



1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)  
7 david@omaralaw.net

8 Liaison Counsel

9 ROBBINS GELLER RUDMAN  
10 & DOWD LLP  
11 RANDALL J. BARON  
12 DAVID A. KNOTTS  
13 655 West Broadway, Suite 1900  
14 San Diego, CA 92101  
15 Telephone: 619/231-1058  
16 619/231-7423 (fax)  
17 rbaron@rgrdlaw.com  
18 dknotts@rgrdlaw.com

19 Lead Counsel for Plaintiffs

20 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

21 IN AND FOR THE COUNTY OF CLARK

22 DAN SCHMIDT, on Behalf of Himself and All)  
23 Others Similarly Situated,

24 Plaintiff,

25 vs.

26 LIBERATOR MEDICAL HOLDINGS, INC., )  
27 et al., )

28 Defendants. )

Master File No. A-15-728234-B  
Dept No. XI

CLASS ACTION

HEARING REQUESTED

29 AND ALL CONSOLIDATED ACTIONS.

30 **PLAINTIFFS' UNOPPOSED MOTION AND MEMORANDUM OF POINTS AND**  
31 **AUTHORITIES FOR PRELIMINARY APPROVAL OF SETTLEMENT**

1 **MOTION**

2 Plaintiffs, by and through undersigned counsel, hereby submit this Unopposed Motion for  
3 Preliminary Approval of Settlement.

4 This Unopposed Motion is based on Plaintiffs’ Memorandum of Points and Authorities in  
5 support of this motion (filed concurrently herewith), the Stipulation of Settlement dated February 5,  
6 2020 and all exhibits attached thereto (filed concurrently herewith), all pleadings and papers filed in  
7 this action, any arguments made before the Court at the hearing of this Unopposed Motion, and any  
8 other matter that the Court may consider at the hearing of this Unopposed Motion.

9 Plaintiffs hereby apply for entry of the Preliminary Approval Order, substantially in the form  
10 of Exhibit A attached to the Stipulation of Settlement dated February 5, 2020, submitted  
11 concurrently herewith, requesting that the Court: (i) preliminarily approve the proposed Settlement;  
12 (ii) approve the proposed form of the Notice of Proposed Settlement of Class Action and the  
13 Summary Notice (attached as Exhibits A-1 and A-3 to the accompanying Stipulation), and approve  
14 the proposed methods of disseminating notice as provided in the Preliminary Approval Order;  
15 (iii) set a date for the Final Approval Hearing; and (iv) rule on such other matters as the Court may  
16 deem appropriate.

17 DATED: February 5, 2020

THE O’MARA LAW FIRM, P.C.  
DAVID C. O’MARA (Nevada Bar No. 8599)

18  
19  
20 /s/ David C. O’Mara  
DAVID C. O’MARA

21 311 East Liberty Street  
22 Reno, NV 89501  
23 Telephone: 775/323-1321  
775/323-4082 (fax)

24 Liaison Counsel  
25  
26  
27  
28

1  
2  
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4  
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ROBBINS GELLER RUDMAN  
& DOWD LLP  
RANDALL J. BARON  
DAVID A. KNOTTS  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

Lead Counsel for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Peter K. Nagel, Dr. Sidney Crain, and Dr. Lee Smith respectfully submit this  
4 memorandum in support of Plaintiffs’ unopposed motion for preliminary approval of the proposed  
5 Settlement.<sup>1</sup> The terms of the Settlement are set forth in the Stipulation concurrently filed herewith.  
6 The Settlement resolves the claims pending in the California Action, and provides \$3 million in cash  
7 for the benefit of the Certified Class. This \$3 million all-cash recovery is incremental to the  
8 previous \$4.75 million recovery in this Litigation, representing a total recovery of \$7.75 million for  
9 the Class. Recall that no Class Member objected to any aspect of the previous \$4.75 million  
10 settlement. Now, this additional Settlement simply provides a greater monetary benefit for the Class  
11 following the same merger.

12 The Settling Parties request that the Court enter the accompanying Preliminary Approval  
13 Order, which will: (a) preliminarily approve the Settlement set forth in the Stipulation; (b) direct  
14 mailing of the Notice of Proposed Settlement of Class Action (“Notice”) and the Proof of Claim and  
15 Release form (“Proof of Claim”), materially in the forms of Exhibits A-1 and A-2 to the Stipulation;  
16 (c) approve publication of the Summary Notice, materially in the form of Exhibit A-3 to the  
17 Stipulation; (d) set deadlines for Class Members to submit claim forms and object to any aspect of  
18 the Settlement; and (e) set a date for the Final Approval Hearing at which the Court will consider  
19 final approval of the Settlement set forth in the Stipulation, the proposed Plan of Allocation of the  
20 Settlement proceeds, and Class Counsel’s request for an award of attorneys’ fees and expenses.

21 As explained herein, Class Counsel are satisfied that the proposed Settlement is in the best  
22 interests of the Class. The proposed Settlement was the culmination of years of contentious  
23 litigation, and was negotiated by well-informed, experienced counsel. The Settlement provides  
24 immediate monetary benefits to the Class. For these reasons, and the reasons discussed below,  
25 Plaintiffs respectfully request that the Court preliminarily approve the Settlement and enter the  
26 Preliminary Approval Order as submitted.

27 <sup>1</sup> All capitalized terms that are not otherwise defined shall have the same definitions as set  
28 forth in the Stipulation of Settlement dated February 5, 2020 (“Stipulation”), and filed concurrently  
herewith.

1 **II. BACKGROUND**

2 The above-captioned, Nevada Action was a certified class action, alleging breach of fiduciary  
3 duties and seeking monetary damages from former defendant Mark A. Libratore, in connection with  
4 the acquisition of Liberator Medical Holdings, Inc. (“Liberator” or “LMH” or the “Company”) by  
5 C.R. Bard, Inc. (“Bard”) (the “Acquisition”). The full background of the Nevada Action is set forth  
6 in the April 17, 2019 Stipulation of Settlement between Plaintiffs and Libratore, which was filed  
7 with this Court on April 19, 2019 (the “Libratore Stipulation”). After over three years of contentious  
8 litigation, Plaintiffs and Libratore agreed to settle the Nevada Action for a \$4.75 million all-cash  
9 recovery for the Class (the “Libratore Settlement”). The Court granted final approval of the  
10 Libratore Settlement on September 30, 2019.

11 This Court retained jurisdiction to review and approve the Settlement that is the subject of  
12 this Motion. The background of facts relevant to this Settlement are summarized below.<sup>2</sup>

13 Plaintiffs previously filed an amended complaint in the Nevada Action, seeking to add JMP  
14 as a defendant for purportedly aiding and abetting the alleged breaches of fiduciary duty.

15 On December 16, 2016, JMP filed its motion to dismiss in the Nevada Action. On April 4,  
16 2017, this Court heard oral argument on JMP’s motion to dismiss and advised that it was granting  
17 dismissal of JMP without prejudice on jurisdictional grounds. On June 29, 2017, pursuant to a  
18 stipulation between Plaintiffs and JMP, this Court entered an order voluntarily dismissing JMP  
19 without prejudice.

20 On February 21, 2018, this Court entered an order granting class certification in the Nevada  
21 Action. The Court certified the following class of LMH stockholders:

22 All holders of Liberator Medical Holdings, Inc. (“LMH”) common stock who  
23 received consideration for their shares in the acquisition of LMH by C.R. Bard, Inc.  
24 (“Bard”) for the price of \$3.35 per share, which closed on January [21], 2016 (the  
25 “Acquisition”). Excluded from the Class are defendant Mark A. Libratore, the LMH  
26 board of directors at the time of the Acquisition, LMH, and Bard (collectively, the  
“Excluded Parties”), as well as any person, firm, trust, corporation or other entity  
related to or affiliated with any of the Excluded Parties.

27 <sup>2</sup> Although many of the background facts of the California Action are intertwined with the  
28 Libratore Settlement, for the sake of brevity, this Motion refers to but does not repeat the facts set  
forth in the background section of the Libratore Stipulation.

1 On June 14, 2018, Plaintiffs filed a complaint against JMP for allegedly aiding and abetting  
2 the Board's alleged breaches of fiduciary duty in connection with the Acquisition in the California  
3 Action. The California Action sought monetary damages on behalf of the same Class as certified in  
4 the Nevada Action. On October 18, 2018, Plaintiffs filed an amended complaint against JMP in the  
5 California Action. JMP responded with a demurrer, which the court denied after full briefing and  
6 argument.

7 On or around April 17, 2019, Plaintiffs and Libratoro entered into the Libratoro Stipulation.  
8 The Libratoro Stipulation provided a \$4.75 million all-cash recovery for the benefit of the Class, and  
9 expressly did not release any of the Class' claims against JMP which were being litigated in the  
10 California Action. On June 3, 2019, the Court signed the Order granting preliminary approval of the  
11 Libratoro Settlement, and approved the form and content of the notice program for the Libratoro  
12 Settlement.

13 On June 24, 2019, the notice of the proposed Libratoro Settlement was mailed to the Class  
14 and posted on website [www.LibratoroSettlement.com](http://www.LibratoroSettlement.com). On July 3, 2019, the Summary Notice of the  
15 proposed Libratoro Settlement was published in the national edition of *The Wall Street Journal* and  
16 over *Business Wire*.

17 On or around September 26, 2019, Plaintiffs and JMP reached a settlement in principle with  
18 respect to the California Action.

19 On September 30, 2019, the Court held a final approval hearing with respect to the Libratoro  
20 Settlement. At that hearing, the Court granted final approval of the Libratoro Settlement, and  
21 approved the plan of allocation for the settlement proceeds.

22 In the interests of efficiency and judicial economy, Plaintiffs requested, and this Court  
23 agreed, to retain jurisdiction in order to evaluate the proposed settlement between Plaintiffs and  
24 JMP, which was anticipated to confer benefits upon the same Class as in the Libratoro Settlement  
25 and utilize the same allocation procedure as the Libratoro Settlement.

26 On December 16, 2019, Plaintiffs and JMP entered into the Settlement Term Sheet, agreeing  
27 to the material terms of this Settlement.

28

1 **III. TERMS OF THE PROPOSED SETTLEMENT**

2 As a result of Plaintiffs’ efforts, and in consideration for the Settlement and dismissal with  
3 prejudice of the California Action and the release of Plaintiffs’ Released Claims, JMP has agreed to  
4 cause the payment of \$3 million into an interest-bearing escrow account established for the benefit of  
5 the Class. Plaintiffs believe that this is a favorable result that deserves final approval. At this  
6 juncture, however, the Court is only asked to preliminarily approve the Settlement and approve the  
7 forms and manner of notice.

8 **IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY**  
9 **APPROVAL**

10 Rule 23(f) of the Nevada Rules of Civil Procedure provides that a class action shall not be  
11 dismissed or compromised without the approval of the court and notice of the proposed compromise  
12 must be given to all members of the class in such a manner as the court directs. This is a two-step  
13 process: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has  
14 been distributed to class members for their comment and objections. *See In re M.L. Stern Overtime*  
15 *Litig.*, No. 07-CV-0118-BTM (JMA), 2009 WL 995864, at \*3 (S.D. Cal. Apr. 13, 2009).<sup>3</sup>

16 At the first preliminary approval step – where the proposed Settlement is at now – the Court  
17 does not make a full and final determination regarding the fairness of the settlement. “Because class  
18 members will subsequently receive notice and have an opportunity to be heard,” the court “need not  
19 review the settlement in detail at this juncture.” *M.L. Stern*, 2009 WL 995864, at \*3; *see also id.*  
20 (citing *Manual for Complex Litigation* §21.632 (4th ed. 2004) (“The judge must make a preliminary  
21 determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct  
22 the preparation of notice of the certification, proposed settlement, and date of the final fairness  
23 hearing.”)).

24  
25  
26 <sup>3</sup> Nevada courts, recognizing that Rule 23 is patterned after Rule 23 of the Federal Rules of  
27 Civil Procedure, have found that federal authorities and decisions are persuasive in reaching a  
28 determination as to whether to approve a proposed class action settlement. *See In re Arena Res.,*  
*Inc.*, No. CV10-01069, 2010 WL 7877145 (Nev. Dist. Ct. Sept. 30, 2010) (noting that Rule 3  
“mirrors its federal counterpart”).

1 The court in *Young v. Polo Retail, LLC*, explained the preliminary approval guideposts as  
2 follows:

3 If the proposed settlement appears to be the product of serious, informed, non-  
4 collusive negotiations, has no obvious deficiencies, does not improperly grant  
5 preferential treatment to class representatives or segments of the class, and falls  
6 within the range of possible approval, then the court should direct that the notice be  
given to the class members of a formal fairness hearing. Manual for Complex  
Litigation, Second §30.44 (1985).

7 No. C-02-4546 VRW, 2006 WL 3050861, at \*5 (N.D. Cal. Oct. 25, 2006) (quoting *Newberg on*  
8 *Class Actions* §11.25 (1992)); see also *Rosenburg v. I.B.M.*, No. CV06-00430PJH, 2007 WL  
9 128232, at \*5 (N.D. Cal. Jan. 11, 2007) (preliminary approval granted where “Settlement has no  
10 obvious defects and is within the ranges of possible Settlement approval such that notice to the Class  
11 is appropriate”); *Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 WL 1114010, at \*4 (N.D.  
12 Cal. Apr. 13, 2007) (preliminarily approving non-collusive settlement that had no obvious defects  
13 and was within the range of fairness); *Barth v. Heart Check Am.*, No. 11A646233, 2012 WL  
14 10130292, at \*2 (Nev. Dist. Ct. June 22, 2012) (preliminarily approving settlement that appeared to  
15 be “the product of informed arms-length bargaining by counsel” with “no obvious deficiencies”).

16 The proposed Settlement readily meets these standards.

17 **A. The Proposed Settlement Was the Result of Serious, Informed, Non-**  
18 **Collusive Negotiations**

19 The approval of a proposed class action settlement is a matter within the sound discretion of  
20 the court. *Velsicol Chem. Corp. v. Davidson*, 107 Nev. 356, 357, 811 P.2d 561, 561 (1991)  
21 (determination of good faith for purposes of approving a settlement “should be left to the trial court,  
22 and the trial court’s decision should not be disturbed absent an abuse of discretion”). There is an  
23 initial presumption of fairness for a proposed settlement that results from arm’s-length negotiations.  
24 *In re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007); *Garner v. State Farm*  
25 *Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at \*13 (N.D. Cal. Apr. 22,  
26 2010) (citing *Newberg on Class Actions* §11.41 (4th ed. 2002)).

27 Here, the record demonstrates that the proposed Settlement was the product of arm’s-length  
28 negotiations. To reach this Settlement, Class Counsel litigated the Nevada Action for over three



1 years of contentious litigation, which included analyzing hundreds of thousands of pages of non-  
2 public documents, eliciting testimony from numerous witnesses, engaging extensive motion practice,  
3 and attending mediation. After settling the Nevada Action, Class Counsel pursued the aiding and  
4 abetting claim in the California Action, where counsel for the Settling Parties – who are experienced  
5 in this type of cases – continued their litigation, which included demurrer briefing. Thus, by the time  
6 counsel for the Settling Parties finally reached the terms of Settlement in the California Action, they  
7 were well-informed concerning the merits and risks of continuing the California Action versus  
8 obtaining the benefits of the Settlement for the Class. *See, e.g., Rodriguez v. W. Publ'g Corp.*, 563  
9 F.3d 948, 967 (9th Cir. 2009) (finding the fact that experienced counsel negotiated the settlement as  
10 a factor in favor of approval; “[p]arties represented by competent counsel are better positioned than  
11 courts to produce a settlement that fairly reflects each party’s expected outcome in litigation”)  
12 (citation omitted). Thus, the proposed Settlement is entitled to the presumption of fairness.

13 **B. The Settlement Has No Obvious Deficiencies**

14 There is nothing in the record that suggests any, much less any obvious, defects with the  
15 Settlement. To the contrary, as demonstrated by the background of this litigation, the record  
16 demonstrates the Settlement was reached only after years of hard-fought litigation, was negotiated  
17 by well-informed, experienced counsel, and is in the best interests of the Class.

18 **C. The Settlement Does Not Grant Preferential Treatment to Class**  
19 **Members**

20 The Settlement does not grant any preferential treatment to Class Members. There is no  
21 monetary award that is being requested by Plaintiffs in their service as Class Representatives. The  
22 Settlement, if approved, will distribute the proceeds *pro rata* amongst all Class Members.

23 **D. The Settlement Falls Within the Range of Possible Approval**

24 Plaintiffs and Class Counsel believe that their claims have merit, but they have concluded  
25 that it is in the best interests of the Class to settle the California Action after considering, without  
26 limitation, the following factors: (1) the immediate benefits provided for the Class in the Settlement;  
27 (2) the fact that the \$3 million all-cash recovery in this Settlement is incremental to the \$4.75 million  
28 all-cash recovery that Class Counsel has previously obtained for the Class in the Nevada Action;

1 (3) the fact that JMP has aggressively challenged liability and damages, and would continue to do so  
2 through summary judgment, trial and appeals; (4) the defenses asserted by and available to the JMP,  
3 including its position throughout the California Action that Plaintiffs’ allegations had no merit; and  
4 (5) the risks and uncertainties in continuing complex litigation which could have resulted in no  
5 monetary recovery to the Class at all. These factors, combined with the other factors discussed  
6 above (*e.g.*, that the proposed Settlement was the result of serious, informed, non-collusive  
7 negotiations, has no obvious deficiencies, and does not grant preferential treatment), demonstrate  
8 that the \$3 million Settlement falls within the range of possible approval and should be preliminarily  
9 approved.

10 **V. THE PROPOSED NOTICE TO CLASS MEMBERS SATISFIES DUE**  
11 **PROCESS AND NRCP 23**

12 Nevada Rule of Civil Procedure 23(d)(3) requires that the court “direct to the members of the  
13 class the best notice practicable under the circumstances, including individual notice to all members  
14 who can be identified through reasonable effort.” The Preliminary Approval Order contemplates  
15 that within 21 calendar days after its entry (*i.e.*, the Notice Date), the Claims Administrator will mail  
16 a copy of the Notice and Proof of Claim to all Class Members who can be identified with reasonable  
17 effort, including all Class Members who were notified with the Librator Settlement, and will post  
18 the same documents on [www.LibratorSettlement.com](http://www.LibratorSettlement.com). Not later than 10 calendar days after the  
19 Notice Date, the Claims Administrator will cause the Summary Notice to be published once in the  
20 national edition of *The Wall Street Journal* and once over a national newswire service. At least  
21 seven business days prior to the Final Approval Hearing, Class Counsel shall serve on JMP’s  
22 counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

23 The Notice is drafted in plain and easily understood language, clearly and concisely describes  
24 the nature of the Litigation and the claims alleged, the definition of the Class, the terms of the  
25 proposed Settlement, including the amount of attorneys’ fees and litigation expenses to be sought by  
26 Class Counsel, and the reasons for the Settlement. In addition, the Notice explains that any Class  
27 Member that so desires may enter an appearance through an attorney, explains the process by which  
28 they may object to the Settlement should they so desire, and explains that any judgment entered by

1 the Court will include all Class Members who do nothing. The Notice and Proof of Claim also  
2 inform Class Members of the deadline for filing claim forms. This method of notice is reasonable  
3 and satisfies both NRCP 23 and constitutional due process standards.

4 **VI. CONCLUSION**

5 In the judgment of Class Counsel, the proposed Settlement is a favorable result for the Class.  
6 After weighing the benefits of the proposed Settlement against the uncertainty and risks of continued  
7 litigation, Class Counsel believe that the proposed \$3 million Settlement is fair, reasonable, and  
8 adequate, and warrants preliminary approval. Plaintiffs therefore respectfully request the Court to  
9 enter the Preliminary Approval Order.

10 DATED: February 5, 2020

Respectfully submitted,

11 THE O'MARA LAW FIRM, P.C.  
12 DAVID C. O'MARA (Nevada Bar No. 8599)

13  
14 

---

/s/ David C. O'Mara  
DAVID C. O'MARA

15 311 East Liberty Street  
16 Reno, NV 89501  
17 Telephone: 775/323-1321  
775/323-4082 (fax)

18 Liaison Counsel

19 ROBBINS GELLER RUDMAN  
& DOWD LLP  
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DAVID A. KNOTTS  
21 655 West Broadway, Suite 1900  
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22 Telephone: 619/231-1058  
619/231-7423 (fax)

23 Lead Counsel for Plaintiffs  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of The O’Mara Law Firm, P.C., 311 E. Liberty  
3 Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing  
4 document on all parties to this action by:

5 \_\_\_\_\_ Depositing in a sealed envelope placed for collection and mailing in the United States  
6 \_\_\_\_\_ Mail, at Reno, Nevada, following ordinary business practices

7 \_\_\_\_\_ Via Email

8  X  Electronically through the Court’s Electronic Filing System

9 addressed as follows:

10 AKERMAN, LLP  
11 Ariel E. Stern  
[Ariel.stern@akerman.com](mailto:Ariel.stern@akerman.com)  
12 Melanie D. Morgan, Esq.  
[Melanie.morgan@akerman.com](mailto:Melanie.morgan@akerman.com)  
13 Samantha Kavanaugh, Esq.  
[Samantha.kavanaugh@akerman.com](mailto:Samantha.kavanaugh@akerman.com)  
14 Tenesa Scaturro, Esq.  
[Tenesa.scaturro@akerman.com](mailto:Tenesa.scaturro@akerman.com)  
15 Brian Miller, Esq.  
[Brian.miller@akerman.com](mailto:Brian.miller@akerman.com)  
16 Ross Linzer, Esq.  
[Ross.linzer@akerman.com](mailto:Ross.linzer@akerman.com)

SNELL & WILMER LLP  
Morgan Petrelli  
[mpetrelli@swlaw.com](mailto:mpetrelli@swlaw.com)  
  
*Attorneys for C.R. Bard*

17 BAILEY KENNEDY  
18 Dennis L. Kennedy  
[dkennedy@baileykennedy.com](mailto:dkennedy@baileykennedy.com)  
19 Joshua P. Gilmore  
[jgilmore@baileykennedy.com](mailto:jgilmore@baileykennedy.com)

20 *Attorneys for Mark A. Libratore*

21 DATED: October 2, 2019

22 \_\_\_\_\_  
23 /s/ Bryan Snyder  
24 BRYAN SNYDER

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INDEX OF EXHIBITS

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EXHIBIT A

EXHIBIT A

1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)  
7 david@omaralaw.net

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13 655 West Broadway, Suite 1900  
14 San Diego, CA 92101  
15 Telephone: 619/231-1058  
16 619/231-7423 (fax)  
17 rbaron@rgrdlaw.com  
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19 Lead Counsel for Plaintiffs

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22 IN AND FOR THE COUNTY OF CLARK

23 DAN SCHMIDT, on Behalf of Himself and All)  
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29 Defendants. )

30 AND ALL CONSOLIDATED ACTIONS. )  
31  
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33 Master File No. A-15-728234-B  
34 Dept No. XI

35 CLASS ACTION

36 [PROPOSED] ORDER PRELIMINARILY  
37 APPROVING SETTLEMENT AND  
38 PROVIDING FOR NOTICE

39 EXHIBIT A

1           WHEREAS, in the above-captioned consolidated class action (the “Nevada Action”), the  
2 Court certified the following class pursuant to Rule 23 of the Nevada Rules of Civil Procedure:

3           All holders of Liberator Medical Holdings, Inc. (“LMH”) common stock who  
4 received consideration for their shares in the acquisition of LMH by C.R. Bard, Inc.  
5 (“Bard”) for the price of \$3.35 per share, which closed on January [21], 2016 (the  
6 “Acquisition”). Excluded from the Class are defendant Mark A. Libratoro, the LMH  
7 board of directors at the time of the Acquisition, LMH, and Bard (collectively, the  
8 “Excluded Parties”), as well as any person, firm, trust, corporation or other entity  
9 related to or affiliated with any of the Excluded Parties.

10           WHEREAS, on September 30, 2019, the Court approved a settlement in the Nevada Action  
11 (the “Libratoro Settlement”);

12           WHEREAS, the Court retained jurisdiction to approve the settlement of a related action  
13 pending in the Superior Court of the State of California, County of San Francisco titled *Nagel v.*  
14 *JMP Securities LLC*, Case No. 567294 (the “California Action”);

15           WHEREAS, the Court-appointed Lead Plaintiffs and Class Representatives Peter K. Nagel,  
16 Dr. Sidney Crain, and Dr. Lee Smith (“Plaintiffs” or “Class Representatives”) have made an  
17 unopposed motion for an order preliminarily approving the settlement of the California Action, in  
18 accordance with a Stipulation of Settlement dated February 5, 2020 (the “Stipulation”), which,  
19 together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed  
20 Settlement between the Settling Parties; and the Court having read and considered the Stipulation  
21 and the Exhibits annexed thereto; and

22           WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set  
23 forth in the Stipulation.

24           NOW, THEREFORE, IT IS HEREBY ORDERED:

25           1.       The Court has reviewed the Stipulation, finds that the Stipulation resulted from arm’s-  
26 length negotiations and was made in good faith, and does hereby preliminarily approve the  
27 Stipulation and Settlement set forth therein as being fair, reasonable and adequate to Class Members  
28 subject to further consideration at the hearing described in ¶2 below.

          2.       A hearing shall be held before this Court on \_\_\_\_\_, 2020, at \_\_\_\_\_.m. (a  
date that is at least 110 calendar days from the date of this Order) (the “Final Approval Hearing”),



1 before the Honorable Elizabeth Gonzalez of the Eighth Judicial District Court of Clark County,  
2 Nevada, 200 Lewis Avenue, Las Vegas, Nevada, Courtroom 3E, to determine whether the proposed  
3 Settlement is fair, reasonable, and adequate to the Class and should be approved by the Court; to  
4 determine whether an Order and Final Judgment as provided in ¶1.18 of the Stipulation should be  
5 entered; to determine whether the proposed Plan of Allocation should be approved; to determine the  
6 amount of fees and expenses that should be awarded to Class Counsel; to hear any objections by  
7 Class Members to the Settlement, Plan of Allocation and/or the award of fees and expenses to Class  
8 Representatives' Counsel; and to consider such other matters the Court deems appropriate.

9         3.         The Court approves the form, substance, and requirements of the Notice of Proposed  
10 Settlement of Class Action (“Notice”) and Proof of Claim and Release form, substantially in the  
11 forms annexed hereto as Exhibits A-1 and A-2, respectively.

12         4.         The Court approves the form of the Summary Notice, substantially in the form  
13 annexed hereto as Exhibit A-3.

14         5.         The firm of Gilardi & Co. LLC (“Claims Administrator”) is hereby appointed to  
15 supervise and administer the notice procedure as well as the processing of claims as more fully set  
16 forth below.

17         6.         Not later than \_\_\_\_\_, 2020 (the “Notice Date”) (a date twenty-one (21)  
18 calendar days after the Court signs and enters this Order), the Claims Administrator shall cause a  
19 copy of the Notice and Proof of Claim and Release form, substantially in the forms annexed hereto,  
20 to be mailed by First-Class Mail to all Class Members who can be identified with reasonable effort  
21 and to be posted on its website at [www.LiberatorSettlement.com](http://www.LiberatorSettlement.com).

22         7.         Not later than \_\_\_\_\_, 2020 (a date ten (10) calendar days after the Notice  
23 Date), the Claims Administrator shall cause the Summary Notice to be published once in the national  
24 edition of *The Wall Street Journal* and once over a national newswire service.

25         8.         Not later than \_\_\_\_\_, 2020 (a date seven (7) calendar days prior to the Final  
26 Approval Hearing), Class Counsel shall serve on JMP’s counsel and file with the Court proof, by  
27 affidavit or declaration, of such mailing and publishing.

28

1           9.       Nominees who held LMH common stock for the beneficial ownership of Class  
2 Members shall be requested to send the Notice and Proof of Claim and Release form to such  
3 beneficial owners of LMH common stock within fifteen (15) calendar days after receipt thereof, or,  
4 send a list of the names and addresses of such beneficial owners to the Claims Administrator within  
5 fifteen (15) calendar days of receipt thereof, in which event the Claims Administrator shall promptly  
6 mail the Notice and Proof of Claim and Release form to such beneficial owners.

7           10.       The form and content of the notice program described herein and the methods set  
8 forth herein for notifying the Class of the Settlement and its terms and conditions, the Fee and  
9 Expense Application, and the Plan of Allocation meet the requirements of Rule 23 of the Nevada  
10 Rules of Civil Procedure and due process, constitute the best notice practicable under the  
11 circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

12           11.       All fees, costs, and expenses incurred in notifying Class Members shall be paid from  
13 the Settlement Fund and in no event shall any of the Released JMP Parties bear any responsibility for  
14 such fees, costs or expenses. All Members of the Class (except Persons who previously requested  
15 exclusion) shall be bound by all determinations and judgments concerning the Settlement, including,  
16 but not limited to, the releases provided for therein, whether favorable or unfavorable to the Class,  
17 regardless of whether such Persons seek or obtain by any means, including, without limitation, by  
18 submitting a Proof of Claim and Release form or any similar document, any distribution from the  
19 Settlement Fund or the Net Settlement Fund. All Persons who previously requested exclusion from  
20 the Class shall have no rights under the Stipulation, shall not share in the distribution of the Net  
21 Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

22           12.       Class Members who wish to participate in the Settlement shall complete and submit  
23 the Proof of Claim and Release form in accordance with the instructions contained therein. Unless  
24 the Court orders otherwise, all Proofs of Claim and Release must be postmarked or submitted online  
25 no later than \_\_\_\_\_, 2020 (a date one hundred and twenty (120) calendar days from the  
26 Notice Date). Any Class Member who does not submit a Proof of Claim and Release within the time  
27 provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund,  
28 unless otherwise ordered by the Court, but shall nevertheless be bound by any final judgment entered

1 by the Court. Notwithstanding the foregoing, Class Counsel shall have the discretion (but not the  
2 obligation) to accept late-submitted claims for processing by the Claims Administrator so long as  
3 distribution of the Net Settlement Fund is not materially delayed thereby. No person shall have any  
4 claim against the Class Representatives, Class Counsel or the Claims Administrator by reason of the  
5 decision to exercise or not exercise such discretion.

6 13. The Proof of Claim and Release submitted by each Class Member must, unless  
7 otherwise ordered by the Court: (i) be properly completed, signed and submitted in a timely manner  
8 in accordance with the provisions of the preceding paragraph; (ii) be accompanied by adequate  
9 supporting documentation, in the form of broker confirmation slips, broker account statements, an  
10 authorized statement from the broker, or such other documentation deemed adequate by Class  
11 Counsel or the Claims Administrator; (iii) include in the Proof of Claim and Release a certification  
12 of current authority to act on behalf of the Class Member if the person executing the Proof of Claim  
13 and Release is acting in a representative capacity; (iv) be complete and contain no material deletions  
14 or modifications of any of the printed matter contained therein; and (v) be signed under penalty of  
15 perjury.

16 14. Any Member of the Class may enter an appearance, at his, her, or its own expense,  
17 individually or through counsel of their own choice. If they do not enter an appearance, they will be  
18 represented by Class Counsel.

19 15. Any Member of the Class may appear and object if he, she, or it has any reason why  
20 the proposed Settlement should not be approved as fair, reasonable and adequate, or why a judgment  
21 should not be entered thereon, why the Plan of Allocation should not be approved, why fees and  
22 expenses should not be awarded to Class Counsel; provided, however, that no Class Member or any  
23 other Person shall be heard or entitled to contest the approval of the terms and conditions of the  
24 proposed Settlement, or, if approved, the judgment to be entered thereon approving the same, or the  
25 order approving the Plan of Allocation, or any fees and expenses to be awarded to Class Counsel,  
26 unless written objections and copies of any papers and briefs are received by Robbins Geller  
27 Rudman & Dowd LLP, David Knotts, 655 West Broadway, Suite 1900, San Diego, CA 92101, and  
28 Wilson Sonsini Goodrich & Rosati, P.C., Steven Guggenheim, 650 Page Mill Road, Palo Alto, CA

1 94304, no later than \_\_\_\_\_, 2020 (a date twenty-one (21) calendar days before the Final  
2 Approval Hearing), and said objections, papers and briefs are filed with the Court, no later than  
3 \_\_\_\_\_, 2020. Any Member of the Class who does not make his, her, or its objection in the  
4 manner provided for herein shall be deemed to have waived such objection and shall forever be  
5 foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed  
6 Settlement as incorporated in the Stipulation, to the Plan of Allocation, and to the Fee and Expense  
7 Application, unless otherwise ordered by the Court. Attendance at the Final Approval Hearing is not  
8 necessary. However, Persons wishing to be heard orally in opposition to the approval of the  
9 Settlement, the Plan of Allocation, and/or the Fee and Expense Application are required to indicate  
10 in their written objection their intention to appear at the hearing. Class Members do not need to  
11 appear at the Final Approval Hearing or take any other action to indicate their approval of the  
12 Settlement.

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

16 17. All papers in support of the Settlement, Plan of Allocation, and any application by  
17 Class Counsel for attorneys' fees and expenses shall be filed and served no later than \_\_\_\_\_,  
18 2020 (a date thirty-five (35) calendar days prior to the Final Approval Hearing), and any reply papers  
19 shall be filed and served no later than \_\_\_\_\_, 2020 (a date seven (7) calendar days prior to  
20 the Final Approval Hearing).

21 18. JMP shall have no responsibility for the Plan of Allocation or any application for  
22 attorneys' fees and expenses submitted by Class Counsel, and such matters will be considered  
23 separately from the fairness, reasonableness, and adequacy of the Settlement.

24 19. At or after the Final Approval Hearing, the Court shall determine whether the Plan of  
25 Allocation proposed by Class Counsel and any application for attorneys' fees and expenses should  
26 be approved.

27 20. All reasonable expenses incurred in identifying and notifying Class Members as well  
28 as administering the Settlement Fund shall be paid as set forth in the Stipulation. In the event the

1 Court does not approve the Settlement, or it otherwise fails to become effective, none of the Class  
2 Representatives nor any of Class Representatives' Counsel shall have any obligation to repay any  
3 amounts actually and properly incurred or disbursed pursuant to ¶2.7 of the Stipulation.

4 21. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations,  
5 discussions, proceedings connected with it, nor any act performed or document executed pursuant to  
6 or in furtherance of the Stipulation or the Settlement may: be construed as an admission or  
7 concession by any of the Released JMP Parties, any Class Representative, any Class Member, or any  
8 other Person, of the truth or lack of truth of any of the allegations in the California Action; or be used  
9 in any way as an admission, concession or evidence of the existence or the absence of any liability or  
10 damages as to any claim alleged or asserted in the California Action; or be otherwise used by any  
11 person in this or the California Action, or in any other action or proceeding, whether civil, criminal,  
12 or administrative, in any court, administrative agency, or other tribunal, except in connection with  
13 any proceeding to enforce the terms of the Stipulation. The Released JMP Parties and/or Plaintiffs  
14 may file the Stipulation of Settlement, the final Court approval of the Settlement, and/or the Order  
15 and Final Judgment in any action that may be brought against them in order to support a defense or  
16 counterclaim based upon principles of *res judicata*, collateral estoppel, release, good faith  
17 settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or  
18 similar defense or counterclaim, or as necessary for the prosecution of any other litigation regarding  
19 the Acquisition.

20 22. Pending the Final Approval Hearing, the Class Representatives and all Class  
21 Members are barred and enjoined from prosecuting any of the Plaintiffs' Released Claims against  
22 any of the Released JMP Parties.

23 23. The Court reserves the right to alter the time or the date of the Final Approval  
24 Hearing without further notice to the Members of the Class, provided that the time or the date of the  
25 Final Approval Hearing shall not be set at a time or date earlier than the time and date set forth in ¶2  
26 above, and retains jurisdiction to consider all further applications arising out of or connected with the  
27 proposed Settlement. The Court may approve the Settlement, with such modifications as may be  
28 agreed to by the Settling Parties, if appropriate, without further notice to the Class.

1           24.    If the Settlement fails to become effective as defined in the Stipulation or is  
2 terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as  
3 expressly provided in the Stipulation, and this Order shall be null and void, of no further force or  
4 effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in  
5 any actions or proceedings by any person or entity against the Settling Parties, and they shall be  
6 deemed to have reverted to their respective litigation positions as of September 26, 2019.

7           IT IS SO ORDERED.

8 DATED: \_\_\_\_\_ THE HONORABLE ELIZABETH GONZALEZ

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# EXHIBIT A-1

# EXHIBIT A-1

1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)  
7 david@omaralaw.net

8 Liaison Counsel

9 ROBBINS GELLER RUDMAN  
10 & DOWD LLP  
11 RANDALL J. BARON  
12 DAVID A. KNOTTS  
13 655 West Broadway, Suite 1900  
14 San Diego, CA 92101  
15 Telephone: 619/231-1058  
16 619/231-7423 (fax)  
17 rbaron@rgrdlaw.com  
18 dknotts@rgrdlaw.com

19 Lead Counsel for Plaintiffs

20 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

21 IN AND FOR THE COUNTY OF CLARK

22 DAN SCHMIDT, on Behalf of Himself and All)  
23 Others Similarly Situated, )

24 Plaintiff, )

25 vs. )

26 LIBERATOR MEDICAL HOLDINGS, INC., )  
27 et al., )

28 Defendants. )

29 AND ALL CONSOLIDATED ACTIONS. )  
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Master File No. A-15-728234-B  
Dept No. XI

CLASS ACTION

NOTICE OF PROPOSED SETTLEMENT OF  
CLASS ACTION

EXHIBIT A-1



1 **TO: ALL HOLDERS OF LIBERATOR MEDICAL HOLDINGS, INC. (“LMH”)**  
2 **COMMON STOCK WHO RECEIVED CONSIDERATION FOR THEIR SHARES IN**  
3 **THE ACQUISITION OF LMH BY C.R. BARD, INC. (“BARD”) FOR THE PRICE**  
4 **OF \$3.35 PER SHARE, WHICH CLOSED ON JANUARY 21, 2016 (THE**  
5 **“ACQUISITION”)**

6 PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY  
7 BE AFFECTED BY THIS SETTLEMENT. PLEASE NOTE THAT IF YOU ARE A CLASS  
8 MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE  
9 SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THE  
10 SETTLEMENT PROCEEDS, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND  
11 RELEASE FORM (“PROOF OF CLAIM”) **POSTMARKED OR SUBMITTED ONLINE ON**  
12 **OR BEFORE [INSERT DATE].**

13 This Notice of Proposed Settlement of Class Action (“Notice”) has been sent to you pursuant to an  
14 Order of the Eighth Judicial District Court for the State of Nevada, Clark County (the “Court”).

15 On September 30, 2019, the Court approved a settlement in the above-captioned action (the  
16 “Libratore Settlement”). The Court retained jurisdiction to approve the settlement of a related action  
17 pending in the Superior Court of the State of California, County of San Francisco titled *Nagel v.*  
18 *JMP Securities LLC*, Case No. 567294 (the “California Action”).

19 The purpose of this Notice is to inform you of the proposed settlement of the California Action (the  
20 “Settlement”), and of the hearing to be held by the Court to consider the fairness, reasonableness,  
21 and adequacy of the Settlement and the proposed Plan of Allocation of the Settlement proceeds, as  
22 well as Class Counsel’s application for fees and expenses.<sup>1</sup> This Notice describes the rights you  
23 may have in connection with your participation in the Settlement and what steps you may take in  
24 relation to the Settlement and the California Action.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A PROOF OF CLAIM</b>	This is the only way to be eligible to receive a payment. Proofs of Claim must be postmarked or submitted online on or before [Insert Date].  If you have previously submitted a valid Proof of Claim in connection with the <i>Libratore</i> Settlement, you do not need to submit another Proof of Claim for this Settlement. Please contact the Claims Administrator if you have any questions concerning whether you have previously submitted a valid Proof of Claim.
<b>OBJECT</b>	Write to the Court about why you oppose the Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and expenses. You

25  
26 <sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the  
27 meanings provided in the Stipulation of Settlement dated February 5, 2020 (the “Stipulation”),  
28 which, along with other important documents, is available on the Settlement website,  
[www.LiberatorSettlement.com](http://www.LiberatorSettlement.com).

1 2	will still be a Member of the Class. Objections must be <b>received</b> by the Court <b>and</b> counsel for the Settling Parties on or before [Insert Date].
3 4 5	<b>GO TO A HEARING ON [_____] AND FILE A NOTICE OF INTENTION TO APPEAR</b>
6 7 8	Ask to speak in Court about the fairness of the Settlement. Requests to speak must be <b>received</b> by the Court <b>and</b> counsel for the Settling Parties on or before [Insert Date].
	<b>DO NOTHING</b>
	Receive no payment from the Settlement unless you have already submitted a valid Proof of Claim in the <i>Libratore</i> Settlement. Members of the Class who do nothing remain bound by the terms of the Settlement unless you have previously requested exclusion from the Class.

**SUMMARY OF THIS NOTICE**

**Statement of Class Recovery**

Pursuant to the Settlement described herein, the Settlement Amount is \$3,000,000. This Settlement Amount exists in addition to the \$4,750,000 settlement amount involved in the Libratore Settlement, resulting in a total recovery for the Class of \$7,750,000. The Settlement Amount, plus accrued interest, and minus the costs of this Notice, all costs associated with the administration of the Settlement, taxes and tax expenses, as well as attorneys’ fees and expenses as approved by the Court, will be distributed to Class Members who submit valid and timely Proofs of Claim pursuant to the Plan of Allocation that is described below in this Notice. *See* Plan of Allocation as set forth at page \_\_ below for more information on your claim.

**Reasons for the Settlement**

The principal reason for the Settlement is the benefit to be provided to the Class now. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly years into the future, against JMP Securities LLC (“JMP”). *See* “Why is there a settlement” at page \_\_ below for more information.

**Statement of Attorneys’ Fees and Expenses Sought**

Class Counsel will apply to the Court for an award of attorneys’ fees of up to 25% of the Settlement Amount, plus expenses up to \$90,000, plus interest earned on both amounts at the same rate as earned by the Settlement Fund. These fees and expenses exist in addition to the fees and expenses sought in connection with the Libratore Settlement (which will be sought jointly, resulting in a total request of up to \$570,000 in expenses relating to both settlements). Class Representatives’ Counsel have expended considerable time and effort in the prosecution of the California Action on a contingent fee basis and advanced the expenses of the California Action in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys’ fees, in addition to expenses reasonably incurred in the litigation.

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**Further Information**

For further information regarding the California Action, this Notice or to review the Stipulation of Settlement, please contact the Claims Administrator toll-free at 1-866-629-1057, or visit the website [www.LiberatorSettlement.com](http://www.LiberatorSettlement.com).

You may also contact a representative of Class Counsel: Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, [www.rgrdlaw.com](http://www.rgrdlaw.com).

Please Do Not Call the Court or JMP with Questions About the Settlement.

**BASIC INFORMATION**

**1. Why did I get this Notice package?**

You have been identified as a potential Class Member.

The Court directed that this Notice be sent to Class Members because they have a right to know about the proposed Settlement of the California Action, and about all of their options, before the Court decides whether to approve the Settlement.

This Notice explains the class action lawsuit, the Settlement, Class Members’ legal rights, what benefits are available, who is eligible for them, and how to get them.

**2. What is the California Action about?**

The above-captioned action was a certified class action, alleging breach of fiduciary duties and seeking monetary damages from former defendant Mark A. Libratore (“Libratore”), in connection with the acquisition of Liberator Medical Holdings, Inc. (“Liberator” or “LMH” or the “Company”) by C.R. Bard, Inc. (“Bard”) (the “Acquisition”).

The California Action is a related shareholder action seeking monetary damages and alleging that JMP aided and abetted breaches of fiduciary duties in connection with the Acquisition.

JMP denies all of the allegations.

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

In a class action, one or more people called a plaintiff sues on behalf of people who have similar claims. All of the people with similar claims are referred to as a Class or Class Members. One court resolves the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

**4. Why is there a settlement?**

No court has decided in favor of JMP or the Class. Instead, both sides agreed to the Settlement to avoid the costs and risks of further litigation, including trial and post-trial appeals. Class Representatives agreed to the Settlement in order to ensure that Class Members will receive

1 compensation, and because Class Representatives (advised by Class Representatives' Counsel)  
2 considered the Settlement Amount to be a favorable recovery compared to the risk-adjusted  
3 possibility of recovery after trial and any appeals. Class Representatives and Class Representatives'  
4 Counsel believe the Settlement is in the best interest of all Class Members in light of the real  
5 possibility that continued litigation could result in no recovery at all. Moreover, this Settlement  
6 confers substantial benefits upon the Class (in addition to the benefits from former Librator  
7 Settlement).

8 JMP is entering into the Settlement solely because it will eliminate the uncertainty,  
9 distraction, burden, and expense of further litigation.

### 10 WHO IS IN THE SETTLEMENT

11 To see if you will get money from this Settlement, you first have to decide if you are a Class  
12 Member.

#### 13 5. How do I know if I am part of the Settlement?

14 The Court directed that everyone who fits this description is a Class Member: *all holders of  
15 LMH common stock who received consideration for their shares in the Acquisition for the price of  
16 \$3.35 per share, which closed on January 21, 2016*, except those Persons and entities that are  
17 excluded, as described below.

#### 18 6. Are there exceptions to being included?

19 Yes. Excluded from the Class are: defendant Mark A. Librator, the LMH board of directors  
20 at the time of the Acquisition, LMH, and Bard ("Excluded Parties"), as well as any person, firm,  
21 trust, corporation or other entity related to or affiliated with any of the Excluded Parties. For the  
22 purposes of this Settlement, JMP agrees that it is one of the Excluded Parties. Also excluded from  
23 the Class are those Persons who timely and validly requested exclusion from the Class.

#### 24 7. What if I am not sure if I am included?

25 If you are still not sure whether you are included, you can ask for free help. You can contact  
26 the Claims Administrator toll-free at 1-866-629-1057 or visit the Settlement website  
27 [www.LibratorSettlement.com](http://www.LibratorSettlement.com), or you can fill out and return the Proof of Claim enclosed with this  
28 Notice package, to see if you qualify.

### THE SETTLEMENT BENEFITS – WHAT YOU GET

#### 8. What does the Settlement provide?

25 In exchange for the Settlement and the release of Plaintiffs' Released Claims (defined below)  
26 as well as dismissal of the California Action, JMP has agreed that a payment of \$3,000,000 will be  
27 made on JMP's behalf to be divided, after taxes, fees, and expenses, among all Class Members who  
28 send in a valid Proof of Claim. This Settlement Amount exists in addition to the \$4,750,000  
settlement amount involved in the Librator Settlement, resulting in a total recovery for the Class of  
\$7,750,000.

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

2 Your share of the fund will depend on several things, including how many Class Members  
3 submit timely and valid Proofs of Claim, and the number of shares of LMH common stock you held  
4 and received consideration for in the Acquisition.

5 See the Plan of Allocation at page \_\_ hereof for more information on your claim.

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

7 **10. How can I receive a payment?**

8 To qualify for a payment, you must submit a Proof of Claim. A Proof of Claim is enclosed  
9 with this Notice or it may be downloaded at [www.LiberatorSettlement.com](http://www.LiberatorSettlement.com). Read the instructions  
10 carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and return it  
11 so that it is postmarked, if mailed, or received, if submitted online, no later than \_\_\_\_\_, 2020. The  
12 Proof of Claim may be submitted online at [www.LiberatorSettlement.com](http://www.LiberatorSettlement.com).

13 If you have previously submitted a valid Proof of Claim in connection with the *Libratorre*  
14 Settlement, you do not need to submit another Proof of Claim for this Settlement. Please contact the  
15 Claims Administrator if you have any questions concerning whether you have previously submitted a  
16 valid Proof of Claim.

17 **11. When would I receive my payment?**

18 The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2020, to decide whether  
19 to approve the Settlement. If the Court approves the Settlement after that, there might be appeals. It  
20 is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps  
21 more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

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

23 Unless you have already excluded yourself, you will remain a Class Member, and that means  
24 that, if the Settlement is approved, you will give up all “Plaintiffs’ Released Claims” (as defined  
25 below), including “Unknown Claims” (as defined below), against the “Released JMP Parties” (as  
26 defined below):

- 27 • “Released JMP Parties” means JMP and all of its predecessors, successors and  
28 assigns, and each of their respective current and former officers, directors,  
employees, managers, members, partners, agents, stockholders, attorneys, or legal  
representatives.
- “Released Plaintiff Parties” means Class Representatives, all Class Members, and  
Class Representatives’ Counsel.
- “JMP’s Released Claims” means any and all actions, claims, debts, demands,  
liabilities, losses, matters, rights, suits and causes of action of any nature whatsoever,  
known or unknown, contingent or absolute, mature or immature, discoverable or  
undiscoverable, whether concealed or hidden, suspected or unsuspected, whether

1 based in law or equity, arising under federal, state, common or foreign law, or any  
2 other law, rule or regulation, which now exist or heretofore have existed, that have  
3 been or could have been asserted in the California Action or any forum by the  
4 Released JMP Parties or any of them against any of the Released Plaintiff Parties,  
5 that arise out of or relate in any way to the institution, prosecution, or settlement of  
6 the claims against the Released JMP Parties, provided, however, that this release  
7 shall not include any claims to enforce the Settlement.

- 8 • “Plaintiffs’ Released Claims” means all claims, demands, rights, actions or causes of  
9 action, liabilities, debts, damages, losses, obligations, judgments, suits, fees,  
10 expenses, costs, matters, and issues of any kind or nature whatsoever, whether known  
11 or unknown, contingent or absolute, suspected or unsuspected, disclosed or  
12 undisclosed, hidden or concealed, matured or unmatured, whether based in law or  
13 equity, that have been, or could have been, asserted in the California Action or in any  
14 court, tribunal, or proceedings (including, but not limited to, any claims arising under  
15 federal, state, foreign, or common law relating to alleged fraud, breach of any duty,  
16 negligence, the federal securities laws, and any state disclosure law) by or on behalf  
17 of any Member of the Class, based on, arising out of, or relating to: (A) his, her, or  
18 its ownership of LMH stock (whether individual, class, derivative, representative,  
19 legal, equitable, or any other type or in any other capacity), against the Released JMP  
20 Parties, whether or not any such Released JMP Parties were named, served with  
21 process, or appeared in the California Action; and (B) which have arisen, could have  
22 arisen, arise now or hereafter arise out of or relate in any manner to the allegations,  
23 facts, events, acquisitions, matters, acts, occurrences, statements, representations,  
24 misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any  
25 series thereof, embraced, involved or set forth in, or referred to or otherwise related  
26 in any way to: (i) the Acquisition; (ii) the adequacy of the consideration paid to LMH  
27 shareholders in connection with the Acquisition; (iii) the fiduciary obligations, if any,  
28 of the Released JMP Parties in connection with the Acquisition; (iv) the negotiations  
in connection with the Acquisition; (v) the processes, events, and analyses leading up  
to the Acquisition, including, but not limited, to the process by which LMH and its  
advisors attempted to locate parties to engage in an acquisition or other strategic  
transaction with LMH; (vi) the disclosures or disclosure obligations of any of the  
Released JMP Parties in connection with the Acquisition, including, but not limited  
to, the disclosures in the Proxy Statement; (vii) any events, matters, acts, omissions,  
statements, or facts alleged or referred to in any complaint filed in any court or  
tribunal related to any of the foregoing topics; or (viii) the settlement of the claims  
against the Released JMP Parties; provided, however, that this release shall not  
include any claims to enforce the Settlement. “Plaintiffs’ Released Claims” includes  
“Unknown Claims” as defined below.

- “Unknown Claims” means any of the Plaintiffs’ Released Claims which Class  
Representatives or any Class Member does not know or suspect to exist in such  
party’s favor at the time of the release of the Released JMP Parties, and any of the  
JMP’s Released Claims that the Released JMP Parties do not know or suspect to  
exist in his, her or its favor at the time of the release of the Released Plaintiff Parties,  
which, if known by such party, might have affected such party’s decision to enter  
into the settlement with and release of the Released JMP Parties or the Released

1 Plaintiff Parties, or might have affected such party's decision not to object to this  
2 Settlement. Unknown Claims include those Plaintiffs' Released Claims or JMP's  
3 Released Claims in which some or all of the facts comprising the claim may be  
4 suspected, or even undisclosed or hidden. With respect to any and all Plaintiffs'  
5 Released Claims and JMP's Released Claims, upon the Effective Date, Class  
6 Representatives and JMP shall expressly, and each of Released Plaintiff Parties and  
7 Released JMP Parties shall be deemed to have, and by operation of the Order and  
8 Final Judgment shall have, waived to the fullest extent permitted by law, the  
9 provisions, rights, and benefits of California Civil Code §1542, which provides:

10 ***A general release does not extend to claims that the creditor or releasing  
11 party does not know or suspect to exist in his or her favor at the time of  
12 executing the release and that, if known by him or her, would have  
13 materially affected his or her settlement with the debtor or released party.***

14 Class Representatives and JMP shall expressly, and each of Released  
15 Plaintiff Parties and Released JMP Parties shall be deemed to have, and by  
16 operation of the Order and Final Judgment shall have, waived any and all  
17 provisions, rights, and benefits conferred by any law of any state or territory  
18 of the United States, or principle of common law, which is similar,  
19 comparable or equivalent to California Civil Code §1542. The Released  
20 Plaintiff Parties and the Released JMP Parties may hereafter discover facts in  
21 addition to or different from those which such party now knows or believes  
22 to be true with respect to the subject matter of the Plaintiffs' Released Claims  
23 and JMP's Released Claims, but Class Representatives and JMP shall  
24 expressly, and each of the Released Plaintiff Parties and the Released JMP  
25 Parties, upon the Effective Date, shall be deemed to have, and by operation of  
26 the Order and Final Judgment shall have, fully, finally, and forever settled  
27 and released any and all Plaintiffs' Released Claims and JMP's Released  
28 Claims, as the case may be, known or unknown, suspected or unsuspected,  
contingent or non-contingent, whether or not concealed or hidden, which now  
exist, or heretofore have existed, upon any theory of law or equity now  
existing or coming into existence in the future, including, but not limited to,  
conduct that is negligent, reckless, intentional, with or without malice, or a  
breach of any duty, law, or rule, without regard to the subsequent discovery  
or existence of such different or additional facts, whether or not previously or  
currently asserted in any action. Class Representatives and JMP  
acknowledge, and the Released Plaintiff Parties and the Released JMP Parties  
shall be deemed by operation of the Order and Final 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.

25 If you remain a Member of the Class, all of the Court's orders will apply to you and legally  
26 bind you.

1 **THE LAWYERS REPRESENTING YOU**

2 **13. Do I have a lawyer in this case?**

3 The Court ordered that the law firm of Robbins Geller Rudman & Dowd LLP represents the  
4 Class, including you. These lawyers are called Class Counsel. They will be paid from the  
5 Settlement Fund to the extent the Court approves their application for fees and expenses. If you  
want to be represented by your own lawyer, you may hire one at your own expense.

6 **14. How will the lawyers be paid?**

7 Class Counsel will move the Court for an award of attorneys' fees of up to 25% of the  
8 Settlement Amount and for expenses up to \$90,000, plus interest earned on both amounts at the same  
9 rate as earned by the Settlement Fund. Such sums as may be approved by the Court will be paid  
10 from the Settlement Fund. These fees and expenses exist in addition to the fees and expenses sought  
in connection with the Libratoro Settlement (which will be sought jointly, resulting in a total request  
of up to \$570,000 in expenses relating to both settlements).

11 The attorneys' fees and expenses requested will be the only payment to Class  
12 Representatives' Counsel for their efforts in achieving this Settlement and for their risk in  
13 undertaking this representation on a wholly contingent basis. To date, Class Representatives'  
14 Counsel have not been paid for their services for conducting the California Action on behalf of Class  
15 Representatives and the Class nor for the litigation expenses Class Representatives' Counsel have  
incurred. The fee requested will compensate Class Representatives' Counsel for their work in  
achieving the Settlement Fund and is within the range of fees and expenses awarded to class counsel  
under similar circumstances in other cases of this type.

16 **OBJECTING TO THE SETTLEMENT**

17 **15. How do I tell the Court that I object to the proposed Settlement?**

18 If you are a Class Member, you can write to the Court to object to the proposed Settlement,  
19 the proposed Plan of Allocation, and/or Class Counsel's fee and expense application. The Court will  
20 consider your views. To object, you must send a signed letter saying that you object to the proposed  
21 Settlement, the proposed Plan of Allocation, and/or the application for fees and expenses, in the  
22 *Liberator Settlement* and the reasons you object. Be sure to include your name, address, telephone  
23 number, and your signature, identify the number of shares of LMH common stock you exchanged  
for the \$3.35 per share merger consideration in the Acquisition, and state the reasons why you  
object. Your objection must be filed with the Court *and* mailed or delivered to each of the following  
addresses such that it is **received no later than [insert date]:**



1	<b>COURT</b>	<b>CLASS COUNSEL</b>	<b>JMP's COUNSEL</b>
2	Clerk of the Court	David Knotts	Steven Guggenheim
3	Department XI	ROBBINS GELLER RUDMAN	WILSON SONSINI
4	Eighth Judicial District Court	& DOWD LLP	GOODRICH & ROSATI,
5	Clark County, Nevada	655 West Broadway, Suite 1900	P.C.
	200 Lewis Avenue	San Diego, CA 92101	650 Page Mill Road
	Las Vegas, NV 89155		Palo Alto, CA 94304

**THE COURT'S SETTLEMENT HEARING**

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

**16. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Final Approval Hearing at\_\_: \_\_\_\_\_.m., on \_\_\_\_\_day, \_\_\_\_\_, 2020, before the Honorable Elizabeth Gonzalez of the Eighth Judicial District Court of Clark County, Nevada, 200 Lewis Avenue, Las Vegas, Nevada, Courtroom 3E. At the hearing the Court will consider whether the Settlement and proposed Plan of Allocation are fair, reasonable, and adequate, and whether Class Counsel's fee and expense application should be granted. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. After the Final Approval Hearing, the Court will decide whether to approve the Settlement, the Plan of Allocation and the amount of fees and expenses. We do not know how long these decisions will take. The Court may change the date and time of the Final Approval Hearing without another notice being sent to Class Members. If you want to attend the hearing, you may wish to check with Class Counsel or the Settlement website beforehand to be sure that the date and/or time has not changed.

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

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or statement in support of the Settlement, you are not required to come to Court to discuss it. As long as you mailed your 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. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

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

If you object to the Settlement, the Plan of Allocation, and/or the fee and expense application, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection (*see* Question 15 above) a statement saying that it is your "Notice of Intention to Appear in the *Liberator Settlement*." Persons who intend to object to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce

1 into evidence at the Final Approval Hearing. You cannot speak at the hearing if you excluded  
2 yourself.

3 **IF YOU DO NOTHING**

4 **19. What happens if I do nothing at all?**

5 If you do nothing, you will get no money from this Settlement. But, unless you previously  
6 excluded yourself, you will not be able to start a lawsuit or be part of any other lawsuit against the  
7 Released JMP Parties about the legal issues in this case ever again.

8 **GETTING MORE INFORMATION**

9 **20. Are there more details about the proposed Settlement?**

10 This Notice summarizes the proposed Settlement. More details are in a Stipulation of  
11 Settlement dated February 5, 2020 (the “Stipulation”). You can obtain answers to common  
12 questions regarding the proposed Settlement by contacting the Claims Administrator toll-free at 1-  
13 866-629-1057. A copy of the Stipulation and other relevant documents are also available on the  
14 Settlement website at [www.LiberatorSettlement.com](http://www.LiberatorSettlement.com).

15 **PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG**  
16 **CLASS MEMBERS**

17 Your share of the Net Settlement Fund will depend on how many shares of LMH common  
18 stock you held and exchanged for the \$3.35 per share merger consideration in the Acquisition, and  
19 the number of shares of LMH common stock represented by valid claims made by Members of the  
20 Class.

21 Distributions will be made to Authorized Claimants after all claims have been processed and  
22 after the Court has finally approved the Settlement. The Net Settlement Fund will be disbursed by  
23 the Claims Administrator to the Authorized Claimants and will be allocated on a *pro rata*, equal per-  
24 share basis amongst the Authorized Claimants. Any distribution will require a \$10.00 minimum.

25 If there is any balance remaining in the Net Settlement Fund after a reasonable period of time  
26 after the initial distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed  
27 checks, or otherwise), Class Counsel shall, if feasible, reallocate on a *pro rata* basis among  
28 Authorized Claimants who negotiated the checks sent to them in the initial distribution and who  
would receive a minimum of \$10.00. These reallocations shall be repeated until the balance  
remaining in the Net Settlement Fund is *de minimis* and any remainder shall thereafter be donated to  
an appropriate non-profit organization selected by Class Counsel.

Class Members who do not submit acceptable Proofs of Claim will not share in the  
Settlement proceeds. The Settlement and the Order and Final Judgment releasing JMP and other  
Released JMP Parties will nevertheless bind all Class Members.

Please contact the Claims Administrator if you disagree with any determinations made by the  
Claims Administrator regarding your Proof of Claim. If you are unsatisfied with the determinations,

1 you may ask the Court, which retains jurisdiction over all Class Members and the claims  
2 administration process, to decide the issue by submitting a written request.

3 No Person shall have any claim against Class Representatives' Counsel, Class  
4 Representatives, the Claims Administrator, JMP and the Released JMP Parties, or any Person  
5 designated by Class Counsel based on distributions made substantially in accordance with the  
6 Stipulation and the Settlement contained therein, or further order(s) of the Court. No Class Member  
7 shall have any claim against the Released JMP Parties for any of Plaintiffs' Released Claims.

8 **SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

9 If you held LMH common stock for the beneficial interest of an individual or organization  
10 other than yourself, the Court has directed that, WITHIN FIFTEEN (15) DAYS OF YOUR  
11 RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator the name and last  
12 known address of each beneficial owner of the common stock, or (b) request additional copies of this  
13 Notice and the Proof of Claim, which will be provided to you free of charge, and within fifteen (15)  
14 days mail the Notice and Proof of Claim directly to the beneficial owners of the common stock  
15 referred to herein. If you choose to follow alternative procedure (b), upon such mailing, you must  
16 send a statement to the Claims Administrator confirming that the mailing was made as directed and  
17 retain the names and addresses for any future mailings to Class Members. You are entitled to  
18 reimbursement from the Settlement Fund of your reasonable expenses actually incurred in  
19 connection with the foregoing, including reimbursement of postage expense and the cost of  
20 ascertaining the names and addresses of beneficial owners. Your reasonable expenses will be paid  
21 upon request and submission of appropriate supporting documentation. All communications  
22 concerning the foregoing should be addressed to the Claims Administrator:

23  
24  
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26  
27  
28  
*Liberator/JMP Settlement*  
c/o Gilardi & Co. LLC  
Claims Administrator  
P.O. Box 404130  
Louisville, KY 40233-4130  
1-866-629-1057  
www.LiberatorSettlement.com

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

BY ORDER OF THE COURT  
EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

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# EXHIBIT A-2

# EXHIBIT A-2

1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)  
7 david@omaralaw.net

8 Liaison Counsel

9 ROBBINS GELLER RUDMAN  
10 & DOWD LLP  
11 RANDALL J. BARON  
12 DAVID A. KNOTTS  
13 655 West Broadway, Suite 1900  
14 San Diego, CA 92101  
15 Telephone: 619/231-1058  
16 619/231-7423 (fax)  
17 rbaron@rgrdlaw.com  
18 dknotts@rgrdlaw.com

19 Lead Counsel for Plaintiffs

20 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
21  
22 IN AND FOR THE COUNTY OF CLARK

23 DAN SCHMIDT, on Behalf of Himself and All)  
24 Others Similarly Situated, )

25 Plaintiff, )

26 vs. )

27 LIBERATOR MEDICAL HOLDINGS, INC., )  
28 et al., )

29 Defendants. )

30 AND ALL CONSOLIDATED ACTIONS. )  
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Master File No. A-15-728234-B  
Dept No. XI

CLASS ACTION

PROOF OF CLAIM AND RELEASE

EXHIBIT A-2

1 **I. GENERAL INSTRUCTIONS**

2 1. To recover as a Member of the Class based on your claims in the action pending in  
3 the Superior Court of the State of California, County of San Francisco titled *Nagel v. JMP Securities*  
4 *LLC*, Case No. 567294 (the “California Action”), you must complete and, on page \_\_ hereof, sign  
5 this Proof of Claim and Release. If you fail to submit a properly addressed (as set forth in paragraph  
6 3 below) Proof of Claim and Release, postmarked or received by the date shown below, your claim  
7 may be rejected and you may be precluded from any recovery from the Net Settlement Fund created  
8 in connection with the proposed Settlement of the California Action.

9 2. Submission of this Proof of Claim and Release, however, does not assure that you  
10 will share in the proceeds of the Settlement.

11 3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED  
12 PROOF OF CLAIM AND RELEASE, ACCOMPANIED BY COPIES OF THE DOCUMENTS  
13 REQUESTED HEREIN, NO LATER THAN \_\_\_\_\_, 2020, TO THE COURT-  
14 APPOINTED CLAIMS ADMINISTRATOR IN THIS CASE, AT THE FOLLOWING ADDRESS:

15 *Liberator/JMP Settlement*  
16 Claims Administrator  
17 c/o Gilardi & Co. LLC  
18 P.O. Box 404130  
19 Louisville, KY 40233-4130  
20 Online submissions: [www.LiberatorSettlement.com](http://www.LiberatorSettlement.com)

21 If you are NOT a Member of the Class as defined in the Notice of Proposed Settlement of Class  
22 Action (the “Notice”), DO NOT submit a Proof of Claim and Release form.

23 4. If you are a Member of the Class and you did not timely request exclusion, you will  
24 be bound by the terms of any judgment entered in the Litigation, including the releases provided  
25 therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

26 **II. CLAIMANT IDENTIFICATION**

27 If you are a Class Member and held LMH shares in your name, you are the beneficial owner  
28 as well as the record owner. If, however, you held LMH common stock and the shares were  
registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial  
owner and the third party is the record owner.

1 Use Part I of this form entitled “Claimant Identification” to identify each owner of record  
2 (“nominee”), if different from the beneficial owner of the common stock which forms the basis of  
3 this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNER(S) OR  
4 THE LEGAL REPRESENTATIVE OF SUCH OWNER(S) OF THE LMH COMMON STOCK  
5 UPON WHICH THIS CLAIM IS BASED.

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

12 If you are acting in a representative capacity on behalf of a Class Member (for example, as an  
13 executor, administrator, trustee, or other representative), you must submit evidence of your current  
14 authority to act on behalf of that Class Member. Such evidence would include, for example, letters  
15 testamentary, letters of administration, or a copy of the trust documents.

16 NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of  
17 transactions may request to, or may be requested to, submit information regarding their transactions  
18 in electronic files. This is different from the online submission process that is available at  
19 [www.LiberatorSettlement.com](http://www.LiberatorSettlement.com). *All claimants MUST submit a manually signed paper Proof of*  
20 *Claim and Release form listing all their transactions whether or not they also submit electronic*  
21 *copies.* If you wish to file your claim electronically, you must contact the Claims Administrator at  
22 [edata@gilardi.com](mailto:edata@gilardi.com) to obtain the required file layout. No electronic files will be considered to have  
23 been properly submitted unless the Claims Administrator issues to the claimant a written  
24 acknowledgement of receipt and acceptance of electronically submitted data.

### 25 **III. CLAIM FORM**

26 Use Part II of this form entitled “Schedule of LMH Common Stock Tendered in the  
27 Acquisition for \$3.35 Per Share” to supply the number of shares of LMH common stock you held  
28

1 and exchanged for the \$3.35 per share merger consideration in the Acquisition, which closed on  
2 January 21, 2016.

3           Broker confirmations or other documents verifying that you held LMH common stock and  
4 tendered it in the Acquisition at the price of \$3.35 per share should be attached to your claim.  
5 Failure to do so could delay verification of your claim or result in rejection of your claim.

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1 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
2 IN AND FOR THE COUNTY OF CLARK

3 *Dan Schmidt, et al. v. Liberator Medical Holdings, Inc., et al.*  
4 Master File No. A-15-728234-B  
5 PROOF OF CLAIM AND RELEASE

6 Must Be Postmarked or Received No Later Than:

7 \_\_\_\_\_, 2020

8 Please Type or Print

9 PART I: CLAIMANT IDENTIFICATION

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

12 \_\_\_\_\_  
13 Street Address

14 \_\_\_\_\_  
15 City

14 \_\_\_\_\_  
15 State or Province

16 \_\_\_\_\_  
17 Zip Code or Postal Code

16 \_\_\_\_\_  
17 Country

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

18 \_\_\_\_\_  
19 Individual  
19 Corporation/Other

20 \_\_\_\_\_  
21 Area Code

20 \_\_\_\_\_  
21 Telephone Number (work)

22 \_\_\_\_\_  
23 Area Code

22 \_\_\_\_\_  
23 Telephone Number (home)

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

1 PART II: SCHEDULE OF LMH COMMON STOCK TENDERED IN THE ACQUISITION  
2 FOR \$3.35 PER SHARE

3 A. Number of shares of LMH common stock you held and exchanged for the \$3.35 per  
4 share merger consideration in the Acquisition, which closed on January 21, 2016:

(Be sure to attach the required documentation):

5 YOUR SIGNATURE ON PAGE \_\_ WILL CONSTITUTE YOUR

6 ACKNOWLEDGMENT OF THE RELEASE DESCRIBED IN PART V BELOW.

7 IV. SUBMISSION TO JURISDICTION OF COURT AND  
8 ACKNOWLEDGMENTS

9 I (We) submit this Proof of Claim and Release under the terms of the Stipulation of  
10 Settlement described in the Notice. I (We) also submit to the jurisdiction of the Eighth Judicial  
11 District Court of the State of Nevada, Clark County, with respect to my (our) claim as a Class  
12 Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I  
13 am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation.  
14 I (We) agree to furnish additional information to the Claims Administrator to support this claim if  
15 requested to do so. I (We) have not submitted any other claim covering the LMH common stock I  
16 (we) held for which I (we) received consideration in the Acquisition for the price of \$3.35 per share,  
17 which closed on January 21, 2016, and know of no other person having done so on my (our) behalf.

18 V. RELEASE

19 1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully,  
20 finally and forever release, relinquish, and discharge each and all of the Released JMP Parties from  
21 the Plaintiffs' Released Claims as provided in the Stipulation of Settlement.

22 2. "Released JMP Parties" means JMP and all of its predecessors, successors and  
23 assigns, and each of their respective current and former officers, directors, employees, managers,  
24 members, partners, agents, stockholders, attorneys, or legal representatives.

25 3. "Released Plaintiff Parties" means Class Representatives, all Class Members, and  
26 Class Representatives' Counsel.

27 4. "JMP's Released Claims" means any and all actions, claims, debts, demands,  
28 liabilities, losses, matters, rights, suits and causes of action of any nature whatsoever, known or

1 unknown, contingent or absolute, mature or immature, discoverable or undiscoverable, whether  
2 concealed or hidden, suspected or unsuspected, whether based in law or equity, arising under federal,  
3 state, common or foreign law, or any other law, rule or regulation, which now exist or heretofore  
4 have existed, that have been or could have been asserted in the California Action or any forum by the  
5 Released JMP Parties or any of them against any of the Released Plaintiff Parties, that arise out of or  
6 relate in any way to the institution, prosecution, or settlement of the claims against the Released JMP  
7 Parties, provided, however, that this release shall not include any claims to enforce the Settlement.

8           5.       “Plaintiffs’ Released Claims” means all claims, demands, rights, actions or causes of  
9 action, liabilities, debts, damages, losses, obligations, judgments, suits, fees, expenses, costs,  
10 matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or  
11 absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or  
12 unmatured, whether based in law or equity, that have been, or could have been, asserted in the  
13 California Action or in any court, tribunal, or proceedings (including, but not limited to, any claims  
14 arising under federal, state, foreign, or common law relating to alleged fraud, breach of any duty,  
15 negligence, the federal securities laws, and any state disclosure law) by or on behalf of any Member  
16 of the Class, based on, arising out of, or relating to: (A) his, her, or its ownership of LMH stock  
17 (whether individual, class, derivative, representative, legal, equitable, or any other type or in any  
18 other capacity), against the Released JMP Parties, whether or not any such Released JMP Parties  
19 were named, served with process, or appeared in the California Action; and (B) which have arisen,  
20 could have arisen, arise now or hereafter arise out of or relate in any manner to the allegations, facts,  
21 events, acquisitions, matters, acts, occurrences, statements, representations, misrepresentations,  
22 omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved  
23 or set forth in, or referred to or otherwise related in any way to: (i) the Acquisition; (ii) the adequacy  
24 of the consideration paid to LMH shareholders in connection with the Acquisition; (iii) the fiduciary  
25 obligations, if any, of the Released JMP Parties in connection with the Acquisition; (iv) the  
26 negotiations in connection with the Acquisition; (v) the processes, events, and analyses leading up to  
27 the Acquisition, including, but not limited, to the process by which LMH and its advisors attempted  
28 to locate parties to engage in an acquisition or other strategic transaction with LMH; (vi) the

1 disclosures or disclosure obligations of any of the Released JMP Parties in connection with the  
2 Acquisition, including, but not limited to, the disclosures in the Proxy Statement; (vii) any events,  
3 matters, acts, omissions, statements, or facts alleged or referred to in any complaint filed in any court  
4 or tribunal related to any of the foregoing topics; or (viii) the settlement of the claims against the  
5 Released JMP Parties; provided, however, that this released shall not include any claims to enforce  
6 the Settlement. “Plaintiffs’ Released Claims” includes “Unknown Claims” as defined below.

7 6. “Unknown Claims” means any of the Plaintiffs’ Released Claims which Class  
8 Representatives or any Class Member does not know or suspect to exist in such party’s favor at the  
9 time of the release of the Released JMP Parties, and any of the JMP’s Released Claims that the  
10 Released JMP Parties do not know or suspect to exist in his, her or its favor at the time of the release  
11 of the Released Plaintiff Parties, which, if known by such party, might have affected such party’s  
12 decision to enter into the settlement with and release of the Released JMP Parties or the Released  
13 Plaintiff Parties, or might have affected such party’s decision not to object to this Settlement.  
14 Unknown Claims include those Plaintiffs’ Released Claims or JMP’s Released Claims in which  
15 some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With  
16 respect to any and all Plaintiffs’ Released Claims and JMP’s Released Claims, upon the Effective  
17 Date, Class Representatives and JMP shall expressly, and each of Released Plaintiff Parties and  
18 Released JMP Parties shall be deemed to have, and by operation of the Order and Final Judgment  
19 shall have, waived to the fullest extent permitted by law, the provisions, rights, and benefits of  
20 California Civil Code §1542, which provides:

21 *A general release does not extend to claims that the creditor or releasing party does*  
22 *not know or suspect to exist in his or her favor at the time of executing the release*  
23 *and that, if known by him or her, would have materially affected his or her*  
*settlement with the debtor or released party.*

24 Class Representatives and JMP shall expressly, and each of Released Plaintiff Parties and Released  
25 JMP Parties shall be deemed to have, and by operation of the Order and Final Judgment shall have,  
26 waived any and all provisions, rights, and benefits conferred by any law of any state or territory of  
27 the United States, or principle of common law, which is similar, comparable or equivalent to  
28 California Civil Code §1542. The Released Plaintiff Parties and the Released JMP Parties may

1 hereafter discover facts in addition to or different from those which such party now knows or  
2 believes to be true with respect to the subject matter of the Plaintiffs' Released Claims and JMP's  
3 Released Claims, but Class Representatives and JMP shall expressly, and each of the Released  
4 Plaintiff Parties and the Released JMP Parties, upon the Effective Date, shall be deemed to have, and  
5 by operation of the Order and Final Judgment shall have, fully, finally, and forever settled and  
6 released any and all Plaintiffs' Released Claims and JMP's Released Claims, as the case may be,  
7 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not  
8 concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity  
9 now existing or coming into existence in the future, including, but not limited to, conduct that is  
10 negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without  
11 regard to the subsequent discovery or existence of such different or additional facts, whether or not  
12 previously or currently asserted in any action. Class Representatives and JMP acknowledge, and the  
13 Released Plaintiff Parties and the Released JMP Parties shall be deemed by operation of the Order  
14 and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for  
15 and a key element of the Settlement of which this release is a part

16           7.       This release shall be of no force or effect unless and until the Court approves the  
17 Stipulation of Settlement and the Settlement becomes effective on the Effective Date.

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

21           9.       I (We) hereby warrant and represent that I (we) have included information (including  
22 supporting documentation) about all of my (our) holdings of LMH common stock requested in this  
23 Proof of Claim and Release form.

24           10.      I (We) hereby warrant and represent that I am (we are) not a person excluded from  
25 the Class.

26           I declare under penalty of perjury under the laws of the State of Nevada that the foregoing  
27 information supplied by the undersigned is true and correct.

28

1 Executed this \_\_\_ day of \_\_\_\_\_ (Month/Year) in  
2 \_\_\_\_\_ (City) (State/Country).

3  
4 \_\_\_\_\_  
(Sign your name here)

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

6  
7 \_\_\_\_\_  
(Capacity of person(s) signing,  
8 e.g., Beneficial Owner,  
Executor or Administrator)

9  
10 **ACCURATE CLAIMS PROCESSING TAKES A**  
11 **SIGNIFICANT AMOUNT OF TIME.**  
12 **THANK YOU FOR YOUR PATIENCE.**

13 **Reminder Checklist:**

- 14 1. Please sign the above release and acknowledgment.
- 15 2. Remember to attach copies of supporting documentation, if available.
- 16 3. Do not send originals of stock certificates or other documentation as they will not be  
17 returned.
- 18 4. Keep a copy of your Proof of Claim and Release form and all supporting  
19 documentation for your records.
- 20 5. If you desire an acknowledgment of receipt of your Proof of Claim and Release form,  
21 please send it Certified Mail, Return Receipt Requested.
- 22 6. If you move, please send your new address to the address below.
- 23 7. Do not use red pen or highlighter on the Proof of Claim and Release form or  
24 supporting documentation.

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THIS PROOF OF CLAIM AND RELEASE MUST BE SUBMITTED ONLINE BY  
\_\_\_\_\_, 2020, OR, IF MAILED, POSTMARKED NO LATER THAN  
\_\_\_\_\_, 2020, addressed as follows:

*Liberator/JMP Settlement*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 404130  
Louisville, KY 40233-4130  
[www.LiberatorSettlement.com](http://www.LiberatorSettlement.com)

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EXHIBIT A-3

EXHIBIT A-3



1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)  
7 david@omaralaw.net

8 Liaison Counsel

9 ROBBINS GELLER RUDMAN  
10 & DOWD LLP  
11 RANDALL J. BARON  
12 DAVID A. KNOTTS  
13 655 West Broadway, Suite 1900  
14 San Diego, CA 92101  
15 Telephone: 619/231-1058  
16 619/231-7423 (fax)  
17 rbaron@rgrdlaw.com  
18 dknotts@rgrdlaw.com

19 Lead Counsel for Plaintiffs

20 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

21 IN AND FOR THE COUNTY OF CLARK

22 DAN SCHMIDT, on Behalf of Himself and All)  
23 Others Similarly Situated, )

24 Plaintiff, )

25 vs. )

26 LIBERATOR MEDICAL HOLDINGS, INC., )  
27 et al., )

28 Defendants. )

29 AND ALL CONSOLIDATED ACTIONS. )  
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Master File No. A-15-728234-B  
Dept No. XI

CLASS ACTION

SUMMARY NOTICE

EXHIBIT A-3

1 **TO: ALL HOLDERS OF LIBERATOR MEDICAL HOLDINGS, INC. (“LMH”)**  
2 **COMMON STOCK WHO RECEIVED CONSIDERATION FOR THEIR SHARES IN**  
3 **THE ACQUISITION OF LMH BY C.R. BARD, INC. (“BARD”) FOR THE PRICE**  
4 **OF \$3.35 PER SHARE, WHICH CLOSED ON JANUARY 21, 2016 (THE**  
5 **“ACQUISITION”)**

6 YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Eighth Judicial District Court  
7 for the State of Nevada, Clark County, that a hearing will be held on \_\_\_\_\_, 2020, at  
8 \_\_\_\_: \_\_\_\_ .m., before the Honorable Elizabeth Gonzalez of the Eighth Judicial District Court of  
9 Clark County, Nevada, 200 Lewis Avenue, Las Vegas, Nevada, Courtroom 3E, for the purpose of  
10 determining: (1) whether the proposed Settlement for \$3,000,000 should be approved by the Court as  
11 fair, reasonable, and adequate; (2) whether an Order and Final Judgment should be entered by the  
12 Court; (3) whether the Plan of Allocation for the Net Settlement Fund is fair, reasonable, and  
13 adequate and should be approved; and (4) whether the application of Class Counsel for the payment  
14 of attorneys’ fees and expenses should be approved.<sup>1</sup> This Settlement Amount exists in addition to  
15 the \$4,750,000 settlement amount involved in the related Librator Settlement, resulting in a total  
16 proposed recovery for the Class of \$7,750,000.

17 IF YOU HELD LMH COMMON STOCK AND RECEIVED CONSIDERATION IN THE  
18 ACQUISITION FOR THE PRICE OF \$3.35 PER SHARE, WHICH CLOSED ON JANUARY 21,  
19 2016, YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT, INCLUDING THE  
20 RELEASE AND EXTINGUISHMENT OF CLAIMS YOU MAY POSSESS RELATING TO  
21 YOUR OWNERSHIP OF LMH COMMON STOCK. If you have not received a detailed Notice of  
22 Proposed Settlement of Class Action (“Notice”) and a copy of the Proof of Claim and Release form,  
23 you may obtain copies by writing to *Liberator/JMP Settlement*, Claims Administrator, c/o Gilardi &  
24 Co. LLC, P.O. Box 404130, Louisville, KY 40233-4130, or on the Internet at  
25 [www.LiberatorSettlement.com](http://www.LiberatorSettlement.com). If you are a Class Member, in order to share in the distribution of  
26 the Net Settlement Fund, you must submit a Proof of Claim and Release by mail (*postmarked no*  
27 *later than* \_\_\_\_\_, 2020), or online at [www.LiberatorSettlement.com](http://www.LiberatorSettlement.com) (*no later than*  
28 \_\_\_\_\_, 2020), establishing that you are entitled to recovery. If you have previously

<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning given to them in the Stipulation of Settlement dated February 5, 2020.

1 submitted a valid Proof of Claim in connection with the related *Libratore* Settlement, you do not  
2 need to submit another Proof of Claim for this Settlement. Please contact the Claims Administrator  
3 if you have any questions concerning whether you have previously submitted a valid Proof of Claim.

4 All Members of the Class who did not timely and validly request exclusion from the Class  
5 will be bound by any judgment entered pursuant to the Stipulation of Settlement.

6 Any objection to the Settlement, the Plan of Allocation, and/or Class Counsel's request for  
7 attorneys' fees and expenses, must be **received** by **each** of the following recipients *no later than*  
8 \_\_\_\_\_, **2020**:

9 CLERK OF THE COURT  
10 DEPARTMENT XI  
11 EIGHTH JUDICIAL DISTRICT COURT  
12 CLARK COUNTY, NEVADA  
13 200 Lewis Avenue  
14 Las Vegas, NV 89155

15 *Class Counsel:*

16 ROBBINS GELLER RUDMAN & DOWD LLP  
17 David Knotts  
18 655 West Broadway, Suite 1900  
19 San Diego, CA 92101

20 *Counsel for JMP:*

21 WILSON SONSINI GOODRICH & ROSATI, P.C.  
22 Steven Guggenheim  
23 650 Page Mill Road  
24 Palo Alto, CA 94304

25 **PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE**  
26 **REGARDING THIS NOTICE.** If you have any questions about the Settlement, you may contact  
27 Class Counsel at the address listed above.

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

BY ORDER OF THE COURT  
EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

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# EXHIBIT B

# EXHIBIT B

1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)  
7 david@omaralaw.net

8 Liaison Counsel

9 ROBBINS GELLER RUDMAN  
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13 655 West Broadway, Suite 1900  
14 San Diego, CA 92101  
15 Telephone: 619/231-1058  
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17 rbaron@rgrdlaw.com  
18 dknotts@rgrdlaw.com

19 Lead Counsel for Plaintiffs

20 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
21  
22 IN AND FOR THE COUNTY OF CLARK

23 DAN SCHMIDT, on Behalf of Himself and All)  
24 Others Similarly Situated, )

25 Plaintiff, )

26 vs. )

27 LIBERATOR MEDICAL HOLDINGS, INC., )  
28 et al., )

29 Defendants. )

30 AND ALL CONSOLIDATED ACTIONS. )  
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33 Master File No. A-15-728234-B  
34 Dept No. XI

35 CLASS ACTION

36 [PROPOSED] ORDER AND FINAL  
37 JUDGMENT

38 EXHIBIT B

1 This matter came before the Court for hearing pursuant to the Order Preliminarily Approving  
2 Settlement and Providing for Notice (“Preliminary Approval Order”) dated \_\_\_\_\_, 2020, on  
3 the application of the Settling Parties for approval of the Settlement set forth in the Stipulation of  
4 Settlement dated February 5, 2020 (the “Stipulation”). Due and adequate notice having been given  
5 to the Class as required in the Preliminary Approval Order, and the Court having considered all  
6 papers filed and proceedings had herein and otherwise being fully informed in the premises and good  
7 cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

8 1. This Order and Final Judgment (“Order and Final Judgment” or “Judgment”)   
9 incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the  
10 same meanings as set forth in the Stipulation, unless otherwise set forth herein.

11 2. This Court has jurisdiction over all Members of the Class. Subject to and without  
12 waiving any defenses, including lack of personal jurisdiction and any due process arguments, JMP  
13 agrees to specially appear in this Court solely in connection with this Settlement.

14 3. Pursuant to Rule 23 of the Nevada Rules of Civil Procedure, this Court previously  
15 certified a Class defined as: All holders of Liberator Medical Holdings, Inc. (“LMH”) common stock  
16 who received consideration for their shares in the acquisition of LMH by C.R. Bard, Inc. (“Bard”)   
17 for the price of \$3.35 per share, which closed on January [21], 2016 (the “Acquisition”). Excluded  
18 from the Class are defendant Mark A. Libratore, the LMH board of directors at the time of the  
19 Acquisition, LMH, and Bard (collectively, the “Excluded Parties”), as well as any person, firm, trust,  
20 corporation or other entity related to or affiliated with any of the Excluded Parties. Also excluded  
21 from the Class are those Persons who timely and validly requested exclusion from the Class; these  
22 Persons were identified in the Report Regarding Class Notice Dissemination filed with the Court on  
23 May 31, 2018. For the purposes of this Settlement, JMP agrees that it is one of the Excluded Parties.

24 4. Pursuant to Rule 23 of the Nevada Rules of Civil Procedure, the Court hereby  
25 approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects,  
26 fair, reasonable, and adequate to the Class.

27 5. Pursuant to Rule 23 of the Nevada Rules of Civil Procedure, the Court finds that the  
28 Settlement is fair, reasonable, and adequate as to each of the Settling Parties, and that the Settlement

1 set forth in the Stipulation is hereby finally approved in all respects, and the Settling Parties are  
2 hereby directed to perform its terms.

3 6. Upon careful consideration of the record and the arguments presented, the Court finds  
4 that the Settlement was entered into in good faith.

5 7. Accordingly, the Court authorizes and directs implementation of the terms and  
6 provisions of the Stipulation, as well as the terms and provisions hereof.

7 8. Upon the Effective Date, and as provided in the Stipulation, the Class  
8 Representatives, and each and all of the Class Members and anyone claiming through or on behalf of  
9 any of them, including, but not limited to, their predecessors, successors, agents, representatives,  
10 attorneys, affiliates, heirs, executors, administrators, and assigns, shall be deemed to have, and by  
11 operation of this Order and Final Judgment shall have, fully, finally, and forever waived, released,  
12 relinquished, and discharged all Plaintiffs' Released Claims (including, without limitation, Unknown  
13 Claims), regardless of whether such Class Member executes and delivers a Proof of Claim and  
14 Release form, except that claims relating to the enforcement of the Settlement shall not be released.

15 9. Upon the Effective Date, and as provided in the Stipulation, each of the Released  
16 JMP Parties shall be deemed to have, and by operation of this Order and Final Judgment shall have,  
17 fully, finally, and forever released, relinquished, and discharged Class Representatives, each and all  
18 of the Class Members, and Class Representatives' Counsel from all JMP's Released Claims, and  
19 shall forever be enjoined from prosecuting such claims, except for claims relating to the enforcement  
20 of the Settlement.

21 10. Upon the Effective Date, and as provided in the Stipulation, Class Representatives,  
22 each and all of the Class Members and anyone claiming through or on behalf of any of them,  
23 including, but not limited to, their predecessors, successors, agents, representatives, attorneys,  
24 affiliates, heirs, executors, administrators, and assigns, are forever barred and enjoined from  
25 commencing, instituting, asserting, maintaining, enforcing, prosecuting, or continuing to prosecute  
26 any action or proceeding in any forum (including, but not limited to, any state or federal court of law  
27 or equity, any arbitral forum, any tribunal, administrative forum, or the court of any foreign  
28 jurisdiction, or any other forum of any kind), any of the Plaintiffs' Released Claims (including,

1 without limitation, Unknown Claims), against any or all of the Released JMP Parties, regardless of  
2 whether such Class Member executes and delivers a Proof of Claim and Release form, except that  
3 claims relating to the enforcement of the Settlement shall not be affected.

4 11. The terms of the Stipulation and of this Order and Final Judgment shall be forever  
5 binding on the Class Representatives, all other Class Members (regardless of whether or not any  
6 individual Class Member submits a Proof of Claim and Release or seeks or obtains a distribution  
7 from the Net Settlement Fund), all Released JMP Parties, as well as their respective, heirs, executors,  
8 administrators, predecessors, successors, and assigns.

9 12. Upon the Effective Date hereof, and as provided in the Stipulation, any party or  
10 parties who are, have been, could be, or could have been alleged to be joint tortfeasors, co-  
11 tortfeasors, co-conspirators, or co-obligors with any or all of the Released JMP Parties respecting  
12 any or all of the Plaintiffs' Released Claims are hereby, to the maximum extent permitted by  
13 law, barred and permanently enjoined from making, instituting, commencing, prosecuting,  
14 participating in or continuing any claim, claim-over, cross-claim, action, or proceeding, however  
15 denominated, regardless of the allegations, facts, law, theories or principles on which they are based,  
16 in this Court or in any other court, tribunal, or proceeding, against any or all of the Released JMP  
17 Parties with respect to any or all of the Plaintiffs' Released Claims, including, without limitation,  
18 equitable, partial, comparative, or complete contribution, set-off, indemnity, or otherwise, whether  
19 by contract, common law or statute, arising out of or relating in any way to the Plaintiffs' Released  
20 Claims. All such claims are hereby fully and finally barred, released, extinguished, discharged,  
21 satisfied and made unenforceable to the maximum extent permitted by law, and no such claim may  
22 be commenced, maintained, or prosecuted against any Released JMP Parties.

23 13. The Escrow Agent shall maintain the Settlement Fund in accordance with the  
24 requirements set forth in the Stipulation. No Released JMP Party shall have any liability, obligation,  
25 or responsibility whatsoever for the administration of the Settlement or disbursement of the Net  
26 Settlement Fund.

27 14. The Notice of Proposed Settlement of Class Action given to the Class in accordance  
28 with the Preliminary Approval Order entered on \_\_\_\_\_, was the best notice practicable under



1 the circumstances, to all Persons entitled to such notice, of those proceedings and of the matters set  
2 forth therein, including the proposed Settlement set forth in the Stipulation. Said notice fully  
3 satisfied the requirements of Rule 23 of the Nevada Rules of Civil Procedure, the requirements of  
4 due process, and all other applicable law and rules.

5 15. Any plan of allocation submitted by Class Counsel or any order entered regarding any  
6 attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be  
7 considered separate from this Judgment.

8 16. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations,  
9 discussions, proceedings connected with it, nor any act performed or document executed pursuant to  
10 or in furtherance of the Stipulation or the Settlement may: be construed as an admission or  
11 concession by any of the Released JMP Parties, any Class Representative, any Class Member, or any  
12 other Person, of the truth or lack of truth of any of the allegations in the Litigation; or be used in any  
13 way as an admission, concession or evidence of the existence or the absence of any liability or  
14 damages as to any claim alleged or asserted in the California Action; or be otherwise used by any  
15 person in the California Action, or in any other action or proceeding, whether civil, criminal, or  
16 administrative, in any court, administrative agency, or other tribunal, except in connection with any  
17 proceeding to enforce the terms of the Stipulation. The Released JMP Parties and/or Plaintiffs may  
18 file the Stipulation of Settlement, the final Court approval of the Settlement, and/or this Judgment in  
19 any action that may be brought against them in order to support a defense or counterclaim based  
20 upon principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or  
21 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or  
22 counterclaim.

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

1           18.     The Court finds that during the course of the Litigation, the Settling Parties and their  
2 respective counsel at all times complied with the requirements of of NRCP 11 and California Code  
3 of Civil Procedure §128.7.

4           19.     In the event that the Settlement does not become effective in accordance with the  
5 terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement  
6 Fund, or any portion thereof, is returned as required under the terms of the Stipulation, then this  
7 Judgment shall be rendered null and void to the extent provided by and in accordance with the  
8 Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in  
9 connection herewith shall be null and void to the extent provided by and in accordance with the  
10 Stipulation.

11          20.     Without further approval from the Court, the Settling Parties are hereby authorized to  
12 agree and to adopt such amendments or modifications of the Stipulation or any exhibits attached  
13 thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Order and Final  
14 Judgment; and (ii) do not materially limit the rights of Class Members in connection with the  
15 Settlement. Without further order of the Court, the Settling Parties may agree to reasonable  
16 extensions of time to carry out any of the provisions of the Stipulation.

17          21.     The Court directs immediate entry of this Judgment by the Clerk of the Court.

18           IT IS SO ORDERED.

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

\_\_\_\_\_  
THE HONORABLE ELIZABETH GONZALEZ

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