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Plaintiff's Counsel

[Additional Counsel appear on Signature Page]

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18 THOMAS O. MORGAN, Individually and on)	Case No. C-04-04362 MJJ
19 Behalf of all others Similarly Situated,)	
20 Plaintiff,)	<u>CLASS ACTION</u>
21 vs.)	[PROPOSED] ORDER Re: DISTRIBUTION
22 AXT, INC., and MORRIS S. YOUNG,)	OF CLASS SETTLEMENT FUND
23 Defendants.)	

[PROPOSED] ORDER Re: DISTRIBUTION OF CLASS SETTLEMENT FUND CASE NO. C-04-04362 MJJ	
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1 **WHEREAS**, on February 26, 2008 this Court entered an Order and Final Judgment
2 approving the terms of the Stipulation and Agreement of Settlement dated as of September 10, 2007
3 (the “Stipulation”) and the Plan of Allocation; and

4 **WHEREAS**, this Court has directed the parties to consummate the terms of the Stipulation
5 and the Plan of Allocation; and

6 **WHEREAS**, this Court has retained jurisdiction of the above-captioned action (the
7 “Action”) for the purpose of considering any further application or matter which may arise in
8 connection with the administration and execution of the Settlement and the processing of Proof of
9 Claim forms (“Proofs of Claim”) and the distribution of the Net Settlement Fund to the Authorized
10 Claimants.

11 **NOW, THEREFORE**, upon reading and filing the Affidavit of Lara McDermott of Gilardi
12 & Co. LLC, the Claims Administrator, and the memorandum of law, and upon all prior proceedings
13 herein and after due deliberation, it is hereby

14 **ORDERED**, that the administrative determinations of the Claims Administrator accepting
15 the claims as indicated on the computer printout of accepted claims submitted with and described in
16 the Affidavit of Lara McDermott including claims submitted after March 28, 2008 through and
17 including December 31, 2008, be and the same hereby are approved, and said claims are hereby
18 accepted; and it is further

19 **ORDERED**, that the administrative determinations of the Claims Administrator rejecting the
20 claims as indicated on the computer printout of rejected claims submitted with and described in the
21 Affidavit of Lara McDermott be and the same hereby are approved, and said claims are hereby
22 rejected; and it is further

23 **ORDERED**, that Gilardi & Co. LLC be paid the sum of \$27,536 from the Settlement Fund
24 for the balance of its fees and expenses incurred and to be incurred in connection with services
25 performed and to be performed with respect to the settlement administration and distribution of the
26 Net Settlement Fund; and it is further

27 **ORDERED**, that the Certified Public Accounting firm of Eisner LLP, the tax accountants for
28 the Settlement Fund, be paid the sum of \$6,000 from the Settlement Fund for its fees and expenses

1 incurred and to be incurred in connection with services performed and to be performed with respect
2 to the taxation of the Settlement Fund herein for the years 2007 and 2008; and it is further

3 **ORDERED**, that the balance of the Settlement Fund after deducting the payments previously
4 allowed and set forth herein (the "Net Settlement Fund") shall be distributed to the eligible claimants
5 listed on the computer printout submitted with the Affidavit of Lara McDermott¹ in proportion to the
6 Recognized Claim allocable to each such eligible claimant as shown on such printout; and it is
7 further

8 **ORDERED**, that the payments to be distributed to the Authorized Claimants shall bear the
9 notation "CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED
10 the "DATE" being one year from the date checks are initially mailed (see Doc. # 144 at 6:23-27).
11 BY [DATE],"[^] Plaintiffs' Co-Lead Counsel and the Claims Administrator are authorized to take
12 appropriate action to locate and or contact any eligible claimant who has not cashed his, her or its
13 distribution within said time; and it is further

14 **ORDERED**, that the costs of such services to locate and reissue payments to such
15 Authorized Claimants shall be payable from the unclaimed/un-cashed monies remaining in the Net
16 Settlement Fund; and it is further

17 **ORDERED**, that, as provided in the Plan of Allocation previously approved by the Court,
18 after one year after the initial distribution of the Net Settlement Fund to eligible claimants and after
19 reasonable and diligent efforts have been made to have the eligible claimants cash their distributions,
20 Plaintiffs' Lead Counsel are authorized to cause the Claims Administrator to distribute any funds
21 remaining in the Net Settlement Fund by reason of returned or unpaid distributions or otherwise, to
22 eligible claimants who have cashed their distributions, provided that they would receive at least
23 \$10.00 on such re-distribution based on their Recognized Claims, after payment of any unpaid costs
24 or fees incurred in administering the Net Settlement Fund for such re-distribution. If after six
25 months after such re-distribution any funds shall remain in the Net Settlement Fund, then such

26 ¹ Provided however that Lead Plaintiff's Counsel are authorized to withhold payment from any
27 claimant suspected of filing a fraudulent claim. Any such withheld payment shall be retained in the
28 Settlement Fund pending determination of the validity of the claim.

1 balance shall be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by
2 Plaintiffs' Lead Counsel; and it is further

3 **ORDERED**, that all persons involved in the review, verification, calculation, tabulation, or
4 any other aspect of the processing of the claims submitted herein, or otherwise involved in the
5 administration or taxation of the Settlement Fund or the Net Settlement Fund are released and
6 discharged from any and all claims arising out of such involvement, and all Class Members, whether
7 or not they are to receive payment from the Net Settlement Fund are barred from making any further
8 claim against the Net Settlement Fund or the released persons beyond the amount allocated to them
9 pursuant to this Order, and it is further

10 **ORDERED**, that the Claims Administrator is hereby authorized to discard paper or hard
11 copies of the Proofs of Claim and supporting documents not less than one year after the initial
12 distribution of the Net Settlement Fund to the eligible claimants and electronic or magnetic media
13 data not less than three years after the initial distribution of the Net Settlement Fund to the eligible
14 claimants; and it is further

15 **ORDERED**, that this Court retain jurisdiction over any further application or matter which
16 may arise in connection with this Action; and it is further

17 **ORDERED**, that no claim submitted, and no deficient claim corrected, after December 31,
18 2008 may be accepted for any reason whatsoever.

19 Dated: March 3 2009


UNITED STATES DISTRICT COURT JUDGE

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