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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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GEORGE WOOD, on behalf of himself)
and all others similarly situated,)

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Plaintiff,)

11

vs.)

12

IONATRON, INC., et al.,)

13

Defendants.)

No. CV 06-354-TUC-CKJ
CV 06-377-TUC-CKJ

14

RAYMOND DEEDON, individually and)
on behalf of all others similarly situated,)

16

Plaintiff,)

17

vs.)

18

IONATRON, INC., et al.,)

19

Defendants.)

ORDER

20

Pending before the Court are Lead Plaintiffs' Motion for Final Approval of Settlement, Application for Award to Lead Plaintiff, and Application for Award of Attorneys' Fees [Doc. # 154]. The Court conducted a Fairness Hearing on September 24, 2009, at which time the Court advised the parties that it would accept the settlement and issue a formal order.

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Factual and Procedural Background

27

Ionatron, Inc. ("Ionatron") became a public company through a reverse merger

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1 with U.S. Home and Garden in March 2004. At the time of the IPO, Robert Howard and
2 Thomas C. Dearmin owned 49.7% of the Company's outstanding shares. Ionatron's
3 primary business is developing and marketing Directed Energy Weapon technology
4 products, including the Joint IED Neutralizer weapon ("JIN"). The JIN grew out of
5 Ionatron's Laser Induced Plasma Channel ("LIPC") technology as a way of directing
6 electricity at a target. Specifically, the JIN was designed to assist the U.S. military in
7 destroying IEDs.

8 On March 11, 2005, the *Mississippi Business Journal* published an article
9 announcing that Ionatron had entered into a \$1.7 million contract with the U.S. Air Force
10 for the "prototyping and deployment" of a counter roadside/improvised explosive device
11 (IED) system. On May 4, 2005, the beginning of the Class Period, Defendants issued a
12 press release announcing that the JIN had been featured the previous evening on the NBC
13 Nightly News. The Plaintiffs alleged that starting with this press release through the
14 eventual announcement on May 10, 2006, that the government had determined the JIN
15 vehicle platform required further changes, Defendants engaged in a number of
16 misrepresentations and/or omissions about the readiness of the JIN in an effort to mislead
17 the public and artificially inflate Ionatron's stock price.

18 Plaintiffs filed this proposed class action individually and on behalf of all persons
19 who purchased the publicly traded common stock of Ionatron from May 4, 2005 to May
20 10, 2006 ("Class Period").¹ Plaintiffs alleged (1) securities fraud under Section 10(b) of
21 the Exchange Act of 1934 and Rule 10b-5, (2) control person liability under Section 20(a)
22 of the '34 Act. The essence of Plaintiffs' claim is that the Defendants committed
23 securities fraud by making material misrepresentations about the operational capabilities
24 and field readiness of the JIN.

25 On July 31, 2009, Plaintiffs filed a Motion for Preliminary Approval of Class
26 Action Settlement [Doc. # 147], docketing the motion as a Notice of Settlement, and a
27

28 ¹Hylton S. Petit, Jr., and Claire Silverman are the lead plaintiffs.

1 Stipulation regarding the Notice of Settlement [Doc. # 149]. On August 6, 2009, the
2 Court issued an Order in which:

3 1. The Court found, for the purposes of the Settlement only, that the
4 prerequisites for a class action under Fed.R.Civ.P. 23(a) and (b)(3) were satisfied
5 in that: (a) the number of Class Members is so numerous that joinder of all
6 members thereof is impracticable; (b) there are questions of law and fact common
7 to the Class; (c) the claims of the named representatives are typical of the claims
8 of the Class they seek to represent; (d) the Lead Plaintiffs will fairly and
9 adequately represent the interests of the Class; (e) the questions of law and fact
10 common to the members of the Class predominate over any questions affecting
11 only individual members of the Class; and (f) a class action is superior to other
12 available methods for the fair and efficient adjudication of the controversy.

13 2. The Court approved the form of Publication Notice and directed Plaintiffs'
14 Lead Counsel to cause the Publication Notice to be published in The Wall Street
15 Journal.

16 3. The Court ordered that she would only consider comments and/or objections
17 to the Settlement, the Plan of Allocation, or the award of attorneys' fees and
18 reimbursement of expenses only if such comments or objections and any
19 supporting papers were filed in writing with the Clerk of the Court, United States
20 District Court for the District of Arizona, on or before the 9th day of September,
21 2009.

22 *See* August 6, 2009, Order [Doc. # 150].

23 On September 24, 2009, the Court conducted a final fairness hearing in open court.
24 Various counsel appeared in person and telephonically. No class members appeared and
25 no objections to the Settlement Agreement were expressed. The hearing was held to
26 determine: (1) whether the terms and conditions of the Stipulation and Agreement of
27 Settlement are fair, reasonable and adequate for the settlement of all claims asserted by
28 the Class against the Defendants in the Complaint now pending in this Court under the

1 above caption, including the release of the Defendants and the Released Parties, and
2 should be approved; (2) whether judgment should be entered dismissing the Complaint
3 on the merits and with prejudice in favor of the Defendants only and as against all persons
4 or entities who are members of the Class herein who have not requested exclusion
5 therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method
6 to allocate the settlement proceeds among the members of the Class; and (4) whether and
7 in what amount to award Plaintiffs' Counsel fees and reimbursement of expenses.

8
9 *Review of Settlement Agreement*

10 The Court has considered the proposed Settlement Agreement, the record in this
11 matter, including the written and oral arguments of counsel. The Court finds the
12 Settlement Agreement is fair, reasonable, and adequate and, therefore, the Court approves
13 the Settlement Agreement as discussed herein.

14
15 *Summary of Terms of Settlement Agreement*

16 The Settlement Agreement requires Defendants or their D&O Insurers to pay or
17 cause to be paid \$5.3 million ("Cash Settlement Amount") into escrow in an interest-
18 bearing account established by and for the benefit of Lead Plaintiffs and the Class. The
19 Settlement Agreement also requires Defendants to provide the amount of Applied
20 Energetics shares sufficient to equal a total value of \$1.2 million (as determined by the
21 average closing price per share of Applied Energetics stock for the 10 trading days
22 immediately prior to the final fairness hearing held in this action) up to a cap of four (4)
23 million shares. *See Stipulation*, ¶4(a).

24
25 *Legal Standard for Approving Settlement Agreement*

26 In the context of a class action, "the extraordinary amount of judicial and private
27 resources consumed by massive class action litigation elevates the general policy of
28 encouraging settlements to 'an overriding public interest.'" *Austin v. Pennsylvania*

1 *Department of Corrections*, 876 F.Supp. 1437, 1455 (E.D.Pa.1995), *quoting Cotton v.*
2 *Hinton*, 559 F.2d 1326, 1331 (5th Cir.1977). Due to their representative nature, class
3 actions are susceptible to abuse by named plaintiffs or their counsel. *Id.* The Federal
4 Rules of Civil Procedure sets forth the procedural requirements of a class action
5 settlement:

6 (e) **Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or
7 defenses of a certified class may be settled, voluntarily dismissed, or compromised
8 only with the court's approval. The following procedures apply to a proposed
9 settlement, voluntary dismissal, or compromise:

10 (1) The court must direct notice in a reasonable manner to all class members
11 who would be bound by the proposal.

12 (2) If the proposal would bind class members, the court may approve it only
13 after a hearing and on finding that it is fair, reasonable, and adequate.

14 (3) The parties seeking approval must file a statement identifying any
15 agreement made in connection with the proposal.

16 (4) If the class action was previously certified under Rule 23(b)(3), the
17 court may refuse to approve a settlement unless it affords a new opportunity
18 to request exclusion to individual class members who had an earlier
19 opportunity to request exclusion but did not do so.

20 (5) Any class member may object to the proposal if it requires court
21 approval under this subdivision (e); the objection may be withdrawn only
22 with the court's approval.

23 Fed.R.Civ.P. 23. The parties have previously filed “a statement identifying any
24 agreement made in connection with the proposal.” Fed.R.Civ.P. 23(e)(3). It appears that
25 a notice of the hearing substantially in the form approved by the Court was mailed to all
26 persons or entities reasonably identifiable, who purchased the publicly traded securities
27 of Ionatron during the Class Period between May 4, 2005 and May 10, 2006, except those
28 persons or entities excluded from the definition of the Class, as shown by the records of
Ionatron’s transfer agent, at the respective addresses set forth in such records, and that
a summary notice of the hearing substantially in the form approved by the Court was
published in *The Wall Street Journal* pursuant to the specifications of the Court.
Fed.R.Civ.P. 23(e)(1). The Court invited objections from class members and conducted
a fairness hearing to consider whether the Settlement Agreement is “fair, reasonable, and

1 adequate.” Fed.R.Civ.P. 23(e)(2).

2
3
4 *Fair, Reasonable, and Adequate Settlement Agreement*

5 In determining whether a proposed agreement is fair, reasonable, and adequate, the
6 Court must consider the settlement as a whole, rather than individual provisions, for
7 overall fairness. *Staton v. Boeing Company*, 327 F.3d 938, 952 (9th Cir.2003), *citing*
8 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998). In making this
9 determination, a court may consider the following factors:

10 the strength of the plaintiff's case; the risk, expense, complexity, and likely
11 duration of further litigation; the risk of maintaining class action throughout trial;
12 the amount offered in settlement; the extent of discovery completed, and the stage
of the proceedings; the experience and views of counsel; the presence of a
governmental participant; and the reaction of the class members to the proposed
settlement.

13 *Molski v. Gleich*, 318 F.3d 937 (9th Cir.2003), *quoting Linney v. Cellular Alaska*
14 *Partnership*, 151 F.3d 1234, 1242 (9th Cir.1998). The Court need not only consider those
15 factors which are relevant to the case before it “[b]ecause the settlement evaluation
16 factors are non-exclusive.” *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566,
17 576 n. 7 (9th Cir.2004). The Court must consider the relevant factors but need not “reach
18 any ultimate conclusions on the contested issues of law and fact which underlie the merits
19 of the dispute, for it is the very uncertainty of the outcome of litigation and avoidance of
20 wasteful and expensive litigation that induce consensual settlements.” *Officers for*
21 *Justice v. Civil Serv. Comm'n.*, 688 F.2d 615, 625 (9th Cir.1982); *Hanlon*, 150 F.3d at
22 1026.

23
24 *Strengths of Plaintiffs' Case*

25 The Settlement is fair and reasonable in light of the hurdles Lead Plaintiffs would
26 have to overcome to defeat summary judgment and ultimately to prove liability and
27 damages. Liability under the Exchange Act requires Lead Plaintiffs to prove that
28

1 Defendants made materially false or misleading representations, Defendants acted
2 knowingly or recklessly, that the Class' losses were caused by Defendants
3 misrepresentations, and Lead Plaintiffs and the Class Members suffered damages. Failure
4 to prove just one of these elements would prevent any recovery. The parties dispute
5 whether the statements made by Defendants were false and misleading. Additionally,
6 Lead Plaintiffs assert the facts provided by the confidential witnesses establish scienter;
7 however, Defendants assert that it is illogical to believe that Defendants knew the JIN
8 was not suitable for deployment and that the minor portions of stock sales made by
9 Defendants do not support an inference of scienter. Lead Plaintiffs believe expert
10 testimony would establish loss causation despite Defendants' claims that the drop in stock
11 price was not statistically significant. The parties dispute whether Lead Plaintiffs can
12 show that the alleged misrepresentations inflated the stock price because the stock price
13 repeatedly declined. Lead Plaintiffs' ability to establish damages would require
14 additional discovery and expert testimony.

15
16 *Risk, Expense, and Likely Duration of Further Litigation*

17 Lead Plaintiffs assert that extensive discovery remains to establish liability and
18 damages and recognize that permissible discovery in light of national security interests
19 would result in lengthy and expensive litigation. The likelihood and expense of
20 continued litigation weighs in favor of approving the Settlement Agreement. In light of
21 the number of named Plaintiffs, the size of the proposed class, the significant cost of
22 continued litigation, the mandates of Fed.R.Civ.P. 1 (encouraging the "just, speedy, and
23 inexpensive determination of every action.") favor approval of the Settlement Agreement.
24 Additionally, the "compromise of complex litigation is encouraged by the courts and
25 favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2nd
26 Cir.2005).

27
28 *Extent of Discovery and the Stage of the Proceedings*

1 Lead Plaintiffs have not yet engaged in extensive discovery but have received
2 extensive factual presentations by Defendants during mediation. Again, Lead Plaintiffs
3 acknowledge the discovery concerns in light of national security interests. Plaintiffs’
4 counsel assert they have consulted with experts and assert they have sufficient
5 information to make an informed decision as to the reasonableness of the settlement.

6
7 *Amount of the Settlement*

8 The proposed \$6.5 million Settlement – or approximately \$0.44 per share –
9 provides members of the Settlement Class with a substantial recovery that is well in
10 excess of typical recoveries, as the Settlement represents approximately 17 percent of
11 Lead Plaintiffs’ “best case” damages estimate of approximately \$2.65 per share.
12 Significantly, Lead Plaintiffs’ “best case” damages estimate is based upon the assumption
13 that, among other concerns, Plaintiffs’ Counsel would be able to convince the Court and
14 the jury that Lead Plaintiffs are entitled to prevail on every theory and for every claimed
15 drop in Ionatron’s stock price.

16
17 *Experience and Views of Counsel*

18 Another relevant factor is the experience of counsel who determined that
19 settlement was appropriate in this matter. Many of the law firms involved in this case
20 have considerable experience in the applicable area of law and in handling similar
21 actions. Izard Nobel LLP engages in class action litigation on behalf of investors alleging
22 misrepresentations in connection with the purchase of securities and have been formally
23 appointed by many courts as lead counsel or co-lead counsel for investors in securities
24 class actions. *See* Joint Declaration, Document # 156, Exhibit D. Scott + Scott LLP is
25 nationally recognized for recovery of money for individuals and institutional investors
26 through securities class actions. *Id.* Bonnett, Fairbourn, Friedman & Balant, P.C., has
27 represented consumers and investors in major class action cases in federal and state
28 courts; it has extensive experience in plaintiffs’ class action securities cases in and out

1 of the state of Arizona. *Id.*

2 Where, as here, settlement is reached through arms'-length negotiations between
3 experienced counsel, and there is no evidence of collusion or bad faith, the judgment of
4 counsel concerning the adequacy of the settlement is entitled to deference. Plaintiffs'
5 Counsel, who have a great deal of experience in securities class action litigation, have
6 weighed the factors and have concluded that the Settlement is a favorable result which
7 is in the best interests of the Settlement Class. The experience and view of Plaintiffs'
8 counsel favors approval of the settlement.

9
10 *Reaction of Class Members to the Proposed Settlement*

11 The reaction of Settlement Class Members to the proposed Settlement supports
12 final approval. Approximately 8,360 copies of the Notice were mailed to Settlement
13 Class Members or their representatives, the Notice was published on a dedicated internet
14 website, and a Summary Notice was published in The Wall Street Journal. Although the
15 Notice provided that Settlement Class Members could object to the proposed Settlement
16 by September 9, 2009, no objections to the Settlement were submitted and only one Class
17 Member requested exclusion.

18
19 *Absence of Evidence of Collusion*

20 The Ninth Circuit has that “[b]efore approving a class action settlement, the district
21 court must reach a reasoned judgment that the proposed agreement is not the product of
22 fraud or overreaching by, or collusion among, the negotiating parties . . .” *Ficalora v.*
23 *Lockheed Cal. Co.*, 751 F.2d 995, 997 (9th Cir. 1985). In this case, the settlement
24 negotiations were conducted at arms length with the assistance of a mediator. *See e.g.*
25 *Wal-Mart Stores, Inc.*, 396 F .3d at 116-117 (stating that “a presumption of fairness,
26 adequacy, and reasonableness may attach to a class settlement reached in arms-length
27 negotiations between experienced, capable counsel after meaningful discovery”),
28 *citations omitted*. The arms length negotiations that occurred in this matter took place

1 with a second mediator after initial efforts with a different mediator failed. There is no
2 evidence of collusion in this case.

3
4 *Attorneys' Fees*

5 Plaintiffs' Counsel request attorneys' fees in an amount equal to 30% of the
6 settlement fund (they seek cash and stock in the same ratio as recovered for the class).
7 Generally, attorneys' fees provisions included in settlement agreements are subject to the
8 determination of whether the agreement is "fair, adequate, and reasonable." Fed.R.Civ.P.
9 23(e). The assumption in scrutinizing a class action settlement agreement is that the class
10 members have an interest in assuring that the fees to be paid class counsel are not
11 unreasonably high. Thus, the "[district] court must exercise its inherent authority to
12 assure that the amount and mode of payment of attorneys' fees are fair and proper."
13 *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003). The Ninth Circuit has instructed
14 that because the amount of fees is often open to dispute and because the parties are
15 compromising to avoid further disputes, the district court need not inquire into the
16 reasonableness of fees with the same level of scrutiny as when the amount of fees is
17 litigated. *Staton*, 327 F.3d at 966. The district court, however, must conduct some inquiry
18 into the hours expended and the billing rate.

19 Here, the proposed settlement provided that Lead Plaintiffs' counsel would seek
20 an award not to exceed 33 1/3 % of the settlement fund, along with reimbursement of out-
21 of-pocket expenses, including expert fees, in an amount not to exceed \$235,000.00.
22 Notice of this potential award was provided to the settlement class members and no
23 objections have been made. Lead Plaintiffs' counsel have expended considerable time
24 (almost 3000 hours) and effort in the expectation that if they were successful in obtaining
25 a recovery fo the class they would be paid from such recovery. The 30% of the settlement
26 fund (\$1,950,000) requested by counsel is well within the range routinely approved in
27 such cases. The requested award of \$1,950,000 is fair, reasonable, and proper. *Zucker*
28 *v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328-29 (9th Cir. 1999).

1 *Summary*

2 The Court finds the terms of the Settlement Agreement are fair, adequate and
3 reasonable. The terms of the Settlement Agreement address Plaintiffs' grievances as set
4 forth in the Complaint. There is no evidence of collusion among the parties or that
5 counsel brought this action solely for personal financial gain. Rather, Plaintiffs' counsel
6 have sacrificed the potential for earning a greater award of attorneys' fees and costs in
7 the interest of settling this matter for the benefit of the class members. After a thorough
8 review of the record in this matter, considering all the relevant factors, considering and
9 determining the fairness and reasonableness of the award of attorneys' fees and expenses
10 requested, and the absence of any objections to the Settlement Agreement, the Court
11 approves the Settlement Agreement and makes the following orders.²

12
13 Accordingly, IT IS ORDERED:

14 1. The Court has jurisdiction over the subject matter of the Action, the Lead
15 Plaintiffs, all Class Members, and the Defendants.

16 2. The Court finds that the prerequisites for a class action under Federal Rule
17 of Civil Procedure 23 (a) and (b)(3) have been satisfied in that: (a) the number of Class
18 Members is so numerous that joinder of all members thereof is impracticable; (b) there
19 are questions of law and fact common to the Class; (c) the claims of the Class
20 Representatives are typical of the claims of the Class they seek to represent; (d) the Class
21 Representatives have and will fairly and adequately represent the interests of the Class;
22 (e) the questions of law and fact common to the members of the Class predominate over
23 any questions affecting only individual members of the Class; and (f) a class action is
24 superior to other available methods for the fair and efficient adjudication of the
25 controversy.

26
27 ²All capitalized terms used herein having the meanings as set forth and defined in the
28 Stipulation.

1 3. Pursuant to Fed.R.Civ.P. 23, this Court hereby finally certifies this Action,
2 for purposes of this Settlement only, as a class action on behalf of all persons who
3 purchased the publicly traded securities of Ionatron during the period between May 4,
4 2005 and May 10, 2006, inclusive. Excluded from the Class are the Defendants, the
5 officers, directors and affiliates of Ionatron at all relevant times, members of their
6 immediate families and their legal representatives, heirs, successors or assigns, and any
7 entity in which Defendants have or had a controlling interest, and all shares of Ionatron
8 stock owned or acquired, directly or indirectly, by any of them. For purposes of this
9 Settlement, the term “controlling interest” shall include any interest of 5% or more of the
10 common stock of any entity. Also excluded from the Class are the persons and/or
11 entities who requested exclusion from the Class as listed on Exhibit 1 annexed hereto.

12 4. Notice of the pendency of this Action as a class action and of the proposed
13 Settlement was given to all Class Members who could be identified with reasonable
14 effort. The form and method of notifying the Class of the pendency of the action as a class
15 action and of the terms and conditions of the proposed Settlement met the requirements
16 of Fed.R.Civ.P. 23, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C.
17 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995 (the
18 “PSLRA”), due process, and any other applicable law, constituted the best notice
19 practicable under the circumstances, and constituted due and sufficient notice to all
20 persons and entities entitled thereto.

21 5. The Settlement is approved as fair, reasonable and adequate, and the Class
22 Members and the parties are directed to consummate the Settlement in accordance with
23 the terms and provisions of the Stipulation.

24 6. The Complaint, which the Court finds was filed on a good faith basis in
25 accordance with the PSLRA and Fed.R.Civ.P. 11 based upon all publicly available
26 information, is hereby dismissed with prejudice and without costs, except as provided in
27 the Stipulation, as against the Defendants.

28 7. Members of the Class and the successors and assigns of any of them, are

1 hereby permanently barred and enjoined from instituting, commencing or prosecuting,
2 either directly, derivatively, as a class representative, or in any other capacity, any and
3 all claims, rights or causes of action or liabilities whatsoever, (including, but not limited
4 to, any claims for damages, injunctive relief, interest, attorneys' fees, expert or consulting
5 fees, and any other costs, expenses or liability whatsoever), whether based on United
6 States federal, state, local, statutory or common law or any other law, rule or regulation,
7 whether foreign or domestic, fixed or contingent, accrued or unaccrued, liquidated or
8 unliquidated, at law or in equity, matured or unmatured, foreseen or unforeseen, whether
9 class, derivative, or individual in nature, including both known claims and Unknown
10 Claims, that have been asserted in the Action by the Class Members or any of them
11 against any of the Released Parties (whether pleaded in the Complaint or not), or (ii) that
12 could have been asserted in the Action or in any forum by the Class Members or any of
13 them against any of the Released Parties, and which also arise out of, relate to, or are
14 based on any of the claims, allegations, activities, press releases or public statements set
15 forth in the Complaint and relate to the purchase, sale, transfer or acquisition of the
16 publicly traded securities of Ionatron during the Class Period, or any actions,
17 representations or omissions that were alleged or might have been alleged to affect the
18 price of any publicly traded securities of Ionatron during the Class Period. "Released
19 Parties" means Defendants and any and all of their past or present partners, principals,
20 employees, predecessors, successors, affiliates, officers, directors, attorneys, agents,
21 insurers and assigns.

22 8. "Unknown Claims" means any and all Settled Claims which any Lead
23 Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the
24 time of the release of the Released Parties, and any Settled Defendants' Claims which any
25 Defendant does not know or suspect to exist in his, her or its favor, which if known by
26 him, her or it might have affected his, her or its decision(s) with respect to the Settlement.
27 With respect to any and all Settled Claims and Settled Defendants' Claims, the parties
28 stipulate and agree that upon the Effective Date, the Lead Plaintiffs and the Defendants

1 shall expressly waive, and each Class Member shall be deemed to have waived, and by
2 operation of the Judgment shall have expressly waived, any and all provisions, rights and
3 benefits conferred by any law of any state or territory of the United States, or principle
4 of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542,
5 which provides:

6 A general release does not extend to claims which the creditor does not know or
7 suspect to exist in his or her favor at the time of executing the release, which if
8 known by him or her must have materially affected his or her settlement with the
9 debtor.

10 Lead Plaintiffs and Defendants acknowledge, and Class Members by operation of law
11 shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the
12 definition of Settled Claims and Settled Defendants’ Claims was separately bargained for
13 and was a key element of the Settlement.

14 9. The Defendants and the successors and assigns of any of them, are hereby
15 permanently barred and enjoined from instituting, commencing or prosecuting, either
16 directly or in any other capacity, any and all claims, rights or causes of action or
17 liabilities whatsoever, whether based on United States federal, state, local, statutory or
18 common law or any other law, rule or regulation, including both known claims and
19 Unknown Claims, that have been or could have been asserted in the Action or any forum
20 by the Defendants or any of them or the successors and assigns of any of them against any
21 of the Lead Plaintiffs, Class Members or their attorneys, which arise out of or relate in
22 any way to the institution, prosecution, or settlement of the Action (except for claims to
23 enforce the Settlement) (the “Settled Defendants’ Claims”) against any of the Lead
24 Plaintiffs, Class Members or their attorneys. The Settled Defendants’ Claims of all the
25 Released Parties are hereby compromised, settled, released, discharged and dismissed on
26 the merits and with prejudice by virtue of the proceedings herein and this Order and Final
27 Judgment.

28 10. Pursuant to the PSLRA, the Released Parties are hereby discharged from all
claims for contribution or equitable indemnity, by any person or entity, whether arising

1 under United States federal, state, local, statutory or common law or any other law, based
2 upon, arising out of, relating to, or in connection with the claims of the Class or any Class
3 Member in the Action. Accordingly, to the maximum extent permissible under the
4 PSLRA, the Court hereby bars and enjoins all such claims for contribution or equitable
5 indemnity: (a) by any person or entity against any Released Party; and (b) by any
6 Released Party against any person or entity other than a person or entity whose liability
7 to the Class has been extinguished pursuant to the Stipulation and Agreement of
8 Settlement and this Order and Final Judgment.

9 11. Neither this Order and Final Judgment, the Stipulation, nor any of its terms
10 and provisions, nor any of the negotiations or proceedings connected with it, nor any of
11 the documents or statements referred to therein shall be:

12 (a) offered or received against the Defendants as evidence of or
13 construed as or deemed to be evidence of any presumption, concession, or
14 admission by any of the Defendants with respect to the truth of any fact alleged by
15 any of the plaintiffs or the validity of any claim that has been or could have been
16 asserted in the Action or in any litigation, or the deficiency of any defense that has
17 been or could have been asserted in the Action or in any litigation, or of any
18 liability, negligence, fault, or wrongdoing of the Defendants;

19 (b) offered or received against the Defendants as evidence of a
20 presumption, concession or admission of any fault, misrepresentation or omission
21 with respect to any statement or written document approved or made by any
22 Defendant;

23 (c) offered or received against the Defendants as evidence of a
24 presumption, concession or admission with respect to any liability, negligence,
25 fault or wrongdoing, or in any way referred to for any other reason as against any
26 of the Defendants, in any other civil, criminal or administrative action or
27 proceeding, other than such proceedings as may be necessary to effectuate the
28 provisions of this Stipulation; provided, however, that if this Stipulation is

1 approved by the Court, Defendants may refer to it to effectuate the liability
2 protection granted them hereunder;

3 (d) construed against the Defendants as an admission or concession that
4 the consideration to be given hereunder represents the amount which could be or
5 would have been recovered after trial; or

6 (e) construed as or received in evidence as an admission, concession or
7 presumption against Lead Plaintiffs or any of the Class Members that any of their
8 claims are without merit, or that any defenses asserted by the Defendants have any
9 merit, or that damages recoverable under the Complaint would not have exceeded
10 the Gross Settlement Fund.

11 12. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs'
12 Counsel and the Claims Administrator are directed to administer the Stipulation in
13 accordance with its terms and provisions.

14 13. The Court finds that all parties and their counsel have complied with each
15 requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings
16 herein.

17 14. Plaintiffs' Counsel are hereby awarded 30 % of the Cash Settlement Amount
18 and the Stock Settlement Amount, respectively, in fees, which sum the Court finds to be
19 fair and reasonable, and \$ 198,972.37 in reimbursement of expenses, which expenses
20 shall be paid to Plaintiffs' Lead Counsel from the Cash Settlement Amount with interest
21 from the date such the Settlement was funded to the date of payment at the same net rate
22 that the Settlement fund earns such interest. The award of attorneys' fees shall be
23 allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Lead
24 Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the
25 prosecution of the Action.

26 15. Plaintiff Hylton S. Petit, Jr., is hereby awarded \$ 2,500; and Plaintiff Claire
27 Silverman is hereby awarded \$ 2,500. Such awards are for reimbursement of these Lead
28 Plaintiffs' reasonable costs and expenses directly related to their representation of the

1 Class under the PSLRA.

2 16. In making this award of attorneys' fees and reimbursement of expenses to
3 be paid from the Gross Settlement Fund, the Court has considered and found that:

4 (a) the settlement has created a fund of \$6.5 million in cash and stock
5 that is available to the Class, plus interest thereon as applicable and that numerous
6 Class Members who submit acceptable Proofs of Claim will benefit from the
7 Settlement created by Plaintiffs' Counsel;

8 (b) Approximately 8,360 copies of the Notice were disseminated to
9 putative Class Members indicating that Plaintiffs' Counsel were moving for
10 attorneys' fees in the amount of up to 33 1/3% of the Gross Settlement Fund and
11 for reimbursement of expenses in an amount not to exceed \$235,000 and no
12 objections were filed against the terms of the proposed Settlement or the ceiling
13 on the fees and expenses requested by Plaintiffs' Counsel contained in the Notice;

14 (c) Plaintiffs' Counsel have conducted the litigation and achieved the
15 Settlement with skill, perseverance and diligent advocacy;

16 (d) Defendants have denied and continue to deny liability and have
17 vigorously defended against the claims asserted in the action;

18 (e) The action involves complex factual and legal issues and was
19 actively prosecuted over two years and, in the absence of a settlement, would
20 involve further lengthy proceedings with uncertain resolution of the complex
21 factual and legal issues;

22 (f) Had Plaintiffs' Counsel not achieved the Settlement there would
23 remain a significant risk that Lead Plaintiffs and the Class may have recovered less
24 or nothing from the Defendants;

25 (g) Plaintiffs' Counsel have devoted nearly 3000 hours, with a lodestar
26 value of \$1,428,580.50, to achieve the Settlement; and

27 (h) The amount of attorneys' fees awarded and expenses reimbursed
28 from the Settlement Fund are consistent with awards in similar cases.

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EXHIBIT 1
ENTITIES REQUESTING EXCLUSION FROM THE SETTLEMENT CLASS

1. J. Giordano Securities LLC (n/k/a/ NewOak Capital Markets LLC).