

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

RHODE ISLAND ECONOMIC  
DEVELOPMENT CORPORATION,

Plaintiff,

v.

WELLS FARGO SECURITIES, LLC;  
BARCLAYS CAPITAL, PLC; FIRST  
SOUTHWEST COMPANY, STARR  
INDEMNITY AND LIABILITY COMPANY;  
CURT SCHILLING; THOMAS ZACCAGNINO;  
RICHARD WESTER; JENNIFER MACLEAN;  
ROBERT I. STOLZMAN; ADLER POLLOCK &  
SHEEHAN P.C.; MOSES AFONSO RYAN  
LTD.; ANTONIO AFONSO, JR.; KEITH  
STOKES; and J. MICHAEL SAUL,

Defendants.

C.A. No. PB-12-5616

**DEFENDANT ADLER POLLOCK & SHEEHAN P.C.'S MEMORANDUM OF  
LAW IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER**

Defendant Adler Pollock & Sheehan P.C. ("Adler Pollock") submits this memorandum in support of its motion for a protective order quashing Plaintiff Rhode Island Economic Development Corporation's (the "EDC's") 30(b)(6) notice of deposition to Adler Pollock.

**STATEMENT OF FACTS**

On November 5, 2013 the EDC commenced the deposition of Robert I. Stolzman, shareholder of Adler Pollock and a defendant in this case. Counsel for the EDC quickly established that, apart from Mr. Stolzman, other individuals at Adler Pollock had very little involvement in the 38 Studios transaction:

Q. Can we agree that the time that you billed to the EDC for the 38 Studios included hundreds of hours of your time?

A. I don't recall, but that would seem accurate.

Q. And indeed the other people in Adler Pollock who were participating were less than ten hours in the aggregate; does that sound right?

A. Yes.

...

Q. And that's a matter of record.

A. Yes, that's correct.

Q. I will represent to you that the time sheets that you've produced show that those three people were a very small number of hours. Does that sound right?

A. That does sound right.

Exhibit A at 23. Counsel for the EDC continued the deposition of Mr. Stolzman on December 4, 2013, and again on January 10, 2014. Counsel for the EDC convened the January 10 deposition at 12:36 P.M. "[W]e're all finished," he commented. Exhibit A at 602.

More than six months later, the EDC issued a 30(b)(6) notice to Adler Pollock, which notice identified thirty-six (36) separate "Subject Matters" for inquiry. *See* Exhibit B (the "30(b)(6) notice"). Illustrative are the following Subject Matters:

- 1) Concerning whether the EDC Board at any time had actual knowledge that the Net Proceeds or the Net Loan Proceeds ... were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island and identifying all documents ... or other information concerning that issue;

...

- 10) Concerning whether APS owed Plaintiff the duties an attorney owes his or her client, and identifying all documents, communications, or other information concerning that issue, and identifying all documents, communications, or other information concerning that issue ... .

Exhibit B at 7, 9 (redundancy in original). Perceiving that the Subject Matters either *were* inquired into during Mr. Stolzman's deposition, *could have been* inquired into at that time, or *are*

improper in that they seek information either irrelevant or protected as work product, on June 20, 2014 counsel for Adler Pollock wrote to the EDC to express its concerns. Adler Pollock also offered a stipulation. Conceding that the EDC could discover whether Adler Pollock's knowledge for the relevant time period was greater than that of its shareholder Mr. Stolzman, Adler Pollock offered to stipulate that Mr. Stolzman's testimony could be treated as if it were that of a 30(b)(6) designee. This economical solution, as is noted *infra*, has been adopted in numerous civil actions. Adler Pollock's stipulation was rejected on June 24, 2014.

## A R G U M E N T

Rule 30(b)(6) depositions are proper and productive where a corporate entity's knowledge differs from that of its agents. However, during the time that Adler Pollock is alleged to have injured the EDC, the law firm's knowledge was coextensive with that of its shareholder, Robert I. Stolzman. Thus, EDC's 30(b)(6) deposition would not reveal further discoverable information. As such, *any* expense incurred in preparing for and defending the noticed 30(b)(6) deposition would be unduly burdensome, much less the gargantuan expense of preparing a witness for the thirty-six (36) "Subject Matters" noticed by the EDC.

To the extent that the 30(b)(6) notice is not quashed in its entirety, it should be restricted to the relevant timeframe and its many inquiries into Adler Pollock's legal contentions should be barred. The Subject Matters that survive the court-ordered limitations should be inquired into via interrogatory.

The court has power under Rule 26(c) to issue a protective order that discovery not be had or that it be had only on specified terms and conditions. The power may be exercised to protect a party from annoyance or undue burden or expense. The court should quash the EDC's 30(b)(6) notice, or, in the alternative, should confine the Subject Matters noted therein and order that instead the discovery take place via interrogatory.

**A. The 30(b)(6) notice should be quashed because the *raison d'être* for such depositions is absent.**

The legislative history of the federal progenitor of Rule 30(b)(6) notes that the rule was adopted to curb “bandying.”<sup>1</sup> Belying its airy name, “bandying” was a noxious practice employed principally by large corporations in the pre-30(b)(6) era.<sup>2</sup> Corporate entities took advantage of their size and sprawl to confound adversaries; employees would arrive at a deposition, swear to tell the truth and the whole truth, then disclaim knowledge on the topics opposing counsel sought to investigate. This practice unjustly strained the resources of litigants and led to frequent disputes regarding (i) whether a witness’ testimony was admissible against the corporation, (ii) the identity of the most knowledgeable witness on a given issue, and (iii) whether parties were required to prepare for their depositions.<sup>3</sup>

The problem of “bandying” was elegantly and forcefully resolved with the adoption of (federal) Rule 30(b)(6). Rule 30(b)(6) depositions (“designee depositions”) require a corporation to designate a witness to set forth the corporation’s “position” on a given topic. In that sense, they are a powerful discovery tool well-adapted to the corporate Hydra. However, as one commentator has noted, “[p]reparing and serving a Rule 30(b)(6) deposition notice takes little or no effort. Responding to a notice, even to a hastily drafted one, can be a gargantuan task

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1 See Advisory Committee’s Explanatory Statement Concerning Amendments of the Discovery Rules, 48 F.R.D. 487, 515 (Rule 30(b)(6) will “curb the ‘bandying’ by which officers or managing agents are deposed in turn but each disclaims knowledge of facts that are clearly known to persons in the organization and thereby to it.”).

2 Evidently the term owes its origin to a federal district court judge from the Fourth Circuit. See *Haney v. Woodward & Lothrop, Inc.*, 330 F.2d 940, 944 (4th Cir. 1964) (“Ford testif[ied] [] that the head of the claims operation was Nicholas Black. ... Maxim was then pointed out to the Court as the one familiar with the file. The Court asked for Black, but was casually told that he presumably was in the Washington office. Thus Raynor was first named as the key man, then Black and finally Maxim. At no time, did the defendants ... offer to bring to the deposition or to court the person with the requisite knowledge. When the Court entered its order ... the defendants could readily have then advised that he was not familiar with the records. No such suggestion was forthcoming. The District Judge aptly termed it all as ‘bandying’.”)

3 See 8A Charles Alan Wright et al., *FEDERAL PRACTICE AND PROCEDURE* § 2103 (3d ed. 2013).

for a corporate deponent.”<sup>4</sup> Thus, and in furtherance of the laudable aim of just, speedy, and *inexpensive* determination of issues on their merits, courts have quashed designee depositions where they are not likely to lead to the discovery of relevant evidence.

Here, “bandying” has not reared its ugly heads, nor could it. Adler Pollock is not a sprawling corporation that staffed its engagement with a panoply of employees bearing varying titles and levels of responsibility. Rather, it is a law firm. Mr. Stolzman, a shareholder thereof, discharged Adler Pollock’s duties to the EDC. He had only incidental or readily quantifiable assistance from others at the firm. Indeed, during the first day of the three-day deposition of Mr. Stolzman, the Plaintiff’s counsel *himself* represented to Mr. Stolzman that other Adler Pollock employees spent “a very small number of hours” on the 38 Studios transaction according to Adler Pollock’s timesheets. *See* Exhibit A at 24. Adler Pollock is and has been willing to stipulate that Mr. Stolzman’s testimony could be admissible against it to the same extent that a 30(b)(6) deponent’s testimony would be admissible against it, and that during the relevant timeframe<sup>5</sup> Mr. Stolzman’s knowledge was coextensive with its own. This stipulation renders nugatory the proposed designee deposition:

A 30(b)(6) deposition may not be justified where, assuming the witness is properly prepared, the entity establishes that the witness’s testimony as a 30(b)(6) witness would be identical to his testimony as an individual and the 30(b)(6) is limited, or substantially limited, to topics covered in the deposition taken in the witness’s individual capacity. In such a situation, there appears to be no obstacle to the entity’s complying with its obligations under Rule 30(b)(6) by adopting the witness’s testimony in his individual capacity.

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4 Amy E. Hamilton & Peter E. Strand, *Corporate Depositions in Patent Infringement Cases: Rule 30(b)(6) Is Broken and Needs to Be Fixed*, 19 INTEL. PROP. & TECH. L.J. 1, 1 (2007).

5 Adler Pollock contends that any alleged misdeeds as described by the EDC would have been completed much earlier than May 31, 2012, but in order to avoid argument on this issue offers May 31, 2012 as a date by which any of its alleged misdeeds must have been completed.

*A.I.A. Holdings, S.A. v. Lehman Bros., Inc.*, 2002 WL 1041356 (S.D.N.Y. May 23, 2002)<sup>6</sup>; *see also Agence France Presse v. Morel*, 2011 WL 5127506 (S.D.N.Y. Oct. 27, 2011) (“Morel already deposed [two witnesses] individually in May of this year, and now seeks Rule 30(b)(6) testimony on an array of issues concerning which they have already testified. AFP advises that if required to produce a 30(b)(6) witness on these topics, it would proffer [the same two witnesses]. We decline to require such a wasteful procedure. In lieu of that duplication of effort, we adopt the suggestion of AFP that the deposition testimony that [the witnesses] gave in the Spring, in their individual capacities, be deemed also to constitute Rule 30(b)(6) testimony of AFP and hence binding on the company.”); *Sabre v. First Dominion Capital, LLC*, 51 Fed. R. Serv. 3d 1405 (S.D.N.Y. 2001) (“[T]he inquiring party [does not have] carte blanche to depose an individual for seven hours as an individual and seven hours as a 30(b)(6) witness. In the case of many closely held corporations, the knowledge of an individual concerning a particular subject also constitutes the total knowledge of the entity. In such a situation, the witness could simply adopt the testimony he or she provided in a former capacity, thereby obviating the need for a second deposition.”)

In light of the affidavit attached hereto as Exhibit C and Adler Pollock’s willingness (i) to stipulate that its knowledge of the discoverable Subject Matters was co-extensive with that of Mr. Stolzman during the relevant time periods, and (ii) to designate Mr. Stolzman’s testimony as that of its corporate designee, the EDC’s 30(b)(6) notice of deposition should be quashed.

**B. If the 30(b)(6) notice is not wholly quashed, the Court should restrict the Subject Matters to facts known to Adler Pollock during the relevant time period.**

EDC’s 30(b)(6) notice is defective in that it seeks information that is not discoverable. The non-discoverable information sought falls into two general categories: (1) factual knowledge that

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<sup>6</sup> In *A.I.A. Holdings*, the court denied the motion to quash but allowed the corporation to renew its application and make a fuller showing that the 30(b)(6) deposition would be a waste of time and money.

Adler Pollock obtained *after* any alleged misdeeds were completed, and (2) legal opinions held by Adler Pollock.

1. *The Court should limit the Subject Matters to the time period ending May 31, 2012.*

Accepting the EDC's allegations as true, all of Adler Pollock's alleged misdeeds must necessarily have been completed by, at the very latest, May 31, 2012. What Adler Pollock knew, and what it did or failed to do up until that point, may be relevant to whether it is liable to the EDC. However, what Adler Pollock has learned since its alleged misdeeds were completed is not only irrelevant to whether it is liable to the EDC, but inextricably intertwined with attorney-work product. In the 2002 case *J.P. Morgan Chase Bank v. Liberty Mutual Ins. Co.*,<sup>7</sup> the United States District Court for the Southern District of New York noted that a request for factual knowledge that included time periods *after* the completion of an alleged misdeed called for irrelevant information:

Even if viewed, superficially, as a request for factual knowledge, plaintiff's request would have to be denied as irrelevant to any material fact issue in this case. ... what each defendant knew at the time it issued its bonds is highly relevant; but what it may have learned since then is entirely irrelevant. **This is because the parties' respective obligations and liabilities are a function of what they knew, and what they disclosed or failed to disclose, at the time they entered their contractual relationships, not thereafter.**

*Id.* (emphasis supplied). The court denied plaintiff's 30(b)(6) request on that basis alone. However, it went on to note that the plaintiff was "really seeking defendants' protected work product." *Id.* at 363. "Under the guise of requesting 'facts' that defendants now contend changed their view of the transactions, plaintiff is really requesting defendants' mental impressions, conclusions, opinions, and legal theory ... classic work product [] properly shielded

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<sup>7</sup> 209 F.R.D. 361 (S.D.N.Y. 2002).



from discovery.” *Id.* In *S.E.C. v. Morelli*,<sup>8</sup> an earlier case from the same jurisdiction, the court addressed the movant’s claim that a notice of deposition improperly sought discovery of material protected as work-product:

Given [movant’s] sworn, uncontroverted statement that all relevant, non-privileged evidence has been disclosed to the defendants, the Court is drawn inexorably to the conclusion that [the 30(b)(6) notice] is intended to ascertain how the [movant] intends to marshal [sic] the facts, documents and testimony in its possession, and to discover the inferences that plaintiff believes properly can be drawn from the evidence it has accumulated. However, as explained by the Third Circuit, [o]pinion work product includes such items as an attorney’s legal strategy, his intended lines of proof, his evaluation of the strengths and weaknesses of his case, and the inferences he draws from interviews of witnesses.

*Id.* (citations and internal quotations omitted); citing *Berkey Photo, Inc. v. Eastman Kodak Co.*, 74 F.R.D. 613, 616 (S.D.N.Y.1977) (barring discovery of “counsel’s ordering of the ‘facts,’ referring to the prospective proofs, organizing, aligning, and marshalling empirical data with the view to combative employment that is the hallmark of the adversary enterprise”).

So too here. As attested to in the affidavit attached hereto as Exhibit C, Adler Pollock has divulged its discoverable, non-privileged evidence through document production, discovery responses, and days’ worth of depositions. As in *Morelli*, “[s]imply put, the [adversaries] have had an opportunity to examine the entire factual basis for this action.” *Id.* What remains to be discovered is the application of law to fact; work product.

Thus, if the 30(b)(6) notice is not quashed, Adler Pollock requests that the Court confine the Subject Matters to the time period ending May 31, 2012. This remedy is both meet and acknowledged. In the 2012 employment law case *Cipriani v. Dick’s Sporting Goods, Inc.*,<sup>9</sup> the United States Magistrate Judge reformed the plaintiff’s 30(b)(6) subject matters, holding that

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<sup>8</sup> 143 F.R.D. 42, 46-47 (S.D.N.Y. 1992)  
<sup>9</sup> 2012 WL 5869818 \*2 (D. Conn. Nov. 19, 2012).

they "must all be limited to the time period of September 2009 through June 2011, when plaintiff was employed by defendant."

2. *The Court should strike the Subject Matters that call for legal conclusions.*

A number of the Subject Matters proffer hypothetical scenarios and/or inquire as to Adler Pollock's opinions of its duties. See Exhibit B, Subject Matter Nos. 9-12, 15, 17, 21, 24, 27-31, 33, 35-36. These Subject Matters seek information that is not discoverable. Adler Pollock in its Answer and at all times since has contended that, with the knowledge available to him at the time that Mr. Stolzman owed duties to the EDC, Mr. Stolzman discharged his duties in a non-negligent fashion. See Exhibit C.

The EDC has had ample discovery of both Mr. Stolzman's knowledge and his actions for the relevant time period. From these his liability, if any, arises. If the facts were not as Mr. Stolzman believed them to be, then the EDC must demonstrate that Mr. Stolzman was negligent in failing to discover them. If the law was not as Mr. Stolzman believed it to be, the EDC must establish that he erred. The adjudication of Adler Pollock's liability *vel non* to the EDC depends on Adler Pollock's knowledge, actions and omissions during the time Adler Pollock is alleged to have injured it, not its present-day opinions on the EDC's exam questions. The EDC has already inquired; now let it argue.

As the Southern District of New York trial court held in *J.P. Morgan*, "[i]n a nutshell, depositions, including 30(b)(6) depositions, are designed to discover facts, not contentions or legal theories, which, to the extent discoverable at all prior to trial, must be discovered by other means."<sup>10</sup> The court acknowledged that while it would no doubt be *useful* for a litigant to discover legal conclusions, such discovery is not permitted: "plaintiff is really seeking

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<sup>10</sup> 209 F.R.D. 361 (S.D.N.Y. 2002).

defendants' protected work product. ... Under the guise of requesting 'facts' that defendants now contend changed their view of the transactions, plaintiff is really requesting defendants' mental impressions, conclusions, opinions, and legal theory."<sup>11</sup>

**C. Any discoverable Subject Matters should be inquired into via interrogatory.**

Once the judicial scalpel has excised the Subject Matters that are irrelevant, seek protected work product, and/or are redundant in light of Adler Pollock's willingness to stipulate that Mr. Stolzman's knowledge was coextensive with its own for all relevant time periods, any Subject Matters that remain should be inquired into via interrogatory or request for admission.

Both the nature of the Subject Matters and considerations of undue burden commend discovery via interrogatory. With respect to burden, counsel for the EDC deposed Mr. Stolzman over three days and convened the third day of deposition at lunchtime. EDC's counsel was early made aware that Mr. Stolzman was the Adler Pollock attorney knowledgeable on the noticed Subject Matters; the few non-objectionable Subject Matters could have been explored on the afternoon of the third day with minimal additional time spent and expense incurred by Adler Pollock. With respect to the nature of the Subject Matters, counsel for the EDC represented by letter that he endeavored to "be as precise and specific as possible" in drafting the 30(b)(6) notice to Adler Pollock, which suggests that the discovery *should* take place via interrogatory rather than the more burdensome and expensive method of discovery by deposition.<sup>12</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., *SmithKline Beecham Corp. v. Apotex Corp.*, No. 99-CV-4303 et al., 2004 WL 739959, at \*2-\*4 (E.D.Pa. March 23, 2004) (ruling that certain categories of proposed deposition pertained to legal positions that should be ascertained by means of interrogatories rather than deposition); *In re Indep. Serv. Orgs. Antitrust Litig.*, 168 F.R.D. 651, 654 (D.Kan.1996) (granting protective order against Rule 30(b)(6) deposition inquiry into legal conclusions, on grounds that producing responses to such questions is "overbroad, inefficient, and unreasonable"); *McCormick-Morgan, Inc. v. Teledyne Indus., Inc.*, 134 F.R.D. 275, 285-88 (N.D.Cal.1991) (ordering both parties to use contention interrogatories rather than Rule 30(b)(6) deposition to ascertain other side's legal positions).

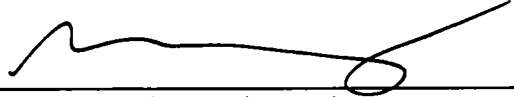
## C O N C L U S I O N

For the foregoing reasons, Adler Pollock requests that this Court quash the EDC's 30(b)(6) notice and allow Adler Pollock to designate the testimony of Mr. Stolzman as that of its 30(b)(6) deponent.

In the alternative, Adler Pollock requests that this Court order that discovery on Subject Matter Nos. 9-12, 15, 17, 21, 24, 27-31, 33, 35-36 not be had, that discovery on Subject Matter Nos. 1-8, 13-14, 16, 18-20, 22-23, 25-26, 32, and 34 be had by designation of prior testimony, and/or limited to facts known to Adler Pollock for the time period ending May 31, 2012, and that said discovery take place via interrogatory.

**ADLER POLLOCK & SHEEHAN P.C.**

By its Attorneys,



William M. Dolan III (#4524)

William K. Wray, Jr. (#9022)

**DONOGHUE BARRETT & SINGAL, P.C.**

155 South Main Street, Suite 102

Providence, RI 02903

(401) 454-0400

(401) 454-0404 Fax

[wdolan@dbslawfirm.com](mailto:wdolan@dbslawfirm.com)

[wwray@dbslawfirm.com](mailto:wwray@dbslawfirm.com)

Date: June 30, 2014

**Certificate of Service**

I hereby certify that on this \_\_\_\_ day of June 2014, I served a true copy of the within document, by electronic mail and first class mail, postage prepaid, upon:

Max Wistow, Esq.  
Stephen P. Sheehan, Esq.  
Benjamin Ledsham, Esq.  
Wistow, Barylick, Sheehan & Loveley, PC  
61 Weybosset Street  
Providence, RI 02903  
[mw@wistbar.com](mailto:mw@wistbar.com)  
[bledsham@wistbar.com](mailto:bledsham@wistbar.com)  
[mail@wistbar.com](mailto:mail@wistbar.com)

Thomas F. Holt, Jr., Esq.  
John Blessington, Esq.  
Christopher J. Valente, Esq.  
Timothy J. Grimes, Esq.  
K&L Gates  
State Street Financial Center  
One Lincoln Street  
Boston, MA 02111  
[Thomas.holt@klgates.com](mailto:Thomas.holt@klgates.com)  
[John.blessington@klgates.com](mailto:John.blessington@klgates.com)  
[Christopher.valente@klgates.com](mailto:Christopher.valente@klgates.com)  
[Timothy.grimes@klgates.com](mailto:Timothy.grimes@klgates.com)

Gerald J. Petros, Esq.  
Mitchell R. Edwards, Esq.  
Hinckley, Allen & Snyder LLP  
50 Kennedy Plaza, Suite 1500  
Providence, RI 02903  
[gpetros@haslaw.com](mailto:gpetros@haslaw.com)  
[medwards@haslaw.com](mailto:medwards@haslaw.com)

Bruce W. Gladstone, Esq.  
Cameron & Mittleman LLP  
301 Promenade Street  
Providence, RI 02908  
[bgladstone@cm-law.com](mailto:bgladstone@cm-law.com)

Jonathan Bell, Esq.  
Mark A. Berthiaume, Esq.  
Timothy E. Maguire, Esq.  
Greenberg Traurig  
One International Place, 20th floor  
Boston, MA 02110  
[bellj@gtlaw.com](mailto:bellj@gtlaw.com)  
[berthiaumeM@gtlaw.com](mailto:berthiaumeM@gtlaw.com)  
[maguiret@gtlaw.com](mailto:maguiret@gtlaw.com)

Jeffrey C. Schreck, Esq.  
99 Wayland Avenue, Suite 200  
Providence, RI 02906  
[jschreck@msn.com](mailto:jschreck@msn.com)

Brooks R. Magratten, Esq.  
Pierce Atwood LLP  
72 Pine Street, 5th floor  
Providence, RI 02903  
[bmagratten@pierceanwood.com](mailto:bmagratten@pierceanwood.com)

David A. Grossbaum, Esq.  
Samuel C. Bodurtha, Esq.  
Matthew R. Watson, Esq.  
Hinshaw & Culbertson LLP  
321 So. Main Street, Suite 301  
Providence, RI 02903  
[dgrossbaum@hinshawlaw.com](mailto:dgrossbaum@hinshawlaw.com)  
[sbodurtha@hinshawlaw.com](mailto:sbodurtha@hinshawlaw.com)  
[mwatson@hinshawlaw.com](mailto:mwatson@hinshawlaw.com)

Michael F. Connolly, Esq.  
Joseph P. Curtin, Esq.  
A.W. (Chip) Phinney, Esq.  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
[mfconnolly@mintz.com](mailto:mfconnolly@mintz.com)  
[jpcurtin@mintz.com](mailto:jpcurtin@mintz.com)  
[awphinney@mintz.com](mailto:awphinney@mintz.com)

Michael P. Duffy, Esq.  
Frederick E. Connelly, Jr., Esq.  
Christopher Conroy, Esq.  
Peabody & Arnold LLP  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, MA 02210-2261  
[mduffy@peabodyarnold.com](mailto:mduffy@peabodyarnold.com)  
[cconroy@peabodyarnold.com](mailto:cconroy@peabodyarnold.com)  
[fconnelly@peabodyarnold.com](mailto:fconnelly@peabodyarnold.com)


Robert M. Duffy, Esq.  
Duffy & Sweeney, Ltd.  
1800 Financial Plaza  
Providence, RI 02903  
[rduffy@duffysweeney.com](mailto:rduffy@duffysweeney.com)  
[bmcmasters@duffysweeney.com](mailto:bmcmasters@duffysweeney.com)  
[snakasian@duffysweeney.com](mailto:snakasian@duffysweeney.com)

David P. Martland, Esq.  
Silva, Thomas, Martland & Offenberg, Ltd.  
1100 Aquidneck Avenue  
Middletown, RI 02842  
[dmartland@silvalawgroup.com](mailto:dmartland@silvalawgroup.com)

James E. Brandt, Esq.  
*Admitted Pro Hac Vice*  
Craig A. Batchelor, Esq.  
*Admitted Pro Hac Vice*  
Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022  
[Ecraig.batchelor@lw.com](mailto:Ecraig.batchelor@lw.com)  
(Co-Counsel to Barclays Capital Inc.)

Carl E. Metzger, Esq.  
Sarah Heaton Concannon, Esq.  
Josh L. Launer, Esq.  
Thomas E. Duncombe, Esq.  
Goodwin Procter LLP  
One Exchange Place  
Boston, MA 02109  
[cmetzger@goodwinprocter.com](mailto:cmetzger@goodwinprocter.com)  
[sconcannon@goodwinprocter.com](mailto:sconcannon@goodwinprocter.com)  
[jlauner@goodwinprocter.com](mailto:jlauner@goodwinprocter.com)  
[tduncombe@goodwinprocter.com](mailto:tduncombe@goodwinprocter.com)

Russell H. Falconer, Esq.  
*Admitted Pro Hac Vice*  
Brian E. Robison, Esq.  
*Admitted Pro Hac Vice*  
Gibson, Dunn & Crutcher LLP  
2100 McKinney Avenue, Suite 1100  
Dallas, TX 75201  
[brobison@gibsondunn.com](mailto:brobison@gibsondunn.com)  
[rfalconer@gibsondunn.com](mailto:rfalconer@gibsondunn.com)  
(Co-Counsel to First Southwest Company)



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William K. Wray Jr.

# EXHIBIT A



**In The Matter Of:**  
*Rhode Island Economic Development Corporation vs  
Wells Fargo Securities, LLC*

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*Robert I. Stolzman  
November 5, 2013*

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STATE OF RHODE ISLAND

SUPERIOR COURT

PROVIDENCE, Sc.

RHODE ISLAND ECONOMIC  
DEVELOPMENT CORPORATION

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C.A. No. P.B. 12-5616

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SHEEHAN, P.C.; MOSES AFONSO RYAN  
LTD.; ANTONIO AFONSO, JR.; KEITH  
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VOLUME I

Deposition of ROBERT I. STOLZMAN, taken  
on behalf of the Plaintiff, pursuant to the Rhode  
Island Rules of Civil Procedure, on Tuesday,  
November 5, 2013, at the offices of Allied Court  
Reporters, 115 Phenix Avenue, Cranston, Rhode  
Island, before Dorothy M. Depointe, Registered  
Diplomate Reporter and Notary Public, convening at  
10:04 a.m.

REPORTING ASSOCIATES  
Shorthand Reporters  
10 Dorrance Street, Suite 617  
Providence, Rhode Island 02903  
(401) 351-1660

## APPEARANCES:

Wistow, Baryllick, Sheehan & Loveley, PC

BY: STEPHEN P. SHEEHAN, ESQ.,

MAX WISTOW, ESQ., AND

BENJAMIN G. LEDSHAM, ESQ.

Counsel for Plaintiff

With Whom Appeared:

Daria L. Souza, Legal Assistant

K&L Gates LLP

BY: THOMAS F. HOLT, JR., ESQ.

Counsel for Defendant Wells Fargo Securities, LLC

Duffy & Sweeney, Ltd.

BY: ERIC A. CONTRE, ESQ.

Counsel for Defendant Wells Fargo Securities, LLC

Hinckley, Allen & Snyder LLP (By telephone)

BY: GERALD J. PETROS, ESQ. AND

REBECCA F. BRIGGS, ESQ.

Counsel for Defendant First Southwest Company

Peabody & Arnold LLP

BY: FREDERICK E. CONNELLY, JR., ESQ.

Counsel for Defendant

Starr Indemnity and Liability Company

Goodwin Procter LLP

BY: SARAH HEATON CONCANNON, ESQ.

Counsel for Defendant Curt Schilling

Mintz Levin Cohn Ferris Glovsky and Popeo PC

BY: MICHAEL F. CONNOLLY, ESQ.

Counsel for Defendants

Thomas Zaccagnino and Richard Wester

Greenberg Traurig

BY: TIMOTHY E. MAGUIRE, ESQ.

Counsel for Defendant Jennifer MacLean

Brown Rudnick LLP

BY: WILLIAM M. DOLAN, III, ESQ.

AND WILLIAM WRAY, ESQ.

Counsel for Defendants Adler Pollock & Sheehan P.C.  
and Robert I. Stolzman

APPEARANCES: (Continued)

Moses Afonso Ryan LTD  
BY: ANTONIO AFONSO, JR., ESQ.  
Counsel for Defendant Moses Afonso Ryan

Hinshaw & Culbertson LLP  
BY: DAVID A. GROSSBAUM, Esq.  
Counsel for Defendants  
Moses Afonso Ryan LTD and Antonio Afonso, Jr.

Silva, Thomas, Martland & Offenberg, Ltd.  
BY: DAVID P. MARTLAND, ESQ.  
Counsel for Defendant Keith Stokes

Cameron & Mittleman LLP  
BY: BRUCE W. GLADSTONE, ESQ.  
Counsel for Defendant J. Michael Saul

1           were involved in the transaction?

2       A.     Paul Campellone provided some support; others  
3           reflected on the time entries; Carol Johnson, a  
4           legal assistant, paralegal.

5       Q.     Can we agree that the time that you billed to the  
6           EDC for the 38 Studios included hundreds of hours  
7           of your time?

8       A.     I don't recall, but that would seem accurate.

9       Q.     And indeed the other people in Adler Pollock who  
10          were participating were less than ten hours in the  
11          aggregate; does that sound right?

12      A.     Yes.

13      Q.     Okay. Now, when --

14      A.     I would like to clarify something.

15      Q.     Sure.

16      A.     I'm not sure about their hours; I have not  
17          reviewed that. So "ten hours in the aggregate,"  
18          I'm not sure if that's accurate. Whatever the  
19          time --

20      Q.     But it didn't sound strange to you, did it?

21      A.     No. I was just --

22      Q.     And that's a matter of record.

23      A.     Yes, that's correct.

24      Q.     I will represent to you that the time sheets that  
25          you've produced show that those three people were

1 a very small number of hours. Does that sound  
2 right?

3 A. That does sound right.

4 Q. Okay. Now, when it came time to make sure that  
5 Adler Pollock and you -- by the way -- let me  
6 clarify this, so I'll withdraw the question.

7 You understand you're an individual  
8 defendant in the case.

9 A. I do.

10 Q. And you understand that Adler Pollock also is a  
11 separate defendant in the case.

12 A. I do.

13 Q. So there were requests for production of all of  
14 the records regarding 38 Studios, Adler Pollock or  
15 your participation in the transaction which led to  
16 the loan. You understood that; right?

17 A. Can you repeat the question.

18 Q. Yes. You understood that there was a request for  
19 production of your files regarding your  
20 participation and Adler Pollock's participation in  
21 the loan to 38 Studios.

22 A. Yes.

23 Q. Okay. And you indicated that there were two  
24 people who were responsible to make sure that the  
25 production given to the plaintiff, EDC, was

1 Q. And there's no doubt that that's 38 Studios.

2 A. That's correct.

3 Q. Okay. And then the second part of that is the  
4 economic development strategy, meaning what would  
5 happen if 75 million goes into one company that's  
6 successful, what would happen overall in Rhode  
7 Island; is that fair?

8 MR. DOLAN: Form.

9 A. That's fair in light of this type of company:  
10 knowledge, jobs, et cetera, all the other things  
11 discussed in the Strategy Analytics report.

12 Q. So the answer to my question is yes.

13 A. Yes.

14 MR. WISTOW: Okay. Subject to  
15 Mr. Sheehan --

16 MR. SHEEHAN: What?

17 MR. WISTOW: -- slapping me around --

18 MR. SHEEHAN: No, not me.

19 MR. WISTOW: Okay. Then we're all  
20 finished.

21 MR. DOLAN: We'll read and sign.

22 (The deposition adjourned at 12:36 p.m.)  
23  
24  
25

# EXHIBIT B



STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

RHODE ISLAND ECONOMIC DEVELOPMENT  
CORPORATION,

Plaintiff,

v.

WELLS FARGO SECURITIES, LLC et al.,

Defendants.

C.A. No. PB-12-5616

**AMENDED NOTICE TO TAKE DEPOSITION**

**DEPONENT: Adler, Pollock & Sheehan PC**

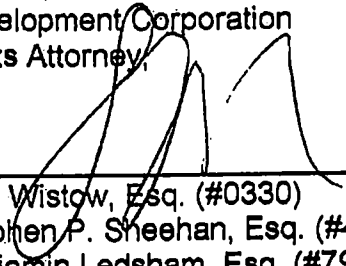
**DATE: July 18, 2014**

**TIME: 9:30 a.m.**

**PLEASE TAKE NOTICE** that pursuant to Rule 30(b)(6) of the Superior Court Rules of Civil Procedure, the attorney for Plaintiff in the above-captioned matter will take the deposition of the above-named organization which examination will continue from day to day until completed, the same to commence on the date and time above stated at the offices of Wistow, Barylick, Sheehan & Loveley, PC, 61 Weybosset Street, Providence, Rhode Island, before a Notary Public duly commissioned in the State of Rhode Island. The deponent shall serve and file, prior to the deposition, a written designation identifying one or more officers, directors, or managing agents, or other person(s) who consent to testify on its behalf and which shall set forth, for each person

designated, the matters on which the person will testify with respect to the matters which are set forth in Schedule A.

Plaintiff, Rhode Island Economic  
Development Corporation  
By Its Attorney,



---

Max Wistow, Esq. (#0330)  
Stephen P. Sheehan, Esq. (#4030)  
Benjamin Ledsham, Esq. (#7956)  
WISTOW, BARYLICK, SHEEHAN &  
LOVELEY, PC  
61 Weybosset Street  
Providence, RI 02903  
401-831-2700  
401-272-9752 (fax)  
spsheehan@wistbar.com

Dated: June 27, 2014

## CERTIFICATION

I hereby certify that an exact copy of the within document was mailed and served by electronic means on this 27<sup>th</sup> day of June, 2014 to the following individuals:

Jonathan Bell, Esq.  
Mark A. Berthiaume, Esq.  
Timothy E. Maguire, Esq.  
Greenberg Traurig  
One International Place  
Boston, MA 02110  
[bellj@gtlaw.com](mailto:bellj@gtlaw.com)  
[berthiaumem@gtlaw.com](mailto:berthiaumem@gtlaw.com)  
[maguiret@gtlaw.com](mailto:maguiret@gtlaw.com)

James E. Brandt, Esq.  
Craig Batchelor, Esq.  
Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022  
[james.brandt@lw.com](mailto:james.brandt@lw.com)  
[craig.batchelor@lw.com](mailto:craig.batchelor@lw.com)

Michael F. Connolly, Esq.  
Joseph P. Curtin, Esq.  
Allison W. Phinney, Esq.  
Emily B. Kanstroom, Esq.  
Mintz Levin Cohn Ferris  
Glovsky and Popea PC  
One Financial Center  
Boston, MA 02111  
[mconnolly@mintz.com](mailto:mconnolly@mintz.com)  
[jpcurtin@mintz.com](mailto:jpcurtin@mintz.com)  
[awphinney@mintz.com](mailto:awphinney@mintz.com)  
[ebkanstroom@mintz.com](mailto:ebkanstroom@mintz.com)

William M. Dolan, III, Esq.  
William K. Wray, Jr., Esq.  
Donoghue Barrett and Singal  
155 South Main St., Suite 102  
Providence, RI 02903  
[wdolan@dbslawfirm.com](mailto:wdolan@dbslawfirm.com)  
[wwray@dbslawfirm.com](mailto:wwray@dbslawfirm.com)

David A. Grossbaum, Esq.  
Samuel R. Bodurtha, Esq.  
Matthew R. Watson, Esq.  
Hinshaw & Culbertson LLP  
321 So. Main Street, Suite 301  
Providence, RI 02903  
[dgrossbaum@hinshawlaw.com](mailto:dgrossbaum@hinshawlaw.com)  
[sbodurtha@hinshawlaw.com](mailto:sbodurtha@hinshawlaw.com)  
[mwatson@hinshawlaw.com](mailto:mwatson@hinshawlaw.com)

Thomas F. Holt, Jr., Esq.  
Christopher J. Valente, Esq.  
John Blessington, Esq.  
Timothy J. Grimes, Esq.  
K&L Gates LLP  
State Street Financial Center  
One Lincoln Street  
Boston, MA 02111-2950  
[thomas.holt@klgates.com](mailto:thomas.holt@klgates.com)  
[christopher.valente@klgates.com](mailto:christopher.valente@klgates.com)  
[john.blessington@klgates.com](mailto:john.blessington@klgates.com)  
[timothy.grimes@klgates.com](mailto:timothy.grimes@klgates.com)

Brooks R. Magratten, Esq.  
Pierce Atwood LLP  
72 Pine Street, 5<sup>th</sup> Floor  
Providence, RI 02903  
[bmagratten@pierceanatwood.com](mailto:bmagratten@pierceanatwood.com)

David P. Martland, Esq.  
Silva, Thomas, Martland & Offenber, Ltd.  
1100 Aquidneck Avenue  
Middletown, RI 02842  
[dmartland@silvalawgroup.com](mailto:dmartland@silvalawgroup.com)

Carl E. Metzger, Esq.  
Sarah Heaton Concannon, Esq.  
Josh L. Launer, Esq.

Michael P. Duffy, Esq.  
Frederick E. Connelly, Jr., Esq.  
Christopher Conroy, Esq.  
Peabody & Arnold LLP  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, MA 02210-2261  
[mduffy@peabodyarnold.com](mailto:mduffy@peabodyarnold.com)  
[cconroy@peabodyarnold.com](mailto:cconroy@peabodyarnold.com)

Robert M. Duffy, Esq.  
Duffy & Sweeney, Ltd.  
1800 Financial Plaza  
Providence, RI 02903  
[rdully@duffysweeney.com](mailto:rdully@duffysweeney.com)

Bruce W. Gladstone, Esq.  
Cameron & Mittleman LLP  
301 Promenade Street  
Providence, RI 02908  
[bgladstone@cm-law.com](mailto:bgladstone@cm-law.com)

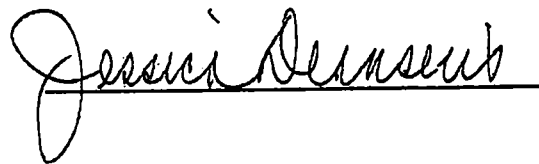
Allied Court Reporters  
115 Phenix Avenue  
Cranston, RI 02920  
[scheduling@alliedcourtreporters.com](mailto:scheduling@alliedcourtreporters.com)

Reporting Associates  
10 Dorrance Street, Suite 617  
Providence, RI 02903  
[reportingassociates@verizon.net](mailto:reportingassociates@verizon.net)

Thomas E. Duncombe, Esq.  
Goodwin Procter LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
[cmetzger@goodwinprocter.com](mailto:cmetzger@goodwinprocter.com)  
[sconcannon@goodwinprocter.com](mailto:sconcannon@goodwinprocter.com)  
[jlauner@goodwinprocter.com](mailto:jlauner@goodwinprocter.com)  
[tduncombe@goodwinprocter.com](mailto:tduncombe@goodwinprocter.com)

Gerald J. Petros, Esq.  
Mitchell R. Edwards, Esq.  
Hinckley Allen Snyder, LLP  
50 Kennedy Plaza, Suite 1500  
Providence, RI 02903  
[gpetros@haslaw.com](mailto:gpetros@haslaw.com)  
[medwards@haslaw.com](mailto:medwards@haslaw.com)

Brian E. Robison, Esq.  
Russell H. Falconer, Esq.  
Gibson, Dunn & Crutcher LLP  
2100 McKinney Avenue, Suite 1100  
Dallas, TX 75201-6912  
[brobison@gibsondunn.com](mailto:brobison@gibsondunn.com)  
[rfalconer@gibsondunn.com](mailto:rfalconer@gibsondunn.com)  
Jeffrey C. Schreck, Esq.  
99 Wayland Avenue, Suite 200  
Providence, RI 02906  
[jschreck@msn.com](mailto:jschreck@msn.com)



## SCHEDULE A

### **Definitions and Instructions**

As used herein, "APS" refers to Defendant Adler, Pollock & Sheehan PC, and its agents, servants, partners, shareholders, and employees.

As used herein, "38 Studios" refers to and includes 38 Studios, LLC, and its subsidiary or affiliated companies, and the officers, employees, members of the board of directors, and agents (including attorneys) of 38 Studios.

As used herein, "EDC" refers to the Rhode Island Economic Development Corporation, currently known as the Rhode Island Commerce Corporation, and its employees.

As used herein, "EDC Board" refers to all or any of the members of the board of directors of the EDC at any time during the period from January 1, 2010 through May 31, 2012.

As used herein, the "2010 Bonds" means "THE RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION JOB CREATION GUARANTY PROGRAM TAXABLE REVENUE BONDS (38 STUDIOS, LLC PROJECT) SERIES 2010."

As used herein, the "EDC/38 Studios Loan" refers to the EDC's loan in 2010 to 38 Studios of \$75 million.

As used herein, "Copernicus" refers to the massive multiplayer online game ("MMOG") developed or under development by 38 Studios or any subsidiary or affiliate thereof;

As used herein, the term "Term Sheet" refers to the document attached hereto as Exhibit 1 and any prior drafts thereof;

As used herein, the term "Net Proceeds" has the same meaning as the term "net proceeds" in the following provision from the Term Sheet:

We understand your capital needs to bring Project Copernicus to completion to be approximately \$75,000,000. Based on our understanding to date of your financial projections, subject to the terms and conditions set forth herein and required legal procedures, the RIEDC is willing to issue \$75,000,000 of revenue bonds pursuant to its newly created Jobs Creation Guaranty Program, the **net proceeds** of which would provide the necessary financing to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize the company's growth and expansion in Rhode Island.

(emphasis added.)

As used herein, "Net Loan Proceeds" refers to the cash that it was anticipated or projected that 38 Studios would receive, or that 38 Studios actually received, from the EDC or the Trustee in connection with the EDC/38 Studios Loan or the 2010 Bonds;

As used herein, the term "April 1 Financial Projections" refers to the document attached hereto as Exhibit 2

As used herein, the term "38 Studios' Other Financial Projections" refers to any of 38 Studios' financial projections other than the April 1 Financial Projections, including any excel version of the April 1 Financial Projections;

As used herein, the term "Authorizing Resolution" refers to the resolution of the EDC Board on July 26, 2010 concerning the EDC/38 Studios Loan and the 2010 Bonds;

As used herein, the term "Equity PPM" refers to that private placement memorandum of 38 Studios that was prepared and issued on or about May 23, 2010 and provided by 38 Studios to APS on or about June 7, 2010;

As used herein, "identifying" an oral communication shall mean to describe it by speaker, the person(s) spoken to, the date, the place of communication, and the substance of the oral communication with particularity.

As used herein, "identifying" a written communication shall mean to describe that document by date, author, address, general subject matter, present custodian and location. it by speaker, the person(s) spoken to, the date, the place of communication, and the substance of the oral communication with particularity.

As used herein, "identifying" an act shall mean to describe the act, including the place, date, and time of its occurrence, and the person, persons or entities that engaged in the act.

As used herein, "identifying" a document shall mean to describe that document by date, author, address, general subject matter, present custodian and location.

As used herein, "identifying" a person shall mean state the name, last known home address, last known business address, and last known employer;

"Person" shall include natural persons, corporations, trusts, partnerships, ventures, governmental or public quasi-public entities, citizens, groups or associations, and any other form of organization or association.

"Document" shall mean the original and any non-identical copy of every kind of written, printed, recorded, graphic or photographic matter, videographic matter, or sound reduction, including but not limited to written communications, agreements, diaries, memoranda, logs, notes, analyses, reports, charts, forms, brochures, bulletins, work papers, calendars, tape recordings, drawings, catalogues, transcripts, photographs, drawings, blueprints, digital files, and any other similar matter, now or formerly in the possession, custody or control of defendant or defendant's counsel or

any other agent, representative, employee or anyone else acting on defendant's behalf. Handwritten or other notations of any kind on any copy of a document render it non-identical.

"Concerning" shall mean concerning, relating to or evidencing.

The singular shall be deemed to include plural and vice versa. The feminine shall be deemed to include the masculine and vice versa. The word "and" shall be deemed to include the disjunctive "or" and vice versa.

Adler, Pollock & Sheehan, PC has the obligation to designate a consenting witness, and the designated witness has the duty to "testify as to matters known or reasonably available to the organization." Accordingly, the witness is obliged to testify to such matters even if the witness lacks personal knowledge thereof. Such a witness testifies notwithstanding his or her lack of personal knowledge, based upon the corporation's preparation of the witness, including investigation of the matters upon which testimony is sought, reviewing documents, and interviewing witnesses.

#### **Subject Matters**

1. Concerning whether the EDC Board at any time had actual knowledge that the Net Proceeds or the Net Loan Proceeds that 38 Studios would receive from the EDC, together with such other revenues as were reflected in the April 1 Financial Projections or 38 Studios' Other Financial Projections, were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and identifying all documents, communications, or other information concerning that issue;
2. Concerning whether the EDC Board at any time was informed or otherwise should have concluded that the Net Proceeds or the Net Loan Proceeds that 38 Studios would receive from the EDC, together with such other revenues as were reflected in the April 1 Financial Projections or 38 Studios' Other Financial Projections, were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and identifying all documents, communications, or other information concerning that issue;
3. Concerning whether the EDC Board at any time had actual knowledge that the Net Proceeds or the Net Loan Proceeds that 38 Studios would receive from the EDC, together with such other revenues as were reflected in the April 1 Financial Projections or 38 Studios' Other Financial Projections, were not sufficient to relocate 38 Studios to Rhode Island, and complete production of Copernicus, and identifying all documents, communications, or other information concerning that issue;

4. Concerning whether the EDC Board at any time was informed or otherwise should have concluded that the Net Proceeds or the Net Loan Proceeds that 38 Studios would receive from the EDC, together with such other revenues as were reflected in the April 1 Financial Projections or 38 Studios' Other Financial Projections, were not sufficient to relocate 38 Studios to Rhode Island, and complete production of Copernicus, and identifying all documents, communications, or other information concerning that issue;
5. Concerning whether APS had actual knowledge or any belief, was informed, or otherwise should have concluded that the Net Proceeds or the Net Loan Proceeds that 38 Studios would receive from the EDC, together with such other revenues as were reflected in the April 1 Financial Projections or 38 Studios' Other Financial Projections, were either sufficient or were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and identifying all documents, communications, or other information concerning that issue;
6. Concerning whether APS had actual knowledge or any belief, was informed, or otherwise should have concluded that the Net Proceeds or the Net Loan Proceeds that 38 Studios would receive from the EDC, together with such other revenues as were reflected in the April 1 Financial Projections or 38 Studios' Other Financial Projections, were either sufficient or were not sufficient to relocate 38 Studios to Rhode Island, and complete production of Copernicus, and identifying all documents, communications, or other information concerning that issue;
7. Concerning what if any information was known to the EDC Board concerning whether the Net Proceeds or the Net Loan Proceeds that 38 Studios would receive from the EDC, together with such other revenues as were reflected in the April 1 Financial Projections or 38 Studios' Other Financial Projections, were either sufficient or were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and what if any of such information was known or provided to APS, and identifying all documents, communications, or other information concerning that issue;
8. Concerning why or how the EDC Board came to have actual knowledge that the Net Proceeds or the Net Loan Proceeds that 38 Studios would receive from the EDC, together with such other revenues as were reflected in the April 1 Financial Projections or 38 Studios' Other Financial Projections, were either sufficient or were not sufficient to relocate 38 Studios to Rhode Island, and complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and why or how APS did not also have that knowledge, and identifying all documents, communications, or other information concerning that issue;



9. Concerning why or how the EDC Board came to have actual knowledge that the Net Proceeds or the Net Loan Proceeds that 38 Studios would receive from the EDC, together with such other revenues as were reflected in the April 1 Financial Projections or 38 Studios' Other Financial Projections, were either sufficient or were not sufficient to relocate 38 Studios to Rhode Island, and complete production of Copernicus, and why or how APS did not also have that knowledge, and identifying all documents, communications, or other information concerning that issue;
10. Concerning whether APS owed Plaintiff the duties an attorney owes his or her client, and identifying all documents, communications, or other information concerning that issue, and identifying all documents, communications, or other information concerning that issue;
11. Concerning whether the duty of care that APS owed Plaintiff included (but not necessarily was limited to) the duty to exercise reasonable care if and when APS provided the EDC Board with any information, legal advice or counsel;
12. Concerning whether APS had a duty to provide any information, legal advice or counsel to the EDC Board concerning the requirements of R. I. Gen. Laws § 42-64-10, in any particular context or in general, and identifying all documents, communications, or other information concerning that issue;
13. Concerning and identifying what information, legal advice or counsel APS provided to the EDC Board concerning the requirements of R. I. Gen. Laws § 42-64-10 in any particular context or in general, and the contents thereof, and identifying all documents, communications, or other information concerning that issue;
14. Concerning what legal advice and counsel APS provided to the EDC Board concerning the requirements of R. I. Gen. Laws § 42-64-10 in the context of the EDC Board's decision whether to approve the Authorizing Resolution, and identifying all documents, communications, or other information concerning that issue;
15. Concerning whether APS had a duty to exercise reasonable care when it provided information, legal advice or counsel to the EDC Board concerning the requirements of R. I. Gen. Laws § 42-64-10 in the context of the EDC Board's decision whether to approve the Authorizing Resolution, and identifying all documents, communications, or other information concerning that issue;
16. Concerning what information, legal advice or counsel any other attorney provided to the EDC Board concerning the requirements of R. I. Gen. Laws § 42-64-10 in the context of the EDC Board's decision whether to approve the

Authorizing Resolution, and whether that information, legal advice or counsel was correct, and identifying all documents, communications, or other information concerning those issues;

17. Concerning whether, in the event that the provision of information, legal advice or counsel referred to in Subject Matter 16 was known to or in the presence of APS, APS had a duty to object or seek clarification if that explanation was incorrect, and whether APS did in fact object or seek clarification, and identifying all documents, communications, or other information concerning that issue;
18. Concerning whether the finding in the Authorizing Resolution "[t]hat adequate provision has been made or will be made for the payment of the cost of the construction, rehabilitation, operation and maintenance and upkeep of the Project" (hereinafter the "Finding of Adequate Provision") was included in whole or in part to comply with R. I. Gen. Laws § 42-64-10, and identifying all documents, communications, or other information concerning that issue;
19. Concerning any information provided to the EDC Board by anyone that the EDC Board could use to inform itself of and evaluate what "provision" had in fact been made or was projected would be made, "for the payment of the cost of the construction, rehabilitation, operation and maintenance and upkeep of the Project," as referred to in the Finding of Adequate Provision, and identifying all documents, communications, or other information concerning that issue;
20. Concerning any information provided to the EDC Board by anyone that the EDC Board could use to inform itself of and evaluate whether the "provision" referred to in the Finding of Adequate Provision was indeed adequate, and identifying all documents, communications, or other information concerning that issue;
21. Concerning whether APS had a duty to provide any information, legal advice or counsel to the EDC Board concerning the Finding of Adequate Provision, including but not limited to the legal requirements for and responsibilities of the EDC Board to make that finding, and identifying all documents, communications, or other information concerning that issue;
22. Concerning whether APS provided any information, legal advice or counsel to the EDC Board concerning the Finding of Adequate Provision, including but not limited to the legal requirements and responsibilities for the EDC Board to make that finding, and identifying all documents, communications, or other information concerning that issue;
23. Concerning whether another attorney provided any information, legal advice or counsel to the EDC Board concerning the Finding of Adequate Provision,

including but not limited to the legal requirements and responsibilities for the EDC Board to make that finding, and identifying all documents, communications, or other information concerning that issue;

24. Concerning whether APS had a duty to attempt to understand the factual basis upon which the EDC Board determined it had satisfied the legal requirements and responsibilities applicable to making the Finding of Adequate Provision, and identifying all documents, communications, or other information concerning that issue;
25. Concerning whether APS read or otherwise attempted to understand any of the factual information or financial projections APS received or discussed concerning 38 Studios, including but not limited to the Equity PPM, the April 1 Financial Projections, or 38 Studios' other Financial Projections;
26. Concerning whether APS read or otherwise attempted to understand any of the factual information that concerned or constituted the "provision" referred to in the Finding of Adequate Provision;
27. Concerning whether APS had a duty to read or otherwise attempt to understand any of the factual information or financial projections APS received or discussed concerning 38 Studios, including but not limited to the Equity PPM, the April 1, Financial projections, or 38 Studios' other Financial projections;
28. Concerning whether APS had a duty to read or otherwise attempt to understand any of the factual information that concerned or constituted the "provision" referred to in the Finding of Adequate Provision;
29. Concerning whether it was or would have been lawful or within their authority or within their fiduciary duties as directors for the EDC Board to make the finding of Adequate Provision if the EDC Board had actual knowledge that the net proceeds 38 Studios would receive from the EDC, together with such other revenues as were reflected in 38 Studios' financial projections, were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and identifying all documents, communications, or other information concerning that issue;
30. Concerning what the duties of APS were or would have been in the event that it appeared that the EDC Board acted unlawfully, or exceeded their authority or breached their fiduciary duty as directors, by falsely, negligently or recklessly making the Finding of Adequate Provision;
31. Concerning whether it was or would have been lawful or within their authority or within their fiduciary duties as directors for the EDC Board to make the

finding of Adequate Provision if the EDC Board had actual knowledge that the net proceeds 38 Studios would receive from the EDC, together with such other revenues as were reflected in 38 Studios' financial projections, were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and that 38 Studios would have to raise additional capital or cut expenses, and identifying all documents, communications, or other information concerning that issue;

32. Concerning whether the EDC Board was informed that the net proceeds 38 Studios would receive from the EDC, together with such other revenues as were reflected in 38 Studios' financial projections, were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and that 38 Studios would have to raise additional capital or cut expenses, and identifying all documents, communications, or other information concerning that issue or the plans, projections or means for 38 Studios to raise more capital or cut expenses;
33. Concerning whether it was or would have been lawful or within their authority or within their fiduciary duties as directors for the EDC Board to make the Finding of Adequate Provision if the EDC Board had actual knowledge that the net proceeds 38 Studios would receive from the EDC, together with such other revenues as were reflected in 38 Studios' financial projections, were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and that 38 Studios would have to raise additional capital or cut expenses, without the EDC Board being provided with revised financial projections concerning how 38 Studios would be able to raise additional capital or cut expenses, and identifying all documents, communications, or other information concerning that issue;
34. Concerning whether the EDC Board was informed that the net proceeds 38 Studios would receive from the EDC, together with such other revenues reflected in 38 Studios' financial projections, were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, but that Curt Schilling might provide the necessary capital himself, and identifying all documents, communications, or other information concerning that issue, including but not limited to documents, communications, or other information concerning Curt Schilling's commitment or ability to provide that capital;
35. Concerning whether it was or would have been lawful for the EDC Board or within their authority or within their fiduciary duties as directors to make the Finding of Adequate Provision if the EDC Board had actual knowledge that the net proceeds 38 Studios would receive from the EDC, together with such

other revenues reflected in 38 Studios' financial projections, either sufficient or were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, but that Curt Schilling might provide the necessary capital himself, and identifying all documents, communications, or other information concerning that issue;

36. Concerning whether it was or would have been lawful for the EDC Board or within their authority or within their fiduciary duties as directors to make the Finding of Adequate Provision if the EDC Board had actual knowledge that the net proceeds 38 Studios would receive from the EDC, together with such other revenues as were reflected in 38 Studios' financial projections, were not sufficient to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize 38 Studio's growth and expansion in Rhode Island, and that 38 Studios would have to raise additional capital or cut expenses, but that Curt Schilling might provide the necessary capital himself, without obtaining a factual basis to evaluate whether Curt Schilling's commitment was binding or his ability to provide that capital, and identifying all documents, communications, or other information concerning that issue.



State of Rhode Island and Providence Plantations

315 Iron Horse Way, Suite 101

Providence, RI 02908

401-278-9100

July 26, 2010

Keith W. Stokes  
Executive Director

Mr. Curt Schilling, Chairman  
38 Studios, LLC  
5 Clock Tower Place, Suite 140  
Maynard, MA 01754

Ms. Jen MacLean, CEO  
38 Studios, LLC  
5 Clock Tower Place, Suite 140  
Maynard, MA 01754

Re: 38 Studios/Rhode Island

Dear Mr. Schilling and Ms. MacLean:

We are pleased to present this outline of terms and conditions based on our ongoing discussions pursuant to which the Rhode Island Economic Development Corporation ("RIEDC") will issue bonds and provide credit enhancement on behalf of 38 Studios, LLC (hereafter "38 Studios" or the "company") to assist 38 Studios relocation to and expansion of its business in Rhode Island.

We appreciate the value your company brings in helping Rhode Island expand its video gaming and interactive digital media industry. We have been impressed with your company's management team and the industry partners and visionaries currently working with 38 Studios on its games in development. We view 38 Studios as aligning perfectly with other key Rhode Island knowledge economy assets that will help us accelerate high wage job growth.

We understand your capital needs to bring project Copernicus to completion to be approximately \$75,000,000. Based on our understanding to date of your financial projections, subject to the terms and conditions set forth herein and required legal procedures, the RIEDC is willing to issue \$75,000,000 of revenue bonds pursuant to its newly created Jobs Creation Guaranty Program, the net proceeds of which would provide the necessary financing to relocate 38 Studios to Rhode Island, complete production of Copernicus, and capitalize the company's growth and expansion in Rhode Island.

We anticipate that bonds would be underwritten or privately placed by a securities firm or firms selected by the RIEDC. As your company is in the position of having pipeline product and

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EXHIBIT 1

contractual commitments for product publishing and distribution, but as yet is "pre-revenue", we recognize the market for these bonds would be limited without credit enhancement. Accordingly, we would utilize our statutory authority to issue bonds with a capital reserve mechanism by which the General Assembly must consider on an annual basis funding any shortfall of any debt service payments necessary to pay the bondholders, thereby creating for this issue what is commonly called a "moral obligation" guaranty for the bondholder(s). The moral obligation mechanism is reflected in the RIEDC's enabling legislation and the resolutions of the legislature authorizing the RIEDC to enter into these types of obligations. That legislation and the related authorizing resolutions require the Governor to submit to the legislature by January of every year a budget request for the legislature to appropriate in the following fiscal year's budget any shortfall on debt service that otherwise is not adequately reserved by the RIEDC.

The bond documents would reflect the following terms and conditions and be subject to the following general parameters and all of which are subject to and conditioned upon a Final Authorizing Resolution approved by the RIEDC board that includes all final agreed upon terms and conditions. In addition all bond documentation must be satisfactory to RIEDC and the company in their sole discretion prior to any bond closing:

**Borrower (s):** 38 Studios and any affiliates or subsidiaries necessary to secure a first position in all the company's assets (see collateral more fully described below). At the discretion of the RIEDC, such affiliates and subsidiaries may act as guarantors of the bonds rather than as co-borrowers.

**Amount:** \$75,000,000

**Bond Net Proceeds Disbursement Schedule:** The net proceeds from the issuance of the bonds will be released to the company upon the following schedule in conjunction with the referenced economic development milestones and compliance with the bond documents:

- a) Upon the closing estimated to be by August 31, 2010 (should any delays in the closing occur, the parties anticipate the estimated target dates will be adjusted accordingly): \$15,000,000.
- b) Upon the public announcement by the company of a relocation date to Rhode Island estimated to be by November 30, 2010: \$10,000,000.
- c) Upon the relocation of the company's headquarters and current project Copernicus studio to Rhode Island, and the creation of at least 80 Full Time Jobs in Rhode Island, estimated to be by February 28, 2011 (such relocation date being subject to (i) a closing by August 31, 2010; (ii) the relocation of the company's headquarters and studio to Rhode Island occurring within six months of the closing; and (iii) the company may extend such relocation by three periods of 30 days each due to delays in landlord's completion of the company's new offices, with each such extension, the administrative approval of the RIEDC which approval shall not be unreasonably withheld or delayed): \$20,000,000.
- d) Upon the creation by the company of an additional 45 Full Time Jobs in Rhode Island estimated to be August 31, 2011: \$5,000,000.

- e) Upon the entry by the company into a satisfactory distribution agreement for its Project Copernicus estimated to be by November 30, 2011: \$5,000,000.
- f) Upon the creation by the company of at least an additional 125 Full Time Jobs in Rhode Island estimated to be by December 31, 2011: the balance of the net proceeds.

"Full Time Jobs" shall mean "full time jobs with benefits" as defined in RIGL 42-64-20(d)(2); provided that the average annual wage for qualifying full time jobs shall be no less than \$67,500.

**Purpose:** Expenses related to relocation and expansion of corporate office and all studio operations to Rhode Island and for all associated business expenses related to product development and deployment by 38 Studios in conjunction with its video games in development.

**Rate:** Market for bond issues of this type as negotiated with bond purchaser and otherwise acceptable to each of the RIEDC and the company in their sole and absolute discretion.

**Term:** Not to exceed 10 years.

**Amortization:** Not to exceed 20 years.

**Collateral:** first security interest and collateral assignment of all assets of company now owned and hereafter acquired including but not limited to intellectual property, licenses, licensing fees, distribution and publishing contracts, receivables, equipment, hardware and software and work product. We recognize that a portion of the company's assets are held in a wholly owned subsidiary, the ownership interest of which will be pledged to the RIEDC, and that such assets are otherwise currently pledged in connection with the publishing agreement with Electronic Arts (EA) and currently are unavailable as collateral for this bond financing, but such assets will be pledged as subordinate collateral for this bond financing and upon completion of the EA publishing agreement RIEDC will step into a first secured position on these assets. The RIEDC will reasonably consider requests of the company to subordinate its collateral position to routine and ordinary course of business equipment leases and purchase money financings secured solely by the equipment so financed.

**State Guaranty Fee:** Initial fee of one half percent (1/2%) payable at closing at closing (\$375,000) and one and one half percent (1.5%) annually of the outstanding bond balance minus the principal balance of the Balloon Payment Account defined below payable on the bond closing anniversary.

**Deferred Fee:** Starting in fiscal year 2014, based upon the company's audited GAAP financial statements of the prior fiscal year (2013), the Company shall pay annually a deferred fee equal to 25% of its Excess Operating Income, as defined below, up to an amount not to exceed \$5.0 million per year until an aggregate deferred fee amount of \$15,250,000 has been paid. If the \$15 million aggregate deferred fee has not been achieved by the company's fiscal year end 2017, the aggregate deferred fee shall be increased to \$18,800,000. In the event the deferred fee has not been paid in full when the bonds become due, then the unpaid balance of the



deferred fee shall be due when the bonds become due regardless of the company's Excess Operating Income. "Excess Operating Income" shall be the fiscal year operating income of the Company as contained in its audited GAAP financial statements less the fiscal year operating income for the same period contained in the Company's six year financial projection furnished RIEDC (which shall be either attached to the bond documents or otherwise adequately described therein based upon 38 Studios 6 year Plan - In-State Loan View - DRAFT - 04.01.10).

**Dividends and Distributions; and Excess Operating Income not otherwise Distributed:**  
The company shall only make dividend payments or other distributions to equity holders out of Excess Equity Balance Available for Dividend or Distribution to Equity Holders, as defined below, except for distributions to cover income tax related matters of the equity holders. The company's repurchase of equity interests into treasury stock under a right of first refusal or otherwise shall be made only after satisfying the Minimum Equity Requirement, as defined below, and shall: (1) be made only from Excess Operating Income as defined in the preceding paragraph; (2) be made only after any deferred fees owed to the RIEDC pursuant to the preceding paragraph are paid; (3) not occur in any event with respect to Mr. Schilling's or his family's equity or ownership interest in the company; and (4) be subject to such other terms, conditions and restrictions as may be agreed upon by the parties. The dollar amount of the "Minimum Equity Requirement" shall mean the outstanding principal balance on the bonds minus any amounts reserved in or paid to the RIEDC to be dedicated as a balloon payment sinking fund account established with respect to this paragraph and to be used when the bonds become due (the "Balloon Payment Account").

The "Excess Equity Balance Available for Dividend or Distribution to Equity Holders" shall mean that amount calculated from the company's GAAP financial statements and calculated as total equity contributions plus total additional paid-in-capital plus the fiscal year 2011 and forward years amounts recorded by the company to retained earnings (loss) less the Minimum Equity Requirement. If any payment of the Excess Equity Balance Available for Dividend or Distribution to Equity Holders is paid out, it shall be paid out as 50% of the amount going to equity holders and 50% being paid to the RIEDC to be placed in the Balloon Payment Account.

In the event that the company does not declare a dividend or make distributions but has Excess Equity Balance Available for Dividend or Distribution to Equity Holders, then 25% of Excess Equity Balance Available for Dividend or Distribution to Equity Holders shall be deposited in the Balloon Payment Account. All earnings on the Balloon Payment Account may be used by the company toward the next amortized bond payment due from the company, and the principal shall accumulate and be applied toward the balloon payment due on the bonds when they become due. In the event the principal balance of the Balloon Payment Account equals the sum of all remaining payments due on the bonds, at that time, the company may prepay the balance of the deferred fee owed pursuant to the preceding paragraph at an amount discounted to the then present value of the balance of the deferred fee owed by the company to the RIEDC.

Specific Conditions and Covenants:

- (a) The debt will not be assignable or assumable without RIEDC consent which will not be unreasonably withheld.
- (b) The bond documents shall reflect that the company may implement compensation strategies consistent with the industry; provided however that any compensation in any form paid by the company to Mr. Schilling shall be for services rendered, within industry norms and capped at amounts to be agreed upon between the company and the RIEDC.
- (c) The bond documents shall reflect the development and implementation of a third party monitoring, reporting and response process regarding the development schedule and budget for project Copernicus to assure that the company's development of project Copernicus remains on time and on budget pursuant to costs, terms and conditions satisfactory to the parties in their sole and absolute discretion.
- (d) 38 Studios will provide 125 Full Time Jobs in Rhode Island within twelve (12) months of the bond closing (the "closing").
- (e) 38 Studios will add an additional 175 Full Time Jobs in Rhode Island within twenty-four (24) months of the closing.
- (f) 38 Studios will add an additional 150 Full Time Jobs in Rhode Island within thirty-six (36) months of the closing.
- (g) Should 38 Studios fail to meet any Full Time Jobs requirements, it shall pay to the RIEDC an amount equal to \$7,500 per year for each Full Time Job not so added until such shortfall is cured.
- (h) 38 Studios will provide 2010 and annually thereafter during the term of the bond a certification that the borrower has met the requirements of (d), (e) and (f) above and certifying the calculations required in the Equity and Dividend section above. All such certifications shall be performed by independent public accountants selected by the company. The RIEDC may at the cost and expense of the company have such certifications audited by its independent public accountants.
- (i) 38 Studios will develop internship programs for students at Rhode Island design and educational institutions pursuant to programs and policies to be agreed upon with such institutions.
- (j) During the term of the bonds, and upon relocating the company to Rhode Island, 38 Studios shall not relocate the company or any substantial portion of its operations outside of Rhode Island which would be an event of default in which case the company's obligations with respect to the bonds would become immediately due and payable, including without limitation any balances due to the bonds, any costs and expenses of the RIEDC incurred with respect to the bonds that have not already been reimbursed or paid for, and an acceleration of the job penalty fees owed to the RIEDC pursuant to paragraph (g) above for the balance of the term of the bonds.


Conditions Precedent: Conditions to closing the bonds will include documentation and legal requirements typical of bond transactions of this size and scope including but not limited to completion of security and collateral due diligence and the review of material operating and personnel contracts and policies of the company and:

- (a) The execution and delivery of an enforceable lease for the company's corporate offices and studio operations in a geographic location in Rhode Island satisfactory to each of the RIBDC and the company in their sole and absolute discretion, such lease reflecting valid commercially reasonable terms and conditions for transactions of the type and nature of the RIBDC's enhancing the credit for the company's relocation to Rhode Island (e.g., term, deposit, renewal options, collateral assignment to tenant's lender permitted, etc.).
- (b) The selection of bond underwriters and/or managers acceptable to the RIBDC.
- (c) Final Authorizing Resolution adopted by the RIBDC Board of Directors.
- (d) At the time of the Final Authorizing Resolution, a \$75,000 deposit is due. Should a closing not occur the deposit will be refunded less reimbursement to the RIBDC for any out of pocket expenses.

Upon the earlier of the execution and delivery of this letter by both parties, or the adoption by the RIBDC of a Final Authorizing Resolution, this letter reflecting the proposed terms of the bond financing and the relocation of 38 Studios to Rhode Island shall not be discussed, negotiated or otherwise utilized by either party hereto with third parties and shall remain confidential.

Should you agree and desire us to commence the process of obtaining the Final Authorizing Resolution for the issuance of the bonds, please indicate so by signing below.

Sincerely yours,



Keith W. Stokes,  
Executive Director

Agreed and accepted as of the date first above written:



38 Studios LLC

By: Jennifer MacLean

Its: President + CEO

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38 Studios, LLC  
Financial Projections - Preliminary Draft  
Consolidated Plan - Non GAAP

	Projected December-10 FY2010	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
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Key Assumptions

Massively Multiplayer Online Gaming (MMO) Division

Division Average Headcount	106	224	347	398	398	396
Division Period End Headcount	150	297	386	386	398	396

MMO #1 - Release date - Fall of 2012

Unit Sales	-	-	2,000,000	1,000,000	1,200,000	1,200,000
Average Price	\$ -	\$ -	\$ 40.00	\$ 30.00	\$ 20.00	\$ 20.00
% to 38 Studios	0.0%	0.0%	30.0%	30.0%	30.0%	30.0%
Subscription Sales						
Average Monthly Subscribers	-	-	800,000	1,000,000	1,200,000	1,200,000
Average Monthly Price	\$ -	\$ -	\$ 12.50	\$ 12.50	\$ 12.50	\$ 12.50
% to 38 Studios	0.0%	0.0%	100.0%	100.0%	100.0%	100.0%

MMO #2 - Release date - Fall of 2016

Role Playing Gaming (RPG) Division

Division Average Headcount	76	80	78	78	78	78
Division Period End Headcount	81	78	78	78	78	78

RPG #1 - Release date - fall 2011

Unit Sales	-	1,729,000	1,438,000	197,000	197,000	197,000
Average Price	\$ -	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00
% to 38 Studios	0.0%	30.0%	33.0%	35.0%	35.0%	35.0%

RPG #2 - Release date - fall 2013

Unit Sales	-	-	-	2,247,700	1,868,800	258,100
Average Price	\$ -	\$ -	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00
% to 38 Studios	0.0%	0.0%	38.0%	38.0%	38.0%	38.0%

RPG #3 - Release date - fall 2015

Unit Sales	-	-	-	-	-	2,822,010
Average Price	\$ -	\$ -	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00
% to 38 Studios	0.0%	0.0%	38.0%	38.0%	38.0%	38.0%

38 Studios, LLC  
Financial Projections - Preliminary Draft  
Consolidated Plan - Non GAAP

	Projected December-10 FY2010	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
<b>Income Statement</b>						
Total Net Revenues	\$ -	\$ 20,748,000	\$ 66,455,200	\$ 195,823,040	\$ 218,333,360	\$ 238,265,272
<b>Costs and Expenses</b>						
Development	30,632,203	41,751,195	53,908,945	72,555,774	77,135,368	80,429,348
Operations and Support	-	1,031,250	13,750,000	20,000,000	20,000,000	20,000,000
S, G, & A expenses	4,288,776	4,900,814	7,534,132	21,566,700	23,340,064	23,616,392
<b>Total Costs and Expenses</b>	<u>34,930,979</u>	<u>47,683,259</u>	<u>75,193,077</u>	<u>114,112,474</u>	<u>120,475,432</u>	<u>124,045,740</u>
<b>Operating Income</b>	<u>(34,930,979)</u>	<u>(26,935,259)</u>	<u>(9,737,877)</u>	<u>81,810,566</u>	<u>97,857,928</u>	<u>114,219,532</u>
Interest Income (Expense)	(4,606,408)	(7,977,262)	(8,005,436)	(7,153,242)	(4,305,979)	(3,468,595)
Other Income (Expense)	-	-	-	-	-	-
Tax (Expense)	-	-	-	-	(37,162,172)	(44,300,375)
<b>Net Income(Loss)</b>	<u>\$ (39,537,384)</u>	<u>\$ (34,912,521)</u>	<u>\$ (17,743,313)</u>	<u>\$ 74,657,324</u>	<u>\$ 55,389,777</u>	<u>\$ 66,450,562</u>

**Percent of Net Revenues**

	0%	100%	100%	100%	100%	100%
<b>Total Net Revenues</b>	0%	100%	100%	100%	100%	100%
<b>Costs and Expenses</b>						
Development	0%	201%	82%	37%	35%	34%
Operations and Support	0%	5%	21%	10%	9%	8%
S, G, & A expenses	0%	24%	12%	11%	11%	10%
<b>Total Costs and Expenses</b>	<u>0%</u>	<u>230%</u>	<u>115%</u>	<u>58%</u>	<u>55%</u>	<u>52%</u>
<b>Operating Income</b>	<u>0%</u>	<u>-130%</u>	<u>-16%</u>	<u>42%</u>	<u>45%</u>	<u>48%</u>
<b>Tax/Other Expense</b>	<u>0%</u>	<u>38%</u>	<u>12%</u>	<u>4%</u>	<u>19%</u>	<u>20%</u>
<b>Net Income(Loss)</b>	<u>0%</u>	<u>-168%</u>	<u>-27%</u>	<u>38%</u>	<u>28%</u>	<u>28%</u>

Confidential  
38 Studios LLC  
Consol Plan

38 Studio 8 Year Plan - In-State Loan View - DRAFT - 04.01.10jlsx

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38 Studios, LLC  
Financial Projections - Preliminary Draft  
Consolidated Plan - Non GAAP

	Projected December-10 FY2010	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
<b>Cash Flow</b>						
<b>Operating activities</b>						
Net Income	\$ (39,537,364)	\$ (34,912,521)	\$ (17,743,313)	\$ 74,657,324	\$ 59,389,777	\$ 66,450,562
Non-Cash	1,415,417	2,148,277	1,983,598	1,958,698	1,992,338	2,066,881
Changes in Operating Accounts						
Accounts receivable	-	(10,374,000)	(5,989,800)	(32,816,960)	(5,602,580)	(4,982,978)
Prepaid and Other Assets	819,619	339,226	(50,000)	(50,000)	(50,000)	(50,000)
A/P, Accrued, Debt Interest	774,519	608,520	1,638,569	5,871,801	6,327,410	1,392,893
<b>Total Operating Activities</b>	<b>(36,527,829)</b>	<b>(42,190,499)</b>	<b>(20,160,946)</b>	<b>49,620,858</b>	<b>59,056,945</b>	<b>64,877,357</b>
<b>Investing Activities</b>						
Fixed Assets	(2,144,055)	(2,840,502)	(891,522)	(2,144,055)	(2,941,438)	(1,115,149)
<b>Financing Activities</b>						
Bank Line	-	-	-	-	-	-
Capital Leases	-	-	-	-	-	-
Distribution Advances	12,477,997	13,131,925	(8,322,128)	-	(25,000,000)	-
Outside Debt	75,000,000	-	-	(10,714,286)	(10,714,286)	(10,714,286)
In-State Tax Credits	(11,579,076)	-	(1,480,000)	-	-	-
Debt to Affiliates	11,923,863	-	20,000,000	60,000,000	-	-
Equity	-	-	-	-	-	-
<b>Change in Cash</b>	<b>49,150,698</b>	<b>(31,899,075)</b>	<b>(8,634,596)</b>	<b>96,662,517</b>	<b>20,401,221</b>	<b>53,047,922</b>
Cash, Beginning of Period	4,923,899	54,074,596	22,175,521	13,340,925	110,003,442	130,404,863
Cash, End of Period	\$ <u>54,074,598</u>	\$ <u>22,175,521</u>	\$ <u>13,340,925</u>	\$ <u>110,003,442</u>	\$ <u>130,404,663</u>	\$ <u>183,452,565</u>

BS Proof

APSO00457

38 Studios, LLC  
Financial Projections - Preliminary Draft  
Consolidated Plan - Non GAAP

	Projected December-10 FY2010	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
<b>Balance Sheet</b>						
<b>Assets</b>						
Cash	\$ 54,074,596	\$ 22,175,621	\$ 13,340,925	\$ 110,003,442	\$ 130,404,663	\$ 183,462,585
Accounts Receivable	.	10,374,000	18,383,800	48,880,760	54,583,340	59,666,318
Prepaid and Other Assets	639,225	300,000	350,000	400,000	450,000	500,000
Fixed Assets	1,941,033	2,633,258	1,541,182	1,726,544	2,675,844	1,723,912
Intellectual Property	.	.	.	.	.	.
Long-term Assets	400,000	400,000	400,000	400,000	400,000	400,000
<b>Total Assets</b>	<b>\$ 57,054,855</b>	<b>\$ 35,882,779</b>	<b>\$ 31,995,907</b>	<b>\$ 181,510,748</b>	<b>\$ 188,513,646</b>	<b>\$ 245,842,815</b>
<b>Liabilities</b>						
A/P and Accrued Liabilities	\$ 1,335,402	\$ 1,943,921	\$ 3,582,480	\$ 9,154,291	\$ 15,481,701	\$ 18,874,593
Bank Debt	.	.	.	.	.	.
Capital Leases	.	.	.	.	.	.
Distribution Advances	18,190,203	31,322,128	25,000,000	25,000,000	.	.
Long-term Liabilities	281,014	281,014	281,014	281,014	281,014	281,014
Outside Debt	75,000,000	75,000,000	75,000,000	64,285,714	53,571,429	42,857,143
Debt to Affiliates	1,526,820	1,526,820	88,620	68,620	68,620	68,620
<b>Total Liabilities</b>	<b>96,335,239</b>	<b>110,075,884</b>	<b>103,932,125</b>	<b>98,789,640</b>	<b>69,402,763</b>	<b>60,081,370</b>
<b>Equity</b>	<b>(39,280,384)</b>	<b>(74,192,905)</b>	<b>(71,936,218)</b>	<b>62,721,108</b>	<b>118,110,883</b>	<b>185,561,445</b>
<b>Total Liabilities and Equity</b>	<b>\$ 57,054,855</b>	<b>\$ 35,882,779</b>	<b>\$ 31,995,907</b>	<b>\$ 181,510,748</b>	<b>\$ 188,513,646</b>	<b>\$ 245,842,815</b>
Proof						

APS000458

**38 Studios, LLC**  
**Financial Projections - Preliminary Draft**  
**Consolidated Plan - Non GAAP**

	Projected December-10 FY2010	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
<b>Metrics</b>						
Revenue	-	20,748,000	85,485,200	195,923,040	218,333,380	238,285,272
EBITDA	(33,515,562)	(24,786,981)	(7,754,279)	83,789,259	99,850,288	116,288,413
EBITDA % of Revenue	N/A	N/A	N/A	42.8%	45.7%	48.8%
EBITDA- Pro Forma (1)	(33,515,562)	(24,786,981)	(7,754,279)	91,269,259	107,350,286	123,786,413
EBITDA Pro Forma % of Revenue	N/A	N/A	N/A	46.6%	49.2%	52.0%
Operating Income	(34,930,979)	(26,935,259)	(9,737,877)	81,810,586	97,857,928	114,219,532
Operating Income % of Revenue	N/A	N/A	N/A	41.8%	44.8%	47.8%
Operating Income - Pro Forma (1)	(34,930,979)	(26,935,259)	(9,737,877)	89,310,586	105,357,928	121,719,532
Operating Income % of Revenue	N/A	N/A	N/A	45.6%	48.3%	51.1%
Net Income	(39,637,384)	(34,912,521)	(17,743,313)	74,557,324	56,389,777	66,450,582
Net Income % of Revenue	N/A	N/A	N/A	38.1%	25.8%	27.9%
Revenue per Head	N/A	84,636	147,588	397,410	442,887	483,297
Total Cost per Head	180,522	148,546	189,545	231,465	244,372	251,614
Monthly Cost per Head	15,043	12,379	14,129	19,289	20,364	20,968
Monthly Cost per Head - Pro Forma (1)	15,043	12,379	14,129	18,021	19,097	19,700

(1) - Pro Forma amounts exclude estimated accruals for a founding employee bonus plan.

APS000459



38 Studios, LLC  
Financial Projections - Preliminary Draft  
Consolidated Plan - Non GAAP

	Projected December-10 FY2010	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
<b>Period End Headcount</b>						
Development	231	335	374	374	374	374
Operations and Support	-	40	100	100	100	100
S, G, & A expenses	17	19	19	19	18	19
<b>Total</b>	<b>248</b>	<b>394</b>	<b>493</b>	<b>493</b>	<b>493</b>	<b>493</b>
<i>Growth from Prior Period</i>	<i>78.4%</i>	<i>68.9%</i>	<i>25.1%</i>	<i>0.0%</i>	<i>0.0%</i>	<i>0.0%</i>
<b>Percent Period End Headcount</b>						
Development	93%	85%	76%	76%	76%	76%
Operations and Support	0%	10%	20%	20%	20%	20%
S, G, & A expenses	7%	5%	4%	4%	4%	4%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Average Headcount</b>						
Development	181	283	365	374	374	374
Operations and Support	-	20	70	100	100	100
S, G, & A expenses	13	18	19	19	19	19
<b>Total</b>	<b>194</b>	<b>321</b>	<b>444</b>	<b>493</b>	<b>493</b>	<b>493</b>
<i>Growth from Prior Period</i>	<i>113.8%</i>	<i>65.9%</i>	<i>38.2%</i>	<i>11.2%</i>	<i>0.0%</i>	<i>0.0%</i>
<b>Percent Average Headcount</b>						
Development	93%	88%	80%	76%	76%	76%
Operations and Support	0%	6%	16%	20%	20%	20%
S, G, & A expenses	7%	6%	4%	4%	4%	4%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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38 Studios, LLC  
Financial Projections - Preliminary Draft  
Consolidated Plan - Non GAAP

	Projected December-10 FY2010	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
<b>Financing</b>						
<b>Distribution Advances - Paid-back on release revenue</b>						
RPG #1	12,477,997	3,131,925	(21,322,128)	.	.	.
MMO #1	.	.	.	.	.	.
RPG #2	.	10,000,000	15,000,000	.	(25,000,000)	.
<b>Total Period Advances</b>	<b>12,477,997</b>	<b>13,131,925</b>	<b>(6,322,128)</b>	<b>-</b>	<b>(25,000,000)</b>	<b>-</b>
<b>Advances Balance</b>	<b>18,180,203</b>	<b>31,322,128</b>	<b>25,000,000</b>	<b>25,000,000</b>	<b>0</b>	<b>0</b>
<b>Equity Financing</b>						
Member 1	10,923,863	.	.	.	.	.
Member 2	.	.	.	.	.	.
Other Members	.	.	.	.	.	.
Series B Members	1,000,000	.	.	.	.	.
Financing/IPO	.	.	20,000,000	60,000,000	.	.
<b>Total Equity Financing</b>	<b>11,923,863</b>	<b>-</b>	<b>20,000,000</b>	<b>60,000,000</b>	<b>-</b>	<b>-</b>
<b>Investor Debt/ Debt Financing</b>						
Note Payable - Credit Line	.	.	.	.	.	.
Director Note	(287,000)	.	.	.	.	.
RA Note	.	.	(1,460,000)	.	.	.
Conversion to Equity	(10,747,231)	.	.	.	.	.
Mentor Media	(544,847)	.	.	.	.	.
<b>Total Investor Debt Financing</b>	<b>(11,579,078)</b>	<b>-</b>	<b>(1,460,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Outside Debt Financing</b>						
Debt Financing - 7 year payback starting 20	80,000,000	.	.	.	.	.
Debt Payments	(5,000,000)	.	.	(10,714,286)	(10,714,286)	(10,714,286)
Tax Credit Sales to Debt to 2012	.	.	.	.	.	.
<b>Total Outside Debt Financing</b>	<b>75,000,000</b>	<b>-</b>	<b>-</b>	<b>(10,714,286)</b>	<b>(10,714,286)</b>	<b>(10,714,286)</b>
<b>Outside Debt Balance</b>	<b>75,000,000</b>	<b>75,000,000</b>	<b>75,000,000</b>	<b>64,285,714</b>	<b>53,571,429</b>	<b>42,857,143</b>

Confidential  
38 Studios LLC  
Consolid Plan  
38 Studio 5 Year Plan - In-State Loan View - DRAFT - 04.01.10.xlsx

AP5000461

38 Studios, LLC  
Financial Projections - Preliminary Draft  
Consolidated Plan - Non GAAP

	Projected December-10 FY2010	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
<b>In-State Tax Credit Analysis</b>						
Total Costs	13,072,829	35,988,580	62,997,614	99,013,588	104,815,077	107,428,440
Less Real Estate Related - @28sq. ft. gross	560,000	1,408,400	2,324,000	2,324,000	2,324,000	2,324,000
less discount of:						
Credit Cost Base	0%					
Credit %						
Total Credit %	0%					
Tax Credit Balance						
	12,512,829	34,580,180	60,673,614	96,689,588	102,291,077	105,104,440
	(2,502,668)	(6,916,038)	(12,134,723)	(19,337,917)	(20,468,215)	(21,020,868)
<b>Interest Expense on Debt</b>						
Distribution Advances and Debt Balance	83,190,203	106,322,128	100,000,000	89,285,715	53,571,429	42,867,143
Interest @ --->						
	4,182,479	7,974,336	8,000,000	7,142,857	4,285,714	3,428,571
8%						

APS000462

38 Studios, LLC  
Maynard  
Financial Projections - Preliminary Draft  
Revenues

	Projected December-10 FY2010	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
MMO Revenue Detail						
MMO #1	\$ -	\$ -	\$ 46,500,000	\$ 159,000,000	\$ 187,200,000	\$ 187,200,000
MMO #2	-	-	-	-	-	-
Total Net Revenue	\$ -	\$ -	\$ 46,500,000	\$ 159,000,000	\$ 187,200,000	\$ 187,200,000

MMO #1 - Subscription Model

Average monthly Subscribers	-	-	600,000	1,000,000	1,200,000	1,200,000
Months	-	-	3	12	12	12
Price pr Month	\$ -	\$ -	\$ 12.50	\$ 12.50	\$ 12.50	\$ 12.50
% to 38 Studios	0.0%	0.0%	100.0%	100.0%	100.0%	100.0%
Subscription Revenue	-	-	22,500,000	150,000,000	180,000,000	180,000,000
Unit Sales	-	-	2,000,000	1,000,000	1,200,000	1,200,000
Retail Price	\$ -	\$ -	\$ 40.00	\$ 30.00	\$ 20.00	\$ 20.00
% to 38 Studios	0.0%	0.0%	30.0%	30.0%	30.0%	30.0%
Distribution Revenue	-	-	24,000,000	9,000,000	7,200,000	7,200,000

APR000463

38 Studios, LLC  
Baltimore  
Financial Projections - Preliminary Draft  
Revenues

	Projected December-11 FY2011	Projected December-12 FY2012	Projected December-13 FY2013	Projected December-14 FY2014	Projected December-15 FY2015
RPG#1	\$ 20,748,000	\$ 18,955,200	\$ 2,758,000	\$ 2,758,000	\$ 2,758,000
RPG#2	-	-	34,165,040	28,375,360	3,892,720
RPG#3	-	-	-	-	44,414,552
Total Revenue	\$ <u>20,748,000</u>	\$ <u>18,955,200</u>	\$ <u>36,923,040</u>	\$ <u>31,133,360</u>	\$ <u>51,065,272</u>

RPG #1					
Unit Sales	1,729,000	1,438,000	197,000	197,000	197,000
Retail Price	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00
% to 38 Studios	30.0%	33.0%	35.0%	35.0%	35.0%
	\$ <u>20,748,000</u>	\$ <u>18,955,200</u>	\$ <u>2,758,000</u>	\$ <u>2,758,000</u>	\$ <u>2,758,000</u>
RPG #2					
Growth from RPG #1	30%	30%	30%	30%	30%
Unit Sales	-	-	2,247,700	1,868,800	256,100
Retail Price	\$ -	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00
% to 38 Studios	0.0%	38.0%	38.0%	38.0%	38.0%
	\$ <u>-</u>	\$ <u>-</u>	\$ <u>34,165,040</u>	\$ <u>28,375,360</u>	\$ <u>3,892,720</u>
RPG #3					
Growth from RPG #2	30%	30%	30%	30%	30%
Unit Sales	-	-	-	-	2,922,010
Retail Price	\$ -	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00
% to 38 Studios	0.0%	38.0%	38.0%	38.0%	38.0%
	\$ <u>-</u>	\$ <u>-</u>	\$ <u>-</u>	\$ <u>-</u>	\$ <u>44,414,552</u>

Confidential  
38 Studios LLC  
RPG Revenues  
38 Studio 6 Year Plan - In-State Loan View - DRAFT - 04.01.10.xlsx

AP5000464



## MARKET ANALYSIS

### U.S. Online PC Gaming 2010-2014 Forecast

Lewis Ward

#### IDC OPINION

The market for online PC gaming continues to advance despite macroeconomic weakness in recent quarters, and IDC anticipates the number of online gamers will top 190 million by 2014 — touching the lives of 8 in 10 Americans. Core business models include premium monthly subscriptions, paid digital downloads, and advertising and microtransactions (i.e., sub-\$5 virtual item purchases). Aggregate revenue should rise from \$4.6 billion this year to nearly \$9.6 billion in 2014. Average subscription revenue and the cost of a typical download should deteriorate over the forecast period as the number of services and game titles proliferates, business models become more flexible, and development and delivery costs decline. IDC also notes:

- ❑ Leading subscription-oriented game service providers include Activision Blizzard (*World of Warcraft (WoW)* enjoys perhaps 3 million U.S. subscribers), Electronic Arts (EA), Jagex Ltd., MGame Corp., NCsoft, Square Enix, Sony Online Entertainment (SOE), and Turbine. The number of premium online PC gaming subscriptions is forecast to top 48.6 million on revenue of \$4.2 billion.
- ❑ In full game digital downloads and add-on space, Valve's Steam service currently leads the way. Other notable developers/publishers, aggregators, and associated service providers include Direct2Drive, EA, GamersGate, IGN, LucasArts, PopCap, RealNetworks, Sega, Stardock, Take-Two Interactive, THQ, and Ubisoft. Many providers in this segment had a rough 2009, partly fueled by the proliferation of free-to-play games offered at popular sites such as Facebook and MySpace. Revenue in this sector should grow at a compound annual growth rate (CAGR) of 23.2% through 2014, however, and approach \$2.6 billion.
- ❑ Game-related ad (in-browser displays, in-game inserts, and sponsorships) and microtransaction revenue dipped slightly in 2009 but appears positioned to rebound in 2010 and thereafter. Ad-centric portals and microtransaction-oriented game companies/divisions today include Addictinggames.com, Aeria Games, AOL Games, Disney Games, Kongregate, Linden Lab, Playdom, Playfish (EA), MSN Games, WeeWorld, WildTangent, Yahoo! Games, and Zynga. Revenue of \$2.7 billion should be generated via this model by 2014, and meeting the needs of mature women appears to be a leading opportunity.
- ❑ From a hardware perspective, momentum has clearly swung in the direction of portable PCs, though a subset of "core" (mostly younger male) gamers should continue to customize desktop/tower form factors for optimal experiences.

# EXHIBIT C

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

\_\_\_\_\_  
RHODE ISLAND ECONOMIC  
DEVELOPMENT CORPORATION,

Plaintiff,

v.

\_\_\_\_\_  
WELLS FARGO SECURITIES, LLC;  
BARCLAYS CAPITAL, PLC; FIRST  
SOUTHWEST COMPANY, STARR  
INDEMNITY AND LIABILITY COMPANY;  
CURT SCHILLING; THOMAS ZACCAGNINO;  
RICHARD WESTER; JENNIFER MACLEAN;  
ROBERT I. STOLZMAN; ADLER POLLOCK &  
SHEEHAN P.C.; MOSES AFONSO RYAN  
LTD.; ANTONIO AFONSO, JR.; KEITH  
STOKES; and J. MICHAEL SAUL,

Defendants.  
\_\_\_\_\_

C.A. No. PB-12-5616

AFFIDAVIT OF

ROBERT I. STOLZMAN, ADLER POLLOCK & SHEEHAN P.C. SHAREHOLDER

I, Robert I. Stolzman, being duly sworn, do hereby depose and state as follows:

1. I am a shareholder in the law firm of Adler Pollock & Sheehan P.C. ("Adler Pollock"), resident in Adler Pollock's Providence, Rhode Island office.
2. Adler Pollock has, in the course of preparing for litigation, become quite knowledgeable on the Subject Matters noticed by the Plaintiff, the Rhode Island Economic Development Corporation (the "EDC").
3. However, until Adler Pollock anticipated litigation, the information sought by the 30(b)(6) notice was known, if at all, by me. If compelled to designate an Adler Pollock attorney as a 30(b)(6) deponent, Adler Pollock would designate me.



4. If the Subject Matters were confined to relevant, discoverable matters, then Adler Pollock would designate my prior testimony as that of its 30(b)(6) designee.
5. If the Subject Matters were *not* limited to the relevant, discoverable matters, then Adler Pollock would have to expend thousands of dollars in foregone work and legal fees in order to prepare a witness with the knowledge obtained by Adler Pollock in the course of more than eighteen months' legal defense work.
6. Having myself diligently searched, and having caused others to diligently search, I attest that the responsive, non-privileged evidence in Adler Pollock's possession has been produced to the Plaintiff.
7. Having inquired, I conclude that as to the various Subject Matters concerning Adler Pollock's legal duties to the EDC Board, or concerning whether the EDC Board could lawfully or within its authority undertake certain actions, I attest that I am the only Adler Pollock attorney to have considered these matters until such time as Adler Pollock anticipated litigation. Therefore, for all relevant time periods, Adler Pollock had no opinion on these matters apart from my own.
8. As was made clear in the Answer filed in this case, Adler Pollock contends that I discharged any duties owed to the Rhode Island Economic Development Corporation in a non-negligent fashion.

SWORN TO UNDER THE PAINS AND PENALTIES OF PERJURY THIS 30<sup>th</sup> DAY

OF JUNE, 2014.

  
ROBERT I. STOLZMAN

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

Personally appeared before me, the undersigned officer, the within named Robert I. Stolzman, who made oath that the foregoing is true and correct to the best of his knowledge and belief.

Date: June 9, 2014

Lou LeBouvier

Notary Public

My Commission Expires: 6/28/17