

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 02-CV-0870-BEN (RBB)

IN RE PEREGRINE SYSTEMS, INC. SECURITIES  
LITIGATION

This Document Relates to:  
ALL ACTIONS

**SECOND NOTICE OF PENDENCY OF CLASS ACTION AND  
HEARING ON ADDITIONAL PROPOSED PARTIAL SETTLEMENTS**

TO: ALL PERSONS WHO PURCHASED OR ACQUIRED PEREGRINE SYSTEMS, INC. SECURITIES DURING THE PERIOD FROM JULY 22, 1999 THROUGH MAY 3, 2002, INCLUSIVE, INCLUDING ALL PERSONS WHO OWNED SHARES OF HARBINGER CORP. OR REMEDY CORP. STOCK AND EXCHANGED THOSE SHARES FOR PEREGRINE SHARES.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS ACTION. IF YOU ARE A SETTLEMENT CLASS MEMBER, AS DEFINED HEREIN, YOU MAY BE ENTITLED TO RECEIVE A CASH BENEFIT PURSUANT TO THE PROPOSED PARTIAL SETTLEMENTS DESCRIBED IN THIS NOTICE.

EXCLUSION DEADLINE: REQUESTS FOR EXCLUSION MUST BE SUBMITTED POSTMARKED ON OR BEFORE SEPTEMBER 3, 2009.

SECURITIES BROKERS AND OTHER NOMINEES: PLEASE SEE INSTRUCTIONS ON PAGE 10 HEREIN.

**I. SUMMARY OF SETTLEMENT AND RELATED MATTERS**

1. This Second Notice of Pendency of Class Action and Hearing on Proposed Partial Settlements (the "Notice") is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of California (the "Court") dated July 10, 2009. The purpose of this Notice is to inform you of additional proposed settlements (collectively referred to as the "Settlement") in the aggregate principal amount of \$56,075,000, which will affect your rights in this Class Action relating to Peregrine Systems, Inc. ("Peregrine"). Final approval of the Settlement will be considered at a hearing to be held by the Court to consider its fairness, reasonableness, and adequacy. This Notice describes your rights under the Settlement and what steps you may take in relation to this Class Action. Capitalized terms used in this Notice have the meanings given to them in the "Definitions" section below unless otherwise defined. The Settlement discussed herein relates to claims against the following defendants, who were former outside directors of Peregrine: John J. Moores, Charles E. Noell III, Norris van den Berg, Richard A. Hosley II, Christopher A. Cole, and Rodney F. Dammeyer (at times collectively referred to as the "Outside Director Settling Defendants"); and the following defendants who were former officers of Peregrine: Stephen P. Gardner, Matthew C. Gless, Frederic B. Luddy, and Richard T. Nelson (at times collectively referred to as the "Officer Settling Defendants"). The Outside Director Settling Defendants and the Officer Settling Defendants are collectively referred to as the "Settling Defendants." The Class previously settled claims against Peregrine in connection with Peregrine's Bankruptcy Court proceedings. Prior settlements were also reached with defendants Arthur Andersen LLP, Douglas S. Powanda, William D. Savoy and Thomas G. Watrous. These prior settlements, approved by the Court, were described in a previous notice dated July 31, 2006. This Notice is not an expression of any opinion by the Court as to the merits of any claims or any defenses asserted by any party in this Class Action or as to the fairness or adequacy of the Settlement.

## **II. STATEMENT OF PLAINTIFFS' RECOVERY**

2. The Settlement, if finally approved, will consist of \$56,075,000 plus approximately \$5,200,000 which is being held by the Peregrine Litigation Trust, resulting in a Settlement Fund of approximately \$61,275,000. The Settlement Fund will be available for distribution to Settlement Class Members, subject to deduction for costs of notice and administration, and for attorneys' fees, costs and expenses as approved by the Court. Attorneys' fees equal to 20% of the Settlement Fund and expenses of up to \$500,000 are being requested. Your recovery from these funds will depend on a number of variables, including the number and timing of Peregrine shares you purchased, whether they were acquired on the open market or through an exchange of shares, and the number of claims submitted. It is estimated that if all eligible Peregrine securities purchasers or exchangers covered by this Settlement were to file claims to share therein, then the average recovery per damaged share of common stock under the Settlement would be \$0.11 per share (before the deduction of any Court-awarded attorneys' fees and expenses).

## **III. STATEMENT OF POTENTIAL OUTCOME OF CASE**

3. The Lead Plaintiffs (defined hereinafter) and the Settling Defendants disagree as to both liability and damages and do not agree on the average amount of damages per share, if any, that would be recoverable if Lead Plaintiffs were to prevail on the claims alleged against the Settling Defendants. In addition to the numerous risks of litigation and liability issues on which the parties disagree, the damage-related issues on which the parties disagree include: (a) whether any affirmative misstatements were made by any Settling Defendant; (b) whether the alleged misstatements or omissions were made intentionally, recklessly, negligently, or innocently; (c) the appropriate economic model for determining the amount by which Peregrine's securities were allegedly artificially inflated (if at all) during the Class Period (defined below); (d) the amount by which Peregrine's securities were allegedly artificially inflated (if at all) during the Class Period; (e) the effect of various market forces influencing the trading price of Peregrine's securities at various times during the Class Period; (f) the extent to which external factors, such as general market and industry conditions, influenced the trading price of Peregrine's securities at various times during the Class Period; (g) the extent to which the various matters that Lead Plaintiffs allege were materially false or misleading influenced (if at all) the trading price of Peregrine's securities at various times during the Class Period; (h) the extent to which the various allegedly adverse material facts that Lead Plaintiffs allege were omitted influenced (if at all) the trading price of Peregrine's securities at various times during the Class Period; and (i) whether any statements made or facts allegedly omitted were material or otherwise actionable under the federal securities laws. Under the relevant securities laws, a claimant's recoverable damages are limited to the losses attributable to the alleged fraud or material misrepresentations or omissions. Losses which resulted from factors other than the alleged fraud or material misrepresentations or omissions are not compensable under the federal securities laws.

4. Lead Counsel believe that there was a substantial risk that Lead Plaintiffs and the Settlement Class might not have recovered anything from the Settling Defendants in light of the status of the litigation, the absence of insurance to satisfy the claims asserted in the Class Action not exhausted by defense costs, and the defenses asserted to the claims. Absent the Settlement, Lead Plaintiffs could have recovered nothing or substantially less than the settlement amount herein described.

5. The Settling Defendants deny that they are liable to the Lead Plaintiffs or the Settlement Class and deny that Lead Plaintiffs or the Settlement Class have suffered any damages.

## **IV. STATEMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES SOUGHT**

6. Lead Counsel intend to apply for fees equal to 20% of the Settlement Fund (an average of \$0.03 per damaged share). This amount is based on the recommendation of the retired federal Magistrate Judge who served as a mediator for various settlement negotiations in this Action. Lead Counsel have expended considerable time and effort in the prosecution of this litigation on a contingent fee basis, and have advanced the expenses of the litigation, with the expectation that if they were successful in obtaining a recovery for the Settlement Class they would be compensated for their efforts from such recoveries. In this type of litigation, it is customary for counsel to be awarded a percentage of the common fund they have created as their attorneys' fees. Lead Counsel are not seeking a fee on the amounts distributed in connection with assets forfeited by Defendant Gardner to the United States government.

7. Lead Counsel are also seeking reimbursement of expenses in an amount not to exceed \$500,000 incurred in this litigation from April 30, 2006 through the date on which final approval of the Settlement is granted.

## **V. REASONS FOR THE SETTLEMENT**

8. The principal reason for the Settlement is the immediate substantial cash benefit to be made available to Settlement Class Members if the Settlement is finally approved and becomes effective. This benefit must be compared to the risk that no recovery might be achieved from the Settling Defendants in view of the current status of the litigation, the significant delay that may arise from continued litigation against these defendants, and the possibility that some or all of the Settling Defendants might ultimately be found not liable to Lead Plaintiffs and/or the Settlement Class.

## **VI. BACKGROUND OF THE LITIGATION**

9. Peregrine at all times during the Class Period was a publicly traded company headquartered in San Diego, California that developed and marketed software products, and whose stock was traded on NASDAQ.

10. Beginning in May 2002, class action complaints alleging violations of the federal securities laws were filed in the Court against Peregrine and other defendants. The other defendants include former officers and directors of Peregrine, former strategic alliance partners of Peregrine, and Peregrine's former auditor. The class actions were consolidated pursuant to an Order of the Court entered on July 23, 2002. By Order dated January 30, 2003, the Court appointed the Loran Group as the Lead Plaintiff for securities fraud claims arising under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act") and Heywood Waga as Lead Plaintiff for claims on behalf of persons who held shares of either Harbinger Corporation ("Harbinger") or Remedy Corporation ("Remedy") and who acquired Peregrine registered common stock in connection with Peregrine's acquisition of these companies (the "Subclasses"). The claims on behalf of the members of the Subclasses are for violation of Sections 11 and 15 of the Securities Act of 1933 and Section 14(a) of the 1934 Act. The Court further appointed the law firm of Gold Bennett Cera & Sidener LLP as Lead Counsel for the Sections 10(b) and 20(a) claims and the law firms of Abraham, Fruchter & Twersky, LLP, and Stull, Stull & Brody as Lead Counsel for the claims brought on behalf of the Harbinger and Remedy Subclasses (collectively referred to as "Lead Counsel").

11. On March 18, 2003, Lead Plaintiffs filed a Consolidated Class Action Complaint for Violations of the Federal Securities Laws (the "Consolidated Complaint"). The Consolidated Complaint generally alleged that certain defendants disseminated a series of materially false and misleading statements in public filings, press releases, shareholder reports, audit opinions, and communications with securities analysts during the Class Period that caused Peregrine securities to trade at artificially inflated prices, thereby causing damage to purchasers of Peregrine securities. As to the Harbinger and Remedy Subclasses, the Consolidated Complaint alleged that certain defendants signed registration statements that contained false and misleading statements.

12. The Court, in an Order dated November 21, 2003, granted in part and denied in part motions to dismiss filed by various defendants, including certain of the Settling Defendants. Specifically, the Court dismissed the Section 10(b), 12(a)(2), 14(a), 15 and 20(a) claims against certain of the Outside Director Settling Defendants without prejudice and with leave to amend, and refused to dismiss the Section 11 claims against certain of the Outside Director Settling Defendants. The motions to dismiss filed by Defendants Nelson and Luddy were granted in their entirety. The motions to dismiss filed by Defendants Gardner and Gless were granted with respect to the Section 12(a)(2) and 14 claims, but denied as to the Section 10(b), 11, 15 and 20(a) claims.

13. On April 5, 2004, Lead Plaintiffs filed a First Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws (the "Complaint"). Because Peregrine had filed for bankruptcy in September 2002, it was no longer named as a defendant in the Complaint. The Complaint generally alleges that certain defendants disseminated a series of materially false and misleading statements in public filings, press releases, shareholder reports, audit opinions, and communications with securities analysts during the Class Period which caused Peregrine securities to trade at artificially inflated prices, thereby causing damage to purchasers of Peregrine securities. As to the Harbinger and

Remedy Subclasses, the Complaint alleges that certain defendants signed registration statements that contained false and misleading statements.

14. The Complaint alleges that material overstatements of the Company's revenues and earnings disseminated during the Class Period resulted from the Company's failure to recognize revenue properly when it was earned under applicable accounting rules and to report Peregrine's true financial results accurately. Peregrine restated earnings for fiscal years 2000 and 2001. The primary reason for the restatements was the overstatement of revenue.

15. The Complaint further alleges that Lead Plaintiffs and other Class Members purchased or otherwise acquired Peregrine securities during the Class Period at artificially inflated prices as a result of certain defendants' dissemination of false and misleading statements and suffered losses when the truth about Peregrine's financial condition became known and Peregrine's stock price declined.

16. The Court, in an Order dated March 30, 2005, granted in part and denied in part motions to dismiss the Complaint filed by various defendants, including certain of the Settling Defendants. Specifically, the Court dismissed the Sections 10(b) and 20(a) claims against the Settling Defendants, and refused to dismiss the Sections 11 and 14(a) claims against certain of the Settling Defendants. Thereafter, the Court entered a Rule 54(b) judgment as to the Section 10(b) claims in favor of the Settling Defendants and stayed prosecution of the Section 11 claims until final resolution of an appeal as to the Section 10(b) claims. Lead Plaintiff the Loran Group appealed the dismissal of the Section 10(b) claims to the Ninth Circuit Court of Appeals. The appeal was argued on November 6, 2007. If this Settlement is finalized, the appeal will be withdrawn as to the Settling Defendants. On January 23, 2009, the Ninth Circuit affirmed the dismissal of the claims against defendants KPMG LLP, BearingPoint, Inc. and Larry Rodda.

17. The Settling Defendants deny all allegations of wrongdoing or liability in the Class Action. The Settling Defendants (excluding Stephen P. Gardner, Matthew C. Gless, and Richard T. Nelson) also deny all other accusations of wrongdoing or violations of law, and have asserted numerous defenses to the claims were this litigation to proceed against them. Stephen P. Gardner, Matthew C. Gless, and Richard T. Nelson have pled guilty to one or more criminal charges, but otherwise deny all allegations of wrongdoing or violations of law. Although Mr. Nelson pled guilty to one count of bank fraud, all other charges against him, including securities fraud and conspiracy to commit securities fraud, were dismissed and he denies any and all of those allegations. The Settlement is not and shall not be construed or be deemed to be evidence or an admission or a concession on the part of the Settling Defendants of any fault or liability or damages whatsoever, and they do not concede any infirmity in the defenses which they have asserted or intended to assert in the Class Action.

## **VII. BACKGROUND TO THE SETTLEMENT**

18. Lead Counsel has conducted an investigation relating to the claims and the underlying events and transactions alleged in the Complaint. Lead Counsel has examined relevant filings by Peregrine with the United States Securities and Exchange Commission before, during and after the Class Period. Further, Lead Counsel was able to obtain access to Peregrine's business records during the relevant period as a result of Lead Counsel's negotiations with Peregrine during its Bankruptcy Court proceedings. Based on the foregoing, Lead Counsel believe that in light of the current status of the litigation against the Settling Defendants, the Settlement represents a significant and highly beneficial recovery for Settlement Class Members.

19. Lead Counsel have analyzed the evidence adduced during their factual investigation and have researched the applicable law with respect to the claims of Lead Plaintiffs and the Settlement Class against the Settling Defendants and the potential defenses thereto. Prior to entering into the Settlement described herein, Lead Counsel conducted an extensive investigation of the claims, including the analysis of hundreds of thousands of documents and e-mails produced by Peregrine.

20. Lead Plaintiffs, through Lead Counsel, have conducted discussions and arms' length negotiations with counsel for the Settling Defendants regarding a compromise and settlement of the Class Action with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Settlement Class Members. As to the

Outside Director Settling Defendants, the parties were assisted in these efforts by a retired United States Magistrate Judge serving as a settlement mediator.

21. Lead Plaintiffs and the Settling Defendants realize that the continued litigation of the claims would entail substantial effort and expense and involve considerable risk and uncertainty, and believe that the claims in the Class Action as against the Settling Defendants are best settled as set forth herein.

22. No determination has been made by the Court as to liability or the amount, if any, of damages suffered by the Class, nor the proper measure of any such damages. The Settlement will provide a substantial cash benefit for Settlement Class Members and avoid the risk that liability or damages might not be proven against the Settling Defendants, or that if liability and damages are proven against them, that any ensuing judgment might not be collectible from them.

23. A FINAL DETERMINATION HAS NOT BEEN MADE ON THE MERITS OF THE LEAD PLAINTIFFS' CLAIMS AGAINST THE SETTLING DEFENDANTS OR THEIR DEFENSES THERETO. ALTHOUGH THE COURT HAS MADE CERTAIN RULINGS ON LEAD PLAINTIFFS' CLAIMS, AS DESCRIBED IN PARAGRAPHS 12 AND 16 ABOVE, THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW OR THAT RECOVERY COULD BE HAD IN ANY AMOUNT IF THE ACTION WERE NOT SETTLED.

#### **VIII. DEFINITIONS**

24. "Actions" means the Class Action and the PLT Action collectively.

25. "Additional Released Parties" means JMI Services, the Avery K. Moores 1994 Trust, Barry A. Moores 1993 Trust, Barry O. Moores 1991 Trust, Benjamin H. Moores 1996 Trust, Melissa K. Moores 1990 Trust, Jennifer Ann Moores Trust, John J. Moores, Jr. Trust, Anthony K. Moores 1991 Trust, Molly Moores Schulman 1991 Trust, Jason B. Schulman 1990 Trust, Rachel E. Schulman 1990 Trust, Michael & Debra Baas 1990 Trust, Rosanne E. Baas 1990 Trust, Christopher N. Baas 1990 Trust, Seth J. Baas 1990 Trust, Britton L. Baas 1990 Trust, Patrick & Rosario Baas Trust; Clare C. Toner 1992 Trust; David A. Toner 1992 Trust, and Toni L. Cruse 1994 Trust.

26. "Authorized Claimant" means any Settlement Class member whose Claim for recovery is allowed by the Court.

27. "Class Action" means the lawsuit captioned *In re Peregrine Systems, Inc., Securities Litigation*, United States District Court for the Southern District of California, Case No. 02-CV-0870-BEN (RBB).

28. "Class Period" means the period of time from July 22, 1999 through May 3, 2002, inclusive.

29. "Court" means the United States District Court for the Southern District of California.

30. "Excluded Settlement Class Members" means any Settlement Class member who validly requests exclusion from the Settlement, as set forth in this Notice.

31. "Lead Counsel" means the law firms appointed as lead counsel in the Court's January 30, 2003 Order: Gold Bennett Cera & Sidener LLP as Lead Counsel for the Section 10(b) and 20(a) claims and Abraham, Fruchter & Twersky, LLP and Stull, Stull & Brody as Lead Counsel for the claims brought on behalf of the Harbinger and Remedy Subclasses.

32. "Lead Plaintiffs" means the group consisting of David Levy, Leighton Powell, David Schenkel, John Virden, Conrad Willemse, Bill Holman, Bob Benesko, Michael Slavitch, Richard Maheu, and Mark Rollins (hereinafter the "Loran Group") who were appointed as Lead Plaintiffs for the claims arising under Section 10(b) of the 1934 Act, and Heywood Waga (hereinafter "Waga"), who was appointed as Lead Plaintiff for the claims arising under Section 11 of the 1933 Act.

33. "Person" means an individual or entity, including any corporation (including any division or subsidiary), partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, or government or any political subdivision or agency thereof.

34. "Plan of Allocation" means the plan, previously approved by the Court on November 15, 2006, for the allocation and distribution of the Settlement proceeds to Authorized Claimants.

35. "PLT Action" means the lawsuit captioned *Peregrine Litigation Trust v. Moores, et al.*, San Diego Superior Court, Case No. GIC 788659, which is currently on appeal to Division One of the Fourth Appellate Division of the State of California, Civil No. D051347.

36. "Released Claims" means all claims, rights, demands, suits, matters, issues or causes of action, whether known or unknown, fixed or contingent, foreseen or unforeseen, against the Settling Defendants and the Additional Released Parties, whether under state or federal law, including the federal securities laws, and whether directly, indirectly, representatively, derivatively or in any other capacity, in connection with, based upon, arising out of, or relating to any claim that has been or could have been raised in the Actions or the acts, facts or events alleged in the Actions, including the claims against the Settling Defendants and the Additional Released Parties asserted in the PLT Action. Released Claims also specifically include claims the Lead Plaintiffs and Settlement Class do not know or suspect to exist in their favor at the time of the Settlement which, if known by them, might affect the Settlement and the releases therein, or might affect their decision not to object to, or opt out of, the Settlement. With respect to any and all claims released herein, the Parties agree that, effective upon the Effective Date, Plaintiffs expressly waive and relinquish, shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived and relinquished, and the Settling Defendants expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Additionally, the Parties expressly waive, upon the Effective Date and by operation of the Order and Final Judgment shall have waived, any and all provisions, rights and benefits conferred by any law of the United States or of any state or territory of the United States or of any other country, whether statutory, code, or common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Parties may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the claims released herein, but hereby stipulate and agree that they do settle and release, and shall be deemed to have, and upon the Effective Date and by operation of the Order and Final Judgment shall have, settled and released all claims described herein, whether 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, without regard to the subsequent discovery or existence of such different or additional facts. The Parties acknowledge that the foregoing waiver was bargained for and is a material term and condition of the Settlement.

37. "Settlement" refers to the agreements to settle claims in the Class Action, which, if approved, will result in dismissal of the claims in the PLT Action, as set forth in the Stipulation and Agreement of Settlement with defendants John J. Moores, Charles E. Noell III, Norris van den Berg, Richard A. Hosley II, Christopher A. Cole, and Rodney F. Dammeyer dated as of August 8, 2008, and the Stipulation and Agreement of Settlement with Defendants Stephen P. Gardner, Matthew C. Gless, Frederic B. Luddy, and Richard T. Nelson dated as of December 22, 2008, both of which are on file with the Court.

38. "Settlement Class" means:

All Persons (including Lead Plaintiffs) who purchased or otherwise acquired Peregrine common stock during the Class Period and who were injured thereby, and two subclasses ("Subclasses") consisting of all Persons who held shares of Harbinger Corporation and who acquired Peregrine registered common stock in connection with Peregrine's acquisition of Harbinger Corporation, which was consummated on or about June 16, 2000, and all Persons who held shares of Remedy Corporation and who acquired Peregrine registered common stock in connection with Peregrine's acquisition of Remedy Corporation, which was consummated on or about August 27, 2001.

Excluded from the Settlement Class are: defendants in the Actions, the Additional Released Parties, members of the immediate families (parents, spouses, siblings and children) of each of the individual defendants; any person, firm, trust, corporation, or entity in which any defendant has a controlling interest; the officers, directors, parents, subsidiaries, and affiliates of Peregrine; and the legal representatives, heirs, successors in interest or assigns of any such excluded party. Also excluded from the Settlement Class are any putative class members who exclude themselves by filing a Request for Exclusion in accordance with the requirements set forth in this Notice, or putative class members who have previously released the Settling Defendants in connection with Peregrine-related claims.

39. "Settlement Fund" means all funds deposited in an escrow account by the Settling Defendants, including accumulated interest or other earnings, less any costs, expenses, reserves, taxes, or attorneys' fees paid therefrom (as authorized by the Stipulation or by Court Order) and the balance of funds held by the Peregrine Litigation Trust, which totaled approximately \$5,200,000 as of April 10, 2009. The funds from the PLT are being included in the Settlement Fund in accordance with an Order of the Bankruptcy Court as conceived and structured by Lead Counsel.

40. "Settling Defendants" means, collectively, John J. Moores, Charles E. Noell III, Norris van den Berg, Richard A. Hosley II, Christopher A. Cole, Rodney F. Dammeyer, Stephen P. Gardner, Matthew C. Gless, Frederic B. Luddy, and Richard T. Nelson.

## **IX. TERMS OF THE PROPOSED SETTLEMENTS**

41. In full and complete resolution of the claims which have or could have been asserted against the Settling Defendants in the Class Action and of the additional claims described in paragraph 41(g) below, and subject to the terms and conditions of the Settlement, which is on file with the Court and available for inspection, the Settling Defendants have paid or will pay \$56,075,000 in cash into an escrow account as follows:

(a) Settling Defendant Dammeyer paid \$950,000 into escrow on August 21, 2008.

(b) Settling Defendants Moores, Noell, van den Berg, Hosley, and Cole paid \$5,000,000 into escrow on October 10, 2008, paid \$22,500,000 into escrow on January 5, 2009, and completed payment of an additional \$27,500,000 into escrow, plus agreed upon interest, on April 9, 2009.

(c) Settling Defendant Luddy will pay One Hundred Thousand Dollars (\$100,000) into an agreed upon escrow account, half of such amount within ten (10) days of entry of an order granting preliminary approval of the Officer Settling Defendants' settlement and the other half five (5) days before the final approval hearing.

(d) Settling Defendant Nelson will pay Twenty-Five Thousand Dollars (\$25,000) into an agreed upon escrow account within ten (10) days of entry of an order granting preliminary approval of the Officer Settling Defendants' settlement.

(e) Settling Defendants Gardner and Gless will not be required to pay any cash in light of their current financial condition. In January 2009, Gardner filed for bankruptcy protection. Gardner previously forfeited to the United States government certain assets pursuant to his guilty plea in the criminal case captioned *United States v. Gardner, et al.*, Criminal Case No. 04CR2605W (S.D. Cal.). These assets consist of approximately \$1,354,684.44 in cash and three parcels of real property located in Maine. It is anticipated that some amount of these previously-forfeited assets will be distributed to the Authorized Claimants in accordance with the Plan of Allocation. Such distribution will need to be approved at a later date by the U.S. Department of Justice and the federal district court overseeing Gardner's criminal case. No attorneys' fees will be claimed on any amounts so distributed. As to Gless, he has provided Lead Counsel with a financial statement showing essentially no assets. Settling Defendants Gardner and Gless will also be required, consistent with their rights in connection with the criminal cases pending against them and to the extent their respective criminal counsel indicates it is advisable, to cooperate with Lead Counsel in pursuing any remaining claims. Such cooperation may include providing relevant documents in their possession, custody and control, as well as interviews and testimony upon request from Lead Counsel.

(f) Lead Plaintiffs will be moving the Court to voluntarily dismiss the claims against remaining defendants Steven S. Spitzer and Ilse Cappel, former officers of Peregrine. These defendants have demonstrated to Lead Counsel that they have no assets with which to satisfy a judgment.

(g) In addition to resolving the claims against the Settling Defendants in the Class Action, the Settlement will, if finally approved, also release the claims brought against the Settling Defendants and certain Additional Released Parties in the PLT Action. Such actions would resolve claims that Lead Plaintiffs asserted against Peregrine in Peregrine's bankruptcy case on behalf of the Settlement Class members.

42. The Settling Defendants deny the wrongdoing alleged, or that could have been alleged in both the Class Action and the PLT Action. The Settlement shall not be construed as evidence or an admission by the Settling Defendants regarding any claim, fault, liability, wrongdoing, or damage, or of any infirmity in the defenses that the Settling Defendants have asserted.

43. If the Settlement is approved by the Court, all claims which have or could have been asserted in the Actions against the Settling Defendants or the Additional Released Parties will be released and dismissed on the merits, with prejudice, as to all Settlement Class members. All Persons, except Excluded Settlement Class Members, will be forever barred from prosecuting the Actions, or any other action raising any Settled Claims against the Settling Defendants or the Additional Released Parties.

44. The Settlement will become effective once, among other things, a final judgment is entered in the Class Action approving the Settlement, the PLT Action is dismissed with prejudice, and neither order is subject to appeal and the entire settlement amount has been deposited into escrow by the Settling Defendants.

#### **X. NOTICE OF SETTLEMENT FAIRNESS HEARING**

45. NOTICE IS HEREBY GIVEN, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court dated July 10, 2009, that a hearing will be held before the Honorable Roger T. Benitez, in the United States Courthouse, 880 Front Street, Fourth Floor, Courtroom 3, San Diego, CA 92101-8900, at 10:00 a.m. on October 16, 2009 (the "Settlement Fairness Hearing") to determine whether the Settlement is fair, reasonable and adequate, and to consider the application of Lead Counsel for an award of attorneys' fees and reimbursement of expenses.

46. The Court, by its Order Preliminarily Approving Settlements and Providing for Notice, dated July 10, 2009, has, for settlement purposes, certified (a) a Settlement Class consisting of all persons who purchased Peregrine securities during the period from July 22, 1999 through May 3, 2002, inclusive; (b) a subclass consisting of all persons who held shares of Harbinger stock and who acquired Peregrine registered common stock in connection with Peregrine's acquisition of Harbinger on or about June 16, 2000; and (c) a subclass consisting of all persons who held shares of Remedy stock and who acquired Peregrine registered common stock in connection with Peregrine's acquisition of Remedy on or about August 27, 2001. Excluded from the Settlement Class are: (i) all defendants in the Class Action; (ii) all members of the immediate families (parents, spouses, siblings and children) of such defendants; (iii) the Additional Released Parties; (iv) any entity affiliated with any defendant in the Class Action or with any member of the immediate family of such defendant, including without limitation any entity in which any such defendant or any member of the immediate family of such defendant has a controlling interest; (v) the officers, directors, parents, subsidiaries and affiliates of Peregrine; (vi) the legal representatives, heirs, successors in interest and assigns of any of the foregoing; and (vii) with respect to the Settling Defendants, any Person who has previously released them from claims relating to Peregrine.

#### **XI. DISTRIBUTION OF SETTLEMENT PROCEEDS**

47. In addition to the \$56,075,000 total settlement consideration, an additional amount of approximately \$5,200,000, which is being held by the Peregrine Litigation Trust, together with the interest earned thereon, less all taxes, approved costs, fees and expenses shall be distributed to members of the Settlement Class and Subclasses who previously filed acceptable Proofs of Claim ("Authorized Claimants") pursuant to the Notice dated July 31, 2006. The Proof of Claim forms previously submitted by Settlement Class Members have been processed by the Claims Administrator and will be used to determine the amount of each Authorized Claimant's recovery. The Allowed Losses previously calculated by the



Claims Administrator will be used to determine each Authorized Claimant's *pro rata* share of the money recovered. If you did not previously file a Proof of Claim and wish to do so at this time, you may download the form at [www.gilardi.com](http://www.gilardi.com). Any such newly filed Proofs of Claim must be submitted by no later than October 9, 2009.

48. Each Authorized Claimant shall receive, on a *pro rata* basis, that share of the Settlement Fund that the Authorized Claimant's "Recognized Loss" bears to the total Recognized Losses of all Authorized Claimants as calculated pursuant to the Plan of Allocation of Settlement Proceeds previously approved by the Court on November 15, 2006.

49. Checks will be issued to Authorized Claimants as soon as possible after the Court has finally approved the Settlement.

## **XII. THE RIGHTS OF SETTLEMENT CLASS MEMBERS**

50. The Court has certified a Settlement Class allowing the Settlement to proceed for the benefit of the members of the Settlement Class. If you purchased Peregrine securities and/or received them in an exchange for Harbinger or Remedy shares during the period from July 22, 1999 through May 3, 2002, inclusive, then you are a Settlement Class Member. However, if you previously released claims against any of the Settling Defendants relating to Peregrine, you are not entitled to any share of the settlement proceeds paid by them. Settlement Class Members have the following options pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure:

(a) If you wish to remain a member of the Settlement Class, you do not have to do anything at this time. Settlement Class Members will be represented by Lead Plaintiffs and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file an appearance on your behalf on or before September 3, 2009, and must serve copies of such appearance on the attorneys listed in paragraph 54 below.

(b) If you do not wish to remain a member of the Settlement Class, you may exclude yourself from the Settlement Class by following the instructions in paragraph 52 below. Persons who exclude themselves from the Settlement Class will NOT be entitled to receive any share of the Settlement proceeds and will not be bound by the Settlement.

(c) If you object to the Settlement, or to Lead Counsel's application for fees or expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in paragraph 54 below.

51. IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU DO NOT PROPERLY EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS, YOU WILL BE BOUND BY THE SETTLEMENT, INCLUDING RELEASES, AND THE FINAL JUDGMENT OF THE COURT DISMISSING THIS ACTION AGAINST THE SETTLING DEFENDANTS. IF YOU EXCLUDE YOURSELF, YOU WILL NOT BE BOUND BY THE JUDGMENT BUT YOU WILL NOT BE ENTITLED TO ANY SHARE OF THE NET SETTLEMENT FUND.

## **XIII. EXCLUSION FROM THE SETTLEMENT**

52. Each Member of the Settlement Class shall be bound by all determinations and judgments in this Class Action concerning the Settlement, whether favorable or unfavorable, unless such Person shall mail, by first class mail, a written request for exclusion from the Settlement Class, postmarked no later than September 3, 2009, addressed to *In re Peregrine Systems, Inc. Securities Litigation Exclusions*, c/o Gilardi & Co. LLC, Claims Administrator, Post Office Box 8040, San Rafael, CA 94912-8040. No Person may be excluded from the Settlement Class after that date. In order to be valid, each such request for exclusion must set forth the name and address of the Person requesting exclusion, must state that such Person "requests exclusion from the Settlement Class in *In re Peregrine Systems, Inc. Securities Litigation*," and must be signed by such Person. Persons requesting exclusion must also provide: (1) for every purchase or acquisition of Peregrine stock during the Class Period, the date of the purchase or acquisition, the purchase or acquisition price, and the number of shares purchased or acquired; and (2) for every sale of Peregrine stock during the Class Period, the date of the sale, the sale price, and the number of shares sold. Persons requesting exclusion should indicate whether any or all of their Peregrine shares were acquired in connection with the Harbinger or Remedy mergers. Persons requesting exclusion are also requested to provide a telephone number. The request for exclusion shall not be

effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

#### **XIV. RIGHTS IN CONNECTION WITH SETTLEMENT FAIRNESS HEARING**

53. At the Settlement Fairness Hearing, the Court will determine whether finally to approve the Settlement and to dismiss the Class Action and the claims of the Settlement Class Members as against the Settling Defendants only, including a release of all claims in the PLT Action. If the Settlement is approved, an additional hearing will be held to determine whether the application of Lead Counsel for attorneys' fees and expenses shall be approved. These hearings may be adjourned from time to time by the Court without further written notice to the Settlement Class Members.

54. At the Settlement Fairness Hearing, any Settlement Class Member who has not properly submitted a Request for Exclusion from the Settlement Class may appear in person or by counsel and be heard to the extent allowed by the Court in opposition to the fairness, reasonableness and adequacy of the Settlement or the application for attorneys' fees and reimbursement of expenses; provided, however, that in no event shall any person be heard in opposition thereto and in no event shall any paper or brief submitted by any such person be accepted or considered by the Court, unless, on or before September 3, 2009, such person (a) files with the Clerk of the Court notice of such person's intention to appear, showing proof of such person's membership in the Settlement Class, and providing a statement that indicates the basis for such opposition, along with any documentation in support of such objection, and (b) simultaneously serves copies of such notice, proof, statement and documentation, together with copies of any other papers or briefs such person files with the Court, in person or by mail upon each of the following: Solomon B. Cera, Esq., Gold Bennett Cera & Sidener LLP, 595 Market Street, Suite 2300, San Francisco, CA 94105-2835; and Lead Counsel shall notify all other interested counsel.

#### **XV. FURTHER INFORMATION**

55. For a more detailed statement of the matters involved in this Class Action, reference is made to the pleadings, to the Stipulations of Settlement, to the Orders entered by the Court and to the other papers filed in the Class Action, which may be inspected at the Office of the Clerk of the Court, United States District Court, Southern District of California, 880 Front Street, Suite 4290, San Diego, CA 92101-8900, during regular business hours or which are otherwise available for viewing on the Court's website, <https://ecf.casd.uscourts.gov>, for a nominal charge.

56. Further information regarding the Settlement referred to in this Notice may also be obtained by contacting Lead Counsel: Solomon B. Cera, Esq., Gold Bennett Cera & Sidener LLP, 595 Market Street, Suite 2300, San Francisco, CA 94105, (415) 777-2230; Howard T. Longman, Esq., Stull Stull & Brody, 6 East 45th Street, New York, NY 10017, (212) 687-7230; and Lawrence D. Levit, Esq., Abraham, Fruchter & Twersky, LLP, One Penn Plaza, Suite 2805, New York, NY 10119-0165, (212) 279-5050.

#### **XVI. SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

57. If you purchased or acquired securities of Peregrine Systems, Inc. during the period from July 22, 1999 through May 3, 2002, inclusive for the beneficial interest of a person or organization other than yourself, the Court has directed that, within seven days of your receipt of this Notice, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased or acquired such Peregrine securities during such time period or (b) request additional copies of this Notice, which will be provided to you free of charge, and within seven days mail the Notice directly to the beneficial owners of Peregrine securities. If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

*In re Peregrine Systems, Inc. Securities Litigation*  
c/o Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040  
(800) 654-5763  
www.gilardi.com

PLEASE DO NOT CONTACT THE COURT.

Dated: July 10, 2009

By Order of the Court  
\_\_\_\_\_  
Clerk of the Court

**PLEASE NOTE:**

**If you previously submitted a claim form to the claims administrator, you do not need to submit another claim form to participate in these additional proposed settlements.**

*In re Peregrine Systems, Inc. Securities Litigation*  
c/o Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040

**Important Legal Document.**

**PRGN2**