

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES GINZKEY, RICHARD
FITZGERALD, CHARLES CERF, BARRY
DONNER, and on behalf of the class
members described below,

Plaintiffs,

v.

NATIONAL SECURITIES
CORPORATION, a Washington Corporation

Defendant.

Case No.: 2:18-cv-1773-RSM

**PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
REQUEST FOR FAIRNESS HEARING**

**NOTE ON MOTION CALENDAR:
June 3, 2022**

I. INTRODUCTION AND RELIEF REQUESTED

The parties have reached an arms-length settlement and seek preliminary approval from this Court pursuant to Federal Rule of Civil Procedure 23(e). Defendant's Counsel have reviewed this motion and confirm that Defendant does not oppose.

II. PROCEDURAL BACKGROUND AND STATUS OF THE CASE

The Plaintiffs filed their Complaint on December 2018 on behalf of themselves and all similarly situated investors that were clients of National Securities who invested in private placement securities issued by Solexel, Inc., later known as Beamreach, Inc. (Dkt. # 1). The

1 complaint outlined three subclasses representing the three separate securities at issue: the
2 Series D Preferred Stock; Series D-1 Preferred Stock, and the Series D-2 Note offering. (*Id.* at
3 26). Defendant moved to dismiss the complaint on February 28, 2019 (Dkt # 20). In its
4 motion, NSC argued that the Plaintiffs all executed documents indicating they received
5 offering memoranda for the various Beamreach securities and conceded to the risks
6 enumerated therein. After being fully briefed, the Court denied NSC's Motion to Dismiss on
7 June 6, 2019 (Dkt. #28).

9 The parties then engaged in discovery. Over several months, and through the initial
10 phases of the COVID-19 pandemic, the parties exchanged over one million pages of
11 documents, including tens of thousands of pages received from third parties responding to
12 subpoenas. NSC took the depositions of each named Plaintiff and Plaintiffs took the Rule
13 30(b)(6) deposition of National Securities through Carmelo Troccoli. After receiving
14 additional document production from NSC and from FINRA in response to a subpoena, the
15 Plaintiffs moved for Class Certification on November 3, 2020 (Dkt. # 53). After being fully
16 briefed, the Court granted Plaintiffs' motion, certifying this class and subclasses on April 27,
17 2021. (Dkt. # 66). NSC sought permission from the Ninth Circuit to appeal the order granting
18 certification, and that was denied on July 16, 2021. (Dkt. # 74).

21 The Plaintiffs then sought approval of their class notice which was approved on
22 October 26, 2021 (Dkt. # 81). The opt-out deadline came and went with two class members
23 opting-out. The parties then engaged in expert discovery with each party filing both initial and
24 rebuttal reports. Plaintiffs deposed both NSC expert witnesses and NSC took the deposition
25 of Plaintiffs' expert.

On December 23, 2021, NSC moved for summary judgment as a matter of law. (Dkt. # 83). After being fully briefed, the court denied the motion on March 10, 2022. (Dkt. # 111). NSC filed a second motion for summary judgment on February 10, 2022, this time based on the merits. (Dkt. # 96). That motion was fully briefed but the case was stayed prior to the Court's ruling. (Dkt. # 120). At the time the parties requested a stay, NSC's pending motion to strike Plaintiffs' Expert Witness (Dkt. # 113) was fully briefed and pending before the Court. Also pending before the Court at the time of the stay, but not yet fully briefed, was NSC's motion for an interlocutory appeal of the Court's decision denying NSC's first motion for summary judgment. (Dkt. # 117). The parties were scheduled for a two week trial set to begin May 8, 2022.

The parties engaged Seattle mediator Stew Cogan to assist the parties in reaching a resolution. The initial mediation took place on February 2, 2022 and was not successful, but progress was made. (Dkt. # 93). The parties agreed to a second mediation which took place on March 8, 2022. Again, the second mediation was not successful, but more progress was made towards what would ultimately become the parties' proposed settlement upon continuing negotiations. (Dkt. # 110). Mr. Cogan's experience mediating class action cases in this District was invaluable to the parties' negotiations in reaching this proposed settlement.

II. Summary of Settlement Terms

a. Financial Considerations and Release

In consideration for settlement and a release of all of the Class claims according to the terms of the attached Settlement Agreement, NSC agrees to pay \$4,650,000 in cash consideration (the "Cash Consideration"). This represents a gross cash recovery for the eligible Series D investors of 10.5%, and 41% for the eligible Series D1/D2 investors. In

1 addition, Defendant also agrees to provide each Class Member with two (2) years of
2 commission free brokerage services, the value of which is estimated to be approximately
3 \$5,894,010 (the “Commission Credit”). As set forth in the Declaration of Fred Knopf filed as
4 Exhibit A, the Commission Credit was calculated on the actual commissions and fees paid to
5 Defendant by the Class Members for securities transactions (not just Beamreach) over the two
6 years between February 6, 2015 and February 9, 2017, the time period Class Members
7 invested in Beamreach. Knopf Dec. ¶ 4. In total, this represents a gross settlement value to the
8 Class of \$10,544,010 (the “Gross Settlement”). Attached hereto as Exhibit B is the Executed
9 Settlement Agreement and Release (“Settlement Agreement”).
10

11
12 **b. Attorneys’ Fees and Costs**

13 Class Counsel will file a motion with the Court requesting up to thirty percent (30%)
14 of the Gross Settlement Fund as attorneys’ fees, and they will seek reimbursement of
15 reasonable expenses of no more than \$120,000. Settlement Agreement ¶ [3.2]. Class Counsel
16 will also file a motion requesting that the Court approve a payment of a service award of
17 \$10,000 to each of the Lead Plaintiffs for their efforts (the “Settlement Awards”). Settlement
18 Agreement ¶ 3.3. Defendant will not oppose this motion.
19

20 **c. Settlement Payments.**

21 After the deduction of attorneys’ fees, reimbursable expenses, the Settlement Awards,
22 and the Claims Administration costs, the net Cash Consideration will be distributed to all
23 Settlement Class Members on a pro rata basis based on which Beamreach securities offering
24 they invested in (i.e. Series D, or Series D1/D2).

25 The process for payment is as follows: within thirty (30) days of the Court’s final
26 approval, Defendant will transfer the Cash Consideration to the Claims Administrator and
27

1 shall provide proof to Plaintiffs' counsel that the Commission Credit has been reflected on the
 2 accounts for the Class Members. The Claims Administrator will prepare and issue the
 3 necessary checks for the Service Awards, and the Attorney's Fees Award, as well as issuing
 4 all the necessary tax documents.
 5

6 All checks shall expire 120 days after issuance. Settlement Class Members who have
 7 not cashed their checks prior to expiration shall have an additional 245 days to contact the
 8 Claims Administrator to obtain a re-issued check. All funds not claimed within 485 days of
 9 the issuance of the first check will be turned over to the Washington State Department of
 10 Revenue's Unclaimed Property Section for disposition in accordance with RCW 63.29.
 11

12 **e. Administration of Settlement and Notice**

13 As agreed by the parties, American Legal Claim Services, LLC (the "Settlement
 14 Administrator") will administer the Settlement. Settlement Agreement ¶ 4.1. If the Court
 15 grants preliminary approval, Plaintiffs will ask the Court to also approve a notice program
 16 directing the Settlement Administrator to send a Postcard Notice directly to each Settlement
 17 Class Member directing each Class Member, which will also be posted on
 18 beamreachclassaction.com. Settlement Agreement § 5.2.1 (the Proposed Notice Form).
 19

20 Notice will be sent to Class Members directly through first class mail using the most
 21 recent contact information available. *Id.* If a notice is returned as undeliverable with a
 22 forwarding address provided by the United States Postal Service, the Settlement
 23 Administrator will promptly resend the notice to that forwarding address. If a notice is
 24 returned as undeliverable and without a forwarding address, the Settlement Administrator will
 25 perform one skip trace search and, if it obtains a more recent address, will resend the notice.
 26 In addition to the postcard notice, the Settlement Administrator will establish and maintain a
 27

Settlement Website, which will display, at a minimum, the operative Complaint, Settlement Notice, the Settlement Agreement, and the Preliminary Approval Order. Settlement Agreement ¶ 4.2.

III. Argument and Authority

A. Standard for Preliminary Review of Class Action Settlement.

Federal Rule of Civil Procedure 23(e) requires the district court to approve any settlement of a certified class before a settlement become final. Fed. R. Civ. P. 23(e). Approval under Rule 23(e) requires a two-step process in which the court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to the class members, whether final approval is warranted.

When the class has already been certified, preliminary approval requires the court to ratify the fairness of the settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). In making this determination, the “court must carefully consider whether a proposed settlement is fundamentally fair, adequate, and reasonable, recognizing that it is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness.” *Id.* (internal citations omitted).

B. The Criteria for Settlement Approval Are Satisfied in this Case.

To assess the fairness of settlement, the court looks to the following eight factors:

(1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and view of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement.

1 *In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934, 944 (9th Cir. 2015) (quoting
2 *Churchill Village, L.L.C., v. General Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). In addition,
3 “the settlement may not be the product of collusion among the negotiating parties.” *Churchill*
4 *Village*, 361 F.3d at 576.
5

6 1) Strength of the Plaintiffs’ Case.

7 Plaintiffs maintain that their claims are strong and have substantial merit. This Court
8 denied NSC’s Rule 12(b)(6) motion to dismiss, certified the claims as a Rule 23(b)(3) class
9 action, and denied NSC’s law-based summary judgment motion. Legal and factual disputes
10 related to Plaintiffs’ negligence claims and Defendant’s defenses, would be resolved at trial.
11

12 2) Risk and Expense of Continued Litigation.

13 NSC’s merits-based summary judgment motion remains pending, as is its motion to
14 strike Plaintiffs’ expert witness under *Daubert v. Merrill Dow*. Although Plaintiffs are
15 confident they will prevail on both motions, there is risk to the class in proceeding. All parties
16 recognize the substantial risk during any jury trial, along with significant expense to prepare
17 for and litigate such a trial. The parties also recognize that even with a favorable jury verdict,
18 there is also potential for a lengthy appeals process as well as the risk that Defendant would
19 become insolvent and cease operations if a judgment is rendered against it.
20

21 3. Risk of Maintaining Class Action Status throughout Trial.

22 Plaintiffs are confident they could maintain class action status through trial and appeal
23 for all of their claims. Still, it is plausible that individualized issues with respect to assumption
24 of risk could manifest through testimony at trial.
25
26
27
28

1 4. Amount Offered in Settlement.

2 NSC has agreed to pay the Class Members \$4,650,000 in cash consideration and
3
4 provide the class with two years of commission-free trading, which is valued alone at
5 \$2,947,005 per year (for a total of \$5,894,010). In total, this settlement provides the Class
6 with \$10,544,010 in value. This total settlement value represents a significant percentage of
7 the damages that would be sought at trial. The total amount of claims eligible for class status,
8 meaning those claims that did not seek exclusion or who are not otherwise excluded, totals
9 \$31,542,433. Class Plaintiffs had no statutory claim for attorney's fees or costs and the claims
10 made were strictly limited to negligence and unjust enrichment.

11 This settlement represents a recovery of \$2,667,662 to the Series D Sub Class
12 Members, with \$26,676,621 in eligible claims, and \$1,982,338 to the Series D1/D2 Class
13 members, with \$4,865,812 in eligible claims. The rationale for this division amongst the
14 various Class Members is that far more "red flags" were present the longer Defendant
15 recommended and sold Beamreach securities, culminating with the D1/D2 offering (which
16 had the most "red flags").
17

18 The Plaintiffs estimate that the best-case outcome for the Class at trial would have
19 been a jury verdict in the amount of \$31,542,433. However, as NSC stated in its Petition for
20 Permission to Appeal Order Granting Class Certification, the verdict of this size would
21 present a "death knell" situation and may not have been collectible against NSC. This very
22 real issue weighed heavily on settlement negotiations.
23

24 5. Extent of Discovery Completed and the Stage of the Proceeding

25 There was a massive amount of discovery in this case. NSC produced 844,043 pages
26 of discovery, Plaintiffs produced an additional 5,888 pages, and Plaintiffs obtained tens of
27

1 thousands of additional pages of records from third parties including FINRA, Darwin IP,
 2 Opus Bank, and Wells Fargo Bank. NSC took all four lead Plaintiffs' depositions, two of
 3 them in-person in Chicago and then two remotely via Zoom. Plaintiffs took the 30(b)(6)
 4 deposition of National Securities Corporation, who offered lead investment banker Carmelo
 5 Troccoli, remotely via Zoom; took the deposition of NSC's expert William Purcell in-person
 6 in New York City, and the deposition of NSC's second expert Kamron Fotouhi, remotely via
 7 Zoom. NSC took the deposition of Plaintiffs' expert, Mason Dinehart, in-person in San
 8 Francisco.

10 The parties were about five (5) weeks from trial when they asked the Court to stay the
 11 proceedings, pending settlement. At that moment, NSC's merits-based summary judgment
 12 motion, motion to strike Plaintiffs' expert under *Daubert*, and motion for interlocutory appeal
 13 were all pending. An adverse ruling on any of those motions could serve to dismiss the
 14 Class's case, hamper the Class's ability to prove their case at trial, or substantially delay the
 15 trial pending appeals. Critically, the parties negotiated this settlement with full knowledge of
 16 the facts in the case and with substantial information about the strengths and weaknesses of
 17 their legal positions.

19
 20 6. Experience and Views of Counsel.

21 All counsel involved in this case have substantial class action experience and very
 22 deep backgrounds in securities law and FINRA regulation of broker-dealers. Counsel for both
 23 parties attended both mediations and all counsel support this settlement as fair and reasonable.
 24 In addition, mediator Stewart Cogan filed a declaration echoing the same. (Dkt. # 122). The
 25 class representatives have been involved in the litigation of this case. It also must be noted
 26 that Class Plaintiffs brought forth a very unique claim here, based exclusively on the
 27

1 applicability of FINRA regulatory rules as evidence of the standard of care against broker-
 2 dealers in performing due diligence on private placements, along with the approval to sell
 3 those securities, to firm clients. As pointed out several times by Defendant, the Plaintiffs
 4 sought to turn 90 years of securities laws on their heads with this case. Although Plaintiffs
 5 disagree with NSC's characterization of their claims as setting forth some sort of dangerous
 6 precedent, it cannot be lost on the Court that what Plaintiffs' and their Counsel accomplished
 7 with this case was to some degree, novel and that it created immense value for a class of
 8 investors content with sitting silently on their claims.

10 Plaintiffs also ask this Court for a service or incentive award in the amount of \$10,000
 11 per Class Representative as compensation for their cooperation and effort. All four Plaintiffs
 12 had to produce documents to Defendant and sit for depositions. Plaintiff Ginzkey and
 13 Fitzgerald even travelled to Chicago to facilitate their depositions. Courts have discretion to
 14 award class action incentive payments to compensate a class representative for work
 15 performed on behalf of the class and for initiating the action. *See Rodriguez v. West*
 16 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Subject to approval by the Court,
 17 \$10,000 will be set aside for each. Settlement Agreement ¶ 3.3.

19
 20 7. Presence of Government Participant.

21 No government entities are involved in this lawsuit, nor has the government
 22 participated in any settlement negotiations.

23 8. The Reaction of the Class Members to the Proposed Settlement.

24 All four class representatives support the settlement proposal, and have executed the
 25 settlement agreement. The Court will be better able to evaluate this prong after notice is
 26 provided to all class members.
 27

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court: 1) Grant
3 preliminary approval of the settlement; 2) Approve the proposed notice plan; 3) appoint
4 American Legal Claim Services, LLC as Settlement Administrator; and 4) schedule a final
5 fairness hearing at the Court's convenience but no earlier than 120 days after entry of the
6 preliminary approval order, to allow for objections to be made no more than sixty (60) days
7 after the Notice deadline, and for Plaintiffs' counsel to prepare and file a final report and
8 motion.
9

10 Dated: June 3, 2022

11
12 Respectfully submitted,
13 **JAMES GINZKEY, RICHARD**
14 **FITZGERALD, CHARLES CERF, BARRY**
15 **DONNER,**
16 Plaintiffs

17 By: /s/ David Neuman
18 One of Their Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June 2022, the foregoing was electronically filed with the Clerk of the United States District Court for the Western District of Washington, Seattle, using the CM/ECF system, which will send notification of such filing to the below counsel:

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David Neuman

EXHIBIT A

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES GINZKEY, RICHARD
FITZGERALD, CHARLES CERF, BARRY
DONNER, and on behalf of the class members
described below,

Plaintiffs,

v.

NATIONAL SECURITIES CORPORATION,
a Washington Corporation,

Defendant.

Case No.: 2:18-cv-01773-RSM

DECLARATION OF FRED KNOPF

I, Fred Knopf, am older than 21 years of age, have personal knowledge of the facts stated herein based on my own knowledge and a review of pertinent National Securities Corporation's records, and am competent to testify thereto.

1. I am the General Counsel for National Securities Corporation ("NSC"), a position I have held since 2017. I am also the Deputy General Counsel, Head of Litigation at non-party B. Riley Financial Inc. ("B. Riley"). B. Riley is the current parent corporation of NSC.

2. NSC and B. Riley provide investment brokerage services to investors. NSC and B. Riley are typically paid by investors for their brokerage services in the form of commissions, calculated as 1-4 percent of purchases or sales.

4. Those investors paid approximately \$5,894,010 in commissions to NSC over that roughly two-year period. This amount includes commissions for the Beamreach securities and also other securities that Plaintiffs and settlement class members invested in through NSC. Should those investors choose to invest at similar levels through NSC or B. Riley over the two years following the effective date of the Settlement Agreement in this matter, those investors would save approximately \$5,894,010 by receiving Commission-Free Brokerage Services (as defined in the Settlement Agreement).



Fred Knopf

EXHIBIT B

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Subject to its terms and conditions and the approval of the Court, this Class Action Settlement and Release of Claims (the “Agreement” or “Settlement Agreement”) is made and entered into by and among Plaintiffs James P. Ginzkey, Richard Fitzgerald, Charles Cerf, and Barry Donner (“Plaintiffs” or “Class Representatives”), in their individual capacities and on behalf of the Class Members (defined below); Defendant National Securities Corporation (“Defendant”) (Plaintiffs and Defendant are referred to collectively herein as the “Parties”), and is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims, as defined below.

RECITALS

A. On December 10, 2018, Plaintiffs filed a proposed class action complaint against Defendant in the United States District Court for the Western District of Washington, captioned *James Ginzkey, et al. v. National Securities Corporation*, Case No. 2:18-cv-1773 (the “Action”), alleging that Defendant negligently offered securities of Beamreach Solar (f/k/a Solexel) for sale to Plaintiffs, and purporting to represent a “Beamreach Class,” a “Series D Sub-Class,” a “Series D-1 Sub-Class,” and a “Series D-2 Sub-Class.” *See* Complaint ¶ 124.

B. On April 27, 2021, the Court granted Plaintiffs’ motion for class certification; certified a “Beamreach Class,” a “Series D Sub-Class,” a “Series D-1 Sub-Class,” and a “Series D-2 Sub-Class”; appointed Plaintiffs as Class Representatives; and appointed Stoltmann Law Offices, P.C. and Law Offices of Joshua B. Kons as Class Counsel. Dkt. 66 at 4-5, 12.

C. On February 2 and March 8, 2022, Plaintiffs and Defendant participated in good-faith, arms-length mediations with mediator Stew Cogan. The Parties were not able to resolve their dispute and litigation continued. However, as a result of the progress made using the services of

Mediator Cogan, the Parties continued to discussing settlement following the two mediation sessions, which were instrumental in the Parties' decision to enter into this Agreement.

D. While litigating the Action, Defendant produced to Plaintiffs substantial documentation regarding its due diligence of Beamreach and related documents. Defendant also provided Plaintiffs with ESI and testimony.

E. Based on these records, and their own independent investigation and evaluation, Class Counsel have thoroughly analyzed the strength and value of the proposed Class Members' claims during the prosecution of this Action. This discovery, investigation, and prosecution by Class Counsel has included, among other things: (a) inspection and analysis of the documents and materials produced by Defendant; (b) analysis of the various legal positions taken and defenses raised by Defendant; (c) investigation into the viability of class treatment of the claims asserted in the Action; (d) analysis of potential class-wide damages; (e) research of the applicable law with respect to the claims asserted in the Complaint and the potential defenses thereto; (f) the exchange of information through discovery; and (g) deposition testimony from fact witnesses and proposed experts.

F. The discovery conducted in this matter, as well as discussions between counsel, have been more than adequate to give Plaintiffs and Class Counsel a sound understanding of the merits of Plaintiffs' position and to evaluate the worth of the claims of the Class Members in light of Defendant's defenses to them. The discovery conducted in this Action and the information exchanged by the parties through discovery has allowed the parties to assess the merits of their respective positions and to compromise the issues on a fair and equitable basis. As a result, Class Counsel and Plaintiffs agree and represent to the Court that the Settlement is fair, adequate, and reasonable, and in the best interests of the Class.

G. Plaintiffs and Class Counsel believe that the claims, causes of action, allegations and contentions asserted in the Action have merit. However, Plaintiffs and Class Counsel recognize and acknowledge the risk, expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel have taken into account the uncertain outcome and the risk of any litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation. Class Counsel are mindful of the inherent problems of proof under, and possible defenses to, the claims alleged in the Action, including, but not limited to Defendant's defense that, based on reasonable due diligence, it had a reasonable basis to offer for sale the Beamreach Offerings. Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon Plaintiffs and the proposed Class Members and that an independent review of this Agreement by the Court in the approval process will confirm this conclusion. Class Counsel further recognize that the risks of this case exceed many other cases because of the uncertain nature of how the evidence will be viewed by a jury. Class Counsel further recognize that currently pending before the Court are Defendant's merits-based motion for summary judgment, a motion for interlocutory appeal concerning a prior legal motion for summary judgment, and a motion to disqualify Plaintiffs' proposed expert, any of which, if granted, could result in substantial impediment to Plaintiffs' efforts to recover any damages in this case. All of these factors materially increase the risk of protracted litigation, including appeals, even if Plaintiffs succeed at trial. Based on their own independent evaluation of all of these factors, Class Counsel have determined that the Settlement set forth in the Agreement is in the best interests of the Plaintiffs and the Class Members.

H. Defendant has denied and continues to deny each and all of the claims and contentions alleged by Plaintiffs and all Class Members in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the

conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendant further denies that, for any purpose other than settlement, the claims alleged in the Action are appropriate for class or representative treatment of any kind. Nonetheless, Defendant has concluded that further conduct of the Action would be protracted and expensive and that it is desirable for economic reasons that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Agreement. The Parties have agreed to the terms set forth herein without in any way acknowledging fault or liability. Therefore, nothing in this Settlement Agreement shall be deemed or used as an admission of liability, fault or wrongdoing by Defendant or as an admission that this case may be maintained as a class or representative action, and shall not be used for any purpose other than for settlement purposes and to enforce its terms.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, subject to final approval by the Court after a hearing or hearings as provided for in this Settlement Agreement, and in consideration of the benefits flowing from the Settlement Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below:

1.1 “Action” means the lawsuit captioned *James Ginzkey, et al. v. National Securities Corporation*, Case No. 2:18-cv-1773, pending in the United States District Court for the Western District of Washington.

1.2 “Agreement” or “Settlement Agreement” means this document.

1.3 “Beamreach Class” means, for purposes of this Settlement only, “all persons who invested in Beamreach Offerings through the Defendant, at any time between February 6, 2015 and February 9, 2017 inclusive.” *See* Dkt. 66 at 4-5.

1.4 “Beamreach Offerings” means the Beamreach Solar (f/k/a Solexel) Series D, Series D-1, and Series D-2 securities, as defined in the Complaint for purposes of this Settlement.

1.5 “Class” means the Beamreach Class, Series D Sub-Class, Series D-1 Sub-Class, and Series D-2 Sub-Class, as defined above and in Dkt. 66. The Class expressly *excludes* any and all institutional investors, which would have performed their own due diligence in regard to the Beamreach Offerings, including but not limited to CMC Capital Fund and Macathel L.P. The Class also expressly *excludes* any and all investors that have previously brought claims regarding or related in any way to the Beamreach Offerings against Defendant, or settled any claims against Defendant arising from, relating to, or in connection with the Beamreach Offerings. The Class also expressly excludes any and all investors that have previously opted out of the Action including Rakesh Amin, Rakesh Amin Living Trust, and Richard J. Kavanaugh. The Class also expressly excludes Defendant and any of its officers, directors, employees, agents, parents, affiliates, or subsidiaries. Also expressly excluded is any entity related to or affiliated with Beamreach, and any judicial officers presiding over this matter and their immediate family members.

1.6 “Class Counsel” means:

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1.7 “Class Member” means a member of the Class.

1.8 “Class Members” means each and every Class Member.

1.9 “Class Notice” means the notice of proposed settlement in substantially the form attached hereto as Exhibit 1 that is to be provided to Class Members after entry of the Preliminary Approval Order.

1.10 “Class Representatives” or “Plaintiffs” mean James P. Ginzkey, Richard Fitzgerald, Charles Cerf, and Barry Donner.

1.11 “Commission-Free Brokerage Services” means two (2) years of commission-free brokerage services for Plaintiffs and Class Members from Defendant, starting from the Effective Date. The commission-free brokerage services provided hereunder include, but are not limited to, margin trades, transition commissions, markup/markdowns, services fees, and other customary brokerage service charges. The Commission-Free Brokerage Services have an attested to valuation over the two-year period of \$5,894,010. Taken together, the Gross Settlement Payment and Commission-Free Brokerage Services shall be defined as the “Total Settlement Value” and shall resolve this case in its entirety and all of the Released Claims, which includes those alleged in the Complaint. Under no circumstances shall Defendant be required to pay more monetary

consideration than the Gross Settlement Payment, in order to consummate the Agreement and effectuate the Settlement.

1.12 “Complaint” means the Class Action Complaint filed in the Action on December 10, 2018.

1.13 “Court” means the United States District Court for the Western District of Washington.

1.14 “Defendant” means National Securities Corporation.

1.15 “Defendant’s Counsel” means:

Curt Roy Hinline
James Morrison
Alexander Vitruk
Logan F. Peppin
BAKER & HOSTETLER LLP
999 Third Avenue, Suite 3900
Seattle, WA 98104-4040
Phone: 206-332-1380
Email: chinline@bakerlaw.com, jmorrison@bakerlaw.com, avitruk@bakerlaw.com,
lpeppin@bakerlaw.com

Daniel J. Buzzetta
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, NY 10111
Phone: 212-589-4236
Email: dbuzzetta@bakerlaw.com

1.16 “Effective Date” means the date that the Settlement becomes Final. “Final” means (i) in the event no objections to the Settlement are filed, thirty-five (35) days after the Court enters the Final Approval Order and Judgment; or, (ii) in the event that one or more objections to the Settlement have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the Final Approval Order and Judgment, without a timely appeal having been filed; or, (iii) in the event that an appeal of the Final Approval Order and Judgment has been filed, then when the applicable court has rendered a final decision or opinion

affirming the Final Approval Order and Judgment without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such Appeal has been either dismissed or withdrawn by the appellant.

1.17 “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of costs awarded by the Court to Class Counsel.

1.18 “Final Approval Hearing” means the hearing at which the Court shall consider a motion for entry of the Final Approval Order and Judgment, Plaintiffs’ application for Service Award, and Class Counsel’s application for Fee Award and Costs.

1.19 “Final Approval Order and Judgment” means the Court’s order granting final approval of the Settlement substantially in the form attached to this Agreement as Exhibit 3.

1.20 “Gross Settlement Payment” means the all-in non-reversionary payment by Defendant of \$4,650,000. The Gross Settlement Payment is the total monetary payment required from Defendant under this Agreement, and is inclusive of the Fee Award and Costs, the Service Award, and the Settlement Administration Costs.

1.21 “Individual Settlement Payment” means the payment to be made to each Class Member from the Net Settlement Fund pursuant to the terms of this Agreement.

1.22 “Net Settlement Fund” means the amount of the Gross Settlement Payment that remains after the deductions of the Fee Award and Costs, and Service Award are made.

1.23 “Notice Deadline” means the deadline for the Settlement Administrator to send the Postcard Notice (Exhibit 1), which shall be thirty (30) days following entry of the Preliminary Approval Order.

1.24 “Objection Deadline” means, respectively, the date by which (1) a written objection to this Agreement must be filed with the Court. The deadlines in each case will be sixty (60) calendar days after the Notice Deadline.

1.25 “Parties” means Class Members, including the Class Representatives and Defendant, each of whom is a “Party.”

1.26 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

1.27 “Preliminary Approval Order” means the Court’s order granting preliminary approval of the Settlement, ordering the mailing of the Class Notice and scheduling the Final Approval Hearing.

1.28 “Released Claims” means any and all claims, demands, and causes of action by Class Members that either were raised in the Complaint or that could have been raised in the Complaint, an individual arbitration, or any other legal proceeding, and that relate in any way to, arise from, or have any connection with the Beamreach Offerings.

1.29 “Released Parties” means National Securities Corporation and its respective parent companies, subsidiaries, divisions, affiliates, and related entities, past and present, as well as their direct and indirect owners, shareholders, employees, officers, directors, representatives, attorneys, insurers, reinsurers, partners, and successors, transferees and assigns of each.

1.30 “Series D Sub-Class” means, for purposes of this Settlement only, “Class Members who invested in Beamreach Series D securities offering through the Defendant, at any time between February 6, 2015 and December 31, 2016 inclusive.” *See* Dkt. 66 at 4-5.

1.31 “Series D-1 Sub-Class” means, for purposes of this Settlement only, “Class Members who invested in Beamreach Series D-1 securities offering through the Defendant, at any time between June 1, 2016 and February 9, 2017 inclusive.” *See* Dkt. 66 at 4-5.

1.32 “Series D-2 Sub-Class” means, for purposes of this Settlement only, “all Class Members who invested in Beamreach Series D-2 securities offering through the Defendant, at any time between October 1, 2016 and February 9, 2017 inclusive.” *See* Dkt. 66 at 4-5.

1.33 “Service Award” means the service payment described in Paragraph 3.3 of this Agreement to be requested from the Court and, if awarded, paid to the Class Representatives out of the Gross Settlement Payment as compensation for its service to the Class and its execution of a general release.

1.34 “Settlement” means the Settlement between the Parties, which is memorialized in this Agreement.

1.35 “Settlement Administrator” means the third-party claims administration firm selected by the Parties and approved by the Court. The Parties have selected American Legal Claim Services, LLC as the Settlement Administrator.

1.36 “Settlement Administration Costs” means the expenses incurred by and the fees charged by the Settlement Administrator to perform all of its duties under this Settlement Agreement.

1.37 “Settlement Notice” means the detailed notice of the Settlement to be posted on the Settlement Website.

1.38 “Settlement Website” means the website to be created by the Settlement Administrator containing full details and information about the Settlement, including this Agreement. The Settlement Website will have links to the Complaint, this Agreement, the Postcard Notice, the Website Notice, motions for preliminary and final approval of this Settlement, any approval order, and Class Counsel’s request for attorneys’ fees and Service Award.

2. SETTLEMENT CONSIDERATION

2.1 The Settlement consideration shall consist of the Gross Settlement Payment and Commission-Free Brokerage Services only.

2.2 The Gross Settlement Payment that Defendant will be obligated to make is \$4,650,000, inclusive of the Settlement Administration Costs, the Fee Award and Costs, the Class Representative

Service Award, and all Individual Settlement Payments to Class Members who submit a timely and valid Claim Form. The Gross Settlement Payment is non-reversionary; if the Court does not approve the full amount of the Settlement Administration Costs, the Fee Award and Costs, or the Class Representative Service Award, the difference between the amount requested and the amount approved will be distributed pro rata to Class Members as Individual Settlement Payments in accordance with the terms of this Agreement.

2.3 The Commission-Free Brokerage Services that Defendant will be obligated to offer is defined in Paragraph 1.11 above, and consists of two (2) years of commission-free brokerage services for Plaintiffs and Class Members only, starting from the Effective Date, subject to paragraph 2.4 below. Notwithstanding anything to the contrary, the Defendant shall not issue or direct the issuance of 1099s or other tax documentation to the Plaintiffs or the Class Members for any unused Commission Free Brokerage Services.

2.4 Should Defendant enter into an agreement for merger or asset transfer before two (2) years after the Effective Date, such agreement shall be conditioned on the surviving firm or firm purchasing Defendant's assets offering the remaining Commission-Free Brokerage Services to Plaintiffs and the Class Members until two (2) years after the Effective Date.

2.5 Under no circumstances shall Defendant be required to pay more than the Gross Settlement Payment in order to consummate the Agreement and effectuate the Settlement.

3. PRELIMINARY APPROVAL OF SETTLEMENT

3.1 As soon as practicable following execution of this Agreement, Plaintiffs shall file an unopposed motion with the Court for entry of the Preliminary Approval Order, which shall, among other things: (a) preliminarily approve the Settlement set forth in this Agreement; (b) appoint a Settlement Administrator to exercise the duties allocated to the Settlement Administrator herein; (c) approve as to form and content the Class Notice; (d) direct the Settlement Administrator to mail the

Class Notice to Class Members as set forth below and instructed by the Court; (e) set deadlines for Class Members to serve objections to the Settlement; and (f) set the date of the Final Approval Hearing no earlier than 120 days after entry of the Preliminary Approval Order.

3.2 Class Counsel will submit an application to the Court for an award of attorneys' fees of up to \$3,163,203.00, which is 30% of the Total Settlement Value, and costs not to exceed \$120,000 (collectively, the "Fee Award and Costs"). Defendant agrees not to oppose Class Counsel's application for the Fee Award and Costs. The amount of the Fee Award and Costs is within the sole discretion of the Court and is not a condition of this Settlement. Any order by the Court providing for a Fee Award and Costs that is less than the amount requested by Class Counsel shall not be grounds to rescind this Agreement or otherwise void the Settlement.

3.3 Class Counsel will submit an application to the Court for a Service Award of \$10,000 for each Plaintiff, in addition to any payment Plaintiffs are otherwise entitled to as Class Members, to recognize Plaintiffs' service to the Class, including their depositions, and as consideration for a general release of Plaintiffs' individual claims against Defendant and all other Released Parties (the "Service Award") and to be paid to Plaintiffs from the Gross Settlement Payment. Defendant will not oppose. The amount of the Service Award is within the sole discretion of the Court and is not a condition of this Settlement. Any order by the Court providing for a Service Award that is less than the amount Class Counsel applies for shall not be grounds to rescind this Agreement or otherwise void the Settlement.

3.4 Class Counsel will submit their motion for a Fee Award and Costs, and Service Award, with their motion for Final Approval of the Class Action Settlement.

4. APPOINTMENT AND DUTIES OF SETTLEMENT ADMINISTRATOR

4.1 Subject to the Court's approval, the Parties hereby stipulate to the appointment of American Legal Claim Services, LLC as the Settlement Administrator under this Agreement.

4.2 The Settlement Administrator shall perform the following duties in connection with its administration of the Settlement: (i) obtaining addresses for Class Members using appropriate methods, as described in Paragraph 5.2.1 below; (ii) mailing the Postcard Notice to Class Members; (iii) tracking non-delivered Postcard Notices and taking reasonable steps to re-send them to Class Members' current addresses; (iv) tracking and timely reporting to Class Counsel and Defendant's Counsel any written objections to the Settlement submitted by Class Members; (v) administration of the fund established by the Gross Settlement Payment; (vi) disbursement of the Fee Award and Costs, and Service Award; (vii) calculation of the amount of the Individual Settlement Payment that is to be made to each Class Member; (viii) disbursement of Individual Settlement Payments to Class Members; (ix) tracking the number of Individual Settlement Payment checks that remain uncashed by the deadline to cash such checks; (x) handling the redistribution contemplated by Paragraph 10, if any; (xi) preparing the reports and declarations contemplated by Paragraph 5.4.1; (xii) establishing and maintaining the Settlement Website; (xiii) establishing a toll-free telephone number for Class Members to call; and (xiv) any other obligations imposed by the Court.

4.3 The Settlement Administrator shall complete its duties in a rational, reasonable, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, including but not limited to a summary of work performed by the Settlement Administrator. Such records will be provided to Class Counsel and Defendant's Counsel and to the Court along with the motion for entry of the Final Approval Order and Judgment.

4.4 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Class Member.

4.5 All expenses and fees due the Settlement Administrator in connection with its administration of the Settlement, including, but not limited to, providing the Class Notice and processing objections, shall be paid from the Net Settlement Fund.

4.6 Settlement Administration shall terminate no later than one year from the Effective Date, or whenever all required payments from the settlement fund have been made, whichever is sooner. If circumstances make termination within one year of the Effective Date infeasible, then the Parties shall meet and confer about an appropriate extension of this deadline. At the time of termination of the settlement administration, the Settlement Administrator and Class Counsel shall return or destroy, at the option of the Defendant, all confidential information in their position.

5. NOTICE OF SETTLEMENT; SUBMISSION OF OBJECTIONS

5.1 The Settlement Administrator shall cause the Class Notice to be disseminated to Class Members. The Class Notice shall comport with Rule 23 of the Federal Rules of Civil Procedure.

5.2 Providing the Class Notice to the Class.

5.2.1 On or before the Notice Deadline, the Settlement Administrator shall cause the Postcard Notice to be mailed by first-class mail to Class Members and will cause the Settlement Website to become active. If a Postcard Notice is returned with a forwarding address, the Settlement Administrator shall promptly forward the original Postcard Notice to the updated address via first-class regular U.S. Mail indicating on the original Notice the date of such re-mailing. If a Postcard Notice is returned as undeliverable without a forwarding address, the Settlement Administrator will perform a reasonable “skiptrace” search using the National Change of Address database to obtain an updated address, and the Postcard Notice will be re-mailed to the Class Member at the updated address.

5.2.2 The Postcard Notice shall be in substantially the form as that attached as Exhibit 1 and shall refer Class Members to the Settlement Website where Class Members can find detailed information about the Settlement as reflected by Exhibit 2.

5.3 Objection to Settlement

5.3.1 Any Class Member may object to this Settlement, the Plaintiffs' requested Service Award, and/or Class Counsel's requested Fee Award and Costs, by filing a written objection and supporting papers, if any, with the Court on or before the Objection Deadline. Such a written objection must (a) clearly identify the case name and number, and (b) be filed with the Clerk of the Court and mailed to Class Counsel and Defense Counsel. The written objection must include: (1) the Class Member's full name, address, telephone number, and e-mail address; (2) information or proof showing that the individual is a Class Member; (3) the reasons why the Class Member objects to the Settlement, including any documents supporting the objection; (4) the name and address of the Class Member's counsel, if any; (5) the name and address of any counsel representing the Class Member that may appear at the Final Approval Hearing; (6) a statement confirming whether the Class Member and/or their or its counsel intend to personally appear and/or testify at the Final Approval Hearing; (7) a list, by case name, court, and docket number, of all other cases in which the Class Member or their or its counsel has filed an objection to any proposed class action settlement within the last three years; and (8) the Class Member's signature or the signature of the Class Members' counsel or other duly authorized representative (along with documentation illustrating representation).

5.3.2 In the event that the Settlement Administrator receives any written objections to the Settlement, the Settlement Administrator shall send copies of such objections to Class Counsel and Defendant's Counsel by electronic means within 24 hours of receipt.

5.3.3 Any Class Member who fails to timely file a written objection in accordance with the terms of this paragraph and as detailed in the Class Notice, shall be deemed to have waived his, her or its objections, shall not be permitted to object to this Settlement, the Plaintiffs' requested Service Award, and/or Class Counsel's requested Fee Award and Costs at the Final Approval Hearing, and shall be foreclosed from seeking review of any Final Approval Order and Judgment by appeal or other means.

5.4 Reports and Declaration By Settlement Administrator

5.4.1 Prior to the deadline for Class Counsel to file a Motion for Final Approval, the Settlement Administrator will prepare and provide to Class Counsel and Defendant's Counsel a draft declaration attesting to the work it performed notifying Class Members of the Settlement. The declaration will discuss the Settlement Administrator's mailing the Postcard Notice, indicating the number of Postcard Notices mailed to Class Members that were not returned undeliverable and thus the percentage of the Class that the Postcard Notice "reached." The declaration also will state the number of visits and unique visitors to the Settlement Website and the number of calls from Class Members that the Settlement Administrator received regarding the Settlement. The declaration will contain a statement from the Settlement Administrator about whether it believes, based on its experience, that the Class Notice satisfies due process.

6. FINAL APPROVAL OF SETTLEMENT

6.1 The Class Representatives will file a motion with the Court requesting final approval of the Settlement, approval of Class Counsel's Fee and Cost Award, approval of Class Representatives' Service Award, approval of Settlement Administrator's Fees and Costs, and entry of the Final Approval Order and Judgment ("Motion for Final Approval") by the deadline set by the Court, which, unless otherwise ordered by the Court, will be filed at least ten (10) days after the

Objection Deadline. The Final Approval Hearing will be set at the convenience of the Court but no earlier than one hundred twenty (120) days after entry of the Preliminary Approval Order.

7. RELEASE OF CLAIMS

7.1 The Parties intend that this Settlement Agreement will fully and finally dispose of the Action, which shall be dismissed with prejudice, and any and all Released Claims against the Released Parties.

7.2 Upon the Effective Date, the Class Representatives and all Class Members, for themselves and for their heirs, executors and assigns, hereby release, discharge, and agree to hold harmless Defendant and all of the other Released Parties, and each of them, from any and all Released Claims.

8. DELIVERY OF GROSS SETTLEMENT PAYMENT TO THE SETTLEMENT ADMINISTRATOR

8.1 Defendant agrees to fund the Gross Settlement Fund over time as funds are reasonably necessary to cover administrative costs, fees, and expenses.

8.2 Within ten (10) days of preliminary approval of the Settlement, Defendant shall transfer to the Settlement Administrator an initial payment to cover expected notice administration costs, as reasonably estimated by the Settlement Administrator.

8.3 In the event that the Settlement becomes Final, Defendant shall, within thirty (30) days of the Effective Date, transfer to the Settlement Administrator the remaining funds. The Settlement Administrator will hold this amount in escrow until such time as it is authorized to use or pay those funds pursuant to the Settlement Agreement, the Preliminary Approval Order, or the Final Approval Order and Judgment, or as otherwise directed by the Parties. To the extent any interest accrues from funds being placed in escrow, such interest shall revert to Defendant upon the closing of the escrow account.

9. DISTRIBUTION OF GROSS SETTLEMENT PAYMENT

9.1 For purposes of making distributions of the Net Settlement Fund to the Class Members on a pro rata basis, the Gross Settlement Payment shall be allocated between the Series D Class Members and the Series D1/D2 Class Members as follows: \$2,667,662 to the Series D Sub Class Members; and \$1,982,338 to the Series D1/D2 Sub Class Members.

9.2 All checks shall expire 120 days after issuance. Class Members who have not cashed their checks prior to expiration shall have an additional 245 days to contact the Settlement Administrator to obtain a re-issued check. All funds not claimed within 485 days of the issuance of the first check will be turned over to the Washington State Department of Revenue's Unclaimed Property Section for disposition in accordance with RCW 63.29.

10. EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

10.1 If (a) the Court should for any reason decline to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment dismissing the Action with prejudice, then the Settlement will automatically become null and void without any act or deed by any Party and the terms and fact of this Agreement (and of any act performed or document executed pursuant to or in furtherance of the Agreement). Put another way, neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court, including all unused funds expended by Defendant as per Section 9 returned to it. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

11. RETENTION OF JURISDICTION

11.1 The Parties stipulate that the Court may retain jurisdiction over any further disputes relating to this Agreement, the implementation of the Agreement, or further issues regarding the claims in the Action, until the Settlement Administrator and the Parties notify the Court that all issues have been resolved and the Settlement has been fully effectuated.

12. MISCELLANEOUS

12.1 The Parties will fully cooperate and use reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary or be ordered by the Court, or otherwise, to accomplish the terms of this Agreement, including, but not limited to, executing such documents and taking such other action as may reasonably be necessary to obtain preliminary and final approval of this Agreement without material modifications and to implement its terms.

12.2 This Agreement shall be subject to, governed by, construed, enforced and administered in accordance with the laws of the State of Washington, both in its procedural and substantive aspects. (Defendant expressly reserves, and does not waive, its right to argue that New York and/or other substantive laws should apply to the Parties' dispute if the Settlement is not approved by the Court.)

12.3 The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement, and in fact only agreed on the terms pursuant to voluntary negotiations between the Parties. Accordingly, the Parties expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement. The Parties agree that the language in this Agreement shall not be construed in favor or against any Party. The Parties further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

12.4 The Parties agree that if, at any time before the Effective Date, any portion of the release of claims, the notice and/or the distribution provisions of this Agreement are determined to be illegal, invalid or unenforceable, then the Parties agree to meet and confer in order to attempt to resolve outstanding issue(s).

12.5 If the Court denies final approval of the Settlement, or if the Court's final approval is reversed or fundamentally changed on appellate review, then this Settlement shall become null and void. If the Settlement is voided through any of the mechanisms described herein, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Payment, or any amounts that otherwise would have been owed under this Settlement, and any obligation to provide Commission-Free Brokerage Services.

12.6 Nothing in this Agreement shall be construed or deemed to be an admission by Defendant or of any of the other Released Parties of any liability, culpability, negligence, or wrongdoing toward the Class Representative, the Class Members, or any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward the Class Representatives, the Class Members, or any other person. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a class action other than for settlement purposes.

12.7 Except as otherwise specifically provided for herein, each Party shall bear its own attorney fees, costs and expenses, taxable or otherwise, incurred by them in, or arising out of, the Action and or the negotiation and execution of this Agreement, and shall not seek reimbursement thereof from any other party to this Agreement.

12.8 Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the fifth business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiffs and the Class:

David Neuman
ISRAELS NEUMAN
10900 NE 8th Street, Suite 1000
PMB #155
Bellevue, WA 98004
Phone: 206-795-5798
Email: dave@israelsneuman.com

Joseph Wojciechowski
Sara Hanley
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Joshua B. Kons
LAW OFFICES OF JOSHUA B. KONS, LLC
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Weatogue, CT 06089
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Email: joshuakons@konslaw.com

Alexander Loftus
Loftus & Eisenberg, Ltd.
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Email: alex@loftusandeisenberg.com

To Defendant:

Curt Roy Hinline
James Morrison
Alexander Vitruk

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Phone: 206-332-1380
Email: chineline@bakerlaw.com, jmorrison@bakerlaw.com, avitruk@bakerlaw.com,
lpeppin@bakerlaw.com

Daniel J. Buzzetta
BAKER & HOSTETTLER LLP
45 Rockefeller Plaza
New York, NY 10111
Phone: 212-589-4236
Email: dbuzzetta@bakerlaw.com

12.9 This Agreement and its Exhibits constitute the entire agreement between the Parties and their respective counsel relating to the Settlement and the transactions contemplated thereby. No rights hereunder may be waived except in writing.

12.10 The Parties represent, covenant and warrant that they have not directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

12.11 With respect to the subject matter hereof, the Parties acknowledge that no written or oral representations, statements or promises made by the other Party, or by their respective agents or attorneys, have been relied upon in entering into this Agreement.

12.12 This Agreement may be modified or amended only if such modification or amendment is agreed to in writing and signed by the duly authorized representatives of the Parties hereto, and approved by the Court which writing shall expressly state the intent of the Parties to modify this Agreement.

12.13 This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, assigns, executors, administrators, successors, transferees, subsidiaries, divisions and

partnerships, past and present, and trustees, directors, officers, shareholders, partners, and employees, past and present, of Plaintiffs, Class Members, Defendant, and all of the other Released Parties.

12.14 This Agreement may be executed in counterparts and/or electronic and/or facsimile signatures, and when each Party has signed and delivered at least one such counterpart, electronic and/or facsimile signature, each said signature shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

12.15 Each of the undersigned represents that he, she, or it has the advice of counsel, has authority to sign on behalf of his, her or its principal, and understands that this Agreement is final and binding, and subject only to the settlement process set forth above.

* * * *

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT IN ITS ENTIRETY AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

Dated: June 2, 2022

Fred Knopf

By:  _____

NATIONAL SECURITIES CORPORATION

Dated: June 2, 2022

By: 
James P. Ginzkey

Dated: June 2, 2022

By: 
Barry Donner

Dated: June 2, 2022

By: 
Richard D. Fitzgerald

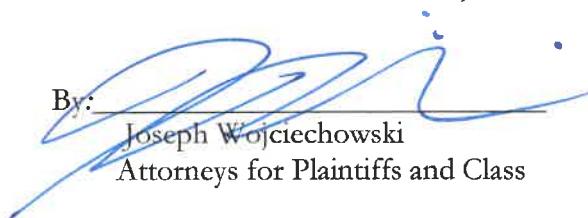
Dated: June 2, 2022

By: 
Charles Cerf

Approved as to form:

Dated: June 2, 2022

STOLTMANN LAW OFFICES, P.C.

By: 
Joseph Wojciechowski
Attorneys for Plaintiffs and Class

Dated: June __, 2022

BAKER & HOSTETLER LLP

By: _____
Curt Roy Hinline
Attorneys for Defendant

Dated: June __, 2022

By: _____
James P. Ginzkey

Dated: June __, 2022

By: _____
Barry Donner

Dated: June __, 2022

By: _____
Richard D. Fitzgerald

Dated: June __, 2022

By: _____
Charles Cerf

Approved as to form:

Dated: June __, 2022

STOLTMANN LAW OFFICES, P.C.

By: _____
Joseph Wojciechowski
Attorneys for Plaintiffs and Class

Dated: June 3, 2022

BAKER & HOSTETLER LLP


By:  _____
Curt Roy Hine
Attorneys for Defendant

EXHIBIT 1

**You may be eligible for a payment from a class action settlement if you
invested in Beamreach Solar (f/k/a Solexel) through National Securities
Corporation between February 6, 2015 and February 9, 2017**

A settlement has been reached in a class action lawsuit against National Securities Corporation (“Defendant”) in regard to the Series D, Series D-1, and Series D-2 Beamreach Solar (f/k/a Solexel) (“Beamreach”) security offerings through Defendant. Plaintiffs and the Class Members claim that Defendant negligently offered and recommended securities of Beamreach Solar (f/k/a Solexel) for sale to them, without a reasonable basis for the securities to be suitable for sale. Defendant denies all of the claims and says it did not do anything wrong.

WHO IS INCLUDED? Defendant’s records show you may have invested in Beamreach through NSC between February 6, 2015, and February 9, 2017, and thus may be included in this Settlement as a “Class Member.” You do not need to do anything to be eligible for a payment.

SETTLEMENT BENEFITS. The Settlement provides two types of benefits to Class Members: 1) payment of between approximately 10% or 40% of your investment amount in Beamreach, on a gross basis totaling \$4,650,000 for the entire Class before deduction of attorney’s fees, costs, and class administrative expenses, depending on whether you invested in the Series D Preferred Stock; Series D-1 Preferred Stock; or the Series D-2 Note Offering; and 2) two years of commission-free brokerage services from Defendant (or any acquiring firm should Defendant cease offering brokerage services), commencing on the Effective Date.

HOW DO I RECEIVE A PAYMENT? If you do nothing, you will remain in the class, you will still be eligible for a payment, and you will be bound by the decisions of the Court and give up your rights to sue Defendant and other released individuals and entities for the claims resolved by this Settlement. Please visit the website or call 1-833-404-4963 for a copy of the more detailed notice. On **Month Day, 2022**, the Court will hold an Approval Hearing to determine whether to approve the Settlement, Class Counsel’s request for attorneys’ fees, costs, and expenses of up to \$3,136,203.00 and a service award of \$10,000.00 for each of the Representative Plaintiffs. If you do not agree with the terms of the settlement and want to object, you must do so by **Month Day, 2022**. Please visit the website for more information on how to object. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. This is only a summary. For more information, call or visit the website below.

www.beamreachclassaction.com

1-833-404-4963

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

You may be eligible for a payment from a class action settlement if you invested in Beamreach Solar (f/k/a Solexel) through National Securities Corporation between February 6, 2015, and February 9, 2017

A federal court authorized this Notice. This is not junk mail, an advertisement, or a solicitation from a lawyer.

- A settlement has been proposed in a class action lawsuit against National Securities Corporation (“Defendant”) in regard to the Series D, Series D-1, and Series D-2 Beamreach Solar (f/k/a Solexel) (“Beamreach”) security offerings through Defendant. Plaintiffs and the Class Members claim that Defendant negligently offered and recommended securities of Beamreach Solar (f/k/a Solexel) for sale to them, without a reasonable basis. Defendant denies all of the claims and says it did not do anything wrong.
- If you received a notification from Defendant, you may be included in this Settlement as a “Class Member.”
- The Settlement provides two types of benefits to Class Members: 1) payment of between approximately 10% or 40% of your investment amount in Beamreach, totaling \$4,650,000 for the entire Class on a gross basis before deduction of attorney’s fees, costs, and class administrative expenses, depending on whether you invested in the Series D Preferred Stock; Series D-1 Preferred Stock; or the Series D-2 Note Offering; and 2) two years of commission-free brokerage services from Defendant (or any acquiring firm should Defendant cease offering brokerage services), commencing at a date certain.
- Your legal rights are affected regardless of whether you do or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
OBJECT TO THE SETTLEMENT	Write to the Court with reasons why you do not agree with the Settlement.
GO TO THE FINAL APPROVAL HEARING	You may ask the Court for permission for you or your attorney to speak about your objection at the Final Approval Hearing.
DO NOTHING	You will still receive a payment from this Settlement and you will give up certain legal rights.

- These rights and options—and the deadlines to exercise them—are explained in this Notice. For complete details, view the Class Action Settlement Agreement and Release (“Settlement Agreement”), available at www.beamreachclassaction.com, or call 1-833-404-4963.
- The Court in charge of this case still has to decide whether to grant final approval the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any appeals are resolved.

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BASIC INFORMATION

1. Why is this Notice being provided?

The Court directed that this Notice be provided because you have a right to know about a proposed settlement that has been reached in this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after objections or appeals, if any, are resolved, the Settlement Administrator appointed by the Court will distribute the payments that the Settlement allows. This Notice explains the lawsuit, the Settlement, your legal rights, what payments are available, who is eligible for them, and how to get them.

The Court in charge of this case is the United States District Court for the Western District of Washington. The case is known as *James Ginzkey, et al. v. National Securities Corporation*, Case No. 2:18-cv-1773 (the “Action”). The people who filed the Action are called the Plaintiffs and the entity they sued, National Securities Corporation, is called the Defendant.

2. What is this lawsuit about?

This Action concerns Defendant’s offering of the Beamreach Solar (f/k/a Solexel) (“Beamreach”) Series D, Series D-1, and Series D-2 security offerings. Plaintiffs claim Defendant negligently offered and approved those Beamreach securities for sale to them, without a reasonable basis for the securities to be suitable for sale. The Action seeks, among other things, reimbursement for Plaintiffs’ and Class Members’ losses on the Beamreach investments. Defendant has denied and continues to deny all of the claims made in the Action, as well as all charges of wrongdoing or liability against it.

3. What is a class action?

In a class action, one or more people called Class Representatives (in this case, James P. Ginzkey, Richard Fitzgerald, Charles Cerf, and Barry Donner) sue on behalf of people who have similar claims. Together, these people are called a Class or Class members. One Court and one judge resolves the issues for all Class members, except for those who exclude themselves from the Class.

4. Why is there a Settlement?

The Court did not decide in favor of the Plaintiffs or Defendant. Instead, the Plaintiffs negotiated a settlement with Defendant that allows both Plaintiffs and Defendant to avoid the risks and costs of lengthy and uncertain litigation and the uncertainty of a trial and appeals. It also allows Class members to obtain payment without further delay. The Class Representatives and their attorneys think the Settlement is in the best interest of all Class members. This Settlement does not mean that Defendant did anything wrong.

WHO IS INCLUDED IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

You are part of this Settlement as a Class member if you invested in Beamreach through Defendant between February 6, 2015, and February 9, 2017. If you have received this notice, then you have been identified as someone who invested in Beamreach through Defendant during this time-period that falls within the Class definition and is not otherwise excluded.

6. Are there exceptions to being included in the Settlement?

Yes. Specifically excluded from the Class are: (i) Defendant and any of its officers, directors, employees, agents, parents, affiliates, or subsidiaries; (ii) any entity related to or affiliated with Beamreach, and any judicial officers presiding over this matter and their immediate family members; (iii) any and all institutional investors that performed their own due diligence in regard to the Beamreach Offerings; (iv) any and all investors that have previously brought claims regarding or related in any way to the Beamreach Offerings against Defendant, or settled any claims against Defendant arising from, relating to, or in connection with the Beamreach Offerings; and (v) any and all investors that have previously opted out of the Action.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

The Settlement will provide payments to people who are members of the Class and not otherwise excluded. If the Settlement is approved, Defendant will be obligated to make a payment of \$4,650,000.00, inclusive of all funds necessary to effectuate the Settlement. The Gross Settlement Payment includes the Settlement Administration Costs, the Fee Award and Costs, the Class Representative Service Awards, and all Individual Settlement Payments to Class Members. Class Members will be entitled to payment of approximately 10% or 40% of your investment amount in Beamreach, on a gross basis before deduction of attorney's fees, costs, and class administrative expenses, depending on whether you invested in the Series D Preferred Stock; Series D-1 Preferred Stock; or the Series D-2 Note Offering, based on the amount each Class Member invested in the Series D Beamreach Offering, and/or the Series D1/D2 Beamreach Offering.

In addition, the Settlement will provide for two years of commission-free brokerage services from Defendant (or an acquiring firm should Defendant cease offering brokerage services), commencing on the Effective Date of the Settlement Agreement. To obtain these benefits, please contact the following:

Christina Minakais
Director, Client Resolution Group & Special Projects Legal & Compliance
Email: cminakais@brileywealth.com
5000 T-Rex Avenue, Suite 300
Boca Raton, FL 33431

8. When will I get my payment?

The Court will hold a Final Approval Hearing at Time on Month Day, 2022 (or any adjourned date set by the Court) to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether any appeals can be resolved favorably, and resolving them can take time, perhaps more than a year. Please be patient.

REMAINING IN THE SETTLEMENT

9. Do I need to do anything to remain in the Settlement?

You do not have to do anything to remain in the Settlement.

10. What am I giving up as part of the Settlement?

If the Settlement becomes final, you will give up your right to sue Defendant for the claims being resolved by this Settlement. The specific claims you are giving up against Defendant are described in ¶ 1.28 of the Settlement Agreement. You will be “releasing” Defendant and all related people or entities as described in ¶ 1.29 of the Settlement Agreement. The Settlement Agreement is available at www.beamreachclassaction.com.

The Settlement Agreement describes the Released Claims with specific descriptions, so read it carefully. If you have any questions about what this means you can talk to the law firms listed in Question 11 for free or you can, of course, talk to your own lawyer at your own expense.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

Yes. The Court appointed Joseph Wojciechowski and Sara Hanley of Stoltmann Law Offices, P.C., at 2000 Center Drive, Suite East C218, Hoffman Estates, Illinois 60192 and Joshua B. Kons of Law Offices of Joshua B. Kons, LLC, at 92 Hopmeadow St., Lower Level, Weatogue, CT 06089 to represent you and other Class members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. How will Class Counsel be paid?

If the Settlement is approved and becomes final, Class Counsel will ask the Court to award attorneys’ fees, not to exceed \$3,163,203.00, and reimbursement of costs not to exceed \$120,000. Class Counsel will also request approval of a service award of \$10,000 for each Class Representative. Defendant has agreed not to oppose these requests.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

13. How do I tell the Court that I do not like the Settlement?

If you are a Class member, you can object to the Settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views before making a decision. To object, you must file with the Court and mail copies to Class Counsel and Defendant’s Counsel a written notice stating that you object to the Settlement in *James Ginzkey, et al. v. National Securities Corporation*, Case No. 2:18-cv-1773.

Your objection must include:

- 1) your full name, address, telephone number, and e-mail address;
- 2) information or proof showing you are a Class member;
- 3) the reasons why you object to the Settlement, including any documents supporting your objection;
- 4) the name and address of your attorney, if you have retained one;
- 5) the name and address of any attorneys representing you that may appear at the Final Approval Hearing;
- 6) a statement confirming whether you and/or your counsel intend to personally appear and/or testify at the Final Approval Hearing;

- 7) a list, by case name, court, and docket number, of all other cases in which you (directly or through a lawyer) have filed an objection to any proposed class action settlement within the last three years;
- 8) a list, by case name, court, and docket number, of all other cases in which your lawyer (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last three years;
- 9) your signature or the signature of your attorney or other duly authorized representative (along with documentation illustrating representation).

Your objection must be filed with the Clerk of the United States District Court for the Western District of Washington, 700 Stewart St, Suite 13134, Seattle, WA 98101, no later than **Month Day, 2022**. You must also mail copies of your objection to Class Counsel and Defendant's Counsel postmarked no later than **Month Day, 2022**, at all of the addresses below.

CLASS COUNSEL	DEFENDANT'S COUNSEL
<p>Joseph Wojciechowski Sara Hanley STOLTMANN LAW OFFICES, P.C. 2000 Center Drive, Suite East C218 Hoffman Estates, IL 60192 Phone: 312-332-4200 Email: joe@stoltlaw.com, sara@stoltlaw.com</p>	<p>Curt Roy Hinceline James Morrison Alexander Vitruk Logan F. Peppin BAKER & HOSTETLER LLP 999 Third Avenue, Suite 3900 Seattle, WA 98104-4040 Phone: 206-332-1380 Email: chinceline@bakerlaw.com, jmorrison@bakerlaw.com, avitruk@bakerlaw.com, lpeppin@bakerlaw.com</p>

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to.

14. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **: 0 .m. on Month Day, 2022** (or any adjourned date set by the Court), in the United States District Court for the Western District of Washington, 700 Stewart St, Seattle, WA 98101. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will take into consideration any properly-filed written objections and may also listen to people who have asked to speak at the hearing (*see* Question 13). The Court will also decide whether to approve fees and costs to Class Counsel, and the service

awards to the Class Representatives.

15. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to come to Court to talk about it. You may also hire your own lawyer to attend, at your own expense, but you are not required to do so.

16. May I speak at the Final Approval Hearing?

Yes, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must follow the instructions provided in Question 13 above.

IF YOU DO NOTHING

17. What happens if I do nothing?

If you do nothing and the Court approves the settlement you will receive compensation from this Settlement and be bound by the Settlement Agreement and the Release. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or related parties about the issues involved in the Action, resolved by this Settlement, and released by the Settlement Agreement.

GETTING MORE INFORMATION

18. Are more details about the Settlement available?

Yes. This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at www.beamreachclassaction.com, or by writing to Class Counsel, Stoltmann Law Offices, P.C., 2000 Center Drive, Suite East C218, Hoffman Estates, IL, 60192.

19. How do I get more information?

Go to www.beamreachclassaction.com, call 1-833-404-4963, or write to Class Counsel, Stoltmann Law Offices, P.C., 2000 Center Drive, Suite East C218, Hoffman Estates, IL, 60192.

***Please do not call the Court or the Clerk of the Court for additional information.
They cannot answer any questions regarding the Settlement or the Action.***

EXHIBIT 3

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES GINZKEY, RICHARD
FITZGERALD, CHARLES CERF, BARRY
DONNER, and on behalf of the class
members described below,

Plaintiffs,

v.

NATIONAL SECURITIES
CORPORATION, a Washington Corporation

Defendant.

Case No.: 2:18-cv-1773-RSM

**[PROPOSED] FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH
PREJUDICE**

THIS MATTER came before the Court for hearing pursuant to the Preliminary Approval Order dated [INSERT DATE], on the application of the Parties for approval of the Settlement set forth in the Settlement Agreement of Settlement dated [INSERT DATE] (the “Settlement Agreement”).

WHEREAS, this Order of Dismissal is “with prejudice”;

WHEREAS, due and adequate notice has been given to the Class as required in the Preliminary Approval Order;

WHEREAS, the Court conducted a hearing on [INSERT DATE]. to consider, among other things: (i) whether the terms and conditions of the Settlement are fair, reasonable, and

adequate, and should therefore be approved, and (ii) whether a judgment should be entered dismissing the Action with prejudice as against the Defendants;

WHEREAS, consistent with the Preliminary Approval Order, all Class Members had the opportunity to exclude themselves from the proposed Class; to object to the proposed Settlement; and to be heard with regard to the proposed Settlement, including by appearing and speaking at the hearing held on [INSERT DATE]; and

WHEREAS, the Court has considered all papers filed and proceedings held herein and otherwise is fully informed in the premises, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Judgment and Order of Dismissal with Prejudice (“Order and Final Judgment”) incorporates by reference the definitions in the Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the Settlement Agreement, unless otherwise set forth herein.

2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Class Members.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement set forth in the Settlement Agreement and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Class, and that the Settlement set forth in the Settlement Agreement is hereby finally approved in all respects, and the Parties are hereby directed to perform its terms.

4. Accordingly, the Court authorizes and directs implementation of the terms and provisions of the Settlement Agreement, as well as the terms and provisions hereof. The Court hereby dismisses with prejudice and without costs, the Action and all claims contained

1 therein, and the Released Claims, defined in the Settlement Agreement as any and all claims,
2 demands, and causes of action by Class Members that either were raised in the Complaint or
3 that could have been raised in the Complaint, an individual arbitration, or any other legal
4 proceeding, and that relate in any way to, arise from, or have any connection with the
5 Beamreach Offerings. Notwithstanding the aforementioned, claims relating to the
6 enforcement of the Settlement shall not be released.
7

8 5. Upon the Effective Date hereof, and as provided in the Settlement Agreement,
9 without further action by anyone, Plaintiffs and each and every Class Member shall be forever
10 barred and enjoined from commencing, instituting, asserting, maintaining, enforcing, aiding,
11 prosecuting, or continuing to prosecute any action or proceeding in any forum (including, but
12 not limited to, any state or federal court of law or equity, any arbitral forum, any tribunal,
13 administrative forum, or the court of any foreign jurisdiction, or any other forum of any kind),
14 any and all of the Released Claims against Defendant and each and all of the Released Parties,
15 except that claims relating to the enforcement of the Settlement shall not be released.
16

17 6. The terms of the Settlement Agreement and of this Order and Final Judgment
18 shall be forever binding on Plaintiffs, all other Class Members (regardless of whether or not
19 any individual Class Member obtains a distribution from the Net Settlement Fund), and
20 Defendant, as well as their respective, heirs, executors, administrators, predecessors,
21 successors, and assigns.
22

23 7. The Settlement Administrator shall maintain the Settlement Fund in
24 accordance with the requirements set forth in the Settlement Agreement. Defendant and the
25 Released Parties shall have no liability, obligation, or responsibility whatsoever for the
26 administration of the Settlement or disbursement of the Net Settlement Fund.
27

1 8. The Notice given to the Class: (a) was implemented in accordance with the
2 Preliminary Approval Order entered on [INSERT DATE], (b) was the best notice practicable
3 under the circumstances to all Class Members entitled to notice of these proceedings and of
4 the matters set forth therein, including the proposed Settlement set forth in the Settlement
5 Agreement, (c) was reasonably calculated under the circumstances to apprise Class Members
6 of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the
7 releases contained therein); and (iii) their right to object to any aspect of the proposed
8 Settlement, and/or appear at the Final Approval Hearing, (d) was reasonable and constituted
9 due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the
10 proposed Settlement, and (e) fully satisfied the requirements of Rule 23 of the Federal Rules
11 of Civil Procedure, the requirements of due process, and all other applicable law and rules.
12 The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C.
13 § 1715, were fully discharged. Therefore, it is determined that all Class Members are bound
14 by the Order and Final Judgment herein.

15 9. Separate orders shall be entered regarding the Class Counsel's motion for
16 attorneys' fees and expenses as allowed by the Court. Any order entered regarding any
17 attorneys' fee and expense application shall in no way disturb or affect this Order and Final
18 Judgment and shall be considered separate from this Order and Final Judgment.

19 10. Neither this Order and Final Judgment, the Settlement Agreement, nor any of
20 their terms or provisions, nor any of the negotiations, discussions, proceedings connected
21 thereto, nor any act performed or document executed pursuant to or in furtherance of the
22 Settlement Agreement or the Settlement: (a) is or may be deemed to be or may be used as an
23 admission of, or evidence of, the validity of any of the allegations in the Action or of the
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1 validity of any Released Claim, or of any wrongdoing or liability of Defendant or Released
 2 Parties; or (b) is, or shall be deemed to be, or shall be used as an admission of any fault or
 3 omission of Defendant or Released Parties in any statement, release, or written documents
 4 issued, filed, or made; or (c) is or may be deemed to be or may be used as an admission of, or
 5 evidence of, any fault, liability, wrongdoing, negligence, or omission of any Defendant or
 6 Released Parties in any civil, criminal, or administrative proceeding in any court, arbitration
 7 proceeding, administrative agency, or forum or tribunal in which any Defendant or Released
 8 Parties are or become parties; or (d) is or may be deemed to be or may be used as an
 9 admission or evidence that any claims asserted by Plaintiffs lacked merit or that the amount
 10 recoverable was not greater than the Settlement Amount, in any civil, criminal, or
 11 administrative proceeding in any court, administrative agency, or other tribunal. Defendant,
 12 Released Parties, Plaintiffs, Class Members, and their respective counsel may file the
 13 Settlement Agreement and/or this Order and Final Judgment in any action that may be
 14 brought against them in order to support a defense or counterclaim based on principles of res
 15 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any
 16 other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The
 17 Parties may file the Settlement Agreement and/or this Order and Final Judgment in any
 18 proceedings that may be necessary to consummate or enforce the Settlement Agreement, the
 19 Settlement, or the Order and Final Judgment.

23 11. Without affecting the finality of this Order and Final Judgment in any way, this
 24 Court hereby retains continuing exclusive jurisdiction over: (a) implementation of this
 25 Settlement and any award or distribution of the Settlement Fund, including interest earned
 26 thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for
 27

1 attorneys' fees and expenses and interest in the Action; and (d) the Parties hereto for the
2 purpose of construing, enforcing, and administering the Settlement Agreement.

3
4 12. The Court finds that during the course of the Action, the Parties and
5 their respective counsel at all times complied with the requirements of Federal Rule of Civil
6 Procedure 11.

7 13. In the event that the Settlement does not become effective in accordance with
8 the terms of the Settlement Agreement, or the Effective Date does not occur, or in the event
9 that the Settlement Fund, or any portion thereof, is returned to the Defendants as required
10 under the terms of the Settlement Agreement, then this Order and Final Judgment shall be
11 rendered null and void to the extent provided by and in accordance with the Settlement
12 Agreement and shall be vacated and, in such event, all orders entered and releases delivered in
13 connection herewith shall be null and void to the extent provided by and in accordance with
14 the Settlement Agreement.

15
16 14. Without further approval from the Court, the Parties are hereby authorized to
17 agree and to adopt such amendments or modifications of the Settlement Agreement or any
18 exhibits attached thereto to effectuate the Settlement that: (i) are not materially inconsistent
19 with this Order and Final Judgment; and (ii) do not materially limit the rights of Class
20 Members in connection with the Settlement. Without further order of the Court, the Parties
21 may agree to reasonable extensions of time to carry out any of the provisions of the
22 Settlement Agreement.

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24 15. The Court directs immediate entry of this Order and Final Judgment by the
25 Clerk of the Court.

1 IT IS SO ORDERED.
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4 Dated this ____ day of _____, 20__.

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6 HON. RICARDO S. MARTINEZ
United States District Judge
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