

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the CALIFORNIA CORPORATIONS COMMISSIONER,

Plaintiff,

vs.

CANAM CAPITAL CORP. a Nevada corporation; PREMIER EQUITY FUND, LLC, a Nevada limited liability company; PREMIER EQUITY FUND II, LLC, a Nevada limited liability company; PREMIER EQUITY FUND III, LLC, a Nevada limited liability company; PREMIER EQUITY FUND IV, LLC, a Nevada limited liability company; JAY JORDAN BARNHARDT, as an individual; KELLY KEITH MORGAN, as an individual; AARON KANE BARNHARDT, as an individual, and Does 1 through 10, inclusive,
Defendants.

And

POWER RESEARCH CORP., a California corporation, and Relief Does 1- 10, inclusive,

Relief Defendants.

Case No.: BC453286

Action Filed: January 20, 2011
Assigned to Hon. Mel Red Recana, Dept. 45

STIPULATION FOR ENTRY OF FINAL JUDGMENT BETWEEN PLAINTIFF AND BUSINESS ENTITY DEFENDANTS CANAM CAPITAL CORP., PREMIER EQUITY FUND, LLC, PREMIER EQUITY FUND II, LLC, PREMIER EQUITY FUND III, LLC, PREMIER EQUITY FUND, IV LLC, AND PREMIER EQUITY FUND, V LLC AND INDIVIDUAL DEFENDANTS JAY JORDAN BARNHARDT, AARON KANE BARNHARDT AND KELLY KEITH MORGAN

1 **RECITALS**

2 A. The California Commissioner of Corporations (“Commissioner” or “Plaintiff”) filed
3 this action on January 20, 2011 pursuant to the Corporate Securities Law of 1968, California
4 Corporations Code Section 25000 *et seq.* (“CSL”). Plaintiff alleges that from February 2004 and
5 continuing thereafter, defendants fraudulently raised at least \$15,000,000 from at least 337
6 investors, from securities transactions in which defendants conducted general solicitations in
7 violation of the CSL. Plaintiff alleges violations of CSL sections 25110 (offer or sale of securities
8 without qualification) and 25401 (the offer or sale of securities by means of material
9 misrepresentations or omissions), and violations of a Desist and Refrain Order issued by the
10 Commissioner on February 11, 2009 (“2009 Order”).

11 B. Defendant CanAm Capital Corp. (“CanAm”) is a Nevada corporation formed in
12 2000 with a primary business address at 1875 Century Park East, Suite 1860, Los Angeles,
13 California 90067. At all relevant times CanAm transacted business within and from California
14 directly and through defendants Premier Equity Fund, LLC; Premier Equity Fund II, LLC; Premier
15 Equity Fund III, LLC; Premier Equity Fund IV, LLC; Premier Equity Fund V, LLC (collectively,
16 the “Funds”); Jay Jordan Barnhardt (“J. Barnhardt”); Aaron Kane Barnhardt (“A. Barnhardt”) and
17 Kelly Keith Morgan (“Morgan”). CanAm is the manager of the Funds. These business activities
18 include selling membership interests in limited liability companies from California to investors in
19 California and elsewhere. CanAm has never been licensed or qualified with the Department of
20 Corporations (“Department”) in any capacity to offer or sell securities.

21 C. Defendant Premier Equity Fund, LLC (“PEF”) formed on August 2, 2003, is a
22 Nevada limited liability company with a business address at 1875 Century Park East, Suite 1860,
23 Los Angeles, California 90067. At all relevant times PEF transacted business within and from
24 California directly and through defendants CanAm, J. Barnhardt, A. Barnhardt and Morgan. These
25 business activities include selling membership interests in PEF to investors in California and
26 elsewhere.

27 D. Defendant Premier Equity Fund II, LLC (“PEF II”) formed on August 25, 2004, is a
28 Nevada limited liability company with a business address at 1875 Century Park East, Suite 1860,

1 Los Angeles, California 90067. At all relevant times PEF II transacted business within and from
2 California directly and through defendants CanAm, J. Barnhardt, A. Barnhardt and Morgan. These
3 business activities include selling membership interests in PEF II to investors in California and
4 elsewhere.

5 E. Defendant Premier Equity Fund III, LLC (“PEF III”) formed on January 27, 2006,
6 is a Nevada limited liability company with a business address at 1875 Century Park East, Suite
7 1860, Los Angeles, California 90067. At all relevant times PEF III transacted business within and
8 from California directly and through defendants CanAm, J. Barnhardt, A. Barnhardt and Morgan.
9 These business activities include selling membership interests in PEF III to investors in California
10 and elsewhere.

11 F. Defendant Premier Equity Fund IV, LLC (“PEF IV”) formed on April 12, 2007, is a
12 Nevada limited liability company with a business address at 1875 Century Park East, Suite 1860,
13 Los Angeles, California 90067. At all relevant times PEF IV transacted business within and from
14 California directly and through defendants CanAm, J. Barnhardt, A. Barnhardt and Morgan. These
15 business activities include selling membership interests in PEF IV to investors in California and
16 elsewhere.

17 G. Defendant Premier Equity Fund V, LLC (“PEF V”) is a Nevada limited liability
18 company with a business address at 1875 Century Park East, Suite 1860, Los Angeles, California
19 90067. At all relevant times PEF V transacted business within and from California directly and
20 through defendants CanAm, J. Barnhardt, A. Barnhardt and Morgan. These business activities
21 include selling membership interests in PEF V to investors in California and elsewhere.

22 H. Defendant J. Barnhardt is an individual whose last known business address is 1875
23 Century Park East, Suite 1860, Los Angeles, California 90067. At all relevant times, J. Barnhardt
24 was the president and principal of CanAm.

25 I. Defendant A. Barnhardt is an individual whose business address is 1875 Century
26 Park East, Suite 1860, Los Angeles, California 90067. At all relevant times, A. Barnhardt was
27 vice president of CanAm, president of Power Research Corporation (“Power”) and a co-owner and
28 registered representative of Santa Rita Partners, Inc. (“Santa Rita”).

1 J. Defendant Morgan is an individual whose last known business address is 1875
2 Century Park East, Suite 1860, Los Angeles, California 90067. At all relevant times Morgan was:
3 1) vice president of client relations for CanAm; and 2) a registered representative of Santa Rita.

4 K. On January 20, 2011, the Court granted a temporary restraining order, asset freeze
5 and appointment of a receiver, Peter A. Davidson (“Receiver”) to take control of defendants
6 CanAm, PEF, PEF II, PEF III, and PEF IV¹, J. Barnhardt, A. Barnhardt and Morgan (hereinafter
7 collectively referred to as “Defendants”) assets for the benefit of investors. Power, Santa Rita, and
8 Steve Bowling Heraty were named as Relief Defendants.²

9 L. On March 7, 2011, the Court granted the Preliminary Injunction, and confirmed the
10 asset freeze and appointment of the Receiver as to all Defendants, and in addition placed entities
11 Northern Equities, LLC, the CDN Fund, LLC and TSX Venture Exchange Funds under the
12 Receiver’s custody and control.

13 M. It is the intention and desire of the parties to resolve this matter without the time
14 and expense of a trial.

15 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
16 forth herein, the parties agree as follows:

17 **TERMS AND CONDITIONS**

18 It is hereby stipulated by and between the Plaintiff; Defendants CanAm, PEF, PEF II, PEF
19 III, PEF IV, AND PEF V (hereinafter, the “Entity Defendants”); Defendant J. Barnhardt;
20 Defendant A. Barnhardt; Defendant Morgan; and the Receiver as follows:

21 1. Defendants admit jurisdiction of this Court over them and over the subject matter of
22 this action. Defendants enter general appearances in this action. Defendants acknowledge that
23 entry of general appearances is equivalent to personal service of the summons on them pursuant to
24 California Code of Civil Procedure section 410.50.

25 2. Defendants admit that they have received service of the Summons and operative
26 Complaint (“Complaint”) filed in this matter.

27
28 _____
¹ On February 10, 2011 the Commissioner filed an Amendment to Complaint to add PEF V, LLC as a Doe defendant.

1 3. Defendants have read the Complaint, this Stipulation to Entry of Final Judgment
2 Between Plaintiff and Defendants (“Stipulation”) and the proposed Final Judgment against
3 CanAm Capital Corp., Premier Equity Fund, LLC, Premier Equity Fund II, LLC, Premier Equity
4 Fund III, LLC, Premier Equity Fund IV, LLC, and Premier Equity Fund V, LLC, Jay Jordan
5 Barnhardt, Aaron Kane Barnhardt, and Kelly Keith Morgan (“Final Judgment”) in the form
6 attached hereto as Exhibit 1.

7 4. Defendants, without admitting or denying the allegations contained in the
8 Complaint and without admitting any wrongdoing, voluntarily consent to the entry by the Court of
9 the Final Judgment, and waive any defense to the Complaint.

10 5. Defendants hereby waive entry of Findings of Fact and Conclusions of Law under
11 California Code of Civil Procedure section 632 and all rights to appeal the entry of the Final
12 Judgment.

13 6. Defendants, Plaintiff and the Receiver hereby waive any claims known and
14 unknown to them against the other, their agents, officers, or employees which are based on the
15 facts underlying the present action. Defendants, Plaintiff and the Receiver specifically waive any
16 rights provided by California Civil Code section 1542, which provides: “A general release does
17 not extend to claims which the Creditor does not know or suspect to exist in his favor at the time
18 of executing the release, which if known by them must have materially affected his settlement with
19 the Debtor.”

20 7. Defendants CanAm Capital Corp., Premier Equity Fund, LLC, Premier Equity
21 Fund II, LLC, Premier Equity Fund III LLC, Premier Equity Fund IV, LLC, and Premier Equity
22 Fund V, LLC, Jay Jordan Barnhardt, Aaron Kane Barnhardt, and Kelly Keith Morgan agree to the
23 issuance by the Court in the above-entitled action of a permanent injunction enjoining all
24 Defendants, their agents, employees, attorneys in fact, and all persons acting in concert or
25 participating with them, from directly or indirectly:

28 ² Relief defendants Steve Bowling Heraty and Santa Rita Partner, Inc. previously stipulated to entry of judgment and are no longer in the action.

- 1 a. Violating California Corporations Code section 25110, by offering to sell, selling,
2 arranging for the sale of, issuing, engaging in the business of selling, or negotiating for
3 the sale of any security of any kind, including but not limited to, the securities
4 described in the Complaint, unless such security or transaction is qualified;
- 5 b. Violating California Corporations Code section 25401, by offering to sell or selling any
6 security of any kind, including but not limited to, the securities described in the
7 Complaint, by means of any written or oral communication which includes any untrue
8 statement of material fact or omits to state any material fact necessary in order to make
9 the statements made, in the light of the circumstances under which they are made, not
10 misleading; and
- 11 c. Violating the Commissioner's 2009 Desist and Refrain Order for offering and selling
12 unqualified non-exempt securities in violation of the CSL.

13 8. The Entity Defendants agree to the Court's entry of a final judgment of restitution
14 against them and in favor of Plaintiff in the total amount of \$17,860,000. The liability for
15 restitution shall be joint and several as against the Entity Defendants.

16 9. Jay Jordan Barnhardt hereby forfeits all right, title and interest in and to the CanAm
17 defined benefits/pension plan, and assigns to the Receiver all of his right, title and interest in and
18 to the following specific assets: (1) All cash held in the Receiver's accounts, including funds from
19 J. Barnhardt's Bank of America account, proceeds from the sale of the residence on Doheny
20 Avenue, and the personal property that was located in the CanAm offices; (2) Funds in the CanAm
21 Defined Benefit Plan, currently frozen by the Receiver at Charles Schwab; (3) the Porsche and a
22 Ferrari automobile which are both located at Horseless Carriage in New Jersey; and (5) the Jetta
23 which the Court has already approved for sale. Other than as specifically set forth herein, the
24 Receiver will not seek to collect any additional assets from J. Barnhardt.

25 10. Aaron Kane Barnhardt hereby forfeits all right, title and interest in and to the
26 CanAm defined benefits/pension plan, and assigns to the Receiver all of his right, title and interest
27 in and to the following specific assets: (1) All cash held in the Receiver's accounts, including
28 funds from the accounts of Power Research and Santa Rita; (2) the IRA at TD/Ameritrade No.

1 781-696398, which funds all came from the CanAm pension/defined benefit plan. Other than as
2 specifically set forth herein, the Receiver will not seek to collect any additional assets from A.
3 Barnhardt.

4 11. Kelly Keith Morgan forfeits all right, title and interest in and to the CanAm defined
5 benefits/pension plan, and assigns to the Receiver all of his right, title and interest in and to the
6 following specific assets: (1) All cash in the Receiver's accounts; and (2) his Vanguard IRA
7 account ending in 0015, which funds all came from the CanAm pension/defined benefit plan.
8 Other than as specifically set forth herein, the Receiver will not seek to collect any additional
9 assets from Morgan.

10 12. The parties stipulate and agree that this Court shall retain jurisdiction of this action
11 in order to implement and enforce the terms of this Stipulation and entry of the Final Judgment
12 pursuant thereto, and to entertain any suitable application or motion for additional relief or
13 modification or any order made herein within the jurisdiction of the Court.

14 13. The parties hereby acknowledge and agree that this Stipulation constitutes the
15 entire Stipulation between Plaintiff and Defendants, and supersedes any and all prior or
16 contemporaneous agreements between Plaintiff and Defendants.

17 14. Defendants acknowledge that the entry of Final Judgment pursuant to this
18 Stipulation shall not preclude any other federal, state or county agency from initiating any other
19 prosecution based upon the allegations contained in the Complaint in the above-entitled case or
20 based on any other acts by Defendants which may violate California or federal law.

21 15. Defendants agree and acknowledge that nothing in this Stipulation or in the Final
22 Judgment in this matter shall preclude the Commissioner, her agents, officers, or employees, to the
23 extent authorized by law, from referring any evidence or information regarding this matter to any
24 district attorney or any other state or federal law enforcement official, or from assisting,
25 cooperating, or co-prosecuting with regards to any investigation and/or action brought by any
26 other federal, state or county agency. Defendants further agree and acknowledge that nothing in
27 this Stipulation or in the Final Judgment in this matter shall bind or otherwise prevent any other
28 federal, state or county agency from the performance of its duties. However, Plaintiff shall not

1 initiate any further civil action relating to or arising from the facts set forth in the Complaint, as
2 such claims have been released.

3 16. Each party hereto represents and warrants that it has received independent advice
4 from its attorney(s) and/or other representatives prior to entering into this Stipulation, and in
5 executing this Stipulation relied solely on the statements set forth herein and the advice of its own
6 counsel and/or representative.

7 17. In that the parties have had the opportunity to draft, review and edit the language of
8 this Stipulation, no presumption for or against any party arising out of drafting all or any part of
9 this Stipulation will be applied in any action relating to or arising out of this Stipulation.
10 Accordingly, the parties hereby waive the benefit of California Civil Code section 1654 and any
11 successor statute.

12 18. The parties hereto shall, from time to time, at the request of another party, execute
13 and deliver such instruments of transfer, conveyance or assignment and/or take such other action
14 as may be required or requested to carry out the terms of this Stipulation.

15 19. The waiver of any provision of this Agreement shall not operate to waive any other
16 provision set forth herein, and any waiver, amendment and/or change to the terms of this
17 Agreement must be in writing signed by the parties hereto.

18 20. Each signatory hereto represents and warrants that he/she possesses the necessary
19 capacity and authority to execute this Stipulation and bind the parties hereto.

20 21. If any paragraph, clause, or provision of this Stipulation or of the Final Judgment
21 entered thereto, or the application thereof, is held invalid or unenforceable, such provision shall be
22 severed, and the invalidity shall not affect the application of the other provisions of this
23 Stipulation, or of the Final Judgment, which shall remain in full force and effect. The provisions
24 of the Stipulation and the Final Judgment are declared by Plaintiff and Defendants to be severable.

25 22. This Stipulation may be executed in one or more separate counterparts, each of
26 which when so executed, shall be deemed an original. Such counterparts shall together constitute
27 and be one and the same instrument. A fax signature shall be deemed the same as an original.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PLAINTIFF, PEOPLE OF THE STATE OF CALIFORNIA by and through the Corporations Commissioner, JAN LYNN OWEN

Dated: 10/23/12

MARY ANN SMITH, Deputy Commissioner

APPROVED AS TO FORM AND CONTENT:

ERVIN COHEN & JESSUP LLP

Dated: 10/24/12

Byron Z. Moldo, Counsel for Receiver

THE MALONEY FIRM, APC

Dated: 10/25/12

Patrick M. Maloney, Counsel for Defendants
Jay Jordan Barnhardt, Aaron Kane Barnhardt
and Kelly Keith Morgan