



IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

KENNETH RICHE, On Behalf of
Himself and All Others Similarly
Situated,

Plaintiff,

v.

JAMES C. PAPPAS, JOHN H.
WALKER, DOUGLAS J. GLASPEY,
PAUL LARKIN, LELAND "ROY"
MINK, RANDOLPH J. HILL, and ALI
G. HEDAYAT,

Defendants.

C.A. No. 2018-0177-JTL

ORDER AND FINAL JUDGMENT

WHEREAS, the Stipulation and Agreement of Compromise, Settlement, and Release, dated May 14, 2020 (the "Stipulation"), of the above-captioned action (the "Action"), and the settlement contemplated thereby (the "Settlement") having been presented at the hearing on September 16, 2020 (the "Settlement Hearing"), pursuant to the Scheduling Order entered herein on June 3, 2020, which Stipulation was entered into between lead plaintiff Kenneth Riche ("Plaintiff"), on his own behalf and on behalf of the Class; and Defendants James C. Pappas, John H. Walker, Douglas J. Glaspey, Paul Larkin, Leland "Roy" Mink, Randolph J. Hill, And Ali G. Hedayat (together with Plaintiff the "Settling Parties") by and through their respective attorneys; and the Court of Chancery of the State of Delaware (the

“Court”) having previously granted Plaintiff’s motion for class certification by decision and order dated September 9, 2019, pursuant to which, among other things, the Court determined that the requirements of Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2) have been satisfied, that Plaintiff is an adequate representative of the Class, and that Plaintiff’s Counsel are appointed as counsel for the Class; and the Court having determined that the Notice of Pendency of Class Action, Proposed Settlement of Class Action, and Settlement Hearing (the “Notice”) was given to the Class in accordance with the Scheduling Order and that said Notice was adequate and sufficient; and the Settling Parties having appeared by their attorneys of record; and the attorneys for the respective Settling Parties having been heard in support of the Settlement of the Action; and an opportunity to be heard having been given to all other Persons desiring to be heard as provided in the Notice; and the entire matter of the Settlement having been considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this 16th day of September, 2020, as follows:

1. Definitions. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order and Final Judgment (this “Order”).

2. Jurisdiction. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over the Settling Parties and the Class Members.

3. Sufficiency of Notice to the Class. The Notice has been provided to the Class pursuant to and in the manner directed by the Scheduling Order, proof of the mailing of the Notice has been filed with the Court, and a full opportunity to be heard has been offered to all parties to the Action, Class Members, and Persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of Delaware Court of Chancery Rule 23, due process, and applicable law, and to constitute due and sufficient notice to all Persons entitled thereto. All Class Members, as well as their transferees, heirs, executors, successors, and assigns, are bound by this Order.

4. Approval of Settlement and Entry of Final Judgment. The Settlement is found to be fair, reasonable, adequate, and in the best interests of the Class, and it is hereby approved. The Court further finds that the Settlement is the result of arms'-length negotiations between experienced counsel representing the interests of the respective Settling Parties. Accordingly, this Court fully and finally approves the Settlement in all respects (including the releases contained therein and the dismissal with prejudice of any and all Released Claims against each and every one of the

respective Released Parties), the Settling Parties are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and, there being no just reason for delay, the Register in Chancery is directed to enter and docket this Order in the Action as a final order.

5. Dismissal of Action. The Action is hereby dismissed with prejudice in full and final discharge of any and all claims or obligations that were or could have been asserted in the Action against the Defendants and, except as provided in the Stipulation, without costs to any Settling Party.

6. Releases. The releases contained in the Stipulation, together with the definitions contained in the Stipulation (certain of which are repeated herein) are expressly incorporated herein in all respects and shall be effective as of the Effective Date.

a. “Released Claims” means the Released Defendants’ Claims and the Released Plaintiff’s Claims.

b. “Released Defendant Parties” means the Defendants and each of their respective past or present affiliates, parents and subsidiaries (specifically including U.S. Geothermal, Inc., Ormat Technologies, Inc. (“Ormat Technologies”), Ormat Nevada Inc. (“Ormat Nevada”)), each and every subsidiary of Ormat Technologies, whether owned or controlled directly or indirectly, and OGP Holding Corp. (“Merger Sub”)), as well as each of their respective past or present

family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, insurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates, and all other Persons who have, may have, or purport to have a right of contribution from any of the foregoing.

c. “Released Defendants’ Claims” means any known and unknown claims that have been or could have been asserted in the Action, or in any court, tribunal, forum, or proceeding, by the Defendants or any of their respective successors and assigns against the Released Plaintiff, which arise out of or relate in any way to the institution, prosecution, settlement, or dismissal of the Action; provided, however, that the Released Defendants’ Claims shall not include the right to enforce the Stipulation.

d. “Released Parties” means the Released Defendant Parties and the Released Plaintiff.

e. “Released Plaintiff” means Plaintiff, all other Class Members, and their respective counsel (including Plaintiff’s Counsel).

f. “Released Plaintiff’s Claims” means all known and unknown claims which Plaintiff or any or all other members of the Class ever had, now have, or may have against any of the Released Defendant Parties, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule (including, but not limited to, any claims that could be asserted derivatively on behalf of U.S. Geothermal), which, now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, claims or any other matters, that were, could have been, or in the future can or might be alleged, asserted, or claimed, directly or indirectly, in the Action, or relate to the subject matter thereof, in any court, tribunal, forum, or proceeding; provided, however, that the Released Plaintiff’s Claims shall not include the right to enforce the Stipulation. “Unknown Claims” means any claims that a Settling Party does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Stipulation. With

respect to any of the Released Claims, the Settling Parties stipulate and agree that upon Final Approval of the Settlement, the Settling Parties shall be deemed to have, and by operation of the Order and Final Judgment entered by the Court shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code §1542 or any law or principle of common law of the United States or any state of the United States or territory of the United States, or other jurisdiction, which is similar, comparable or equivalent to Cal. Civ. 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.

The Settling Parties acknowledge, and the Class by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Settling Parties, and by operation of law the Class, to completely, fully, finally, and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Settling Parties acknowledge, and the Class by operation of law shall be deemed to have acknowledged, that the inclusion of

“Unknown Claims” in the definition of “Released Plaintiff’s Claims” was separately bargained for and was a material element of the Settlement and was relied upon by each and all of the Settling Parties in entering into the Stipulation.

7. Plaintiff and Class Bound by Order. As of the Effective Date, Plaintiff and each and every Class Member, on behalf of themselves, their legal representatives, heirs, executors, administrators, estates, predecessors, successors, predecessors-in-interest, successors-in-interest, affiliates and assigns, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their respective officers, directors, employees, and agents, shall be deemed bound by the Stipulation and this Order. This Order, including the release of all Released Plaintiff’s Claims against all Released Defendant Parties, shall have *res judicata*, collateral estoppel, and all other preclusive effect in all pending and future lawsuits, arbitrations, or other proceedings maintained by, or on behalf of, Plaintiff or any Class Members.

8. Plaintiff’s Counsel’s Attorneys’ Fees and Expenses.

a. Plaintiff’s Counsel is awarded reimbursement of expenses in the amount of \$250,760.81, which are deducted from the settlement consideration before determining the fee award. When a case settles early and the expenses are limited, this court has expressed a preference for an all-in fee award that does not provide separately for reimbursement of expenses. *See In re Appraisal of Dell Inc.*,

2016 WL 6069017, at *9 (Del. Ch. Oct. 17, 2016) (collecting authorities), *rev'd on other grounds, Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd.*, 177 A.3d 1 (Del. 2017). An all-in award is more straightforward for the court, facilitates comparisons across cases, and incentivizes counsel to control expenses. *Id.* at *9. “When a case goes to trial or settles late in the litigation process, particularly after the parties have incurred fees for experts, the all-in approach can have the deleterious effect of significantly reducing the net percentage of the award that counsel receives.” *Id.* To address this problem, some decisions have awarded a fee to counsel based on the total benefit conferred, then awarded expenses on top of the fee award. This approach has the corresponding problem of forcing the class to internalize all of the expenses in its share of the recovery. “Just as it seems unfair to force counsel to internalize all of the expenses, so too it is unfair to impose all of the expenses on the class.” *Id.* Instead, when a party has litigated a case through trial and incurred significant out-of-pocket expenses, “the approach that best balances the interests of the attorneys and the class is to deduct reimbursable expenses first, then award a fee based on the net benefit achieved.” *Id.* at *10. This approach recognizes that class counsel’s claim to fees is analogous to a carried interest that shares *pari passu* in the recovery with the members of the class. Counsel’s claim to fees is effectively a residual claim, and expenses paid to third parties logically take priority over the residual claim. *Id.*

b. Plaintiffs' Counsel are awarded attorneys' fees of \$1,875,000, representing 30% of the net settlement consideration after the deduction of expenses, and rounded up to avoid any implication of false precision. The Court finds this amount to be fair and reasonable.

c. The awards of fees and expenses shall be paid to Plaintiff Counsel in accordance with the terms of the Stipulation.

d. Neither Plaintiff, nor Plaintiff's Counsel, shall make, or assist any other counsel in making, any application for an award of fees or expenses in any other jurisdiction from the Defendants or Released Defendant Parties.

9. Order and Settlement Not Conditioned on Plaintiff's Counsel's Attorneys' Fees and Expenses. The binding effect of this Order and the obligations of Plaintiff, the Class, and the Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order that relates solely to the issue of Plaintiff' Counsel's application for an award of attorneys' fees and expenses.

10. Termination of Settlement. In the event that the proposed Settlement (or any amendment thereof by the Settling Parties) is rendered null and void as to all Settling Parties for any reason, (a) all of the Settling Parties shall be deemed to have reverted to their respective litigation statuses immediately prior to the execution of the Stipulation, and they shall proceed in all respects as if the Stipulation had not

been executed and any related orders (including the Scheduling Order and this Order) had not been entered, except for the obligation of the Insurers to pay for any expenses incurred in connection with the Notice, (b) all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way, and (c) the statements made in connection with the negotiations of the Stipulation shall not be deemed to prejudice in any way the positions of any of the Settling Parties with respect to the Action, or to constitute an admission of fact of wrongdoing by any Settling Party, shall not be used or entitle any Settling Party to recover any fees, costs, or expenses incurred in connection with the Action, and neither the existence of the Stipulation nor its contents nor any statements made in connection with its negotiation or any settlement communications shall be admissible in evidence or shall be referred to for any purpose in the Action, or in any other litigation or judicial proceeding.

11. No Admission. The Defendants deny any and all allegations of wrongdoing, fault, liability, or damage in the Action. Neither the Stipulation nor the fact of or any terms of the Settlement, or any communications relating thereto, is evidence, or a presumption, admission, or concession by any Defendant, any Defendants' Counsel, or any other Released Defendant Party, of any fault, liability, wrongdoing, or damages whatsoever, which are expressly denied and disclaimed by each Settling Defendant. The Stipulation is not a finding or evidence of the validity

or invalidity of any claims or defenses in the Action or any wrongdoing by any of the defendants named therein or any damages or injury to any Plaintiff or other Class Member. Neither the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, shall (a) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Parties, or of any infirmity of any defense, or of any damage to any Plaintiff or any other Class Member, (b) otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Parties concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted in the Action, or of any purported liability, fault, or wrongdoing of the Released Defendant Parties or of any injury or damages to any Person, or (c) be admissible, referred to, interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any Person in the Action, or in any other action or proceeding whatsoever, whether civil, criminal, or administrative; provided, however, that the Stipulation and/or this Order may be

introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue that the Stipulation and/or this Order has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Stipulation, Settlement, and/or this Order or as otherwise required by law. This provision shall remain in force in the event that the Settlement is terminated for any reason whatsoever.

12. Extension of Stipulation Dates. Without further order of the Court, Plaintiff and the Defendants may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

13. Retention of Jurisdiction. Without affecting the finality of this Order in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement, including the resolution of any disputes that may arise with the effectuation of any of the provisions of the Stipulation, the entry of such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement and this Order, and other matters related or ancillary to the foregoing.

14. Interpretation of Headings. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.



Vice Chancellor J. Travis Laster