

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

UNITED STATES OF AMERICA *ex rel.* CABOT SQUARE
LLC,

Plaintiff,

v.

FULCRUM CAPITAL HOLDINGS LLC,
MATTHEW HAMILTON, TIMOTHY HORRIGAN,
FONDACO SGR S.P.A., COMPAGNIA DI SAN
PAOLO, and CARAC,

Defendants.

18 Civ. 9160 (VEC)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

FULCRUM CAPITAL HOLDINGS LLC,

Defendant.

STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the United States of America (the “United States” or “Government”), by its attorney, Damian Williams, United States Attorney for the Southern District of New York, the relator Cabot Square LLC (“Cabot”), whose sole members are [Redacted] (collectively, “Relators”), by their authorized representatives, and defendant Fulcrum Capital

Holdings LLC (“Fulcrum” or “Defendant,” and together with the Government and Relator, the “Parties”), by its authorized representatives;

WHEREAS, Fulcrum is a Delaware limited liability corporation and investment firm with its principal place of business in Austin, Texas. Matthew Hamilton (“Hamilton”) and Timothy Horrigan (“Horrigan”) are cofounders and members of Fulcrum;

WHEREAS, from as early as the 1970s through December 2008, Bernard L. Madoff perpetrated the largest Ponzi scheme in history, defrauding thousands of victims of billions of dollars through Bernard L. Madoff Investment Securities LLC (“Madoff Securities”) (the “Madoff Fraud”). In March 2009, Madoff pleaded guilty to eleven federal felony counts, including securities, mail, and wire fraud, and in June 2009, Madoff was sentenced to serve 150 years in prison and forfeit over \$170 billion;

WHEREAS, the United States Attorney’s Office for the Southern District of New York has recovered over \$9 billion through civil and criminal asset forfeitures related to the Madoff Fraud;

WHEREAS, in 2013, the United States Department of Justice (“DOJ”), pursuant to DOJ remission regulations, 28 C.F.R §§ 9.1-9.9 (the “Regulations”), created the Madoff Victim Fund (the “MVF”) to distribute to victims of the Madoff Fraud certain funds forfeited to the United States, and appointed Richard Breeden as special master (the “Special Master”) to oversee the MVF and assist DOJ in connection with remission proceedings for victims of the Madoff Fraud;

WHEREAS, from November 2013 through April 2014, the MVF received remission petitions from tens of thousands of victims of the Madoff Fraud, and in November 2017, the MVF began making distributions to victims whose claims were approved. To date, the MVF has made

eight distributions totaling over \$4 billion, and has made payments to more than 42,000 approved claimants;

WHEREAS, Luxalpha SICAV (“Luxalpha”), was a Luxembourg-based investment fund that operated as a Madoff Securities feeder fund, and its underlying investors suffered losses as a result of the Madoff Fraud. Among the persons and entities who were beneficial owners of Luxalpha shares were: Carac, a public pension fund based in Paris, France; a group of investors in a fund called “Fondaco Absolute Return,” which was managed by Fondaco SGR S.p.A. (“Fondaco”), an institutional asset management company based in Torino, Italy (the “Fondaco Investors”), including Compagnia di San Paolo (“CSP”), a foundation based in Torino, Italy; and a group of individuals located in France, named Bruno Plancke, Michel Plancke, Olivier Plancke, Thierry Plancke, and Virginie Reant Plancke (the “Planckes”);

WHEREAS, in February, March and April 2014, Carac, the Fondaco Investors, and the Planckes (the “Claimants”) each filed claims with the MVF seeking remission payments for losses they claimed to have incurred as a result of their investments in Madoff Securities through Luxalpha;

WHEREAS, on or about October 5, 2018, Relators filed a complaint, under the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. §§ 3729 *et seq.*, against Fulcrum, Hamilton, Horrigan, Fondaco, CSP, and Carac, alleging that they submitted, or caused to be submitted, false claims to the MVF for remission payments to which they were not entitled (the “Relator Complaint”);

WHEREAS, the Government alleges that from at least October 2016 through October 2022 (the “Covered Period”), Fulcrum violated the FCA by submitting, or causing to be submitted, false claims or statements to the MVF that fraudulently failed to disclose payments the Claimants had

received from Fulcrum for the sale of their Luxalpha shares and attendant rights, and/or claims for remission payments from the MVF to Fulcrum. These payments were collateral recoveries that the Claimants were required to disclose to the MVF. Pursuant to the Regulations, the MVF was required to reduce the Claimants' remission payments by the amount of their collateral recoveries to prevent the Claimants from receiving duplicative recoveries. As a result of the false claims or statements Fulcrum submitted, or caused to be submitted, to the MVF, the MVF made remission payments to the Claimants that they were not entitled to receive. Many of the Claimants then transferred the amounts they had unlawfully received from the MVF to Fulcrum. The conduct described in this Paragraph is the "Covered Conduct" for purposes of this Stipulation;

WHEREAS, on or about September 13, 2023, the Government filed a Notice of Election to Partially Intervene and on or about September 22, 2023, the Government filed a Complaint-In-Intervention in the above-referenced *qui tam* action (the "Government Complaint"), in which it asserts claims against Defendant Fulcrum under the FCA for the Covered Conduct;

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Defendant Fulcrum in the Government Complaint and the Relator Complaint, for the Covered Conduct;

NOW, THEREFORE, upon the Parties' agreement IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.
2. Defendant admits, acknowledges, and accepts responsibility for the following conduct (the "Admitted Conduct") that occurred during the Covered Period:

- a. Fulcrum is an investment firm that specializes in, among other things, trading distressed assets. In particular, during the Covered Period, Fulcrum engaged in the purchase and sale of Madoff feeder fund shares and attendant rights.
- b. In February, March and April of 2014, Carac, the Fondaco Investors, and the Planckes filed claims with the MVF seeking remission payments for losses from their investments in Madoff Securities through Luxalpha.
- c. Fulcrum subsequently purchased the Claimants' Luxalpha shares. Specifically, Fulcrum purchased Fondaco's Luxalpha shares in July 2014, Carac's Luxalpha shares in October 2014, and the Planckes' Luxalpha shares in January 2019. Fulcrum immediately resold the Fondaco and Carac shares to third parties, but retained rights to Claimants' MVF remission payments, as described below.
- d. Specifically, Fulcrum entered into Purchase and Sale Agreements ("PSAs") with Carac, CSP, and the Planckes pursuant to which Fulcrum purported to acquire their rights to receive remission payments from the MVF. Under the PSAs, Carac, CSP, and the Planckes agreed that they would retain no beneficial interest in any distributions they received from the MVF, that they would hold any such distributions as agents of Fulcrum, and that they would deliver any such distributions to Fulcrum within five days of receipt. Carac, CSP, and the Planckes further agreed to grant Fulcrum irrevocable power of attorney with respect to the remission claims and authorize Fulcrum to act in each of their names, places, and steads with respect to such claims. Finally, Carac, CSP, and the Planckes agreed to deliver all correspondence they received from the MVF to Fulcrum and take all actions requested by Fulcrum to effectuate the terms of the PSAs.
- e. Fulcrum knew that DOJ issued a Plan of Distribution for the MVF (the "Plan") in the form of answers to frequently asked questions, which has been published on the MVF website since November 2013. Fulcrum knew that the MVF Remission process was governed by the Regulations and the Plan. In particular, Fulcrum knew that:
 - (1) To be eligible to participate in payments from the MVF, a person must be a "victim" under the Regulations, meaning that the person lost their own money as a direct result of investments that were rendered worthless by the Madoff fraud.
 - (2) No victim is eligible to recover more than his or her actual "net loss" on a cash-in, cash-out basis. This means that the starting point in measuring victim loss is all the cash the victim

invested in Madoff Securities, less the amount of any withdrawals.

- (3) Pursuant to the Regulations, DOJ requires that all “collateral recoveries” the victim has already received, or that are “reasonably available” must be considered in determining eligibility for remission and requires that remission payments be reduced by the victim’s “collateral recoveries.”
 - (4) In the case of the MVF, collateral recoveries include any payments victims receive, directly or indirectly, from the Securities Investor Protection Corporation, Madoff bankruptcy distributions, insurance or class action recoveries, or any other source for the victims’ Madoff losses.
 - (5) Victims making claims to MVF are required to certify to the completeness and the accuracy of their recovery disclosures, as of the date such disclosures are made.
- f. Furthermore, Fulcrum knew that from 2016 to 2022, the MVF issued multiple Collateral Recovery Update (“CRU”) Notices to each of the Claimants. As indicated in the respective CRU Notices, updated recovery disclosures were required in advance of each MVF distribution, in order to permit the MVF to compute the accurate amount of the remission payment for each eligible claimant in each MVF distribution. Thus, the CRU Notices required Claimants to disclose any recoveries they received from any source other than the MVF, including proceeds received from the sale or assignment of Madoff feeder fund shares and rights, and from the purported sale or assignment of MVF remission claims.
- g. Fulcrum also knew that the MVF periodically posted notices on its website reminding victims of the requirement to disclose collateral recoveries to the MVF and further explaining what constitutes a collateral recovery. In particular, Fulcrum knew that a notice posted on the MVF website from August through December 2017 stated: “MVF previously sent you a collateral recovery update request explaining that: ‘Collateral recoveries include bankruptcy distributions, litigation recoveries, settlement proceeds, insurance recoveries, or any other compensation received for your Madoff losses.’ Essentially, anything you received from anyone due to your Madoff loss is a collateral recovery. In particular, you need to report to MVF all payouts from the Madoff bankruptcy, as well as any proceeds you received as a result of the sale or assignment of your claim in either the bankruptcy or MVF proceedings.”

- h. Despite the stated requirement that victims disclose all collateral recoveries they received, including proceeds from the sale of Madoff claims, Fulcrum instructed, or otherwise caused the Claimants to submit inaccurate CRU responses to the MVF that failed fully to disclose the amounts the Claimants had received from selling their Luxalpha shares and related rights, and remission claims to Fulcrum. In particular:
- (1) In September 2017 and May 2019, respectively, pursuant to the PSA and at Fulcrum's behest, Carac submitted two CRU responses to the MVF that inaccurately represented that Carac had received no collateral recoveries, when, in fact, it had received significant sales proceeds from Fulcrum.
 - (2) From February 2017 through July 2019, pursuant to the PSA and at Fulcrum's behest, CSP submitted four CRU responses to the MVF that inaccurately failed to disclose the full amount that CSP had received from Fulcrum for its Luxalpha shares and related rights. CSP stated that it had sold its remission claim to an unidentified secondary market player for a specified amount, but this amount reflected only the amount CSP received from Fulcrum for the purported sale of its remission rights rather than the total proceeds CSP had received from Fulcrum for the sale of its Luxalpha shares and related rights. During the same time period, the other Fondaco Investors likewise submitted 28 documents to the MVF that inaccurately represented that these investors had received no collateral recoveries, when, in fact, they had received significant sales proceeds from Fulcrum.
 - (3) From August 2019 through October 2020, pursuant to the PSA, and at Fulcrum's behest, the Planckes submitted twenty CRU responses to the MVF that inaccurately represented that the Planckes had received no collateral recoveries other than those they received from a financial intermediary in connection with a litigation settlement, when in fact they had received significant additional proceeds from Fulcrum for the sale of their Luxalpha shares and related rights.
- i. As a result of Fulcrum instructing or otherwise causing the Claimants to submit inaccurate collateral recovery information as described above, the MVF distributed remission payments to the Claimants that they were not entitled to receive. Pursuant to the PSA, Carac, CSP, and the Planckes then transferred the amounts they had improperly received from the MVF to Fulcrum.

3. Defendant shall pay to the Government within fourteen (14) business days of the Effective Date (defined below in Paragraph 27) the sum of \$2,511,084 plus interest which shall be compounded annually at a rate of 5.21% accruing from June 16, 2023, to the date of the payment (the “Settlement Amount”) in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of New York. Of the Settlement Amount, \$837,028 plus applicable interest constitutes restitution to the United States.

4. Defendant agrees that Fulcrum and the Claimants are not entitled to receive any amounts from the MVF in the future, and that Fulcrum shall not seek to obtain, on behalf of itself or the Claimants, any amounts from the MVF.

5. Defendant agrees to cooperate fully and truthfully with the United States’ investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Defendant shall encourage, and agree not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendant further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

6. Subject to the exceptions in Paragraph 10 (concerning reserved claims) below and subject to Paragraph 11 (concerning default) and Paragraph 15 (concerning bankruptcy proceedings) below, and conditioned on Defendant’s full compliance with the terms of this

Stipulation, including full payment of the Settlement Amount to the United States pursuant to Paragraph 3 above, the United States releases Defendant, including its subsidiaries and corporate predecessors, successors and assigns, from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, and the common law theories of fraud, payment by mistake, and unjust enrichment. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Defendant from liability of any kind.

7. Defendant fully and finally releases the United States, its agencies, officers, employees, servants, and agents, including the MVF, the Special Master, and all entities involved in the administration of the MVF and their employees, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendant has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, employees, servants, or agents related to the Covered Conduct or the United States' investigation, prosecution and settlement thereof.

8. Conditioned on Defendant's full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the United States pursuant to Paragraph 3 above, Cabot releases from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Cabot has against Defendant from the beginning of time through the date of this Stipulation relating to the Admitted Conduct. Cabot agrees to file, within 10 days of this Stipulation, an additional stipulation of dismissal as to Matthew Hamilton and Timothy Horrigan.

9. In consideration of the execution of this Stipulation by Relators and the Relators' release as set forth in Paragraph 8 above, Defendant, including its subsidiaries, predecessors, and corporate successors and assigns, as well as all of its current and former officers, directors, employees, attorneys, and other agents, release Relators and their heirs, successors, attorneys, agents, and assigns, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Defendant has against Relators related to or arising from the Relator Complaint.

10. Notwithstanding the release given in Paragraph 6 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any administrative liability or enforcement right, including the suspension or debarment rights of any federal agency;
- d. any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. any liability based upon obligations created by this Stipulation; and
- f. any liability of individuals.

11. Defendant shall be in default of this Stipulation if Defendant fails to make the required payment set forth in Paragraph 3 above on or before the due date for such payment, or if Defendant fails to comply materially with any other term of this Stipulation that

applies to Defendant (“Default”). The Government will provide a written Notice of Default to Defendant of any Default in the manner set forth in Paragraph 27 below. Defendant shall then have an opportunity to cure the Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due and paying any additional interest accruing under the Stipulation up to the date of payment. If Defendant fails to cure the Default within thirty (30) calendar days of receiving the Notice of Default (“Uncured Default”), interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance). In the event of an Uncured Default, Defendant shall agree to the entry of a consent judgment in favor of the United States against Defendant in the amount of the Settlement Amount as attached hereto as Exhibit A. Defendant also agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Stipulation, and reinstate the claims asserted against Defendant in the Government Complaint, or bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the release provided in Paragraph 6 above, with any recovery reduced by the amount of any payments previously made by Defendant to the United States under this Stipulation; (ii) take any action to enforce this Stipulation in a new action or by reinstating the Government Complaint; (iii) offset the remaining unpaid balance from any amounts due and owing to Defendant and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted

by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Defendant agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Stipulation pursuant to this paragraph, Defendant waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (i) are filed by the United States against Defendant within 120 days of written notification that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on October 5, 2018. Defendant agrees not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

12. Defendant having truthfully admitted to the Admitted Conduct set forth in Paragraph 2 hereof, agrees it shall not, through its attorneys, agents, officers, or employees, make any public statement, including but not limited to, any statement in a press release, social media forum, or website, that contradicts or is inconsistent with the Admitted Conduct or suggests that the Admitted Conduct is not wrongful (a "Contradictory Statement"). Any Contradictory Statement by Defendant or its attorneys, agents, officers, or employees, shall constitute a violation of this Stipulation, thereby authorizing the Government to pursue any of the remedies set forth in Paragraph 11 hereof, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall

notify Defendant that it has determined that Defendant has made a Contradictory Statement. Upon receiving notice from the Government, Defendant may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If Defendant learns of a potential Contradictory Statement by its attorneys, agents, officers, or employees, Defendant must notify the Government of the statement within 24 hours. The decision as to whether any statement constitutes a Contradictory Statement or will be imputed to Defendant for the purpose of this Stipulation, or whether Defendant adequately repudiated a Contradictory Statement to cure a violation of this Stipulation, shall be within the sole discretion of the Government. Consistent with this provision, Defendant may raise defenses and/or assert affirmative claims or defenses in any proceeding brought by private and/or public parties, so long as doing so would not contradict or be inconsistent with the Admitted Conduct.

13. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation; Relators agree and confirm that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

14. Defendant waives and shall not assert any defenses that it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action.

15. In exchange for valuable consideration provided in this Stipulation, Defendant acknowledges the following:

- a. Defendant has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.
- b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendant, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.
- c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.
- d. The Parties do not intend to hinder, delay, or defraud any entity to which Defendant was or became indebted on or after the date of any transfer contemplated in this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).
- e. If Defendant's obligations under this Stipulation are avoided for any reason (including but not limited to through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Defendant or a third party commences a case, proceeding, or

other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Defendant; debts, or to adjudicate Defendant as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or any substantial part of Defendant's assets:

- (1) the United States may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the release provided in Paragraph 6 above.
 - (2) the United States has an undisputed, noncontingent, and liquidated allowed claim against Defendant in the amount of \$2,511,048, less any payments received pursuant to the Stipulation, provided, however, that such payments are not otherwise avoided and recovered from the United States by Defendant, a receiver, trustee, custodian, or other similar official for Defendant; and
 - (3) if any payments are avoided and recovered by Defendant, a receiver, trustee, custodian, or similar official for Defendant, Relators shall, within thirty days of written notice from the United States to the undersigned Relators' counsel, return any portions of such payments already paid by the United States to Relator.
- f. Defendant agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 15(e) above is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it

would be an exercise of the United States' police and regulatory power. Defendant shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Defendant waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Defendant that the release has been rescinded pursuant to this paragraph, except to the extent such defenses were available on October 5, 2018. Defendant agrees to the following:

- g. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Defendant and its present or former officers, directors, employees, shareholders, and agents in connection with:
- (1) the matters covered by this Stipulation;
 - (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Stipulation;
 - (3) Defendant's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Stipulation (including attorney's fees);
 - (4) the negotiation and performance of this Stipulation;

(5) the payment Defendant makes to the United States pursuant to this Agreement and any payments that Defendant may make to Relators, including costs and attorneys' fees, are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

h. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Defendant, and Defendant shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

i. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Defendant shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendant or any of its subsidiaries or affiliates from the United States. Defendant agrees that the United States, at a minimum, shall be entitled to recoup from Defendant any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Defendant's books and records and to disagree with any calculations submitted by Defendant or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendant, or the effect of any such Unallowable Costs on the amount of such payments.

16. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing in this Stipulation shall preclude Relators from seeking to recover their expenses or attorneys' fees and costs from Defendant, pursuant to 31 U.S.C. § 3730(d).

18. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

19. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York.

20. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

21. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties. No prior agreements, oral representations or statements shall be considered part of this Stipulation.

22. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

23. This Stipulation is binding on Defendant's successors, transferees, heirs, and assigns.

24. This Stipulation is binding on Relators' successors, transferees, heirs, and assigns.

25. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

26. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Pierre G. Armand
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, New York 10007
Email: Pierre.armand@usdoj.gov

TO DEFENDANT:

Jonathan M. Phillips
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Email: jphillips@gibsondunn.com

TO RELATORS:

Matthew L. Schwartz
Boies Schiller Flexner LLP
55 Hudson Yards, 20th Floor
New York, New York 10001
Email: mlschwartz@bsflp.com

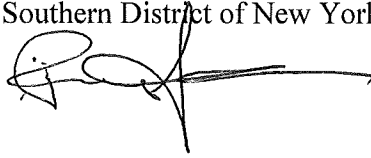
27. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the “Effective Date”).

Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
September 29, 2023

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York



By:

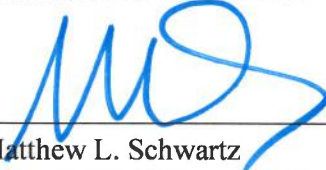
Pierre G. Armand
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel.: (212) 637-2724
Email: pierre.armand@usdoj.gov
Attorney for the United States of America

RELATORS

Dated: New York, New York
September 29, 2023

Boies Schiller Flexner LLP

By: _____


Matthew L. Schwartz
Boies Schiller Flexner LLP
55 Hudson Yards, 20th Floor
New York, New York 10001
Tel.: (212) 303-3646
Email: mlschwartz@bsfllp.com
Attorney for Relators

DEFENDANT FULCRUM CAPITAL HOLDINGS LLC

Dated: Austin, Texas
September 29, 2023

By: 

Matthew Hamilton
Member
Fulcrum Capital Holdings LLC

Dated: Washington, DC
September 29, 2023

Gibson, Dunn & Crutcher LLP

By: 

Jonathan M. Phillips
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1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel.: (202) 887-3546
Email: jphillips@gibsondunn.com

*Attorneys for Defendant Fulcrum Capital
Holdings LLC*

SO ORDERED:

HON. VALERIE E. CAPRONI
UNITED STATES DISTRICT JUDGE

Dated: _____, 2023

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

UNITED STATES OF AMERICA *ex rel.* CABOT SQUARE
LLC,

Plaintiff,

v.

FULCRUM CAPITAL HOLDINGS LLC,
MATTHEW HAMILTON, TIMOTHY HORRIGAN,
FONDACO SGR S.P.A., COMPAGNIA DI SAN
PAOLO, and CARAC,

Defendants.

18 Civ. 9160 (VEC)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

FULCRUM CAPITAL HOLDINGS LLC,

Defendant.

JUDGMENT

Upon the consent of plaintiff the United States of America and defendant Fulcrum Capital Holdings LLC (“Fulcrum”), it is hereby

ORDERED, ADJUDGED and DECREED: that plaintiff the United States of America is awarded judgment in the amount of \$2,511,084 against Fulcrum as well as post-judgment interest at the rate of 12% per annum compounded daily.

Dated: New York, New York
_____, 2023

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By:

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Attorney for the United States of America

Dated: Austin, Texas
_____, 2023

By:

Matthew Hamilton
Member
Fulcrum Capital Holdings LLC

Dated: Washington, DC
_____, 2023

Gibson, Dunn & Crutcher LLP

By:

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*Attorneys for Defendant Fulcrum Capital
Holdings LLC*

SO ORDERED:

HON. VALERIE E. CAPRONI
UNITED STATES DISTRICT JUDGE

Dated: _____, 2023