
**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

KELLEY JESSOP, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

DALLIN LARSEN, an individual, HENRY
MARSH, an individual, RANDY LARSEN, an
individual, and BANKERS TRUST
COMPANY,

Defendants,

And related Third Party Complaint.

Civil No. 2:14-cv-00916

Honorable Bruce S. Jenkins

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“**Settlement Agreement**”) is entered into by and between Plaintiff Kelley Jessop, individually and on behalf the Plaintiff Class (as defined below) (collectively “**Plaintiff**”), and Defendants Bankers Trust Company (“**BTC**”), Bankers Trust Company of South Dakota (“**BTC of SD**”) (BTC and BTC of SD are collectively BTC), Dallin Larsen, Henry Marsh, and Randy Larsen (the “**Individual Defendants**” and collectively all Defendants are referred to as “**Defendants**”), and Mona Vie, Inc. (“**Mona Vie**” or the “**Company**”), with Mona Vie being a party to this Settlement Agreement solely for the purpose of providing and receiving mutual releases of claims by and between itself and BTC as set forth in paragraph 3.4 below and the other specific references to and agreements of Mona Vie set forth below (Plaintiff and all Defendants and Mona Vie are collectively referenced as the “**Parties**”).

WHEREAS, Mona Vie was an operating company headquartered in Utah focused primarily on the production and sale of acai berry beverage products founded in part by the Individual Defendants;

WHEREAS, on or about September 12, 2010, BTC was appointed by Mona Vie's board of directors as the independent discretionary trustee (the "**Trustee**") of the to-be-formed Mona Vie, Inc. Employee Stock Ownership Plan (the "**MV ESOP**") for the purpose of determining whether the MV ESOP should engage in a transaction to purchase Company stock ("**Stock**");

WHEREAS, on or about September 14, 2010, BTC engaged Chartwell Capital Solutions, LLC ("**Chartwell**"), an independent financial advisory firm, to assist the Trustee in determining the value of the Stock, for the purposes of the potential MV ESOP transaction;

WHEREAS, in its capacity as Trustee of the potential MV ESOP, BTC thereafter conducted legal and financial due diligence of Mona Vie and its affiliates ("**Due Diligence**") together with Chartwell and BTC's legal advisor ("**Counsel**");

WHEREAS, the Due Diligence included, but was not limited to: (i) the review of Mona Vie's historical financial information and financial projections, as well as corporate formation documentation and other legal matters; (ii) interviews of the Company's senior management, general counsel and various other Mona Vie personnel; (iii) BTC's consultation with Chartwell about Mona Vie's financial projections and historical performance, and Chartwell's determination of the Company's value (the "**Valuation**"); and (iv) review and consideration by BTC personnel of the Valuation, suitability of the potential Stock purchase by the MV ESOP, and potential terms and conditions of such potential transaction, among other actions engaged in by BTC, Chartwell and Counsel;

WHEREAS, Chartwell's October 2010 preliminary and final Valuation conclusions published to the Trustee on November 16, 2010, stated that the per share value of the Stock was within the range of \$13.99 to \$18.66;

WHEREAS, following negotiations with Mona Vie during October and November 2010, BTC ultimately offered to purchase approximately 40% of Mona Vie's equity (determined on a fully-diluted basis) from the Company on behalf of the MV ESOP, in the form of newly-issued shares of Stock for a price of \$14.50 per share (the "**Shares**"), which offer was accepted by Mona Vie;

WHEREAS, the total purchase price for the Shares was approximately \$186M and financed by the Trustee via the issuance of a secured nonrecourse promissory note (the "**Note**") by the MV ESOP to Mona Vie (the "**MV ESOP Transaction**") on November 17, 2010 (the "**Closing Date**");

WHEREAS, prior to the Trustee's negotiation of the MV ESOP Transaction, the Company negotiated a transaction with its existing investor, TSG Consumer Partners, LLC ("**TSG**"), to convert TSG's equity interest in an affiliate of Mona Vie into debt (the "**TSG Transaction**");

WHEREAS, the TSG Transaction closed immediately prior to the ESOP Transaction on the Closing Date, at which time Mona Vie made a partial cash payment to TSG and issued a secured promissory note to TSG in the approximate amount of \$160M (the "**Promissory Note**") as consideration for TSG Transaction;

WHEREAS, thereafter the Shares were periodically allocated to MV ESOP participants' ("**Participants**") accounts following the payment of Company contributions to the MV ESOP

and corresponding Note payments back to Mona Vie by BTC to satisfy the debt payment obligations created under the Note;

WHEREAS, following the Closing Date, Mona Vie continued to operate for several years, but ultimately did not perform well financially which caused the Company to terminate the ESOP as of December 31, 2014;

WHEREAS, prior to May 6, 2015, TSG sold the Promissory Note to an unrelated third-party, Jeunesse Global, LLC ("**Jeunesse**"), and thereafter Jeunesse began proceedings to foreclose on the Promissory Note (the "**Foreclosure**");

WHEREAS, on about May 6, 2015, the Company's board of directors consented to a "Strict Foreclosure" of the assets that secured the Promissory Note, which consisted of substantially all of the assets of the Company. Soon thereafter the Trustee secured a Temporary Restraining Order to investigate the Foreclosure resulting in the Trustee's sale to Jeunesse of three million four hundred eighty-eight thousand four hundred twenty-eight and 2913/10000 (3,488,428.2913) of the MV ESOP Shares that had been allocated to the Participants' accounts as of December 31, 2014, for One Hundred Four Thousand Six Hundred Fifty-Two and 85/100 Dollars (\$104,652.85), which cash funds are currently held in the MV ESOP trust along with a minor amount of additional cash (for a total of approximately \$110,000) and nine million three hundred seventy-three thousand four hundred thirty-two and 7087/10000 (9,373,432.7087) of unallocated Shares which are worthless;

WHEREAS, on December 18, 2014, a lawsuit was filed against the Defendants as a proposed Class Action in the Utah Federal Court, Cause No. 2:14-cv-00916 ("**Lawsuit**"). The Plaintiff in the Lawsuit is a former employee of Mona Vie who has a vested account in the MV

ESOP that was invested in shares of Mona Vie stock on December 18, 2014. The Lawsuit is pending before Judge Bruce S. Jenkins (the “**Court**”);

WHEREAS, on April 21, 2015, BTC filed its Third Party Complaint against Mona Vie in the Lawsuit making various claims against Mona Vie, including claims for breach of contract, indemnification and contribution; and on June 5, 2015, Mona Vie filed a Counterclaim against BTC in the Lawsuit making various claims against BTC, including claims for wrongful injunction. Both BTC and Mona Vie subsequently filed responses denying all material allegations of liability to the Third Party Complaint and Counterclaim;

WHEREAS, on December 1, 2015, the Court granted Plaintiff’s Motion for Class Certification in the Lawsuit, which for purposes of this Settlement is now formally defined in Section 2.1.2 below;

WHEREAS, on February 11, 2016, Plaintiff filed a Motion for Leave to Amend the Complaint, which Motion was granted on March 10, 2015 (the “**Amended Complaint**”);

WHEREAS, the Amended Complaint broadly alleges that BTC breached its fiduciary duty to the Participants, including claims for breach of fiduciary duty under ERISA § 404 (29 U.S.C. § 1104) and claims that BTC engaged in a prohibited transaction with a party of interest in violation of ERISA § 406 (29 U.S.C. § 1106). Including, but without limitation, Plaintiff alleges BTC breached its fiduciary duty by (i) approving the MV ESOP Transaction and agreeing to enter into the MV ESOP Transaction on behalf of the Participants, (ii) approving the MV ESOP Transaction at an inflated share price, and (iii) allowing the MV ESOP to borrow from Mona Vie as memorialized under the Note at an inflated interest rate of 10%, among other allegations;

WHEREAS, the Amended Complaint also makes claims against the Individual Defendants alleging violations of ERISA and breach of fiduciary duty. Including, but without limitation, Plaintiff alleges the Individual Defendants knew of and participated in BTC's breach of fiduciary duty, and have liability for choosing BTC to serve as the Trustee, among other allegations;

WHEREAS, BTC filed a Motion to Dismiss the Amended Complaint against BTC on March 28, 2016, denying all liability. The Motion to Dismiss has not been ruled upon and remains pending. The Individual Defendants filed an Answer to the Amended Complaint on March 24, 2016, denying all liability;

WHEREAS, the United States Department of Labor ("**DOL**") commenced an investigation of the MV ESOP beginning in early 2013. On March 15, 2016, the DOL issued its investigative findings with respect to BTC in its role as Trustee, which in general allege that BTC committed ERISA violations with respect to the MV ESOP Transaction ("**BTC Findings**"). On June 23, 2016, the DOL issued its investigative findings with respect to the Individual Defendants and other third parties in their individual roles as fiduciaries of the MV ESOP, which in general allege that the Individual Defendants and others committed ERISA violations with respect to the MV ESOP ("**Individuals' Findings**"). The DOL has threatened to bring suit against all Defendants based on the allegations set forth in its BTC Findings and Individuals' Findings;

WHEREAS, BTC, and each of the Individual Defendants, separately and collectively, deny all material allegations of the Amended Complaint, the BTC Findings, the Individuals' Findings, and in general deny any wrongdoing with respect to the MV ESOP or the MV ESOP Transaction, Mona Vie and BTC deny the allegations of the respective Third Party Complaint

and Counterclaim against each other, but the Parties believe that due to the cost of the Lawsuit, the time and attention that must be invested in litigation of the Lawsuit, the inherent uncertainty of the outcome of the Lawsuit, the current financial condition of the Parties, and for other good and valid reasons, a settlement as detailed in this Settlement Agreement is in the best interests of the Parties; and

WHEREAS, on July 12 and 13, 2016, the Defendants, Plaintiff, and the DOL conducted a comprehensive settlement mediation conference with mediator Robert A. Meyer in San Francisco, California. The mediation resulted in a settlement and/or resolution of all claims by the Plaintiff and the DOL against the Defendants.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein stated, and for other good and valuable consideration, the Parties now agree as follows:

1. Settlement Payments. The “**Settlement**” shall mean the settlement to be consummated under this Settlement Agreement.

1.1 BTC. BTC shall pay Sixteen Million Dollars (\$16M) total in Settlement (“**BTC Settlement Amount**”) to a qualified settlement trust (the “**Settlement Trust**”) maintained by the Settlement administrator (“**Settlement Administrator**”) and escrow agent (“**Escrow Agent**”) appointed by the court (see Exhibit A hereto), whose appointment shall not be objected to by the DOL.

1.2 Individual Defendants. The Individual Defendants shall collectively pay Three Million Eight Hundred Thousand Dollars (\$3.8M) total in the form of a voluntary contribution to the Settlement Trust (“**Individual Defendants’ Settlement Amount**”), in accordance with and subject to the terms of this Settlement Agreement (collectively both Section 1.1 and Section 1.2 payments are referred to as the “**Settlement Fund**”).

2. Conditions to Finality of the Settlement.

The Settlement shall be final and the Settlement Fund paid when each of the following conditions in Sections 2.1 through 2.4 have been satisfied or waived.

2.1 Court Approval. The Settlement shall have been approved by the Court as provided for in Section 2 herein. Plaintiff shall move the Court for an order and judgment approving this Settlement Agreement, a successor trustee to BTC (“**Successor Trustee**”) (see Exhibit A hereto), an Independent Fiduciary, an Escrow Agent, a Settlement Administrator and the Settlement. Plaintiff shall recommend to the Court that such order and judgment be entered. Defendants will not object to such recommendation. Mona Vie affirmatively agrees to the appointment of the Successor Trustee and the Independent Fiduciary. The Parties shall cooperate in good faith to effectuate the Settlement, which shall include all steps and efforts contemplated by this Settlement Agreement, all steps or efforts reasonably necessary to secure preliminary and final approval by the Court of the Settlement, and any other steps or efforts which may become necessary by order of the Court (unless such order materially modifies the terms of this Settlement Agreement) to carry out this Settlement Agreement, including the following:

2.1.1 Motion for Preliminary Approval of Settlement. As soon as reasonably possible upon the full execution of this Settlement Agreement by the Parties, Plaintiff will file a motion (“**Preliminary Approval Motion**”) with the Court for an order (the “**Preliminary Approval Order**”) substantially in the form attached hereto as Exhibit B.

2.1.2 Final Class Definition. The Plaintiff class is defined as: All individuals who were participants in the Mona Vie, Inc. Employee Stock

Ownership Plan at any time on or after November 17, 2010, to the date of judgment and their beneficiaries, but excluding the Individual Defendants, and any beneficiary claiming directly through the Individual Defendants (the “**Class**”).

2.1.3 Non-Opt Out Class Certification. Given that the Court in the Lawsuit certified the Plaintiff Class under Federal Rule of Civil Procedure 23(b)(1)(B), the Parties agree that no person in the Plaintiff Class can opt out of the proposed Settlement. This Settlement is conditioned on that understanding and the Court’s Order ordering same.

2.1.4 Issuance of Class Notice. On the date and in the manner set by the Court in its Preliminary Approval Order, Plaintiff shall cause the Class Notice to be transmitted in the form attached hereto as Exhibit C and matter approved by the Court as directed in the Preliminary Approval Order.

2.1.5 Compliance with CAFA.

2.1.5.1 No later than twenty (20) calendar days following the filing of the Preliminary Approval Motion, the Defendants shall serve notice of the proposed Settlement upon the appropriate State official of each State in which a Class member (“**Class Member**”) resides and the appropriate Federal official(s), as required by the Class Action Fairness Act, 28 U.S.C. § 1715 (“**CAFA**”) (“**CAFA Notice Recipients**”).

2.1.5.2 The Court shall have determined that the Defendants complied with CAFA and its notice obligations by providing appropriate officials with information about the Settlement.

2.1.6 The Fairness Hearing. Upon entry of the Preliminary Approval Order, the Parties contemplate that the Court will schedule and then conduct a Hearing at which the Court will determine whether the Settlement is fair, reasonable, and adequate (the “**Fairness Hearing**”). Specifically, Plaintiff will request that the Court determine on or after the date of the Fairness Hearing: (a) whether to enter judgment fully and finally approving the Settlement and dismissing with prejudice the Lawsuit (which judgment is referred to herein as the “**Final Order**”); (b) whether the requirements of Federal Rule of Civil Procedure 23(e) and due process have been satisfied in connection with distribution of the Class Notices to the Plaintiff Class; (c) whether the requirements of CAFA have been satisfied; (d) whether the distribution of the Settlement Fund to the Successor Trustee as provided in this Settlement Agreement should be approved; (e) what attorney’s fees and litigation expenses should be awarded to Plaintiff Class Counsel; and (f) what amount should be awarded to Plaintiff Kelly Jessop as contemplated by Section 10 herein (the “**Case Management Award**”).

2.2 Finality of Final Order. The Court shall have entered the Final Order and final judgment as more fully discussed in Sections 2.1.5 herein and the Final Order shall have become Final. “**Final**” shall have the same meaning ascribed to “final” under 28 U.S.C. §1291, and: (i) the time expired to file an appeal, motion for reargument, motion for rehearing, petition for a writ of certiorari or other writ (“**Appeal Proceeding**”) with respect to a judicial ruling or order with no such Appeal Proceeding having been filed; or

(ii) if an Appeal Proceeding has been filed with respect to such judicial ruling or order, (a) the judicial ruling or order has been affirmed without material modification and with no further right of review, or (b) such Appeal Proceeding has been denied or dismissed with no further right of review.

2.3 Funding of Class Settlement Amount. Defendants shall have deposited or shall have caused the Settlement Fund to be deposited into the Settlement Trust established by the Settlement Administrator at the time prescribed by, and otherwise as provided for, in Sections 7.1.1 and 7.1.2 herein.

2.4 Intervention by the Department of Labor. The DOL has not opposed the Settlement, and has filed a separate Complaint (“**DOL Complaint**”) and agreed Consent Judgment (by intervention or otherwise) against BTC asserting generally similar allegations and claims as those asserted by Plaintiff in the Lawsuit prior to the entry of the Final Order in this case. Should the DOL not file the DOL Complaint and an agreed Consent Judgment or should such Consent Judgment not then be ordered and approved by the Court, BTC shall have the right to terminate this Settlement Agreement in accordance with Section 11 herein in its sole discretion.

3. Releases.

3.1 Releases of the Defendant Releasees by Plaintiff and Plaintiff Class. Subject to Section 11 herein, effective upon the entry of the Final Order by the Court in the Lawsuit, Plaintiff and the Plaintiff Class on behalf of themselves, their beneficiaries, heirs, executors, representatives, and assigns (collectively “**Plaintiff Releasers**”), absolutely and unconditionally release and forever discharge BTC and all of their officers, directors, employees, agents, attorneys, relations, representatives, parents,

subsidiaries, affiliates, divisions, assigns, insurers and reinsurers, including all current or former members of the BTC ESOP Committee, Mona Vie, each of the Individual Defendants and all of their officers, directors, employees, agents, attorneys, relations, representatives, parents, subsidiaries, affiliates, divisions, assigns, insurers and reinsurers (collectively “**Defendant Releasees**”), from all Released Claims that Plaintiff and the Plaintiff Class directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have against Defendant Releasees. Notwithstanding any other provision hereof, the Releases set forth in Section 3 herein will remain in effect during the pendency of any Appeal Proceeding of the Final Order. Only if any Appeal Proceeding results in a reversal or vacation of the Final Order will the Releases set forth in Section 3 herein become void and lose their effect, at which time the provisions of Section 11 will become effective.

3.2 Released Claims. The Released Claims shall be as follows: any and all claims of any nature whatsoever (including claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification, or any other type or nature of legal or equitable relief), whether accrued or not, whether against Defendant Releasees in their capacity as individuals, corporate entities, or in their capacities as fiduciaries, whether already acquired or acquired in the future, whether known or unknown, in law or equity, which were or could have been asserted in the Lawsuit, in any way regarding the MV ESOP Transaction, and administration of the MV ESOP (the “**Released Claims**”). In the event that any court with original or appellate jurisdiction over the Lawsuit issues a final determination that any portion of Section 3 herein is not enforceable, the Parties will

jointly modify Section 3 herein to conform with such determination, and in any event, all portions of Section 3 herein that are enforceable shall remain enforceable.

3.3 Mutual Releases between Defendants. Subject to Section 11 herein, effective upon the entry of the Final Order by the Court in the Lawsuit, BTC on one hand, and each of the Individual Defendants on the other hand, on behalf of themselves, their officers, directors, employees, beneficiaries, heirs, executors, representatives, parents, subsidiaries, affiliates, divisions, and assigns, absolutely and unconditionally mutually release and forever discharge each other, their officers, directors, employees, agents, attorneys, relations, representatives, parents, subsidiaries, affiliates, divisions, assigns, insurers and reinsurers, including all current or former members of the BTC ESOP Committee, from all claims of any nature whatsoever (including claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification, or any other type or nature of legal or equitable relief), whether accrued or not, that Defendants indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have against each other, including all claims which were or could have been asserted in the Lawsuit against each other, in any way regarding the MV ESOP Transaction, and the administration of the MV ESOP. Notwithstanding any other provision hereof, the Releases set forth in Section 3 herein will remain in effect during the pendency of any Appeal Proceeding of the Final Order. Only if any Appeal Proceeding results in a reversal or vacation of the Final Order will the Releases set forth in Section 3 herein become void and lose their effect, at which time the provisions of Section 11 will become effective.

3.4 Mutual Releases between BTC and Mona Vie. Subject to Section 11 herein, effective upon the entry of the Final Order by the Court in the Lawsuit, BTC on the one hand, and Mona Vie on the other hand, on behalf of themselves, their officers, directors, employees, beneficiaries, heirs, executors, representatives, related companies, parents, subsidiaries, affiliates, divisions, and assigns, absolutely and unconditionally mutually release and forever discharge each other and all of their officers, directors, employees, agents, attorneys, relations, representatives, related companies, parents, subsidiaries, affiliates, divisions, assigns, insurers and reinsurers, including all current or former members of the BTC ESOP Committee, from all claims of any nature whatsoever (including claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification, or any other type or nature of legal or equitable relief), whether accrued or not, that BTC and Mona Vie directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have against each other, including all claims which were or could have been asserted in the Lawsuit against each other, in any way regarding the MV ESOP Transaction, and the administration of the MV ESOP. Notwithstanding any other provision hereof, the Releases set forth in Section 3 herein will remain in effect during the pendency of any Appeal Proceeding of the Final Order. Only if any Appeal Proceeding results in a reversal or vacation of the Final Order will the Releases set forth in Section 3 herein become void and lose their effect, at which time the provisions of Section 11 will become effective.

3.5 California Release Waiver. The Parties understand and agree that the Releases to be given pursuant to this Settlement Agreement shall be effective as a bar to

any and all currently unsuspected, unknown, or partially known claims within the scope of the Releases. Accordingly, the Parties explicitly acknowledge and waive any and all rights they may have under Cal. Civ. Code §1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code §1542, including, without limitation, the claims discussed in Sections 3.1 – 3.4 herein. Cal. Civ. Code §1542 provides:

A GENERAL RELEASE DOES NOT EXCEED TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT 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.

3.6 Scope of Releases. The Releases set forth in Section 3 are not intended to include the release of any rights, obligations, or duties arising out of this Settlement Agreement.

4. Covenants.

4.1 Covenants Not to Sue. Plaintiff covenants and agrees, (i) not to file against any Defendant Releasee any lawsuit or claim based on, relating to, or arising from any Released Claim; and (ii) that the foregoing covenant and agreement shall be a complete defense to any such lawsuit or claims against any of the Defendant Releasees.

4.2 Taxation of Settlement Fund. Plaintiff acknowledges that Defendant Releasees have no responsibility for any taxes due on the Settlement Fund, on earnings on the Settlement Fund, or on any amounts that Plaintiff receives from the Settlement Fund. Nothing herein shall constitute an admission or representation that any such taxes will or will not be due.

4.3 Cooperation. The Parties shall cooperate in good faith, including taking all steps and efforts contemplated by this Settlement Agreement and all steps reasonably necessary to secure preliminary and final approval by the Court of the Settlement as set forth above in Sections 2.1 and 2.2 herein.

4.4 Identification of Plaintiff Class. After entry of the Preliminary Approval Order, within thirty (30) calendar days the Parties will use their reasonable best efforts to obtain the names and last known addresses of all Class Members and respond to reasonable written requests for accessible data in the Parties' custody and control necessary to identify (including identifying persons excluded from the Class) and provide notice to the Plaintiff Class. The Parties acknowledge that any information provided by Defendants, third parties, or Mona Vie to the Plaintiff for this purpose shall be treated as "Confidential" under the Court's standing Protective Order. Plaintiff expressly acknowledges that the information may be used solely to deliver the class notice and/or implement the Settlement, including making distributions to Participants.

4.5 Request by the Court for Information. If the Court deems it necessary for the Parties to supply any information as part of the Court's review of the Settlement Agreement, the Parties will reasonably expedite provision of such information.

5. Representations and Warranties.

5.1 Parties' Representations and Warranties. The Parties, and each of them, represent and warrant as follows:

5.1.1 That Plaintiff and his counsel have conducted an appropriate investigation and discovery, and have diligently litigated the Lawsuit.

5.1.2 That none of the Plaintiff's claims or causes of action made in the Lawsuit or that could have been alleged in the Lawsuit against any of the Defendant Releasees have been or will be assigned, encumbered, or in any manner transferred in whole or in part.

5.1.3 That Plaintiff shall have no surviving claim or cause of action against any of the Defendant Releasees with respect to the Released Claims.

5.1.4 That the Parties have carefully read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each person executing this Settlement Agreement on behalf of each of the Parties.

5.2 Signatories' Representations and Warranties. Each person executing this Settlement Agreement on behalf of themselves or in a representative capacity do hereby personally represent and warrant that, to the best of his or her information and knowledge formed after reasonable inquiry, he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal for whom such individual represents or purports to represent.

6. No Admission of Liability.

6.1 Except as set forth in Paragraph 6.2 below, this Settlement Agreement, whether or not consummated, and any discussions, negotiations, proceedings or agreements relating to the Settlement Agreement, and any matters arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be construed, offered or received against or to the prejudice of the Parties for any purpose, and in particular:

6.1.1 do not constitute and shall not be deemed to constitute any liability or wrongdoing by any of the Defendant Releasees, or give rise to any inference of wrongdoing or liability under ERISA;

6.1.2 do not constitute, and shall not be offered or received against or to the prejudice of Defendant Releasees as evidence of any presumption, concession or admission by Defendant Releasees with respect to the truth of any allegation by Plaintiff or as alleged in the Lawsuit, or of any liability, damages, fault, omission, or wrongdoing of Defendant Releasees;

6.1.3 do not constitute, and shall not be offered by or received against or to the prejudice of Defendant Releasees, in any other civil, criminal, or administrative lawsuit or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement;

6.1.4 do not constitute, and shall not be construed as or received in evidence as, an admission, concession, or presumption against Plaintiff that any of Plaintiff's claims are without merit, or that damages recoverable in the Lawsuit would not have exceeded the Settlement Fund.

6.2 Defendant Releasees may file this Settlement Agreement and/or the Final Order in any action that may be brought against them in order to support a defense or counterclaim based in principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate the liability protection granted them under any applicable insurance policies. A Party may file this Settlement

Agreement and/or the Final Order in any action that the Party brings against another Party to enforce the terms of this Settlement Agreement and/or the Final Order.

7. The Settlement Fund.

7.1 Payment of the Settlement Fund.

7.1.1 Not later than ten (10) calendar days after the Final Order becomes Final (including the full running of any Appeal Proceeding), BTC shall deposit the BTC Settlement Amount referenced in Section 1.1 above, into the Settlement Trust via electronic transfer or other method acceptable to the Escrow Agent; provided, however, BTC shall deposit Eight Million Dollars (\$8M) (or at BTC's option file an appeal bond in the same amount) ("**Settlement Advance**") of the BTC Settlement Amount into the Settlement Trust via electronic transfer or other method acceptable to the Escrow Agent within ten (10) calendar days of the filing of a notice of appeal if an Appeal Proceeding is commenced, so that during the pendency of the Appeal Proceeding the Settlement Advance is held in the Settlement Trust while the Appeal proceeds. The Settlement Advance shall be invested by the Independent Fiduciary in an interest bearing fixed income investment or investments in accordance with the Independent Fiduciary's duties set forth in Section 8.2 , and any increase in the amount of the Settlement Advance after BTC's deposit into the Settlement Trust shall be credited towards the BTC Settlement Amount due and owing by BTC not later than ten (10) calendar days after the Final Order becomes Final (including the full running of any Appeal Proceeding). The Settlement Advance deposited into the Settlement Trust will be deemed and considered to be in the legal custody of the Court during

any such Appeal Proceeding. The BTC Settlement Amount portion of the Settlement Fund created pursuant to this Settlement Agreement (including the Settlement Advance) created pursuant to this Settlement Agreement and deposited into the Settlement Trust will then be deemed and considered to be in the legal custody of the Court until such time as such funds may be distributed pursuant to further order of the Court or pursuant to the terms of this Settlement. No part of the Settlement Fund paid by BTC is considered a penalty payment pursuant to ERISA Section 502(l) (28 U.S.C. § 1132(l)) or any other penalty provision. BTC is only responsible for the BTC Settlement Amount referenced in Section 1.1 above.

7.1.2 Not later than ten (10) calendar days after the Final Order becomes Final (including the full running of any Appeal Proceeding), the Individual Defendants shall deposit the Individual Defendants' Settlement Amount payment referenced in Section 1.2 above, into the Settlement Trust via electronic transfer or other method acceptable to the Escrow Agent. The Individual Defendants' Settlement Amount portion of the Settlement Fund created pursuant to this Settlement Agreement and deposited into the Settlement Trust will then be deemed and considered to be in the legal custody of the Court until such time as such funds may be distributed pursuant to further order of the Court or pursuant to the terms of this Settlement. No part of the Settlement Fund paid by the Individual Defendants is considered a penalty payment pursuant to ERISA Section 502(l) (28 U.S.C. § 1132(l)) or any other penalty provision. The

Individual Defendants are only responsible for the Individual Defendants' Settlement Amount referenced in Section 1.2 above.

7.1.3 The Parties acknowledge and agree that Defendant Releasees shall have no authority, control or liability in connection with the design, management, administration, investment, maintenance, or control of the Settlement Fund, or for any expenses the Settlement Fund may incur or any taxes that may be payable by the Settlement Fund.

7.2 The Settlement Fund Amount. The payments referenced in Section 1 above shall be the full and sole monetary contribution and payment made by or on behalf of Defendant Releasees in connection with the Settlement effected with the Plaintiff Releasers, and the payment referred to in Section 1.1 shall be the full and sole monetary contribution and payment made by or on behalf of BTC in connection with the settlement of the DOL Complaint effected with the DOL under this Settlement Agreement. The Settlement Fund amount specifically covers any claims for attorneys' fees and litigation expenses by Plaintiff, and any Case Contribution Award. Except as otherwise specified in this Settlement Agreement, the Parties shall bear their own costs and expenses (including attorneys' fees) in connection with the Lawsuit and effectuating this Settlement Agreement and securing necessary Court orders and approvals with respect to the same.

8. Independent Fiduciary and Successor Trustee.

8.1 Establishment of Successor Trust. The Successor Trustee's duties shall be to establish a successor tax-qualified trust for the MV ESOP (the "**Successor MV**

Trust") and to hold the assets of the MV ESOP in trust and pursuant to the direction of the Independent Fiduciary.

8.2 The Independent Fiduciary's duties shall be to (i) serve as the "plan administrator" as defined in ERISA for the MV ESOP; (ii) coordinate and transfer the Settlement Fund net any Court approved expenses paid pursuant to Sections 9 and 10 herein ("**Net Settlement Fund**") from the Qualified Settlement Trust and Escrow Agent to the Successor MV Trust; (iii) direct the Successor Trustee as to acceptance of the Net Settlement Fund into the Successor MV Trust, the disbursement of MV ESOP assets (including distributions to Participants), the investment of MV ESOP assets pending distribution of assets to Participants, and other matters as appropriate; (iv) determine the amount payable from the Successor MV Trust to each of the Plaintiff Class participants with respect to the Net Settlement Proceeds in accordance with the terms of the MV ESOP and such records as may be available to the Independent Fiduciary; (v) coordinate and transfer the existing MV ESOP trust assets (approximately \$110,000) (the "**Residual Assets**") from BTC to the Successor MV Trust to be held and administered in a sub trust ("**Sub Trust**") of the Successor MV Trust by the Successor Trustee; (vi) determine and pay the proper amount of the Residual Assets to each Participant in accordance with the terms of the MV ESOP and such records as may be available to the Independent Fiduciary; (vii) exercise final discretion and authority with respect to any claims by Plaintiff Class participants and Participants with respect to distributions and payments from the MV ESOP; and (viii) wind up the MV ESOP to the extent necessary, including preparation of any necessary MV ESOP amendments (the "**Amendments**").

8.3 Mona Vie agrees (i) to sign such Amendments and other documents that may be required to be executed by the MV ESOP plan sponsor in connection with winding up the of the MV ESOP and any IRS Forms 5500 required to be filed in the future; and (ii) to assist the Independent Fiduciary in understanding the basis for the information set forth on MV ESOP IRS Forms 5500 previously filed and the status of related MV ESOP plan audits. If Mona Vie is unable or unwilling to fulfill its plan sponsor duties set forth in this Section 8.3, the Independent Fiduciary shall be authorized to execute any necessary documents on behalf of Mona Vie.

8.4 BTC agrees to cooperate in the transition of the Residual Assets held by BTC pursuant to the terms of the Mona Vie, Inc. Employee Stock Ownership Plan Trust Agreement dated November 17, 2010 (the "**Trust Agreement**"), to the Successor Trustee. Upon completion of the transfer of the Residual Assets to the Successor Trustee, (i) BTC shall be deemed to have resigned as trustee of the MV ESOP and be fully released from (a) any and all obligations set forth under Articles VI and VII of the Trust Agreement, and (b) any and all claims that may arise as result of BTC's holding and management of MV ESOP trust assets or other BTC actions pertaining to the MV ESOP; and (ii) such transfer shall be deemed to be a full and complete discharge of all of BTC's duties and obligations set forth under the Trust Agreement.

8.5 Successor Trustee Fees. All costs incurred in connection with the Successor Trustee shall be paid by the Settlement Administrator from the Court-approved fees paid to the Settlement Administrator. To the extent, however, the Independent Fiduciary directs that the assets of the Successor Trust be invested in a fund(s) managed by the Successor Trustee, the investment management and other fees charged in

connection with such investment shall be in addition to the fees paid to the Successor Trustee for trustee services.

8.6 Independent Fiduciary Fees. All costs incurred in connection with the Independent Fiduciary shall (i) be paid from the Settlement Fund; (ii) not exceed \$150,000; and (iii) be approved by the Court.

9. Payments From the Settlement Fund.

9.1 Expenses of Class Notice. All costs incurred in connection with Class Notice shall be payable or reimbursed from the Settlement Fund. If the Settlement Agreement is terminated or does not become final for any reason after the expenditure of funds to pay for the reasonable costs associated with the Class Notice, Plaintiff Counsel shall be obligated to instruct the Settlement Administrator, Escrow Agent, and/or the Successor Trustee to return the funds remaining in the Settlement Fund.

9.2 Disbursements from Settlement Fund. Plaintiff's Counsel shall be entitled to seek from the Court disbursement of money from the Settlement Fund once the Final Order becomes Final as follows:

9.2.1 For Attorneys' Fees and Litigation Expenses. As provided in Section 10.1 herein.

9.2.2 For Kelley Jessop's Case Contribution Award. As provided in Section 10.2 herein.

9.2.3 For Taxes and Expenses of the Settlement Fund. If any, and with reference to Section 4.2 herein, from the Settlement Fund.

9.2.4 For Fees and Expenses of the Independent Fiduciary. To disburse money from the Settlement Fund to pay the reasonable fees and expenses of the Independent Fiduciary not to exceed \$150,000.

9.2.5 For Fees and Expenses Paid to the Settlement Administrator. To disburse money from the Settlement Fund to pay the reasonable fees and expense of the Settlement Administrator which shall include the fees and expenses of the Successor Trustee, other than the expenses of Class Notice.

9.2.6 For Payment to the Plaintiff Class Participants. Upon the Final Order becoming Final as provided in Sections 2.1.5, and 2.2 herein, and after the amounts payable pursuant to Sections 8.2, 9 and 10 herein have been determined and disbursed from the Settlement Fund, the Settlement Administrator and Escrow Agent shall transfer the Net Settlement Fund to the Successor MV Trust. After the Net Settlement Fund has transferred to the Successor MV Trust, the Independent Fiduciary shall calculate the amounts payable to Plaintiff Class Participants pursuant to the terms of the ESOP, using the records available to it, and considering documents, if any, submitted by Plaintiff Class Participants regarding individual payments. The Settlement Administrator shall assist the Independent Fiduciary in administering the calculation and distribution of payments to Plaintiff Class Participants, but the Independent Fiduciary shall have final authority and discretion to determine payments. Defendant Releasees shall have no liability in the event of any failure by the Independent Fiduciary, Settlement Administrator or Successor Trustee to follow these instructions and

fulfill its duties and to determine the appropriate amounts to be paid and pay such amount to each Plaintiff Class participant.

9.3 Compliance with Section 2. If Plaintiff and Defendants disagree as to whether each and every condition set forth in Section 2 herein has been satisfied or waived, they shall promptly confer in good faith and, if unable to promptly resolve their differences, shall present their disputes for determination to the Court.

10. Attorneys' Fees and Litigation Expenses and Case Contribution Award to Named Plaintiff.

10.1 Payment of Plaintiff's Attorneys' Fees and Litigation Expenses. As provided in Sections 2.1.5 and 9.2.1 herein, Plaintiff's Counsel may apply to the Court for an award of attorneys' fees, and for reimbursement of litigation expenses, including the cost and expense of any service company, expert, or consultant retained by Plaintiff's Counsel, in an amount not exceeding Three Million Dollars (\$3M) of the Settlement Fund. Plaintiff's Counsel shall be entitled to receive attorneys' fees and litigation expenses from the Settlement Fund to the extent awarded by the Court and agrees not to seek from the Court an award of attorneys' fees and litigation expenses in excess of the Three Million Dollar (\$3M) amount. Defendants and Mona Vie shall not oppose Plaintiff's Counsel's application for attorneys' fees and litigation expenses, provided that the application for attorneys' fees and litigation expenses does not exceed Three Million Dollars (\$3M) of the Settlement Amount. The Parties acknowledge that these matters are left to the sound discretion of the Court. Defendants and Mona Vie shall have no responsibility for payment of attorneys' fees and/or litigation expenses to Plaintiff Counsel above Defendants' payment of the Settlement Fund.

10.2 Payment of Case Contribution Award to Jessop. As provided in Section 2.1.5 and 9.2.2 herein, Plaintiff's Counsel may apply to the Court for a Case Contribution Award to Plaintiff Kelley Jessop as consideration for his time and effort devoted to the prosecution of the Lawsuit in an amount of up to Ten Thousand Dollars (\$10,000.00). Defendants shall not oppose the application for a Case Contribution Award to the Plaintiff, provided that the application does not exceed Ten Thousand Dollars (\$10,000.00). The Parties acknowledge that these amounts are left to the sound discretion of the Court. Defendants and Mona Vie shall have no responsibility for payment of any Case Contribution Award above Defendants' payment of the Settlement Fund.

10.3 Separate Considerations. The procedure for and allowance or disallowance by the Court of Plaintiff's application for attorneys' fees, litigation expenses, or the Case Contribution Award are a separate part of the Settlement set forth in this Settlement Agreement, and are separate from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Settlement Agreement. Any order or proceeding relating to any application for attorneys' fees, litigation expenses, or the Case Contribution Award, including an award of attorneys' fees and litigation expenses in an amount less than the amount requested by Plaintiff's Counsel, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement, or affect or delay the finality of the Final Order approving the Settlement Agreement and the Settlement set forth herein. Plaintiff and Plaintiff's Counsel may not cancel or terminate the Settlement Agreement or the Settlement in accordance with Section 11 herein or

otherwise based on the Court's or any appellate court's ruling with respect to attorneys' fees, litigation expenses, or the Case Contribution Award in the Lawsuit.

11. Termination of the Settlement Agreement.

11.1 Termination. This Settlement Agreement may be terminated if (i) the Court declines to enter the Final Order, (ii) the Final Order entered by the Court is reversed or modified in any material respect by any Appeal Proceeding, provided that the terminating party, within fourteen (14) calendar days from the date of such event, furnishes written notice to Plaintiff's Counsel or Defendants' Counsel, as the case may be, of the termination of this Settlement, specifying the terms modified or not approved that give rise to the right to terminate, or (iii) the DOL and BTC cannot reach agreement on the terms of an agreed Consent Judgment and related pleadings or the Court does not approve and order the agreed Consent Judgment, with reference to Section 2.4 herein.

11.2 Consequences of Termination of the Settlement Agreement. If the Settlement Agreement is terminated, the following shall occur:

11.2.1 Plaintiff's Counsel and/or Defendants' Counsel shall promptly after the date of termination of the Settlement Agreement notify the Court and return any Settlement Amounts received by the Settlement Trust, except for amounts disbursed or incurred pursuant to Section 9.1 and 9.2.3.

11.2.2 The Lawsuit shall for all purposes revert to its status as of the day immediately before the Settlement Agreement was executed by the Parties and the Parties shall request a scheduling conference with the Court. In any subsequent proceeding, the terms of this Settlement Agreement shall not constitute nor be

construed as an admission by any Party, nor be used against any Party, in any manner, whether as evidence or argument.

11.2.3 All provisions of this Settlement Agreement shall be null and void except as otherwise provided herein.

12. Miscellaneous Provisions.

12.1 Continuing Jurisdiction of the Court. The Court shall retain jurisdiction over this Lawsuit to resolve any dispute that may arise regarding the Settlement Agreement, the Class Notice, the Final Order, or any other matters relating thereto, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement.

12.2 Required Disclosures. The Parties acknowledge and agree that (i) they shall be authorized to disclose the fact of the Settlement and the Settlement Amount and (ii) they may make such public filings and accompanying public statements they may be required to make under applicable law concerning the Settlement upon execution of this Settlement Agreement and the filing of this Settlement Agreement with the Court for preliminary approval.

12.3 Full Resolution. The Parties to this Settlement Agreement intend the Settlement of the Lawsuit to be the full, final and complete resolution of the Released Claims and the Lawsuit. The Parties and their counsel agree that they shall not make any applications for sanctions, pursuant to Rule 11 of the Federal Rules of Civil Procedure or other court rule or statute, with respect to any claim or defense in this Lawsuit.

12.4 Governing Law. The construction, interpretation, operation, effect and validity of this Settlement Agreement and all documents necessary to effectuate it, shall

be governed by the laws of the United States, including federal common law, except to the extent as a matter of federal law state law controls, in which case the law of the State of Utah without regard to conflicts of laws shall apply.

12.5 Severability. The provisions of this Settlement Agreement are not severable.

12.6 Destruction or Return of Protected Materials. Within thirty (30) calendar days after the Final Order becomes Final, the Parties shall fully comply with the applicable provisions of the Protective Order concerning the destruction or return of protected materials.

12.7 Amendment of Settlement Agreement. Before the entry of the Final Order, the Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of the Final Order, the Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Court. Amendments or modifications may be made without notice to the Plaintiff Class unless notice is required by law or the Court.

12.7.1 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 on this Settlement Agreement where such extensions are of deadlines imposed by the Parties, not the Court.

12.8 Waiver. The provisions of this Settlement Agreement may be waived only in writing executed by the waiving Party. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

12.9 Retention of Privilege. Nothing in this Settlement Agreement, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney-client privilege, joint defense privilege, or work product protection.

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

12.11 Principles of Interpretation. The following principles of interpretation apply to this Settlement Agreement:

12.11.1 Headings. The headings of this Settlement Agreement are for reference only purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.

12.11.2 Terms of Inclusion. Whenever the words “include,” “includes,” or “including” are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

12.12 Further Assurances. Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver each other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement, so long as such documents and actions are consistent with the terms of this Settlement Agreement and do not effectively result in a material modification of the terms of this Settlement Agreement.

12.13 Survival. All representations, warranties and covenants set forth in this Settlement Agreement shall be deemed continuing and shall survive the Settlement.

12.14 Entire Agreement.

12.14.1 All of the recitals and exhibits to the Settlement Agreement are material and integral parts hereof and are, excepts as set forth, fully incorporated herein by this reference.

12.14.2 This Settlement Agreement (including its exhibits) constitutes the entire agreement among the Parties hereto concerning the Settlement and settlement of the Lawsuit, and no representations, warranties, or inducements have been made by any Party hereto concerning this Settlement Agreement and its exhibits other than those contained and memorialized in such documents. Specifically, and without limiting the foregoing sentence, the Parties acknowledge that this Settlement Agreement specifically supersedes any settlement terms or settlement agreements that were previously agreed upon orally or in writing by any of the Parties regarding the issues of the Settlement.

12.14.3 It is understood by the Parties that, except for the matters expressly represented herein, the facts or law with respect to which the Lawsuit or this Settlement Agreement is entered into may turn out to be other than or different from the facts now know to each party or believed by such party to be true; each Party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Settlement Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

12.15 Counterparts. This Settlement Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument. Signatures sent by facsimile or by e-mail "PDF" shall be deemed originals.

12.16 Successors and Assigns. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

12.17 Binding Effect. This Settlement Agreement shall be binding when signed, but the Settlement shall be effective only on the condition that the Court approves the Settlement Agreement and satisfaction of Section 2 herein.

12.18 Protective Order. All agreements made and orders entered during the course of the Lawsuit relating the confidentiality of information, including the Protective Order, shall survive this Settlement Agreement.

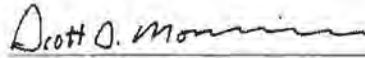
IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on November 11, 2016.


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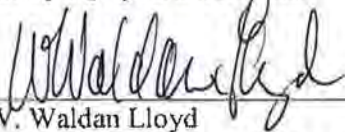


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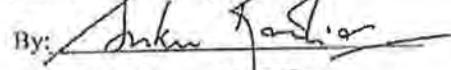
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Bankers Trust Company of South Dakota

By: 

Its: President

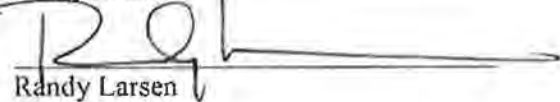
Bankers Trust Company

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Henry Marsh


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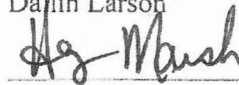
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