the Parties and the Releasees and their

respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement;

(c) shall be construed against any of Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(d) shall be construed against Plaintiffs' Releasees as an admission, concession, or presumption that any of their claims are without merit, that any of the Released Defendant Parties had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

44. The Parties further understand and agree that Defendants deny all of Plaintiffs' claims and material allegations asserted in this proceeding; and that the Parties shall, in good faith, communicate the terms of the Settlement in a manner that is consistent with the fact that no adjudication of fault was made by any court or jury.

## **XII. MISCELLANEOUS PROVISIONS**

45. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

46. To the extent they choose to do so, Defendants shall determine the form of notice to be provided pursuant to the Class Action Fairness Act ("CAFA") and identify those who will receive the CAFA Notice. Defendants shall be responsible for mailing the CAFA Notice and for all expenses and costs related thereto.

47. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Lead Plaintiffs, any other

Settlement Class Members and their attorneys against all Released Defendant Parties with respect to all Released Plaintiffs' Claims. Accordingly, Lead Plaintiffs, their counsel and each Defendant and his, her or its counsel agree not to assert in any forum that this Action was brought by Lead Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. No Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense or settlement of this Action. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's-length and in good faith by the Parties, including through a mediation process, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

48. In all events, Lead Plaintiffs and their counsel and Defendants and their counsel shall, in good faith, communicate the terms of the Settlement in a manner that is consistent with the fact that no adjudication of fault was made by the Court or a jury, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

49. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of both Lead Plaintiffs and Defendants (or their successors-in-interest).

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

51. The administration and consummation of the Settlement as embodied in this Stipulation, shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to

Lead Counsel and enforcing the terms of this Stipulation, including the implementation or maintenance of the Plan of Allocation and the distribution of the Net Settlement Fund to Settlement Class Members.

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

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

54. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the signatories of this Stipulation shall exchange among themselves original signed counterparts.

55. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties, including any and all Releasees and any corporation, partnership, or other entity into or with any Party hereto may merge, consolidate or reorganize.

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

57. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in this Court. However, if disputes arise between the Parties regarding the Settlement or the terms thereof, as reflected in this Stipulation, the Parties agree that any such disputes shall first be submitted to the Mediator for mediation. The Mediator's fees and expenses associated with any such mediation shall be paid 50% by insurance coverage available to Defendants and 50% by Lead Counsel, unless the Mediator determines that another allocation is merited.

58. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

59. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

60. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

61. If either Party is required to give notice to the other Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand

delivery or facsimile transmission with confirmation of receipt. Notice shall be provided as follows:

If to Lead Plaintiffs  
or Lead Counsel:

Labaton Sucharow LLP  
Attn: Ira A. Schochet, Esq.  
140 Broadway  
New York, NY 10005  
Telephone: (212) 907-0700

-and-

Scott + Scott, Attorneys at Law, LLP  
Attn: Deborah Clark-Weintraub, Esq.  
The Helmsley Building  
230 Park Avenue, 17th Floor  
New York, New York 10169  
Telephone: (212) 223-6444

If to Defendants  
or Defendants' Counsel:

Paul, Weiss, Rifkind, Wharton &  
Garrison LLP  
Attn: Audra J. Soloway, Esq.  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Telephone: (212) 373-3000

-and-

Winston & Strawn LLP  
Attn: James P. Smith III, Esq.  
200 Park Avenue  
New York, New York 10166  
Telephone: (212) 294-6700

-and-

Steptoe & Johnson LLP  
Attn: Michael C. Miller  
1114 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 506-3900

62. Except as otherwise provided herein, each Party shall bear its own costs.



63. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential. Notwithstanding the foregoing, the Parties agree that this Stipulation may be filed publicly via ECF as part of any motion for preliminary approval of the Settlement.


64. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

65. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties to the Settlement or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

66. Lead Plaintiffs and Lead Counsel represent and warrant that none of Lead Plaintiffs' claims or causes of action referred to in any complaint this Action or this Stipulation have been assigned, encumbered or in any manner transferred in whole or in part.

IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be executed,  
by their duly authorized attorneys, dated June 2, 2017.

**LABATON SUCHAROW LLP**

By:   
Joel H. Bernstein  
Ira A. Schochet  
Eric D. Gottlieb  
140 Broadway  
New York, NY 10005  
Telephone: (212) 907-0700

-and-

**SCOTT+SCOTT, ATTORNEYS AT LAW, LLP**

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Deborah Clark-Weintraub  
Max R. Schwartz  
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New York, New York 10169  
Telephone: (212) 223-6444

*Lead Counsel for Lead Plaintiffs*

**PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON, LLP**

By: \_\_\_\_\_  
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Audra J. Soloway  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Telephone: (212) 373-3000

*Counsel for Defendant Nicholas S. Schorsch*

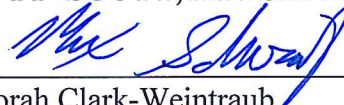
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*Lead Counsel for Lead Plaintiffs*

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By: \_\_\_\_\_  
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*Counsel for Defendant Nicholas S. Schorsch*

**WINSTON & STRAWN LLP**

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James P. Smith III

John E. Schreiber

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*Counsel for Defendants RCS Capital Corp., RCAP Holdings, LLC, RCAP Equity, LLC, Edward M. Weil, Jr., William M. Kahane, Brian D. Jones, Peter M. Budko, Mark Auerbach, Jeffrey Brown, C. Thomas McMillen and Howell Wood*

**STEPTOE & JOHNSON LLP**

By: \_\_\_\_\_

Michael C. Miller

Michael G. Scavelli

1114 Avenue of the Americas

New York, NY 10036

Telephone: (212) 506-3900

*Counsel for Defendant Brian S. Block*

IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be executed,  
by their duly authorized attorneys, dated June 2, 2017.

**LABATON SUCHAROW LLP**

By: \_\_\_\_\_  
Joel H. Bernstein  
Ira A. Schochet  
Eric D. Gottlieb  
140 Broadway  
New York, NY 10005  
Telephone: (212) 907-0700

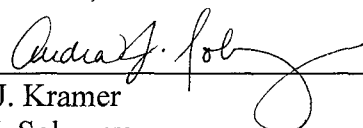
-and-

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*Lead Counsel for Lead Plaintiffs*

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*Counsel for Defendant Nicholas S. Schorsch*

**WINSTON & STRAWN LLP**

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*Counsel for Defendants RCS Capital Corp., RCAP Holdings, LLC, RCAP Equity, LLC, Edward M. Weil, Jr., William M. Kahane, Brian D. Jones, Peter M. Budko, Mark Auerbach, Jeffrey Brown, C. Thomas McMillen and Howell Wood*

**STEPFEE & JOHNSON LLP**

By: \_\_\_\_\_

Michael C. Miller

Michael G. Scavelli

1114 Avenue of the Americas

New York, NY 10036

Telephone: (212) 506-3900

*Counsel for Defendant Brian S. Block*

# **Exhibit A**

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

GRADY SCOTT WESTON, Individually and  
On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

RCS CAPITAL CORPORATION, RCAP  
HOLDINGS, LLC, RCAP EQUITY, LLC,  
NICHOLAS S. SCHORSCH, BRIAN S.  
BLOCK, EDWARD MICHAEL WEIL,  
WILLIAM M. KAHANE, BRIAN D. JONES,  
PETER M. BUDKO, MARK AUERBACH,  
JEFFREY BROWN, C. THOMAS  
MCMILLEN, and HOWELL WOOD,

Defendants.

Civ. No. 1:14-CV-10136-GBD

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE, AND SETTING  
DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**

WHEREAS, as of June 2, 2017, Oklahoma Police Pension Fund and Retirement System and City of Providence, Rhode Island (collectively, “Lead Plaintiffs”), on behalf of themselves and all members of the proposed Settlement Class, and RCS Capital Corporation (“RCAP” or the “Company”) and RCAP Holdings, LLC (“RCAP Holdings”), RCAP Equity, LLC (“RCAP Equity”), Nicholas S. Schorsch, Brian S. Block, Edward M. Weil, Jr., William M. Kahane, Brian D. Jones, Peter M. Budko, Mark Auerbach, Jeffrey Brown, C. Thomas McMillen and Howell Wood (collectively, “Defendants”) entered into the Stipulation and Agreement of Settlement (the “Stipulation”) in the Action;



WHEREAS, the Court has reviewed and considered: (a) the motion for preliminary approval of the Settlement, and the papers filed and arguments made in connection therewith; and (b) the Stipulation and the exhibits annexed thereto;

WHEREAS, the Court has read and considered the Settlement to determine, among other things, whether the Settlement is sufficiently fair, reasonable, and adequate to warrant the issuance of notice of the proposed Settlement to the members of the Class;

WHEREAS, the Parties to the Stipulation have consented to the entry of this Order; and

WHEREAS, all capitalized terms used in this Order that are not otherwise defined herein have the meanings set forth in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2017 that:

1. **Preliminary Approval of the Settlement.** The Court has reviewed the Stipulation and preliminarily finds the Settlement to be fair, reasonable and adequate, subject to further consideration at the Settlement Hearing described below.

2. **Preliminary Certification of the Settlement Class.** Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies, for the purposes of the Settlement only, the Settlement Class of: all investors who purchased or otherwise acquired the common stock of RCAP from February 12, 2014 to December 18, 2014, inclusive, and were allegedly damaged thereby. Excluded from the Settlement Class are: Defendants; the officers and directors of RCAP, RCAP Holdings and RCAP Equity; members of the Immediate Families of any excluded person and their legal representatives, heirs, successors, affiliates, or assigns; and any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class are any Settlement Class Members who properly exclude themselves by

submitting a valid and timely request for exclusion in accordance with the requirements set forth below and in the Notice.

3. The Court finds and concludes that the prerequisites of class action certification under Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been satisfied for the Settlement Class defined herein and for the purposes of the Settlement only, in that:

- (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members is impracticable;
- (b) there are questions of law and fact common to the Settlement Class Members;
- (c) the claims of Lead Plaintiffs are typical of the Settlement Class's claims;
- (d) Lead Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of the Settlement Class;
- (e) the questions of law and fact common to Settlement Class Members predominate over any individual questions; and
- (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering that the claims of Settlement Class Members in the Action are substantially similar and would, if tried, involve substantially identical proofs and may therefore be efficiently litigated and resolved on an aggregate basis as a class action; the amounts of the claims of many of the Settlement Class Members are too small to justify the expense of individual actions; and it does not appear that there is significant interest among Settlement Class Members in individually controlling the litigation of their claims.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of the Settlement only, Lead Plaintiffs Oklahoma Police Pension Fund and Retirement System and City of Providence, Rhode Island are certified as Class Representatives for the Settlement Class. The law firms of Labaton Sucharow LLP and Scott+Scott, Attorneys at Law, LLP are appointed Class Counsel for the Settlement Class.

5. **Preliminary Findings Concerning Proposed Settlement.** The Court preliminarily finds that the proposed Settlement should be approved as: (i) the result of serious, extensive arm's-length and non-collusive negotiations; (ii) falling within a range of reasonableness warranting final approval; (iii) having no obvious deficiencies; and (iv) warranting notice of the proposed Settlement to Class Members and further consideration of the Settlement at the fairness hearing described below.

6. **Settlement Hearing.** A hearing (the "Settlement Hearing") in accordance with Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on \_\_\_\_\_, 2017, at \_\_:\_\_\_\_\_.m. for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate, and should be approved by the Court; (b) to determine whether the proposed Final Order and Judgment ("Judgment") as provided under the Stipulation should be entered, and to determine whether the release by the Settlement Class of the Released Plaintiffs' Claims, as provided in the Stipulation, should be provided to the Released Defendant Parties; (c) to determine whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable and should be approved by the Court; (d) to determine whether the Settlement Class should be finally certified for the purposes of Settlement only; whether Lead Plaintiffs should be finally certified as Class Representatives for the Settlement Class; and whether the law firms of

Labaton Sucharow LLP and Scott+Scott, Attorneys at Law, LLP should be finally appointed Class Counsel for the Settlement Class; (e) to consider Lead Counsel's application for an award of attorneys' fees and Litigation Expenses (which may include an application for Lead Plaintiffs of their reasonable costs and expenses (including lost wages) directly related to their representations of the Settlement Class, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA")); and (f) to rule upon any other matters that the Court may deem appropriate.

7. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Settlement Class of any kind. The Court further reserves the right to enter the Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may also adjourn the Settlement Hearing or modify any of the dates in this Order without further notice to members of the Settlement Class.

8. **Notice.** The Court approves the form, substance, and requirements of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses ("Notice") and the Proof of Claim and Release form ("Claim Form"), substantially in the forms annexed hereto as Exhibits 1 and 2, respectively, and finds they: (a) constitute the best notice to Class Members practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to describe the terms and effect of the Settlement and to apprise Settlement Class Members of their right to object to the proposed Settlement or to exclude themselves from the Settlement Class; (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive such notice; and (d) satisfy all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) – (e)), the United

States Constitution (including the Due Process Clause), Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, the Rules of this Court, and any other applicable law.

9. The Court approves the retention of A.B. Data Ltd. as the Claims Administrator. The Claims Administrator shall cause the Notice and the Claim Form, substantially in the forms annexed hereto as Exhibits 1 and 2, respectively, to be mailed, by first-class mail, postage prepaid, no later than ten (10) business days after entry of this Order (“Notice Date”), to all Settlement Class Members who can be identified with reasonable effort. Defendant RCAP, to the extent it has not already done so, and no later than five (5) business days following entry of this Order, shall provide, or cause to be provided, to Lead Counsel or the Claims Administrator, at no cost to Lead Plaintiffs or the Settlement Class, the Company’s transfer records in electronic searchable form, such as Excel, containing the names and addresses of persons and entities that purchased or otherwise acquired the common stock of RCAP during the Class Period.

10. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities that purchased or otherwise acquired the common stock of RCAP during the Class Period as record owners but not as beneficial owners. These nominees SHALL EITHER: (a) WITHIN SEVEN (7) CALENDAR DAYS of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice to forward to all beneficial owners for which they purchased or otherwise acquired the common stock of RCAP during the Class Period and WITHIN SEVEN (7) CALENDAR DAYS of receipt of those Notices from the Claims Administrator forward them to all those beneficial owners; or (b) WITHIN SEVEN (7) CALENDAR DAYS of receipt of the Notice, provide a list of the names and addresses of all those beneficial owners to the Claims Administrator, and the

Claims Administrator shall send the Notice promptly to the identified beneficial owners. Nominees who elect to send the Notice to their beneficial owners SHALL ALSO send a statement to the Claims Administrator confirming that the mailing was made and shall retain their mailing records for use in connection with any further notices that may be provided in the Action. Upon full and timely compliance with these directions, the nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought.

11. Pursuant to the Stipulation, Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all Notice and Administration Costs actually and reasonably incurred. Such costs and expenses shall include, without limitation, the actual costs of publication, printing, and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses actually incurred and fees reasonably charged by the Claims Administrator in connection with providing notice and processing the submitted claims, and the reasonable fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation (including the Supplemental Agreement), all Notice and Administration Costs actually paid or incurred, including any related fees, will not be returned or repaid to Defendants or to any other person or entity who or which paid any portion of the Settlement Amount.

12. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of mailing of the Notice and Proof of Claim.

13. The Court approves the form of the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses ("Summary Notice"), substantially in the form annexed hereto as Exhibit 3, and directs that Lead Counsel shall cause the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of publication of the Summary Notice.

14. The form and content of the notice program described in this Order, and the methods provided in this Order of notifying the Settlement Class of the proposed Settlement of the Action and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, and Due Process; constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled to notice.

15. **Submission of Claim Forms.** In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the Stipulation, each Claimant must take the following actions and be subject to the following conditions:

(a) The Claimant must submit a properly executed Claim Form, substantially in the form annexed hereto as Exhibit 2, to the Claims Administrator, at the address indicated in the Notice, postmarked or received no later than one hundred twenty (120) calendar days after the Notice Date. Each Claim Form shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first-class or overnight mail, postage prepaid) as long as

the Claim Form is actually received before the motion for an order of the Court approving distribution of the Net Settlement Fund. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice. Any Settlement Class Member who does not timely submit a Claim Form within the time provided for shall be barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by the Court or allowed by Lead Counsel, but shall remain bound by all determinations and judgments in this Action concerning the Settlement. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claim Forms provided such acceptance does not delay the distribution of the Net Settlement Fund to Authorized Claimants.

(b) The Claim Form submitted by each Claimant must satisfy the following conditions, unless otherwise allowed by the Stipulation: (a) it must be properly completed, signed, and submitted in a timely manner in accordance with the preceding subparagraph; (b) it must be accompanied by adequate supporting documentation for the transactions reported in it, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or other documentation that is deemed adequate by the Claims Administrator or Lead Counsel; (c) if the person executing the Claim Form is acting in a representative capacity, a certification of his or her current authority to act on behalf of the Claimant must be included in the Claim Form; and (d) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained in it and must be signed under penalty of perjury.



(c) As part of the Claim Form, each Claimant shall submit to the jurisdiction of the Court with respect to the claim submitted.

16. **Appearance.** Any Settlement Class Member may enter an appearance in this Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. If any Settlement Class Member does not enter an appearance, he, she, or it will be represented by Lead Counsel.

17. **Exclusion from the Settlement Class.** Settlement Class Members shall be bound by all orders, determinations, and judgments in this Action, whether favorable or unfavorable, regardless of whether such Class Member submits a Proof of Claim form, unless they request exclusion from the Settlement Class in a timely and proper manner, as provided below. A putative Settlement Class Member wishing to request exclusion from the Settlement Class must mail the request in written form by first-class mail to the address designated in the Notice for exclusion requests, such that it is received no later than thirty (30) calendar days before the Settlement Hearing. The request for exclusion must state the name, address, and telephone number of the Person seeking exclusion and, in the case of entities, the name and address of the appropriate contact person for the entity; must state that the Person requests to be “excluded from the Class in *Weston v. RCS Capital Corporation*, No. 1:14-CV-10136-GBD (S.D.N.Y.)” and must be signed by the Person seeking exclusion. Persons requesting exclusion must also state the following information requested in the Notice: the number of shares of RCAP common stock purchased, acquired, and/or sold during the Class Period, as well as the dates, number of shares, and prices of each such purchase, acquisition, or sale. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

18. Putative Settlement Class Members whose requests for exclusion from the Settlement Class are allowed by the Court shall not be eligible to receive any payment from the Net Settlement Fund.

19. **Objections.** Any Settlement Class Member who does not request exclusion from the Settlement Class may object to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's application for attorneys' fees and expenses. Any objections must state (a) the name, address, telephone number, and e-mail address of the objector and must be signed by the objector; (b) that the objector is objecting to the proposed Settlement, Plan of Allocation, or application for attorneys' fees and Litigation Expenses in *Weston v. RCS Capital Corporation*, No. 1:14-CV-10136-GBD (S.D.N.Y.); (c) the objection(s) and the specific reasons for each objection, including any legal and evidentiary support, including witnesses, the Settlement Class Member wishes to bring to the Court's attention; and (d) include documents sufficient to prove the objector's membership in the Class, such as the number of shares of RCAP common stock, purchased, acquired or sold during the Class Period, as well as the dates and prices of each such purchase, acquisition, and/or sale. The Court will consider a Settlement Class Member's objection only if the Settlement Class Member has served by hand or by mail his, her or its written objection and supporting papers, such that they are received no later than thirty (30) calendar days before the Settlement Hearing, upon Lead Counsel and Defendants' Counsel, and has filed the objection and supporting papers with the Clerk of the Court, no later than thirty (30) calendar days before the Settlement Hearing. The address for filing objections with the Court and service on counsel are as follows:

**Court**

Clerk of the Court  
United States District Court for the

Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

**Lead Counsel**

Ira A. Schochet  
Labaton Sucharow LLP  
140 Broadway  
New York, NY 10005

Deborah Clark-Weintraub  
Scott + Scott, Attorneys at Law, LLP  
The Helmsely Building  
230 Park Avenue, 17<sup>th</sup> Floor  
New York, NY 10169

**Defendants' Counsel Representative**

Audra J. Soloway  
Paul, Weiss, Rifkind, Wharton & Garrison  
LLP  
1285 Avenue of the Americas  
New York, NY 10019

Any Settlement Class Member who does not make his, her, or its objection in the manner provided for in this Order and in the Notice shall be deemed to have waived the objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, to the Plan of Allocation, or to the request for attorneys' fees and expenses, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Settlement Class Members submitting written objections are not required to attend the Settlement Hearing, but any Settlement Class Member wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses must file a written objection and indicate in the written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the

Settlement Hearing. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

20. **Supporting Papers.** All papers in support of the Settlement, Plan of Allocation, and Lead Counsel's request for an award of attorneys' fees and expenses shall be filed with the Court and served no later than forty-five (45) calendar days before the date set in this Order for the Settlement Hearing. If reply papers are necessary, they must be filed with the Court and served no later than seven (7) calendar days before the Settlement Hearing.

21. **Settlement Fund.** All funds held in escrow shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until the funds are disbursed pursuant to the Stipulation and/or further order of the Court.

22. **Termination.** If the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, then the Stipulation, including any amendment(s) to it, except as expressly provided in the Stipulation, and this Order shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties shall be deemed to have reverted to their respective litigation positions in the Action immediately prior to March 20, 2017, and the Settlement Fund shall be returned in accordance with ¶ 40 of the Stipulation.

23. **Use of Order.** Neither this Order, the Term Sheet, the Stipulation (whether or not finally approved or consummated), nor their negotiation, or any proceedings taken pursuant to them: (a) shall be offered against any of the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendant Parties with respect to the truth of any fact alleged by Lead Plaintiffs, or

the validity of any claim that was or could have been asserted, or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind by any of the Released Defendant Parties; (b) shall be offered against any of the Plaintiffs' Releasees as evidence of, or construed as, or deemed to be evidence of, any 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 Plaintiffs' Releasees in any 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 if the Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement; (c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given represents the amount which could be or would have been recovered after trial; and (d) shall be construed against Plaintiffs' Releasees that any of their claims are without merit, that any of Released Defendant Parties had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount. The Parties further understand and agree that Defendants deny all of Plaintiffs' claims and material allegations asserted in this proceeding; and that the Parties shall, in good faith, communicate the terms of the Settlement in a manner that is consistent with the fact that no adjudication of fault was made by any court or jury.

24. **Stay.** Until otherwise ordered by the Court, the Court shall continue to stay all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be

approved, Lead Plaintiffs and all Settlement Class Members shall not institute, commence, or prosecute any action which asserts Released Plaintiffs' Claims against the Released Defendant Parties.

25. **Jurisdiction.** The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Honorable George B. Daniels  
UNITED STATES DISTRICT JUDGE

# **Exhibit A-1**

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

GRADY SCOTT WESTON, Individually And  
On Behalf Of All Others Similarly Situated,

Plaintiffs,

V.

RCS CAPITAL CORPORATION, RCAP  
HOLDINGS, LLC, RCAP EQUITY, LLC,  
NICHOLAS S. SCHORSCH, BRIAN S.  
BLOCK, EDWARD MICHAEL WEIL,  
WILLIAM M. KAHANE, BRIAN D. JONES,  
PETER M. BUDKO, MARK AUERBACH,  
JEFFREY BROWN, C. THOMAS  
MCMILLEN, AND HOWELL WOOD,

Defendants.

Civ. No. 1:14-CV-10136-GBD

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT,  
AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

**If you purchased or otherwise acquired the common stock of RCS Capital Corporation during the period from February 12, 2014 to December 18, 2014, inclusive (the “Class Period”), and were allegedly damaged thereby, you may be entitled to a payment from a class action settlement.**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

- The purpose of this Notice is to inform you of: (i) the pendency of the above-captioned securities class action (the “Action”); (ii) the proposed settlement of the Action (the “Settlement”) on the terms and conditions provided for in the Stipulation and Agreement of Settlement, dated June 2, 2017 (the “Stipulation”);<sup>1</sup> and (iii) the hearing to be held by the Court (the “Settlement Hearing”). At the Settlement Hearing, the Court will consider: (i) whether the Settlement should be approved; (ii) whether the proposed plan for allocating the net proceeds of the Settlement to eligible members of the Settlement Class (the “Plan of Allocation”) should be approved; (iii) Lead Counsel’s application for attorneys’ fees and expenses; and (iv) certain other matters. Please read this Notice carefully. This Notice describes important rights you may have and what steps you must

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<sup>1</sup> The Stipulation can be viewed at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).



take if you wish to participate in the Settlement or wish to be excluded from the Settlement Class.<sup>2</sup>

- If approved by the Court, the Settlement will create a \$31 million cash fund, plus any interest earned thereon, for the benefit of eligible Settlement Class Members, less any attorneys’ fees and expenses awarded by the Court, Notice and Administration Costs, and Taxes.
- The Settlement resolves claims by Court-appointed Lead Plaintiffs Oklahoma Police Pension Fund and Retirement System and City of Providence, Rhode Island (collectively, “Lead Plaintiffs”) that have been asserted on behalf of the Settlement Class against RCS Capital Corporation (“RCAP” or the “Company”), RCAP Holdings, LLC (“RCAP Holdings”), RCAP Equity, LLC (“RCAP Equity”), Nicholas S. Schorsch, Brian S. Block, Edward M. Weil, Jr., William M. Kahane, Brian D. Jones, Peter M. Budko, Mark Auerbach, Jeffrey Brown, C. Thomas McMillen and Howell Wood (collectively, “Defendants”); avoids the costs and risks of continuing the litigation; pays money to eligible Settlement Class Members; and releases the Released Defendant Parties (defined below) from liability.

**If you are a Settlement Class Member, your legal rights will be affected by this Settlement whether you act or do not act. Please read this Notice carefully.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED OR RECEIVED NO LATER THAN _____, 2017</b>	The <u>only</u> way to be eligible to receive a payment from the Net Settlement Fund.
<b>EXCLUDE YOURSELF BY SUBMITTING A WRITTEN REQUEST SO THAT IT IS RECEIVED NO LATER THAN _____, 2017</b>	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Net Settlement Fund. This is the only option that, assuming your claim is timely brought, might allow you to ever bring or be part of any other lawsuit against Defendants and/or the other Released Defendant Parties concerning the Released Plaintiffs’ Claims. <i>See</i> Question 13 below for details.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN _____, 2017</b>	Write to the Court about why you do not like the Settlement, the Plan of Allocation, and/or Lead Counsel’s motion for attorneys’ fees and payment of Litigation Expenses. If you object, you will still be a member of the Settlement Class. <i>See</i> Question 16 below for details.
<b>GO TO A HEARING ON _____, 2017 AND</b>	Ask to speak in Court about the Settlement. If you submit an objection, you may (but you do not have to) attend the

<sup>2</sup> All capitalized terms not otherwise defined in this Notice have the same meanings as defined in the Stipulation.

<b>FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN _____, 2017</b>	hearing and, at the discretion of the Court, speak in Court about your objection. <i>See</i> Question 20 below for details.
<b>DO NOTHING</b>	You will not be eligible to receive a payment from the Net Settlement Fund, you will give up rights, and you will still be bound by the Settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made to all Settlement Class Members who timely submit valid Claim Forms, if the Court approves the Settlement and after any appeals are resolved. Please be patient.

### **SUMMARY OF THE NOTICE**

#### **Statement of the Settlement Class’s Recovery**

1. Lead Plaintiffs have entered into the proposed Settlement with Defendants which, if approved by the Court, will resolve the Action in its entirety. Subject to Court approval, Lead Plaintiffs, on behalf of the Settlement Class, have agreed to settle the Action in exchange for a payment of \$31,00,000 in cash (the “Settlement Amount”) to be deposited into an interest-bearing Escrow Account (the “Settlement Fund”). The Net Settlement Fund (as defined below) will be distributed to Settlement Class Members according to a Court-approved plan of allocation. The proposed Plan of Allocation is set forth on pages \_\_\_-\_\_\_ below.

#### **Estimate of Average Amount of Recovery Per Share**

2. Based on Lead Plaintiffs’ damages expert’s estimate of the number of shares of RCAP common stock eligible to participate in the Settlement, and assuming that all investors eligible to participate in the Settlement do so, Lead Plaintiffs estimate that the average recovery, before deduction of any Court-approved fees and expenses, such as attorneys’ fees, Litigation Expenses, Taxes, and Notice and Administration Costs, would be approximately \$0.68 per

allegedly damaged share.<sup>3</sup> If the Court approves the attorneys' fees and Litigation Expenses requested by Lead Counsel (discussed below), the average recovery would be approximately \$0.47 per allegedly damaged share. **Settlement Class Members should note, however, that the foregoing average recovery amounts are only estimates and Settlement Class Members may recover more or less than these estimated amounts.** An individual Settlement Class Member's actual recovery will depend on, for example: (i) the total number of claims submitted; (ii) the amount of the Net Settlement Fund; (iii) when the Settlement Class Member purchased or acquired RCAP common stock during the Class Period; and (iv) whether and when the Settlement Class Member sold RCAP common stock. See the Plan of Allocation beginning on page [\_\_] for information on the calculation of your Recognized Claim.

#### **Statement of Potential Outcome of Case**

3. The Parties disagree about both liability and damages and do not agree on the damages that would be recoverable if Lead Plaintiffs were to prevail on each claim asserted against Defendants. The issues on which the Parties disagree include, for example: (i) whether Defendants made any statements or omitted any facts that were materially false or misleading, or otherwise actionable under the federal securities laws; (ii) whether any such allegedly materially false or misleading statements or omissions were made with the requisite level of intent or recklessness; (iii) the amounts by which the prices of RCAP common stock were allegedly artificially inflated, if at all, during the Class Period; and (iv) the extent to which external factors, such as general market, economic and industry conditions, influenced the trading prices of RCAP common stock at various times during the Class Period.

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<sup>3</sup> An allegedly damaged share might have been traded, and potentially damaged, more than once during the Class Period, and the average recovery indicated above represents the estimated average recovery for each share that allegedly incurred damages.

4. Defendants have denied and continue to deny any wrongdoing, deny that they have committed any act or omission giving rise to any liability or violation of law, and deny that Lead Plaintiffs and the Settlement Class have suffered any loss attributable to Defendants' actions. While Lead Plaintiffs believe they have meritorious claims, they recognize that there are significant obstacles in the way to recovery.

#### **Statement of Attorneys' Fees and Expenses Sought**

5. Lead Counsel, on behalf of all Plaintiffs' Counsel, will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 30% of the Settlement Fund, which includes any accrued interest. Lead Counsel will also apply for payment of Litigation Expenses incurred by Plaintiffs' Counsel in prosecuting the Action in an amount not to exceed \$425,000, plus accrued interest, which may include an application pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") for the reasonable costs and expenses (including lost wages) of Lead Plaintiffs directly related to their representation of the Settlement Class. If the Court approves Lead Counsel's attorneys' fees and expense application in full, the average amount of fees and expenses, assuming claims are filed for all shares eligible to participate in the Settlement, will be approximately \$0.21 per allegedly damaged share of RCAP common stock.

#### **Reasons for the Settlement**

6. For Lead Plaintiffs, the principal reason for the Settlement is the guaranteed cash benefit to the Settlement Class. This benefit must be compared to the uncertainty of being able to prove the allegations in the Complaint; the risk that the Court may grant some or all of the anticipated dismissal motions to be filed by Defendants; the uncertainty of a greater recovery after a trial and appeals, given the bankruptcy of the Company and wasting insurance policies; the risks of litigation, especially in complex actions like this; as well as the difficulties and delays inherent in such litigation (including any trial and appeals).

7. For Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that Settlement Class Members were damaged, the principal reasons for entering into the Settlement are to end the burden, expense, uncertainty, and risk of further litigation.

**Identification of Attorneys' Representatives**

8. Lead Plaintiffs and the Settlement Class are represented by Lead Counsel, Ira A. Schochet, Esq., Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, (888) 219-6877, www.labaton.com, settlementquestions@labaton.com, and Deborah Clark-Weintraub, Esq., Scott+Scott, Attorneys at Law, LLP, The Helmsley Building, 230 Park Avenue, 17th Floor, New York, New York 10169, (800) \_\_\_\_\_, www.scott-scott.com.

9. Further information regarding this Action, the Settlement, and this Notice may be obtained by contacting the Claims Administrator: \_\_\_\_\_, (\_\_\_\_) \_\_\_\_-\_\_\_\_, www.\_\_\_\_\_com; or Lead Counsel.

**Please Do Not Call the Court with Questions About the Settlement.**

[END OF PSLRA COVER PAGE]

**BASIC INFORMATION**

**1. Why did I get this Notice?**

10. The Court authorized that this Notice be sent to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired the common stock of RCAP during the period from February 12, 2014 to December 18, 2014, inclusive. **Please Note: Receipt of this Notice does not mean that you are a Member of the Settlement Class or that you will be entitled to receive a payment from the Settlement. If you are a Member of the Settlement Class and wish to be eligible for a payment, you are required to submit the Claim Form that is being distributed with this Notice and supporting documents, as explained in the Claim Form. See Question 8 below.**

11. The Court directed that this Notice be sent to Settlement Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, including whether or not to object or exclude themselves from the Settlement Class, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

12. This Notice explains the Action, the Settlement, Settlement Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

13. The Court in charge of the Action is the United States District Court for the Southern District of New York, and the case is known as *Weston v. RCS Capital Corporation, et al.*, No. 1:14-CV-10136-GBD. The Action is assigned to the Honorable George B. Daniels, United States District Judge.

## **2. What is this case about?**

14. The Action arises from an alleged accounting fraud at American Realty Capital Properties, Inc. ("ARCP"), a public real estate investment trust that shared a number of directors with RCAP, which was allegedly perpetrated and concealed by Defendant Schorsch (co-founder of RCAP and Executive Chairman of RCAP's board of directors) and other senior management of ARCP. RCAP is a wholesale broker-dealer and investment banking and advisory business, with the majority of its revenues during the Class Period generated from services provided to AR Capital, LLC ("ARC"), a real estate management company that also shared a number of directors with RCS. Those services included the wholesale distribution of ARC's investment products. Throughout the Class Period, Defendants, among other things, allegedly made false and misleading statements and omissions regarding the strength of RCAP's business prospects, emphasizing RCAP's ability to leverage its relationship with Schorsch-related entities.

15. In December 2014, an initial securities class action complaint was filed in the United States District Court for the Southern District of New York (the “Court”) on behalf of investors in RCAP. On March 31, 2015, the Court entered an Order appointing Oklahoma Police Pension Fund and Retirement System and the City of Providence, Rhode Island, as Lead Plaintiffs pursuant to the PSLRA. By the same Order, the Court approved Lead Plaintiffs’ selection of Labaton Sucharow LLP and Scott+Scott, Attorneys at Law, LLP as Lead Counsel for the class.

16. On June 1, 2015, Lead Plaintiffs filed an Amended Class Action Complaint for Violations of Federal Securities Laws, and, on June 30, 2015, Lead Plaintiffs filed the operative Corrected Amended Class Action Complaint for Violations of Federal Securities Laws (the “Complaint”), asserting claims under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the “Securities Act”) and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 (17 C.F.R. §240.10b-5) promulgated thereunder. In general, the Complaint alleged that Defendants violated the federal securities laws by making materially false and misleading statements and omissions concerning the strength of RCAP’s core wholesale distribution and investment banking business and its prospects for success. As alleged in the Complaint, because of the alleged entanglement of RCAP, ARCP, and ARC, and the fact that investors associated all of those entities with Defendant Schorsch, the alleged accounting manipulations that occurred at ARCP undercut the credibility, reputation, and business operations of RCAP, as well as ARCP, and rendered Defendants’ statements concerning the strength of RCAP’s wholesale distribution and investment banking business and its prospects for growth success, false and misleading. The Complaint further alleged that the price of RCAP common stock was artificially inflated as a result of Defendants’ allegedly false and misleading statements, and declined when the truth was revealed.

17. On September 11, 2015, Defendants filed motions to dismiss the Complaint, which Lead Plaintiffs opposed on October 27, 2015. On December 1, 2015, Defendants filed reply papers in further support of their respective motions to dismiss. Oral argument on the motions was held before the Honorable George B. Daniels on April 21, 2016. Thereafter, in light of the scheduling of settlement conferences, the motions were deemed withdrawn without prejudice.

18. On January 31, 2016, voluntary petitions for relief under Chapter 11 of the Bankruptcy Code were filed by RCAP and its affiliated debtors (collectively, the “Debtors”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), and docketed as Case No. 16-10223 (the “Bankruptcy Action”). The Action was automatically stayed as to RCAP. On February 1, 2016, RCAP filed a Notice of Suggestion of Bankruptcy in the Action.

19. The Court converted the oral argument on Defendants’ motions to dismiss scheduled for February 2, 2016 into a status conference at which Defendants updated the Court and Lead Plaintiffs regarding RCAP’s bankruptcy petition, including whether it would move the Bankruptcy Court to extend the bankruptcy stay to any non-debtor Defendants. Following the February 2, 2016 status conference, oral argument on Defendants’ motions to dismiss was adjourned to April 21, 2016 to afford Defendants (and the Debtors) the opportunity to determine whether to seek, and then pursue, such relief from the Bankruptcy Court.

20. After Defendants and the Debtors did not seek further relief from the Bankruptcy Court, a day-long hearing on the motions to dismiss was held on April 21, 2016. Immediately following the argument, the Court scheduled a settlement conference for June 30, 2016.

21. On April 25, 2016, Lead Plaintiffs filed a motion in the Bankruptcy Action requesting that the Bankruptcy Court enter an order generally granting limited relief from the



automatic bankruptcy stay pursuant to section 326(d) of the Bankruptcy Code with respect to RCAP and permitting Lead Plaintiffs to prosecute and/or settle the claims asserted in the Action against RCAP.

22. On May 5, 2016, the Bankruptcy Court entered an order partially granting Lead Plaintiffs' motion to lift the automatic bankruptcy stay against RCAP. More specifically, the order lifted the stay and granted Lead Plaintiffs relief from the plan discharge and injunction provisions of a future confirmed chapter 11 plan, "solely to prosecute and/or settle the claims asserted in the Weston Securities Litigation against RCAP. . . solely from any insurance proceeds under any insurance policies that may provide coverage for any liability of RCAP in the Weston Securities Litigation, provided, however, that to the extent any settlement with or judgment against RCAP exceeds any funded insurance payments (an "Excess Claim"), this Court shall, unless hereafter otherwise ordered by this Court, retain jurisdiction with respect to the treatment of such Excess Claim . . . ." The order allowed the Court to consider the pending motion to dismiss filed by RCAP.

23. On May 19, 2016, the Bankruptcy Court entered an order, *inter alia*, confirming the "Fourth Amended Joint Plan Of Reorganization For RCS Capital Corporation And Its Affiliated Debtors Under Chapter 11 Of The Bankruptcy Code" and "Debtors' Second Amended Joint Prepackaged Plan Of Reorganization Under Chapter 11 Of The Bankruptcy Code," which, *inter alia*, permitted Lead Plaintiffs' claims against RCAP in the Action to proceed while limiting recovery for such claims to the proceeds available under RCAP's applicable insurance policies.

24. On June 27, 2016, the Parties informed the Court of their agreement to explore mediation and accordingly requested that the June 30, 2016 settlement conference be adjourned to allow the Parties to engage in settlement negotiations before a mediator.

25. In September 2016, the Parties engaged Mr. Robert A. Meyer, a well-respected and highly experienced mediator, to assist them in exploring a potential negotiated resolution of the claims in the Action. On November 14, 2016, the Parties participated in a full-day mediation session before with Mr. Meyer in an attempt to reach a settlement. In advance of the mediation session, the Parties provided detailed mediation statements and exhibits to the Mediator which addressed the issues of both liability and damages. Following arm's-length and mediated negotiations under the auspices of Mr. Meyer, on March 20, 2017, the Parties reached an agreement-in-principle to settle the Action.

26. On June 2, 2017, the Parties executed the Stipulation, which sets forth the final terms and conditions of the Settlement.

27. Lead Plaintiffs, through Lead Counsel, have conducted a thorough investigation of the claims, defenses, and underlying events and transactions that are the subject of the Action. This process included reviewing and analyzing: (i) United States Securities and Exchange Commission ("SEC") filings by RCAP, ARCP, and their affiliates; (ii) the sworn/verified allegations in *McAlister v. American Realty Capital Properties, Inc., et al.*, Index No. 162499/2014 (Sup. Ct. N.Y. Cnty.); (iii) other court filings related to RCAP and ARCP and the issues and events in question, including (a) the amended pleadings and other filings in *In re American Realty Capital Properties, Inc. Litigation*, Civil Action No. 1:15-mc-00040-AKH (S.D.N.Y); (b) the complaint filed in *RCS Creditor Trust v. Schorsch, et al.*, Case No. 2017-0178 (Del. Ch.); (c) filings in the Bankruptcy Action; and (d) filings in actions and other proceedings brought by the United States Department of Justice ("DOJ") and SEC, including in the actions captioned (1) *U.S. v. Block*, Case No. 16-cr-00595-JPO (S.D.N.Y); (2) *U.S. v. McAlister*, Case No. 16-cr-653-AKH (S.D.N.Y); and (3) *S.E.C v. Block et al.*, Case No. 16-cv-07003-LGS (S.D.N.Y); (iv) securities analysts' reports and advisories about the Company and ARCP; (v)

press releases, investor presentations, and other public statements issued by the Company, ARCP, and their affiliates; (vi) transcripts of RCAP and ARCP conference calls; and (vii) media reports about RCAP, ARCP, and their affiliates. Lead Counsel also identified approximately 58 former RCAP employees and others with relevant knowledge and analyzed witness interviews from 13 former RCAP employees and others with relevant knowledge (three of whom have provided information as confidential witnesses) and consulted with experts on damages and loss causation issues.

### **3. Why is this a class action?**

28. In a class action, one or more persons or entities (in this case, Lead Plaintiffs), sue on behalf of people and entities who have similar claims. Together, these people and entities are a “class,” and each is a “class member.” Bringing a case, such as this one, as a class action allows the adjudication of many individuals’ similar claims that might be too small to bring economically as individual actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or “opt-out,” from the class. In this Action, the Court has appointed Oklahoma Police Pension Fund and Retirement System and City of Providence, Rhode Island to serve as Lead Plaintiffs and has appointed Labaton Sucharow LLP and Scott+Scott, Attorneys at Law, LLP to serve as Lead Counsel.

### **4. What are the reasons for the Settlement?**

29. The Court did not finally decide in favor of Lead Plaintiffs or Defendants. Instead, both sides agreed to a settlement.

30. Lead Plaintiffs and Lead Counsel believe that the claims asserted in the Action have merit. Lead Plaintiffs and Lead Counsel recognize, however, the expense and length of continued proceedings necessary to pursue their claims in the Action through trial and appeals, as well as the difficulties in establishing liability. Lead Plaintiffs and Lead Counsel have

considered the uncertain outcome and the risk of any litigation, especially in complex lawsuits like this one, as well as the difficulties and delays inherent in litigation. For example, Defendants have raised a number of arguments and defenses (which they would raise at summary judgment and trial) that they did not make false and misleading statements in violation of the Securities Act and the Exchange Act because, *inter alia*, the claims are based on inactionable statements of opinion or corporate optimism and protected by the PSLRA statutory safe harbor and, with respect to the Exchange Act claims only, that Lead Plaintiffs would not be able to establish that Defendants acted with the requisite intent given that the alleged accounting errors did not occur at Defendant RCAP, but at an affiliate, ARCP. Even assuming Lead Plaintiffs could establish liability, Defendants maintained that there was a disconnect between the alleged corrective disclosures and the alleged misstatements. Defendants also asserted certain standing arguments in connection with the Securities Act claims. In the absence of a settlement, the Parties would present factual and expert testimony on each of these issues, and there is a risk that the Court or jury would resolve these issues unfavorably against Lead Plaintiffs and the Settlement Class. There was also significant uncertainty concerning the Settlement Class's ability to recover more than the Settlement Amount after trial and the inevitable appeals, given the Company's bankruptcy filing and the potential unavailability of wasting insurance policies at the point of a non-appealable verdict. In light of the Settlement and the guaranteed cash recovery to the Settlement Class, Lead Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

31. Defendants have denied and continue to deny any wrongdoing and deny that they have committed any act or omission giving rise to any liability or violation of law. Defendants deny the allegations that they knowingly, or otherwise, made any material misstatements or

omissions; that any Member of the Settlement Class has suffered damages; that the prices of RCAP common stock were artificially inflated by reason of the alleged misrepresentations, omissions, or otherwise; or that Members of the Settlement Class were harmed by the conduct alleged in the Complaint. Nonetheless, Defendants have concluded that continuation of the Action would be protracted, time-consuming and expensive, and have taken into account the uncertainty and risks inherent in any litigation, especially a complex case like this Action, and believe that the Settlement is in the best interests of Defendants.

### **WHO IS IN THE SETTLEMENT**

32. To be eligible for a payment from the proceeds of the Settlement, you must be a Settlement Class Member.

#### **5. How do I know if I am part of the Settlement Class?**

33. The Court has directed, for the purposes of the proposed Settlement, that everyone who fits the following description is a Settlement Class Member and subject to the Settlement unless they are an excluded person (*see* Question 6 below) or take steps to exclude themselves from the Settlement Class (*see* Question 13 below):

***All investors that purchased or otherwise acquired the common stock of RCAP during the period from February 12, 2014 to December 18, 2014, inclusive, and were allegedly damaged thereby.***

34. If one of your mutual funds purchased RCAP common stock during the Class Period, that alone does not make you a Settlement Class Member. You are a Settlement Class Member only if you individually purchased or otherwise acquired RCAP common stock during the Class Period. Check your investment records or contact your broker to see if you have any eligible purchases or acquisitions.

**6. Are there exceptions to being included?**

35. Yes. There are some individuals and entities who are excluded from the Settlement Class by definition. Excluded from the Settlement Class are: Defendants; the officers and directors of RCAP, RCAP Holdings and RCAP Equity; members of the Immediate Families of any excluded person and their legal representatives, heirs, successors, affiliates, or assigns; and any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class is anyone who timely and validly seeks exclusion from the Settlement Class in accordance with the procedures described in Question 13 below.

**THE SETTLEMENT BENEFITS — WHAT YOU GET**

**7. What does the Settlement provide?**

36. In exchange for the Settlement and the release of the Released Plaintiffs' Claims against the Released Defendant Parties (*see* Question 10 below), Defendants have agreed to cause a \$31 million cash payment to be made, which, along with any interest earned on this amount, will be distributed after deduction of Court-awarded attorneys' fees and Litigation Expenses, Notice and Administration Costs, Taxes, and any other fees or expenses approved by the Court (the "Net Settlement Fund"), among all Settlement Class Members who submit valid Claim Forms and are found by the Court to be eligible to receive a distribution from the Net Settlement Fund ("Authorized Claimants").

**8. How can I receive a payment?**

37. To qualify for a payment from the Net Settlement Fund, you must submit a timely and valid Claim Form. A Claim Form is included with this Notice. If you did not receive a Claim Form, you can obtain one from the website dedicated to the Settlement: [www.\\_\\_\\_\\_\\_com](http://www._____com), or from Lead Counsel's websites: [www.labaton.com](http://www.labaton.com) and [- 15 -](http://www.scott-</a></p></div><div data-bbox=)

scott.com. You can also request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at (\_\_\_\_) \_\_\_\_-\_\_\_\_.

38. Please read the instructions contained in the Claim Form carefully, fill out the Claim Form, include all the documents the form requests, sign it, and mail or submit it to the Claims Administrator so that it is **postmarked or received no later than \_\_\_\_\_, 2017.**

**9. When will I receive my payment?**

39. The Court will hold a Settlement Hearing on \_\_\_\_\_, **2017** to decide, among other things, whether to finally approve the Settlement. Even if the Court approves the Settlement, there may be appeals which can take time to resolve, perhaps more than a year. It also takes a long time for all of the Claim Forms to be accurately reviewed and processed. Please be patient.

**10. What am I giving up to receive a payment or stay in the Settlement Class?**

40. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the “Effective Date” of the Settlement, you will release all “Released Plaintiffs’ Claims” against the “Released Defendant Parties.”

- (a) **“Released Plaintiffs’ Claims”** means any and all claims, demands, losses, rights, and causes of action of any nature whatsoever, known or Unknown, whether arising under federal, state, common, or foreign law, whether brought directly or indirectly, that (a) were asserted in this Action or that could have been asserted in the Action, or in any other action or forum, whether foreign or domestic, and (b) arise out of, are based upon, or relate in any way to both (i) the purchase, sale or acquisition of RCAP common stock during the Class Period and (ii) any of the allegations, acts, transactions, facts, events,

matters, occurrences, representations or omissions involved, set forth, alleged or referred to, in the Action. For the avoidance of doubt, the Settlement does not affect: (i) the pending claims asserted by the Securities and Exchange Commission in *SEC v. Brian S. Block and Lisa Pavelka McAlister*, 1:16-cv-07003 (S.D.N.Y.), or by the Department of Justice in *United States v. Lisa McAlister*, 16-cr-00653 (S.D.N.Y.) and *United States v. Brian Block*, 16-cr-00595 (S.D.N.Y.); or (ii) any claims for losses allegedly incurred in connection with the purchase, sale, acquisition or holding of the securities of American Realty Capital Properties, Inc., as asserted in *In re American Realty Capital Properties, Inc. Litigation*, Case No. 1:15-mc-00040-AKH (S.D.N.Y.) (including *Teachers Insurance and Annuity Assoc. of America, et al. v. American Realty Capital Properties, Inc., et al.*, Case No. 15-cv-00421 (S.D.N.Y.) and all other cases consolidated therein or designated as related thereto).

(a) **“Released Defendant Parties”** means Defendants and their respective present and former parents, subsidiaries, divisions, affiliates, present and former employees, members, general and limited partners and partnerships, principals, officers, directors, attorneys, advisors (including, but not limited to, financial advisors), accountants, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives and assigns of each of them, in their capacity as such.

(b) **“Unknown Claims”** means any Released Claims which Lead Plaintiffs or any other Settlement Class Member, Defendants, or any of the other Releasees does not know or suspect to exist in his, her or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to



exclude himself, herself, or itself from the Settlement Class. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members and each of the other Releasees shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law, that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Lead Plaintiffs, other Settlement Class Members, or Defendants, and their respective Releasees may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Released Claims, but the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members and Releasees shall be deemed to have waived, and by operation of the Judgment, or if applicable, the Alternative Judgment, shall have expressly waived any and all Released Claims without regard to subsequent discovery or existence of such different or additional facts. Lead Plaintiffs and Defendants acknowledge, and each of the other Settlement Class Members and each of the other Releasees shall be deemed by operation of law to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Plaintiffs’ Claims and

Released Defendants' Claims was separately bargained for and is a key element of the Settlement.

41. The "Effective Date" will occur when an Order entered by the Court approving the Settlement becomes Final and not subject to appeal. If you remain a member of the Settlement Class, all of the Court's orders, whether favorable or unfavorable, will apply to you and legally bind you.

42. Upon the "Effective Date," Defendants will also provide a release of any claims against Lead Plaintiffs and the Settlement Class arising out of or related to the institution, prosecution, or settlement of the claims in the Action.

#### **EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS**

43. If you do not want to be eligible to receive a payment from the Settlement, and you want to keep any right you may have to sue or continue to sue Defendants and the other Released Defendant Parties on your own concerning the Released Plaintiffs' Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or "opting out." **Please note:** If you decide to exclude yourself from the Settlement Class, there is a risk that any lawsuit you may file to pursue claims alleged in the Action may be dismissed, including because the suit is not filed within the applicable time periods required for filing suit.

<b>11. How do I exclude myself from the Settlement Class?</b>
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44. To exclude yourself from the Settlement Class, you must mail a signed letter stating that you "request to be excluded from the Settlement Class in *Weston v. RCS Capital Corporation*, No. 1:14-CV-10136 (S.D.N.Y.)." You cannot exclude yourself by telephone or e-mail. Each request for exclusion must also state: (i) the name, address, e-mail, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person for the entity; (ii) the number of shares of

RCAP common stock purchased, acquired, and/or sold during the Class Period, as well as the date, number of shares and price per share of each such purchase, acquisition, and/or sale; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion must be submitted so that it is **received no later than \_\_\_\_\_, 2017** to:

*RCAP Securities Litigation*

c/o \_\_\_\_\_

P.O. Box \_\_\_\_\_

45. Your exclusion request must comply with these requirements in order to be valid. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, you cannot object to the Settlement because you will not be a Settlement Class Member. However, if you submit a valid exclusion request, you will not be legally bound by anything that happens in the Action, and you may be able to sue (or continue to sue) Defendants and the other Released Defendant Parties in the future.

<b>12. If I do not exclude myself, can I sue Defendants and the other Released Defendant Parties for the same thing later?</b>
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46. No. Unless you properly exclude yourself, you will remain in the Settlement Class and you will give up any rights to sue Defendants and the other Released Defendant Parties for any and all Released Plaintiffs' Claims. If you have a pending lawsuit against any of the Released Defendant Parties, **speak to your lawyer in that case immediately**. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is \_\_\_\_\_, **2017**.

<b>13. If I exclude myself, can I get money from the proposed Settlement?</b>
---

47. No. If you exclude yourself, do not send in a Claim Form to ask for any money. But, you may exercise any right you may have to sue, continue to sue, or be part of a different lawsuit against Defendants and the other Released Defendant Parties.

## **THE LAWYERS REPRESENTING YOU**

<b>14. Do I have a lawyer in this case?</b>
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48. The Court appointed the law firms of Labaton Sucharow LLP and Scott+Scott, Attorneys at Law, LLP to represent all Settlement Class Members. These lawyers are called “Lead Counsel.” You will not be separately charged for these lawyers. The Court will determine the amount of Plaintiffs’ Counsel’s fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

<b>15. How will the lawyers be paid?</b>
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49. Plaintiffs’ Counsel have been prosecuting the Action on a contingent basis and have not been paid for any of their work. Lead Counsel will ask the Court to award Plaintiffs’ Counsel attorneys’ fees of no more than 30% of the Settlement Fund, which will include any accrued interest. Lead Counsel will also seek payment of Litigation Expenses incurred by Plaintiffs’ Counsel in the prosecution of the Action of no more than \$425,000, plus accrued interest, which may include an application in accordance with the PSLRA for the reasonable costs and expenses (including lost wages) of Lead Plaintiffs directly related to their representation of the Settlement Class. As explained above, any attorneys’ fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

### **OBJECTING TO THE SETTLEMENT, THE PLAN OF ALLOCATION, OR THE FEE AND EXPENSE APPLICATION**

<b>16. How do I tell the Court that I do not like something about the proposed Settlement?</b>
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50. If you are a Settlement Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation of the Net Settlement Fund, and/or Lead Counsel’s application for an award of attorneys’ fees and Litigation Expenses. You may give reasons why

you think the Court should not approve any or all of the Settlement terms or related relief. If you would like the Court to consider your views, you must file a proper objection within the deadline, and according to the following procedures.

51. To object, you must send a signed letter stating that you object to the proposed Settlement in “*Weston v. RCS Capital Corporation*, No. 1:14-CV-10136 (S.D.N.Y.)” The objection must: (i) state the name, address, telephone number, and e-mail address of the person or entity objecting and must be signed by the objector; (ii) contain a statement of the Settlement Class Member’s objection or objections and the specific reasons for each objection, including any legal and evidentiary support (including witnesses) the Settlement Class Member wishes to bring to the Court’s attention; and (iii) include documents sufficient to prove membership in the Settlement Class, including the number of shares of RCAP common stock purchased, acquired, and/or sold during the Class Period, as well as the date, number of shares, and price per share of each such purchase, acquisition, and/or sale. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be forever foreclosed from making any objection to the proposed Settlement, the Plan of Allocation, and/or Lead Counsel’s application for attorneys’ fees and Litigation Expenses. Your objection must be filed with the Court **no later than \_\_\_\_\_, 2017 and** mailed or delivered to the following counsel so that it is **received no later than \_\_\_\_\_, 2017:**

<u>Court</u>	<u>Lead Counsel</u>	<u>Defendants' Counsel Representative</u>
<p><b>Clerk of the Court</b>            United States District Court            Southern District of New York            Daniel Patrick Moynihan U.S.            Courthouse            500 Pearl Street            New York, NY 10007</p>	<p><b>Labaton Sucharow LLP</b>            Ira A. Schochet, Esq.            140 Broadway            New York, NY 10005</p> <p><b>Scott+Scott, Attorneys at Law, LLP</b>            Deborah Clark-Weintraub, Esq.            The Helmsely Building            230 Park Avenue, 17<sup>th</sup> Floor            New York, NY 10169</p>	<p><b>Paul, Weiss, Rifkind, Wharton &amp; Garrison LLP</b>            Audra J. Soloway, Esq.            1285 Avenue of the Americas            New York, NY 10019</p>

52. You do not need to attend the Settlement Hearing to have your written objection considered by the Court. However, any Settlement Class Member who has not submitted a request for exclusion and who has complied with the procedures described in this Question 16 and below in Question 20 may appear at the Settlement Hearing and be heard, to the extent allowed by the Court, about their objection. An objector may appear in person or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Settlement Hearing.

<b>17. What is the difference between objecting and seeking exclusion?</b>
--

53. Objecting is telling the Court that you do not like something about the proposed Settlement, Plan of Allocation, or Lead Counsel's application for attorneys' fees and Litigation Expenses. You can still recover money from the Settlement. You can object *only* if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself from the Settlement Class, you have no basis to object because the Settlement and the Action no longer affect you.

## THE SETTLEMENT HEARING

### **18. When and where will the Court decide whether to approve the proposed Settlement?**

54. The Court will hold the Settlement Hearing on \_\_\_\_\_, 2017 at \_\_\_\_\_.m., in Courtroom 11A at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007.

55. At this hearing, the Court will consider, among other things, whether: (i) the Settlement is fair, reasonable, adequate, and should be finally approved; (ii) the Plan of Allocation is fair and reasonable, and should be approved; and (iii) the application of Lead Counsel for an award of attorneys' fees and payment of Litigation Expenses, including those of Lead Plaintiffs, is reasonable and should be approved. The Court will take into consideration any written objections filed in accordance with the instructions in Question 16 above. We do not know how long it will take the Court to make these decisions.

56. You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Lead Counsel or visit the settlement website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com), beforehand to be sure that the hearing date and/or time has not changed.

### **19. Do I have to come to the Settlement Hearing?**

57. No. Lead Counsel will answer any questions the Court may have. But, you are welcome to attend at your own expense. If you submit a valid and timely objection, the Court will consider it and you do not have to come to Court to discuss it. You may have your own lawyer attend (at your own expense), but it is not required. If you do hire your own lawyer, he or she must file and serve a Notice of Appearance in the manner described in the answer to Question 20 below **no later than** \_\_\_\_\_, 2017.

**20. May I speak at the Settlement Hearing?**

58. You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (*see* Question 16), **no later than \_\_\_\_\_, 2017**, a statement that you, or your attorney, intend to appear in “*Weston v. RCS Capital Corporation*, No. 1:14-CV-10136 (S.D.N.Y.)” Persons who intend to present evidence at the Settlement Hearing must also include in their objections (prepared and submitted in accordance with the answer to Question 16 above) the identities of any witnesses they may wish to call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing. You may not speak at the Settlement Hearing if you exclude yourself from the Settlement Class or if you have not provided written notice of your objection and intention to speak at the Settlement Hearing in accordance with the procedures described in this Question 20 and Question 16 above.

**IF YOU DO NOTHING**

**21. What happens if I do nothing at all?**

59. If you do nothing and you are a member of the Settlement Class, you will receive no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Plaintiffs’ Claims. To share in the Net Settlement Fund, you must submit a Claim Form (*see* Question 8 above). To start, continue, or be a part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Plaintiffs’ Claims, you must exclude yourself from the Settlement Class (*see* Question 13 above).



## GETTING MORE INFORMATION

### 22. Are there more details about the Settlement?

60. This Notice summarizes the proposed Settlement. More details are contained in the Stipulation. You may review the Stipulation filed with the Court or other documents in the case during business hours at the Office of the Clerk of the United States District Court, Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007. Subscribers to PACER, a fee-based service, can also view the papers filed publicly in the Action through the Court's on-line Case Management/Electronic Case Files System at <https://www.pacer.gov>.

61. You can also get a copy of the Stipulation, and other documents related to the Settlement, as well as additional information about the Settlement by visiting the website dedicated to the Settlement, [www.\\_\\_\\_\\_\\_.com](http://www._____.com), where you will find answers to common questions about the Settlement and can download copies of the Stipulation or Claim Form. You may also call the Claims Administrator toll free at (\_\_\_\_) \_\_\_\_-\_\_\_\_ or write to the Claims Administrator at *RCAP Securities Litigation*, c/o\_\_\_\_\_. **Please do not call the Court with questions about the Settlement.**

## PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

### 23. How will my claim be calculated?

62. As discussed above, the Settlement provides \$31 million in cash for the benefit of the Settlement Class. The Settlement Amount and any interest it earns constitute the "Settlement Fund." The Settlement Fund, after deduction of Court-approved attorneys' fees and Litigation Expenses, Notice and Administration Costs, Taxes, and any other fees or expenses approved by the Court, is the "Net Settlement Fund." If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants – *i.e.*, members of the

Settlement Class who timely submit valid Claim Forms that are accepted for payment by the Court – in accordance with this proposed Plan of Allocation or such other plan of allocation as the Court may approve. Settlement Class Members who do not timely submit valid Claim Forms will not share in the Net Settlement Fund, but will otherwise be bound by the Settlement. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the settlement website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

63. The objective of the Plan of Allocation is to distribute the Net Settlement Fund equitably among those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The Plan of Allocation reflects Lead Plaintiffs' damages expert's analysis undertaken to that end, including a review of publicly available information regarding RCAP and statistical analysis of the price movements of RCAP publicly traded common stock and the price performance of relevant market and industry indices during the Class Period, as well as the statutory provisions for a claim for violations of Sections 11 and 12 of the Securities Act. The Plan of Allocation, however, is not a formal damage analysis, and the calculations made in accordance with the Plan of Allocation are not intended to be estimates of, or indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations intended to be estimates of the amounts that will be paid to Authorized Claimants. The computations under the Plan of Allocation are only a method to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making pro rata allocations of the Net Settlement Fund.

#### **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

64. In this Action, Class Members may have claims under Sections 11 and/or 12(a)(2) of the Securities Act and/or Section 10(b) of the Exchange Act. Pursuant to the Plan of

Allocation, if a Claimant has a claim under **both the Securities Act and the Exchange Act for the same transaction in RCAP common stock**, the claim will be calculated under the section of the Plan (*i.e.*, Section I or Section II below) that yields the largest loss.

65. For purposes of determining whether a Claimant has a “Recognized Claim” (defined below) the respective purchases, acquisitions, and sales of RCAP common stock will first be matched on a First In/First Out (“FIFO”) basis. If a Settlement Class Member has more than one purchase/acquisition or sale of RCAP common stock during the Class Period, the Class Period sales will be matched first against any holdings at the beginning of the Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

66. A “Recognized Loss Amount” will be calculated as set forth below for each share of RCAP common stock purchased or otherwise acquired during the Class Period that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a Claimant’s Recognized Loss Amount results in a negative number (a gain), that number shall be set to zero.

67. A Claimant’s “Recognized Claim” under the Plan shall be the sum of his, her or its Recognized Loss Amounts as calculated under the Plan.

#### **I. EXCHANGE ACT RECOGNIZED LOSS AMOUNT CALCULATIONS**

68. In order to have recoverable damages pursuant to the Exchange Act, disclosure of the alleged misrepresentations or omissions must be the cause of the decline in the price of securities. In the Action, Lead Plaintiffs alleged that Defendants made false statements and omitted material facts during the Class Period (February 12, 2014 through and including December 18, 2014), which allegedly had the effect of artificially inflating the price of RCAP common stock. In addition, Lead Plaintiffs alleged that partially corrective disclosures occurred

over a series of days, beginning on October 29, 2014 and ending on December 18, 2014.<sup>4</sup> Accordingly, in order to have an Exchange Act Recognized Loss Amount with respect to any given purchase or acquisition, the RCAP common stock must have been purchased/acquired between February 12, 2014 and December 18, 2014, inclusive, and held through at least one of the alleged corrective disclosures.

69. For each share of RCAP common stock purchased or otherwise acquired during the Class Period and sold on or before March 17, 2015,<sup>5</sup> an “Out of Pocket Loss” will be calculated. Out of Pocket Loss is defined as the purchase/acquisition price (excluding all fees, taxes, and commissions) *minus* the sale price (excluding all fees, taxes, and commissions). To the extent that the calculation of the Out of Pocket Loss results in a negative number thereby reflecting a gain on the transaction, that number shall be set to zero.

70. For each share of RCAP common stock purchased or acquired from February 12, 2014 through and including December 18, 2014, and:

- (a) Sold prior to October 29, 2014 (the date of the first alleged corrective disclosure) the Exchange Act Recognized Loss Amount shall be zero.
- (b) Sold between October 29, 2014 and December 18, 2014 (the date of the last corrective disclosure), inclusive, the Exchange Act Recognized Loss Amount for each share shall be the *lesser of*:
  - (i) the dollar amount of artificial inflation applicable to each share on the date of purchase/acquisition as set forth in **Table 1** below *minus* the dollar amount of artificial inflation applicable to each share on the date of sale as set forth in **Table 1** below; or
  - (ii) the Out of Pocket Loss.

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<sup>4</sup> The disclosures allegedly resulted in changes in the market price of RCAP common stock on October 29, 2014, November 3, 2014, November 4, 2014, November 10, 2014, December 15, 2014 and December 18, 2014.

<sup>5</sup> March 17, 2015 represents the last day of the 90-day period subsequent to the Class Period (the “90-day look back period”).

- (c) Sold after December 18, 2014, and prior to the close of trading on March 17, 2015,<sup>6</sup> the Exchange Act Recognized Loss Amount for each share shall be *the least of*:
  - (i) the dollar amount of artificial inflation applicable to each share on the date of purchase/acquisition as set forth in **Table 1** below;
  - (ii) the purchase/acquisition price of each share (excluding all fees, taxes and commissions) *minus* the average closing price of each share as set forth in **Table 2** below on the date of sale; or
  - (iii) the Out of Pocket Loss.
  
- (d) Held through the close of trading on March 17, 2015, the Exchange Act Recognized Loss Amount for each share shall be *the lesser of*:
  - (i) the dollar amount of artificial inflation applicable to each share on the date of purchase/acquisition as set forth in **Table 1** below; or
  - (ii) the actual purchase/acquisition price of each share (excluding all fees, taxes, and commissions) *minus* \$10.84 (the average closing price of RCAP common stock between December 18, 2014, and March 17, 2015, as set forth on the last line of **Table 2** below).

## **II. SECURITIES ACT RECOGNIZED LOSS AMOUNT CALCULATIONS**

71. Investors who purchase securities in an offering pursuant or traceable to a registration statement that contained material misrepresentations or omissions have a right to assert a claim under Sections 11 and/or 12 of the Securities Act. The following section of the Plan of Allocation measures the amount of alleged loss that a Settlement Class Member can claim under applicable provisions of the Securities Act for RCAP common stock purchased or

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<sup>6</sup> The PSLRA imposes a statutory limitation on recoverable damages using the 90-day look back period. This limitation is incorporated into the calculation of Recognized Loss Amounts. Specifically, a Recognized Loss Amount cannot exceed the difference between the purchase price paid for a share of RCAP common stock and the respective average price of the share of RCAP common stock during the 90-day look back period subsequent to the Class Period, if the share was held through March 17, 2015, the end of the 90-day look back period. Losses on RCAP common stock purchased/acquired during the Class Period and sold *during* the 90-day look back period cannot exceed the difference between the purchase price paid for the share of RCAP common stock and the average price of the RCAP common stock during the portion of the 90-day look back period elapsed as of the date of sale, as set forth in **Table 2** below.

otherwise acquired pursuant to the prospectus and registration statement issued in connection with RCAP's secondary public offering of common stock on June 5, 2014. For the calculation of a claim under the Securities Act, the "value" of the stock on the date on which a complaint was first filed is relevant for purposes of calculating damages for securities still held as of that date. Thus, under certain conditions, "value" may be measured here by the closing price on June 1, 2015, which is the date the first such complaint was filed in this Action.

72. For each share of RCAP common stock purchased or acquired pursuant to the Company's June 5, 2014 secondary public offering and:

- (a) Sold before June 1, 2015, the Securities Act Recognized Loss Amount shall be the purchase/acquisition price per share (not to exceed the issue price at the offering of \$20.25) minus the sale price per share; or
- (b) Sold on or after June 1, 2015, the Securities Act Recognized Loss Amount shall be the purchase/acquisition price per share (not to exceed the issue price at the offering of \$20.25) minus the sale price per share (not to be less than \$7.40, the closing price of RCAP common stock on June 1, 2015); or
- (c) Never sold, the Securities Act Recognized Loss Amount shall be the purchase/acquisition price per share (not to exceed the issue price at the offering of \$20.25) minus \$7.40 (the closing price of RCAP common stock on June 1, 2015).

#### **ADDITIONAL PROVISIONS**

73. Purchases/acquisitions and sales of RCAP common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance or operation of law of RCAP common stock during the Class Period shall not be deemed a purchase, acquisition or sale of RCAP common stock for the calculation of an Authorized Claimant's Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such RCAP common stock unless (i) the donor or decedent purchased or otherwise acquired such RCAP common

stock during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such RCAP common stock; and (iii) it is specifically so provided in the instrument of gift or assignment.

74. The date of covering a “short sale” is deemed to be the date of purchase or acquisition of the share of RCAP common stock. The date of a “short sale” is deemed to be the date of sale of the respective RCAP common share. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on purchases/acquisitions used to cover “short sales” is zero. In the event that a Claimant has an opening short position in RCAP common stock, the earliest Class Period purchases or acquisitions shall be matched against such opening short position and not be entitled to a recovery until that short position is fully covered. In the event that a Claimant newly establishes a short position during the Class Period, the earliest subsequent Class Period purchases or acquisitions shall be matched against such short position on a FIFO basis and not be entitled to a recovery.

75. Option contracts to purchase or sell RCAP common stock are not securities eligible to participate in the Settlement. With respect to RCAP common stock purchased or sold through the exercise of an option, the purchase/sale date of the RCAP common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

76. An Authorized Claimant’s Recognized Claim shall be the amount used to calculate the Authorized Claimant’s pro rata share of the Net Settlement Fund. If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its pro rata share of the Net Settlement Fund. The pro rata share shall be the Authorized Claimant’s Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If the Net

Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed pro rata to all Authorized Claimants entitled to receive payment.

77. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

78. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund at least six (6) months after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks may occur thereafter in a reasonable and economic fashion if Lead Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Plaintiffs and approved by the Court.



79. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Claimants. No person shall have any claim against Lead Counsel, Plaintiffs' Counsel, Lead Plaintiffs' damages expert, Defendants, Defendants' Counsel, any of the other Plaintiffs' Releasees or Released Defendant Parties, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. Lead Plaintiffs, Defendants and their respective counsel, and all other Released Defendant Parties, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the Plan of Allocation; the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

80. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Claimant. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim Form.

**SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES**

81. If you purchased or otherwise acquired RCAP common stock (ISIN: \_\_\_\_\_) during the Class Period for the beneficial interest of a person or entity other than yourself, the Court has directed that **WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER:** (a) provide to the Claims Administrator the name and last known address of each person or entity for whom or which you purchased or otherwise acquired RCAP common stock during the Class Period; or (b) request additional copies of this Notice and the Claim Form from the Claims Administrator, which will be provided to you free of charge, and **WITHIN SEVEN (7) DAYS** of receipt, mail the Notice and Claim Form directly to all the beneficial

owners of those securities. If you choose to follow procedure (b), the Court has also directed that, upon making that mailing, **YOU MUST SEND A STATEMENT** to the Claims Administrator confirming that the mailing was made as directed and keep a record of the names and mailing addresses used. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation and timely compliance with the above directives. All communications concerning the foregoing should be addressed to the Claims Administrator:

*RCAP Securities Litigation*  
 c/o \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Dated: \_\_\_\_\_, 2017

BY ORDER OF THE UNITED STATES  
 DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

**TABLE 1**

**Estimated Alleged Artificial Inflation for RCAP Common Stock  
 for Purposes of Calculating Purchase and Sale Inflation**

<b>Purchase or Sale Date</b>	<b>Inflation Per Share</b>
February 12, 2014 - October 28, 2014	\$12.17
October 29, 2014 - October 31, 2014	\$9.48
November 3, 2014	\$6.89
November 4, 2014 - November 7, 2014	\$4.23
November 10, 2014 - December 12, 2014	\$3.56
December 15, 2014 - December 18, 2014	\$2.37

**TABLE 2**  
**RCAP Common Stock Closing Price and Average Closing Price**  
**December 18, 2014 – March 17, 2015**

<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price Between December 18, 2014 and Date Shown</b>	<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price Between December 18, 2014 and Date Shown</b>
12/18/2014	\$9.95	\$9.95	2/3/2015	\$9.54	\$10.83
12/19/2014	\$11.00	\$10.48	2/4/2015	\$9.63	\$10.79
12/22/2014	\$10.81	\$10.59	2/5/2015	\$10.18	\$10.77
12/23/2014	\$10.97	\$10.68	2/6/2015	\$10.32	\$10.76
12/24/2014	\$11.23	\$10.79	2/9/2015	\$10.12	\$10.74
12/26/2014	\$11.15	\$10.85	2/10/2015	\$9.71	\$10.71
12/29/2014	\$11.30	\$10.92	2/11/2015	\$9.59	\$10.68
12/30/2014	\$12.16	\$11.07	2/12/2015	\$10.00	\$10.66
12/31/2014	\$12.24	\$11.20	2/13/2015	\$10.28	\$10.65
1/2/2015	\$12.25	\$11.31	2/17/2015	\$10.37	\$10.64
1/5/2015	\$12.94	\$11.45	2/18/2015	\$10.17	\$10.63
1/6/2015	\$13.01	\$11.58	2/19/2015	\$10.24	\$10.62
1/7/2015	\$12.46	\$11.65	2/20/2015	\$11.06	\$10.63
1/8/2015	\$11.88	\$11.67	2/23/2015	\$11.27	\$10.65
1/9/2015	\$11.21	\$11.64	2/24/2015	\$10.60	\$10.65
1/12/2015	\$10.93	\$11.59	2/25/2015	\$10.70	\$10.65
1/13/2015	\$10.87	\$11.55	2/26/2015	\$10.58	\$10.65
1/14/2015	\$10.34	\$11.48	2/27/2015	\$11.40	\$10.66
1/15/2015	\$10.06	\$11.41	3/2/2015	\$11.47	\$10.68
1/16/2015	\$10.00	\$11.34	3/3/2015	\$11.38	\$10.69
1/20/2015	\$9.83	\$11.27	3/4/2015	\$11.73	\$10.71
1/21/2015	\$10.00	\$11.21	3/5/2015	\$11.75	\$10.73
1/22/2015	\$10.19	\$11.16	3/6/2015	\$11.85	\$10.75
1/23/2015	\$10.19	\$11.12	3/9/2015	\$11.68	\$10.77
1/26/2015	\$10.08	\$11.08	3/10/2015	\$11.40	\$10.78
1/27/2015	\$10.24	\$11.05	3/11/2015	\$11.46	\$10.80
1/28/2015	\$10.07	\$11.01	3/12/2015	\$11.71	\$10.81
1/29/2015	\$9.82	\$10.97	3/13/2015	\$11.63	\$10.83
1/30/2015	\$9.43	\$10.92	3/16/2015	\$11.22	\$10.83
2/2/2015	\$9.44	\$10.87	3/17/2015	\$11.07	\$10.84

# **Exhibit A-2**

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

GRADY SCOTT WESTON, Individually and  
On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

RCS CAPITAL CORPORATION, RCAP  
HOLDINGS, LLC, RCAP EQUITY, LLC,  
NICHOLAS S. SCHORSCH, BRIAN S.  
BLOCK, EDWARD MICHAEL WEIL,  
WILLIAM M. KAHANE, BRIAN D. JONES,  
PETER M. BUDKO, MARK AUERBACH,  
JEFFREY BROWN, C. THOMAS  
MCMILLEN, and HOWELL WOOD,

Defendants.

Civ. No. 1:14-CV-10136-GBD

**PROOF OF CLAIM AND RELEASE**

**I. GENERAL INSTRUCTIONS**

1. To recover as a member of the Settlement Class based on your claims in the action entitled *Weston v. RCS Capital Corporation, et al.*, No. 1:14-CV-10136-GBD (S.D.N.Y.) (the “Action”), you must complete and, on page \_\_\_ hereof, sign this Proof of Claim and Release form (“Claim Form”). If you fail to submit a timely and properly addressed (as set forth in paragraph 3 below) Claim Form, your claim may be rejected and you may not receive any recovery from the Net Settlement Fund created in connection with the proposed Settlement.

2. Submission of this Claim Form, however, does not assure that you will share in the proceeds of the settlement of the Action.

3. YOU MUST MAIL OR SUBMIT ELECTRONICALLY YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE FORM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN \_\_\_\_\_, 2017, ADDRESSED AS FOLLOWS:

*RCAP Securities Litigation*  
Claims Administrator  
c/o \_\_\_\_\_  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_  
www.\_\_\_\_\_.com

If you are NOT a member of the Settlement Class (as defined in the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (“Notice”), which accompanies this Claim Form) DO NOT submit a Claim Form.

4. If you are a member of the Settlement Class and you did not timely request exclusion in response to the Notice dated \_\_\_\_\_, 2017, you are bound by the terms of any judgment entered in the Action, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A CLAIM FORM.

## **II. CLAIMANT IDENTIFICATION**

5. If you purchased or otherwise acquired the common stock of RCS Capital Corporation (“RCAP” or the “Company”) from February 12, 2014 to December 18, 2014, inclusive (the “Class Period”) and held the stock in your name, you are the beneficial purchaser as well as the record purchaser. If, however, you purchased or otherwise acquired the common stock of RCAP during the Class Period through a third party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is the record purchaser.

6. Use Part I of this form entitled “Claimant Identification” to identify each beneficial purchaser or acquirer of RCAP common stock that forms the basis of this claim, as well as the purchaser or acquirer of record if different. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S) OF THE RCAP COMMON STOCK UPON WHICH THIS CLAIM IS BASED.**

7. All joint purchasers must sign this claim. Executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

## **III. CLAIM FORM**

8. Use Part II of this form entitled “Schedule of Transactions in RCAP Common Stock” to supply all required details of your transaction(s) in RCAP common stock. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

9. On the schedules, provide all of the requested information with respect to *all* of your purchases and acquisitions during the period from February 12, 2014 through and including March 17, 2015 and *all* of your sales of RCAP common stock which took place, whether such transactions resulted in a profit or a loss. You must also provide all of the requested information with respect to *all* of the RCAP common stock you held at the close of trading on February 11, 2014 and March 17, 2015. Failure to report all such transactions may result in the rejection of your claim.

10. List each transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

11. The date of covering a “short sale” is deemed to be the date of purchase of RCAP common stock. The date of a “short sale” is deemed to be the date of sale of RCAP common stock.

12. Copies of broker confirmations or other documentation of your transactions in RCAP common stock should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim. The Parties do not have information about your transactions in RCAP common stock.

13. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. All claimants MUST submit a manually signed paper Claim Form whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at \_\_\_\_\_ to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgment of receipt and acceptance of electronically submitted data.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
*Weston v. RCS Capital Corporation, et al.*,  
No. 1:14-CV-10136-GBD

PROOF OF CLAIM AND RELEASE

**Must Be Postmarked (if Mailed) or Received (if Filed Electronically) No Later Than:**

\_\_\_\_\_, 2017

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

\_\_\_\_\_  
Beneficial Owner's Name (First, Middle, Last)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State or Province

\_\_\_\_\_  
Zip Code or Postal Code

\_\_\_\_\_  
Country

\_\_\_\_\_  
Social Security Number or  
Taxpayer Identification Number

\_\_\_\_\_  
Individual  
Corporation/Other

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (work)

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (home)

\_\_\_\_\_  
Record Owner's Name (if different from beneficial owner listed above)

PART II: SCHEDULE OF TRANSACTIONS IN RCAP COMMON STOCK

- A. Number of shares of RCAP common stock held at the close of trading on February 11, 2014: \_\_\_\_\_
- B. Purchases/Acquisitions of RCAP common stock (February 12, 2014 – March 17, 2015, inclusive)<sup>1</sup>:

Trade Date Month/Day/Year	Number of Shares Purchased/Acquired	Purchase/Acquisition Price per Share	Total Purchase/ Acquisition Price	Check box if Shares were Purchased or Acquired Pursuant to the Company's June 5, 2014 Secondary Offering
1. _____	1. _____	1. _____	1. _____	<input type="checkbox"/>
2. _____	2. _____	2. _____	2. _____	<input type="checkbox"/>
3. _____	3. _____	3. _____	3. _____	<input type="checkbox"/>

**IMPORTANT:** If any purchase listed covered a “short sale,” please mark Yes.  Yes

- C. Sales of RCAP common stock:

Trade Date Month/Day/Year	Number of Shares Sold	Sales Price per Share	Total Sales Price	Check box if Shares were Purchased or Acquired Pursuant to the Company's June 5, 2014 Secondary Offering
1. _____	1. _____	1. _____	1. _____	<input type="checkbox"/>
2. _____	2. _____	2. _____	2. _____	<input type="checkbox"/>
3. _____	3. _____	3. _____	3. _____	<input type="checkbox"/>

<sup>1</sup> Information requested with respect to your purchases/acquisitions of common stock from December 19, 2014 through and including March 17, 2015 is needed in order to calculate your claim; purchases/acquisitions during this period, however, are not eligible to participate in the Settlement as these purchases/acquisitions are outside the Class Period.

D. Number of shares of RCAP common stock held at the close of trading on March 17, 2015: \_\_\_\_\_

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

**IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

14. I (We) submit this Proof of Claim and Release under the terms of the Stipulation and Agreement of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of New York, with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Action. I (We) agree to furnish additional information to the Claims Administrator to support this claim (including transactions in other RCAP securities) if requested to do so. I (We) have not submitted any other claim in the Action covering the same purchases or sales of RCAP common stock during the Class Period and know of no other person having done so on my (our) behalf.

**V. RELEASE AND ACKNOWLEDGEMENT**

15. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge from the Released Plaintiffs' Claims each and all of the Released Defendant Parties, both as defined in the accompanying Notice. This release shall be of no force or effect unless and until the Court approves the Stipulation of Settlement and the Stipulation becomes effective on the Effective Date (as defined in the Stipulation).

16. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

17. I (We) hereby warrant and represent that I (we) have included the information requested about all of my (our) transactions in RCAP common stock which are the subject of this claim, as well as the opening and closing positions in such securities held by me (us) on the dates requested in this Claim Form.

18. I (We) certify that I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code. (Note: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the prior sentence.)

I declare under penalty of perjury under the laws of the United States of America that all of the foregoing information supplied on this Claim Form by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_  
(Month/Year)  
in \_\_\_\_\_  
(City) (State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

---

(Capacity of person(s) signing,  
e.g., Beneficial Purchaser, Executor  
or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and acknowledgement.
2. If this Claim is being made on behalf of Joint Claimants, then both must sign.
3. Remember to attach copies of supporting documentation, if available.
4. **Do not send** originals of certificates.
5. Keep a copy of your Claim Form and all supporting documentation for your records.
6. If you desire an acknowledgment of receipt of your Claim Form, please send it Certified Mail, Return Receipt Requested.
7. If you move, please send your new address to:  

*RCAP Securities Litigation*  
Claims Administrator  
c/o \_\_\_\_\_  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_
8. **Do not use red pen or highlighter** on the Claim Form or supporting documentation.

# **Exhibit A-3**

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

GRADY SCOTT WESTON, Individually and  
On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

RCS CAPITAL CORPORATION, RCAP  
HOLDINGS, LLC, RCAP EQUITY, LLC,  
NICHOLAS S. SCHORSCH, BRIAN S.  
BLOCK, EDWARD MICHAEL WEIL,  
WILLIAM M. KAHANE, BRIAN D. JONES,  
PETER M. BUDKO, MARK AUERBACH,  
JEFFREY BROWN, C. THOMAS  
MCMILLEN, and HOWELL WOOD,

Defendants.

Civ. No. 1:14-CV-10136-GBD

**SUMMARY NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED  
SETTLEMENT, AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

**To: All Investors That Purchased or Otherwise Acquired the Common Stock of RCS Capital Corporation (“RCAP”) During the Period from February 12, 2014 to December 18, 2014, Inclusive (the “Class Period”), and Were Allegedly Damaged Thereby (the “Settlement Class”).**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York, that Oklahoma Police Pension Fund and Retirement System and City of Providence, Rhode Island (“Lead Plaintiffs”) on behalf of themselves and the Settlement Class, and RCAP Holdings, LLC, RCAP Equity, LLC, Nicholas S. Schorsch, Brian S. Block, Edward M. Weil, Jr., William M. Kahane, Brian D. Jones, Peter M. Budko, Mark Auerbach, Jeffrey Brown, C. Thomas McMillen and Howell Wood (collectively, “Defendants”) have reached a proposed

settlement of the above-captioned action (the “Action”) in the amount of \$31,000,000 in cash that, if approved, will resolve the Action in its entirety (the “Settlement”).

A hearing will be held before the Honorable George B. Daniels of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, Courtroom 11 A, 500 Pearl Street, New York, NY 10007 at \_\_\_\_:\_\_\_\_ \_\_\_\_m. on \_\_\_\_\_ \_\_, 2017 (the “Settlement Hearing”) to, among other things, determine whether the Court should: (i) approve the proposed Settlement as fair, reasonable, and adequate; (ii) dismiss the Action with prejudice as provided in the Stipulation and Agreement of Settlement, dated June 2, 2017; (iii) approve the proposed Plan of Allocation for distribution of the Net Settlement Fund; and (iv) approve Lead Counsel’s application for an award of attorneys’ fees and payment of Litigation Expenses. The Court may change the date of the Settlement Hearing without providing another notice. You do NOT need to attend the Settlement Hearing to receive a distribution from the Net Settlement Fund.

**IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO A MONETARY PAYMENT.** If you have not yet received the Notice and Proof of Claim and Release form (“Claim Form”), you may obtain copies of these documents by visiting the website dedicated to the Settlement, [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or by contacting the Claims Administrator at:

*RCAP Securities Litigation*  
Claims Administrator  
c/o \_\_\_\_\_  
\_\_\_\_\_  
(\_\_\_\_) \_\_\_\_-\_\_\_\_

Inquiries, other than requests for the Notice/Claim Form or for information about the status of a claim, may also be made to Lead Counsel:



Ira A. Schochet, Esq.  
**LABATON SUCHAROW LLP**  
140 Broadway  
New York, NY 10005  
www.labaton.com  
(888) 219-6877

Deborah Clark-Weintraub, Esq.  
**SCOTT+SCOTT, ATTORNEYS AT  
LAW, LLP**  
The Helmsely Building  
230 Park Avenue, 17<sup>th</sup> Floor  
New York, NY 10169  
(800) \_\_\_\_-\_\_\_\_

If you are a Settlement Class Member, to be eligible to share in the distribution of the Net Settlement Fund, you must submit a Claim Form *postmarked or received no later than* \_\_\_\_\_, **2017**. If you are a Settlement Class Member and do not timely submit a valid Claim Form, you will not be eligible to share in the distribution of the Net Settlement Fund, but you will nevertheless be bound by all judgments or orders entered by the Court in the Action, whether favorable or unfavorable.

If you are a Settlement Class Member and wish to exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Notice such that it is *received no later than* \_\_\_\_\_, **2017**. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action, whether favorable or unfavorable, and you will not be eligible to share in the distribution of the Net Settlement Fund.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's application for attorneys' fees and payment of Litigation Expenses must be filed with the Court and mailed to counsel for the Parties in accordance with the instructions in the Notice, such that they are *filed and received no later than* \_\_\_\_\_, **2017**.

**PLEASE DO NOT CONTACT THE COURT, DEFENDANTS, OR  
DEFENDANTS' COUNSEL REGARDING THIS NOTICE.**

DATED: \_\_\_\_\_, 2017

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

# **Exhibit B**

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

GRADY SCOTT WESTON,  
INDIVIDUALLY AND ON BEHALF OF  
ALL OTHERS SIMILARLY SITUATED,

PLAINTIFFS,

V.

RCS CAPITAL CORPORATION, RCAP  
HOLDINGS, LLC, RCAP EQUITY, LLC,  
NICHOLAS S. SCHORSCH, BRIAN S.  
BLOCK, EDWARD MICHAEL WEIL,  
WILLIAM M. KAHANE, BRIAN D. JONES,  
PETER M. BUDKO, MARK AUERBACH,  
JEFFREY BROWN, C. THOMAS  
MCMILLEN, AND HOWELL WOOD,

DEFENDANTS.

CIV. NO. 1:14-CV-10136-GBD

**[PROPOSED] FINAL ORDER AND JUDGMENT**

WHEREAS:

A. As of June 2, 2017, Oklahoma Police Pension Fund and Retirement System and City of Providence, Rhode Island (collectively, “Lead Plaintiffs”), on behalf of themselves and all members of the Settlement Class, and RCS Capital Corporation (“RCAP” or the “Company”), RCAP Holdings, LLC (“RCAP Holdings”), RCAP Equity, LLC (“RCAP Equity”), Nicholas S. Schorsch, Brian S. Block, Edward M. Weil, Jr., William M. Kahane, Brian D. Jones, Peter M. Budko, Mark Auerbach, Jeffrey Brown, C. Thomas McMillen and Howell Wood (collectively, “Defendants”) entered into the Stipulation and Agreement of Settlement (the “Stipulation”) in the Action;

B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered \_\_\_\_\_, 2017 (the “Preliminary Approval Order”), the Court scheduled a hearing for \_\_\_\_\_, 2017 (the “Settlement Hearing”) to, among other things: (i) determine whether the proposed Settlement provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; and (ii) determine whether a judgment as provided for in the Stipulation should be entered;

C. The Court ordered that the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) and the Proof of Claim and Release form (“Claim Form”), substantially in the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid, on or before ten (10) business days after the date of entry of the Preliminary Approval Order (“Notice Date”) to all potential Settlement Class Members who could be identified through reasonable effort, and that the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Summary Notice”), substantially in the form attached to the Preliminary Approval Order as Exhibit 3, be published in *The Wall Street Journal* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date;

D. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the Parties such that they were received by \_\_\_\_\_, 2017;

E. The provisions of the Preliminary Approval Order as to notice were complied with;

F. On \_\_\_\_\_, 2017, Lead Plaintiffs moved for final approval of the Settlement, as provided in the Preliminary Approval Order. The Settlement Hearing was duly held before this Court on \_\_\_\_\_, 2017, at which time all interested Persons were afforded the opportunity to be heard; and

G. This Court has duly considered Lead Plaintiffs' motion for final approval of the Settlement, the affidavits, declarations, and memoranda of law submitted in support of the motion, the Stipulation, and all of the other submissions and arguments presented with respect to the proposed Settlement;

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. **Incorporation of Settlement Documents.** This Judgment incorporates by reference: (i) the Stipulation filed with the Court on June 2, 2017; and (ii) the Notice, which was filed with the Court on \_\_\_\_\_, 2017. Capitalized terms not defined in this Judgment have the meanings set forth in the Stipulation.

2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all Parties to the Action and all Settlement Class Members.

3. **Class Certification for Settlement Purposes.** The Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies, for purposes of the Settlement only, pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Settlement Class of: all investors who purchased or otherwise acquired the common stock of

RCAP from February 12, 2014 to December 18, 2014, inclusive, and were allegedly damaged thereby. Excluded from the Settlement Class are: Defendants; the officers and directors of RCAP, RCAP Holdings and RCAP Equity; members of the Immediate Families of any excluded person and their legal representatives, heirs, successors, affiliates, or assigns; and any entity in which Defendants have or had a controlling interest. [Also excluded from the Settlement Class are the Persons listed on the annexed Exhibit A as having submitted an exclusion request allowed by the Court.]

4. For purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order and finds the prerequisites of class action certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied for the Settlement Class defined herein, in that: (i) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members is impracticable; (ii) there are questions of law and fact common to the Settlement Class Members; (iii) the questions of law and fact common to Settlement Class Members predominate over any individual questions; (iv) the claims of Lead Plaintiffs are typical of the Settlement Class's claims; (v) Lead Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (vi) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. For purposes of the Settlement only, and pursuant to Federal Rule of Civil Procedure 23, the Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies Lead Plaintiffs Oklahoma Police Pension Fund and Retirement System and City of Providence, Rhode Island as Class Representative for the Settlement Class, and finally

appoints the law firms of Labaton Sucharow LLP and Scott+Scott, Attorneys at Law, LLP as Class Counsel for the Settlement Class.

6. **Notice.** The Court finds that the mailing of the Notice and Claim Form and publication of the Summary Notice: (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise Settlement Class Members of the effect of the Settlement, of the proposed Plan of Allocation, of Lead Counsel's request for an award of attorney's fees and payment of expenses incurred in connection with the prosecution of the Action, of Settlement Class Members' right to object or seek exclusion from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA").

7. **Exclusions from the Settlement Class.** [In accordance with Fed. R. Civ. P. 23, excluded from the Settlement Class are the persons and entities listed in Exhibit A to this Judgment, who are excluded from the Settlement Class pursuant to request.]

8. **Objections.** [There have been \_\_ objections to the Settlement [, each of which was addressed by the Court at the Settlement Hearing].]

9. **Final Settlement Approval and Dismissal of Claims.** Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, and in light of the benefits to the Settlement Class, the complexity, expense and possible duration of further litigation against

Defendants, the risks of establishing liability and damages, and the costs of continued litigation, the Court fully and finally approves the Settlement provided for 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 Plaintiffs' Claims as against the Defendants; and the dismissal with prejudice of claims against Defendants), and finds that the Settlement is, in all respects, fair, reasonable and adequate, and in the best interests of Lead Plaintiffs and the Settlement Class. This Court further finds that the Settlement is the result of arm's-length negotiations between experienced counsel representing the interests of Lead Plaintiffs, the Settlement Class, and Defendants. The Settlement shall be consummated in accordance with the terms and conditions of the Stipulation.

10. The Corrected Amended Class Action Complaint for Violations of Federal Securities Laws, filed on June 30, 2015 and all claims contained therein are hereby dismissed in their entirety, with prejudice, and without costs to any Party, except as otherwise provided in the Stipulation.

11. **Releases.** The Releases, as set forth in paragraphs 4 and 5 of the Stipulation, together with the definitions contained in the Stipulation relating thereto, are expressly incorporated herein in all respects. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 12 below, as of the Effective Date, Lead Plaintiffs and Settlement Class Members shall be deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every one of the Released Plaintiffs' Claims against Defendants and the other Released Defendant Parties, and shall forever be enjoined from prosecuting any or all of the Released Plaintiffs' Claims against Defendants or any of the other



Released Defendant Parties. This Release shall not apply to any Person listed on Exhibit A hereto.

(b) Without further action by anyone, and subject to paragraph 12 below, as of the Effective Date, Defendants and the other Released Defendant Parties shall be deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every one of the Released Defendants' Claims against Lead Plaintiffs, the other Settlement Class Members, and the other Plaintiffs' Releasees, and shall forever be enjoined from prosecuting any or all of the Released Defendants' Claims against Lead Plaintiffs, the other Settlement Class Members, and the other Plaintiffs' Releasees. This Release shall not apply to any Person listed on Exhibit A hereto.

12. Notwithstanding paragraph 11(a)-(b) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

13. **Binding Effect.** Each Settlement Class Member, whether or not the Settlement Class Member executes and delivers a Claim Form, is bound by this Judgment, including, without limitation, the release of claims provided for herein. [The Persons listed on Exhibit A hereto are excluded from the Class pursuant to request and are not bound by the terms of the Stipulation or this Judgment.]

14. **Complete Bar Order.**

(a) Any and all Persons are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting or asserting any and all claims for contribution (or any other claim where the alleged injury to that Person is that Person's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Action)

arising out of, based upon, relating to, concerning, or in connection with the Released Plaintiffs' Claims against each and every one of the Defendants, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Action or a separate action, in the Court or in any other court, arbitration proceeding, administration, or other forum in the United States or elsewhere.

(b) Each and every Defendant is permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution (or any other claim where the alleged injury to that Defendant is that Defendant's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Action) arising out of, based upon, relating to, concerning, or in connection with the Released Plaintiffs' Claims against any and all Persons, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Action or a separate action, in the Court or in any other court, arbitration proceeding, administration, or other forum in the United States or elsewhere.

(c) Nothing in this Complete Bar Order shall bar any action to enforce the Settlement or alter the contractual rights of any Defendant. Neither the Complete Bar Order nor any other provision of the Stipulation, or the Settlement shall have any impact on (a) claims that Defendants, their subsidiaries or their affiliates, have filed in *In re RCS Capital Corp.*, Case No. 16-10223 (MFW) (Bankr. D. Del.), or (b) counterclaims or claims for set offs, contribution or indemnification by or among the named defendants in or arising out of *RCS Creditor Trust v. Schorsch, et al.*, Case No. 2017-0178 (Del. Ch.).

15. **Rule 11 Findings.** The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

16. **No Admissions.** This Judgment and the Stipulation, whether or not consummated, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action to enforce this Judgment and the Stipulation, and in particular:

(a) shall not be offered against any of the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendant Parties with respect to the truth of any fact alleged by Lead Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind by any of the Released Defendant Parties;

(b) shall not be offered against any of the Plaintiffs' Releasees, 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 Plaintiffs' Releasees, in any 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 if the Stipulation is approved by the Court, the Parties and the Releasees and their

respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement;

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

(d) shall not be construed against Plaintiffs' Releasees as an admission, concession, or presumption that any of their claims are without merit, that any of the Released Defendant Parties had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount; and

(e) shall be communicated about by the Parties in good faith, and in a manner that is consistent with the fact that no adjudication of fault was made by any court or jury.

17. **Termination.** If the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection with this Judgment shall be null and void to the extent provided by and in accordance with the Stipulation, and the Settlement Fund shall be returned in accordance with paragraph 40 of the Stipulation.

18. **Extensions of Time.** Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

19. **Separate Orders for Attorneys' Fees and Expenses and Plan of Allocation.** A separate order shall be entered regarding Lead Counsel's application for attorneys' fees and payment of expenses as allowed by the Court. A separate order shall also be entered regarding the proposed Plan of Allocation for the Net Settlement Fund. Those orders shall in no way

disturb or affect this Judgment and shall be considered separate from this Judgment. 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.

20. **Retention of Jurisdiction.** Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over: (i) implementation of the Settlement; (ii) the allowance, disallowance or adjustment of any claim to the Settlement Fund on equitable grounds and any award or distribution of the Settlement Fund; (iii) disposition of the Settlement Fund; (iv) hearing and determining applications for attorneys' fees, costs, interest and payment of expenses in the Action; (v) all Parties for the purpose of construing, enforcing and administering the Settlement and this Judgment; (f) the Class Members for all matters relating to the Action; and (vi) other matters related or ancillary to the foregoing.

21. **Administration of Settlement.** The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any Claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

22. **Entry of Final Judgment.** There is no just reason for delay in the entry of this Judgment and the Clerk of the Court is directed to immediately enter it.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Honorable George B. Daniels  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

**[List of Persons and Entities Excluded from the Settlement Class Pursuant to Request]**