

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SAM LIPSON, on behalf of himself and all others  
similarly situated,

Plaintiff,

- against -

MARTIN J. SIMON et al.,

Defendants.

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CV 98 4573 (TCP)

**STIPULATION OF  
SETTLEMENT**

This Stipulation of Settlement (the “Stipulation”), entered into as of the 4th day of November, 2004, 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 Plaintiff Sam Lipson, on behalf of himself and all other members of the Class (defined below), and defendant McGladrey & Pullen, LLP (“McGladrey”) in the above-captioned class action (the “Action”), by and through their respective attorneys.

**WHEREAS:**

A. The Action was commenced on July 6, 1998 in the United States District Court for the Eastern District of New York by Sam Lipson on behalf of himself and a putative class (the “Class”) consisting of purchasers of the common stock of First Central Financial Corporation (“First Central” or the “Company”) during the period July 6, 1995 through and including September 6, 1997 (the “Class Period”).

B. The First Amended Complaint (the “Complaint”) was served and filed on January 14, 1999. The Complaint named as defendants certain officers and directors of First Central (the “Individual Defendants”) and McGladrey, First Central’s independent auditor.

C. The Complaint alleged claims that defendants engaged in a scheme to inflate the financial condition of First Central and its primary operating subsidiary, First Central Insurance Company (“FCIC”), in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, as well as common law fraud. First Central was not named as a defendant because on March 5, 1998, the Company filed for relief under Chapter 11 of the Bankruptcy Code. *In re First Central Financial Corp.*, Case No. 98-12846 (Bankr. E.D.N.Y.).

D. On May 10, 1999, McGladrey and the Individual Defendants moved to dismiss the Complaint in this Action, primarily on the grounds that (i) Plaintiff’s claims were barred by the one-year statute of limitations then applicable to Rule 10b-5 claims, and (ii) the Complaint failed to meet the pleading requirements of Fed. R. Civ. P. 9(b) and of the Private Securities Litigation Reform Act of 1995 (“PSLRA”).

E. Following extensive briefing and oral argument, on March 15, 2001, the Court issued a Memorandum Decision and Order denying the motions to dismiss the Complaint.

F. On or about May 8, 2001, McGladrey served an Answer to the Complaint denying all allegations of liability, asserting affirmative defenses and demanding judgment on the merits dismissing the Complaint.

G. On June 20, 2001, Plaintiff filed a motion under Rule 23, Fed. R. Civ. P., for, *inter alia*, certification of the Action as a class action; appointment of Lipson as Class Representative; and appointment of Plaintiff’s attorneys, Law Office of J. James Carriero and Lowey Dannenberg Bemporad & Selinger, P.C., as Class Counsel (the “Class Motion”).

H. Following discovery relating to class certification issues, in March 2002, McGladrey and the Individual Defendants filed oppositions to the Class Motion.

I. On May 24, 2002, the Class Motion was dismissed without prejudice so that renewed settlement negotiations with the Individual Defendants could be pursued globally with counsel for the Class, the NYSID, and the Bankruptcy Trustee.

J. On March 20, 2003, Plaintiff entered into a stipulation of settlement with the Individual Defendants (the “Individual Defendants Settlement”). On July 3, 2003, the Court approved the Individual Defendants Settlement.

K. The parties thereafter engaged in extensive discovery, including the voluminous production of documents and the deposition testimony of numerous defendant and third-party witnesses, many for multiple days, and in several states.

L. On September 1, 2004, following a full-day mediation session overseen by Judge Kathleen Roberts, and after extensive arm’s-length negotiations, the parties reached the settlement described herein (the “Settlement”).

M. McGladrey has denied and continues to deny each and every allegation of wrongdoing made against it in the Complaint. McGladrey asserts that it has meritorious defenses to Plaintiff’s claims, that its conduct has been lawful and proper in all respects, that no person or entity has suffered any harm or damages as a result of any matter that is the subject of or underlies any of the claims against it in the Action, and that judgment should be entered dismissing all claims against it with prejudice.

N. McGladrey has entered into this Stipulation for the purpose of avoiding the continuing additional expense, inconvenience, distraction and risks of this litigation, without admitting any wrongdoing whatsoever. By doing so, McGladrey desires to compromise, settle and terminate the Action with prejudice, and to put to rest all claims which have or could have

been asserted, or which arise from or in any way are related to the acts, transactions, occurrences, representations or omissions alleged in the Complaint.

O. Based upon their extensive discovery, including an examination of the Company's public filings, Board Minutes, documents produced by FCIC's actuary, and various reports of McGladrey to First Central and its Audit Committee, Plaintiff's Counsel (defined below) have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiff and the Class, and in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (i) the substantial benefits that Plaintiff and the members of the Class will receive from settlement of the Action, (ii) the attendant risks of litigation, and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED,** by and among the undersigned counsel for the Plaintiff and McGladrey, and subject to the terms and conditions set forth in this Stipulation and the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that this Action, as well as any and all of the claims and causes of action of any nature or description that have or could have been asserted therein or which arise out of or are in any way related to the acts, transactions or occurrences alleged in the Complaint be, and the same hereby are, compromised and settled on the terms and conditions as follows:

#### **CERTAIN DEFINITIONS**

1. For purposes of this Stipulation:
  - a. "Authorized Claimant" means a Class Member who does not request exclusion in response to the Class Notice, who either filed a timely and valid Proof of Claim in connection with the Individual Defendants Settlement or submits the Proof of Claim required

pursuant to paragraph 17, and whose Proof of Claim is substantially complete and is allowed by the Settlement Administrator and not disallowed by the Court. An Authorized Claimant must submit a Release Form in all material respects in the form accompanying the Notice attached as Exhibit 1-D.

b. “Class Member” means a member of the Class.

c. “McGladrey’s Counsel” means Williams & Connolly LLP, 725 12<sup>th</sup> Street, NW, Washington, DC 20005.

d. “Net Settlement Fund” means the balance of the Settlement Fund remaining after deduction of amounts paid pursuant to paragraphs 7(a) through 7(d).

e. “Notice” means the Notice of Pendency of Class Action, Hearing On Proposed Settlement, and Application for Attorneys’ Fees and Right to Share in Settlement Fund, which is to be sent to members of the Class in all material respects in the form attached hereto as Exhibit 1-A.

f. “Order and Final Judgment” means the proposed order to be entered approving the Settlement, in all material respects in the form attached hereto as Exhibit 2.

g. “Person” means any individual, corporation, partnership, association, estate, trust or any other type of business or legal entity.

h. “Plaintiff’s Counsel” means the Law Offices of J. James Carriero, Esq., 29-53 Butler Street, East Elmhurst, NY 11369 and Lowey, Dannenberg, Bemporad & Selinger, P.C., The Gateway, One North Lexington Avenue, White Plains, NY 10601, or the Settlement Administrator.

i. “Plan of Allocation” means a plan or formula for processing Proof of Claim and Release forms submitted by Class Members and for allocation of the Net Settlement Fund, which Plan shall be described in the Class Notice, whereby the Net Settlement Fund shall

be distributed to Authorized Claimants in accordance with paragraph 25.

j. “Preliminary Approval Order” means the proposed order, preliminarily approving the Settlement, setting forth a date and time for the Settlement Hearing, certifying a class for settlement purposes and setting out process by which the Settlement will be administered, substantially in the form attached hereto as Exhibit 1.

k. “Released Parties” means McGladrey, its past or present subsidiaries, affiliates, parents, successors and predecessors, partners, officers, directors, agents, employees, attorneys, insurers and any person, firm, trust, corporation, officer, director or other individual or entity in which McGladrey has a controlling interest or which is related to or affiliated with McGladrey, and McGladrey’s legal representatives, heirs, successors in interest or assigns.

l. “Settled Claims” means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether class or individual in nature, including both known claims and unknown claims, that have been or could have been asserted in this Action by Plaintiff, Class Members, or any of them against any of the Released Parties, which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint.

m. “Settled Defendants’ Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, that have been or could have been asserted in the Action or any forum by McGladrey or its successors and assigns against any of Plaintiff, Class Members, or their attorneys, which arise

out of or relate in any way to the institution, prosecution, or settlement of the Action except claims relating to the enforcement of the settlement of the Action against Plaintiff, Class Members or their attorneys.

n. “Settlement” means the transaction described in this Stipulation.

o. “Settlement Administrator” means the firm of Complete Claims Solutions, Inc., or other representative(s) of Plaintiff’s Counsel empowered by the Court to supervise and administer the identification and notice procedures and the processing of claims and distribution of the Net Settlement Fund.

p. “Summary Notice” means the Summary Notice of Proposed Settlement and Hearing for publication in all material respects in the form attached as Exhibit 1-B.

#### **SCOPE AND EFFECT OF SETTLEMENT**

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action as against McGladrey and any and all Settled Claims as against all Released Parties.

3. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, Plaintiff, Class Members, on behalf of themselves and on behalf of their respective predecessors, successors, affiliates, heirs, executors, administrators, and assigns, shall, by operation of the Order and Final Judgment, release and be deemed to release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against McGladrey and any of the Released Parties.

4. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, McGladrey and the Released Parties, on behalf of themselves and on behalf of their respective predecessors, successors, affiliates, heirs, executors, administrators, and assigns, shall, by operation of the Order and Final Judgment, release and be deemed to release and forever

discharge Plaintiff, Class Members, and Plaintiff's Counsel as to Settled Defendants' Claims.

**THE SETTLEMENT FUND**

5. McGladrey or its insurers shall pay the sum of Three Million Seven Hundred Eighty Thousand Dollars (\$3,780,000) (the "Settlement Fund") into the interest-bearing escrow account previously established by Plaintiff's Counsel with respect to the Individual Defendants Settlement (the "Settlement Account") within three (3) business days of the entry of the Preliminary Approval Order annexed hereto as Exhibit 1.

6. Prior to the date of the Settlement Hearing, Plaintiff's Counsel is authorized to expend up to the maximum sum of \$75,000 from the Settlement Account to pay the costs of providing notice of the Settlement to the Class and for reasonable settlement administration. In the event that the costs of notice and administration exceed \$75,000, Plaintiff's Counsel shall seek Court approval to expend such additional funds from the Settlement Account as are necessary to cover reasonable settlement administration costs.

7. The Settlement Fund shall be disbursed in the following manner:

- a. to pay all costs and expenses of giving notice to the Class;
- b. to pay taxes on the interest earned on the Settlement Fund and tax-related fees and expenses;
- c. to pay Plaintiff's Counsel any award of attorneys' fees and expenses as approved by the Court;
- d. to pay the costs of administering and disbursing the Settlement Fund including escrow fees, taxes, custodial fees, attorneys fees, postage fees and administration expenses incurred in processing Proofs of Claim; and
- e. to pay Authorized Claimants (as hereinafter defined) in the manner and in accordance with the distribution formulas set forth in the Notice attached as Exhibit 1-A.

8. Any sums required to be held in escrow in the Settlement Account shall be held by Plaintiff's Counsel as escrow agents for the Settlement Account. All funds held by the escrow agents for the Settlement 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 shall be distributed or returned to McGladrey pursuant to this Stipulation and/or further order of the Court. The escrow agents for the Settlement Account shall invest any funds in excess of \$100,000 in United States Agency or Treasury Securities of no more than 90 days maturity, and shall collect and reinvest all interest accrued thereon. Any funds held in escrow in the Settlement Account in an amount of less than \$100,000 may be held in an interest-bearing bank account insured by the FDIC. The Settlement Fund shall, upon the Effective Date, constitute a "qualified settlement fund" within the meaning of Treasury Regulations, 26 C.F.R. §§1.468B-1 through 1.468B-3 (1992). The Settlement Administrator shall treat the Settlement Fund as a qualified settlement fund for all reporting purposes under the federal tax laws.

9. Earnings on the investment of the Settlement Fund may be used at any time to pay the actual amount of any taxes assessed against the Settlement Fund. The Settlement Administrator shall pay these expenses and any tax-related fees and expenses without prior approval of the Court.

10. The Settlement Administrator shall serve as the administrator of the Settlement Fund within the meaning of Treasury Regulations, 26 C.F.R. §§ 1.468B-2(k)(3). The Settlement Administrator shall comply with all applicable reporting, withholding and filing requirements for a qualified settlement fund, as provided for in Treasury Regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-2 (1992). McGladrey and McGladrey's Counsel shall not be liable for the payment or withholding of any taxes assessed on the Settlement Fund. The parties to this Stipulation agree to cooperate with the Settlement Administrator, each other and their tax

attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

11. McGladrey and McGladrey's Counsel shall not be liable for any costs, fees or expenses of any of Plaintiff's attorneys, experts, consultants, agents or representatives, and all such costs, fees and expenses as approved by the Court shall be paid out of the Settlement Fund.

### **NOTICE AND SETTLEMENT ADMINISTRATION**

12. The Claims Administrator shall distribute notice of the Settlement under Plaintiff's Counsel's supervision and subject to the jurisdiction of the Court. McGladrey and McGladrey's Counsel shall have no responsibility for the distribution of notice of the Settlement, and shall have no liability in connection with such distribution. Plaintiff's Counsel may expend from the Settlement Account, without prior approval from McGladrey or the Court, the reasonable costs and expenses associated with the distribution of notice of the Settlement, including, without limitation, the costs of identifying members of the Class and effecting mail notice and publication notice. Such amounts shall include, without limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding notice to their beneficial owners, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims.

13. The Settlement Administrator, acting under the supervision of Plaintiff's Counsel, shall be responsible for the administration of the Settlement, including, but not limited to, determining the timeliness, completeness and validity of Proofs of Claim and Release Forms, in accordance with the terms and provisions of this Stipulation. McGladrey and McGladrey's Counsel shall have no responsibility for administration of the Settlement.

14. For purposes of facilitating the processing of claims, the Settlement Administrator may cause to be leased and maintained a numbered Post Office Box. The Settlement Administrator shall be responsible for preserving for a reasonable period of time the Proofs of Claim, Release Forms, and other written communications received from Class Members or other persons in response to the Class Notice. Plaintiff's Counsel, or, if appropriate, the Settlement Administrator, shall be responsible for responding to inquiries mailed to the Post Office Box, but copies of all written answers to such inquiries shall be maintained and made available for inspection by all counsel in this action.

15. For the purpose of making claim to a portion of the Net Settlement Fund, each Class Member who has not requested exclusion shall be required to have previously submitted a valid Proof of Claim in the Individual Defendants Settlement and now to submit a Release Form, and, if such Proof of Claim was not previously submitted, to submit a Proof of Claim affirmed under penalty of perjury and in all material respects in the form attached as Exhibit 1-C, supported by such documents as specified in the Proof of Claim as are available through the exercise of reasonable diligence.

16. To be valid, a Proof of Claim and/or Release Form must be submitted no later than the last date for submission of Proofs of Claim and/or Releases as ordered by the Court and addressed in accordance with the instructions contained in the Class Notice and Proof of Claim. Each Proof of Claim and/or Release Form shall be deemed to have been submitted when postmarked, if mailed by first-class mail or air mail, postage prepaid, and addressed in accordance with the instructions. Any Proof of Claim and/or Release Form submitted otherwise shall be deemed to have been submitted when it is actually received by the Settlement Administrator.

17. A Proof of Claim must also satisfy the following conditions: (i) the proof of

Claim must have been approved for payment in connection with the Individual Defendants Settlement (if previously submitted); (ii) the Proof of Claim must provide substantially all the information requested therein; (iii) the Proof of Claim must be duly executed by each claimant; (iv) if the person executing the Proof of Claim is acting in a representative capacity, the Proof of Claim must be accompanied by proof of the authority of the representative to act on behalf of and to bind the claimant; (v) the Proof of Claim must be accompanied by competent proof (*e.g.*, broker's confirmation slips, brokerage account statements, letters from brokers, the Schedule D from the applicable tax return, or other competent proof) of all relevant acquisitions and/or dispositions of First Central common stock; and (vi) the Proof of Claim must be submitted in a timely manner in accordance with the provisions of this paragraph.

18. Each person who submits, or who has already submitted, a Proof of Claim shall execute a Release Form. The release shall be effective upon distribution of such person's allocable share of the Net Settlement Fund pursuant to the terms of this Stipulation.

19. By submitting a Proof of Claim, or by having previously submitted a Proof of Claim, each claimant will thereby submit to the jurisdiction of this Court for the purpose of asserting a claim in this Action, and each Proof of Claim will be subject to examination, investigation and discovery under the Federal Rules of Civil Procedure, and ultimate determination by the Court as to such claimant's status as a claimant and the allowable amount of the claim.

20. A Proof of Claim will be deemed accepted and eligible for payment in accordance with the formulas set forth in the Plan of Allocation described in the Class Notice unless it is disallowed. All Class Members who submitted valid Proofs of Claim in the Individual Defendants Settlement will be considered Authorized Claimants with respect to this Settlement. However, each Authorized Claimant must execute a Release Form.

21. With respect to Proofs of Claim received pursuant to the Class Notice contemplated by this Settlement (*i.e.*, newly received Proofs of Claim), the Settlement Administrator, acting under the direction of Plaintiff's Counsel, shall undertake whatever investigation is deemed reasonable or necessary to verify, to the extent possible, the accuracy, completeness and validity of the Proof of Claim. If any Proof of Claim is disallowed, in whole or in part, for failure to satisfy the requirements enumerated in said Proof of Claim, the Settlement Administrator shall request the Class Member to cure such defects in the Proof of Claim or to submit such supporting documents as may be necessary to verify the accuracy and completeness of the Proof of Claim (a "Request to Cure"). Unless extended by the Court, Class Members shall have 30 days after the mailing of such Request to Cure to respond or to explain why substantial compliance cannot be made. Failure to respond to such Request to Cure within 30 days of mailing shall, unless waived by the Court, constitute consent on the part of such claimant to the disallowance of the claim, or to such part of the claim, to which the Request to Cure relates. If after receipt of a claimant's response to a Request to Cure, the Settlement Administrator determines that a Proof of Claim should still be disallowed, in whole or in part, then, as soon as practicable, such claimant shall be notified by first-class mail (i) that the claim has been disallowed in whole or in part; (ii) of the reason or reasons for such disallowance; and (iii) the time period within and the manner with which the claimant may file with the Court a request for a hearing contesting the disallowance. Within 30 days after the date of mailing such notice of disallowance, the claimant may file with the Court a written request for a hearing, mailing copies of such request to Plaintiff's Counsel and McGladrey's Counsel at the addresses specified in the Class Notice on or before the date such request is filed with the Court.

22. Following resolution of the validity of all previously filed and newly filed Proofs of Claim, Plaintiff's Counsel shall submit to the Court a proposed order (i) directing the prompt

payment of all approved claims from the Net Settlement Fund in accordance with a schedule to be prepared and submitted by Plaintiff's Counsel, which schedule shall list all Class Members whose claims are recommended to be allowed and disallowed, in whole or in part, and the amount due each Authorized Claimant; (ii) finally barring any disallowed claims; (iii) barring any claims against any person involved in the acceptance, disallowance, verification, calculation, tabulation or other processing of the claims submitted, the notification of claimants as to the disposition of their claims, or any other aspects of the administration of the Settlement; (iv) seeking payment for fees and expenses incurred in connection with the administration of the Settlement; and (v) releasing the parties to this Stipulation and the Settlement Agreement and their agents and attorneys from any liability in connection with the processing of the Proofs of Claim or any other aspect of the administration of the Settlement.

23. Upon the later of (i) entry of the order described in paragraph 22 or (ii) the Settlement Effective Date, Plaintiff's Counsel shall disburse from the Net Settlement Fund as promptly as possible in payment for all approved claims to the extent they are allowed.

24. The administration of the Settlement, payments out of the Net Settlement Fund, and final decision of all disputed questions of law and fact with respect to the allowable amount and the validity of any claim (including the manner of proving claims) shall be within the jurisdiction and authority of the Court.

#### **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

25. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim (as defined in the Plan of Allocation described in the Notice annexed hereto as Exhibit 1-A, or in such other Plan of Allocation as the Court approves).

26. The Plan of Allocation proposed in the Notice is not a necessary term of this

Stipulation and it is not a condition of this Stipulation that that Plan of Allocation be approved.

27. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his or its Recognized Claim compared to the total Recognized Claims of all accepted claimants. This is not a claims-made settlement. McGladrey shall not be entitled to any return of the settlement monies (or interest earned thereon) once the Effective Date occurs. McGladrey and McGladrey's Counsel shall have no responsibility for or involvement in reviewing or challenging claims.

28. No Person shall have any claim against Plaintiff's Counsel, the Settlement Administrator or any other agent designated by Plaintiff's Counsel, or against McGladrey, McGladrey's Counsel, or the Released Parties based on the distributions made substantially in accordance with this Stipulation and the Settlement Agreement, the Plan of Allocation, or further orders of the Court.

#### **ATTORNEYS' FEES AND EXPENSES**

29. Plaintiff's Counsel will apply to the Court for an award from the combined settlement funds established by this Settlement and Individual Defendants Settlement (which has not yet been distributed), of attorneys' fees not to exceed thirty-three and one-third percent (33 1/3%) of the combined settlement funds, and reimbursement of expenses, plus interest. Such attorneys' fees, expenses, and interest as are awarded by the Court shall be payable from the Settlement Fund to Plaintiff's Counsel commencing on the third business day following the entry by the Court of an order awarding counsel fees and costs, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Plaintiff's Counsel's 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 and when, as a result of any appeal and/or further proceedings

on remand or successful collateral attack, the fee or cost award is reduced or reversed.

30. The Court's approval of the Settlement shall not be conditioned in any way on the Court's approval of the fee application by Plaintiff's Counsel, and rejection of the fee application shall not provide a basis to terminate or modify the Settlement. Any order or proceedings relating solely to the fee and expense applications, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Stipulation or the Settlement or affect the finality of any Order and Final Judgment approving the Stipulation or the Settlement.

### **ADMINISTRATION EXPENSES**

31. Plaintiffs' Counsel will apply to the Court, on notice to McGladrey's Counsel, for an order (the "Class Distribution Order") approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

### **FINAL JUDGMENT**

32. Upon the approval by this Court of the Settlement, a Final Judgment shall be entered in the Action, in all material respects in the form annexed hereto as Exhibit 2:

a. approving the Settlement; adjudging the terms thereof to be fair, reasonable and adequate; directing consummation of its terms and provisions; awarding Plaintiff's Counsel such fees, expenses and disbursements as the Court deems appropriate to be paid from the Settlement Fund; and retaining jurisdiction to effectuate the foregoing;

b. dismissing the Complaint in the Action on the merits and with prejudice as against McGladrey and permanently barring all Class Members, except those persons who

excluded themselves therefrom, from prosecuting against McGladrey and the Released Parties any individual or class claims which are or could have been asserted in the Action, including without limitation, any claims arising out of or in any way relating to any of the acts, facts, transactions, occurrences, representations or omissions set forth in the Complaint;

c. pursuant to the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4(f)(7)(A), finally discharging all obligations of McGladrey to the Plaintiff and the Class arising out of the Action and barring all future claims for contribution arising out of the Action by any person against McGladrey and by McGladrey against any person, other than a person whose liability has been extinguished by the Settlement; and

d. containing such other and further provisions consistent with the terms and provisions of this Stipulation as the Court may deem advisable.

#### **EFFECTIVE DATE**

33. The Effective Date shall be the earliest date by which all of the following shall have occurred:

a. entry of the Preliminary Approval Order in all material respects in the form annexed hereto as Exhibit 1;

b. approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

c. entry by the Court of an Order and Final Judgment, in all material respects in the form set forth in Exhibit 2 annexed hereto, and the expiration of any time for appeal or review of such Order and Final Judgment, or, if any appeal is filed and not withdrawn or dismissed, after such Order and Final Judgment is upheld on appeal in all material respects by the highest Court to which such appeal shall have been taken and is no longer subject to review upon further appeal or review by writ of certiorari, or, in the event that the Court enters an order

and final judgment in form other than that provided above (“Alternative Judgment”) and none of the parties hereto elect to terminate this Settlement, the date that such Alternative Judgment becomes final and no longer subject to appeal or review.

### **TERMINATION**

34. If persons who otherwise would be Class Members have filed timely and proper requests for exclusion (“Requests for Exclusion”) from the Class in accordance with the provisions of the Notice, and such persons in the aggregate purchased a number of First Central shares during the Class Period in an amount greater than the threshold number of shares specified in a separate supplemental agreement between Plaintiff and McGladrey (the “Supplemental Agreement”), then McGladrey shall have the option to terminate this Stipulation in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement shall not be filed with the Court unless a dispute arises as to its terms, and in that event, it shall be filed and maintained with the Court under seal.

35. McGladrey or Plaintiff shall 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 party hereto within thirty (30) days of: (i) the Court’s declining to enter the Preliminary Approval Order in any material respect; (ii) the Court’s refusal to approve this Stipulation or any material part of it; (iii) the Court’s declining to enter the Order and Final Judgment in any material respect; (iv) the date upon which the Order and Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

36. Except as otherwise provided herein, in the event the Settlement is terminated or the Effective Date fails to occur for any reason, then the parties to this Stipulation shall be

deemed to have reverted to their respective status in the Action and, except as otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and any releases exchanged pursuant to this Stipulation shall be void and of no further effect. Any portion of the Settlement Amount previously paid by or on behalf of McGladrey, together with any interest earned thereon, less any Taxes paid with respect to such income, and less costs of administration and notice actually incurred and paid or payable from the Notice and Administration Account, shall be returned to McGladrey.

### **MISCELLANEOUS**

37. The parties to this Stipulation agree to use their best efforts to consummate this Settlement as soon as practicable.

38. The parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Released Parties with respect to the Settled Claims. The parties agree not to assert in any forum that the litigation was brought by Plaintiff or defended by McGladrey in bad faith or without a reasonable basis. The parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length in good faith by the parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

39. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all parties hereto or their successors-in-interest.

40. 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 expenses to Plaintiff's Counsel and enforcing the terms of this Stipulation.

41. 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.

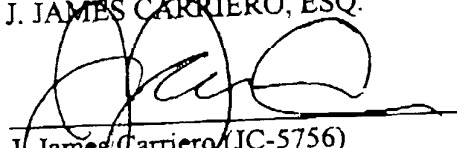
42. This Stipulation is governed by the laws of the State of New York.

43. All counsel and any other person executing this Stipulation and any 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.

44. This Stipulation may be executed in separate counterparts, each of which when so executed shall constitute an original, but all of which together shall constitute the same instrument.

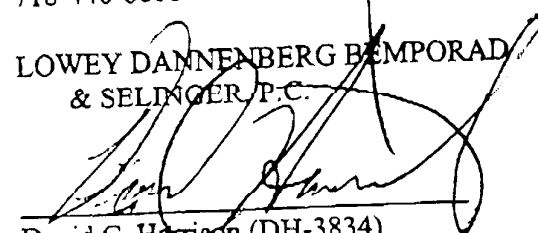
LAW OFFICES OF  
J. JAMES CARRIERO, ESQ.

By:

  
J. James Carriero (JC-5756)  
29-53 Butler Street  
East Elmhurst, NY 11369  
718-446-8600

LOWEY DANNENBERG BEMPORAD  
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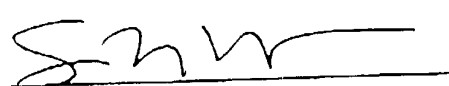
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