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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE NEW CENTURY

Case No. CV 07-00931 DDP (FMOx)
(Lead Case)

**OFFICER AND DIRECTOR FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE**

1 This matter came before the Court for hearing pursuant to the Order
2 Preliminarily Approving Settlements and Providing for Notice (“Preliminary
3 Approval Order” or “Notice Order”), on the application of Lead Plaintiff New
4 York State Teachers’ Retirement System (“Lead Class Plaintiff”) and Plaintiffs
5 Carl Larson and Charles Hooten (collectively “Class Plaintiffs”) for approval of
6 the settlement between the Class Plaintiffs, on behalf of the Class, and the Class
7 Individual Defendants set forth in the Stipulation Of Global Settlement With New
8 Century Officers And Directors (the “Global Officer And Director Stipulation” or
9 “Global Officer And Director Settlement”). Full and adequate notice having been
10 given to the Class as required in the Court’s Order, and the Court having
11 considered all papers filed and proceedings held herein and otherwise being fully
12 informed in the premises and good cause appearing therefor,

13 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14 1. This Judgment incorporates by reference the definitions in the Global
15 Officer And Director Stipulation, and all capitalized terms used, but not defined
16 herein, shall have the same meanings as in the Global Officer And Director
17 Stipulation.

18 2. This Court has jurisdiction over the subject matter of the Consolidated
19 Class Action and over all parties to the Consolidated Class Action, including all
20 members of the Class.

21 3. The Court hereby affirms its certification in the Preliminary Approval
22 Order pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil
23 Procedure, of a Class defined as follows:

24 all persons and entities who purchased or otherwise acquired New
25 Century common stock, New Century Series A Preferred Stock, New
26 Century Series B Preferred Stock, and/or New Century call options
27 and/or who sold New Century put options, during the time period
28 from May 5, 2005, through and including March 13, 2007, either in
the Offerings, pursuant to a registration statement, or in the market,
and who, upon disclosure of certain facts alleged in the Complaint,
were injured thereby. Excluded from the Class are (a) Class
Defendants; (b) members of the immediate families of the Class
Individual Defendants; (c) the subsidiaries and affiliates of Class

1 Defendants; (d) any person or entity who was a partner, executive
2 officer, director or controlling person of New Century (including any
3 of its subsidiaries or affiliates) or of any Class Defendant; (e) any
4 entity in which any Class Defendant has a controlling interest; and (f)
5 the legal representatives, heirs, successors and assigns of any such
6 excluded party. Also excluded from the Class are any persons who
7 exclude themselves by filing a request for exclusion in accordance
8 with the requirements set forth in the Notice, as listed on Exhibit 1
9 annexed hereto.

10 4. The Court also affirms its findings in the Preliminary Approval Order
11 that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal
12 Rules of Civil Procedure have been satisfied in that: (a) the number of Class
13 Members is so numerous that joinder of all members thereof is impracticable; (b)
14 there are questions of law and fact common to the Class; (c) the claims of Lead
15 Class Plaintiff and Class Plaintiffs Carl Larson and Charles Hooten are typical of
16 the claims of the Class they seek to represent; (d) Class Plaintiffs have fairly and
17 adequately represented the interests of the Class; (e) the questions of law and fact
18 common to the members of the Class predominate over any questions affecting
19 only individual members of the Class; and (f) a class action is superior to other
20 available methods for the fair and efficient adjudication of the controversy.

21 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the
22 Court affirms its certification of Class Plaintiffs as the Class representatives and
23 Lead Counsel Bernstein Litowitz Berger & Grossmann LLP as the Class counsel.

24 6. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby
25 approves the Global Officer And Director Settlement set forth in the Global
26 Officer And Director Stipulation and finds that the Global Officer And Director
27 Settlement is, in all respects, fair, reasonable, adequate and entered into in good
28 faith within the meaning of California Code of Civil Procedure § 877. The Court
further finds that the Global Officer And Director Settlement set forth in the
Global Officer And Director Stipulation is the result of arm's-length negotiations
between experienced counsel representing the interests of the Parties.

1 Accordingly, the Global Officer And Director Settlement embodied in the Global
2 Officer And Director Stipulation is hereby finally approved in all respects. The
3 Parties are hereby directed to perform its terms.

4 7. Pursuant to and in compliance with Rule 23 of the Federal Rules of
5 Civil Procedure, the Court hereby finds that due and adequate notice of these
6 proceedings was directed to all persons and entities who are Class Members,
7 advising them of the Global Officer And Director Settlement, the Plan of
8 Allocation, and Lead Counsel's intent to apply for attorneys' fees and
9 reimbursement of Litigation Expenses associated with the Consolidated Class
10 Action, and of their right to object thereto, and a full and fair opportunity was
11 accorded to all persons and entities who are Class Members to be heard with
12 respect to the foregoing matters. Thus, it is hereby determined that all Class
13 Members who did not timely and properly elect to exclude themselves by written
14 communication postmarked or otherwise delivered on or before the date set forth
15 in the Notice and the Preliminary Approval Order, are bound by this Judgment.

16 8. The Consolidated Class Action and all claims contained therein are
17 dismissed with prejudice as to the Class Individual Defendants.

18 9. The Parties are to bear their own costs, except as otherwise provided
19 in the Global Officer And Director Stipulation.

20 10. Upon the Effective Date, the Settled Claims shall be discharged as
21 against each and every Released Officer And Director and the Insurance Carriers,
22 and Plaintiffs shall be deemed to forever be enjoined from prosecuting any or all
23 of the Settled Claims against each and every Released Officer And Director and
24 the Insurance Carriers.

25 11. Upon the Effective Date, the Settling Individuals' Claims as against
26 Class Plaintiffs and all other Class Members, the Trust, the Trustee, Alan M.
27 Jacobs individually, the Debtors, the Debtors' Estates, the Plan Advisory
28 Committee, and Kodiak, and their respective heirs, predecessors, successors,

1 assigns, employees, agents and retained professionals (other than KPMG or the
2 Underwriter Defendants) shall be released, waived, discharged and dismissed, and
3 the Settling Individuals shall be deemed to forever be enjoined from prosecuting
4 each and every of the Settling Individuals' Claims against Class Plaintiffs and all
5 other Class Members, the Trust, the Trustee, Alan M. Jacobs individually, the
6 Debtors, the Debtors' Estates, the Plan Advisory Committee, and Kodiak, and
7 their respective heirs, predecessors, successors, assigns, employees, agents and
8 retained professionals.

9 12. Upon the Effective Date, the Settling Individuals shall be deemed to
10 have released, waived, discharged and dismissed each and every Settling
11 Individuals' Claims against KPMG and the other Released Auditor Parties, and
12 shall forever be enjoined from prosecuting each and every Settling Individuals'
13 Claim against KPMG and the other Released Auditor Parties.

14 13. Upon the Effective Date, the Settling Individuals shall be deemed to
15 have released, waived, discharged and dismissed each and every claim, and shall
16 forever be enjoined from prosecuting any claim, against any and all of the
17 Underwriter Defendants and the other Released Underwriter Parties whether
18 arising under federal, state, common or foreign law, arising out of or based upon
19 the allegations, transactions, facts, matters or occurrences, representations or
20 omissions involved, set forth, or referred to in the Consolidated Class Action.

21 14. Upon the Effective Date, Kodiak shall be deemed to have released,
22 waived, discharged and dismissed, and shall forever be enjoined from prosecuting
23 each and every of the Settled Kodiak Claims as against KPMG and the other
24 Released Auditor Parties.

25 15. Upon the Effective Date, this Final Judgment And Order Of
26 Dismissal With Prejudice constitutes the final discharge of all obligations to the
27 Plaintiffs of the Settling Individuals arising out of the Officer And Director
28 Litigations. All future claims for contribution arising out of the Officer And

1 Director Litigations by any person or entity against the Settling Individuals or by
2 any Settling Individual against any other person or entity, other than a person
3 whose liability for the Claims asserted in the Director And Officer Litigations has
4 been extinguished by the Settlement of those Claims by that Settling Individual,
5 are barred pursuant to 15 U.S.C. § 78u-4(f)(7)(A).

6 16. The distribution of the Notice and the publication of the Summary
7 Notice as provided for in the Preliminary Approval Order constituted the best
8 notice practicable under the circumstances, including individual notice to all
9 members of the Class who could be identified through reasonable effort. Said
10 notice provided the best notice practicable under the circumstances of those
11 proceedings and of the matters set forth therein, including the proposed Global
12 Officer And Director Settlement set forth in the Global Officer And Director
13 Stipulation, to all persons entitled to such notice, and said notice fully satisfied the
14 requirements of Federal Rule of Civil Procedure 23, the Private Securities
15 Litigation Reform Act of 1995, due process, and any other applicable law.

16 17. The Court hereby finds and concludes that the formula for the
17 calculation of the claims which is set forth in the Plan of Allocation proposed by
18 Lead Class Plaintiff provides a fair and equitable basis upon which to allocate the
19 proceeds of the Settlements¹ among the Class Members with due consideration
20 having been given to administrative convenience and necessity.

21 18. The Court hereby finds and concludes that the Plan of Allocation
22 proposed by Lead Class Plaintiff is, in all respects, fair and equitable to the Class.

23 _____
24 ¹ “Settlements” herein includes the settlements as set forth in the Global Officer
25 And Director Stipulation, the Stipulation of Settlement Between Plaintiffs and
26 KPMG LLP (“KPMG Stipulation” or “KPMG Settlement”), and the Stipulation of
27 Settlement Between Plaintiffs and the Underwriter Defendants (“Underwriter
28 Settlement” or “Underwriter Stipulation”) (collectively “Settlements” or
“Stipulations”). The Plan of Allocation sets forth a plan for allocating to Class
Members the funds allocated to the Class from all three of the Settlements.

1 Accordingly, the Court hereby approves the Plan of Allocation proposed by Lead
2 Class Plaintiff.

3 19. Any order entered regarding any attorneys' fees and any expense
4 application shall in no way disturb or affect this Final Judgment and Order of
5 Dismissal with Prejudice and shall be considered separate from this Final
6 Judgment and Order of Dismissal with Prejudice.

7 20. The Global Officer And Director Stipulation and Global Officer And
8 Director Settlement set forth therein, whether or not consummated, and any
9 proceedings taken pursuant to it:

10 a. shall not be offered or received against any of the Released Officers
11 And Directors as evidence of, or construed as, or deemed to be evidence of any
12 presumption, concession, or admission by any of the Released Officers And
13 Directors with respect to the truth of any fact alleged by Plaintiffs or the validity of
14 any claim that was or could have been asserted against any of the Released
15 Officers And Directors in the Officer And Director Litigations or in any litigation,
16 or of any liability, negligence, fault, or other wrongdoing of any kind of any of the
17 Released Officers And Directors;

18 b. shall not be offered or received against any of the Released Officers
19 And Directors as evidence of a presumption, concession or admission of any fault,
20 misrepresentation or omission with respect to any statement or written document
21 approved or made by any of the Released Officers And Directors, or against the
22 Plaintiffs or any Class Members as evidence of any infirmity in the claims of
23 Plaintiffs or the other Class Members;

24 c. shall not be offered or received against any of the Released Officers
25 And Directors, or against the Plaintiffs or any other Class Members, as evidence of
26 a presumption, concession or admission with respect to any liability, negligence,
27 fault or wrongdoing of any kind, or in any way referred to for any other reason as
28 against any of the Released Officers And Directors, in any other civil, criminal or

1 administrative action or proceeding, other than such proceedings as may be
2 necessary to effectuate the provisions of this Stipulation; provided, however, that if
3 this Stipulation is approved by the Consolidated Class Action Court, the Settling
4 Individuals, any other Released Officer And Director, or any Class Member may
5 refer to it to effectuate the protection from liability granted them hereunder;

6 d. shall not be construed against any of the Released Officers And
7 Directors, Plaintiffs or any other Class Members as an admission, concession, or
8 presumption that the consideration to be given hereunder represents the amount
9 which could be or would have been recovered after trial;

10 e. shall not be construed against Plaintiffs or any other Class Members
11 as an admission, concession, or presumption that any of their claims are without
12 merit or that damages recoverable under the Officer And Director Litigations
13 would not have exceeded the Officer And Director Settlement Amount; and

14 f. shall not be construed as or received in evidence as an admission,
15 concession or presumption that class certification is appropriate in this
16 Consolidated Class Action, except for purposes of this Settlement.

17 21. The Global Officer And Director Stipulation may be filed in an action
18 to enforce or interpret the terms of the Global Officer And Director Stipulation, the
19 Global Officer And Director Settlement contained therein, and any other
20 documents executed in connection with the performance of the agreements
21 embodied therein. The Stipulation and/or this Final Judgment And Order Of
22 Dismissal With Prejudice may be filed in any action in order to support a defense
23 or counterclaim based on the principles of *res judicata*, collateral estoppel, full
24 faith and credit, release, good faith settlement, judgment bar, or reduction or any
25 other theory of claim preclusion or issue preclusion or similar defense or
26 counterclaim.

27 22. Without affecting the finality of this Final Judgment And Order Of
28 Dismissal With Prejudice in any way, this Court hereby retains continuing

1 jurisdiction over: (a) implementation of this Global Officer And Director
2 Settlement and any award or distribution of the settlement fund, including interest
3 earned thereon; (b) the allowance, disallowance or adjustment of any Class
4 Member's claim on equitable grounds and any award or distribution of the
5 settlement fund; (c) disposition of the settlement fund; (d) hearing and determining
6 applications for attorneys' fees and Litigation Expenses in the Consolidated Class
7 Action; (e) enforcing and administering this Judgment; (f) all parties hereto for the
8 purpose of construing, enforcing and administering the Global Officer And
9 Director Stipulation; and (g) other matters related or ancillary to the foregoing.

10 23. The Court finds that during the course of the Consolidated Class
11 Action, the Parties and their respective counsel at all times complied with the
12 requirements of Federal Rule of Civil Procedure 11.

13 24. In the event that the Global Officer And Director Settlement does not
14 become effective in accordance with the terms of the Global Officer And Director
15 Stipulation or the Effective Date does not occur, or in the event that the settlement
16 fund, or any portion thereof, is returned to any person or entity contributing to the
17 settlement fund, then this Final Judgment And Order Of Dismissal with Prejudice
18 shall be rendered null and void to the extent provided by and in accordance with
19 the Global Officer And Director Stipulation and shall be vacated and, in such
20 event, all orders entered and releases delivered in connection herewith shall be null
21 and void to the extent provided by and in accordance with the Global Officer And
22 Director Stipulation.

23 25. Without further Order of the Court, the Parties may agree to
24 reasonable extensions of time to carry out any of the provisions of the Global
25 Officer And Director Stipulation.


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26. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED,

DATED: November 15, 2010



THE HONORABLE DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE