

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re BUCA, INC. SECURITIES
LITIGATION

Civil Action No. 05-1762 DWF/AJB

STIPULATION OF SETTLEMENT

TABLE OF CONTENTS

	<u>Page</u>
I. DESCRIPTION OF THE ACTION.....	1
II. BENEFITS OF SETTLEMENT TO THE PLAINTIFF CLASS	2
III. THE SETTLING DEFENDANTS’ REASONS FOR SETTLEMENT.....	2
IV. THE SETTLING DEFENDANTS’ DENIALS OF WRONGDOING.....	3
V. TERMS OF THE AGREEMENT.....	3
A. Definitions.....	4
B. Conditional Remand From Appeal	8
C. The Court’s Order Preliminarily Approving the Settlement.....	9
D. Judgment To Be Entered by the Court Approving the Settlement	13
E. The Settlement Fund	15
F. The Fee and Expense Petition.....	19
G. Conditions of Settlement; Effect of Disapproval; Cancellation and Termination.....	20
H. Miscellaneous Provisions.....	22

EXHIBITS

Exhibit A: Order Preliminarily Approving Settlement

Exhibit A-1: Notice of Class Action Determination, Proposed Settlement, and Hearing on Settlement

Exhibit A-2: Summary Notice of Proposed Class Action Settlement and Hearing

Exhibit A-3: Notice Letter to Federal Officials and State Officials

Exhibit A-4: Proof of Claim and Release

Exhibit B: Order for Final Judgment

Exhibit C: (Filed Under Seal) Statement As To The Number Of Shares Requesting Exclusion That May Permit Cancellation Of Settlement

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Stipulation”) is made as of March 20, 2008, by and among the following parties, as hereinafter defined: (1) the Lead Plaintiffs, by and through Class Counsel in this Action; and (2) the Individual Defendants and BUCA, Inc. (“BUCA”), by and through their attorneys in this Action.

I. DESCRIPTION OF THE ACTION

In August and September 2005, three class action lawsuits were commenced against BUCA and three former officers and/or directors of BUCA in the United States District Court for the District of Minnesota (the “Court”). By Amended Order filed on November 3, 2005, the three actions were consolidated into Civil Action No. 05-1762 DWF/AJB under the caption “In re BUCA, Inc. Securities Litigation” (the “Action”), and the Lead Plaintiffs and Class Counsel were appointed. The Lead Plaintiffs thereafter served and filed successive versions of a Consolidated Complaint, the most recent being the Second Amended Consolidated Complaint filed on December 18, 2006. The successive versions of the Consolidated Complaint alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The defendants moved to dismiss the successive versions of the Consolidated Complaint, and their motions were granted by a Memorandum Opinion and Order filed on October 16, 2006, and by a Memorandum Opinion and Order filed on August 30, 2007. The Court entered final judgment in favor of the defendants in the Action on August 31, 2007.

The Lead Plaintiffs filed an appeal to the United States Court of Appeals for the Eighth Circuit (“Appeals Court”). While the Action was on appeal, and after the Lead Plaintiffs had filed their opening brief, the parties reached agreement on this settlement.

Before reaching agreement, each side obtained a preliminary expert report on damages. The parties hereto have jointly sought and obtained a stay of proceedings in the Appeals Court so that the Court can consider the settlement described in this Stipulation.

II. BENEFITS OF SETTLEMENT TO THE SETTLEMENT CLASS

The Lead Plaintiffs and Class Counsel have carefully weighed the benefits to the Class of a prompt settlement of the Action for the consideration being offered by the Settling Defendants, against the significant cost, risk and delay that continued prosecution of the Action would involve, especially in light of the Court's decision to dismiss the Action. Although the Lead Plaintiffs and Class Counsel believe that the claims pursued in the Action are meritorious, they recognize the risk that their appeal may not be successful, and that even if it is, there would be considerable risk, expense, and delay in attempting to prosecute the Action through trial and appeals. The Lead Plaintiffs and Class Counsel also have taken into account the anticipated difficulty of proving damages. In light of the foregoing, the Lead Plaintiffs and Class Counsel believe that the settlement set forth in this Stipulation confers substantial and immediate benefits on the Class.

III. THE SETTLING DEFENDANTS' REASONS FOR SETTLEMENT

BUCA and the Individual Defendants have concluded that the further conduct of the Action against them would be protracted and expensive. Substantial amounts of time, energy and resources have been and, unless this settlement is made, will continue to be devoted to the defense of the claims asserted in the Action. BUCA and the Individual Defendants also recognize that there are risks attendant in any litigation. BUCA and the Individual Defendants have, therefore, determined that it is desirable and beneficial to them

that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation to eliminate the burden and expense of further protracted litigation.

IV. THE SETTling DEFENDANTS' DENIALS OF WRONGDOING

BUCA and the Individual Defendants have denied and continue to deny each and all of the claims and contentions alleged in the Action. BUCA and the Individual Defendants repeatedly have asserted, and continue to assert, many defenses thereto, and have expressly denied and continue to deny any wrongdoing or legal liability arising out of any of the conduct alleged in the Action. Neither this Stipulation, nor any document referred to herein, nor any action taken to carry out this Stipulation, is, may be construed as, or may be used as an admission by or against BUCA or the Individual Defendants of any fault, wrongdoing or liability whatsoever. Pursuant to Fed. R. Evid. 408, entering into or carrying out this Stipulation, the exhibits hereto, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession by any of the undersigned parties, and shall not be offered or received into evidence in any action or proceeding against any undersigned party or their attorneys in any court, administrative agency or other tribunal for any purpose whatsoever, other than to enforce the provisions of this Stipulation or the provisions of any related agreement or exhibit hereto.

V. TERMS OF THE STIPULATION

NOW, THEREFORE, it is hereby stipulated and agreed, by and among the undersigned parties, that the Action shall be settled, subject to the approval of the Court pursuant to Fed. R. Civ. P. 23(e), upon and subject to the following terms and conditions:

A. Definitions

1. “Action” means the three actions filed in the United States District Court for the District of Minnesota that were consolidated into Civil Action No. 05-1762 DWF/AJB under the caption “In re: BUCA, Inc. Securities Litigation.”

2. “Administrative Expenses” mean the initial costs of administering the settlement, including without limitation any taxes due and the reasonable costs of notifying Class Members, up to the maximum total amount of \$75,000, as described in Paragraph V(E)(4)(c) of this Stipulation.

3. “Appeals Court” means the United States Court of Appeals for the Eighth Circuit.

4. “Authorized Claimant” means a Claimant who has filed a timely and adequate proof of claim who is entitled to share in the Settlement Fund in accordance with the plan of distribution approved by the Court, and whose claim has been approved for payment by the Claims Administrator.

5. “BUCA” means BUCA, Inc., a Minnesota corporation, and its past and present parent, subsidiary, and affiliated corporations and entities, and the predecessors and successors in interest of any of them.

6. “BUCA Securities” means all common stock of BUCA.

7. “Claimant” means any Class Member who files a proof of claim in such form, in such manner, and within such times as the Court shall prescribe.

8. “Claims Administrator” means Complete Claims Solutions, LLC.

9. “Class” means the Lead Plaintiffs and all other persons, including BUCA employees, who purchased any BUCA Securities during the Class Period, except for:

(a) any person who files a valid and timely request for exclusion pursuant to the Notice of Class Action Determination, Proposed Settlement, and Hearing on Settlement as provided in Paragraph V(C)(11); (b) the Settling Defendants; (c) John Motschenbacher and Daniel P. Skrypek; (d) any member of the immediate family of any Individual Defendant, or of John Motschenbacher or Daniel P. Skrypek; (e) any entity in which any Settling Defendant, or John Motschenbacher or Daniel P. Skrypek, has a controlling interest; and (f) any legal representative, heir, successor, predecessor in interest, or assign of any Settling Defendant, or of John Motschenbacher or Daniel P. Skrypek.

10. “Class Counsel” means the law firms of Cohen, Milstein, Hausfeld & Toll, P.L.L.C., and Berman Devalario Pease Tabacco Burt & Pucillo.

11. “Class Member(s)” means a member of the Class.

12. “Class Period” means the period beginning February 6, 2001 through March 11, 2005, inclusive.

13. “Court” means the United States District Court for the District of Minnesota.

14. “Effective Date” means the date on which the Court’s judgment approving this Stipulation, in substance materially the same as the form attached hereto as Exhibit B, becomes Final. As used in this Stipulation, “Final” means the date upon which the judgment in the Action becomes not subject to further appeal or review. Thus, “Final” means, without limitation, the date of expiration of the time for the filing or noticing of any appeal from the final judgment of the Court without any appeal being filed therein; or, if an appeal is filed in the Action, the date upon which the judgment in the Action is finally affirmed on appeal, or the appeal is finally dismissed without any request for further

discretionary review of such appellate decision; or, if further discretionary review of such appellate decision is sought, the date upon which such discretionary review is denied or, if granted, results in final affirmance of the judgment in the Action.

15. “Final Judgment Order” means an Order For Final Judgment approving the settlement that is in substance materially the same as Exhibit B to this Stipulation.

16. “Individual Defendants” means Joseph P. Micatrotto, Greg A. Gadel, and Pete Mihaljov, all and each of them, and all and each of their respective assigns, successors, agents, representatives, spouses, heirs, executors, administrators, and insurers.

17. “Insurers” means the insurers for the Settling Defendants, including but not limited to National Union Fire Insurance Company of Pittsburgh, PA, American International Specialty Lines Insurance Company, and Federal Insurance Company of Indiana.

18. “Lead Plaintiffs” means West Palm Beach Police Pension Fund, Steven Jones, Charles Booth, and Bert-Mary Brady, both in her individual capacity and as personal representative of the Estate of James Brady.

19. “Person” means any individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, government and any political subdivision thereof, or any other type of entity.

20. “Preliminary Approval Order” means an Order granting preliminary approval of the settlement that is in substance materially the same as Exhibit A to this Stipulation.

21. “Settled Claims” means any and all claims, actions, causes of action, rights or liabilities, whether arising out of state or federal law, including Unknown Claims, of

any Class Member, which exist or may exist against any of the Settling Defendants and their respective past and present parent, subsidiary, and affiliated corporations and entities, the predecessors and successors in interest of any of them, and all of their respective past and present officers, directors, employees, agents, partners, representatives, spouses, heirs, executors, administrators, attorneys, and assigns, and the Insurers, by reason of any matter, event, cause or thing whatsoever arising out of, relating to, or in any way connected with: (a) the purchase or sale of any BUCA Securities during the Class Period; or (b) any facts, circumstances, transactions, events, occurrences, acts, omissions or failures to act that were alleged in the Action and that relate to a Class Member's decision to purchase, sell, or hold BUCA Securities.

22. "Settling Defendants" means, collectively, BUCA and the Individual Defendants.

23. "Settlement Fund" means the sum of \$1,600,000, to be paid by the Insurers on behalf of the Settling Defendants as specified in Paragraph V(E)(1) of this Stipulation, including any interest accrued thereon after payment.

24. "Settlement Hearing" means the hearing or hearings before the Court to determine whether the Final Judgment Order should be entered and to consider related matters.

25. "Unknown Claims," as used in the definition of Settled Claims in Paragraph V(A)(21), and in the Final Judgment Order, means claims which the releasors do not know or suspect to exist in their favor at the time of their granting a release, which if known by them might have affected their settlement of the Action. Solely with respect to the releases provided in the Final Judgment Order, it is the intention of the parties hereto that,

upon the Effective Date, as defined below, each of the releasors shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of any statute or law which might otherwise render a general release unenforceable with respect to Unknown Claims. Each of the releasors shall be deemed to have acknowledged, and by operation of the Final Judgment acknowledges, that he is aware that he may hereafter discover facts in addition to or different from those which he now knows or believes to be true with respect to the subject matter of this release, but that it is his intention to, and each releasor shall be deemed, upon the Effective Date, to have, fully, finally, and forever settled and released any and all claims within the scope of release provided from the releasor in the Final Judgment Order, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, which now exist, may hereafter exist or may heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts. All of the foregoing is the definition of "Unknown Claims."

B. Conditional Remand From Appeal

As soon as practicable after execution of this Stipulation, counsel for the undersigned parties shall apply jointly to the Appeals Court for an order: (1) conditionally remanding the Action to the Court for the limited and exclusive purpose of considering the settlement set forth in this Stipulation, and for conducting such proceedings and entering such orders as the Court deems necessary in accordance with the requirements of Fed. R. Civ. P. 23; and (2) staying the appeal pending the conclusion of proceedings in the Court.

C. The Court's Order Preliminarily Approving the Settlement

As soon as practicable after the conditional remand of the Action from the Appeals Court to the Court, counsel for the undersigned parties shall apply jointly to the Court for an order that is in substance materially the same as the proposed Order attached hereto as Exhibit A ("Preliminary Approval Order"), which shall specifically include provisions which:

1. Vacate the final judgment entered in the Action on August 31, 2007 pursuant to Fed. R. Civ. P. 60(b)(6) for the limited and exclusive purpose of considering the settlement set forth in this Stipulation;
2. Preliminarily approve the settlement as embodied in this Stipulation as being fair, reasonable, and adequate to the Class;
3. For purposes of settlement only, preliminarily certify the Class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and provide that the interests of Class Members in enforcing their rights in the Action will be fairly and adequately represented by the Lead Plaintiffs and by Class Counsel;
4. Provide that Class Counsel are authorized to enter into the Stipulation and on behalf of the Class, and to bind Class Members to the duties and obligations contained herein, subject to final approval by the Court following the Settlement Hearing;
5. Approve a Notice of Class Action Determination, Proposed Settlement, and Hearing on Settlement ("Notice of Settlement Hearing") that is in substance materially the same as Exhibit A-1 attached hereto, for transmission to Class Members in order to provide notice of the hearing for approval of the settlement;

6. Direct that such Notice of Settlement Hearing be mailed to those Class Members who can be identified through reasonable effort, such mailing to be accomplished within 20 days of entry of the Preliminary Approval Order;

7. Order that nominees for BUCA Securities owned beneficially by Class Members be required to either (a) forward the Notice of Settlement Hearing to Class Members, using either first class United States mail, postage prepared, or electronic means if previously authorized by the Class Members; or (b) provide the Claims Administrator with the names and addresses of Class Members who were beneficial owners of BUCA Securities;

8. Approve a Summary Notice that is in substance materially the same as Exhibit A-2 attached hereto, to be published in order to provide notice of the hearing for approval of the settlement, and direct that Class Counsel cause such Summary Notice to be published once in the national edition of Investors Business Daily within 30 days of entry of the Preliminary Approval Order;

9. Find that mailing, forwarding by nominees, and publication pursuant to Paragraphs V(C)(5),(6),(7), and (8) above constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in said Notices to all persons entitled to receive notice, and fully satisfy the requirements of due process, of 15 U.S.C. §78u-4(a)(7), and of Fed. R. Civ. P. 23;

10. Approve a Notice Letter to Federal Officials and State Officials that is in substance materially the same as Exhibit A-3 attached hereto, and direct that the counsel for the Settling Defendants cause such Notice Letter and its enclosures to be served by first class United States mail, postage prepaid, upon the appropriate federal officials and state

officials described in 28 U.S.C. §1715(a), within 10 days of the date of entry of the Preliminary Approval Order;

11. Require any Class Member who desires to request exclusion from the Class to so notify the Claims Administrator in the manner set forth in the Notice of Settlement Hearing, and to provide the information required therein;

12. Schedule a hearing to be held by the Court (“Settlement Hearing”) on a date at least 100 days after entry of the Preliminary Approval Order in order to determine: (a) whether the settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class; (b) whether a final judgment should be entered that is in substance materially the same as Exhibit B attached hereto (“Final Judgment Order”); (c) whether the Lead Plaintiffs’ proposed plan of distribution of the settlement proceeds that is described in the Notice of Settlement Hearing (“Plan of Distribution”) should be approved as fair and reasonable to the Class; and (d) whether to approve the application of Class Counsel for an award of attorneys’ fees, costs, and expenses (“Fee and Expense Petition”);

13. Provide that any objections to the settlement, the Plan of Distribution, or the Fee and Expense Petition shall be heard, and any papers submitted in support of said objections shall be received and considered by the Court at the Settlement Hearing (unless, in its discretion, the Court shall direct otherwise), only if, on or before a date to be specified in the Court’s Notice of Settlement Hearing, persons making objections give notice of their intention to appear, and submit copies of such papers as they propose to submit, to Class Counsel and counsel for the Settling Defendants in the manner described in the Notice of Settlement Hearing;

14. Approve a Proof of Claim and Release form (“Proof of Claim”) that is in substance materially the same as Exhibit A-4 attached hereto, and direct that such Proof of Claim be mailed or transmitted at the same time, in the same manner, and to the same persons, as the Notice of Settlement Hearing;

15. Provide that, in order to share in the Settlement Fund, a Class Member must execute and submit a Proof of Claim in the manner provided therein within such time as is allowed by the Court;

16. Provide that all Class Members, whether or not they submit a Proof of Claim within the time provided for, shall be permanently enjoined and barred from asserting any claims (except through the proof of claim procedures) against any of the Settling Defendants and the Insurers arising from the Settled Claims, and that all Class Members conclusively shall be deemed to have released any and all such Settled Claims, except for proceedings to enforce this Stipulation;

17. Provide that, if this Stipulation becomes Effective, only persons who are Authorized Claimants shall have rights in the distribution of the Settlement Fund, except as otherwise provided in this Stipulation;

18. Provide that a Proof of Claim filed by mail shall be deemed to have been submitted when legibly postmarked by the U.S. Postal Service, if mailed by first class mail, registered mail, or certified mail, postage prepaid, addressed in accordance with the instructions given in the Proof of Claim, and that all other Proofs of Claim shall be deemed to have been submitted at the time they are actually received by the Claims Administrator;
and

19. Provide that the Settlement Hearing may, from time to time and without further notice to Class Members, be continued or adjourned by order of the Court.

D. Judgment To Be Entered by the Court Approving the Settlement

Upon approval by the Court of the settlement set forth in this Stipulation, a final judgment shall be entered by the Court, pursuant to an Order For Final Judgment (“Final Judgment Order”) that is in substance materially the same as Exhibit B attached hereto, which shall specifically include provisions which:

1. Approve the settlement set forth in this Stipulation as fair, reasonable, adequate, and in the best interests of the Class, and direct consummation of the settlement in accordance with the terms and provisions of this Stipulation;
2. Fully and finally dismiss the Action with prejudice, and without costs (except as may be provided herein) to any undersigned party as against any other;
3. Adjudge that the Lead Plaintiffs and all Class Members shall conclusively be deemed to have released all Settled Claims against the Settling Defendants and their respective past and present parent, subsidiary, and affiliated corporations and entities, the predecessors and successors in interest of any of them, and all of their respective past and present officers, directors, employees, agents, partners, representatives, spouses, heirs, executors, administrators, attorneys, and assigns, and the Insurers;
4. Bar and permanently enjoin the Lead Plaintiffs and all Class Members from instituting, asserting or prosecuting, either directly, representatively, or in any other capacity, any and all Settled Claims which they, or any of them, had or have against the Settling Defendants and their respective past and present parent, subsidiary, and affiliated corporations and entities, the predecessors and successors in interest of any of them, and all

of their respective past and present officers, directors, employees, agents, partners, representatives, spouses, heirs, executors, administrators, attorneys, and assigns, and the Insurers;

5. Adjudge that the Settling Defendants shall conclusively be deemed to have released the Lead Plaintiffs and Class Counsel, and all of their respective past and present officers, directors, employees, agents, partners, representatives, spouses, heirs, executors, administrators, insurers, attorneys, and assigns, of and from any and all claims, actions, causes of actions, rights or liabilities, whether arising out of state or federal law, including Unknown Claims, relating to the institution, prosecution, or settlement of this Action, except for proceedings to enforce the Stipulation;

6. Bar and permanently enjoin the Settling Defendants from instituting, asserting, or prosecuting, either directly, representatively, or in any other capacity, any and all claims, actions, causes of action, rights or liabilities, whether arising out of state or federal law, including Unknown Claims, against the Lead Plaintiffs or Class Counsel, or their respective past and present officers, directors, employees, agents, partners, representatives, spouses, heirs, executors, administrators, insurers, attorneys, and assigns, relating to the institution, prosecution, or settlement of this Action, except for proceedings to enforce the Stipulation;

7. Determine, pursuant to 15 U.S.C. §78u-4(c)(1), that all counsel appearing in this Action have complied with the requirements of Rule 11(b) of the Federal Rules of Civil Procedure;

8. Determine that the Settling Defendants have complied with the requirements of 28 U.S.C. §1715(b);

9. Approve the Plan of Distribution, and order that payments be made to Authorized Claimants only in accordance with the Plan of Distribution;

10. Award Class Counsel from out of the Settlement Fund such attorneys' fees, costs, and expenses as the Court may allow; and

11. Reserve jurisdiction over: (a) implementation of this settlement and any distribution to Authorized Claimants, pursuant to further orders of the Court; (b) disposition of the Settlement Fund; (c) the Action, until the Effective Date, and until each and every act agreed to be performed by the undersigned parties shall have been performed pursuant to this Stipulation; and (d) all undersigned parties, for the purpose of enforcing and administering this Stipulation.

E. The Settlement Fund

1. Within seven business days after the Court enters the Preliminary Approval Order, the Settling Defendants shall cause the Insurers to deposit with SunTrust Bank into an escrow account denominated "Trust Account for BUCA Securities Litigation" (the "Escrow Account"), the sum of \$1,600,000. This amount, together with any interest accrued thereon, shall constitute the Settlement Fund. No Person shall be liable to pay any amount pursuant to this Stipulation except as set forth in this paragraph.

2. The Settlement Fund 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 entirety of the Settlement Fund is distributed as provided in Paragraphs V(E)(4) and V(E)(7) of this Stipulation, or returned to the Insurers as provided in Paragraph V(E)(5) of this Stipulation.

3. Up until the Effective Date, the Escrow Account shall be under the joint control of two escrow agents: Herbert E. Milstein, on behalf of the Lead Plaintiffs,

Class Counsel, and the Class; and Wendy J. Wildung, on behalf of the Settling Defendants (collectively, the “Escrow Agents”). The Escrow Agents shall cause the Settlement Fund to be invested as follows: (a) \$75,000 in an interest-bearing account insured by the FDIC; and (b) the remainder of the Settlement Fund in short-term United States Agency or Treasury Securities.

4. Before the Effective Date, no disbursements shall be made out of the Settlement Fund except: (a) upon order of the Court; (b) upon the unanimous consent of the Escrow Agents; or (c) to pay the initial costs of administering the settlement, including without limitation the reasonable costs of notifying Class Members in accordance with Paragraphs V(C)(5),(6),(7), and (8) above, up to the maximum total amount of \$75,000 (the “Administrative Expenses”). The Administrative Expenses may be disbursed by Class Counsel upon notice to the Settling Defendants, but without further order of the Court.

5. If the Effective Date does not occur, or if this Stipulation is voided, terminated or cancelled for any reason, the Lead Plaintiffs and Class Counsel shall have no obligation to repay any of the Administrative Expenses that have been disbursed or incurred. Any amounts remaining in the Settlement Fund after payment of outstanding obligations for notice, including all interest earned on the Settlement Fund net of any tax liability, shall be returned to the Insurers, and no other Person shall have any further claim whatsoever to such amounts.

6. As of the Effective Date, all rights of the Settling Defendants and the Insurers in or to the Settlement Fund shall be extinguished, and Herbert E. Milstein shall become the sole Escrow Agent for the Escrow Account.

7. On and after the Effective Date, the Settlement Fund shall be applied, subject to the approval of the Court, as follows:

- (a) To pay to Class Counsel such attorneys' fees, costs, and expenses as the Court may award;
- (b) To pay all unpaid costs and expenses incurred in connection with providing notice to Class Members, locating Class Members, administering and distributing the Settlement Fund, and processing Proofs of Claim Forms and Releases, including without limitation the fees of the Claims Administrator;
- (c) To create a \$50,000 reserve fund to be used to pay late claims, if appropriate, to adjust any errors in payment, to make other equitable adjustments, and to pay costs, expenses and attorneys' fees associated with dealing with such matters, subject to Court approval on notice to the Settling Defendants but without further notice to the Class; and
- (d) To pay the claims of all Authorized Claimants.

8. After reasonable efforts to distribute the Settlement Fund have been completed and any other obligations of the Settlement Fund have been discharged, any amounts remaining in the Settlement Fund, including the reserve fund, shall be paid to Second Harvest Heartland Food Shelf in St. Paul, Minnesota, upon notice to the Settling Defendants, but without further notice to the Class or further order of the Court.

9. The Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-1. The Settling Defendants, their counsel, and the Insurers shall have no liability or responsibility for the payment of any taxes

or tax expense. Class Counsel shall be responsible for filing tax returns for the Settlement Fund and paying from the Settlement Fund any taxes owed with respect to the Settlement Fund. Class Counsel shall indemnify and hold harmless the Settling Defendants, their counsel, and the Insurers for any liability for taxes or tax expense. It shall be the responsibility of the Settling Defendants to provide timely to the Escrow Agent(s) the statement described in Treasury Regulations §1.468B-3(e). All (a) taxes on the income of the Settlement Fund, and (b) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants), shall be paid out of the Settlement Fund and shall be timely paid by the Escrow Agent(s) upon notice to the Settling Defendants but without further notice to the Court.

10. The Escrow Agent(s) are authorized to execute such transactions as are provided for in this Stipulation. The Escrow Agent(s) shall not be responsible for the payment of any amounts due except to the extent of maintaining account of and appropriately paying amounts as required by this Stipulation, but only to the extent such amounts are delivered into the Escrow Account. The Escrow Agent(s) shall not be responsible for the performance of any obligations made herein by any party to this Stipulation. The Escrow Agent(s) may rely upon representations of Class Counsel, and of counsel for the Settling Defendants, in carrying out their duties hereunder. The Escrow Agent(s) shall be liable only for acts of gross negligence or willful misconduct. The assumption of duties as Escrow Agent(s) shall not preclude the Escrow Agent(s) from continuing to represent parties to this Stipulation. Escrow Agent(s) may relieve themselves of the duties provided herein absent agreement of the parties to this Stipulation by interpleading the amounts then held by them.

11. Concurrently with submission of this Stipulation to the Court, Class Counsel are submitting a proposed Plan of Distribution of settlement proceeds to the Court for its approval. The proposed Plan of Distribution is described in the Notice of Settlement Hearing. It is agreed by the undersigned parties that Court approval of the proposed Plan of Distribution is not a condition of this Stipulation, and the proposed Plan of Distribution is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Stipulation. Any order or proceedings relating to the proposed Plan of Distribution shall not operate to terminate or cancel this Stipulation or to affect its finality.

12. The Claims Administrator, acting at the direction of Class Counsel and subject to the jurisdiction of the Court, shall calculate the claims submitted by Class Members and shall oversee distribution of the Settlement Fund to Class Members. The Settling Defendants, their counsel, and the Insurers shall have no responsibility, financial obligation, or liability whatsoever with respect to the investment or distribution of the Settlement Fund after the Effective Date, with respect to the processing of claims against the Settlement Fund, or otherwise with respect to the administration of this settlement or the Settlement Fund.

F. The Fee and Expense Petition

1. Within 60 days after the entry of the Preliminary Approval Order, Class Counsel intend to file an application for attorneys' fees in an amount not exceeding 30% of the Settlement Fund, and for reimbursement of reasonable out-of-pocket costs and expenses (the "Fee and Expense Petition"). Any amounts awarded on the Fee and Expense Petition shall be paid only from the Settlement Fund and shall not otherwise be paid by the Settling

Defendants or the Insurers. Class Counsel may pay other counsel who have represented the Class in the Action from amounts awarded on the Fee and Expense Petition.

2. It is agreed that the allowance or disallowance by the Court of the Fee and Expense Petition is not a term or condition of the settlement set forth in this Stipulation, and any order or proceeding relating thereto, or any appeal from any such order, shall not operate to terminate or cancel this Stipulation. However, distribution of all or a portion of the Settlement Fund may be delayed in the event of an appeal concerning any fees, costs, or expenses that have been allowed or are expected to be incurred.

G. Conditions of Settlement; Effect of Disapproval, Cancellation and Termination

1. This Stipulation shall be deemed terminated and cancelled, and shall have no further force and effect whatsoever, if:

- (a) There is no Effective Date;
- (b) The Action is not remanded from the Appeals Court to the Court in substance materially the same as Paragraph B above;
- (c) The Court fails to enter an order vacating the judgment entered on August 31, 2007, certifying the Class, preliminarily approving the settlement, and directing that notice of the settlement be given, in substance materially the same as Paragraph V(C) and Exhibits A and A-1 through A-4 hereto, or if such an order is entered, it later is reversed or materially modified, whether on appeal or otherwise; or
- (d) The Court fails to enter the Final Judgment Order as provided in Paragraph V(D) and Exhibit B hereto, or if such a Final Judgment

Order is entered, it later is reversed or materially modified, whether on appeal or otherwise (a reversal or modification of any proposed Plan of Distribution or of any award of attorneys' fees, costs, and expenses pursuant to the Fee and Expense Petition shall not be deemed a reversal or modification of the material terms of this Stipulation).

2. Any of the Settling Defendants shall have the right to terminate and cancel this Stipulation if the members of the Class who request exclusion from the settlement pursuant to Paragraph V(C)(11) above collectively have purchased in excess of the number of shares of BUCA Securities during the Class Period that is set forth on Exhibit C attached hereto, which is being filed under seal. Any Settling Defendant electing to terminate and cancel this Stipulation pursuant to this Paragraph V(G)(2) shall give written notice to the counsel for the undersigned parties by no later than seven business days prior to the Settlement Hearing.

3. In the event that this Stipulation is voided, terminated or cancelled, or fails to become effective for any reason whatsoever, then within seven business days after written notice is sent by any undersigned party to the Escrow Agent and all other undersigned parties, the Escrow Agent shall cause the Settlement Fund and all interest earned thereon (subject to the expiration of any time deposit not to exceed 90 days) shall be refunded to the Insurers, less any Administrative Expenses disbursed, billed, or incurred in accordance with the terms of this Stipulation. In such event, the undersigned parties shall be deemed to have reverted to their respective statuses as of the date and time immediately prior to the execution of this Stipulation, and they shall proceed in all respects as if this Stipulation, its exhibits, and any related agreements or orders, had never been executed. In

such event, the undersigned parties jointly will seek vacation of any order entered or actions taken in connection with this Stipulation, and the final judgment entered in this Action on August 31, 2007 will be reinstated *nunc pro tunc*.

H. Miscellaneous Provisions

1. Simultaneous with the execution of this Stipulation, Class Counsel will deliver to counsel for the Settling Defendants statements signed by each of the Lead Plaintiffs stating that the signatory Lead Plaintiff understands and agrees to the terms of settlement set forth in this Stipulation.

2. All of the exhibits attached hereto are hereby incorporated by this reference as though fully set forth herein.

3. This Stipulation may be amended or modified only by a written instrument signed by all of the parties to this Stipulation or their successors-in-interest, except to the extent that any modification would be inconsistent with any order by the Court.

4. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver, by that party or by any other party to this Stipulation, of any other prior or subsequent breach of this Stipulation.

5. This Stipulation and its exhibits constitute the entire agreement among the parties hereto, and no representations, warranties or inducements have been made to any party concerning this Stipulation or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

6. Class Counsel, on behalf of the Class, is authorized to take all appropriate action required or permitted to be taken by the Class pursuant to this Stipulation

to effectuate its terms. Class Counsel also are authorized to enter into any modifications or amendments to this Stipulation on behalf of the Class which such counsel deem appropriate.

7. This Stipulation will be executed on behalf of the parties hereto by their respective counsel of record. All counsel executing this Stipulation represent and warrant that they are authorized and empowered to execute this Stipulation on behalf of their stated client(s), and that the signature of such counsel is intended to and does legally bind stated client(s) of such counsel.

8. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties hereto shall exchange among themselves signed counterparts. Signatures may be originals, or facsimile or pdf. copies.

9. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties to this Stipulation.

10. All terms of this Stipulation and the exhibits hereto shall be governed by and interpreted according to the laws of the State of Minnesota, except to the extent that federal law applies.

11. The parties to this Stipulation and their counsel agree to use their best efforts, and to take all reasonable steps necessary, to obtain the entry of the Order for Final Judgment and to effectuate the settlement set forth in this Stipulation.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of the date stated above.

Date: March ____, 2008.

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

By _____
Herbert E. Milstein
Avi S. Garbow
Mathew B. Kaplan
1100 New York Ave. NW
Suite 500, West Tower
Washington, D.C. 20005
Phone: (202) 408-4600

Attorneys for Lead Plaintiffs and the Class

Date: March ____, 2008.

**BERMAN DEVALERIO PEASE
TABACCO BURT & PUCILLO**

By _____
Michael J. Pucillo
Wendy Zoberman
222 Lakeview Avenue
Esperante Building, Suite 900
West Palm Beach, FL 33401
Phone: (561) 835-9400

Attorneys for Lead Plaintiffs and the Class

* * *

Date: March ____, 2008.


LEONARD, STREET AND DEINARD

By _____
Todd A. Noteboom (#240047)
Monica L. Davies (#315023)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Phone: (612) 335-1500

Attorneys for Defendant Greg A. Gadel

Date: March 20, 2008.

FAEGRE & BENSON LLP

By  _____
Wendy L. Wildung (#117055)
Michael M. Krauss (#342002)
2200 Wells Fargo Center
90 south Seventh Street
Minneapolis, MN 55402
Phone: (612) 766-7000

Attorneys for Defendants BUCA, Inc. and
Pete Mihaljov

Date: March ____, 2008.

HENSON & EFRON, P.A.

By _____

Joseph T. Dixon, Jr. (#23139)

Wesley T. Graham (#034574X)

220 South Sixth Street, Suite 1800

Minneapolis, MN 55401

Phone: (612) 339-2500

Attorneys for Defendant Joseph P.
Micatrotto

fb.us.2609672.07

Date: March ____, 2008.

**COHEN, MILSTEIN, HAUSFELD &
TOLL, P.L.L.C.**

By _____
Herbert E. Milstein
Avi S. Garbow
Mathew B. Kaplan
1100 New York Ave. NW
Suite 500, West Tower
Washington, D.C. 20005
Phone: (202) 408-4600

Attorneys for Lead Plaintiffs and the Class

Date: March ____, 2008.

**BERMAN DEVALERIO PEASE
TABACCO BURT & PUCILLO**

By _____
Michael J. Pucillo
Wendy Zoberman
222 Lakeview Avenue
Esperante Building, Suite 900
West Palm Beach, FL 33401
Phone: (561) 835-9400

Attorneys for Lead Plaintiffs and the Class

Date: March 20, 2008.

LEONARD, STREET AND DEINARD

By Todd A. Noteboom
Todd A. Noteboom (#240047)
Monica L. Davies (#315023)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Phone: (612) 335-1500

Attorneys for Defendant Greg A. Gadel

* * *

Date: March 20, 2008.

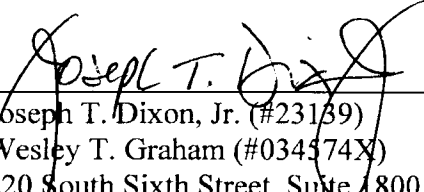
FAEGRE & BENSON LLP

By Wendy d. Wildung
Wendy d. Wildung (#17055)
Michael M. Krauss (#342002)
2200 Wells Fargo Center
90 south Seventh Street
Minneapolis, MN 55402
Phone: (612) 766-7000

Attorneys for Defendants BUCA, Inc. and
Pete Mihaljov

Date: March 20, 2008.

HENSON & EFRON, P.A.

By 
Joseph T. Dixon, Jr. (#23139)
Wesley T. Graham (#034374X)
220 South Sixth Street, Suite 1800
Minneapolis, MN 55401
Phone: (612) 339-2500

Attorneys for Defendant Joseph P.
Micatrotto


fb us.2609672.07

Date: March ____, 2008.

Date: March ____, 2008.

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

**BERMAN DEVALERIO PEASE
TABACCO BURT & PUCILLO**

By 

By _____

Herbert E. Milstein
Avi S. Garbow
Mathew B. Kaplan
1100 New York Ave. NW
Suite 500, West Tower
Washington, D.C. 20005
Phone: (202) 408-4600

Michael J. Pucillo
Wendy Zoberman
222 Lakeview Avenue
Esperante Building, Suite 900
West Palm Beach, FL 33401
Phone: (561) 835-9400

Attorneys for Lead Plaintiffs and the Class

Attorneys for Lead Plaintiffs and the Class

* * *

Date: March ____, 2008.

Date: March ____, 2008.

LEONARD, STREET AND DEINARD

FAEGRE & BENSON LLP

By _____

By _____

Todd A. Noteboom (#240047)
Monica L. Davies (#315023)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Phone: (612) 335-1500

Wendy J. Wildung (#117055)
Michael M. Krauss (#342002)
2200 Wells Fargo Center
90 south Seventh Street
Minneapolis, MN 55402
Phone: (612) 766-7000

Attorneys for Defendant Greg A. Gadel

Attorneys for Defendants BUCA, Inc. and
Pete Mihaljov

Date: March ____, 2008.

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

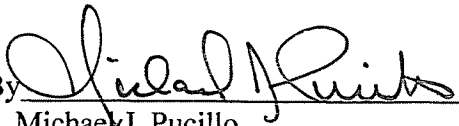
By _____

Herbert E. Milstein
Avi S. Garbow
Mathew B. Kaplan
1100 New York Ave. NW
Suite 500, West Tower
Washington, D.C. 20005
Phone: (202) 408-4600

Attorneys for Lead Plaintiffs and the Class

Date: March ____, 2008.

**BERMAN DEVALERIO PEASE
TABACCO BURT & PUCILLO**

By  _____

Michael J. Pucillo
Wendy Zoberman
222 Lakeview Avenue
Esperante Building, Suite 900
West Palm Beach, FL 33401
Phone: (561) 835-9400

Attorneys for Lead Plaintiffs and the Class

* * *

Date: March ____, 2008.

LEONARD, STREET AND DEINARD

By _____

Todd A. Noteboom (#240047)
Monica L. Davies (#315023)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Phone: (612) 335-1500

Attorneys for Defendant Greg A. Gadel

Date: March ____, 2008.

FAEGRE & BENSON LLP

By _____

Wendy J. Wildung (#117055)
Michael M. Krauss (#342002)
2200 Wells Fargo Center
90 south Seventh Street
Minneapolis, MN 55402
Phone: (612) 766-7000

Attorneys for Defendants BUCA, Inc. and
Pete Mihaljov