

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

In re NIGHTHAWK RADIOLOGY
HOLDINGS, INC. SECURITIES
LITIGATION

Master File No. 2:09-cv-00659-EJL-CWD

Judge: Hon. Edward J. Lodge

NOTICE OF PENDENCY AND PROPOSED
SETTLEMENT OF CLASS ACTION

This Document Relates To: ALL ACTIONS

TO: ALL PERSONS AND ENTITIES WHO PURCHASED SHARES OF NIGHTHAWK RADIOLOGY HOLDINGS, INC. ("NIGHTHAWK") COMMON STOCK BETWEEN MAY 2, 2007 AND MAY 7, 2008, INCLUSIVE (THE "CLASS PERIOD")

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS ACTION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE POSTMARKED ON OR BEFORE FEBRUARY 28, 2013.

This Notice has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Idaho (the "Court"). The purpose of this Notice is to inform you of the proposed settlement of a class action lawsuit (the "Action"), as set forth in the Stipulation and Agreement of Settlement ("Stipulation" or "Settlement Agreement"), and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement. The Settlement resolves the Settlement Class's claims against Nighthawk, Paul Berger, Glenn R. Cole, Tim Mayleben, and Jon Berger (collectively, the "Defendants"). This Notice describes the rights you may have in connection with the Settlement and what steps you may take in relation to the Settlement and this class action litigation.

The proposed Settlement creates a fund in the amount of \$650,000 in cash before deduction of costs and expenses, and including interest that accrues on the fund prior to distribution. Lead Counsel will not be seeking attorneys' fees related to this representation. Based on Lead Counsel's estimate of the number of shares entitled to participate in the Settlement and the anticipated number of claims to be submitted by Class Members, the average distribution per share to Class Members who purchased Nighthawk common stock during the Class Period is estimated to be \$0.04 per damaged share, before deduction of Court-approved expenses. Your actual recovery from this fund will depend on a number of variables, including the number of claimants, the number of Nighthawk shares they purchased, the number of Nighthawk shares you purchased, the expense of administering the claims process, Court-approved legal expenses, and the timing of your purchases and sales, if any (*see* Plan of the Distribution *infra* for a more detailed description of how the settlement proceeds will be allocated among Class Members).

Plaintiff and Defendants disagree on both liability and damages, and do not agree on the average amount of damages per share, if any, that would be recoverable if Plaintiff had prevailed on each claim asserted. The issues on which the parties disagree include, but are not limited to: (1) whether the statements made or facts allegedly omitted were false, material, or otherwise actionable under the federal securities laws; (2) whether any of the allegedly false or misleading statements were made knowingly or recklessly; (3) the extent to which the

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various matters that Plaintiff alleged were materially false or misleadingly influenced (if at all) the trading price of Nighthawk common stock at various times during the Class Period; (4) the extent to which external factors, such as general market conditions, influenced the trading price of Nighthawk common stock at various times during the Class Period; (5) the appropriate economic model for determining the amount by which Nighthawk common stock was allegedly artificially inflated (if at all) during the Class Period; and (6) the extent to which Class Members were damaged (if at all).

Defendants deny that they did anything wrong, deny any liability to Plaintiff, and deny that Plaintiff and the Class Members have suffered any losses attributable to Defendants' actions. While Plaintiff believes that it has meritorious claims, it recognizes that there are significant obstacles in the way to recovery.

Plaintiff believes that the proposed Settlement is a good recovery in light of the procedural posture of the case, and is in the best interests of the Settlement Class. The Action was dismissed by the Court in response to Defendants' motion to dismiss. Nevertheless, Plaintiff was able to negotiate a class-wide settlement. Absent the Settlement, the Settlement Class might receive nothing.

Plaintiff's Counsel does not intend to seek payment for their services in conducting this Action on behalf of Plaintiff and the members of the Settlement Class. They will, however, seek reimbursement of their out-of-pocket expenditures. If the Settlement is approved by the Court, Plaintiff's Counsel will apply to the Court for reimbursement of expenses not to exceed \$70,000 to be paid from the Settlement Fund. Application will also be made to the Court for reimbursement from the Settlement Fund of Plaintiff's reasonable costs and expenses (including lost wages) directly relating to its representation of the Class in this Action. The amount of Plaintiff's reimbursement request will not exceed \$2,500. If the amount requested by Plaintiff and Plaintiff's Counsel is approved by the Court, the average cost per share for Class Members would be approximately \$0.004, making the estimated recovery after expenses \$0.036 per share.

This Notice is not an expression of any opinion by the Court about the merits of any of the claims or defenses asserted by any party in this Action or the fairness or adequacy of the proposed Settlement.

For further information regarding this Settlement you may contact: Mike Burnett, Scott+Scott LLP, 156 South Main Street, P.O. Box 192, Colchester, CT 06415, Telephone: (800) 404-7770. Please do not call any representative of the Defendants or the Court.

I. NOTICE OF HEARING ON PROPOSED SETTLEMENT

A settlement hearing (the "Settlement Hearing") will be held on March 13, 2013, at 9:30 a.m., before the Honorable Edward J. Lodge, at the United States District Court for the District of Idaho, 550 W. Fort Street, Boise, Idaho 83724. The purpose of the Settlement Hearing will be to determine: (1) whether the proposed settlement of the Action, for the sum of \$650,000 in cash ("Settlement Amount"), should be approved by the Court as fair, reasonable, and adequate; (2) whether, thereafter, this Action should be dismissed with prejudice against the Defendants as set forth in the Settlement Agreement dated May 25, 2012; (3) whether the Plan of Distribution of settlement proceeds is fair, reasonable, and adequate and should, therefore, be approved; (4) the reasonableness of the application of Plaintiff's Counsel for the reimbursement of expenses incurred in connection with this Action, together with interest thereon; (5) whether Plaintiff should be reimbursed for its reasonable costs and expenses (including lost wages) directly related to its representation of the Class in this Action; and (6) whether the Court should grant certification to the Class. The Court may adjourn or continue the Settlement Hearing without further notice to the Settlement Class.

II. DEFINITIONS USED IN THIS NOTICE

1.1 “Authorized Claimant” means any member of the Settlement Class who submits a timely and valid Proof of Claim and Release form and whose claim for recovery has been allowed pursuant to the terms of the Stipulation.

1.2 “Claims Administrator” means The Garden City Group, Inc.

1.3 “Class Member” means a Person who falls within the definition of the Settlement Class as set forth in ¶1.22 of this Notice.

1.4 “Class Period” means the period of May 2, 2007 through May 7, 2008, inclusive.

1.5 “Complaint” means any complaint filed in this Action, including the Amended Complaint, filed on July 13, 2010, and the Class Action Complaint for Violations of Federal Securities Laws, filed on December 17, 2009.

1.6 “Defendants” means Nighthawk, Paul Berger, Glenn R. Cole, Tim Mayleben, and Jon Berger.

1.7 “Effective Date” means three (3) business days after the date by which all of the events and conditions specified in ¶7.1 of the Stipulation have been met and have occurred.

1.8 “Escrow Agent” means The Garden City Group, Inc., or its successors.

1.9 “Final” means when the last of the following with respect to the Judgment approving the Settlement shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed or, if such a motion is filed, the Judgment is not altered or amended; (ii) the expiration of the time in which to appeal the Judgment without any appeal having been taken; and (iii) if an appeal is taken, immediately after (a) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari, or (b) the date of affirmance of the Judgment on appeal and the expiration of time for any further judicial review whether by appeal, reconsideration or a petition for writ of certiorari and, if certiorari is granted, the date of final affirmance of the Judgment following review pursuant to the grant. For purposes of this paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of this Settlement, but shall not include any appeal which concerns only the issue of attorneys’ fees and expenses, the Plan of Distribution of the Settlement Fund, or the procedures for determining Authorized Claimants’ recognized claims.

1.10 “Individual Defendants” means Paul Berger, Glenn R. Cole, Tim Mayleben, and Jon Berger.

1.11 “Judgment” means the judgment and order of dismissal with prejudice to be rendered by the Court upon approval of the Settlement.

1.12 “Lead Counsel” means Scott+Scott LLP, 707 Broadway, Suite 1000, San Diego, California 92101.

1.13 “Lead Plaintiff” or “Plaintiff” means Plymouth County Contributory Retirement System.

1.14 “Net Settlement Fund” means the Settlement Fund, less: (i) any Court-awarded costs and expenses; (ii) any Court-approved award to Lead Plaintiff; (iii) notice and administration costs authorized by the Stipulation; (iv) Taxes and Tax Expenses; and (v) other Court-approved deductions that occur before distribution of the proceeds of the settlement to the Class.

1.15 “Nighthawk” means Nighthawk Radiology Holdings, Inc. and its assigns and successors.

1.16 “Person” means an individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity.

1.17 “Plaintiff’s Counsel” means any counsel who appeared on behalf of any plaintiff in the Action.

1.18 “Plan of Distribution,” as further defined in §VII of this Notice, means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the Settlement, Taxes and Tax Expenses, and such costs, expenses, and interest as may be awarded by the Court. Any Plan of Distribution is not part of the Stipulation and the Released Persons shall have no responsibility or liability with respect thereto.

1.19 “Released Claims” means any and all claims, including both known claims and Unknown Claims (as defined in ¶1.25), debts, demands, rights, liabilities, and causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured, that (i) have been asserted in this Action or in the Complaint by the Lead Plaintiff or any Class Member against any of the Released Persons, or (ii) could have been asserted in the Action or any other forum by the Lead Plaintiff or any Class Member against any of the Released Persons which arise out of, or are based upon or related in any way to, the allegations, transactions, facts, matters or occurrences, representations or omissions involved in the Action, or set forth or referred to in the Complaint, and that relate to the purchase of Nighthawk common stock during the Class Period. Excluded from the Released Claims are claims to enforce the Settlement.

1.20 “Released Persons” means Defendants; each and all of any Defendants’ past or present partners, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors, investment advisors, personal or legal representatives, agents, assigns, executors, estates, administrators, related or affiliated persons or entities, and any entity in which any Defendant has a controlling interest; Nighthawk’s past and present directors, officers, employees, shareholders, predecessors, successors, parents, subsidiaries, divisions and joint ventures; Individual Defendants’ immediate family members, spouses and marital communities; and any trust of which any Individual Defendant is the settler or which is for the benefit of any Individual Defendant’s family.

1.21 “Settlement Amount” means \$650,000 in cash to be paid by means of wire transfer, check(s) or money order(s) to the Escrow Agent.

1.22 “Settlement Class” means all purchasers of Nighthawk common stock during the Class Period. Excluded from the Settlement Class are: (i) Persons otherwise meeting the definition of the Settlement Class who submit valid and timely requests for exclusion from the Settlement Class; and (ii) Defendants, the officers and directors of Nighthawk during the Class Period, members of the immediate families of the officers and directors of Nighthawk during the Class Period, the legal representatives, heirs, successors or assigns of the officers and directors of Nighthawk during the Class Period, and any entity in which Defendants have a controlling interest.

1.23 “Settlement Fund” means the Settlement Amount plus all interest and accretions thereto, and which may be reduced by payments or deductions as provided herein or by Court order.

1.24 “Settling Parties” and “Parties” means, collectively, (i) the Defendants, and (ii) the Plaintiff on behalf of itself and the Class Members.

1.25 “Unknown Claims” means any Released Claims which Plaintiff or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished any and all provisions, rights, and benefits of California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiff shall expressly, and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiff shall expressly, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, grossly negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was bargained for separately and is a key element of the Settlement of which this release is a part.

III. THE LITIGATION

On December 17, 2009, this case was filed in the United States District Court for the District of Idaho as a putative securities class action on behalf of all Persons who purchased the common stock of Nighthawk during the period April 10, 2007 and February 13, 2008, inclusive. On April 29, 2010, Chief Magistrate Judge Candy W. Dale entered an Order (the “April 29 Order”) appointing Plymouth County Contributory Retirement System (“Plymouth”) as Lead Plaintiff, and approving Plymouth’s selection of Scott+Scott LLP as Lead Counsel and Holland & Hart LLC as Liaison Counsel. The April 29 Order was affirmed by Judge Edward J. Lodge on December 16, 2010.

Lead Plaintiff filed an Amended Class Action Complaint (the “Amended Complaint”) on July 13, 2010. The Amended Complaint alleged violations of §10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), Rule 10b-5 promulgated thereunder, and §20(a) of the Exchange Act, occurring between May 2, 2007 and May 7, 2008, inclusive (the “Class Period”).

Defendants moved to dismiss the Amended Complaint, and the motion was opposed by Plaintiff. On September 12, 2011, Chief Magistrate Judge Dale issued a Report and Recommendation granting the motion to dismiss without prejudice. The Report and Recommendation was adopted by Judge Lodge in an order dated September 30, 2011, on which date Judge Lodge also entered a judgment dismissing the action without prejudice (“September 20, 2011 Judgment”).

The Settling Parties subsequently entered into settlement negotiations, and ultimately reached an agreement to settle this lawsuit on a class basis. Thereafter, on December 2, 2011, the Parties entered into a memorandum of understanding (the “Memorandum of Understanding”), which served as the basis for the Settlement Agreement. On May 25, 2012, the Settling Parties executed the Settlement Agreement, which is subject to the approval of the Court.

IV. CLAIMS OF THE PLAINTIFF AND BENEFITS OF SETTLEMENT

This securities fraud class action was brought on behalf of those Persons who purchased the common stock of Nighthawk between May 2, 2007 through May 7, 2008, inclusive, against Nighthawk and four of its current and/or former key executives and directors for allegedly issuing false and misleading public statements during the Class Period. These statements concerned: (1) the claimed benefits of Nighthawk’s corporate acquisitions; (2) Nighthawk’s customer retention rates; (3) Nighthawk’s staffing levels; and (4) Nighthawk’s revenue and earnings guidance. According to Plaintiff, Defendants’ allegedly false statements and material omissions artificially inflated the market price of Nighthawk’s stock during the Class Period. When the true state of affairs was revealed, Plaintiff alleged, Nighthawk’s stock price dropped, resulting in significant losses to those shareholders who had purchased Nighthawk common stock while it was allegedly artificially inflated.

Plaintiff and Lead Counsel believe that the claims asserted in the Action have merit and that the evidence developed to date supports the claims. However, Plaintiff and Lead Counsel recognize and acknowledge that the case has been dismissed by the Court and that even if they were to prevail before the Ninth Circuit and the dismissal was reversed, they still would face the expense and length of continued proceedings necessary to prosecute the Action against the Defendants through trial and through a post-trial appeal to the Ninth Circuit. Plaintiff and Lead Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, as well as the risks posed by the difficulties and delays inherent in such litigation. Plaintiff and Lead Counsel also are mindful of the defenses to the securities law violations alleged in the Action, as well as the fact that the Court has already dismissed the case once. Plaintiff and Lead Counsel believe that the Settlement confers substantial benefits upon the Settlement Class, especially when viewed against the possibility of no recovery whatsoever. Based on their evaluation, Plaintiff and Lead Counsel have determined that the Settlement set forth in the Settlement Agreement is in the best interests of the Settlement Class.

V. THE DEFENDANTS’ DENIALS OF WRONGDOING AND LIABILITY

Defendants have denied and continue to deny each and all of the claims and contentions alleged in the Action. Defendants have expressly denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendants have also denied and continue to deny, *inter alia*, the allegations that Defendants’ public statements were deficient in any respect; that the Plaintiff or the Settlement Class have suffered any damage; and that the price of Nighthawk common stock was artificially inflated by reason of alleged

misrepresentations, non-disclosures or otherwise. Nonetheless, Defendants have determined that it is desirable to avoid the burden and expense of further litigation, and beneficial to them that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.

VI. TERMS OF THE PROPOSED SETTLEMENT

The amount of \$650,000 has been transferred, or will soon be transferred, to an interest-bearing escrow account under the control of the Escrow Agent. This principal amount of \$650,000 in cash, plus any accrued interest, shall constitute the Settlement Fund. A portion of the Settlement Fund will pay the cost of identifying Class Members, providing notice to the Settlement Class, processing submitted claims, paying any taxes on the Settlement Fund and distributing the Settlement pursuant to the terms of the Notice Order. In addition, as explained below, a portion of the Settlement Fund may be awarded by the Court to Plaintiff and/or Plaintiff's Counsel as reimbursement for costs and expenses incurred in litigating the case. The balance of the Settlement Fund (*i.e.*, the "Net Settlement Fund") will be distributed according to the Plan of Distribution described below to Class Members who submit valid and timely Proofs of Claim.

VII. PLAN OF DISTRIBUTION

The Net Settlement Fund will be distributed to Class Members who submit valid, timely Proofs of Claim and Release forms (*i.e.*, "Authorized Claimants") under the Plan of Distribution described below. The Plan of Distribution provides that you will be eligible to participate in the distribution of the Net Settlement Fund only if you have a net loss on all transactions in Nighthawk common stock during the Class Period.

For purposes of determining the amount an Authorized Claimant may recover under the Plan of Distribution, Plaintiff's Counsel have consulted with a damage consultant. The Plan of Distribution reflects an assessment of the damages that could have been recovered as well as Plaintiff's Counsels' assessment of the likelihood of establishing liability for various periods of the Settlement Class.

To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim, as defined below. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

The total of all profits shall be subtracted from the total of all losses from transactions in Nighthawk common stock during the Class Period to determine if a Class Member has a claim. Only if a Class Member had a net loss, after all profits from transactions in Nighthawk common stock during the Class Period are subtracted from all losses, will such Class Member be eligible to receive a distribution from the Net Settlement Fund.

The Class Period for purchases of Nighthawk common shares shall extend from May 2, 2007 through May 7, 2008, inclusive. The estimated number of common shares purchased and held during the Class Period is 16.26 million. Given the gross settlement amount of \$650,000 and allocation of damages to common shares, shares purchased during the Class Period shall recover on average \$0.04 per share in gross damages.

Calculation of Recognized Loss Claims for Nighthawk common shares shall be as follows:

The total net number of Nighthawk common shares damaged is estimated to be 16.26 million shares associated with shares purchased on or between May 2, 2007 and May 7, 2008. Given the total settlement of \$650,000, the average gross recovery per share is estimated to be \$0.04 per damaged share. Assuming expenses of \$70,000 and other litigation and claims administration expenses, the expected average net recovery per share will be at least \$0.036. For shares purchased on or between May 2, 2007 and May 7, 2008, such shares shall be eligible for damages if sold on or after January 29, 2008 or they continue to be held. The following summarizes the method for determining damages per share:

A. For each share purchased between May 2, 2007 and May 7, 2008, and sold on or after January 29, 2008 and on or before May 7, 2008, the Recognized Loss for each such share shall be *the lesser of the difference between:*

(i) dollar inflation applicable to each share purchased on the date of purchase (trade date, not settlement date) as set forth in Table 1 minus the dollar inflation on the date of sale (trade date, not settlement date), or

(ii) the actual purchase price of each such share (excluding all fees and commissions) minus the actual sale price (excluding all fees and commissions).

B. For each share purchased between May 2, 2007 and May 7, 2008, and sold on or after May 8, 2008 and continued to be held, the Recognized Loss for each such share shall be the dollar inflation applicable to the date of purchase as set forth in Table 1.

Table 1: Inflation per Share Table

Period	Begin Date	End Date	Inflation per Share
1	5/2/2007	1/28/2008	\$ 2.76
2	1/29/2008	2/13/08	\$ 1.41
3	2/14/08	5/7/08	\$ 0.73
4	5/8/08	Current	\$ 0.00

For all purposes, the transaction date and not the settlement date shall be used as the date for determining inflation per share, eligibility to file a claim for damages, and the calculation of Recognized Losses. The date of purchase or sale is the “transaction” date, as distinguished from the “settlement” date. The determination of the price paid per share and the price received per security shall be exclusive of all commissions, taxes, fees, and charges.

All purchases and sales of Nighthawk common shares shall be accounted for and matched using the first-in, first-out (“FIFO”) method of accounting. Under the FIFO method, sales of shares during the Class Period will be matched, in chronological order, first against shares held at the beginning of the Class Period. The remaining sales of shares during the Class Period will then be matched, in chronological order, against shares purchased during the Class Period.

Payments Less Than \$10

A payment to any Class Member that would amount to less than \$10 in total will not be included in the calculation of the Net Settlement Fund, and no payment to these Class Members will be distributed.

Defendants had no role in creating the Plan of Distribution, take no position with respect to the Plan of Distribution, and have no responsibility or liability with respect thereto.

The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

VIII. ORDER CERTIFYING A CLASS FOR PURPOSES OF SETTLEMENT

On October 31, 2012, the Court certified a class for purposes of settlement only. The Settlement Class is defined above.

IX. PARTICIPATION IN THE SETTLEMENT CLASS

If you fall within the definition of the Settlement Class, you are a Class Member unless you elect to be excluded from the Settlement Class pursuant to this Notice. If you do not request to be excluded from the Settlement Class, you will be bound by any judgment entered with respect to the settlement in the Action against Defendants whether or not you file a Proof of Claim and Release.

If you are a Class Member, you need do nothing (other than timely file a Proof of Claim and Release if you wish to participate in the distribution of the Net Settlement Fund). Your interests will be represented by Lead Counsel. If you choose, you may enter an appearance individually or through your own counsel at your own expense.

TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM AND RELEASE THAT ACCOMPANIES THIS NOTICE. The Proof of Claim and Release must be postmarked on or before February 28, 2013, and delivered to the Claims Administrator at the address below. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim and Release, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Settlement Agreement and the Order and Final Judgment.

X. EXCLUSION FROM THE SETTLEMENT CLASS

You may request to be excluded from the Settlement Class. To do so, you must mail a written request stating that you wish to be excluded from the Settlement Class to:

Nighthawk Securities Litigation
c/o GCG
P.O. Box 9905
Dublin, Ohio 43017-5805

The request for exclusion must: (1) state your name, address, and telephone number; and (2) demonstrate via brokerage statements, affidavit, confirmation slips, or other documentation, all purchases and sales of Nighthawk common stock during the Class Period, including the dates of each purchase or sale, and the number of shares purchased or sold. YOUR EXCLUSION REQUEST MUST BE POSTMARKED ON OR BEFORE FEBRUARY 20, 2013. If you submit a valid and timely request for exclusion, you shall have no

rights under the Settlement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement Agreement or the Judgment.

XI. DISMISSAL AND RELEASES

If the proposed Settlement is approved, the Court will enter a final Judgment. The Judgment will dismiss the Action with prejudice as to all Defendants.

The Judgment will also provide that all Class Members who have not previously validly and timely requested to be excluded from the Settlement Class shall be deemed to have released and forever discharged all Released Claims (including Unknown Claims) against all Released Persons.

XII. STATEMENT OF COSTS AND EXPENSES SOUGHT

Lead Counsel will not be seeking attorneys' fees related to this representation. At the Settlement Hearing, Plaintiff's Counsel will, however, request the Court to reimburse expenses not to exceed \$70,000, which were advanced in connection with the Action, plus interest thereon. Class Members are not personally liable for any such fees, expenses, or compensation.

To date, Plaintiff's Counsel have not received any payment for their services in conducting this Action on behalf of Plaintiff and the members of the Settlement Class, nor have counsel been reimbursed for their out-of-pocket expenses. Plaintiff's Counsel have, nevertheless, decided not to seek attorneys' fees in connection with this representation.

Application will be made to the Court for reimbursement from the Settlement Fund of Plaintiff's reasonable costs and expenses (including lost wages) directly relating to its representation of the Class in this Action. The amount of Plaintiff's reimbursement request will not exceed \$2,500.

XIII. CONDITIONS FOR SETTLEMENT

The Settlement is conditioned upon the occurrence of certain events described in the Settlement Agreement. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Settlement Agreement; and (2) expiration of the time to appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described in the Settlement Agreement is not met, the Settlement Agreement might be terminated and, if terminated, will become null and void, and the Parties to the Settlement Agreement will be restored to their respective positions as of December 2, 2011.

XIV. THE RIGHT TO BE HEARD AT THE HEARING

Any Class Member who has not validly and timely requested to be excluded from the Settlement Class, and who objects to any aspect of the Settlement, the Plan of Distribution, or the application for expenses may appear and be heard at the Settlement Hearing. Any such Person must submit and serve a written notice of objection, to be received by the parties on or before February 20, 2013 and filed with the Clerk of the Court by February 27, 2013 at the following addresses:

Clerk of the Court
UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO
550 w. Fort Street
Boise, Idaho 83724

Walter W. Noss, Esq.
SCOTT+SCOTT LLP
707 Broadway, Suite 1000
San Diego, CA 92101

Lead Counsel for Plaintiff

Gregory L. Watts, Esq.
WILSON SONSINI GOODRICH & ROSATI
701 Fifth Avenue, Suite 5100
Seattle, WA 98104-7036

Lead Counsel for Defendants

The notice of objection must demonstrate the objecting Person's membership in the Settlement Class, including the number of shares of Nighthawk common stock purchased and sold during the Class Period, the dates of any such purchase(s) and sale(s), the price of any purchase(s) and/or sale(s), and contain a statement of the reasons for objection. Only Class Members who have submitted written notices of objection in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise.

XV. SPECIAL NOTICE TO NOMINEES

If you hold or held any Nighthawk common stock during the Class Period as nominee for a beneficial owner, then, within 10 calendar days after you receive this Notice, you must either: (1) send a copy of this Notice and the Proof of Claim and Release by First-Class Mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

Nighthawk Securities Litigation
c/o GCG
P.O. Box 9905
Dublin, Ohio 43017-5805

If you choose to mail the Notice and Proof of Claim and Release yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for, or advancement of, reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and Proof of Claim and Release and which would not have been incurred but for the obligation to forward the Notice and Proof of Claim and Release, upon submission of appropriate documentation to the Claims Administrator.

XVI. EXAMINATION OF PAPERS

This Notice is a summary and does not describe all of the details of the Settlement Agreement. For full details of the matters discussed in this Notice, you may review the Settlement Agreement filed with the Court, which may be inspected during business hours, at the office of the Clerk of the Court, United States District Court for the District of Idaho, 550 W. Fort Street, Boise, Idaho 83724. You also may review the Settlement Agreement on the internet at www.NighthawkSecuritiesLitigation.com.

If you have any questions about the Settlement of the Action, you may contact a representative of Lead Counsel: Mike Burnett, Scott+Scott LLP, 156 South Main Street, P.O. Box 192, Colchester, CT 06415, Telephone: (800) 404-7770.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE

DATED: October 31, 2012

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT JUDGE
DISTRICT OF IDAHO