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2 **~~PROPOSED~~ SCHEDULING ORDER**

3 Before the Court is the Parties' unopposed Joint Motion for Preliminary Approval of the
4 Stipulation of Settlement dated February 11, 2013 ("Stipulation"), pursuant to Rule 23 of the
5 Federal Rules of Civil Procedure. See Mot. for Prelim. Approval, ECF No. 90. The Stipulation is
6 incorporated herein by reference and, together with the accompanying documents and the
7 Memorandum of Understanding (the "MOU") executed by the Parties on July 5, 2012, sets forth
8 the terms and conditions for the Settlement and for a judgment dismissing Plaintiffs' claims with
9 prejudice upon the terms and conditions set forth therein. The Parties request entry of an Order:
10 "(i) preliminarily approving the Settlement set forth in the Stipulation; (ii) certifying the Class;
11 (iii) authorizing the form and manner of notice to be sent to the Class;" and "(iv) scheduling a
12 hearing to consider final approval of the Settlement." Mot. for Prelim. Approval at 1.

13 Review of a proposed settlement generally consists of two stages. First, a court may grant
14 preliminary approval and direct notice to the class if the settlement: "(1) appears to be the product
15 of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not
16 improperly grant preferential treatment to class representatives or segments of the class; and (4)
17 falls within the range of possible approval." *Harris v. Vector Mktg. Corp.*, No. 08-5198, 2011 WL
18 1627973, at *7 (N.D. Cal. Apr. 29, 2011). Second, a court conducts a fairness hearing to determine
19 whether the proposed settlement is "fair, reasonable and adequate" pursuant to Rule 23(e)(2) of the
20 Federal Rules of Civil Procedure. Fed. R. Civ. P. 23(e)(2); see *Armstrong v. Bd. of Sch. Dirs.*, 616
21 F.2d 305, 314 (7th Cir. 1980) (same), overruled on other grounds by *Felzen v. Andreas*, 134 F.3d
22 873 (7th Cir. 1998).

23 Having considered the submissions of the parties and the relevant law, and for good cause
24 shown, the Court hereby GRANTS the Parties' Motion for Preliminary Approval of Settlement.

25 **IT IS HEREBY ORDERED** this 18th day of July, 2013, that:

26 **A. Settlement Class**

27 1. The Court conditionally grants the motion for the Federal Action to be maintained
28 and proceed as a class action pursuant to Rules 23(a), 23(b)(1) and 23(b)(2) of the Federal Rules of
Civil Procedure, without opt-out rights and for settlement purposes only, subject to final approval

1 after the final fairness hearing (“the Hearing”). Plaintiff Gary Ogurkiewicz (“Dr. Ogurkiewicz”) 2 shall conditionally represent the settlement class, and the class shall conditionally consist of any 3 and all record and beneficial holders of Cost Plus stock, including any and all of their respective 4 successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, 5 assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or 6 claiming under, any of them, and each of them, who held any such Cost Plus stock at any time 7 between and including May 9, 2012, and June 29, 2012, but excluding the specifically named 8 Defendants (the “Class”).

9 **B. Final Approval Hearing**

10 2. The Hearing shall be held before the Honorable Lucy H. Koh, United States District 11 Court for the Northern District of California, San Jose Courthouse, Courtroom 8, 4th Floor, 280 12 South 1st Street, San Jose, California 95113, on December 5, 2013, at 1:30 p.m., to determine the 13 fairness, reasonableness and adequacy of the settlement and for the purposes of determining:

14 (a) whether the Court should unconditionally certify the case as a class action, without opt-out 15 rights and for settlement purposes only, pursuant to Rules 23(a), 23(b)(1) and 23(b)(2) of the 16 Federal Rules of Civil Procedure, on behalf of any and all record and beneficial holders of Cost 17 Plus stock, including any and all of their respective successors in interest, predecessors, 18 representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and 19 remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and 20 each of them, who held any such Cost Plus stock at any time between and including May 9, 2012, 21 and June 29, 2012, but excluding the specifically named Defendants; (b) whether Dr. Ogurkiewicz 22 may be designated as class representative with the law firm of Pomerantz Grossman Hufford 23 Dahlstrom & Gross LLP as Lead Counsel for the Class for the settlement of all claims in the 24 Actions, including those claims brought under Section 14(e) of the Williams Act (15 U.S.C.A. 25 §§ 78n, 78aa), and whether Dr. Ogurkiewicz and Pomerantz Grossman Hufford Dahlstrom & 26 Gross LLP have adequately represented the interests of the Class; (c) whether the Court should 27 approve the Settlement pursuant to the Stipulation; (d) whether the Court should enter the 28 Judgment providing for the dismissal of the claims asserted in the Actions and the Released Claims

1 on the merits and with prejudice as against the named Plaintiffs and all members of the Class and
2 releasing the Released Parties from the Released Claims and also providing for the dismissal of the
3 Defendants' Released Claims on the merits and with prejudice as against Defendants and releasing
4 Plaintiffs, Plaintiffs' Counsel, Dixon, Dixon's counsel, and every member of the Class from the
5 Defendants' Released Claims; (e) whether the Court should grant the application of Plaintiffs'
6 Counsel for an award of attorneys' fees and expenses to be paid by Cost Plus or its successor-in-
7 interest; (f) whether the Court should grant the application of an incentive award for Dr.
8 Ogurkiewicz; and (g) such other matters as may properly come before the Court. The Court may
9 adjourn the Hearing (including consideration of the application of Plaintiffs' Counsel for an award
10 of attorneys' fees and expenses and/or an incentive award for Dr. Ogurkiewicz) without further
11 notice to the Class other than by announcement at the Hearing or any adjournment thereof.

12 **C. Notice**

13 3. The Court approves, in form and content, the Notice of Pendency of Class Action,
14 Proposed Settlement of Class Action, Settlement Hearing and Right to Appear (the "Notice")
15 substantially in the form attached as Exhibit C to the Stipulation, and finds that the mailing of the
16 Notice meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process,
17 is the best notice practicable under the circumstances, and shall constitute due and sufficient notice
18 to all persons entitled thereto.

19 4. Within ten (10) business days after the date of this Order, Cost Plus or its successor-
20 in-interest shall cause a copy of the Notice to be mailed by first-class mail to each person who was
21 shown on the stock records maintained by or on behalf of Cost Plus to be or to have been a record
22 owner of any shares of Cost Plus common stock at any time between and including May 9, 2012,
23 and June 29, 2012, at his, her, or its last known address appearing on the stock records maintained
24 by or on behalf of Cost Plus. All record holders who were not also the beneficial owners of the
25 shares of Cost Plus' common stock held by them of record shall be requested to forward the Notice
26 to the beneficial owners of those shares. Cost Plus or its successor-in-interest shall use reasonable
27 efforts to give notice to beneficial owners of Cost Plus' stock by making additional copies of the
28 Notice available to any record holder requesting the same for the purpose of distribution to

1 beneficial owners.

2 5. No later than November 21, 2013, the Parties shall file any opening briefs in support
3 of the Settlement, and Plaintiffs' Counsel shall file their application for an award of attorneys' fees
4 and expenses and an incentive award for Dr. Ogurkiewicz, including any supporting affidavits.

5 6. At or before the Hearing provided for in Paragraph 2 of this Order, Cost Plus or its
6 successor-in-interest shall file proof, by affidavit, of such mailings provided for in Paragraph 4 of
7 this Order.

8 **D. Objections**

9 7. Any member of the Class who objects to the certification of the Class, the
10 Settlement of Plaintiffs' claims in the Actions as set forth in the Stipulation, the Judgment to be
11 entered in the Federal Action, and/or Plaintiffs' Counsel's application for fees and expenses and/or
12 an incentive award for Dr. Ogurkiewicz, or otherwise wishes to be heard, may appear personally or
13 by counsel at the Hearing and present evidence or argument that may be proper and relevant;
14 provided, however, that no member of the Class may be heard and no papers or briefs submitted by
15 or on behalf of any member of the Class shall be received and considered, except by Order of the
16 Court for good cause shown, unless, no later than November 27, 2013, copies of (a) a written
17 notice of intention to appear, identifying the name, address, and telephone number of the objector
18 and, if represented, their counsel; (b) proof of membership in the Class; (c) a written detailed
19 statement of such person's specific objections to any matter before the Court; (d) a written
20 statement certifying that the objector is a member of the Class; (e) the grounds for such objections
21 and any reasons for such person's desiring to appear and be heard; and (f) all documents and
22 writings such person desires this Court to consider, shall be served electronically or by hand or
23 overnight mail upon the following counsel:
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1 Gustavo F. Bruckner
2 Pomerantz Grossman Hufford Dahlstrom & Gross LLP
3 Attn: Cost Plus Settlement
4 600 Third Avenue, 20th Floor
5 New York, NY 10016

4 Evan Smith
5 Brodsky & Smith, LLC
6 Attn: Cost Plus Settlement
7 9595 Wilshire Boulevard
8 Suite 900
9 Beverly Hills, CA 90212

8 Eric S. Waxman
9 Skadden, Arps, Slate, Meagher & Flom LLP
10 Attn: Cost Plus Settlement
11 300 South Grand Avenue
12 Suite 3400
13 Los Angeles, CA 90071

11 Michael Firestein
12 Proskauer Rose LLP
13 Attn: Cost Plus Settlement
14 2049 Century Park East
15 Los Angeles, CA 90067-3206

14 Mr. Bruckner or Mr. Smith shall immediately furnish all objections as they are received to
15 Defendants' counsel and will file all objections with the Court no later than November 27, 2013.
16 Unless the Court otherwise directs, no member of the Class shall be entitled to object to the
17 Settlement, or to the judgment to be entered herein, or to the award of attorneys' fees and expenses
18 to Plaintiffs' Counsel and/or an incentive award for Dr. Ogurkiewicz, or otherwise to be heard,
19 except by serving and filing written objections as described above. Any person who fails to object
20 in the manner provided above shall be deemed to have waived such objection and shall forever be
21 barred from making any such objection in the Federal Action or in any other action or proceeding.

22 8. If the Court approves the Settlement provided for in the Stipulation following the
23 Hearing, judgment shall be entered substantially in the form attached as Exhibit A to the
24 Stipulation.

25 **E. Further Matters**

26 9. The Stipulation and the Settlement are subject to and expressly conditioned upon:
27 (a) the entry by the Court of the Judgment substantially in the form attached to the Stipulation as
28 Exhibit A, (b) consummation of the Merger, and (c) Final Court Approval of the Settlement;

1 provided, however, that neither the Court's approval of the Settlement nor Final Court Approval of
2 the Settlement is contingent on approval of the Fee Application or awarding the Fee Award. If the
3 Court fails to approve the Settlement in accordance with the terms described in the Stipulation or
4 the MOU, then any orders that may have been entered by any court in connection therewith shall
5 be null and void and of no force and effect, unless counsel for each of the Parties to the Stipulation,
6 within ten (10) business days from any such terminating event, agrees in writing with counsel for
7 the other Parties to the Stipulation to proceed with the Stipulation and Settlement, including only
8 with such modifications, if any, as to which all other Parties in their sole judgment and discretion
9 may agree. In the event the Stipulation is terminated pursuant to its terms or by any Party, it shall
10 not be deemed to prejudice in any way the position of any Party with respect to this litigation or
11 any other litigation or proceeding. In such event, the Parties to the Stipulation shall be deemed to
12 have reverted to their respective litigation status immediately prior to the execution of the MOU,
13 and they shall proceed in all respects as if the MOU and the Stipulation had not been executed and
14 any related orders had not been entered, and neither the existence of the Stipulation or the MOU
15 nor their respective contents shall be admissible in evidence or shall be referred to for any purpose
16 in this litigation or in any other litigation or proceeding.

17 10. The Court will retain jurisdiction over the Actions to consider all further
18 applications arising out of or connected with the proposed Settlement.

19 11. Pending final determination of whether the Settlement should be approved,
20 Plaintiffs and any member of the Class shall not institute, commence or prosecute any claims
21 covered by the Settlement, including Released Claims or any claim by any member of the Class or
22 any attorney for any member of the Class seeking a fee based on any supplemental disclosures
23 made by Cost Plus other than in connection with the proceedings set forth in Paragraph 14 of the
24 Stipulation. In addition, all discovery and other proceedings in the Actions, other than such
25 proceedings as may be necessary to carry out the terms and conditions of the Settlement embodied
26 in the Stipulation, are hereby stayed and suspended until further order of this Court.

27 12. The following schedule is set:

28 1. Last day to mail the Notice by first-class mail: August 1, 2013

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2. Last day for counsel to file papers in support of the Settlement, apply for attorneys' fees and expenses, and apply for an incentive award:

November 21, 2013

3. Last day for counsel to receive objections from class members and file the objections with the Court:


November 27, 2013

4. Final Approval Hearing:

December 5, 2013, at 1:30 p.m.

IT IS SO ORDERED.

Dated: July 18, 2013



The Honorable Lucy H. Koh
United States District Court