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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

14 In re METROPOLITAN SECURITIES
LITIGATION

No. CV-04-0025-FVS

16 THIS DOCUMENT RELATES TO:
17 ALL ACTIONS

18 ORDER
19 PRELIMINARILY APPROVING
20 SETTLEMENT BETWEEN THE
CLASS AND DEFENDANT
PRICewaterHOUSE COOPERS
LLP

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22 Having considered the Motion and Memorandum of Plaintiffs, pursuant to
23 Fed. R. Civ. P. 23, for an Order preliminarily approving the proposed settlement
24 (the "Settlement") between the Class and defendant PricewaterhouseCoopers LLP
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ORDER PRELIMINARILY APPROVING
PWC SETTLEMENT - 1



1 (“PwC”) in accordance with the terms and provisions of the Settlement Agreement
2 and Release dated April 9, 2010 (“Settlement Agreement”).

3 **IT IS HEREBY ORDERED:**

4 1. This Order incorporates by reference the definitions in the Settlement
5 Agreement. Additionally, “Other Defendant” and “Other Defendants” refer to
6 those defendants other than PwC that or who were named in the Action
7 (specifically, Ernst & Young LLP, Roth Capital Partners, C. Paul Sandifur, Jr.,
8 Thomas Turner, Robert Ness, William Snider, Irv Marcus, Robert K. Potter,
9 Clayton E. Rudd, James V. Hawkins, Gregory S. Strate, Philip W. Sandifur,
10 Samuel Smith, Bruce J. Blohowiak, B. Elaine Hoskin, Gary D. Bracjcich, the
11 Estate of Harold W. Erfurth, Reuel C. Swanson, William A. Smith, John T.
12 Trimble, and Erik E. Skaggs). “Settling Parties” refers to the Class and PwC.

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15 2. The Court has personal jurisdiction over all parties to the Action and
16 the PwC Action, including all Class Members and PwC, and subject matter
17 jurisdiction over the Action and the PwC Action.

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19 3. Without further order of the Court, the Settling Parties may agree to
20 reasonable extensions of time to carry out any of the provisions of the Settlement
21 Agreement.

22 4. In the interest of conserving expenses to the Class, pursuant to the
23 terms of the Settlement Agreement, the Court shall defer approval of the form and
24 manner of providing notice of the Settlement to the Class, and scheduling a hearing
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1 for final approval of the Settlement and Settlement Agreement (the “Final
2 Approval Hearing”).

3 5. The Court hereby preliminarily approves the Settlement, as embodied
4 in the Settlement Agreement, as being fair, reasonable and adequate as to the Class
5 Members, subject to further consideration at the Final Approval Hearing.
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7 6. This Order shall become null and void and be without prejudice to the
8 rights of the Settling Parties, all of whom shall be deemed to have reverted to their
9 respective status in the Action and the PwC Action as of February 21, 2010, if:

10 (i) the Effective Date does not occur; or (ii) the proposed Settlement is terminated
11 or does not become effective for any other reason. In such event, the Settlement
12 Agreement shall become null and void and have no further force and effect, and
13 the Settlement shall be without prejudice and none of its terms shall be effective or
14 enforceable.
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16 7. The Action is stayed as to PwC in all respects until further order of the
17 Court, except as may be necessary to implement and effectuate the Settlement and
18 Settlement Agreement.
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20 8. Pending final determination by the Court as to whether the Settlement,
21 as set forth in the Settlement Agreement, is fair, reasonable and adequate and
22 should be finally approved, and whether the Judgment dismissing the Action and
23 the PwC Action with prejudice as to PwC, and whether an order barring any claims
24 for contribution or indemnification against the PwC Released Parties should be
25 entered, no Lead Plaintiff nor any Class Member, either directly, representatively
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1 or in any other capacity, shall assert, commence or prosecute against any of the
2 PwC Released Parties any of the PwC Released Claims in this Action, the PwC
3 Action or any other proceeding or forum. This injunction is necessary to protect
4 and effectuate the Settlement, this Order, and the Court's flexibility and authority
5 to effectuate the Settlement and to enter judgment when appropriate, and is ordered
6 in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C.
7 § 1651(a).

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9 9. Pursuant to the Settlement Agreement and applicable law, any and all
10 claims arising out of any claims under the federal securities laws released by the
11 Class, including, but not limited to, any claims based upon, arising out of or
12 relating to the claims or allegations that were asserted or could have been asserted
13 by the Class in the Action, the Class Action Complaint, Consolidated and
14 Amended Class Action Complaint, Consolidated and Second Amended Class
15 Action Complaint, Consolidated and Third Amended Class Action Complaint,
16 Consolidated and Fourth Amended Class Action Complaint, or the PwC Action,
17 (a) by any person against the PwC Released Parties, and (b) by PwC against any
18 Other Defendant, are hereby permanently barred, enjoined and restrained. This bar
19 shall apply whether or not the PwC Released Parties are "covered persons" as
20 defined in 15 U.S.C. § 78u-4(f)(10). Accordingly, without limiting the above, all
21 persons (including any Other Defendant(s) and all persons purporting to act on his,
22 its or their behalf, and all persons purporting to claim by or through him, it or
23 them, whether under a subrogation theory or otherwise) are hereby permanently
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1 barred, enjoined and restrained from asserting, commencing or prosecuting against
2 the PwC Released Parties any such claims, and PwC is hereby permanently barred,
3 enjoined and restrained from asserting, commencing or prosecuting against any
4 Other Defendant any such claims.

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6 10. If any final verdict or judgment, or portion of any final verdict or
7 judgment, under the federal securities laws is obtained by or on behalf of the Class
8 or a Class Member against any Other Defendant over matters for which PwC
9 would have been jointly and severally liable, as determined by the jury through
10 special interrogatories allocating any liability for the expertised and non-expertised
11 portions of the registration statements to PwC and/or any other Defendant, then
12 such final verdict or judgment, or portion of any final verdict or judgment, over
13 matters for which PwC would have been jointly and severally liable, shall be
14 reduced by the greater of: (a) an amount that corresponds to the percentage of fault
15 or responsibility attributed to PwC for the alleged loss to the Class or the Class
16 Member as determined by the jury with regard to the portion of the judgment for
17 which PwC would have been jointly and severally liable; or (b) the amounts paid
18 by or on behalf of PwC to the Class or the Class Member in connection with the
19 Settlement Agreement.

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24 11. The Court finds that the Settlement represents a reasonable and good
25 faith settlement of all claims arising under state law, federal securities law, federal
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1 non-securities law and common law released by the Class under the Settlement
2 Agreement and is sufficient to discharge the PwC Released Parties from all such
3 claims. The Court further finds that the PwC Released Parties are entitled to
4 protection to the fullest extent permitted by applicable state and federal laws from
5 liability to third parties for contribution or indemnification or any other claim
6 where the claimant's injury is the claimant's liability to the Class. These
7 protections include, without limitation, those provided by WASH. REV. CODE
8 § 4.22.060, CAL. CIV. PROC. §§ 877 and 877.6 and any comparable statute or
9 common law of any other state (the "Additional Contribution Protections"). The
10 Court further finds that, to the extent such Additional Contribution Protections
11 apply, any Other Defendant shall have any final verdict or judgment obtained by or
12 on behalf of the Class or a Class Member against such Other Defendant reduced
13 according to the corresponding judgment reduction provisions applicable under
14 such state law or federal non-securities law, including, but not limited to, those
15 provided by WASH. REV. CODE § 4.22.060, CAL. CIV. PROC. §§ 877 and 877.6 and
16 any comparable statute or common law of any other state.

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22 12. Pursuant to the Settlement Agreement and applicable law, all
23 person(s) (including any Other Defendant(s), and all persons and entities
24 representing them or otherwise acting on their behalf) are permanently barred,
25 enjoined and restrained from asserting, commencing or prosecuting any claim
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1 under state, federal or common law against the PwC Released Parties, however
2 styled, whether legal or equitable, whether known or unknown, whether for
3 indemnification or contribution or otherwise denominated (including without
4 limitation claims for breach of contract or misrepresentation), where the claim is
5 based on, arises out of or relates in any way to claims or allegations that were
6 asserted or could have been asserted in the Action or the PwC Action (the “Barred
7 Claims”).
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9 13. Because the Other Defendants, and all persons and entities
10 representing them or otherwise acting on their behalf, are barred from asserting any
11 Barred Claims against the PwC Released Parties, any final verdict or judgment
12 obtained by the Class or a Class Member against any Other Defendants shall be
13 reduced in accordance with the judgment reduction provisions under state law,
14 federal non-securities law or common law applicable to such Barred Claims.
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16 14. In the event the Action proceeds to trial as to any Other Defendant:
17 (i) the Class may not use any finding, ruling, order, trial testimony, verdict or
18 judgment or any attribution of fault or responsibility to PwC, for any purpose
19 whatsoever against PwC in the Action or the PwC Action or in any other
20 proceeding or forum, or for any other purpose; (ii) any finding, ruling, order, trial
21 testimony, verdict or judgment or any attribution of fault or responsibility to PwC,
22 shall not be admissible for any purpose whatsoever as against PwC in the Action or
23 the PwC Action or in any other proceeding or forum, or for any other purpose;
24 (iii) any finding, ruling, order, trial testimony, verdict or judgment or any
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1 attribution of fault or responsibility to PwC, shall not constitute collateral estoppel
2 or res judicata as to PwC in the Action or the PwC Action or in any other
3 proceeding or litigation between PwC and the Class; (iv) PwC shall not be
4 estopped from challenging liability in the Action or the PwC Action or any other
5 proceeding or forum as if no settlement had been negotiated or entered into;
6 (v) PwC shall not use or seek to admit any finding, ruling, order, trial testimony,
7 attribution of fault or responsibility to any Other Defendant, verdict or judgment
8 against the Class in the PwC Action or any other proceeding or litigation between
9 PwC and the Class; (vi) any finding, ruling, order, trial testimony, verdict or
10 judgment shall not be admissible for any purpose against the Class in the PwC
11 Action or in any other proceeding or litigation between PwC and the Class;
12 (vii) any finding, ruling, order, trial testimony, attribution of fault or responsibility
13 to any Other Defendant, verdict or judgment shall not constitute collateral estoppel
14 or res judicata as to the Class in the PwC Action or in any other proceeding or
15 litigation between PwC and the Class; and (viii) the Class shall not be estopped
16 from asserting the liability of PwC in the Action as if no settlement had been
17 negotiated or entered into.

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21 15. This Order shall not be construed or used as an admission, concession
22 or declaration by or against PwC of any fault, wrongdoing, breach, or liability.
23 Nor shall the Order be construed or used as an admission, concession or
24 declaration by or against the Class Representatives or the Class, that their claims
25 lack merit, that their damages are in any way limited, or that the relief requested in
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1 the Action or the PwC Action is inappropriate, or as a waiver by any party of any
2 defenses of claims he, she, or it may have.

3 16. The Class shall move the Court for an order approving and directing
4 notice of the Settlement to the Class, and setting a Final Approval Hearing, no later
5 than June 15, 2010, or such continued date as the Class and PwC may agree to in
6 writing.
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9 **IT IS SO ORDERED.**

10 Dated this 9th day of June, 2010.

11
12 s/ Fred Van Sickle

13 THE HONORABLE FRED VAN SICKLE
14 UNITED STATES DISTRICT COURT

15 Presented by:

16 GORDON THOMAS HONEYWELL LLP

17 By /s Bradley B. Jones

18 Bradley B. Jones, WSBA No. 17197
19 Kenneth G. Kieffer, WSBA No. 10850
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21 Attorneys for Lead Plaintiffs and the Class

22 HAGENS BERMAN SOBOL SHAPIRO LLP

23 By /s Tyler S. Weaver

24 Steve W. Berman, WSBA No. 12536
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Attorneys for Lead Plaintiffs and the Class

ORDER PRELIMINARILY APPROVING
PWC SETTLEMENT - 9