

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

In re RED HAT, INC. SECURITIES LITIGATION	)	Master File. No. 5:04-CV-473-BR(3)
_____	)	
	)	<u>CLASS ACTION</u>
This Document Relates To:	)	
	)	
ALL ACTIONS.	)	
_____	)	

STIPULATION OF SETTLEMENT

This Stipulation of Settlement dated as of February 26, 2010 (the “Stipulation”), is made and entered into by and among the following Settling Parties (as further defined in §IV hereof) to the above-captioned case (“Litigation”): (i) the Lead Plaintiff (as defined herein, on behalf of himself and each of the Class Members), by and through their court-approved counsel (as defined herein); and (ii) Defendants (as defined herein), by and through his counsel of record in the Litigation. The Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined in ¶1.23), upon and subject to the terms and conditions hereof.

#### **I. THE LITIGATION**

Beginning on July 14, 2004 several actions were filed asserting claims for violations of §§10(b) and 20(a) of the Exchange Act against Red Hat, Inc. (“Red Hat” or the “Company”) and certain of its officers and directors. By Order dated September 8, 2004, the Court consolidated these actions under the caption *In re Red Hat, Inc. Securities Litigation*, Master File. No. 5:04-CV-473-BR(3) (the “Litigation”). The Court also appointed the United Food and Commercial Workers’ Local 1262, Employers Pension Fund, the Zhang Family, Robert Piccurrio, Eric Bushman and Steve Salek (the “Union Group”) to serve as Lead Plaintiffs. The current Lead Plaintiff, Mr. Charles Gilbert, originally sought appointment as Lead Plaintiff but withdrew his motion.

Thereafter, the Union Group filed a Consolidated Class Action Complaint on May 6, 2005, and named Red Hat, Matthew J. Szulik, Kevin B. Thompson, along with Mark H. Webbink, Timothy J. Buckley, Paul J. Cormier, and Pricewaterhouse Coopers LLP (“PWC”) as defendants. Defendants moved to dismiss the Complaint on July 29, 2005. On May 12, 2006, the Court issued an Order granting Defendant PWC’s motion and granting in part and denying in part Defendant Red Hat and the individual defendants’ motion to dismiss. While the Court held that the Union Group had sufficiently stated a claim against Defendants Red Hat, Szulik and Thompson, it dismissed the claims against the remaining defendants.

Defendants then answered the Complaint on June 5, 2006. After discovery related to class certification, on November 7, 2006, the Union Group filed its motion for class certification. Following the class certification discovery process, only Lead Plaintiffs Eric Bushman and Steve Salek continued seeking appointment as class representatives. Defendants filed an opposition to the plaintiffs' motion for class certification on February 2, 2007. On May 11, 2007, the Court issued an Order denying the Union Group's motion for class certification, finding that proposed class representatives Eric Bushman and Steve Salek were inadequate.

On June 4, 2007, the Court held a status conference and addressed how the underlying actions would proceed. Subsequently, Mr. Gilbert and James McRee filed renewed motions to be appointed lead plaintiff and for approval of their selection of counsel. After briefing on these motions, this Court issued an Order on November 13, 2007, appointing Plaintiff Gilbert as Lead Plaintiff and Coughlin Stoa Geller Rudman & Robbins LLP and McDaniel and Anderson, L.L.P. to serve as Lead and Liaison Counsel, respectively and set an expedited schedule for class certification discovery.

Following the completion of class discovery and extensive briefing on class and related expert issues, on August 28, 2009, the Court issued the Class Certification Order, certifying a class of all purchases of the common stock of Red Hat between December 17, 2002 and July 12, 2004, inclusive and who were damaged thereby (the "Class"). The Court also appointed Mr. Gilbert as class representative.

Thereafter the parties held a Rule 26(f) conference and submitted a Rule 26 Report. On November 12, 2009, the parties participated in mediation with the Honorable Nicholas H. Politan (Ret.). After continued settlement negotiations, the parties reached an agreement-in-principle to settle the Litigation.

## **II. CLAIMS OF THE LEAD PLAINTIFF AND BENEFITS OF SETTLEMENT**

The Lead Plaintiff believes that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims. However, counsel for the Lead Plaintiff recognizes and acknowledges the expense and length of continued proceedings necessary to prosecute the Litigation against the Defendants through trial and possible appeals. Lead Plaintiff and his counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Lead Plaintiff and his counsel also are mindful of the inherent problems of proof under and possible defenses to the federal securities law violations asserted in the Litigation. Lead Plaintiff and his counsel believe that the settlement set forth in the Stipulation confers substantial benefits upon the Class and that the settlement set forth in the Stipulation is in the best interests of the Class.

## **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

The Defendants have denied and continue to deny each and all of the claims and contentions alleged by the Lead Plaintiff in the Litigation. The Defendants have denied expressly 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 Litigation. The Defendants also have denied and continue to deny, *inter alia*, the allegations that they made a materially false statement or had any intent to make one, that the Lead Plaintiff or Class Members have suffered damage, that the price of Red Hat's stock was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, or that the Lead Plaintiff or Class Members were harmed by the conduct that was or could have been alleged in the Litigation.

Nonetheless, the Defendants have concluded that further litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. The Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Litigation. The Defendants have, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in the Stipulation.

#### **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Lead Plaintiff (for himself and the Class Members) and the Defendants, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Stipulation.

##### **1. Definitions**

As used in the Stipulation, the following terms have the meanings specified below.

1.1 “Authorized Claimant” means any Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.

1.2 “Claimant” means any Class Member who files a Proof of Claim and Release in such form and manner, and within such time, as the Court shall prescribe.

1.3 “Claims Administrator” means the firm of RSM McGladrey, which shall administer the settlement.

1.4 “Class” means the class certified by the Court by Opinion and Order dated August 29, 2009, comprised of:

All Persons who purchased the common stock of Red Hat, Inc. between December 17, 2002 and July 12, 2004, inclusive and who were damaged thereby. Excluded from the Class are Red Hat, Inc., Matthew J. Szulik and Kevin B. Thompson, any entity in which any excluded person has or had a controlling interest, the officers and directors of Red Hat, Inc., and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors-in-interest or assigns of any such excluded party.

1.5 “Class Member” or “Member of the Class” mean, for purposes of this Stipulation only, a Person who falls within the definition of the Class as set forth in this Stipulation and who does not timely exercise his, her or its right to opt-out of the Class.

1.6 “Class Period” means the period beginning on December 17, 2002 through July 12, 2004, inclusive.

1.7 “Court” means the United States District Court for the Eastern District of North Carolina.

1.8 “Defendants” means Red Hat, Matthew J. Szulik and Kevin B. Thompson.

1.9 “Effective Date” means the first date by which all of the events and conditions specified in ¶7.1 of the Stipulation have been met and have occurred.

1.10 “Escrow Account” means the bank account maintained by the Escrow Agent into which the Settlement Amount shall be deposited.

1.11 “Escrow Agent” means the law firm of Coughlin Stoia Geller Rudman & Robbins LLP or its successor(s).

1.12 “Final” with respect to the Judgment to be entered pursuant to this Stipulation means that the Judgment has been entered by the Court and has not been modified, and: (i) no appeal has been filed with the period in which an appeal might be filed under Rule 4 of the Federal Rules of Appellate Procedure; or (ii) if an appeal is filed, the Court of Appeals has affirmed the Judgment in all respects and the time for further appeal (including petition for a writ of certiorari) has expired without further appeal or the Judgment has been finally affirmed and no further appeal is permitted.

Any proceeding or order, or any appeal or petition for a writ of certiorari, pertaining solely to any Plan of Allocation and/or Fee and Expense Application shall not in any way delay or preclude the Judgment from becoming Final.

1.13 “Judgment” means the final judgment and order of dismissal with prejudice to be rendered by the Court that contains all material terms of the proposed form of order attached hereto as Exhibit B.

1.14 “Lead Counsel” means Coughlin Stoia Geller Rudman & Robbins LLP.

1.15 “Lead Plaintiff” means the Court-appointed lead plaintiff Charles Gilbert.

1.16 “Liaison Counsel” means McDaniel and Anderson, L.L.P.

1.17 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.18 “Plaintiff” means any Person who filed a complaint in the Litigation.

1.19 “Plaintiffs’ Counsel” means counsel who have appeared for any Plaintiff in the Litigation.

1.20 “Plan of Allocation” means a plan or formula of allocation of the 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 attorneys’ fees, costs, expenses, and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation and the Released Persons shall have no responsibility or liability with respect thereto.

1.21 “Red Hat” means Red Hat, Inc.

1.22 “Related Parties” means each Defendant and their respective past or present directors, officers, employees, partners, members, principals, agents, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants or auditors, banks or investment banks, underwriters, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, , estates, related or affiliated entities, any entity in which a Defendant has a controlling interest, any members of each Defendant’s immediate families, any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his family, and the heirs, successors and assigns of the foregoing.

1.23 “Released Claims” means any and all claims (including “Unknown Claims” as defined below), that Lead Plaintiff or any member of the Class asserted or could have asserted arising out of, in connection with, or in any way related to, directly or indirectly, to the purchase or sale of Red Hat common stock during the Class Period and the actions, facts, statements or omissions that were or could have been alleged or asserted in the Litigation.

1.24 “Released Persons” means each and all of the Defendants and the Related Parties.

1.25 “Settlement Amount” means twenty million dollars (\$20,000,000).

1.26 “Settlement Fund” means the Settlement Amount, deposited in an interest-bearing Escrow Account, as set forth in ¶2.2, maintained by the Escrow Agent into which the Settlement Amount shall be paid. Interest earned on the Settlement Amount shall be added to and included in the Settlement Fund.

1.27 “Settling Parties” means, collectively, each of the Defendants and the Lead Plaintiff on behalf of himself and the Members of the Class.

1.28 “Unknown Claims” means any Released Claims which the Lead 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, the Lead Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the 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.**

The Lead Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived 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, and/or equivalent to California Civil Code §1542. The Lead Plaintiff or any Class Member 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 the Lead 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 which is negligent, 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. The Lead Plaintiff acknowledges, and the Class Members shall be deemed by

operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

**2. The Settlement**

**a. The Settlement Fund**

2.1 The Settlement Amount shall be transferred by Red Hat and/or its insurers on behalf of Defendants directly into the Escrow Account within the later of: (i) ten (10) business days of the Court's entry of an Order preliminarily approving the settlement as set forth in the Stipulation; or (ii) April 8, 2010. If the Settlement Amount is not transferred into the Escrow Account as set forth above, interest will accrue at 10% per annum from the date such payment should have been deposited on such portion of the Settlement Amount not transferred, until the date such sums are transferred to the Escrow Agent.

**b. The Escrow Agent**

2.2 The Escrow Agent shall invest the amounts deposited pursuant to ¶2.1 only in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of those instruments as they mature in similar instruments at their then current market rates. The Escrow Agent shall not disburse any of the Settlement Fund except as provided in the Stipulation and by an order of the Court. Prior to the Effective Date, except as provided in paragraphs 2.3, 2.4, and 6.2, the Escrow Agent shall not disburse any of the Settlement Fund without the written agreement of counsel for Defendants. The Settlement Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court. The Settlement Fund shall bear all risks related to investment of the Settlement Fund.

2.3 Without written agreement of counsel for the Defendants or any further order of the Court, after preliminary approval of the Settlement by the Court, the Escrow Agent may establish a "Notice and Administration Fund," and may deposit up to \$150,000 from the Settlement Fund in it. The Notice and Administration Fund may be used by the Escrow Agent without further consent of Defendants or order of the Court to pay costs and expenses reasonably and actually incurred in connection with providing notice to the Class, locating Class Members, soliciting Class claims, assisting with the filing of claims, administering and distributing the Settlement Fund to Authorized Claimants, processing Proof of Claim and Release forms, and paying escrow fees and costs, if any. The Notice and Administration Fund may also be invested and earn interest.

**c. Taxes**

2.4 The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.4, including the "relation-back election" (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶2.4(a) hereof) shall be consistent with this ¶2.4 and in all events shall reflect that all Taxes (including any estimated Taxes

(as defined in ¶2.4(b) hereof), interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.4(b) hereof. After preliminary approval, the Escrow Agent may pay such Taxes without further order of the Court or written agreement by counsel for the Defendants.

(b) The Released Persons shall have no liability or responsibility for any Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Defendants or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”). All (a) Taxes, and (b) expenses and costs incurred in connection with the operation and implementation of this ¶2.4 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶2.4 (“Tax Expenses”)), shall be paid out of the Settlement Fund; in all events the Released Persons shall have no liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); none of the Released Persons are responsible nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent,

each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.4.

(c) For the purpose of this ¶2.4, references to the Settlement Fund shall include both the Settlement Fund and the Notice and Administration Fund and shall also include any earnings thereon.

**d. Termination of Settlement**

2.5 In the event that the Stipulation is not approved, or is terminated, canceled, or fails to become effective for any reason, the Settlement Fund, including the Notice and Administration Fund (including accrued interest on both), less costs of notice and administration actually incurred or due and owing in connection with the settlement provided for herein, shall be refunded to Red Hat and/or its insurers, as described in ¶7.4 hereof.

**3. Notice Order and Settlement Hearing**

3.1 Promptly after execution of the Stipulation, Lead Counsel shall submit the Stipulation together with its Exhibits to the Court and shall apply for entry of an order (the “Notice Order”) substantially in the form of Exhibit A attached hereto, requesting, *inter alia*, approval for the mailing of a settlement notice (the “Notice”) and publication of a summary notice substantially in the form and content of Exhibits A-1 and A-3 attached hereto.

3.2 Lead Counsel shall request that after notice is given, the Court hold a hearing (the “Settlement Hearing”) and approve the settlement of the Litigation as set forth herein. At or after the Settlement Hearing, Lead Counsel also will request that the Court approve the proposed Plan of Allocation attached to the Notice Order as Exhibit A and the Fee and Expense Application.

**4. Releases**

4.1 Upon the Effective Date, as defined in ¶1.9 hereof, the Lead Plaintiff and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally,

and forever remised, released, relinquished, and discharged all Released Claims against the Released Persons, regardless whether such Class Member executes and delivers a Proof of Claim and Release.

4.2 Upon the Effective Date, as defined in ¶1.9 hereof, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Lead Plaintiff, each and all of the Class Members, Lead Counsel, Liaison Counsel, and Plaintiffs' Counsel, from all claims (including Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement or resolution of the Litigation or the Released Claims.

**5. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of the Settlement Fund**

5.1 The Claims Administrator, subject to such supervision and direction of the Court or Lead Counsel as may be necessary or as circumstances may require, shall administer and calculate the claims submitted by Class Members and shall oversee distribution of the Net Settlement Fund (defined below) to Authorized Claimants.

5.2 The Settlement Fund shall be applied as follows:

(a) to pay all the costs and expenses reasonably and actually incurred in connection with providing notice, locating Class Members, soliciting Class claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proof of Claim and Release forms, and paying escrow fees and costs, if any;

(b) to pay the Taxes and Tax Expenses described in ¶2.4 hereof, if any;

(c) to pay Plaintiffs' Counsel's attorneys' fees, expenses, and costs with interest thereon (the "Fee and Expense Award"), if and to the extent allowed by the Court; and

(d) to distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

5.3 Following the Effective Date, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with ¶¶5.4-5.9.

5.4 Within ninety (90) days after the mailing of the Notice or such other time as may be set by the Court, each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release, in a form containing all material terms of the form of Exhibit A-2 attached hereto, signed under penalty of perjury and supported by such documents as specified in the Proof of Claim and Release and as are reasonably available to the Class Member.

5.5 Except as otherwise ordered by the Court, all Class Members who fail to timely submit a Proof of Claim and Release within such period, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to the Stipulation and the settlement set forth therein, but will in all other respects be subject to and bound by the provisions of the Stipulation, the releases contained herein, and the Judgment. Notwithstanding the foregoing, Lead Counsel may, in their discretion, accept for processing late filed claims so long as distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed.

5.6 The Net Settlement Fund shall be distributed to Authorized Claimants substantially in accordance with a Plan of Allocation to be described in the Notice and approved by the Court. However, if there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Lead Counsel shall reallocate such balance among Authorized Claimants in an

equitable and economic fashion. Thereafter, any balance which still remains in the Net Settlement Fund shall be donated to a non-profit organization selected by the Court.

5.7 The Released Persons shall have no responsibility for or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, or any losses incurred in connection therewith.

5.8 No Person shall have any claim against Plaintiffs' Counsel or any Released Person or any claims administrator based on the distributions made substantially in accordance with the Stipulation and the settlement contained therein, the Plan of Allocation, or further order(s) of the Court.

5.9 It is understood and agreed by the Settling Parties that any proposed plan of allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth in the Stipulation, and any orders or proceedings relating to the Plan of Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's Judgment approving the Stipulation and the settlement set forth therein, or any other orders entered pursuant to the Stipulation.

#### **6. Plaintiffs' Counsel's Attorneys' Fees and Payment of Expenses**

6.1 Lead Counsel may submit an application or applications (the "Fee and Expense Application") for distributions to them from the Settlement Fund for: (a) an award of attorneys' fees; plus (b) payment of expenses, including the fees and expenses of any experts or consultants, incurred in connection with prosecuting the Litigation, plus any interest on such attorneys' fees, costs, and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as

may be awarded by the Court. Lead Counsel reserve the right to make additional applications for fees and expenses incurred.

6.2 The attorneys' fees, expenses, and costs, including the fees and expenses of experts and consultants, as awarded by the Court, may be paid to Lead Counsel from the Settlement Fund, as ordered, immediately after the Court executes an order awarding such fees and expenses. Lead Counsel shall thereafter allocate the attorneys' fees amongst Plaintiffs' Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Litigation. In the event attorneys' fees or expenses are awarded by the Court pursuant to ¶6.1 hereof and paid to Plaintiffs' Counsel from the Settlement Fund, all Plaintiffs' Counsel who receive any payment of attorneys' fees or expenses agree that they accept payment subject to the joint and several obligation of each Plaintiffs' Counsel (including their respective partners, shareholders, and/or firms), to make repayment to the Settlement Fund within five (5) business days from receiving notice from Lead Counsel or from a court of appropriate jurisdiction, of the amount required to be refunded, with accrued interest at the same rate as earned by the Escrow Account, in the event, for any reason, including, without limitation, appeal, further proceeding on remand or successful collateral attack, the attorneys' fee or expense award is reduced or reversed, and Lead Counsel agrees that it shall on that date pay any amount due to be paid by any Plaintiffs' Counsel which remains unpaid. Furthermore, all Plaintiffs' Counsel (including their respective partners, shareholders, and/or firms) agree that they remain subject to the continuing jurisdiction of the Court for the purpose of enforcing their obligation to repay required attorneys' fees and expenses to the Settlement Fund as provided in this paragraph.

6.3 The procedure for and the allowance or disallowance by the Court of any applications by Lead Plaintiff or Lead Counsel for attorneys' fees and expenses, including the fees and expenses

of experts and consultants, to be paid out of the Settlement Fund, are not part of the settlement set forth in the Stipulation, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth in the Stipulation, and any order or proceeding relating to the provisions of ¶¶6.1 and 6.2 of this Stipulation, the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the settlement of the Litigation set forth therein.

6.4 Defendants and the Related Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment to the Lead Plaintiff, Lead Counsel, Liaison Counsel, Plaintiffs' Counsel, or any other counsel or Person who receives payment from the Settlement Fund.

6.5 Defendants and the Related Parties shall have no responsibility for, and no liability whatsoever with respect to the allocation among Plaintiffs' Counsel and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Litigation, and Defendants and their respective Related Parties take no position with respect to such matters.

**7. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

(a) the Settlement Amount shall have been transferred to the Escrow Agent as required by ¶2.1 hereof;

(b) the Court has entered the Notice Order as required by ¶3.1 hereof;

(c) the Court has entered the Judgment substantially in the form and content of Exhibit B attached hereto; and

(d) the Judgment has become Final, as defined in ¶1.12 hereof.

7.2 Upon the occurrence of all of the events referenced in ¶7.1 hereof, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished.

7.3 If all of the conditions specified in ¶7.1 hereof are not met or cannot be met, then the Stipulation shall be canceled and terminated subject to ¶¶7.4-7.6 hereof unless Lead Counsel and counsel for Defendants mutually agree in writing to proceed with the Stipulation.

7.4 If, prior to the Settlement Hearing, the aggregate number of shares of Red Hat common stock purchased by Persons who would otherwise be members of the Class, but who request exclusion from that Class, exceeds the sum specified in a separate supplemental agreement between Lead Plaintiff and Defendants (the "Supplemental Agreement"), Red Hat shall have, in its sole and absolute discretion (which must be unanimously exercised), the option to terminate this Stipulation in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement will not be filed with the Court unless required by the Court or unless and until a dispute as between Lead Plaintiff and Defendants concerning its interpretation or application arises.

7.5 Unless otherwise ordered by the Court, in the event the Stipulation shall terminate, or be canceled, or shall not become effective for any reason, the Settlement Fund (including accrued interest), plus any amount then remaining in the Notice and Administration Fund (including accrued interest), less expenses and any costs which have either been disbursed pursuant to ¶¶2.3 or 2.4 hereof, or are chargeable to the Notice and Administration Fund, shall be refunded by the Escrow

Agent to Red Hat and/or its insurers within five (5) business days after written notification of such event is sent by counsel for Defendants. At the request of Defendants' counsel, the Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to Red Hat and/or its insurers.

7.6 In the event that the Stipulation is not approved by the Court or the settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Litigation as of the date of this Stipulation. In such event, the terms and provisions of the Stipulation shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, expenses, and interest awarded by the Court to the Lead Plaintiff or to any Plaintiffs' Counsel shall constitute grounds for cancellation or termination of the Stipulation.

7.7 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither the Lead Plaintiff nor any Plaintiffs' Counsel shall have any obligation to repay any amounts actually and properly disbursed from the Notice and Administration Fund or pursuant to ¶2.4 hereof. In addition, any expenses already incurred and chargeable to the Notice and Administration Fund pursuant to ¶2.3 hereof at the time of such termination or cancellation but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Stipulation prior to the balance being refunded in accordance with ¶7.4 hereof.

7.8 If a case is commenced in respect to any Defendant under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of the Settlement Fund, or any portion thereof, by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction, then, as to such Defendant, the releases given and Judgment entered in favor of such Defendant pursuant to this Stipulation shall be null and void.

**8. Miscellaneous Provisions**

8.1 The Settling Parties (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

8.2 The Settling Parties intend this Stipulation to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense.

8.3 The Final Judgment will contain a statement that during the course of the Litigation, the parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. The parties agree that the amount paid to the Settlement Fund and the other terms of the settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

8.4 Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim,

or of any wrongdoing, fault or liability of the Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any wrongdoing, fault or liability of any of the Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Defendants may, however, file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. In addition, nothing contained in this paragraph shall prevent this Stipulation (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Stipulation (or any agreement or order relating thereto) or the Judgment, or to enforce or effectuate provisions of this settlement, the Final Judgment, or the Proofs of Claim and Release as to the Defendants and Released Persons.

8.5 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

8.6 All of the Exhibits to the Stipulation are material and integral parts thereof and are fully incorporated therein by this reference.

8.7 The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8.8 The Stipulation and the Exhibits attached hereto constitute the entire agreement among the parties hereto and no representations, warranties or inducements have been made to any party concerning the Stipulation or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided therein, each party shall bear its own costs.

8.9 Lead Counsel, on behalf of the Class, are expressly authorized by the Lead Plaintiff to take all appropriate action required or permitted to be taken by the Class pursuant to the Stipulation to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the Class which they deem appropriate.

8.10 Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

8.11 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

8.12 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

8.13 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Stipulation.

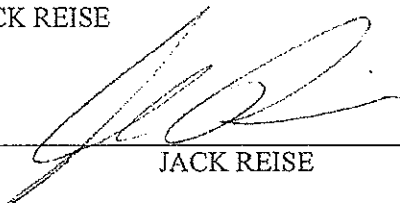
8.14 In the event that the Court or any other court is called upon to interpret this Stipulation, no one party or group of parties shall be deemed to have drafted this Stipulation.

8.15 The section headings used throughout this Stipulation are for convenience only and shall not affect the interpretation or construction of this Stipulation.

8.16 The Stipulation and the Exhibits thereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of North Carolina, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of North Carolina without giving effect to that State's choice-of-law principles.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by  
their duly authorized attorneys dated as of February 26, 2010.

COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
PAUL J. GELLER  
JACK REISE



---

JACK REISE

120 East Palmetto Park Road, Suite 500  
Boca Raton, FL 33432  
Telephone: 561/750-3000  
561/750-3364 (fax)

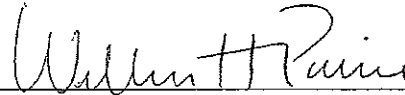
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202/663 6363 (fax)

Counsel for Defendants

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

In re RED HAT, INC. SECURITIES	)	Master File. No. 5:04-CV-473-BR(3)
LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
This Document Relates To:	)	
ALL ACTIONS.	)	
_____	)	

ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE

EXHIBIT A

WHEREAS, a consolidated action is pending before this Court styled *In re Red Hat, Inc. Securities Litigation*, Master File. No. 5:04-CV-473-BR(3) (the "Litigation");

WHEREAS, the parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order approving the settlement of this Litigation, in accordance with a Stipulation of Settlement dated as of February \_\_, 2010 (the "Stipulation"), which, together with the exhibits annexed thereto, set forth the terms and conditions for a proposed settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the exhibits annexed thereto; and

WHEREAS, all defined terms herein have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve the Stipulation and the settlement set forth therein, subject to further consideration at the Settlement Hearing described below.

2. A hearing (the "Settlement Hearing") shall be held before this Court on \_\_\_\_\_, 2010, at \_\_\_\_\_m., at the United States District Court for the Eastern District of North Carolina, Terry Sanford Federal Building and Courthouse, 310 New Bern Avenue, Raleigh, NC 27601 to determine whether the proposed settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class and should be approved by the Court; whether a Judgment as provided in ¶1.12 of the Stipulation should be entered; whether the proposed Plan of Allocation should be approved; and to determine any amount of fees and expenses that should be awarded to Lead Counsel and any award to Lead Plaintiff for his representation of the Class.

3. Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure, the Court appoints the firm of RSM McGladrey, Inc., 512 Township Line Road, One Valley Square, Suite 250, Blue Bell, Pennsylvania (“Claims Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Not later than \_\_\_\_\_, 2010 (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice and the Proof of Claim and Release, substantially in the forms annexed as Exhibits A-1 and A-2 hereto, to be mailed by first class mail to all Class Members who can be identified with reasonable effort; and to be posted on its website at www.\_\_\_\_\_com;

(b) Not later than \_\_\_\_\_, 2010, the Claims Administrator shall cause the Summary Notice to be published once in the national edition of *Investor’s Business Daily*;

(c) Not later than \_\_\_\_\_, 2010, the Claims Administrator shall post on its website at www.\_\_\_\_\_com the Stipulation, Notice and Proof of Claim Form; and

(d) Not later than \_\_\_\_\_, 2010, Lead Counsel shall serve on Defendants’ counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

4. Nominees who purchased Red Hat common stock for the benefit of another Person during the period December 17, 2002 to July 12, 2004, inclusive, shall be requested to send the Notice and Proof of Claim and Release to all such beneficial owners of Red Hat common stock within ten (10) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim and Release to such beneficial owners.

5. All fees, costs, and expenses incurred in identifying and notifying members of the Class shall be paid from the Settlement Fund.

6. All members of the Class shall be bound by all determinations and judgments in the Litigation concerning the settlement, whether favorable or unfavorable to the Class.

7. Class Members who wish to participate in the settlement shall complete and submit the Proof of Claim and Release in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proof of Claim and Release forms must be submitted no later than ninety (90) days from the Notice Date. Any Class Member who does not timely submit a Proof of Claim and Release within the time provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall nevertheless be bound by any final judgment entered by the Court. Notwithstanding the foregoing, Lead Counsel shall have the discretion to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed.

8. Any member of the Class may enter an appearance in the Litigation, at his, her, or its own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Lead Counsel.

9. Any Person falling within the definition of the Class may, upon request, be excluded or "opt out" from the Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), postmarked no later than \_\_\_\_\_, 2010. A Request for Exclusion must be signed and state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) the Person's purchases of Red Hat common stock during the Class Period, including the dates, the number of shares of Red Hat common stock purchased, and price paid for each such purchase; and (c) that the Person wishes to be excluded from the Class. All Persons which

submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

10. Lead Counsel shall cause to be provided to Defendants' counsel copies of all Requests for Exclusion, and any written revocation of Requests for Exclusion, as expeditiously as possible and in any event within seven (7) days prior to the Settlement Hearing.

11. Any member of the Class may appear and show cause, if he, she, or it has any reason why the proposed settlement of the Litigation should not be approved as fair, reasonable and adequate, or why a Judgment should not be entered thereon, why the Plan of Allocation should not be approved, why attorneys' fees and expenses should not be awarded to counsel for the Lead Plaintiff or an award to Lead Plaintiff for his representation of the Class; provided, however, that no Class Member or any other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed settlement, or, if approved, the Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, or any attorneys' fees and expenses to be awarded to counsel for Lead Plaintiff, unless written objections and copies of any papers and briefs are received by Jeffrey D. Light, Coughlin Stoia Geller Rudman & Robbins LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, William H. Paine, Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, MA 02109, on or before \_\_\_\_\_, 2010; and said objections, papers and briefs are filed with the Clerk of the United States District Court for the Eastern District of North Carolina, on or before \_\_\_\_\_, 2010. Any member of the Class who does not make his, her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of the proposed settlement as incorporated in the Stipulation, to the Plan

of Allocation, and to the award of attorneys' fees and expenses to Lead Counsel and the payment of an award to Lead Plaintiff for his representation of the Class, unless otherwise ordered by the Court.

12. All funds held by the Escrow Agent(s) shall be deemed and considered to be in *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

13. All papers in support of the settlement, Plan of Allocation and any application by counsel for Lead Plaintiff for attorneys' fees and expenses shall be filed and served no later than fourteen (14) calendar days prior to the objection deadline in ¶11 and any reply papers shall be filed and served seven (7) calendar days prior to the Settlement Hearing.

14. Neither Defendants nor their Related Parties shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or expenses submitted by the Lead Plaintiff and Lead Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the settlement.

15. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Lead Counsel, any application for attorneys' fees and expenses, and any award to Lead Plaintiff for his representation of the Class, should be approved.

16. All reasonable expenses incurred in identifying and notifying Class Members as well as administering the Settlement Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the settlement, or it otherwise fails to become effective, neither Lead Plaintiff nor any of his counsel shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to ¶2.3 or ¶2.4 of the Stipulation.

17. Defendants have denied any liability, fault, or wrongdoing of any kind in connection with the allegations in the Litigation, and as such, neither the Stipulation, nor any of its terms or

provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind.

18. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE W. EARL BRITT  
SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

In re RED HAT, INC. SECURITIES LITIGATION	)	Master File. No. 5:04-CV-473-BR(3)
_____	)	
	)	<u>CLASS ACTION</u>
This Document Relates To:	)	
	)	
ALL ACTIONS.	)	
_____	)	

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

EXHIBIT A-1

*If you purchased Red Hat, Inc. (“Red Hat” or the “Company”)<sup>1</sup> common stock during the period from December 17, 2002 and July 12, 2004, inclusive (the “Class Period”) and are not otherwise excluded from the Class (see Question 6 below), you could get a payment from a class action settlement.*

A federal court authorized this Notice. This is not a solicitation from a lawyer.

**Security and Time Period:** Red Hat common stock (symbol “RHT”) purchased between December 17, 2002 and July 12, 2004, inclusive.

**Settlement Fund:** \$20,000,000 in cash plus any interest earned. Your recovery will depend on the timing of your purchases and any sales of Red Hat common stock during the Class Period. Based on the information currently available to Lead Plaintiff and the analysis performed by their damage consultants, it is estimated that if Class Members submit claims for 100% of the shares eligible for distribution under the Plan of Allocation (described below), the estimated average distribution per share will be approximately \$0.\_\_\_\_ before deduction of Court-approved fees and expenses, including the cost of notifying members of the Class and settlement administration. Historically, actual claims rates are less than 100%, which result in higher distributions per share. A Class Member’s actual recovery will be a proportion of the Net Settlement Fund determined by that claimant’s recognized claim as compared to the total recognized claims of all Class Members who submit valid Proof of Claim and Release forms (“Proof of Claim”).

**Reasons for Settlement:** Avoids the costs and risks associated with continued litigation, including the danger of no recovery.

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<sup>1</sup> This Notice incorporates by reference the definitions in the Stipulation of Settlement dated February 26, 2010, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation of Settlement. The Stipulation is posted on the Claims Administrator’s website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

**If the Case Had Not Settled:** Continuing with the case could have resulted in loss at summary judgment, trial or on appeal. The two sides vigorously disagree on both liability and the amount of money that could have been won if Lead Plaintiff prevailed at trial. The parties disagree about: (1) the method for determining whether the price of Red Hat common stock was artificially inflated during the relevant period; (2) the amount of any such alleged inflation; (3) whether there was any wrongdoing on the part of Defendants, including whether Defendants acted recklessly or intentionally in reporting Red Hat's financial results during the relevant period; (4) the extent that various facts alleged by Lead Plaintiff influenced the trading price of Red Hat common stock during the Class Period; and (5) whether the facts alleged were material, false, misleading or otherwise actionable under the federal securities laws.

**Attorneys' Fees and Expenses:** Court-appointed Lead Plaintiff's counsel will ask the Court for attorneys' fees of \_\_\_% of the Settlement Fund and expenses not to exceed \$ \_\_\_\_\_ to be paid from the Settlement Fund plus interest. Lead Plaintiff's counsel have not received any payment for their work investigating the facts, prosecuting this Litigation and negotiating this settlement on behalf of the Lead Plaintiff and the Class. Lead Plaintiff's counsel will also ask the Court to approve an award of up to \$ \_\_\_\_\_ for the Court-appointed Lead Plaintiff for his representation of the Class. If the above amounts are requested and approved by the Court, the average cost per share will be \$0.\_\_\_\_.

**Deadlines:**

Submit Claim: \_\_\_\_\_, 2010

Request Exclusion: \_\_\_\_\_, 2010

File Objection: \_\_\_\_\_, 2010

**Court Hearing on Fairness of Settlement:** \_\_\_\_\_, 2010

**More Information:** [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or

Claims Administrator:

*Red Hat Securities Litigation*  
Claims Administrator  
c/o RSM McGladrey, Inc.  
512 Township Line Road  
One Valley Square, Suite 250  
Blue Bell, PA 19422  
1-215-641-8600

Representative of Lead Plaintiff's counsel:

Rick Nelson  
Shareholder Relations  
Coughlin Stoia Geller  
Rudman & Robbins LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
1-800-449-4900

- Your legal rights are affected whether you act, or do not act. Read this Notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

- |                            |   |
|----------------------------|---|
| <b>SUBMIT A CLAIM FORM</b> | The only way to get a payment.  |
| <b>EXCLUDE YOURSELF</b>    | Get no payment. This is the only option that allows you to participate in another lawsuit against the Defendants for the legal claims in this case.                 |
| <b>OBJECT</b>              | You may write to the Court if you do not like this settlement, the request for attorneys' fees and expenses, the award to Lead Plaintiff or the Plan of Allocation. |
| <b>GO TO A HEARING</b>     | You may ask to speak in Court about the fairness of the settlement.   |
| <b>DO NOTHING</b>          | Get no payment. Give up rights.   |

- These rights and options — *and the deadlines to exercise them* — are explained in this Notice.

- The Court in charge of this case must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and, if there are any appeals, after appeals are resolved. Please be patient.

#### **BASIC INFORMATION**

##### **1. Why did I get this notice package?**

You or someone in your family may have purchased Red Hat common stock between December 17, 2002 and July 12, 2004, inclusive.

The Court directed that you be sent this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it and after any objections or appeals (if there are any) are resolved, the Claims Administrator appointed by the Court will make the payments that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Eastern District of North Carolina, and the case is known as *In re Red Hat, Inc. Securities Litigation*, Master File No. 5:04-CV-473-BR(3). The person who leads the Litigation, Charles Gilbert, is called the Lead Plaintiff and the company and the individuals he sued are called Defendants.

##### **2. What is this lawsuit about?**

This Litigation alleges that Red Hat and its former Chief Executive Officer and Chief Financial Officer violated the federal securities laws in connection with their publication of financial statements that the Company later corrected. Lead Plaintiff alleges that when Defendants disclosed

the Company's true financial condition, Class Members suffered damages as a result of the decline in the price of Red Hat common stock.

Defendants deny all of the Lead Plaintiff's allegations and further deny that they did anything wrong. Defendants also deny that the Lead Plaintiff or the Class suffered damages or that the price of Red Hat common stock was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise.

**3. Why is this a class action?**

In a class action, one or more people called class representatives (in this case, the Court-appointed Lead Plaintiff, Charles Gilbert) sue on behalf of people who have similar claims. All of these people and/or entities are called a class or class members. One judge – in this case, Senior United States District Court Judge W. Earl Britt – 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 Lead Plaintiff or Defendants. Instead, the lawyers for both sides of the lawsuit have negotiated a settlement, with the assistance of a highly respected mediator, the Honorable Nicholas H. Politan (Ret.), that they believe is in the best interests of their respective clients. The settlement allows both sides to avoid the risks and cost of lengthy and uncertain litigation and the uncertainty of a trial and appeals, and permits Class Members to be compensated without further delay. Lead Plaintiff and his attorneys think the settlement is best for all Class Members.

**WHO GETS MONEY FROM THE SETTLEMENT**

To see if you will get money from this settlement, you first have to determine if you are a Class Member.

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

The Class includes *all Persons who purchased the common stock of Red Hat between December 17, 2002 and July 12, 2004, inclusive.*

**6. Are there exceptions to being included in the Class?**

Yes. Excluded from the Class are Red Hat, Inc., Matthew J. Szulik and Kevin B. Thompson, any entity in which any excluded person has or had a controlling interest, the officers and directors of Red Hat, Inc., and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors-in-interest or assigns of any such excluded party. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to this Notice.

**7. I'm still not sure if I am included.**

If you still are not sure whether you are included, you can ask for free help. You can call 1-800-\_\_\_\_\_ or visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com) for more information; or, you can call Rick Nelson at 1-800-449-4900 for more information; or you can fill out and return the claim form described in Question 10 to see if you qualify.

**THE SETTLEMENT BENEFITS – WHAT YOU GET**

**8. What does the settlement provide?**

Defendants have agreed to pay or cause to be paid \$20,000,000 in cash (the “Settlement Fund”). The Settlement Fund, plus interest earned from the date it is established, less costs, fees and expenses (the “Net Settlement Fund”), will be divided among all eligible Class Members who send in valid claim forms (“Authorized Claimants”). Costs, fees and expenses include Court-approved attorneys’ fees and expenses, the costs of notifying Class Members, including the costs of printing and mailing this Notice and the cost of publishing newspaper notice, and the costs of claims administration.

**9. How much will my payment be?**

Your share of the Net Settlement Fund will depend on the number of valid claim forms that Class Members send in and how many shares of stock you purchased during the relevant period and when you bought and sold them.

In the unlikely event 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.

A "Claim" will be calculated as follows:

*[to be inserted]*

The date of purchase or sale is the "contract" or "trade" date as distinguished from the "settlement" date.

For Class Members who held Red Hat common stock at the beginning of the Class Period or made multiple purchases or sales during the Class Period, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases and sales for purposes of calculating a claim. Under the FIFO method, sales of Red Hat common stock during the Class Period will be matched in chronological order first against the common stock held at the beginning of the Class Period. The remaining sales of stock during the Class Period will then be matched, in chronological order, against shares held during the Class Period.

An Authorized Claimant will be eligible to receive a distribution from the Net Settlement Fund only if a Class Member had a net loss, after all profits from transactions in Red Hat common stock during the Class Period are subtracted from all losses. However, the proceeds from sales of stock which have been matched against stock held at the beginning of the Class Period will not be used in the calculation of such net loss.

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

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Authorized Claimants. No Person shall have any claim against Lead Plaintiff, Plaintiffs' Counsel, any claims administrator or other Person designated by Lead Plaintiff's counsel or Defendants and/or the Related Parties and/or the Released Persons and/or their counsel based on distributions made substantially in accordance with the Stipulation and the settlement contained therein, the Plan of Allocation, or further orders of the Court. All Class Members who fail to complete and file a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

#### **HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM**

##### **10. How will I get a payment?**

To qualify for a payment, you must send in a claim form. A claim form is enclosed with this Notice. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign it, and mail it in the enclosed envelope postmarked no later than \_\_\_\_\_, 2010.

**11. When would I get my payment?**

The Court will hold a hearing on \_\_\_\_\_, 2010, at \_\_\_\_\_, to decide whether to approve the settlement. If Judge Britt approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved favorably, and resolving them can take time, perhaps more than a year. It also takes time for all the claim forms to be processed. If there are no appeals and depending on the number of claims submitted, the Claims Administrator could distribute the Net Settlement Fund as early as nine months after the fairness hearing. Please be patient.

**12. What am I giving up to get a payment or stay in the Class?**

Unless you exclude yourself, you are staying in the Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants about the same issues in this case or about issues that could have been asserted in this case. It also means that all of the Court's orders will apply to you and legally bind you and you will release your Released Claims in this case against the Defendants. "Released Claims" means any and all claims (including "Unknown Claims" as defined below), that Lead Plaintiff or any member of the Class asserted or could have asserted arising out of, in connection with, or in any way related to, directly or indirectly to the purchase or sale of Red Hat common stock during the Class Period and the acts, facts, statements or omissions that were or could have been alleged or asserted in the Litigation.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from this settlement, but you want to keep the right to sue or continue to sue the Defendants on your own about the same issues in this case, then you must take steps to get out of the Class. This is called excluding yourself or is sometimes referred to as opting out of the Class.

**13. How do I get out of the Class?**

To exclude yourself from the Class, you must send a letter by mail stating that you want to be excluded from *In re Red Hat, Inc. Securities Litigation*, Master File No. 5:04-CV-473-BR(3). You must include your name, address, telephone number, your signature, and the number of shares of Red Hat common stock you purchased between December 17, 2002 and July 12, 2004, inclusive, and the dates and prices of such purchases. You must mail your exclusion request postmarked no later than \_\_\_\_\_, 2010 to:

*Red Hat Securities Litigation*  
Claims Administrator  
c/o RSM McGladrey, Inc.  
512 Township Line Road  
One Valley Square, Suite 250  
Blue Bell, PA 19422

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you are not eligible to get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

**14. If I do not exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this settlement resolves. Remember, the exclusion deadline is \_\_\_\_\_, 2010.

**15. If I exclude myself, can I get money from this settlement?**

No. If you exclude yourself, do not send in a claim form to ask for any money. Once you exclude yourself, you will receive no cash payment even if you also submit a claim form.

**THE LAWYERS REPRESENTING YOU**

**16. Do I have a lawyer in this case?**

The Court appointed the law firm of Coughlin Stoia Geller Rudman & Robbins LLP to represent you and other Class Members. These lawyers are called Lead Counsel. The Court also appointed McDaniel & Anderson, L.L.P as Liaison Counsel. These lawyers will apply to the Court for payment from the Settlement Fund; you will not otherwise be charged for their work. If you want to be represented by your own lawyer, you may hire one at your own expense.

**17. How will the lawyers be paid?**

At the fairness hearing, Lead Plaintiff's counsel will request the Court to award attorneys' fees of \_\_\_% of the Settlement Fund and for expenses up to \$\_\_\_\_\_, which were incurred in connection with the Litigation. In addition, Lead Plaintiff Charles Gilbert may request up to \$\_\_\_\_\_ for his efforts in representing the Class. If awarded, the cost would be \$0.\_\_\_\_ per share. This compensation will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses. To date, Lead Plaintiff's counsel have not received any payment for their services in conducting this Litigation on behalf of the Lead Plaintiff and the Class, nor have counsel been paid for their expenses. The fee requested will compensate Lead Plaintiff's counsel for their work in achieving the Settlement Fund and is well within the range of fees awarded to class counsel under similar circumstances in other cases of this type. The Court may award less than this amount.

**OBJECTING TO THE SETTLEMENT**

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

**18. How do I tell the Court that I do not like the settlement?**

If you are a Class Member (and you have not excluded yourself), you can object to the settlement, the request for attorneys' fees and expenses, the award to Lead Plaintiff or the Plan of

Allocation if you do not like any part of it. You can give reasons why you think the Court should not approve the settlement, the request for attorneys' fees and expenses, the award to Lead Plaintiff or the Plan of Allocation. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed settlement in *In re Red Hat, Inc. Securities Litigation*, Master File. No. 5:04-CV-473-BR(3). Be sure to include your name, address, telephone number, your signature, the number of shares of Red Hat common stock purchased between December 17, 2002 and July 12, 2004, inclusive, and the reasons you object to the settlement, the requested attorneys' fees and expenses, the award to Lead Plaintiff or the Plan of Allocation. Any such objection must be mailed or delivered such that it is received by each of the following no later than \_\_\_\_\_, 2010:

*Court:*

Clerk of the Court  
Dennis P. Iavarone  
United States District Court  
Eastern District of North Carolina  
P.O. Box 25670  
Raleigh, NC 27611

*Lead Counsel for Lead Plaintiff:*

COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP  
JEFFREY D. LIGHT  
655 West Broadway, Suite 1900  
San Diego, CA 92101

*Counsel for Defendants:*

WILMER CUTLER PICKERING HALE AND DORR LLP  
WILLIAM H. PAINE  
60 State Street  
Boston, MA 02109

**19. What is the difference between objecting and excluding myself from the settlement?**

Objecting is telling the Court that you do not like something about the proposed settlement. You can object *only* if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer applies to you.

#### **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the proposed settlement. You may attend, but you do not have to.

**20. When and where will the Court decide whether to approve the settlement?**

The Court will hold a hearing at \_\_\_\_\_, on \_\_\_\_\_, 2010, at the United States District Court for the Eastern District of North Carolina, Terry Sanford Federal Building and Courthouse, 310 New Bern Avenue, Raleigh, NC 27601. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court will also decide whether to approve the payment of fees and expenses to Lead Plaintiff's counsel, including the award to Lead Plaintiff and the Plan of Allocation. We do not know how long the hearing will take or whether the Court will make its decision on the day of the hearing or sometime later.

**21. Do I have to come to the hearing?**

No. Lead Plaintiff's counsel will answer questions Judge Britt may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but you are not required to do so.

**22. May I speak at the hearing?**

You may ask the Court for permission to speak at the hearing. To do so, you must send a letter saying that it is your intention to appear in *In re Red Hat, Inc. Securities Litigation*, Master File No. 5:04-CV-473-BR(3). Be sure to include your name, address, telephone number, your signature, and the number of shares of Red Hat common stock purchased between December 17, 2002 and July 12, 2004, inclusive. Your notice of intention to appear must be received no later than \_\_\_\_\_, 2010 by the Clerk of the Court, Lead Plaintiff's counsel, and Defendants' counsel, at the addresses listed in Question 18. You cannot speak at the hearing if you exclude yourself from the Class.

**IF YOU DO NOTHING**

**23. What happens if I do nothing at all?**

If you do nothing, you will get no money from this settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants about the same issues in this case.

**GETTING MORE INFORMATION**

**24. Are there more details about the settlement?**

This Notice summarizes the proposed settlement. More details are in the Stipulation of Settlement dated February 26, 2010 ("Stipulation"), which has been filed with the Court. You can get a copy of the Stipulation from the Clerk's office at the United States District Court, Eastern District of North Carolina, Clerk of the Court, Dennis P. Iavarone, United States District Court, Eastern District of North Carolina, P.O. Box 25670, Raleigh, NC 27611, during regular business hours, or at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or you may contact Lead Counsel at the number and address below.

**25. How do I get more information?**

You can call 1-800-449-4900 or write to a representative of Lead Plaintiff's counsel, Rick Nelson, Coughlin Stoia Geller Rudman & Robbins LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, or visit the Claims Administrator's website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). *Please do not call the Court or the Clerk of the Court for additional information about the settlement.*

**26. Special notice to nominees**

If you hold any Red Hat common stock purchased between December 17, 2002 and July 12, 2004, inclusive as a nominee for a beneficial owner, then, within ten (10) days after you receive this Notice, you must either: (1) send a copy of this Notice 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:

*Red Hat Securities Litigation*  
Claims Administrator  
c/o RSM McGladrey, Inc.  
512 Township Line Road  
One Valley Square, Suite 250  
Blue Bell, PA 19422

If you choose to mail the Notice and Proof of Claim 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 which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DATED: \_\_\_\_\_, 2010

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

In re RED HAT, INC. SECURITIES	)	Master File. No. 5:04-CV-473-BR(3)
LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
	)	
This Document Relates To:	)	
	)	
ALL ACTIONS.	)	
_____	)	

PROOF OF CLAIM AND RELEASE

EXHIBIT A-2



## II. DEFINITIONS

1. "Class" means the class certified by the Court by Opinion and Order dated August 29, 2009, comprising of:

All Persons who purchased the common stock of Red Hat, Inc. between December 17, 2002 and July 12, 2004, inclusive and who were damaged thereby. Excluded from the Class are Red Hat, Inc., Matthew J. Szulik and Kevin B. Thompson, any entity in which any excluded person has or had a controlling interest, the officers and directors of Red Hat, Inc., and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors-in-interest or assigns of any such excluded party.

2. "Defendants" means Red Hat, Matthew J. Szulik and Kevin B. Thompson.

3. "Released Parties" means each Defendant and their respective past or present directors, officers, employees, partners, members, principals, agents, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants or auditors, banks or investment banks, underwriters, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, estates, related or affiliated entities, any entity in which a Defendant has a controlling interest, any members of their immediate families, or any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his family, and the heirs, successors and assigns of the foregoing.

4. "Stipulation" or "Stipulation of Settlement" is the Stipulation of Settlement dated as of February 26, 2010, entered into by the parties to the Litigation for the purpose of settling the Litigation.

## III. CLAIMANT IDENTIFICATION

If you purchased Red Hat common stock and held the certificate(s) in your name, you are the beneficial purchaser as well as the record purchaser. If, however, you purchased Red Hat common stock and the certificate(s) were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is the record purchaser.

Use Part I of this form entitled "Claimant Identification" to identify each purchaser of record ("nominee"), if different from the beneficial purchaser of Red Hat common stock which forms the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER OR PURCHASERS, OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER OR PURCHASERS, OF THE RED HAT COMMON STOCK UPON WHICH THIS CLAIM IS BASED.

All joint purchasers must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

#### IV. CLAIM FORM

Use Part II of this form entitled "Schedule of Transactions in Red Hat Common Stock" to supply all required details of your transaction(s) in Red Hat common stock. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to *all* of your purchases of Red Hat common stock which took place at any time between December 17, 2002 and July 12, 2004, inclusive (the "Class Period") and *all* of your sales of Red Hat common stock which took place at any time between December 17, 2002 and \_\_\_\_\_, inclusive, whether such transactions resulted in a profit or a loss. You must also provide all of the requested information with respect to *all* of the Red Hat common stock you held at the beginning of trading on

December 17, 2002, and at the close of trading on \_\_\_\_\_ . Failure to report all such transactions may result in the rejection of your claim.

List each transaction in the Class Period separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day and year of each transaction you list.

The date of covering a "short sale" is deemed to be the date of purchase of Red Hat common stock. The date of a "short sale" is deemed to be the date of sale of Red Hat common stock.

Copies of broker confirmations or other documentation of your transactions in Red Hat common stock should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

*In re Red Hat, Inc. Securities Litigation,*  
Master File. No. 5:04-CV-473-BR(3)  
PROOF OF CLAIM AND RELEASE

Must Be Postmarked No Later Than:

\_\_\_\_\_, 2010

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

\_\_\_\_\_  
Beneficial Owner's Name (First, Middle, Last)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State or Province

\_\_\_\_\_  
Zip Code or Postal Code

\_\_\_\_\_  
Country

\_\_\_\_\_  
Social Security Number or  
Taxpayer Identification Number

\_\_\_\_\_  
Individual  
Corporation/Other

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (work)

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (home)

\_\_\_\_\_  
Record Owner's Name (if different from beneficial owner listed above)

PART II: SCHEDULE OF TRANSACTIONS IN RED HAT COMMON STOCK

- A. Number of shares of Red Hat common stock held at the beginning of trading on December 17, 2002: \_\_\_\_\_
- B. Purchases (December 17, 2002 – July 12, 2004, inclusive) of Red Hat common stock:

Trade Date Mo. Day Year	Number of Shares Purchased	Total Purchase Price
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____

IMPORTANT: Identify by number listed above all purchases in which you covered a “short sale”: \_\_\_\_\_

- C. Sales (December 17, 2002 – \_\_\_\_\_, inclusive) of Red Hat common stock:

Trade Date Mo. Day Year	Number of Shares Sold	Total Sales Price
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____

- D. Number of shares of Red Hat common stock held at the close of trading on \_\_\_\_\_, 2004: \_\_\_\_\_

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ THE RELEASE. YOUR SIGNATURE ON PAGE \_\_\_ WILL CONSTITUTE YOUR ACKNOWLEDGMENT OF THE RELEASE.**

**V. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (We) submit this Proof of Claim and Release under the terms of the Stipulation of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Eastern District of North Carolina, with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I (we) am bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim covering the same purchases or sales of Red Hat common stock during the Class Period and know of no other person having done so on my (our) behalf.

**VI. RELEASE**

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Released Claims each and all of the "Released Persons," defined as each and all of Defendants and each and all of their Related Parties.

2. "Released Claims" means any and all claims (including "Unknown Claims" as defined below), that Lead Plaintiff or any member of the Class asserted or could have asserted arising out of, in connection with, or in any way related to, directly or indirectly to both the purchase of Red Hat common stock during the Class Period and the acts, facts, statements or omissions that were or could have been alleged or asserted in the Litigation.

3. "Unknown Claims" means any Released Claims which the Lead 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, 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, the Lead Plaintiff shall expressly and each of the Class members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the 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.

4. This release shall be of no force or effect unless and until the Court approves the Stipulation and it becomes effective on the Effective Date (as defined in the Stipulation).

5. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

6. I (We) hereby warrant and represent that I (we) have included information about all of my (our) transactions in Red Hat common stock which occurred during the Class Period as well as the number of shares of Red Hat common stock held by me (us) at the beginning of trading on December 17, 2002, and at the close of trading on \_\_\_\_\_, 2004.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_  
(Month/Year)

in \_\_\_\_\_  
(City) (State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing,  
e.g., Beneficial Purchaser,  
Executor or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A  
SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and declaration.
2. Remember to attach supporting documentation, if available.
3. Do not send original stock certificates.
4. Keep a copy of your claim form for your records.
5. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
6. If you move, please send us your new address.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

In re RED HAT, INC. SECURITIES	)	Master File. No. 5:04-CV-473-BR(3)
LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
	)	
This Document Relates To:	)	
	)	
ALL ACTIONS.	)	
_____	)	

SUMMARY NOTICE

EXHIBIT A-3

TO: ALL PERSONS WHO PURCHASED RED HAT TECHNOLOGIES ("RED HAT")  
COMMON STOCK BETWEEN DECEMBER 17, 2002 AND JULY 12, 2004, INCLUSIVE

YOU ARE HEREBY NOTIFIED that pursuant to an Order of the United States District Court for the Eastern District of North Carolina, a hearing will be held on \_\_\_\_\_, 2010, at \_\_\_:\_\_\_m., before the Honorable W. Earl Britt, at the United States District Court for the Eastern District of North Carolina, Terry Sanford Federal Building and Courthouse, 310 New Bern Avenue, Raleigh, NC 27601, for the purpose of determining: (1) whether the proposed settlement of the Litigation for the sum of \$20,000,000 in cash should be approved by the Court as fair, reasonable and adequate; (2) whether, thereafter, this Litigation should be dismissed with prejudice against the Defendants as set forth in the Stipulation of Settlement dated as of February 26, 2010; (3) whether the Plan of Allocation of settlement proceeds is fair, reasonable and adequate and therefore should be approved; and (4) the reasonableness of the application of Lead Counsel for the payment of attorneys' fees and expenses incurred in connection with this Litigation, together with interest thereon and the award to Lead Plaintiff for representing the Class.

If you purchased Red Hat common stock between December 17, 2002 and July 12, 2004, inclusive, your rights may be affected by this Litigation and the settlement thereof. If you have not received a detailed Notice of Proposed Settlement of Class Action and a copy of the Proof of Claim and Release, you may obtain copies by writing to *Red Hat Securities Litigation*, Claims Administrator, c/o RSM McGladrey, Inc., 512 Township Line Road, One Valley Square, Suite 250, Blue Bell, PA 19422, or by downloading this information at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). If you are a Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release no later than \_\_\_\_\_, 2010, establishing that you are entitled to a recovery. You will be bound by any judgment rendered in the Litigation unless you request to be excluded, in writing, to the above address, postmarked by \_\_\_\_\_, 2010.

Any objection to any aspect of the settlement must be filed with the Clerk of the Court no later than \_\_\_\_\_, 2010, and *received* by the following no later than \_\_\_\_\_, 2010:

COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
JEFFREY D. LIGHT  
655 West Broadway, Suite 1900  
San Diego, CA 92101

*Lead Counsel for Lead Plaintiff*

WILMER CUTLER PICKERING  
HALE AND DORR LLP  
WILLIAM H. PAINE  
60 State Street  
Boston, MA 02109

*Counsel for Defendants*

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE  
REGARDING THIS NOTICE.**

DATED: \_\_\_\_\_, 2010

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

In re RED HAT, INC. SECURITIES ) Master File. No. 5:04-CV-473-BR(3)  
LITIGATION )  
 ) CLASS ACTION  
 )  
----- )  
This Document Relates To: )  
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FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

EXHIBIT B

This matter came before the Court for hearing pursuant to the Order of this Court dated \_\_\_\_\_, 2010, on the application of the parties for approval of the settlement set forth in the Stipulation of Settlement dated as of February 26, 2010 (the "Stipulation"). Due and adequate notice having been given to the Class as required in the Court's Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all members of the Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies this Litigation as a class action defined as all Persons who purchased the common stock of Red Hat, Inc. between December 17, 2002 and July 12, 2004, inclusive and who were damaged thereby. Excluded from the Class are Red Hat, Inc., Matthew J. Szulik and Kevin B. Thompson, any entity in which any excluded person has or had a controlling interest, the officers and directors of Red Hat, Inc., and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors-in-interest or assigns of any such excluded party

4. With respect to the Class, this Court finds and concludes that: (a) the members of the Class are so numerous that joinder of all Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual question; (c) the claims of the Lead Plaintiff are typical of the claims of the Class; (d) Lead Plaintiff and his counsel have fairly and adequately represented and protected the interests of the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the

controversy, considering: (i) the interests of the members of the Class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the Class, (iii) the desirability or undesirability of concentrating the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

5. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the settlement set forth in the Stipulation and finds that the settlement is, in all respects, fair, reasonable and adequate to the Settling Parties. The Court further finds that the settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of the Settling Parties. Accordingly, the settlement embodied in the Stipulation is hereby finally approved in all respects. The Settling Parties are hereby directed to perform its terms.

6. Except as to any individual claim of those Persons (identified in Exhibit I hereto) who have validly and timely requested exclusion from the Class, the Litigation and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as to the Lead Plaintiff and the other members of the Class, and as against the Released Persons. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

7. Upon the Effective Date, the Lead Plaintiff and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all Released Claims against the Released Persons, whether or not such Class Member executes and delivers a Proof of Claim and Release.

8. Upon the Effective Date, the Lead Plaintiff and all Class Members and anyone claiming through or on behalf of any of them, are forever barred and enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in any court of law or equity,

arbitration tribunal, administrative forum, or other forum of any kind (whether within the United States or not) any of the Released Claims against any of the Released Persons.

9. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged the Lead Plaintiff, any Plaintiff, Class Members and Plaintiffs' Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement or resolution of the Litigation.

10. The distribution of the Notice of Proposed Settlement of Class Action and the publication of the Summary Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all members of the Class who could be identified through reasonable effort. Said notice provided the best notice practicable under the circumstances of those proceedings and of the matters set forth therein, including the proposed settlement set forth in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, §21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process and any other applicable law.

11. Any plan of allocation submitted by Lead Counsel or any order entered regarding the attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

12. Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim,

or of any wrongdoing or liability of the Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Stipulation may be filed in an action to enforce or interpret the terms of the Stipulation, the settlement contained therein, and any other documents executed in connection with the performance of the agreements embodied therein. Defendants and/or the other Released Persons may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on the principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees and expenses in the Litigation; and (d) all parties hereto for the purpose of construing, enforcing and administering the Stipulation.

14. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

15. In the event that the settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and,

in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE W. EARL BRITT  
SENIOR UNITED STATES DISTRICT JUDGE