

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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| JAMES RAFTON, TRUSTEE OF THE JAMES & CYNTHIA RAFTON TRUST, et al., |) | No. 10-CV-01171 LHK |
| |) | PROPOSED FINAL JUDGMENT AND ORDER OF DISMISSAL |
| |) | |
| Plaintiffs, |) | |
| v. |) | AS MODIFIED |
| |) | |
| RYDEX SERIES FUNDS, et al., |) | |
| |) | CLASS ACTION |
| Defendants. |) | |

1 This Court having considered: the Stipulation and Agreement of Settlement dated July 28,
2 2011, including all Exhibits thereto (the “Stipulation”), between James Rafton and James Darst, Jr.
3 (“Lead Plaintiffs”), on behalf of themselves and the Class, and Rydex Series Funds, Padco
4 Advisors Inc. d/b/a Rydex Investments, Inc., Rydex Distributors, Inc., (collectively, the “Rydex
5 Defendants”), and Richard M. Goldman, Carl G. Verboncoeur, Nick Bonos, Michael P. Byrum,
6 John O. Demaret, Corey A. Colehour, J. Kenneth Dalton, Werner E. Keller, Thomas F. Lydon,
7 Roger Somers, and Patrick T. McCarville (collectively, the “Individual Defendants”) (together, the
8 Rydex Defendants and the Individual Defendants are referred to as “Defendants”); and having held
9 a hearing on February 9, 2012; and having considered all of the submissions and arguments with
10 respect thereto, and the one objection to the attorneys’ fees percentage, and otherwise being fully
11 informed, and good cause appearing therefore,

12 IT IS HEREBY ORDERED that:

13 **Introductory Findings**

14 1. This Final Judgment and Order of Dismissal (“Judgment”) incorporates herein and
15 makes a part hereof, the Stipulation, including the Exhibits thereto. Unless otherwise defined
16 herein, all capitalized terms used herein shall have the same meanings as set forth in the
17 Stipulation.

18 2. The Court has personal jurisdiction over Lead Plaintiffs, the Class Members and
19 Defendants for purposes of this Action and settlement, and has subject matter jurisdiction to
20 approve the Stipulation and the terms and conditions of the settlement set forth therein (the
21 “Settlement”).

22 **Affirmance Of Class Certification**

23 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Federal Rule 23”), the
24 Court confirms certification of the following Class, as ordered by the Court in its September 13,
25 2011 Order Preliminarily Approving Settlement and Providing for Notice (Docket No. 99) (the
26 “Preliminary Approval Order”):

1
2 “All persons and entities who purchased or otherwise acquired shares
3 of the Fund during the Class Period and who were damaged thereby.
4 Excluded from the Class are Defendants; the Rydex Defendants’s officers
5 and directors; members of Defendants’ immediate families; Defendants’
6 legal representatives, heirs, successors, or assigns; and any entity in which
7 Defendants have or had a controlling interest. Also excluded from the
8 Class are any proposed Class Members who properly excluded themselves
9 by filing a valid and timely request for exclusion in accordance with the
10 requirements set forth in the Notice (“the Class”).”

11 “Class Period” means the period from August 1, 2007 through July 31,
12 2009, inclusive.

13 4. The Court confirms that certification of the Class met the requirements of Federal
14 Rule 23 as follows:

15 (a) There are thousands of Members of the Class, and the Class is of sufficient
16 size and geographical dispersion that joinder of all Class Members is impracticable, satisfying
17 Federal Rule 23(a)(1).

18 (b) There are questions of law and fact common to the Class, thus satisfying
19 Federal Rule 23(a)(2). Among the questions of law and fact common to the Class are whether the
20 Securities Act of 1933 was violated by Defendants’ acts as alleged; whether statements made in the
21 Rydex Inverse Government Long Bond Strategy Fund Registration Statements and Prospectuses
22 misrepresented or omitted material facts; and whether the Members of the Class have sustained
23 damages and, if so, what is the proper measure thereof.

24 (c) Lead Plaintiffs’ claims for violations of Sections 11, 12(a)(2) and 15 of the
25 Securities Act of 1933 are typical of the claims of the Class, satisfying Federal Rule 23(a)(3).

26 (d) Lead Plaintiffs and Sparer Law Group (“Class Counsel”) have and will fairly
27 and adequately protect the interests of the Class, thus satisfying Federal Rule 23(a)(4).

28 (e) The questions of law and fact common to the Class predominate over any
29 questions affecting only individual members, satisfying Federal Rule 23(b)(3).

(f) A class action is superior to other available methods for the fair and efficient
30 adjudication of the controversy, satisfying Federal Rule 23(b)(3).

Approval Of The Plan Of Allocation

1 11. The Court hereby finds that Lead Plaintiff and Lead Counsel’s proposed Plan of
2 Allocation is fair, adequate and reasonable. The Plan of Allocation appropriately utilizes a formula
3 that takes into consideration both major claims in the First Amended Complaint to determine each
4 Class Member’s Summary of Recognized Losses. *Class Plaintiffs. v City of Seattle*, 955 F.2d
5 1268, 1284-85 (9th Cir 1992)). “It is reasonable to allocate the settlement funds to class members
6 based on the extent of their injuries or the strength of their claims on the merits.”

7 12. Distributions will be made to Class Members who do not exclude themselves from
8 the settlement after all claims have been processed. The distributions will allocate the Net
9 Settlement Fund pro-rata based on the amount of each Class Member’s Recognized Losses
10 compared to the total Recognized Losses of all Class Members.

11 13. If any funds remain in the Net Settlement Fund by reason of un-cashed checks or
12 otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to
13 distribute such funds, any balance remaining shall be contributed to one or more nonsectarian, not
14 for profit, 501(c)(3) organization(s) designated by Class Counsel.

Dismissal Of Claims And Release

15 14. The Consolidated Class Action Complaint filed in the Action and all claims asserted
16 therein (except the individual claims of those individuals and entities listed on Exhibit A hereto)
17 are hereby dismissed with prejudice and without costs to any party, except as otherwise provided in
18 the Stipulation.

19 15. The Court finds that during the course of the Action, the settling parties and their
20 respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of
21 Civil Procedure.

22 16. Upon the Effective Date of the Settlement (as defined in Paragraph 22 of the
23 Stipulation), the Releasing Plaintiff Parties (as defined in Paragraph 1(dd) of the Stipulation) shall
24 release and forever discharge the Released Claims (as defined in Paragraph 1(x) of the Stipulation)
25 as against the Released Defendant Parties (as defined in Paragraph 1(y) of the Stipulation).
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1 17. Upon the Effective Date of the Settlement (as defined in Paragraph 22 of the
2 Stipulation), the Releasing Defendant Parties (as defined in Paragraph 1(cc) of the Stipulation)
3 shall release and forever discharge the Released Defendants' Claims (as defined in Paragraph 1(z)
4 of the Stipulation) as against the Released Plaintiff Parties (as defined in Paragraph 1(bb) of the
5 Stipulation).

6 18. No Class Member, either directly, representatively, or in any other capacity (other
7 than the individuals or entities listed on Exhibit A hereto), shall commence, continue, or prosecute
8 against any or all Released Defendant Parties any action or proceeding in any court or tribunal
9 asserting any of the Released Claims defined in the Stipulation, and are hereby permanently
10 enjoined from so proceeding.

11 19. Each Class Member, except the individuals and entities listed on Exhibit A hereto,
12 whether or not such Class Member executes and delivers a Proof of Claim or Dispute Form, is
13 bound by this Judgment, including, without limitation, the release of claims as set forth in the
14 Stipulation.

15 20. This Judgment, the Preliminary Approval Order, the Stipulation and its terms, the
16 negotiations leading up to the Stipulation, the Settlement, and the proceedings taken pursuant to the
17 Settlement, shall not: (1) be construed as an admission of liability or an admission of any claim or
18 defense on the part of any Party, in any respect; (2) form the basis for any claim of estoppel by any
19 third party against any of the Released Defendant Parties; or (3) be admissible in any action, suit,
20 proceeding, or investigation as evidence, or as an admission, of any wrongdoing or liability
21 whatsoever by any of the Released Defendant Parties or as evidence of the truth of any of the
22 claims or allegations contained in any complaint filed in the Action, or deemed to be evidence of or
23 an admission or concession that Lead Plaintiffs or any Class Members have suffered any damages,
24 harm or loss. Neither this Judgment, nor the Preliminary Approval Order, nor the Stipulation, nor
25 any of their terms and provisions, nor any of the negotiations or proceedings connected with them,
26 nor any action taken to carry out this Judgment, the Preliminary Approval Order, or Stipulation by
27 any of the Parties shall be referred to, offered into evidence, or received in evidence in any pending
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1 or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce
2 this Judgment, the Preliminary Approval Order or the Stipulation, or to enforce any insurance
3 rights, to defend against the assertion of Released Claims (including to support a defense or
4 counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement,
5 judgment bar or reduction), or by Class Counsel to demonstrate its adequacy to serve as lead
6 counsel under the PSLRA or class counsel pursuant to Federal Rule 23(g) (or its state law analogs),
7 or as otherwise required by law.

8 **Escrow Account**

9 21. The Court finds that the Escrow Account (as defined in Paragraph 1(i) of the
10 Stipulation) is a “Qualified Settlement Fund” as defined in Section 1.468B-1(a) of the Treasury
11 Regulations in that it satisfies each of the following requirements:

12 (a) The Escrow Account was established pursuant to an order of this Court,
13 specifically the Preliminary Approval Order, and is subject to the continuing jurisdiction of this
14 Court;

15 (b) The Escrow Account was established to resolve or satisfy one or more
16 contested or uncontested claims that have resulted or may result from an event that has occurred
17 and that has given rise to at least one claim asserting liability arising out of an alleged violation of
18 law; and

19 (c) The assets of the Escrow Account are segregated from other assets of
20 Defendants, the transferors of payments to the Settlement Fund, and from the assets of persons
21 related to Defendants.

22 22. Under the “relation-back” rule provided under section 1.468B-1(j)(2)(i) of the
23 Treasury Regulations, the Court finds that:

24 (a) The Escrow Account met the requirements of Paragraphs 19(b) of this
25 Judgment at the time it was established pursuant to the Preliminary Approval Order, subject to the
26 continued jurisdiction of this Court; and

1 (b) Defendants and the “administrator” under Section 1.468B-2(k)(3) of the
2 Treasury Regulations may jointly elect to treat the Escrow Account as coming into existence as a
3 “Qualified Settlement Fund” on the earlier of the date the Escrow Account met the requirements of
4 Paragraph 19(b) of this Judgment or January 1 of the calendar year in which all of the requirements
5 of Paragraph 19 of this Judgment are met. If such relation-back election is made, the assets held by
6 the Escrow Account on such date shall be treated as having been transferred to the Escrow Account
7 on that date.

8 **Continuing Jurisdiction**

9 23. Without affecting the finality of this Judgment, the Court retains continuing and
10 exclusive jurisdiction over all matters relating to administration, consummation, enforcement and
11 interpretation of the Stipulation, the Settlement, and of this Judgment, to protect and effectuate this
12 Judgment, and for any other necessary purpose. Defendants, Lead Plaintiffs and each Class
13 Member are hereby deemed to have irrevocably submitted to the exclusive jurisdiction of this
14 Court for the purpose of any suit, action, proceeding or dispute arising out of or relating to the
15 Settlement or the Stipulation, including the Exhibits thereto, and only for such purposes. Without
16 limiting the generality of the foregoing, and without affecting the finality of this Judgment, the
17 Court retains exclusive jurisdiction over any such suit, action or proceeding. Solely for purposes of
18 such suit, action or proceeding, to the fullest extent they may effectively do so under applicable
19 law, Defendants, Lead Plaintiffs and each Class Member are hereby deemed to have irrevocably
20 waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or
21 objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way,
22 an improper venue or an inconvenient forum.

23 **Miscellaneous**

24 24. Any plan for allocating the Net Settlement Fund to eligible Class Members
25 submitted by Class Counsel or any order regarding any fee and expense application, or any appeal,
26 modification or change thereof, shall in no way disturb or affect this Judgment and shall be
27 considered separate from this Judgment.

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25. In the event that the Settlement does not become effective according to the terms of the Stipulation, this Judgment shall be rendered null and void as provided by the Stipulation, shall be vacated, and all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

26. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: February

Exhibit A

Rafton v. Rydex Series Funds, et al.

Requests for Exclusion as of December 20, 2011

| # | GCG ID# | Party |
|----------|----------------|-----------------------------------|
| 1 | 1030218 | Sanford F. Ress Trust |
| 2 | 1140710 | Charles T. Koehn & Yoo Jung Chong |
| 3 | 1145757 | Scott Finlayson |
| 4 | 1146464 | Louis Debole |
| 5 | 1152506 | Scott Finlayson |
| 6 | 1172433 | Annie B. Mitchell |