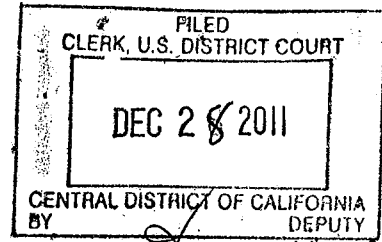


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION – LOS ANGELES

KATHLEEN MILLER, SONDRÉ
BILET, MARK J. HOLLAND and
KATHERINE DOOLITTLE,

Plaintiffs,

vs.

PALM DESERT INVESTMENTS,
PALM DESERT NATIONAL
BANK, KEVIN McGUIRE, and
DOES 1-10,

Defendants.

Case No. CV-11-02454 CBM (RZx)

~~PROPOSED~~ AMENDED ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

1 This Action involves claims for alleged violations of the Employee
2 Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.*
3 (“ERISA”), with respect to the Palm Desert Investments Employee Stock Ownership
4 Plan and Trust (the “Plan”).

5 Presented to the District Court for preliminary approval is a settlement
6 between the Parties. The terms of the Settlement are set out in a Class Action
7 Settlement Agreement (“Settlement Agreement”) filed with the Court on November
8 14, 2011.

9 The Court has preliminarily considered the Settlement to determine, among
10 other things, whether it warrants the issuance of notice to members of the Settlement
11 Class. Upon reviewing the Settlement Agreement, it is hereby ORDERED,
12 ADJUDGED AND DECREED as follows:

13 1. Class Certification. The Court preliminarily finds that the requirements
14 of the United States Constitution, the Federal Rules of Civil Procedure and any other
15 applicable laws have been met as to the Settlement Class¹ defined below in that:

- 16 a. The Settlement Class is cohesive and well defined;
- 17 b. The members of the Settlement Class are reasonably
- 18 ascertainable from records kept with respect to the Plan, and the members of
- 19 the Settlement Class are so numerous that their joinder before the Court would
- 20 be impracticable;
- 21 c. Based on allegations in the Complaint, the Court preliminarily
- 22 finds that there are one or more questions of fact and law common to the
- 23 Settlement Class;
- 24 d. Based on the terms of the Complaint and the proposed
- 25
- 26

27
28 ¹ The initial capitalization of terms not defined in this order shall have the meanings assigned to them in the Settlement Agreement.

1 Settlement, the Court finds that Plaintiffs' claims are typical of the claims of
2 the Settlement Class;

3 e. Plaintiffs will fairly and adequately protect the interests of the
4 Settlement Class in that: (i) the interests of Plaintiffs in the nature of the
5 alleged claims and the Settlement are consistent with those of the members of
6 the Settlement Class; (ii) there appear to be no conflicts between or among
7 Plaintiffs and the Settlement Class; and (iii) Plaintiffs and the Settlement Class
8 are represented by qualified counsel who are experienced in preparing and
9 prosecuting large, complicated class actions;

10 f. Based on the Complaint, the prosecution of separate actions with
11 individual members of the Settlement Class would create a risk of:
12 (i) inconsistent or varying adjudications as to individual Settlement Class
13 members that would establish incompatible standards of conduct for the
14 parties opposing the claims asserted in the Action; or (ii) adjudications as to
15 individual Settlement Class members that would, as a practical matter, be
16 dispositive of the interests of the other Settlement Class members not parties
17 to the adjudications, or substantially impair or impede the ability of those
18 persons to protect their interests; and

19 2. Based on the findings set out in Paragraph 1, the Court preliminarily
20 certifies the following class for settlement purposes only under Federal Rule of Civil
21 Procedure 23(b)(1):

22 All Persons who were participants in or beneficiaries of
23 the Palm Desert Investments Employee Stock
24 Ownership Plan and whose individual Share Accounts
25 held vested shares of stock of Palm Desert Investments
26 from September 30, 2006 through September 1, 2011;
27 provided, however, that Defendants, former and
28 present directors of Palm Desert Investments and/or
Palm Desert National Bank and their heirs, Successors-
in-Interest, or assigns, to the extent such Persons
acquire an interest held by Defendants, are excluded
from the Settlement Class.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Appointments.

a. The Court preliminarily appoints Plaintiffs Kathleen Miller, Sondre Bilet, Mark J. Holland and Katherine Doolittle as class representatives for the Settlement Class. The Court also preliminarily appoints Snyder Miller and Orton LLP as Class Counsel for the Settlement Class.

b. The Court appoints Nicholas L. Saakvitne as Administrator for the purpose of implementing the Settlement. The Administrator shall be fully responsible for overseeing the distribution of the proceeds to the Settlement Class, including all related tax issues. The Administrator's fees and expenses incurred for administration of this settlement, including costs of administering the Class Notice pursuant to Section 3c shall be paid from the Settlement Fund in an amount not to exceed \$25,000. The Administrator will be paid in accordance with the Final Approval Order.

c. The Court further appoints Nicholas L. Saakvitne as Administrator of the Settlement for purposes of transmitting the Class Notice to the Settlement Class. Payment for these services shall be deferred until the Effective Date of the Settlement. In the event the Settlement does not become effective, Mr. Saakvitne shall be reimbursed by the Insurer for his reasonable costs of administering the Class Notice in conformance with the Settlement, which amount shall not exceed \$5,000.

d. The Court appoints Nicholas L. Saakvitne as Independent Fiduciary to review the Settlement Agreement under the Department of Labor's Prohibited Transaction Class Exemption 2003-29, as amended. Mr. Saakvitne will: (i) review and evaluate the terms and conditions of the Settlement, including the consideration received by the Plan, proposed attorneys fees and other sums paid from the Settlement Fund, the proposed plan of allocation and the scope of the release; (ii) determine whether the terms and conditions of the transaction are no less favorable to the Plan than

Snyder
Miller
& Orton
LLP

1 comparable arms-length terms and conditions that would have been agreed to
2 by unrelated parties under similar circumstance; (iii) determine if the
3 transaction is part of an agreement, arrangement, or understanding designed
4 to benefit a party in interest to the Plan; and (iv) determine whether the Plan
5 should approve of the release required under the Settlement. Mr. Saakvitne
6 shall undertake this review and analysis for the sum of \$10,000, which will
7 be paid by the Insurer within ten (10) days of the date of this Order.

8 4. Preliminary Findings Concerning Proposed Settlement. The Court
9 preliminarily finds that the proposed Settlement should be approved as: (i) the result
10 of serious, extensive arms-length and non-collusive negotiations; (ii) fair,
11 reasonable, and adequate; (iii) having no obvious deficiencies; (iv) not improperly
12 granting preferential treatment to Plaintiffs or segments of the Settlement Class; (v)
13 falling within the range of possible approval; and (vi) warranting notice to
14 Settlement Class members of a formal fairness hearing, at which evidence may be
15 presented in support of and in opposition to the proposed Settlement.

16 5. Final Fairness Hearing. A hearing is scheduled for May 22, 2012 at
17 9:00 a.m. or after (the "Final Fairness Hearing") to determine, among other things:

18 a. Whether the Settlement should be finally approved as fair,
19 reasonable, and adequate;

20 b. Whether the litigation should be dismissed with prejudice
21 pursuant to the terms of the Settlement Agreement;

22 c. Whether the Class Notice and the means of dissemination
23 provided for by the Settlement Agreement: (i) constituted the best
24 practicable notice; (ii) constituted notice that was reasonably
25 calculated, under the circumstances, to apprise members of the
26 Settlement Class of the pendency of the litigation, their right to object
27 to the Settlement, and their right to appear at the Final Fairness
28 Hearing; (iii) was reasonable and constituted due, adequate, and

1 sufficient notice to all Persons entitled to notice; and (iv) met all
2 applicable requirements of the Federal Rules of Civil Procedure and
3 any other applicable law;

4 d. Whether Class Counsel adequately represented the Settlement
5 Class for purposes of entering into and implementing the Settlement
6 Agreement;

7 e. Whether the Plan of Allocation should be approved; and

8 f. Whether the application for attorneys' fees and expenses filed by
9 Class Counsel should be approved.

10 6. Notices. The Court approves the form of class notice attached to the
11 Motion for Preliminary Approval. The Court finds that the form fairly and
12 adequately: (i) describes the terms and effect of the Settlement Agreement and of the
13 Settlement; (ii) notifies the Settlement Class concerning the proposed Plan of
14 Allocation; (iii) notifies the Settlement Class that Class Counsel will seek attorneys'
15 fees and expenses not to exceed 33 1/3% of the Settlement Fund; (iv) gives notice to
16 the Settlement Class of the time and place of the Final Fairness Hearing; and (v)
17 describes how the recipients of the Class Notice may object to any of the relief
18 requested. The Court directs that, pursuant to the Settlement Agreement:

19 a. Within seven (7) days of the date of this Order, the
20 Administrator shall cause the Class Notice attached as Exhibit 1, with blanks
21 completed and such non-substantive modifications as may be agreed upon by
22 the Parties, to be sent to each member of the Settlement Class listed in the
23 records of the Plan's record keeper. The notice shall be sent by first-class
24 mail to each of the Settlement Class member's last known address.

25 b. At or before the Final Fairness Hearing, Class Counsel shall file
26 with the Court a declaration of the Administrator's proof of timely compliance
27 with the foregoing requirements.

28

1 7. Objections to Settlement. Any member of the Settlement Class who
2 wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the
3 Plan of Allocation, to any term of the Settlement Agreement, or to the proposed
4 award of attorneys' fees and expenses may file an objection. An objector must file
5 with the Court a statement of his, her or its objections, specifying the reasons for
6 each objection, including any legal support or evidence that the objector wishes to
7 bring to the Court's attention. The objector must also mail the objection and all
8 supporting law and evidence to Class Counsel and to Defendants' Counsel. The
9 addresses for filing objections with the Court and service on counsel are as follows:

10 **To the Court:**

11 Clerk of the Court
12 U.S. District Court for the Central District of California, Western Division
13 Spring Street Courthouse, 2-2nd Floor
14 312 N. Spring Street, Los Angeles, CA 90012

15 **To Class Counsel:**

16 Peter P. Meringolo
17 Rebecca L. Kassekert
18 SNYDER MILLER & ORTON LLP
19 180 Montgomery Street, Suite 700
20 San Francisco, CA 94104

21 **To Defendants' Counsel:**

22 Nicole A. Diller
23 MORGAN LEWIS & BOCKIUS LLP
24 One Market, Spear Street Tower
25 San Francisco, CA 94105

26 The objector or his, her or its counsel (if any) must effect service of the
27 objection on counsel listed above and file it with the Court within sixty (60)
28 days of the date of this Order. If an objector hires an attorney to object
pursuant to this Paragraph, the attorney must both effect service of a notice of
appearance on counsel listed above and file it with the Court within sixty (60)
days of the date of this Order. Except for good cause shown, any member of
the Settlement Class or other person who does not timely file and serve a

1 written objection complying with the terms of this paragraph shall be deemed
2 to have waived, and shall be foreclosed from raising, any objection to the settlement,
3 and any untimely objection shall be barred.

4 8. Appearance at Final Fairness Hearing. Any objector who files and
5 serves a timely, written objection may appear at the Fairness Hearing either in
6 person or through counsel retained at the objector's expense. Any objector intending
7 to appear at the Final Fairness Hearing shall indicate that intention in the objection
8 filed and served in accordance with Paragraph 7.

9 9. Service of Papers. If it appears that any objections were not properly
10 filed or served, Defendants' Counsel and Class Counsel shall promptly furnish each
11 other with copies of any and all such objections that come into their possession and
12 file them with the Court.

13 10. Fee Petition. Class Counsel shall file an application for attorneys' fees
14 and expenses within thirty-five (35) days of the date of this Order.

15 11. Injunction. Pending the final determination of the fairness,
16 reasonableness and adequacy of the proposed Settlement, all members of the
17 Settlement Class are enjoined from instituting or commencing any action against
18 Defendants and Releasees based on the Released Claims, and all proceedings in this
19 action, except those related to approval of the Settlement, are stayed.

20 12. Termination of Settlement. This Order shall become void and
21 shall be without prejudice to the rights of the Parties, all of whom shall be restored to
22 their respective positions existing as of September 29, 2011 pursuant to Section 11.1
23 of the Settlement Agreement, if the Settlement is terminated in accordance with the
24 Settlement Agreement or does not receive final approval. In such event, Section 11
25 of the Settlement Agreement shall govern the rights of the Parties.

26 13. Use of Order. Neither the fact nor the terms of this Order shall be
27 construed or used as an admission, concession, or declaration by or against
28 Defendants of any fault, wrongdoing, breach, or liability or as a waiver by any Party

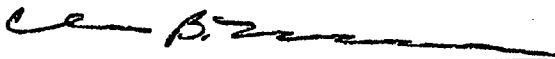
Snyder
Miller
& Orton
LLP

1 of any arguments, defenses, or claims he, she, or it may have, including but not
2 limited to any objections by Defendants to class certification in the event that the
3 Settlement Agreement is terminated or not given final approval.

4 14. Continuance of Hearing. The Court may in its discretion
5 continue the Fairness Hearing without further written notice.

6 **IT IS SO ORDERED.**

7 Dated: 12/28/11

8 
9 Honorable Consuelo B. Marshall
10 United States District Court Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28