

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

Case No.: 2:12-cv-06333-KM-MCA

JAMES BURT, an individual,  
Plaintiff,

v.

KEY TRADING LLC, a Delaware limited liability company;  
RAFAEL DENOYO, an individual;  
DAVID SULLIVAN, an individual;  
PETER LARKIN, an individual;  
CHRISTINE DENOYO, an individual;  
ALYSSA COHEN, an individual;  
and CATHERINE LARKIN, an individual;  
Defendants.

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**AMENDED COMPLAINT FOR DAMAGES**

Plaintiff, James Burt, an individual, pursuant to New Jersey common law; hereby sues Defendants, **Key Trading LLC**, a Delaware limited liability company; **Rafael deNoyo**, an individual; **David Sullivan**, an individual; **Peter Larkin**, an individual; **Christine deNoyo**, an individual; **Alyssa Cohen**, an individual; and **Catherine Larkin**, an individual (collectively, the “Defendants”), for damages. As grounds therefor, Plaintiff alleges the following:

**PRELIMINARY STATEMENT**

1. This litigation arises from a multi-layered fraudulent scheme that saw several of the defendants pilfer millions of dollars from Plaintiff, falsely induce him into signing a restitution agreement that was supposed to recompense him for his injuries, subsequently breach that written agreement to pay Plaintiff the money owed to him, and arises from certain defendants’ acceptance of funds that were essentially stolen from Plaintiff.

2. James (“Jim”) Burt, a former National Football League player and two-time Super Bowl champion, entrusted several of the defendants with his hard-earned funds, and they took

advantage of his naiveté by promising him great financial rewards but instead provided him nothing but financial loss.

## **PARTIES, JURISDICTION AND VENUE**

### **THE PARTIES**

3. Plaintiff, James Burt (referred to herein as “Plaintiff” or “BURT”), is an individual domiciled in the State of New Jersey; is a citizen of the State of New Jersey; and is *sui juris*.

4. Defendant, Key Trading LLC (“KEY TRADING”), is a Delaware limited liability company with its principal place of business at 32 Broadway - Suite 1404, New York, New York 10004. KEY TRADING has two Members: Rafael deNoyo and David Sullivan. For purposes of diversity jurisdiction, KEY TRADING is a citizen of the states of Oregon and New York, as one of the Members of the limited liability company (Mr. deNoyo) is a citizen of Oregon and the other Member of the company (Mr. Sullivan) is a citizen of New York.

5. Defendant, Rafael deNoyo (“DENOYO”), is an individual domiciled in the State of Oregon; is a citizen of the State of Oregon; and is *sui juris*.

6. Defendant, David Sullivan (“SULLIVAN”), is an individual domiciled in the State of New York; is a citizen of the State of New York; and is *sui juris*.

7. Defendant, Peter Larkin (“LARKIN”), is an individual domiciled in the State of New York; is a citizen of the State of New York; and is *sui juris*.

8. Defendants DENOYO, SULLIVAN, and LARKIN are collectively referred to herein as “THE DENOYO GROUP.”

9. Defendant, Christine deNoyo, is an individual domiciled in the State of Oregon; is a citizen of the State of Oregon; and is *sui juris*; and at all times material hereto was the wife of Rafael deNoyo.

10. Defendant, Alyssa Cohen, is an individual domiciled in the State of New York; is a citizen of the State of New York; and is *sui juris*; and since May 2010 has been the wife of David Sullivan.

11. Defendant, Catherine Larkin, is an individual domiciled in the State of New York; is a citizen of the State of New York; and is *sui juris*; and at all times material hereto was the wife of Peter Larkin.

12. In addition to those persons and entities set forth as Defendants herein, there are likely other parties who may well be liable to BURT but respecting whom BURT currently lacks specific facts to permit him to name such person or persons as a party defendant. By not naming such persons or entities at this time, BURT is not waiving his right to amend this pleading to add such parties, should the facts warrant adding such parties.

#### **JURISDICTION AND VENUE**

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because Plaintiff is a citizen of the State of New Jersey, Defendants are all citizens of other states, and the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted in this action occurred in this district. In addition, the parties to the Settlement Agreement identified herein have agreed that the “*exclusive jurisdiction with respect to any disputes hereunder shall be venued in the Federal Courts of the State of New Jersey.*”

### **GENERAL FACTUAL ALLEGATIONS**

15. In or about January 2005, LARKIN became an associate of KEY TRADING to solicit funds, including trading capital and marketing funds.

16. In or about March 2005, LARKIN introduced BURT to KEY TRADING and to DENOYO and SULLIVAN. Pursuant to that introduction, KEY TRADING obtained from BURT One Million Dollars (\$1,000,000) in September 2005 and an additional One Million Dollars (\$1,000,000) in January 2006.

17. BURT wire transferred the aforementioned Two Million Dollars (\$2,000,000) based on THE DENOYO GROUP's representations to him that KEY TRADING had developed a proprietary leveraged trading system and that BURT would be provided monthly returns on what he was told by KEY TRADING and THE DENOYO GROUP was an "investment."

18. The representations made to BURT by THE DENOYO GROUP, individually and/or on behalf of KEY TRADING, were untrue when made; and THE DENOYO GROUP knew those statements to be untrue at the time they were made to BURT.

19. BURT did not benefit from a "proprietary leveraged trading system" and did not receive a return on the funds that KEY TRADING and THE DENOYO GROUP took from him.

20. In essence, KEY TRADING and THE DENOYO GROUP stole the \$2,000,000 from BURT with no intent of returning any funds to him.

21. BURT uncovered the fraud that had been perpetrated against him and, through counsel, demanded restitution.

### **THE SETTLEMENT AGREEMENT**

22. In or about September 2010, BURT, KEY TRADING and THE DENOYO GROUP entered into a written Settlement Agreement under which KEY TRADING and THE

DENOYO GROUP obligated themselves, jointly and severally, to compensate BURT in the principal amount of One Million Two Hundred Sixty Five Thousand Dollars (\$1,265,000), plus accrued interest of Six Hundred Sixty-Seven Thousand Two Hundred Fourteen Dollars (\$667,214), for a total sum of One Million Nine Hundred Thirty Two Thousand Two Hundred Fourteen Dollars (\$1,932,214). A copy of the Settlement Agreement is attached hereto as **Exhibit “A”**.

**The Refco Bankruptcy Case Payment Obligation**

23. Among the obligations KEY TRADING and THE DENOYO GROUP undertook upon entering into the Settlement Agreement was an obligation to pay BURT certain sums received by KEY TRADING as a creditor in the bankruptcy proceeding styled *In re Refco, Inc.*, U.S. Bankruptcy Court - Southern District of New York - Case No. 05-60006 (RDD) (the “*Refco Bankruptcy Case*”).

24. As a material component of the parties’ negotiations that culminated in the formal written Settlement Agreement, KEY TRADING and THE DENOYO GROUP, as well as their counsel, William J. Fallon (“Attorney Fallon”), represented, assured, and affirmed that none of them had received any creditor distributions in the *Refco Bankruptcy Case* prior to executing the Settlement Agreement but that they were anticipating receiving such payments in the future -- which they were obligated to then pay to BURT.

25. Attorney Fallon repeatedly and resolutely assured BURT’s counsel at the time that neither KEY TRADING nor THE DENOYO GROUP (or any of its constituent members) had received any distribution payments in the *Refco Bankruptcy Case* either before or since execution of the Settlement Agreement.

26. Attached hereto as **Exhibit “B”** is a true and correct copy of an affidavit, executed by BURT’s former counsel (Steve M. Kalebic, Esq.), setting forth his recitation of the facts comprising and surrounding KEY TRADING and THE DENOYO GROUP’s default in that regard.

27. As an extension and further memorialization of its obligation to pay BURT monies received as full or partial satisfaction of their claim in the *Refco* Bankruptcy Case, the Settlement Agreement provides in Section 6: “*KEY TRADING shall execute and deliver to BURT an assignment of the portion of KEY TRADING’s rights to said Refco bankruptcy claim . . . .*”

28. Indeed, KEY TRADING executed a Partial Assignment of Claim on or about August 2, 2011 which provides in part:

*[KEY TRADING] further warranties that effective immediately and without further action, contingent only upon the receipt of any check or money transfer from the Refco Trustee to [KEY TRADING] in partial or full satisfaction of its Claim, [KEY TRADING] will transfer within ten (10) days of receipt, 62.5% of the amount of such funds to Burt. [KEY TRADING] will also hold an additional 28.125% of the amount, to be released to Burt upon a release or assignment to Burt of any claims against [KEY TRADING] by [Halloran Investment Group LLC or Seamus Halloran].*

Attached hereto as **Exhibit “C”** is a true and correct copy of the Partial Assignment of Claim.

29. Notwithstanding KEY TRADING and THE DENOYO GROUP’s assurances of non-payment of any *Refco* distributions and their lack of funds overall, Plaintiff has come to learn that commencing on or about October 1, 2007, KEY TRADING received, under Proof of Claim No. 11389, several distribution payments in the *Refco* Bankruptcy Case totaling more than \$347,000.00.

30. By September 2010 (when the Settlement Agreement was executed), KEY TRADING had already received approximately \$260,000.00 in distribution payments from the

*Refco* Bankruptcy Case, had received approximately \$53,000.00 more by August 2, 2011 (when the Partial Assignment of Claim was executed), and received the remaining \$34,000.00 in distribution payments before this lawsuit was commenced. Attached hereto as **Exhibit "D"** is a true and correct copy of correspondence with the third party administrator of creditor claims filed in the *Refco* Bankruptcy Case -- correspondence that identifies by date and amount the distribution payments made to KEY TRADING.

31. KEY TRADING and THE DENOYO GROUP have admitted in this litigation that KEY TRADING has received approximately \$358,000.00 in distribution payments from the *Refco* Bankruptcy Case.

32. Even in the face of its admission that it has received distribution payments, KEY TRADING has never forwarded to BURT any portion of the *Refco* bankruptcy distributions.

#### **The Personal Financial Statement Obligation**

33. Similarly, as a material inducement for BURT to enter into the Settlement Agreement, Section 4 the Settlement Agreement provides:

*Annexed hereto as Exhibit "B" are the individual personal financial statements of the deNoyo Group. DENOYO, SULLIVAN, and LARKIN hereby ratify, reaffirm, and swear that these attached statements accurately reflect their personal financial conditions. The parties hereto expressly understand and agree that BURT is relying upon the accuracy of these personal financial statements in entering into this Settlement Agreement.*

34. Notwithstanding THE DENOYO GROUP's assurances of accuracy and truthfulness, Plaintiff has come to learn that the personal financial statements incorporated within the Settlement Agreement were all materially false.

35. For example, SULLIVAN asserted in his Personal Financial Statement that as of September 1, 2010, he did not own his primary residence, owned no real estate at all, and had not

sold or transferred any assets within the five years immediately preceding September 1, 2010.

As Plaintiff now knows, those statements were false when made, *to wit*:

- (a) SULLIVAN and his wife, Alyssa Cohen, had purchased a house in Melville, New York for \$650,000.00 in or about December 2009. That valuable real estate holding was purposefully omitted from SULLIVAN's Personal Financial Statement.
- (b) Moreover, the funds used to purchase that Melville, New York residence were also purposefully omitted from the Personal Financial Statement. According to SULLIVAN and Alyssa Cohen, they purchased that house using funds inherited from SULLIVAN's family and no other funds. However, the only inheritance SULLIVAN identified in his Personal Financial Statement was a \$60,000 inheritance he received in June 2010, approximately seven months *after* the Melville residence was purchased. Therefore, the residence could not have been purchased with those funds and must have been purchased with funds omitted from SULLIVAN's Personal Financial Statement.

36. Likewise, upon information and belief, the amounts stated in SULLIVAN's Personal Financial Statement as his bank account holdings and asset transfers were artificially decreased and did not truthfully or accurately represent SULLIVAN's personal financial holdings during the stated time period(s). The same can be said of the information represented in DENOYO's and LARKIN's Personal Financial Statements as well.

37. Similarly, upon information and belief, THE DENOYO GROUP purposefully concealed numerous bank accounts and other financial accounts they have held (individually, jointly with their spouses, or in a corporate capacity) at JPMorgan Chase Bank, N.A., Wells Fargo, N.A., and other financial institutions -- all in an effort to mislead BURT as to the true measure of their personal financial assets and misrepresent to BURT the true state of their personal financial condition.



**The Monthly Payment Obligation**

38. Under Section 2(a) the Settlement Agreement, KEY TRADING and THE DENOYO GROUP were jointly and severally obligated to make certain payments to BURT *“until the total settlement obligation herein has been paid in full.”*

39. Although KEY TRADING and THE DENOYO GROUP made a limited number of payments to BURT in accordance with that provision, those payments ceased in or around February 2012.

40. In or about February 2012, KEY TRADING and THE DENOYO GROUP defaulted on their monthly payment obligations to BURT and have failed to cure their default in the months that have passed since then.

41. KEY TRADING and THE DENOYO GROUP defaulted on their payment obligations in each and every month since February 2012.

**Key Trading and The deNoyo Group Have Failed to Cure Their Defaults**

42. In August 2012, undersigned counsel, on BURT’s behalf, sent a demand letter to KEY TRADING and THE DENOYO GROUP, alerting them of their defaults and providing them an opportunity to cure their breach of the Settlement Agreement and, by extension, the Partial Assignment of Claim.

43. Despite having been provided due notice of default and a fair opportunity to cure, KEY TRADING and THE DENOYO GROUP failed to cure their defaults and remain in default today.

44. KEY TRADING and THE DENOYO GROUP, amongst other obligations, have failed to satisfy their payment obligations, as set forth in the Settlement Agreement and the

Partial Assignment of Claim; and BURT has suffered damage as a direct and proximate result therefrom.

45. BURT has duly performed all of his duties and obligations, and any conditions precedent to BURT bringing this action have occurred, have been performed, or else have been excused or waived.

46. To enforce his rights, BURT has retained undersigned counsel and is obligated to pay counsel a reasonable fee for its services, for which Defendants are liable as a result of their bad faith and otherwise.

**COUNT I – BREACH OF CONTRACT (SETTLEMENT AGREEMENT)**  
**[AGAINST KEY TRADING AND THE DENOYO GROUP]**

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 46 above, and further alleges:

47. The Settlement Agreement constitutes a contract between BURT, KEY TRADING and THE DENOYO GROUP.

48. KEY TRADING and THE DENOYO GROUP have breached the express terms of the Settlement Agreement by failing to make the necessary payments thereunder.

49. As a direct and proximate result of KEY TRADING and THE DENOYO GROUP's breach of the Settlement Agreement, BURT has been damaged.

WHEREFORE, Plaintiff, JAMES BURT, an individual, demands entry of a judgment against Defendants, KEY TRADING LLC, a Delaware limited liability company; RAFAEL DENOYO, an individual; DAVID SULLIVAN, an individual; PETER LARKIN, an individual; jointly and severally, for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate.

**COUNT II – BREACH OF IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING (SETTLEMENT AGREEMENT)**  
**[AGAINST KEY TRADING AND THE DENOYO GROUP]**

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 46 above, and further alleges:

50. A covenant of good faith and fair dealing in the course of the contract performance is implicit in all contracts.

51. The purpose of the implied covenant of good faith is to further an agreement by protecting the promise against a breach of the reasonable expectations and inferences otherwise derived from the agreement. The covenant of good faith and fair dealing protects the bargained-for terms of the agreement.

52. As referenced above in Paragraph 22, BURT entered into the Settlement Agreement with KEY TRADING and THE DENOYO GROUP under which KEY TRADING and THE DENOYO GROUP were obligated, *inter alia*, to pay BURT a specifically denominated sum of money as compensation for the harm they had caused him.

53. The bargained-for terms of the Settlement Agreement included an agreement made by KEY TRADING and THE DENOYO GROUP to engage in good faith practices and satisfy all of their obligations free of manipulation and deception.

54. In contravention of these bargained-for terms, KEY TRADING and THE DENOYO GROUP have engaged in various unscrupulous acts with a purpose of defrauding BURT by, *inter alia*:

- (a) duping him into believing his funds had been invested and his returns were contingent upon the success of a sham corporate entity created by THE DENOYO GROUP;
- (b) withholding from him the significant portion of the *Refco* bankruptcy case dividend they received and which they were

contractually obligated to pay BURT upon their receipt of the dividend;

- (c) misstating and misrepresenting to him that the money transferred to a trading account at Refco FX Associates “*has been frozen pending resolution of the bankruptcy*” when approximately \$260,000.00 in distribution payments from the *Refco* Bankruptcy Case had already been unfrozen and paid to KEY TRADING before the Settlement Agreement was entered into by the parties;
- (d) refusing to provide him any documents or information regarding the *Refco* claim under the guise that Plaintiff was given a partial assignment of Defendants’ rights to the *Refco* bankruptcy claim but is not entitled or authorized to see any information related to that claim; and
- (e) intentionally misrepresenting their financial assets from BURT while claiming to be unable to satisfy their financial obligations under the Settlement Agreement.

55. By reason of KEY TRADING and THE DENOYO GROUP’s above-described conduct, they have breached the covenant of good faith and fair dealing, which has caused BURT substantial harm.

56. BURT has fully performed all of his obligations under the Settlement Agreement, except to the extent that such performance has been excused, prevented, hindered, frustrated and/or rendered useless by the acts and omissions of KEY TRADING and THE DENOYO GROUP.

57. As a direct and proximate result of KEY TRADING and THE DENOYO GROUP’s breach of the Settlement Agreement, BURT has suffered damages.

WHEREFORE, Plaintiff, JAMES BURT, an individual, demands entry of a judgment against Defendants, KEY TRADING LLC, a Delaware limited liability company; RAFAEL DENOYO, an individual; DAVID SULLIVAN, an individual; PETER LARKIN, an individual; jointly and severally, for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate.

**COUNT III – BREACH OF CONTRACT (PARTIAL ASSIGNMENT OF CLAIM)**  
**[AGAINST KEY TRADING]**

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 46 above, and further alleges:

58. The Partial Assignment of Claim constitutes a contract between BURT and KEY TRADING.

59. KEY TRADING has breached the express terms of the Partial Assignment of Claim by failing to make the necessary payments thereunder.

60. As a direct and proximate result of KEY TRADING's breach of the Partial Assignment of Claim, BURT has been damaged.

WHEREFORE, Plaintiff, JAMES BURT, an individual, demands entry of a judgment against Defendants, KEY TRADING LLC, a Delaware limited liability company; for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate.

**COUNT IV – BREACH OF IMPLIED COVENANT OF**  
**GOOD FAITH AND FAIR DEALING (PARTIAL ASSIGNMENT OF CLAIM)**  
**[AGAINST KEY TRADING]**

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 46 above, and further alleges:

61. A covenant of good faith and fair dealing in the course of the contract performance is implicit in all contracts.

62. The purpose of the implied covenant of good faith is to further an agreement by protecting the promise against a breach of the reasonable expectations and inferences otherwise derived from the agreement. The covenant of good faith and fair dealing protects the bargained-for terms of the agreement.

63. BURT entered into the Partial Assignment of Claim with KEY TRADING under which KEY TRADING is obligated, *inter alia*, to pay BURT a specifically denominated sum of money as compensation for the harm it has caused him.

64. The bargained-for terms of the Partial Assignment of Claim included an agreement made by KEY TRADING to engage in good faith practices and satisfy all of its obligations free of manipulation and deception.

65. In contravention of these bargained-for terms, KEY TRADING has engaged in various unscrupulous acts with a purpose of defrauding BURT by, *inter alia*:

- (a) withholding from him the significant portion of the *Refco* bankruptcy case dividend KEY TRADING received and which it was contractually obligated to pay BURT upon its receipt of the dividend;
- (b) refusing to provide him any documents or information regarding the *Refco* claim under the guise that Plaintiff was given a partial assignment of Defendants' rights to the *Refco* bankruptcy claim but is not entitled or authorized to see any information related to that claim; and
- (c) misstating and misrepresenting to him that the money transferred to a trading account at Refco FX Associates "*has been frozen pending resolution of the bankruptcy*" when approximately \$313,000.00 in distribution payments from the *Refco* Bankruptcy Case had already been unfrozen and paid to KEY TRADING before the Partial Assignment of Claim was executed by KEY TRADING and presented to BURT.

66. By reason of KEY TRADING's above-described conduct, it has breached the covenant of good faith and fair dealing, which has caused BURT substantial harm.

67. BURT has fully performed all of his obligations under the Partial Assignment of Claim, except to the extent that such performance has been excused, prevented, hindered, frustrated and/or rendered useless by the acts and omissions of KEY TRADING.

68. As a direct and proximate result of KEY TRADING's breach of the Partial Assignment of Claim, BURT has suffered damages.

WHEREFORE, Plaintiff, JAMES BURT, an individual, demands entry of a judgment against Defendants, KEY TRADING LLC, a Delaware limited liability company; for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate.

**COUNT IV – FRAUDULENT INDUCEMENT**  
**[AGAINST KEY TRADING AND THE DENOYO GROUP]**

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 46 above, and further alleges:

69. KEY TRADING and THE DENOYO GROUP, by acts of both omission and commission, made to Plaintiff false statements of fact concerning their willingness and ability to satisfy the debt they had agreed to pay Plaintiff. For example, to gain Plaintiff's confidence and entice him to enter into the Settlement Agreement and later accept the Partial Assignment of Claim, KEY TRADING and THE DENOYO GROUP told Plaintiff that:

- (a) the money transferred to a trading account at Refco FX Associates *"has been frozen pending resolution of the bankruptcy"*,
- (b) they had not received any distribution payments from the *Refco* Bankruptcy Case,
- (c) they would forward to Plaintiff a predetermined percentage of any distribution payments KEY TRADING were to receive from the *Refco* Bankruptcy Case,
- (d) they lacked the financial means to satisfy their financial obligation to Plaintiff, and
- (e) they would pay Plaintiff each month in accordance with an agreed-upon schedule to compensate Plaintiff for the harm KEY TRADING and THE DENOYO GROUP had caused him.

70. KEY TRADING and THE DENOYO GROUP knew at the time the statements were made to Plaintiff that the statements were false.

71. KEY TRADING and THE DENOYO GROUP intended that Plaintiff would be induced into action by relying upon the statements of fact made to him by KEY TRADING and THE DENOYO GROUP. However, KEY TRADING and THE DENOYO GROUP never intended to satisfy the obligations they represented to Plaintiff they would satisfy.

72. In executing the Settlement Agreement and accepting the Partial Assignment of Claim, Plaintiff reasonably and justifiably relied on the statements of fact made to him by KEY TRADING and THE DENOYO GROUP.

73. As a direct and proximate result of Plaintiff's reliance on the statements made to him by KEY TRADING and THE DENOYO GROUP, Plaintiff has suffered damage.

WHEREFORE, Plaintiff, JAMES BURT, an individual, demands entry of a judgment against Defendants, KEY TRADING LLC, a Delaware limited liability company; RAFAEL DENOYO, an individual; DAVID SULLIVAN, an individual; PETER LARKIN, an individual; jointly and severally, for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate.

**COUNT V – IMPOSITION OF A CONSTRUCTIVE TRUST**  
**AND DISGORGEMENT OF FUNDS**  
**[AGAINST CHRISTINE DENOYO]**

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 46 above, and further alleges:

74. Christine deNoyo is a beneficiary of the proceeds that were wrongly misappropriated, converted, and stolen from BURT by her husband, Rafael deNoyo.



75. Any and all monies being held by Christine deNoyo must be held in trust for the benefit of BURT, as Christine deNoyo is not entitled to the benefit of wrongfully misappropriated, converted, and stolen funds which were provided to her by her spouse, Rafael deNoyo.

76. Any and all funds provided to Christine deNoyo must be disgorged to the benefit of BURT, as Christine deNoyo is not entitled to the benefit of wrongfully misappropriated, converted, and stolen funds which were provided to her by her spouse, Rafael deNoyo.

WHEREFORE, Plaintiff, JAMES BURT, an individual, demands imposition of a constructive trust against Defendant, CHRISTINE DENOYO, an individual; full disgorgement of all funds that were wrongly misappropriated, converted, and stolen from BURT by her husband, Rafael deNoyo; and an award of interest, costs, and such other relief as this Court deems just and appropriate.

**COUNT VI – IMPOSITION OF A CONSTRUCTIVE TRUST**  
**AND DISGORGEMENT OF FUNDS**  
**[AGAINST ALYSSA COHEN]**

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 46 above, and further alleges:

77. Alyssa Cohen is a beneficiary of the proceeds that were wrongly misappropriated, converted, and stolen from BURT by her husband, David Sullivan.

78. Any and all monies being held by Alyssa Cohen must be held in trust for the benefit of BURT, as Alyssa Cohen is not entitled to the benefit of wrongfully misappropriated, converted, and stolen funds which were provided to her by her spouse, David Sullivan.

79. Any and all funds provided to Alyssa Cohen must be disgorged to the benefit of BURT, as Alyssa Cohen is not entitled to the benefit of wrongfully misappropriated, converted, and stolen funds which were provided to her by her spouse, David Sullivan.

WHEREFORE, Plaintiff, JAMES BURT, an individual, demands imposition of a constructive trust against Defendant, ALYSSA COHEN, an individual; full disgorgement of all funds that were wrongly misappropriated, converted, and stolen from BURT by her husband, David Sullivan; and an award of interest, costs, and such other relief as this Court deems just and appropriate.

**COUNT VII – FRAUDULENT CONVEYANCE**  
**[AGAINST ALYSSA COHEN]**

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 46 above, and further alleges:

80. This is a cause of action under The Uniform Fraudulent Transfer Act (“UFTA”), N.J.S.A. 25:2-20 *et seq.*

81. As noted above, approximately \$2,000,000 was wrongly misappropriated, converted, and stolen from BURT by KEY TRADING and THE DENOYO GROUP (which includes SULLIVAN).

82. After misappropriating, converting, and stealing those funds from BURT, SULLIVAN transferred a portion of those funds to his wife, Alyssa Cohen, with the actual intent to hinder, delay, or defraud BURT and BURT’s ability to recover the sums owed to him by SULLIVAN.

83. Alyssa Cohen received from SULLIVAN the stolen funds knowing that she did not provide SULLIVAN a reasonably equivalent value in exchange for the transfer.

84. Upon information and belief, SULLIVAN and Alyssa Cohen used the stolen funds to incur a mortgage obligation in or about December 2009 on a residence in Melville, New York, knowing that incurring such an obligation would leave them with insufficient funds for SULLIVAN to satisfy his obligations to BURT.

85. By SULLIVAN transferring, and Alyssa Cohen receiving, the funds referenced above, they knowingly and willingly put those funds beyond BURT's reach -- funds that would have been available to BURT at some point in time but for the conveyance.

86. Alyssa Cohen participated in the fraudulent conveyance knowing and intending that doing so would defraud, delay, or hinder BURT and BURT's ability to recover the sums owed to him by SULLIVAN.

87. As a direct and proximate result of the fraudulent transfer and receipt between SULLIVAN and Alyssa Cohen, BURT has suffered damage.

WHEREFORE, Plaintiff, JAMES BURT, an individual, demands entry of a judgment against Defendant, ALYSSA COHEN, an individual; for an amount within the jurisdictional limits of this court, including an award of interest, costs, and such other relief as this Court deems just and appropriate.

**COUNT VII – IMPOSITION OF A CONSTRUCTIVE TRUST**  
**AND DISGORGEMENT OF FUNDS**  
**[AGAINST CATHERINE LARKIN]**

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 46 above, and further alleges:

88. Catherine Larkin is a beneficiary of the proceeds that were wrongly misappropriated, converted, and stolen from BURT by her husband, Peter Larkin.

89. Any and all monies being held by Catherine Larkin must be held in trust for the benefit of BURT, as Catherine Larkin is not entitled to the benefit of wrongfully misappropriated, converted, and stolen funds which were provided to her by her spouse, Peter Larkin.

90. Any and all funds provided to Catherine Larkin must be disgorged to the benefit of BURT, as Catherine Larkin is not entitled to the benefit of wrongfully misappropriated, converted, and stolen funds which were provided to her by her spouse, Peter Larkin.

WHEREFORE, Plaintiff, JAMES BURT, an individual, demands imposition of a constructive trust against Defendant, CATHERINE LARKIN, an individual; full disgorgement of all funds that were wrongly misappropriated, converted, and stolen from BURT by her husband, Peter Larkin; and an award of interest, costs, and such other relief as this Court deems just and appropriate.

### **RESERVATION OF RIGHTS**

Plaintiff reserves his right to further amend this Amended Complaint, upon completion of his investigation and discovery, to assert any additional claims for relief against Defendants or other parties as may be warranted under the circumstances and as allowed by law.

### **PLAINTIFF'S DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

Respectfully submitted,

**SILVER LAW GROUP**

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Admitted *Pro Hac Vice* [DE 40]

E-mail: [DSilver@silverlaw.com](mailto:DSilver@silverlaw.com)

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing was electronically filed with the Clerk of Court on this 25th day of October 2013 by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participant(s): **JONATHAN S. GOODGOLD, ESQ.**, GOODGOLD LAW, LLC, *Counsel for Defendants, Key Trading LLC; Rafael Denoyo; David Sullivan; and Peter Larkin*, 72 Eagle Rock Avenue - Suite 260, East Hanover, NJ 07936; **WILLIAM J. FALLON, ESQ.**, *Co-Counsel for Defendants, Key Trading LLC; Rafael Denoyo; David Sullivan; and Peter Larkin*, 3601 Hempstead Turnpike - Suite 305, Levittown, New York 11571; **STUART M. NACHBAR, ESQ.**, LAW OFFICE OF STUART M. NACHBAR, P.C., *Counsel for Defendant, Alyssa Cohen*, 570 West Mount Pleasant Avenue, Suite 101 - P.O. Box 2205, Livingston, New Jersey 07039; **JENNY R. FLOM, ESQ.**, COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A., *Counsel for Defendant, Catherine Larkin*, 25 Main Street, P.O. Box 800, Hackensack, New Jersey 07602-0800; and that a copy will be served via electronic mail only to: **NEIL R. FLAUM, ESQ.**, FLAUM & ASSOCIATES, P.C., *Co-Counsel for Defendant, Alyssa Cohen*, 369 Lexington Avenue - 12th Floor, New York, New York 10017; and via First Class U.S. Mail to: **CHRISTINE DENOYO**, 1110 21st Street NE, Salem, Oregon 97301.



DAVID C. SILVER

## SETTLEMENT AGREEMENT

THIS AGREEMENT ("Agreement") made as of this \_\_\_\_ day of \_\_\_\_, 2010 by and between James Burt (hereinafter referred to as "Burt") residing at [REDACTED], Saddle River, New Jersey [REDACTED]; Key Trading, LLC (hereinafter referred to as "Key Trading"), a Delaware Limited Liability Company, with an office located at 32 Broadway, Suite 1404, New York, New York, 10004, and Key Trading's individual members, Rafael deNoyo (hereinafter referred to as "deNoyo") residing at [REDACTED], Salem Oregon [REDACTED] and David Sullivan (hereinafter referred to as "Sullivan") residing at [REDACTED] Bronx, New York [REDACTED], and Key Trading's associate, Peter Larkin (hereinafter referred to as "Larkin"), residing at [REDACTED], Central Valley New York [REDACTED] and Joseph Musumeci (hereinafter referred to as "Musumeci") residing at [REDACTED], Pompton Lakes, New Jersey [REDACTED].

## RECITALS

WHEREAS, at all relevant times herein, deNoyo and Sullivan constituted all of the members of Key Trading.

WHEREAS, Larkin became an associate of Key Trading on or about January, 2005 to solicit funds, including trading capital and marketing.

WHEREAS, Key Trading, Larkin, deNoyo and Sullivan are hereinafter collectively referred to as the "deNoyo Group." At no time was Larkin an officer or member of Key Trading. Furthermore, Larkin was neither authorized as a signatory on Key Trading's bank or other accounts nor authorized to transfer funds or make trades for Key Trading.

WHEREAS, Larkin introduced Halloran Investment Group, LLC (hereinafter referred to as "Halloran") and Burt to Key Trading in March 2005. Pursuant to that introduction, the amount of One Million United States Dollars (\$1,000,000.00) was obtained from Halloran on or about June, 2005, the amount of One Million United States Dollars (\$1,000,000.00) was obtained from Burt on or about September, 2005, and an additional One Million United States Dollars (\$1,000,000.00) was obtained from Burt on or about January 2006.

WHEREAS, the One Million United States Dollars (\$1,000,000.00) received from Halloran in June, 2005, was wire transferred to Key Trading's account from Halloran's bank account. The One Million United States Dollars (\$1,000,000.00) received in September, 2005, from Burt was wire transferred from Larkin's bank account. The One Million United States Dollars (\$1,000,000) received from Burt in January, 2006, was wire transferred from Musumeci's bank account. All of the aforesaid funds transferred to Key Trading from Burt and or Halloran were based on the representations by the deNoyo Group that Key Trading had developed a proprietary leveraged trading strategy.

WHEREAS, Burt alleges that the monies provided to Key Trading by Halloran and Burt were based on a representations by Key Trading and the deNoyo Group that Burt would be provided monthly return on his investment provided to Key Trading as described herein.

WHEREAS, Key Trading and the deNoyo Group agree that they received certain monies from Halloran and Burt, as described herein, but assert that the money received from Halloran in June 2005 was a loan from Halloran to Key Trading, and that the money received from Burt in September 2005 was also a loan and the money received from Burt in January of 2006 was an equity investment in Key Trading.

**WHEREAS**, Key Trading and the deNoyo Group represent and assert that the monies received by Key Trading as described herein prior to October 10, 2005, were transferred to a trading account at Refco FX Associates (hereinafter referred to as "Refco," a foreign entity and subsidiary wholly owned by Refco Inc., a domestic corporation presently in bankruptcy) and has been frozen pending resolution of the bankruptcy and that Key Trading is an unsecured General Creditor in the Refco bankruptcy proceedings.

**WHEREAS**, there has been no resolution among the parties to this Agreement regarding the ultimate disposition of any funds hereunder due to Halloran and or Seamus Halloran's bankruptcy, except as otherwise provided herein.

**WHEREAS**, the parties hereto have undertaken a course of negotiation with respect to their issues in dispute and now desire to resolve their differences pursuant to the terms and conditions set forth herein.

**WHEREAS**, the deNoyo Group represents that its three members each individually acquired ownership interests totaling 49.8% (16.6% each owned by deNoyo, Sullivan, and Larkin respectively through their single member LLCs) in 60 Arch, LLC, the General Partner of a newly created entity fund, 60 Arch Absolute Return Fund, L.P.

**WHEREAS**, the deNoyo Group desire to now pledge their interest in this entity as collateral security and a percentage of their income derived therefrom for their obligations hereunder.

**NOW THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:



1. **Settlement Obligation** – As of the date of execution of this Settlement Agreement, all parties hereto affirm and ratify the following settlement obligations:

- a. **Halloran Investment Group** – The deNoyo Group and Key Trading hereby acknowledge the receipt of One Million United States Dollars (\$1,000,000.00) from and disbursement of Five Hundred and Fifty Thousand Dollars (\$550,000.00) to Halloran. The total settlement obligation related to monies received/dispursed through Halloran is Four Hundred Fifty Thousand United States Dollars (\$450,000.00). Due to Halloran's bankruptcy filing, a potential dispute has arisen with Halloran's bankruptcy trustee as to the ownership of these funds. Accordingly, the repayment of these funds in the amount specified herein as part of the total settlement obligation herein shall be held in abeyance pending a resolution with Halloran's bankruptcy trustee as to their disposition. Any resolution with Halloran's bankruptcy trustee shall be the subject of a separate settlement agreement and shall be deducted from the Halloran settlement obligation set forth herein. The balance of the Halloran settlement obligation (if any), after deduction of the amount thereof to be paid to Halloran's bankruptcy trustee, shall be added to the Burt settlement obligation set forth at Subparagraph (b) hereunder. Burt alleges that any and all monies received/dispursed through Halloran were never intended to be credited to a Halloran account and was instead to be established in a separate account in Burt's individual name and that Halloran was solely to receive a commission related thereto. Key Trading and the deNoyo Group allege that that any and all monies received/dispursed through Halloran were represented and intended to be

credited to the Halloran and that no mention was ever made of Burt other than as a major investor in and or member of the Halloran.

**b. Burt Settlement Obligation** – The deNoyo Group and Key Trading hereby acknowledge the receipt of Two Million United States Dollars (\$2,000,000.00) from Burt during the period from September 2, 2005 through January, 2006, a portion of which is frozen in the Refco bankruptcy along with funds provided by other non-parties. These monies were received through Larkin on or about September, 2005, and Musumeci on or about January, 2006. Although, at the time, the Larkin transfer was represented by Larkin and Halloran as an additional Halloran loan, Larkin now acknowledges that these funds were provided by Burt directly as an investment. Larkin and Musumeci further acknowledge and ratify that these monies are to be incorporated as part of the Burt settlement obligation as set forth herein. Burt hereby acknowledges disbursements to him from Key Trading in the amount of \$735,000.00, wire transferred directly from Key Trading's bank account. The parties hereto now agree that the total settlement obligation due and owed to Burt from Key Trading and the individual members of the deNoyo Group (Larkin, Sullivan and deNoyo), on a joint and several basis, is One Million Two Hundred Sixty Five Thousand United States Dollars (\$1,265,000.00) in principal plus accrued interest of Six Hundred Sixty-Seven Thousand, Two Hundred and Fourteen United States Dollars (\$667,214.00), for a total of One Million Nine Hundred Thirty-Two Thousand, Two Hundred and Fourteen United States Dollars (\$1,932,214.00). Additionally, the parties agree that this settlement obligation shall also include any residual monies to be added

thereto as result of the settlement with Halloran's bankruptcy trustee. The parties hereto further agree that this settlement obligation, together with any remaining portion added thereto from the Halloran bankruptcy settlement, shall hereinafter accrue interest at five percent (5 %) per annum until paid in full.

2. **Payment of Settlement Obligation** -Larkin, deNoyo, and Sullivan in their individual capacities and Key Trading shall be jointly and severally liable for the following payments with respect to the settlement obligation:

- a. A monthly payment of Four Thousand United States Dollars (\$4,000.00) commencing five (5) days following execution of this Agreement and on the same day each consecutive month thereafter until the total settlement obligation herein has been paid in full provided, however, that payments received within fifteen (15) days of the due date shall be considered timely made;
- b. A quarterly payment commencing on October 10, 2010 and continuing on the tenth day of every consecutive three month quarterly period thereafter (i.e. January 10, 2011; April 10, 2011 etc.) until the total settlement obligation herein has been paid in full provided, however, that payments received within fifteen (15) days of the due date shall be considered timely made. This quarterly payment shall be based on the following formula:
  - i. An amount equal to Seventy-Five Percent (75%) of any and all revenue to be derived from the deNoyo Group's interest in 60 Arch, LLC and/or any other income producing source for the applicable quarterly period. In this regard, simultaneous with the quarterly payments required herein, the deNoyo Group shall provide Burt with a full accounting of all income received by the deNoyo Group from 60 Arch, LLC or any other income received by the deNoyo Group from any source for the immediately preceding quarterly period.
  - ii. In the event 60 Arch, LLC liquidates or otherwise ceases operations, then Larkin, deNoyo and Sullivan are to pay Burt 75% of all income derived from any other sources in excess of \$6,000.00 per month each and shall provide

pay stubs on a quarterly basis in support of these payment and Federal tax returns to be provided within 30 days of the filing thereof.

All payments made hereunder shall be first applied to outstanding and accrued interest and then to the principal amount of the Settlement Obligation. All payments shall be made payable to "Steve M. Kalebic, Esq. – Attorney Trust Account" and delivered either electronically in the form of a wire transfer (see wire instructions annexed as Exhibit "A" hereto), by check drawn on any the account(s) of Key Trading or any member(s) of the deNoyo Group and forwarded to the Law Offices of Steve M. Kalebic, 167 Main Street, Hackensack, New Jersey, 07601, by regular or overnight mail deposited with the United States Postal Service or any nationally recognized courier, or via hand delivery. Notwithstanding the provisions set forth in subparagraphs (a) and (b) herein, said payments shall be deemed made at the time and day of receipt by Steve M. Kalebic.

3. Pledge of Security Interest – As collateral security for their obligations hereunder, deNoyo, Sullivan and Larkin shall execute and deliver to Burt a first lien security interest in their percentage of ownership of 60 Arch, LLC. In this regard, deNoyo, Sullivan and Larkin represent that they each own a 16.6% interest in 60 Arch, LLC through the following entities (each a Delaware Limited Liability Company wholly owned by the designated individuals):

- a. deNoyo – RDN Enterprises, LLC
- b. Sullivan – DAA Enterprises, LLC
- c. Larkin – JCE Enterprises, LLC

Within thirty (30) days of the execution of this Settlement Agreement, deNoyo, Sullivan and Larkin shall each execute an Assignment of Membership Interest in the designated ownership entities (to be held in escrow in the event of any default hereunder) together with a corresponding Security Agreement drafted by Burt's attorney, Steve M. Kalebic.

4. **Reliance Upon Personal Financial Statements** – Annexed hereto as Exhibit "B" are the individual personal financial statements of the deNoyo Group. deNoyo, Sullivan and Larkin hereby ratify, reaffirm and swear that these attached statements accurately reflect their personal financial conditions. The parties hereto expressly understand and agree that Burt is relying upon the accuracy of these personal financial statements in entering into this Settlement Agreement.

5. **Accounting of Key Trading Activities** – Within sixty (60) days of the date of execution of this Settlement Agreement, the deNoyo Group agrees to provide Burt with an accounting of the trading activities of Key Trading from May, 2005 through the present date. This accounting shall include:

- a. Copies of all monthly bank statements for the accounting period from May, 2005 through December, 2009.
- b. Copies of all available brokerage account reports reflecting trades and dispositions thereof for the accounting period January, 2005 through December, 2009. In the event the deNoyo Group is unable to provide copies of such accounting reports, Burt's attorney, Steve M. Kalebic is hereby authorized to attempt to obtain copies of such accounting reports and the deNoyo Group agrees to execute any required authorizations in connection therewith.

The parties agree that any information provided herein shall be kept confidential and that Burt will not attempt to solicit any of Key Trading's clients whose identity and or contact information may be contained in the aforesaid records and documents for any business, financial, professional or personal matter without the express written consent of Key Trading and the deNoyo group. The parties hereto agree that any violation of this covenant shall entitle the deNoyo Group to injunctive relief. In the event of any such injunction application, the prevailing party shall be entitled to the recoupment of all legal fees in conjunction therewith.

6. **Representation of Refco Bankruptcy Claim** – Key Trading hereby ratifies and affirms its earlier representation that, in or about October, 2005, a portion of monies forwarded to Key Trading as described herein by Halloran and Burt and by other investors prior to that were frozen in the Refco bankruptcy and that Key Trading undertook all actions reasonably necessary to file a claim for said monies and those other funds provided by non-parties in the Refco bankruptcy proceedings. Within thirty (30) days of the execution of this Settlement Agreement, Key Trading shall execute and deliver to Burt an assignment of the portion of Key Trading's rights to said Refco bankruptcy claim attributable to Burt's September 2005 \$1,000,000.00 investment, net of any amounts already returned by Key Trading to Burt for that investment plus any residual amount of the Halloran settlement obligation added thereto. Any monies received by Burt from the Refco bankruptcy claim (net of any recovery expenses related thereto) shall be credited to the settlement obligation hereunder. Burt agrees to provide counsel for the deNoyo Group with copies of all documentation related to the pursuit of any assignment claim hereunder.

7. **Default** – On fifteen (15) days written notice, Burt may declare the Settlement Obligation set forth herein to be accelerated and immediately due and payable if any of the following events (each, an "Event of Default") shall have occurred and be continuing;

- a. The deNoyo Group and Key Trading shall fail to pay the Settlement Obligation in accord with the payment schedule or fifteen (15) day cure period set forth herein; or
- b. The deNoyo Group and Key Trading shall have made a material misrepresentation and/or omission with respect to Key Trading account information or personal financial statements being provided herein.
- c. The deNoyo Group and Key Trading fails to provide the limited assignment of the Refco bankruptcy claim as required herein.
- d. The deNoyo Group and Key Trading fails to provide the accounting and documentation required herein.

8. Release and Tolling of Statute of Limitations -- The parties hereto recognize that except as provided below, Burt is not providing any party to this Agreement with any release until such time as the Settlement Obligation herein is paid in full. All parties hereto agree to a tolling of the statute of limitations under all applicable state and federal common law or securities statutes and regulations claims, together with any claims related to the fraudulent conveyance of assets by deNoyo, Sullivan, Larkin or Key Trading until the settlement obligation herein has been paid in full. Burt will provide full release of all applicable state and federal common law or securities statutes and regulations claims, together with any other related claims, upon payment of this Settlement Obligation in full.

9. Governing Law/Jurisdiction - This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey. The parties hereto hereby agree that exclusive jurisdiction with respect to any disputes hereunder shall be venued in the Federal Courts of the State of New Jersey.

10. Entire Contract - This Agreement sets forth the entire contract and understanding of the parties with respect to the transaction contemplated hereby and supersedes all prior agreements, arrangement and understandings relating to the subject matter hereof.

11. Successors and Assigns - All the terms, covenants, representations and warranties of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and the legal representatives, successors and assigns of the parties hereto.

12. No Oral Modification - This Agreement may be amended, modified, superseded or canceled, and any of the terms, covenants, representations, warranties or conditions hereof may

be waived, only by written instrument executed by the parties hereto or in the case of death or incapacitation of a party, their heirs, beneficiaries, guardians, executors, or in the case of a waiver, by the party waiving compliance.

13. **No Waiver** - The failure of either party at any time to require performance of any provision hereof shall in no manner effect the right at a later time to enforce the same. No waiver by either party of any condition, or of the breach of any term, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or waiver or any other condition or of the breach of any other term, representation or warranty of this Agreement.

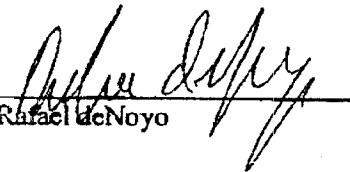
14. **Notices** - All notices and other communications required or permitted to be given hereunder, shall be effective only upon receipt and shall be in writing and shall be mailed by certified mail/ return receipt requested, sent by UPS Next Day Air or other nationally recognized next-day mail service, or (with regard to parties to be copied only) sent by telecopy or electronic mail, addressed to the respective parties as provided above. In addition, a copy of all such notices shall be provided to counsel for the respective parties, the Law Office of Newfeld & Fallon, PLLC, PO Box 575, Rockville Centre, New York, 11571, email: [newfeldandfallon@yahoo.com](mailto:newfeldandfallon@yahoo.com), efax: (516) 224-3362 for Key Trading and the deNoyo Group, and Law Offices of Steve M. Kalebic, 167 Main Street, Hackensack, New Jersey, 07601, email: [smk@kmilawgroup.com](mailto:smk@kmilawgroup.com), telecopy: (201) 646-1301, for Burt. Any party may change their address for receipt of notice hereunder only upon providing all parties with written notice of such address change in accord with the notice provisions herein within five (5) days of any such change of address.



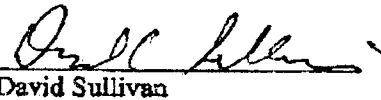
15. **Confidentiality** - All parties to this Agreement agree to keep the contents of this Agreement confidential and shall not disclose it to any other party except upon proper subpoena following notice to all other parties. The parties hereto agree that any violation of this covenant shall entitle the non-breaching party to injunctive relief. In the event of any such injunction application, the prevailing party shall be entitled to the recoupment of all legal fees in conjunction therewith.

16. **Counterparts** -- This Settlement Agreement may be executed and delivered in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

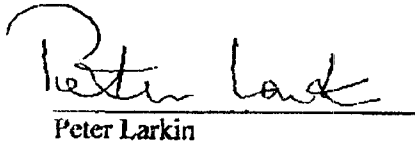
IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized representative of the parties, on the date set forth above.

  
Rafael deNoyo

\_\_\_\_\_  
James Burt

  
David Sullivan

KEY TRADING, LLC

  
Peter Larkin

By:   
Rafael deNoyo, Member

\_\_\_\_\_  
Joseph Musumeci

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**AFFIDAVIT OF STEVE M. KALEBIC**

STATE OF NEW JERSEY                    )  
  ) ss.  
COUNTY OF BERGEN                    )

BEFORE ME, the undersigned authority, personally appeared, **STEVE M. KALEBIC**, who, after being first duly sworn, deposes and says:

1. My name is Steve M. Kalebic. I am an attorney licensed to practice law in the State of New Jersey and formerly represented James Burt (“BURT”) in his legal dispute with Key Trading LLC, a Delaware limited liability company (“KEY TRADING”); Rafael deNoyo, an individual (“DENOYO”); David Sullivan, an individual (“SULLIVAN”); and Peter Larkin, an individual (“LARKIN”) over nearly Two Million Dollars in funds that Defendants unlawfully converted from Mr. Burt.

2. DENOYO, SULLIVAN, and LARKIN are collectively referred to herein as THE DENOYO GROUP.

3. In or about September 2010, BURT, KEY TRADING and THE DENOYO GROUP entered into a written Settlement Agreement (the “Agreement”) under which KEY TRADING and THE DENOYO GROUP obligated themselves, jointly and severally, to compensate BURT in the principal amount of One Million Two Hundred Sixty Five Thousand Dollars (\$1,265,000), plus accrued interest of Six Hundred Sixty-Seven Thousand Two Hundred Fourteen Dollars (\$667,214), for a total sum of One Million Nine Hundred Thirty Two Thousand Two Hundred Fourteen Dollars (\$1,932,214).

4. As set forth in the Agreement among the obligations KEY TRADING and THE DENOYO GROUP undertook upon entering into the Agreement was an obligation to assign and pay BURT certain sums received by KEY TRADING as a creditor in the bankruptcy proceeding styled *In re Refco, Inc.*, U.S. Bankruptcy Court - Southern District of New York - Case No. 05-60006 (RDD).

5. As a material component of the parties’ negotiations that culminated in the formal written Agreement, KEY TRADING and THE DENOYO GROUP, as well as their counsel, William J. Fallon (“Attorney Fallon”), represented, assured, and affirmed that none of them had received any creditor distributions in the *Refco* bankruptcy case prior to executing the Agreement but that they were anticipating receiving such payments in the future – all of which they were obligated to then pay to Mr. Burt.

6. On multiple occasions since September 2010, I inquired of KEY TRADING and THE DENOYO GROUP, through their counsel, Attorney Fallon, as to the status of the assignment and whether they had received any creditor distributions in the *Refco* bankruptcy case.

**EXHIBIT "B"**

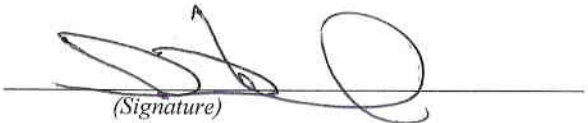
7. Attorney Fallon repeatedly and resolutely assured me that neither KEY TRADING nor THE DENOYO GROUP (or any of its constituent members) had received any distribution payments in the *Refco* bankruptcy case either before or since execution of the Agreement.

8. To be clear, Attorney Fallon and his clients KEY TRADING and THE DENOYO GROUP were specifically asked about distributions from the *Refco* bankruptcy case, and they denied ever having received any such payments either before or since execution of the Agreement.

9. I have recently been informed that KEY TRADING and/or THE DENOYO GROUP has received a distribution payment in the *Refco* bankruptcy case. However, no portion of that distribution was paid to Mr. Burt.

10. It appears KEY TRADING, THE DENOYO GROUP, and Attorney Fallon have intentionally deceived Mr. Burt and myself about the receipt of distributions in the *Refco* bankruptcy case as well as the financial ability of KEY TRADING and THE DENOYO GROUP to satisfy their contractual payment obligations to Mr. Burt.

STEVE M. KALEBIC

  
(Signature)

SUBSCRIBED AND SWORN to before me this 5 day of October, 2012.



NOTARY PUBLIC

Printed Name: Yomarís Peralta

My Commission Expires:



S:\KALEBIC\BURT\KEY TRADING\Affidavit of Steve M. Kalebic.doc

### Partial Assignment of Claim

Know all men by these presents, that Key Trading LLC, a Delaware limited liability company, with an office address of 32 Broadway, New York, New York, 10004, its successors and assigns (hereinafter referred to as "Assignor"), for good and valuable consideration the sufficiency of which is hereby acknowledged and in partial satisfaction of a debt, does hereby transfer, assign, and set over to James Burt, an individual, whose address is 10 River Farm Lane, Saddle River, New Jersey (hereinafter referred to as "Burt"), Sixty-Two and a half percent (62.5%) of its rights and interest in any and all monies now due or to become due (hereinafter "Rights of Claim") to Assignor in satisfaction of its claim filed (hereinafter "Claim") in the bankruptcy liquidation proceedings of Refco Inc. and certain of its direct and indirect subsidiaries, including UK indirect subsidiaries Refco FX Associates and Refco Capital Markets Group (hereinafter "Refco"), in the Case number 05-60006 (RDD) pending in the United States Bankruptcy Court for the Eastern District of New York. Assignor is a Class 5a unsecured creditor in the Refco bankruptcy and of the Refco Liquidation Trust.

This assignment is to the extent of any monetary satisfaction of the Claim due or to become due to Assignor from the Refco Trustee.

Assignor further assigns to Burt an additional 28.125% of the Rights of Claim payable to Assignor in satisfaction of its Claim contingent upon the release or assignment to Burt of any claims Halloran Investment Group LLC or Seamus Halloran (hereinafter "Halloran") may have against Assignor.

Assignor further warrants that it has not previously compromised or assigned any claim, cause of action, or any other rights against Refco, its principals or agents, arising out of or related to any activity giving rise to the Claim.

Assignor further warrants that effective immediately and without further action, contingent only upon the receipt of any check or money transfer from the Refco Trustee to Assignor in partial or full satisfaction of its Claim, Assignor will transfer within ten (10) days of receipt, 62.5% of the amount of such funds to Burt. Assignor will also hold an additional 28.125% of the amount, to be released to Burt upon a release or assignment to Burt of any claims against Assignor by Halloran.

The Undersigned avers that he is authorized to execute this Partial Assignment of Claim on behalf of Assignor and that no other signature is required for the effectiveness hereof.

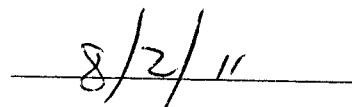
In Witness Whereof, the undersigned has on this day set forth below, duly executed this Partial Assignment of Claim, intending to be legally bound hereby.

Key Trading LLC

By:

  
David Sullivan, Member

Date:



**EXHIBIT "C"**

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**From:** refcoinc [mailto:refcoinc@capstoneag.com]  
**Sent:** Wednesday, May 08, 2013 1:12 PM  
**To:** David Silver  
**Cc:** Norman Haslun; jsg@goodgoldlaw.com; Dennis Drasco  
**Subject:** RE: Burt v. Key Trading LLC, et al.

Distributions paid:

	Payee Name	Check Amount	Distribution Date
<b>Estate of Refco FXA</b>	KEYTRADING LLC	\$185,811.79	10/1/2007
<b>Estate of Refco FXA</b>	KEYTRADING LLC	\$61,937.26	4/9/2008
<b>Estate of Refco FXA</b>	KEYTRADING LLC	\$47,485.24	3/18/2011
<b>Estate of Refco FXA</b>	KEYTRADING LLC	\$6,193.73	10/15/2012
<b>Refco Litigation Trust</b>	KEYTRADING LLC	\$11,634.03	05/17/2010
<b>Refco Litigation Trust</b>	KEYTRADING LLC	\$5,637.66	06/09/2011
<b>Refco Litigation Trust</b>	KEYTRADING LLC	\$21,798.95	08/29/2011
<b>Refco Litigation Trust</b>	KEYTRADING LLC	\$6,815.07	10/24/2012

The **Estate of Refco FXA** has wound up, therefore there will be no further distributions from the Estate. There may be a distribution in the future from the **Refco Litigation Trust**, however timing and percentages are currently unknown.

Regards,  
Lina

Lina Sorace  
Refco Support

---

**From:** David Silver [mailto:dsilver@silverlaw.com]  
**Sent:** Wednesday, May 08, 2013 11:42 AM  
**To:** refcoinc  
**Cc:** Norman Haslun; jsg@goodgoldlaw.com; Dennis Drasco  
**Subject:** Re: Burt v. Key Trading LLC, et al.

Lina - apparently they claim to have received \$200,000 and not \$300,000. I confused \$160,000 for \$200,000. Are you still holding distributions for Key or has ~\$300,000 already been paid?

David C. Silver  
11780 W. Sample Road

**EXHIBIT "D"**

Coral Springs, Florida 33065

Tel: (954) 755-4799

Cell: (202) 834-4214

On May 8, 2013, at 11:30 AM, "David Silver" <[dsilver@silverlaw.com](mailto:dsilver@silverlaw.com)> wrote:

Lina -

Can we please get copies of distributions? There is a dispute as to how much was received and Key Trading has stated they received less than \$160,000 which is less than 36.50%. My math says at minimum the distribution should have been \$301,428.02. Am I missing something?

Thank you.

David C. Silver

11780 W. Sample Road

Coral Springs, Florida 33065

Tel: (954) 755-4799

Cell: (202) 834-4214

On May 8, 2013, at 11:22 AM, "refcoinc" <[refcoinc@capstoneag.com](mailto:refcoinc@capstoneag.com)> wrote:

Gentlemen,

RE: Refco F/X Associates Claim# 11389 KEYTRADING LLC Allowed @ \$825,830.18

To date, recovery for Allowed Class 5(a) – FXA General Unsecured Claims has been approximately **42.056%**. The breakdown is as follows:

Estate of Refco FXA: **36.50%**

Refco Litigation Trust: **5.556%**

Claim# 11389 does not receive distributions from the Private Actions Trust.

Regards,

Lina

Lina Sorace

Refco Support

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**From:** David Silver [<mailto:dsilver@silverlaw.com>]

**Sent:** Tuesday, May 07, 2013 4:48 PM

**To:** Norman Haslun; refcoinc

**Cc:** [jsg@goodgoldlaw.com](mailto:jsg@goodgoldlaw.com); Dennis Drasco

**Subject:** FW: Burt v. Key Trading LLC, et al.

Norman – We have not received a response to the e-mail that was sent to the generic [refcoinc@capstoneag.com](mailto:refcoinc@capstoneag.com). If you are not the person who can help us, can you please put us in contact with the correct person directly so that we can resolve this?

Thank you for your help.

David

David C. Silver, Esq.  
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**From:** David Silver  
**Sent:** Monday, May 06, 2013 12:15 PM  
**To:** refcoinc  
**Cc:** '[jsg@goodgoldlaw.com](mailto:jsg@goodgoldlaw.com)'; Dennis Drasco  
**Subject:** Burt v. Key Trading LLC, et al.

To Whom It May Concern:

I am an attorney for Mr. Burt, who is currently in litigation with Key Trading, LLC, David Sullivan, and others. We are attempting to confirm what distributions were made to Key Trading/David Sullivan pursuant to either Claim No: 11388 or Claim No: 11389 [see attached]. Counsel for Key Trading/David Sullivan, Mr. Jonathan Goodgold, is copied on this e-mail; as is Dennis Drasco, Esq., who served as the mediator in our lawsuit. If the information I seek is not public information (which at the moment, all the parties believe it is), please instruct to whom we can send a release for all the information regarding these claims.

Thank you – if you have any questions, please do not hesitate to contact me.

David C. Silver, Esq.  
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