





## I. BACKGROUND

### A. The Enforcement Action

On November 13, 2009, the Securities and Exchange Commission (the “Commission”) commenced the Enforcement Action against defendants Kaleta and KCM, alleging violations of the antifraud provisions of the federal securities laws arising from the fraudulent offering of promissory-note securities. On December 2, 2009, the Court appointed Thomas L. Taylor III as Receiver for KCM. On June 17, 2010 this Court expanded the Receivership Estate to include Relief Defendants BizRadio and DFFS. *See Agreed Order Appointing Receiver, Doc. # 7; Order Modifying Order Appointing Receiver, Doc. # 34* (collectively the “Order Appointing Receiver”).<sup>1</sup>

### B. Litigation by the Receiver Against Kaleta

On August 23, 2011 the Receiver commenced litigation against Receivership Entity owners, officers and employees Daniel and Elisea Frishberg and Kaleta, and against Barrington Financial Advisors, Inc. (“Barrington”) and its principal William C. Heath (the “Ancillary Action”). Enforcement Action Doc. # 105. The Receiver alleged, *inter alia*, breaches of fiduciary duties and fraudulent transfers arising from the subject matter of the Enforcement Action. The Frishbergs, Barrington and Heath filed Answers to the Complaint<sup>2</sup> in the Ancillary Action. *See* Enforcement Action Docs. # 186, 187. On May 2, 2012 the Court severed the Ancillary Action from the Enforcement Action. Enforcement Action Doc. # 199. The Ancillary Action is now styled *Taylor v. Frishberg, et al.*, Civil Action No. 4:12-cv-1491, in the United States District Court for the Southern District of Texas.

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<sup>1</sup> Citations to the “Order Appointing Receiver” refer to pages or paragraphs within Doc. # 7.

<sup>2</sup> The Receiver filed a First Amended Complaint on November 17, 2011. Enforcement Action Doc. # 150.

On January 26, 2012 Kaleta filed a voluntary petition in the United States Bankruptcy Court for the Southern District of Texas for relief under Chapter 7 of Title 11 of the United States Bankruptcy Code, *In Re Albert F. and Connie T. Kaleta*, Case No. 4:12-bk-30558 (the “Bankruptcy Action”). The Ancillary Action as to Kaleta was thereafter subject to the automatic stay arising from Kaleta’s voluntary petition in bankruptcy.

On April 23, 2012 the Receiver instituted an adversary proceeding against Kaleta in the United States Bankruptcy Court for the Southern District of Texas, *Thomas L. Taylor III, Receiver v. Albert Fase Kaleta*, Case No. 4:12-ad-03209 (the “Adversary Action”), through the filing of a Complaint to Determine Dischargeability Pursuant to 11 U.S.C. § 523. On May 1, 2012 the Receiver filed in the Adversary Action a Motion for Withdrawal of Reference Pursuant to 11 U.S.C. § 157(d) and FED. R. BANKR. P. 5011(a).

Prior to the hearing on the Motion for Withdrawal of Reference, the Receiver and Kaleta agreed to terms on a framework for settlement of the Adversary Action. Judge Bohm, with the agreement of the parties, issued a Report and Recommendation that the Motion for Withdrawal of Reference to the Bankruptcy Court be granted. This Court granted the motion, and the Adversary Action was restyled *Thomas L. Taylor III, Receiver v. Albert Fase Kaleta*, Civil Action No. 4:12-cv-2401, in the United States District Court for the Southern District of Texas (*See Adversary Action Docs. # 1, 4*). The Bankruptcy Court ordered the automatic stay be “lifted pursuant to 11 U.S.C. §362(d)(1) so that matters may proceed before the Honorable Nancy F. Atlas” in the Enforcement Action, Ancillary Action and Adversary Action. Bankruptcy Action Doc. # 30. On February 6, 2013 this Court issued an Order consolidating the Adversary Action into the lead case, the Enforcement Action. Doc. # 231.

### C. Settlement Agreement

On behalf of the Receivership Estate and all persons who have a substantive claim against the Receivership Estate, the Receiver has entered into a proposed Settlement Agreement and Full and Final Mutual Release (the "Settlement Agreement," attached hereto as **Exhibit 1**) with Kaleta, the essential terms of which are:

- (1) Kaleta consents to the entry of a judgment against him in the amount of \$1,000,000 (the "Stipulated Judgment") (attached to the Settlement Agreement as **Exhibit A**);
- (2) Kaleta waives the dischargeability of the Stipulated Judgment in any bankruptcy action in which he is a debtor;
- (3) Kaleta releases the Receivership Estate from any and all claims as of the date of the Settlement Agreement; and
- (4) the Receiver releases Kaleta from any and all claims which the Receivership Estate may hold against him as of the date of the Settlement Agreement.

The Receiver believes that the proposed settlement is fair, equitable, and reasonable, and is in the best interests of the Receivership Estate and all claimants to the eventual distribution of Estate assets. Receiver reaches this conclusion because the Stipulated Judgment, if approved and entered, will be an asset of the Receivership Estate, the Settlement releases the Estate from any claims by Kaleta, and the Settlement avoids costly and uncertain litigation which, if successful, would result in a judgment for essentially the same assets being obtained through settlement. The settling parties submit the settlement to the Court in the interest of full transparency, and respectfully request the Court approve it.

The Receiver respectfully submits that this matter does not require oral argument, unless opposition to the Motion is subsequently submitted to the Court. Any person or entity opposing this Motion must timely file with the Court and serve upon the Receiver a written opposition which complies in all respects with the rules of this Court on or before March 15, 2013. Failure

to timely file an opposition may be deemed by the Court to be consent to the granting of the Receiver's Motion.

This Motion and all exhibits hereto are posted on the Receivership Estate's website at <http://www.kcmreceivership.com>, where they may be reviewed in their entirety. Copies will be provided to any interested party upon receipt of a written request which may be directed to: Thomas L. Taylor III, Receiver; The Taylor Law Offices, P.C.; 4550 Post Oak Place, Suite 241, Houston, Texas 77027. The Receiver has discussed this motion and the proposed settlement with counsel for the Commission, which does not oppose this motion.

## II. ARGUMENT AND AUTHORITIES

### A. Receiver's Authority to Enter Into Settlement

Pursuant to this Court's Order Appointing Receiver, the Receiver is directed and authorized to "[p]erform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate." *Order Appointing Receiver* ¶ 5(g). The Receiver is further directed to "compromise ... such actions or proceedings ... that [he] deems necessary and advisable to preserve the value of the Receivership Estate, or ... to carry out [his] mandate under this Order." *Id.* ¶ 5(i). It is also the Receiver's duty to "[p]reserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursement ... to claimants." *Id.* ¶ 5(j).

### B. The Settlement Is Fair and in the Best Interest of the Receivership Estate

The Receiver asserted claims against Kaleta under the theories of breach of fiduciary duty and negligence, and the Texas Uniform Fraudulent Transfer Act, TEX. BUS. & COM. CODE ANN. §24.001, *et seq.*, ("TUFTA"). See Enforcement Action Doc. # 150; Adversary Action

Doc. # 1. The Receiver sought to recover damages suffered by the Receivership Entities in order to satisfy claims against the Receivership Estate by its creditors, including defrauded investors.

The Receiver's actions against Kaleta were contested, and the continuation of such litigation would have proven costly with respect to both time and the resources of the Receivership Estate. The ultimate determination of liability and the extent of recovery would be the subject of protracted litigation in which the outcome was less than certain. Furthermore, the Defendant had filed for protection under the Bankruptcy Code, and lacks the resources to immediately satisfy any judgment entered against him. Securing a judgment through trial would likely have been a Pyrrhic victory, costing the Estate far more than any materially recoverable amount. In light of these circumstances, the Receiver sought to negotiate a settlement with Kaleta which would benefit the Estate while avoiding the costs associated with litigation.

The negotiations with Kaleta resulted in the settlement of which the Receiver now seeks approval by the Court. The material terms of the Settlement Agreement are the entry of the Stipulated Judgment in the amount of \$1,000,000, to which Kaleta waives dischargeability in any bankruptcy action in which he is a debtor. Additionally, the Receiver and Kaleta will mutually release all claims against the other party and the Receivership Estate. The Stipulated Judgment will be an asset of the Receivership Estate and, although not presently collectable, ensures that if the Defendant obtains sufficient assets in the future, the Receiver will be able to execute the judgment and collect assets on behalf of the Estate.

The Receiver is satisfied that this settlement is in the best interests of the Receivership Estate. The Receiver believes this settlement represents the best option to recover assets and maximize the value of the Receivership Estate, while minimizing the expenses incurred to the

Estate in the recovery of said assets. Litigation with Kaleta would only cause further harm to the Receivership Estate and the defrauded investors the Receiver was appointed to protect.

### **C. Nondischargeability of the Stipulated Judgment**

The Adversary Action was commenced to determine the dischargeability of debts pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6). In negotiating a settlement of the claims made in the Ancillary and Adversary Actions with Kaleta, the Receiver required that Kaleta waive the dischargeability of to the Stipulated Judgment in the Defendant's present bankruptcy proceedings and in any future proceedings in which he is a debtor. Kaleta agreed to these terms. *See* Settlement Agreement, § II.2.

The parties seek the approval of the waiver of discharge pursuant to Section 727(a)(10) of the Bankruptcy Code, which provides that the Court "shall grant the debtor a discharge, unless" it "approves a written waiver of discharge executed by the debtor after the order for relief under this chapter." 11 U.S.C. § 727(a)(10); *see also Lichtenstein v. Barbanel*, 161 Fed. Appx. 461, 465 – 67 (6th Cir. 2005) (per curiam). The Settlement Agreement is a written waiver of discharge on behalf of the debtor, Kaleta, in regard to the Stipulated Judgment. It was executed on October 12, 2012, following the Defendant's petition date of January 26, 2012 [Bankruptcy Action Doc. # 1]. It does not become operative and binding on the parties until this Motion is granted and the Stipulated Judgment is entered by this Court. *See* Settlement Agreement, § II.1.

### **III. CONCLUSION**

Receiver respectfully submits to the Court for approval the Settlement Agreement with Albert F. Kaleta, which he believes is fair, equitable, and reasonable, and requests the Court grant this Motion in all respects.

February 21, 2013

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.



By: \_\_\_\_\_

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COUNSEL FOR RECEIVER

**CERTIFICATE OF SERVICE**

On February 21, 2013, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Southern District of Texas, using the CM/ECF electronic filing system. I hereby certify that I have provided copies to all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Andrew M. Goforth  
Andrew M. Goforth

# **Exhibit 1**

## SETTLEMENT AGREEMENT AND FULL AND FINAL MUTUAL RELEASE

This Settlement Agreement and Full and Final Mutual Release (the "Agreement"), dated October 12, 2012 (the "Effective Date") is entered into by and between Thomas L. Taylor III, solely in his capacity as Court-appointed Receiver for Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. and all entities owned or controlled by them (the "Receiver") on the one hand, and Albert Fase Kaleta ("Kaleta") on the other hand.

### RECITALS

WHEREAS, the Receiver instituted the Litigation against Kaleta, asserting claims against him, which Kaleta fully and completely denies; and

WHEREAS, Kaleta instituted the bankruptcy action *In re Albert F. and Connie T. Kaleta*, Case No. 12-30558, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division; and

WHEREAS, the Receiver instituted the Adversary Proceeding against Kaleta, asserting that the claims and liabilities alleged in the Litigation against Kaleta are non-dischargeable in bankruptcy pursuant to 11 U.S.C. §523; and

WHEREAS, the Parties have agreed to fully and finally compromise and settle any and all disputes between them; and

WHEREAS, in furtherance of such settlement the Parties have agreed to the undertakings set forth below.

THEREFORE, as material considerations and inducements to the execution of this Agreement and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby contract, covenant and agree as follows:

### I. DEFINITIONS

For the purposes of this Agreement:

**"Adversary Proceeding"** refers to Civil Action No. 4:12-cv-02401, *Thomas L. Taylor III, Receiver v. Albert Fase Kaleta*, in the United States District Court for the Southern District of Texas, Houston Division, pursuant to the Order [Doc. # 4] withdrawing the reference to the Bankruptcy Court as to Civil Action No. 4:12-ap-03209, *Thomas L. Taylor III, Solely in his Capacity as Court-Appointed Receiver for Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. v. Albert Fase Kaleta*, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

“**Affiliate**” of (a) a natural person refers to and includes his or her past and present employees, agents, attorneys, legal representatives, heirs, executors, and administrators, and their permitted successors and assigns; and (b) an entity refers to and includes its past and present parents, subsidiaries and affiliates, and their respective past and present officers, directors, shareholders, partners, agents, employees, attorneys and legal representatives, and their respective predecessors, heirs, executors, and administrators, and their permitted successors and assigns.

“**Agreed Final and Non-Dischargeable Judgment**” refers to the non-dischargeable judgment to be entered by the Court upon approval of the settlement memorialized by this Agreement and the granting of the Motion to Approve. The Agreed Final and Non-Dischargeable Judgment is attached hereto as **Exhibit A**. This Agreement shall not become operative and binding on the Parties unless and until (a) the Court enters an order granting the Motion to Approve; and (b) the Court enters the Agreed Final and Non-Dischargeable Judgment.

“**Agreement**” refers to this Settlement Agreement and Full and Final Mutual Release.

“**Claim**” or “**Claims**” refer to and include all actions, causes of action, claims, counterclaims, cross-claims, debts, demands, controversies, rights, liabilities, suits, legal, equitable, and administrative proceedings of any kind, payments, charges, reimbursements, obligations, judgments, and theories of recovery of whatever nature, arising before the Effective Date, whether presently known or unknown, foreseen or unforeseen, fixed or contingent, asserted or unasserted, liquidated or unliquidated, accrued or unaccrued, recognized by the law of any jurisdiction, whether arising under statute or common law, in contract or in tort, at law or in equity, or under any theory of liability or damages (including without limitation any theory of strict liability, trespass, nuisance, breach of any duty, fraud, intentional or negligent misrepresentation, common law or statutory negligence, breach of contract, fraudulent transfer or conveyance, securities violations, breach of fiduciary duty, conversion, defamation, unjust enrichment, tortious interference, property damage, conspiracy, inducement, aiding and abetting, quantum meruit, promissory estoppel, mental anguish, gross negligence, vicarious liability, “alter ego” liability, piercing the corporate veil, exemplary damages, disgorgement, fee forfeiture, constructive trust, penalties, suit for accounting, injunctive relief, attorneys’ fees and costs, intentional acts or omissions, or violation of any regulation or statutory duty under State, Federal, or local law).

“**Court**” refers to the United States District Court for the Southern District of Texas, Houston Division presiding over the Adversary Proceeding, the Litigation and the Receivership Action.

“**Effective Date**” refers to the first date appearing in this Agreement.

“**Kaleta**” refers to Albert Fase Kaleta and his Affiliates.

“**Litigation**” refers to Civil Action No. 4:12-cv-01491; *Thomas L. Taylor III, Solely in his Capacity as Court-Appointed Receiver for Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. v. Daniel S. Frishberg, Elisea T. Frishberg, Albert F. Kaleta, Barrington*

*Financial Advisors, Inc. and William C. Heath*; in the United States District Court for the Southern District of Texas, Houston Division. The Litigation was initially filed in the Receivership Action [Doc. # 105] and severed per order of the Court [Doc. # 199].

“**Motion to Approve**” refers to the motion to be filed by the Receiver following execution of this Agreement, seeking Court approval of the settlement memorialized by this Agreement and entry of the Agreed Final and Non-Dischargeable Judgment. This Agreement shall not become operative and binding on the Parties unless and until (a) the Court enters an order granting the Motion to Approve; and (b) the Court enters the Agreed Final and Non-Dischargeable Judgment.

“**Order Appointing Receiver**” refers to the Agreed Order Appointing Receiver, entered December 2, 2009 in the Receivership Action [Doc. # 7], as modified by the Order Modifying Order Appointing Receiver, entered June 17, 2010 in the in the Receivership Action [Doc. # 34].

“**Parties**” and “**Party**” refer to the Receiver and Kaleta, as defined herein, collectively and individually, respectively.

“**Receiver**” refers to Thomas L. Taylor III, solely in his capacity as Court-appointed receiver for Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. and all entities owned or controlled by them, appointed pursuant to the Order Appointing Receiver.

“**Receivership Action**” refers to Civil Action No. 4:09-cv-03674; *Securities and Exchange Commission v. Albert Fase Kaleta, et al.*; in the United States District Court for the Southern District of Texas, Houston Division.

“**Receivership Entities**” refers collectively to Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. and all entities owned or controlled by them.

“**Receivership Estate**” refers to the estate created by and defined in the Order Appointing Receiver.

## II. AGREEMENTS AND RELEASES

1. **Disposition of the Adversary Proceeding and Litigation as to Kaleta.** Kaleta consents to the entry of the Agreed Final and Non-Dischargeable Judgment. Within a reasonable time following execution of this Agreement by the Parties, the Receiver shall file the Motion to Approve with the Court and take all other actions necessary to conclude the Adversary Proceeding and Litigation as to Kaleta. This Agreement shall not become operative and binding on the Parties unless and until (a) the entry of an order granting the Motion to Approve; and (b) the entry of the Agreed Final and Non-Dischargeable Judgment.

2. **Waivers.** Kaleta waives, fully and finally, (a) the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure; (b) any right to appeal from the entry of the Agreed Final and Non-Dischargeable Judgment; and (c) the

dischargeability of the Agreed Final and Non-Dischargeable Judgment in any present or future bankruptcy proceeding.

3. **Release of Kaleta by the Receiver.** In consideration of the foregoing, and except for the obligations imposed by this Agreement, which obligations survive in accordance with their terms, the Receiver and the Receivership Entities and their respective past, present, and future officers, directors, owners, shareholders, members, agents, partners, parent companies, subsidiaries, related entities, affiliates, employees, representatives, attorneys, trusts, trustees and estates, executors, administrators, predecessors, successors, relations by blood and marriage, beneficiaries, heirs, assigns, and all persons, natural and corporate, in privity with any of the foregoing, and anyone claiming by, through or under them RELEASE, REMISE, CANCEL, ACQUIT and DISCHARGE Kaleta, and his respective past, present, and future officers, directors, owners, shareholders, members, agents, partners, parent companies, subsidiaries, related entities, affiliates, employees, representatives, attorneys, trusts, trustees and estates, executors, administrators, predecessors, successors, relations by blood and marriage, beneficiaries, heirs, assigns, and all persons, natural and corporate, in privity with him, from any and all Claims, including without limitation, all Claims asserted or that could have been asserted by the Receiver in the Adversary Proceeding or the Litigation or otherwise against Kaleta, which the Receiver and the Receivership Entities have ever had, or now have, or may have in the future against Kaleta based upon events, actions, and/or omissions which occurred prior to and through the Effective Date arising out of, concerning, or relating, directly or indirectly, to the Adversary Proceeding, the Litigation, the Receivership Action, the Receiver, the Receivership Entities, and/or the Receivership Estate, and any other transactions or dealings that Kaleta has had with the Receiver or the Receivership Entities.

3.1 **Conditional Non-Waiver by Receiver of Claims as to Dischargeability of Debts in Bankruptcy.** If any bankruptcy proceeding is instituted as to Kaleta under Title 11 of the United States Code, in which a petition instituting such proceeding is filed after the Effective Date of this Agreement, and the Bankruptcy Court presiding over such proceeding holds that the waivers of dischargeability as to the Agreed Final and Non-Dischargeable Judgment in this Agreement and in the Agreed Final and Non-Dischargeable Judgment are invalid, void or otherwise unenforceable, the Receiver retains for all purposes and shall not be deemed to have waived any Claims as to the dischargeability of the Agreed Final and Non-Dischargeable Judgment in such bankruptcy proceeding. Kaleta waives any and all use of the releases made by the Receiver in this Agreement in any action to determine the dischargeability of the Agreed Final and Non-Dischargeable Judgment in any such bankruptcy proceeding.

4. **Release of the Receiver and the Receivership Entities by Kaleta.** In consideration of the foregoing, and except for the obligations imposed by this Agreement, which obligations survive in accordance with their terms, Kaleta and his respective past, present, and future officers, directors, owners, shareholders, members, agents, partners, parent companies, subsidiaries, related entities, affiliates, employees, representatives, attorneys, trusts, trustees and estates, executors, administrators, predecessors, successors, relations by blood and marriage, beneficiaries, heirs, assigns, and all persons, natural and corporate, in privity with any of the foregoing, and anyone claiming by, through or under them RELEASE, REMISE, CANCEL,

ACQUIT and DISCHARGE the Receiver, the Receivership Entities, the Receivership Estate and their respective past, present, and future officers, directors, owners, shareholders, members, agents, partners, parent companies, subsidiaries, related entities, affiliates, employees, representatives, attorneys, trusts, trustees and estates, executors, administrators, predecessors, successors, relations by blood and marriage, beneficiaries, heirs, assigns, and all persons, natural and corporate, in privity with them, from any and all Claims, including without limitation, all Claims asserted or that could have been asserted by Kaleta in the Adversary Proceeding, the Litigation or otherwise against the Receiver, the Receivership Entities and the Receivership Estate, which Kaleta has ever had, or now has, or may have in the future against the Receiver, the Receivership Entities and the Receivership Estate based upon events, actions, and/or omissions which occurred prior to and through the Effective Date arising out of, concerning, or relating, directly or indirectly, to the Adversary Proceeding, the Litigation, the Receivership Action, the Receiver, the Receivership Entities, and/or the Receivership Estate, and any other transactions or dealings that the Receiver, the Receivership Entities and the Receivership Estate had with Kaleta.

5. **Relinquishment of Claims Against the Receivership Estate by Kaleta.** Kaleta hereby relinquishes and waives any and all Claims he may have, individually or jointly with others, against the Receivership Estate in the claims procedure to be established and approved by the Court in the Receivership Action. In other words, Kaleta may not, individually or jointly with others, submit claims against the Receivership Estate subject to the normal claims procedure as approved by the Court in the Receivership Action, or otherwise.

6. **Costs.** No Party shall be liable for the attorneys' fees or other costs incurred by any other Party in the Adversary Proceeding or the Litigation, including without limitation the negotiation, drafting and implementation of this Agreement, the Motion to Approve and the Agreed Final and Non-Dischargeable Judgment.

7. **Authority.** Each Party represents, covenants and warrants that it has the full authority and capacity to make this Agreement and to grant the releases set forth herein, subject to the approval of this Agreement by the Court.

8. **Disputed Claims.** It is understood that this is a compromise of disputed Claims, and that neither (1) the consideration provided for herein, (2) the entering into this Agreement, nor (3) any recital contained herein, shall be construed or interpreted as an admission of liability by or on behalf of any Party to this Agreement, all such liability being expressly denied.

9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns.

10. **Amendment.** This Agreement may not be amended or otherwise changed except by an agreement in writing signed by each of the Parties hereto, and approved by the Court.

11. **Severability.** If any provision of this Agreement is or may be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall

nonetheless survive and continue in full force and effect without being impaired or invalidated in any way.

12. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be an original and each of which shall constitute but one and the same instrument.

13. **Complete Agreement.** Each Party acknowledges that this Agreement constitutes the full, final and complete settlement of their differences and supersedes all other written or oral exchanges, arrangements, or negotiations between them concerning the subject matter of this Agreement, and further acknowledges that there are no representations, agreements, arrangements, or understandings, oral or written, concerning the subject matter of this Agreement that are not fully expressed herein or therein.

14. **Cooperation.** The Parties agree to cooperate and perform in a timely manner any additional act(s) necessary to carry out the terms of this Agreement.

15. **Headings and Construction.** Headings in this Agreement are for the convenience of the Parties and are not to be used in construing the Agreement. This Agreement shall not be construed or interpreted against or in favor of any Party by reason of any Party having drafted or prepared this Agreement, or otherwise, but it shall be construed and interpreted as to give the fullest effect to the terms set forth herein.

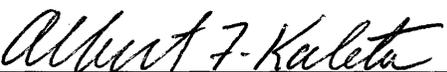
**EACH PARTY EXPRESSLY REPRESENTS AND WARRANTS TO THE OTHER PARTIES THAT IT HAS CAREFULLY READ THIS AGREEMENT, UNDERSTANDS THE CONTENTS OF THIS AGREEMENT, AND SIGNS THIS AGREEMENT AS ITS OWN FREE ACT.**

**[Signatures on the following page]**

By:   
Thomas L. Taylor III

Solely in his capacity as Court-appointed Receiver for Kaleta Capital Management, Inc., BusinessRadio Network, L.P. d/b/a BizRadio, Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. and all entities owned or controlled by them.

Date: 10/12/2012

By:   
Albert F. Kaleta, Individually

Date: 10/12/2012

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# **Exhibit A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ALBERT FASE KALETA and KALETA  
CAPITAL MANAGEMENT, INC.,

Defendants,

and

BUSINESSRADIO NETWORK, L.P.,  
d/b/a BizRadio and DANIEL FRISHBERG  
FINANCIAL SERVICES, INC., d/b/a  
DFFS CAPITAL MANAGEMENT, INC.,

Relief Defendants,  
Solely for the purposes  
of Equitable Relief.

Civil Action No. 4:09-cv-3674

and

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THOMAS L. TAYLOR III, Receiver,  
Plaintiff,

v.

ALBERT FASE KALETA,  
Defendant.

Civil Action No. 4:12-cv-2401

(CONSOLIDATED)



for the Withdrawal of the Reference of the Adversary [Doc. # 1 in Civil Action No. 4:12-cv-2401] and submitted to this Court's jurisdiction over the Parties and the subject matter of the Adversary; and following which this Court entered the Order Withdrawing the Reference of the Adversary [Doc. # 4 in Civil Action No. 4:12-cv-2401]; the Parties hereby consent to the entry of this Agreed Final and Non-Dischargeable Judgment pursuant to the Settlement Agreement approved by Order of this Court [Doc. # \_\_\_ in the Receivership Action].

The Defendant consents to the entry of this Agreed Final and Non-Dischargeable Judgment without admitting or denying the allegations made by the Receiver in the Complaint (except as to jurisdiction) and other pleadings filed in the Adversary, and having waived, fully and finally, (a) the entry of findings of fact and conclusions of law pursuant to FED. R. CIV. P. 52; (b) any and all right to appeal from this Agreed Final and Non-Dischargeable Judgment, and (c) the dischargeability of the Judgment Amount (defined below) in the pending Bankruptcy Case No. 12-30558 or any bankruptcy proceeding hereafter filed by or relating to the Defendant.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Defendant Albert F. Kaleta shall pay to the Receivership Estate by and through the Receiver, the amount of \$1,000,000.00 (the "Judgment Amount"). Defendant shall satisfy this obligation within 21 days following receipt of written demand by the Receiver on the Defendant via U.S.P.S. Certified Mail, Return Receipt Requested. Payment of the Judgment Amount shall be made by certified check, bank cashier's check, United States postal money order or electronic wire transfer, payable to Thomas L. Taylor III, Receiver for Kaleta Capital Management, Inc., et al. In making payment of the Judgment Amount, the Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to the Defendant. Defendant

shall pay no pre-judgment interest on the Judgment Amount, and shall pay post-judgment interest at a rate determined pursuant to 28 U.S.C. § 1961 on any amounts not timely paid upon demand of the Receiver in conformity with the above terms of payment.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Settlement Agreement [Doc. # 235-1 in the Receivership Action] is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Agreed Final and Non-Dischargeable Judgment.

There being no just reason for delay in the entry of this Agreed Final and Non-Dischargeable Judgment as to the Defendant, the Court hereby directs the clerk to enter judgment as to the Defendant pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SO ORDERED at Houston, Texas this \_\_\_\_ day of \_\_\_\_\_, 2013.

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Nancy F. Atlas  
United States District Judge