

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**RALPH S. JANVEY, in his capacity as
court-appointed Receiver for the Stanford
International Bank, Ltd., et al.**

Plaintiff,

v.

JAMES R. ALGUIRE, et al.

Relief Defendants.

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Case No. 03:09-CV-0724-N

**APPENDIX TO PATRICIO ATKINSON'S MOTION TO COMPEL
ARBITRATION OR, IN THE ALTERNATIVE, TO DISMISS
SECOND AMENDED COMPLAINT AND BRIEF IN SUPPORT**

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Case No. 03:09-CV-0724-N

DECLARATION OF PATRICIO ATKINSON

I, Patricio Atkinson, declare and state pursuant to 28 U.S.C. § 1746 the following:

1. My name is Patricio Atkinson. I am over twenty-one years of age and have never been convicted of a felony. I make this declaration based on my personal knowledge. If called as a witness, I could and would testify competently to the matters contained herein.

2. At all times relevant to this case, I have resided and been domiciled in the State of Florida.

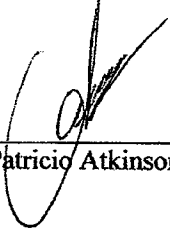
3. I did not receive any interest, principal, commission or other payment in connection with the purchase and sale of CD's issued by Stanford International Bank, Ltd. I was in no way complicit in, and had absolutely no knowledge of, any improper activity relating to the issuance or sale of CDs by Stanford International Bank, Ltd. and/or any of its related entities.

4. On or about November 16, 2007, I terminated my employment with Stanford Financial Group Company ("Stanford") pursuant to a Separation Agreement and Waiver of Rights (the "Severance Agreement") entered into with Stanford. A true and correct copy of the Severance Agreement is attached as Exhibit B to this Appendix.

5. I fully performed my obligations under the Severance Agreement in all material respects.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on: February 4, 2010.



Patricio Atkinson



SEPARATION AGREEMENT AND WAIVER OF RIGHTS

This Separation Agreement and Waiver of Rights ("Agreement and Waiver") is dated as of the 16th day of November, 2007, by and between Patricio Atkinson ("Employee"), and Stanford Financial Group Company, including its affiliates and subsidiaries ("Stanford"). Stanford and Employee mutually desire to enter into this Agreement and Waiver whereby Employee acknowledges the separation of his employment with Stanford and agrees to waive and release Stanford from claims and rights he may have as more fully set forth in paragraph 4 below for and in consideration of the following consideration:

One (1) separation payment of \$300,000.00, less standard deductions for payroll taxes, which payment will be distributed as set forth in Section 9 of this Agreement and Waiver.

This separation payment does not affect the payment by Stanford to Employee for: 1) earned but unused vacation, if any, as of the effective date of his separation; 2) any contributions by Stanford to Employee's account in the Stanford's 401(k) Plan which are earned according to the terms of said plan; and 3) any salary or other compensation earned but not yet paid.

In exchange for the above-described consideration, Employee also hereby agrees as follows:

- 1) **SEPARATION:** Employee's separation of employment will occur on January 5, 2008. Employee has requested to take his accrued vacation and personal leave from November 16, 2007 through January 5, 2008. Consistent therewith, Employee shall not report to work after November 15, 2007, unless requested by Stanford.

- 2) **SETTLEMENT AND COMPROMISE:** Employee agrees that this Agreement and Waiver is intended to resolve all actual and/or potential matters between him and Stanford and to forever terminate any relationship or dealings they may have. Accordingly, to the maximum extent permitted by law, this Agreement and Waiver extinguishes all rights and claims, if any, which Employee may have against Stanford and all obligations, if any, which Stanford may have to Employee, whether contractual, statutory, common law or otherwise, including but not limited to those relating to the employment of Employee by Stanford or the termination of such employment. Therefore, as part of this settlement and compromise, Employee agrees to waive and relinquish any and all claims and rights arising out of or relating to his previous employment with Stanford. Employee further acknowledges that, by entering into this Agreement and Waiver, neither he nor Stanford admits to any unlawful conduct or other wrongdoing related to the employment of Employee, that this Agreement and Waiver does not constitute any evidence of unlawful conduct or wrongdoing on his part or on the part of Stanford, and that Stanford expressly denies any unlawful conduct by Stanford.

- 3) **EMPLOYEE REPRESENTATION:**
 - (a) Employee warrants that he has not filed and/or assigned and will not assign his right to file or maintain any claims, lawsuits, charges, complaints, petitions, or accusatory pleadings against Stanford with any governmental agency or in any court, based upon, arising out of or related in any way to any events occurring prior to the execution of this Agreement and Waiver, including his employment with Stanford or the termination of such employment.



- (b) Employee acknowledges that in connection with his employment, Employee was fully paid for all hours worked, received all benefits due, and was not denied time off or any leave of absence to which Employee was legally entitled as an employee of Stanford.

4) **WAIVER AND RELEASE:**

- (a) Employee for himself and for his spouse (if any), heirs, executors, administrators, successors, estates, beneficiaries, assigns, and representatives, for the consideration set forth above and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, hereby **KNOWINGLY AND VOLUNTARILY WAIVES, RELEASES, ACQUITS and FOREVER DISCHARGES** Stanford, its present and former directors, officers, employees, agents, attorneys, affiliates, subsidiaries, stockholders, predecessors, successors, transferees, trustees, assignees, and all other persons or parties affiliated with or in privity with any of them (collectively, "Stanford Releasees") from any and all claims, charges, causes of actions, rights, and demands which he has or may have, of any kind or character, whether now known or unknown, including, but not limited to, any claim for salary, compensation, severance pay, retirement or other benefits, expenses, actual and compensatory damages, exemplary damages, interest, attorneys' fees, costs, and any form of declaratory or injunctive relief not expressly provided in this agreement ("Waiver and Release"). This Waiver and Release includes all claims arising from, attributable to, or related to: (i) Employee's employment with Stanford, (ii) Employee's separation from Stanford, and (iii) any and all other acts or omissions that occurred from the beginning of time up to and including the Effective Date of his execution of this Agreement and Waiver. This Waiver and Release includes, but is not limited to, any claims or wrongful refusal to hire, wrongful termination, discrimination or harassment (based on gender, race, age or any other factor), failure to promote, differences in compensation or benefits, emotional distress, breach of contract, tortious interference with contract, retaliation, assault, battery, defamation, conspiracy, negligence, gross negligence or any other alleged unlawful or wrongful conduct, whether arising under any federal or state statute or regulation or the common law (contract law, tort or other) of any jurisdiction. Employee acknowledges that he is aware of any rights he may have under federal or state statutes such as, but not limited to Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991, 42 U.S.C. § 2000e *et seq.*; under the Equal Pay Act of 1963, 29 U.S.C. § 206(d) *et seq.*; 42 U.S.C. § 1981; 42 U.S.C. § 1985; 42 U.S.C. § 1988; the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*; the Americans with Disabilities Act, the Age Discrimination in Employment Act ("ADEA"), 42 U.S.C. § 12101 *et seq.*; the Florida Human Rights Act, the Florida Wage Discrimination Law, and the anti-retaliation provisions codified at Fla. Stat. Ch. 448.101 to 448.105, as amended; any and all claims under the laws governing employee benefits including, but not limited to, the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*; and any and all other claims which are subject to waiver under any federal, state, or local statute or ordinance, or under any federal, state or local law, whether statutory or at common law or otherwise and understands and agrees that any and all claims based on such rights under those statutes and any others are among those that he is releasing and waiving as part of this Agreement and Waiver, except for rights or claims under the ADEA which may arise after execution of this Agreement and Waiver; and



- (b) Employee agrees that should any government agency or third party pursue any claims against Stanford or any of the Stanford Releasees, Employee disclaims any right to money damages or individual relief in connection with same, and Employee assigns and agrees to assign and/or pay to Stanford any amount adjudged due to him or her in connection with same; and
- (c) Except as relating to waiver of claims under the ADEA, Employee, unless otherwise provided by law, agrees not to bring any lawsuit, charge or claim against Stanford before any government agency or in any court, arising from or relating to the matters identified in this paragraph 4; and
- (d) Employee understands and agrees that no claims whatsoever against Stanford Releasees of the nature described in this paragraph 4 are reserved.
- (e) In compliance with the requirements of the ADEA, as amended by the Older Workers Benefit Protection Act of 1990, Employee acknowledges by his signature below that he has read and understands this Agreement and Waiver and specifically understands the following:
 - 1. That he has been advised in writing of his right to consult with an attorney before signing this Agreement and Waiver;
 - 2. That he is releasing the Stanford Releasees from, among other things, any claim which he might have against them pursuant to the ADEA as amended by the Older Workers Benefit Protection Act of 1990;
 - 3. That this Agreement and Waiver does not cover rights or claims that may arise under the ADEA after the date of execution of this Agreement and Waiver;
 - 4. That he has been given twenty-one (21) days in which to consider this Agreement and Waiver before signing it; and
 - 5. That he may revoke this Agreement and Waiver during the seven (7) day period following his execution of this Agreement and Waiver by delivering notice of such revocation by personal delivery to the Director of Human Resources at 5050 Westheimer, Houston, Texas 77056 or by facsimile to (713) 964-5284 by 5:00 p.m. C.S.T. on the seventh day following Employee's execution of this Agreement. Accordingly, this Agreement and Waiver will not become binding and effective until the seven (7) day revocation period has expired without timely revocation by Employee ("Effective Date").

5) **CONFIDENTIALITY AGREEMENT:**

- (a) Employee hereby acknowledges and re-affirms his obligations under any Confidentiality Agreement that he may have previously signed with Stanford and agrees and



acknowledges that he continues to be bound by the terms of any such agreement;

- (b) Employee agrees that he will not disclose Stanford's trade secrets and other proprietary and/or confidential information acquired during his employment with Stanford (such as information concerning strategic marketing plans, product development plans, cost or pricing information, vendor or supplier information, confidential customer information, information regarding proposed joint ventures, mergers, acquisitions, and other such anticipated or contemplated business ventures of Stanford, and confidential financial information,) unless such information has already become or becomes publicly known other than through Employee unless Employee is required to disclose such information by law or court order. Employee further promises and agrees that he will not damage, or attempt to damage, the business reputation or goodwill of Stanford;
 - (c) Employee acknowledges that, in addition to signing this Agreement and Waiver, he already has returned or will return to Stanford any and all of Stanford's property entrusted to him, such as (but not limited to) marketing plans and related information, product development plans and related information, trade secret information, pricing information, customer information, vendor information, financial information, telephone lists, computer software and hardware, keys, credit cards, vehicle, telephone, computer, and office equipment;
 - (d) For eighteen (18) months after the Effective Date of this Agreement and Waiver, Employee, acting either directly or indirectly, or through any other person, firm, or corporation, will not encourage, induce or attempt to induce or influence any employee of Stanford to terminate employment with Stanford or accept employment with a competitor of Stanford; and
 - (e) Employee shall not disclose the contents of this Agreement and Waiver to any person who is not a party hereto or discuss its terms with any person who is not a party hereto (with the exception of confidential disclosures to Employee's immediate family members, personal attorney or personal tax advisor) unless ordered by a court of competent jurisdiction, compelled pursuant to a subpoena, or required for the purpose of a governmental tax audit or as required any government entity having legal authority to require disclosure. Should Employee or any representative of Employee receive any such subpoena or court order compelling disclosure, Employee to the maximum extent allowed by law will immediately notify Stanford so that it may have the opportunity to interpose an objection. Employee agrees that should he breach the provisions of this paragraph, that Stanford shall have the right to recover from any sums paid to Employee.
- 6) **BREACH OF CONFIDENTIALITY:** In the event that Employee, either directly or indirectly, breaches, violates or fails to fully perform his obligations under paragraph 5 (hereinafter referred to in this paragraph as a "breach"), Employee acknowledges and agrees that each such breach will cause immediate and irreparable harm to Stanford in a manner that cannot be measured nor adequately compensated for in damages.

Employee has carefully considered the nature and extent of the restrictions upon him and the rights and remedies conferred upon Stanford under this Agreement and Waiver, and hereby acknowledges and agrees that the same are reasonable with respect to scope and duration; are designed to protect the legitimate business interests of Stanford; and do not confer benefits upon



Stanford disproportionate to the detriment of Employee. Employee agrees that, in the event any court of competent jurisdiction determines that the above covenants are invalid or unenforceable, he will join with Stanford in requesting the court to construe the applicable provision by limiting or reducing to the minimum extent necessary so as to be enforceable to the extent compatible with applicable law.

Stanford and Employee further agree that, in the event of any such breach and in addition to any and all other remedies that it may have at law or in equity, Stanford shall be entitled to temporary, preliminary, and permanent injunctive relief to restrain such breach by Employee, and to recover all costs and expenses, including reasonable attorneys' fees, of any proceedings brought to obtain such injunctive relief. Employee agrees to waive any objection to, or defense in respect of, the Confidentiality commitment as set forth in paragraph 5 hereof. Nothing contained in this paragraph shall restrict or limit in any manner Stanford's right to seek and obtain any form of relief, legal or equitable, in an action brought to enforce its rights hereunder.

- 7) **FUTURE COOPERATION:** Employee agrees that he will make himself available for discussion and testimony and will otherwise fully cooperate with Stanford in all past, present, and future litigation involving Stanford for which Stanford requests Employee's cooperation.
- 8) **BINDING EFFECT:** Employee is bound by this Agreement and Waiver and anyone who succeeds to his rights and responsibilities, such as his heirs or the executor of his estate, is also bound. The Waiver and Release of all claims by Employee is made for the benefit of Stanford and all who succeed to its rights and responsibilities, such as its successors or assigns. This Agreement and Waiver shall have no force or effect and shall not be binding on the parties until this Agreement and Waiver is executed by both parties and the applicable revocation period has expired without the Agreement and Waiver having been timely revoked.
- 9) **PAYMENT OF CONSIDERATION:** The separation payment provided for in the first paragraph of this Agreement and Waiver shall occur at the latter of the expiration of the seven (7) day revocation period referenced in paragraph 4(e)(5) or January 15, 2008 (so long as Employee has not revoked his acceptance of this Agreement and Waiver). Employee acknowledges and agrees that the payment made to him under this Agreement and Waiver is more than Stanford is required to pay under its normal policies and procedures and is payment in consideration for his commitments herein, including but not limited to his Waiver and Release as set forth more fully in paragraph 4 herein. If Employee fails to sign this Waiver and Release, Employee understands that he will not be entitled to the separation payments or benefits set forth above. Neither this Agreement and Waiver nor anything contained herein shall constitute or is to be construed as an admission by either party as evidence of any liability, wrongdoing or unlawful conduct.
- 10) **REMEDIES:** Employee acknowledges and agrees that Stanford has a vested interest in protecting its business, reputation and goodwill, trade secrets, and other confidential and proprietary information and that Stanford might suffer irreparable harm, injury and damage as a result of his breach of this Agreement and Waiver. Accordingly, Employee agrees that the remedy at law for any breach of this Agreement and Waiver will be inadequate such that Stanford shall be entitled to temporary injunctive relief (and/or a temporary restraining order,) without bond and without the necessity of proving actual or potential irreparable harm, injury or damage, in addition to any money damages.



If Employee breaks the promises Employee has made in this Agreement and Waiver by asserting legal claims against any of the Stanford Releasees which are waived or released by paragraph 4, Employee will be obligated to pay for all fees and costs incurred by the Stanford Releasees to the maximum extent permitted by law, including reasonable attorneys' fees incurred in defending against Employee's claims. In addition, if Employee has made any false representations in this Agreement and Waiver or breaks any of the promises he has made as described above, Employee agrees to repay to Stanford the consideration provided by Stanford pursuant to this Agreement and Waiver. Employee will not be obligated to pay for fees and costs incurred by a Stanford Releasee, or to repay the consideration provided by Stanford pursuant to this Agreement and Waiver, as a condition of or in connection with a challenge to this Agreement and Waiver under the Older Workers Benefit Protection Act.

Employee understands that even if he violates the terms of this Agreement and Waiver, this Agreement and Waiver shall otherwise remain in full force and effect, including Employee's waiver and release of claims.

- 11) **SEVERABILITY:** The waiver, invalidity or unenforceability of any provision of this Agreement and Waiver shall not affect the validity or enforceability of any other provision, it being the intent of Employee and Stanford for any tribunal or court construing this Agreement and Waiver to modify or limit such provision to the extent necessary to render it valid and enforceable to the full extent allowed by law. However, if any provision hereof is not susceptible of such reformation and thus is finally held to be invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement and Waiver shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement and Waiver. The parties acknowledge that each party has reviewed and revised this Agreement and Waiver and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement and Waiver.

- 12) **CHOICE OF LAW/BINDING ARBITRATION:** This Agreement and Waiver shall be governed by Texas law without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction other than the State of Florida. The parties agree to venue in Dade County—Miami, Florida for any dispute arising out of this Agreement or the subject matter thereof. Except for claims under paragraphs 5, 6, 7, 8 and 10 of this Agreement and Waiver, which may be brought in any court of competent jurisdiction, any and all controversies, claims, and differences arising out of or relating to the parties' rights or obligations as set forth in this Agreement and Waiver, and/or the previous employment relationship, which cannot be settled by good faith negotiation between the parties will be finally settled by binding arbitration brought within one (1) year of the alleged violation of this Agreement and Waiver in accordance with the then existing commercial rules of the American Arbitration Association ("AAA"), by one arbitrator. In the event of any conflict between the AAA rules and provisions of this paragraph, the provisions of this paragraph shall govern. Upon the written demand of either of the parties concerned, the parties shall attempt to appoint a single arbitrator. Such arbitrator must be acceptable to both parties. If they are unable to agree within ten (10) days of such demand, each of the parties shall appoint one (1) arbitrator and the two (2) nominated shall, in turn, choose a third arbitrator within a period of ten (10) days of their nomination. The third arbitrator shall then be appointed by the AAA. Arbitration proceedings



shall be held in such place as is mutually agreed upon. The decision of the arbitrator(s) shall be final and binding upon the parties hereto, not subject to appeal, and shall deal with the questions of interest, cost of the arbitration, and all matters relevant thereto. Judgment upon the award or decision rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In the event that an action is brought to enforce the terms of this Agreement and Waiver, the prevailing party shall be entitled to recover its costs of arbitration and/or court, including all attorneys' fees.

- 13) **ENTIRE AGREEMENT:** This Agreement and Waiver constitutes the entire agreement between the parties hereto with respect to the matters set forth herein and supersedes in its entirety any and all agreement or communications, whether written or oral, previously made in connection with the matter herein. This Agreement may not be modified or changed orally. All modifications or changes must be in writing and signed by both Employee and Stanford.

BY YOUR SIGNATURE BELOW, YOU SIGNIFY THAT YOU HAVE READ THIS DOCUMENT, THAT YOU UNDERSTAND ALL OF ITS TERMS AND CONDITIONS, THAT YOU EXECUTE IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND EFFECT, AND THAT YOU DEEM IT TO BE A FAIR AND EQUITABLE SETTLEMENT OF THIS MATTER.

ACCEPTANCE OF AGREEMENT BY STANFORD FINANCIAL GROUP COMPANY

ACCEPTED AND AGREED this 27th day of November, 2007.

Name:

FRANCO MOCCIA

By:

ACCEPTANCE OF AGREEMENT BY EMPLOYEE

AFTER HAVING THE OPPORTUNITY TO CONSIDER THIS AGREEMENT AND WAIVER OF RIGHTS AS STATED ABOVE, I HEREBY ACCEPT THE TERMS AND CONDITIONS STATED IN IT. I UNDERSTAND THAT I HAVE SEVEN (7) DAYS FROM THIS DATE WITHIN WHICH TO REVOKE MY ACCEPTANCE OF THE AGREEMENT.

ACCEPTED this 27th day of November, 2007.

Employee:

P. ATKINSON

DATE: February 5, 2010

Respectfully submitted,

MILLER, EGAN, MOLTER & NELSON LLP

By: /s/ Kerry C. Peterson

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**ATTORNEYS FOR DEFENDANT
PATRICIO ATKINSON**

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2010, a true and correct copy of the foregoing document was submitted to the Clerk of the Court of the U.S. District Court, Northern District of Texas, using the CM/ECF system, and was served upon all counsel that have appeared in this case through this Court's electronic filing system.

/s/ Matthew D. Rinaldi

Matthew D. Rinaldi