

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS**

---

REID FRIEDMAN, on behalf of himself and all  
others similarly situated,

Lead Plaintiff,

vs.

PENSON WORLDWIDE, INC., PHILIP A.  
PENDERGRAFT, KEVIN W. MCALEER,  
ROGER J. ENGEMOEN, DANIEL P. SON,  
THOMAS R. JOHNSON, BDO SEIDMAN, LLP  
and BDO LLP, USA,

Defendants.

---

Case No.: 11-cv-02098-O

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION, FINAL  
APPROVAL HEARING, AND MOTION FOR ATTORNEYS' FEES  
AND REIMBURSEMENT OF EXPENSES**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

**PLEASE READ THIS NOTICE CAREFULLY!**

**THIS NOTICE EXPLAINS IMPORTANT RIGHTS YOU MAY HAVE INCLUDING YOUR POSSIBLE RECEIPT OF CASH FROM THE SETTLEMENT. YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU DO OR DO NOT ACT. IN ORDER TO RECOVER FROM THE SETTLEMENT, YOU MUST FILE A PROOF OF CLAIM AND RELEASE *POSTMARKED ON OR BEFORE* [ \_\_\_\_\_ ], 2013.**

If you purchased the publicly traded common stock of Penson Worldwide, Inc. between March 30, 2007 and August 4, 2011 (the "Settlement Class Period"), or held Penson common stock as of the record date in 2009, 2010, and 2011 (March 23, 2009, March 29, 2010, and March 1, 2011, respectively) and were entitled to vote on the election of Penson's directors, you are a member of the Settlement Class ("Settlement Class" or "Settlement Class Member") and could get a payment from the Settlement described below.<sup>1</sup>

1. **Statement of Settlement Class Members' Recovery:** This Notice has been sent to you pursuant to an Order of the United States District Court for the Northern District of Texas (the "Court") in the class action *Reid Friedman*, on behalf of himself and all others similarly situated, v. *Penson Worldwide, Inc.*, et al., Case No.: 11-cv-02098-O (the "Class Action" or "Action"). The purpose of this

---

<sup>1</sup> All capitalized terms that are not defined herein are defined in the Stipulation of Settlement dated December 28, 2012, which is available on the website for the Action at [www.\\_\\_\\_\\_\\_](http://www._____).

Notice is to inform you of the proposed Settlement of the Class Action consisting of \$6,500,000 in cash plus interest (the “Settlement Amount”). This Notice describes the rights you may have in connection with the Settlement, what steps you may take in relation to the Settlement, and provides information about the hearing that will be held by the Court to consider the fairness, reasonableness and adequacy of the Settlement. In order to receive proceeds from the Settlement, you will need to file a Proof of Claim and Release.

2. **Reasons for the Settlement:** The Settlement resolves claims against Defendants (as defined herein) in the Class Action regarding alleged violations of the federal securities laws. The Defendants deny all allegations of wrongdoing. In light of the amount of the Settlement and the immediacy of recovery to the Settlement Class Members, Lead Plaintiff, Reid Friedman (“Lead Plaintiff”) believes that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class. The Settlement provides a substantial benefit, namely \$6,500,000, as compared to the risk that a similar, smaller, or no recovery would be achieved after a trial and appeals, possibly years in the future, in which the Defendants would have the opportunity to assert defenses to the claims asserted against them. Defendants and/or their insurers will collectively pay \$6,500,000 to resolve the Class Action, with BDO contributing \$500,000 of this Settlement Amount.

3. **Estimate of Average Amount of Recovery Per Share:** Lead Plaintiff’s damages expert estimates that approximately 24,119,674 million shares of Penson common stock were purchased during the Class Period and held through a corrective disclosure and therefore were damaged pursuant to Section 10(b) of the Exchange Act. Purchasers of Penson common stock during the Class Period that held shares of Penson common stock as of the record date in 2009, 2010 and 2011 (March 23, 2009, March 29, 2010, and March 1, 2011) (making them eligible to vote on the election of Penson’s directors) “Record Dates”) and held through a corrective disclosure, were also damaged pursuant to Section 14(a) of the Exchange Act.

Separately, Lead Plaintiff’s damages expert estimates that approximately 6,268,793 shares of Penson common stock were held as of March 29, 2007, held on the Record Dates, and held through a corrective disclosure and therefore were damaged pursuant to Section 14(a) of the Exchange Act.

Under the federal securities laws, however, an investor is not entitled to multiple recoveries and thus, because there is overlap between the shares that were damaged pursuant to Sections 10(b) and 14(a), Lead Plaintiff’s damages expert has eliminated the overlap in his calculations of the estimated recovery per share.<sup>2</sup> Lead Plaintiff’s damages expert estimates that, if valid claims for all damaged shares are submitted, the average recovery per damaged share of Penson common stock will be approximately \$0.21 per share before deduction of attorneys’ fees, costs and expenses awarded by the Court and the costs of providing notice and administering the Settlement.

**Settlement Class Members should note, however, that the foregoing average recovery per damaged share of Penson common stock is only an estimate.** A Settlement Class Member’s actual recovery will depend on several things, including: (1) the number of claims filed; (2) when Settlement Class Members purchased, acquired and/or held their Penson common stock during the Class Period; and (3) whether Settlement Class Members sold their shares of Penson common stock and, if so, when. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth herein (see pages \_\_ - \_\_ below) or such other plan of allocation as may be ordered by the Court. Settlement Class Members who submit timely and valid Proofs of Claim and Releases will be the Authorized Claimants’ pro rata share of the Settlement Amount.

---

<sup>2</sup> The overlap applies only to those shares of Penson common stock that were purchased during the Class Period, held as of the Records Dates, and were still held as of the close of trading on May 9, 2011.

No payment will be made on any claim where the potential distribution amount is \$10 or less, but the Claimant will otherwise be bound by the Final Judgment (as defined below) entered by the Court.

4. **Statement of Average Amount of Damage Per Share:** Lead Plaintiff and the Defendants do not agree on the average amount of damages per share, if any, that would be recoverable if Lead Plaintiff had prevailed on each claim alleged. The issues on which the parties disagree include, but are not limited to: (a) the appropriate economic model for determining the amount by which Penson common stock was allegedly artificially inflated (if at all) during the Settlement Class Period; (b) the amount by which Penson common stock was allegedly artificially inflated (if at all) during the Settlement Class Period; (c) the various market forces influencing the trading price of Penson common stock at various times during the Settlement Class Period; (d) the extent to which external factors, such as general market conditions, influenced the trading price of Penson common stock at various times during the Settlement Class Period; (e) the extent to which the various matters that Lead Plaintiff alleged were false or misleading influenced (if at all) the trading price of Penson common stock at various times during the Settlement Class Period; (f) the extent to which the various allegedly material facts that Lead Plaintiff alleged were omitted influenced (if at all) the trading price of Penson common stock at various times during the Settlement Class Period; and (g) whether the statements allegedly made or facts allegedly omitted were actionable under the federal securities laws.

5. **Statement of Attorneys' Fees and Expenses:** Court-appointed Co-Lead Counsel for Lead Plaintiff, Kaplan Fox & Kilsheimer LLP and Schneider Wallace Cottrell Brayton Konecky LLP ("Co-Lead Counsel") have been prosecuting the Action on a wholly contingent basis since its inception in 2011, have not received any payment for their services in conducting this Action on behalf of Lead Plaintiff and the Settlement Class Members, and have not been reimbursed for their out-of-pocket expenditures. If the Settlement is approved by the Court, Lead Counsel will apply to the Court for attorneys' fees not to exceed 33 $\frac{1}{3}$ % of the Settlement proceeds and reimbursement of expenses not to exceed \$250,000 to be paid from the Settlement proceeds. If the amount requested by Lead Counsel is approved by the Court, the average cost would be approximately \$ 0.08 per share.

6. **Identification of Lead Plaintiff's Representatives:** For further information regarding this Settlement you may contact Jeffrey P. Campisi, Esq. by mail at Kaplan Fox & Kilsheimer LLP, 850 Third Avenue, New York, NY 10022, by dialing 1-800-290-1952 or (212) 687-1980, or by email: info@kaplanfox.com. DO NOT CONTACT THE COURT.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		
	<b>DATE</b>	
<b>SUBMIT A PROOF OF CLAIM AND RELEASE FORM</b>	[    ]	The only way to get a payment that results in the release of claims against the Defendants and others. (¶¶ __ - __)
<b>EXCLUDE YOURSELF</b>	[    ]	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against the Defendants with respect to the claims in this case. (¶¶ __ - __)
<b>TELL THE COURT YOUR VIEWS</b>	[    ]	Write to the Court and explain why you do not like or like the Settlement. (¶¶ __ - __)
<b>REQUEST NOTICE OF CHANGE OF PLAN OF ALLOCATION</b>	[    ]	You may request to be notified if the Plan of Allocation of the Settlement is modified in any manner, including by Court order. (¶¶ __ - __)
<b>GO TO A HEARING</b>	[    ]	Ask to speak in Court about the fairness of the

		Settlement. (¶¶ ___ - ___))
<b>DO NOTHING</b>		Get no payment. Give up your rights (release claims). Alternatively, submit a claim. (¶¶ ___ - ___))

**WHY DID I GET THIS NOTICE?**

7. You or someone in your family may have purchased the publicly traded common stock of Penson between March 30, 2007 and August 4, 2011, or that held Penson common stock as of the record date in 2009, 2010, and 2011 (March 23, 2009, March 29, 2010, and March 1, 2011, respectively) and were entitled to vote on the election of Penson’s directors. The Court sent you this Notice because, as a potential Settlement Class Member, you have a right to know about a proposed Settlement of the Class Action and your options, before the Court decides whether to approve the Settlement. A class action is a lawsuit in which one or more persons sue on behalf of all other persons who have similar claims.

8. If the Court approves the Settlement, and after any objections and appeals are resolved, a settlement administrator approved by the Court will make payments from the Settlement Fund to eligible claimants pursuant to the Settlement.

9. The Court in charge of this case is the United States District Court for the Northern District of Texas, and the case is known as Reid Friedman v. Penson Worldwide, Inc., et al., Case No.: 11-cv-02098-O. The plaintiff in this lawsuit, Mr. Friedman, was appointed Lead Plaintiff by the Court on January 19, 2012. The entities and people who have been sued are Penson Worldwide, Inc.; Philip A. Pendergraft; Kevin W. McAleer; Roger J. Engemoen, Jr.; Daniel P. Son; Thomas R. Johnson; BDO Siedman, LLP and BDO USA, LLP (collectively, the “Defendants”). The Settlement would settle and release all claims against the Defendants and will bring the Action to an end. Your interests have been represented in this lawsuit by Court-appointed Co-Lead Counsel, Kaplan Fox & Kilsheimer LLP, 850 Third Avenue, New York, NY 10022 and Schneider Wallace Cottrell Brayton Konecky LLP, 3700 Buffalo Speedway #1100, Houston, Texas 77098.

10. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of the terms of the proposed Settlement and to inform you of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement and to consider the application for attorneys’ fees and reimbursement of litigation expenses.

11. The Settlement Hearing will be held on \_\_\_\_\_, at \_\_\_\_\_ .m., before the Honorable Reed O’Connor, United States District Judge, at the United States District Court for the Northern District of Texas, 1100 Commerce Street, Room 1520, Dallas, Texas 75242-1003 (the “Final Settlement Approval Hearing”). The purpose of the Final Settlement Approval Hearing will be to determine whether (a) the Settlement for \$6,500,000 in cash, plus interest should be approved as fair, just, reasonable and adequate to Lead Plaintiff and the Settlement Class; (b) whether the proposed plan to distribute the Settlement proceeds (the “Plan of Allocation”) is fair, just, reasonable and adequate; (c) whether the application by Co-Lead Counsel for an award of attorneys’ fees and expenses should be approved; (d) whether the Class Action should be dismissed with prejudice against the Defendants; and (e) any other relief that the Court deems necessary to effectuate the terms of the Settlement.

12. The Court may adjourn or continue the Final Settlement Approval Hearing without further notice to the Settlement Class. The issuance of this Notice is not an expression of the Court’s opinion on the merits of any claim in the lawsuit, and the Court still has to decide whether to approve the

Settlement. If the Court approves the Settlement, payments will be made after appeals, if any, are resolved and after the processing of all claims. Please be patient.

**HOW DO I KNOW IF I AM PART OF THIS SETTLEMENT?**

13. By order of the Court dated \_\_\_\_\_, all persons and entities who purchased the publicly traded common stock of Penson between March 30, 2007 and August 4, 2011 (the “Class Period”), or that held Penson common stock as of the record date in 2009, 2010, and 2011 (March 23, 2009, March 29, 2010, and March 1, 2011, respectively) and were entitled to vote on the election of Penson’s directors are eligible to participate in the Settlement, with the exception of Defendants; any parent or subsidiary, present or former director, officer, or subsidiary of Penson; any entity in which any Defendant respectively has a controlling interest; and Defendants’ respective legal representatives, heirs, successors and assigns, any immediate family member of an individual defendant . Also excluded from the Settlement is any person or entity that files a request for exclusion in accordance with the requirements set forth in this Notice (¶\_\_\_\_).

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU MUST MAIL THE PROOF OF CLAIM AND RELEASE, POSTMARKED ON OR BEFORE \_\_\_\_\_ (¶¶\_\_\_\_).**

**WHAT RECOVERY DOES THE SETTLEMENT PROVIDE?**

14. The total monetary value of the Settlement is currently \$6,500,000. Attorneys’ fees and expenses, notification costs, and claim administration costs will be deducted from the Settlement Amount. The Settlement Amount minus these fees, costs, expenses, and awards (the “Distribution Amount”) shall be distributed to the Settlement Class.

15. The average expected recovery will depend on a number of factors including when and for what price Settlement Class Members purchased and/or sold their shares of Penson common stock, and the total number of shares for which timely and valid Proofs of Claim and Releases are submitted by Authorized Claimants.

**WHY IS THERE A SETTLEMENT?**

16. Under the proposed Settlement, the Court will not decide in favor of either the Lead Plaintiff or the Defendants. By agreeing to a Settlement, both the Lead Plaintiff and the Defendants respectively avoid the costs and risk of a trial, and the Settlement Class Members are compensated.

17. In light of the amount of the Settlement and the immediacy of recovery to the Settlement Class, Lead Plaintiff believes that the proposed Settlement is fair, reasonable and adequate, and in the best interests of Settlement Class Members. The Settlement provides a substantial benefit, namely \$6,500,000 in cash, plus interest, as compared to the risk that a similar, smaller, or no recovery would be achieved after a trial and appeals, possibly years in the future, in which the Defendants would have the opportunity to assert defenses to the claims asserted against them.

**WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

18. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of its claims, neither Lead Plaintiff nor the Settlement Class would recover anything from

the Defendants. Also, if the Defendants were successful in proving any of their defenses, the Settlement Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.

### **WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?**

#### **Background**

19. The claims alleged against Defendants are set forth in the Amended Class Action Complaint for Violations of Federal Securities Laws (the “Complaint”). A copy of the Complaint may be viewed at [www.](http://www.).

20. The Complaint alleges that during the Settlement Class Period, Penson was a provider of services to the financial industry with a significant margin lending business.

21. The Complaint further alleges that Defendants concealed approximately \$43 million in margin loans to several related parties (the “Related Party Margin Loans”) that were collateralized by illiquid (Retama Series B Bonds).

22. On May 9 and 12, 2011, the Penson disclosed that the Company loaned \$42.6 million on margin that was collateralized by the Retama Series B Bonds.

23. Between May 9 and May 12, 2011, the price of Penson common stock declined from a close on May 9, 2011 of \$5.45 per share, to close at \$3.12 per share, a decline of \$2.33 per share or approximately 43%.

24. On August 4, 2011, after the close of trading, Penson disclosed a write-down of \$43 million in the values of the Related Party Margin Loans and began to foreclose on the collateral (the Retama Series B Bonds).

25. On August 5, 2011, Penson shares declined \$0.49 per share or approximately 19% to close at \$2.12 per share.

#### **The Class Action**

26. On August 23, 2011, Mr. Friedman commenced the Action in the United States District Court for the Northern District of Texas.

27. On October 24, 2011, Mr. Friedman, as well as certain other members of the proposed class, separately moved pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”) to appoint a lead plaintiff and appoint lead counsel.

28. On January 19, 2012, the Court appointed Mr. Friedman as Lead Plaintiff, and appointed Kaplan Fox & Kilsheimer LLP and Schneider Wallace Cottrell Brayton Konecky LLP as Co-Lead Counsel.

29. On March 2, 2012, Lead Plaintiff served a request for production of documents on Penson, Pendergraft, and McAleer.

30. On March 23, 2012, Lead Plaintiff filed the Complaint, which alleges claims under Section 10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), as well as Rules

10b-5 and 14a-9 promulgated pursuant to the Exchange Act. A copy of the Complaint may be viewed at [www.\\_\\_\\_\\_\\_](http://www._____).

31. Starting on March 29, 2012, Lead Plaintiff served subpoenas for the production of documents on twelve nonparties.

32. On April 4, 2012, Lead Plaintiff served a request for production of documents on BDO.

33. On April 6, 2012, Defendants Penson, Pendergraft, and McAleer moved to dismiss the Complaint. Under the Exchange Act, as amended by the PSLRA, all proceedings, including discovery, were stayed by the filing of the motion to dismiss.

34. On April 20, 2012, Defendants Daniel P. Son and Roger J. Engemoen, Jr. moved to dismiss the Complaint. On April 17, 2012, Defendant BDO moved to dismiss the Complaint. On April 27, 2012, Defendant Thomas Johnson moved to dismiss.

35. On May 18, 2012, Lead Plaintiff filed a consolidated opposition memorandum of law in response to Defendants' motions to dismiss. Briefing on Defendants' motions was completed on June 1, 2012.

36. Defendants' respective motions were pending a decision by the Court when the parties reached an agreement to settle the Action.

#### **Events that Led to the Settlement**

37. On November 13, 2012, all parties participated in a mediation with the assistance of Michael D. Young, an experienced mediator affiliated with JAMS (Judicial Arbitration and Mediation Services, Inc.). During the mediation, the strengths and weaknesses of the claims alleged in the Complaint were discussed and debated.

38. After the mediation, Lead Plaintiff and the Defendants agreed to a settlement of the Action and signed a Memorandum of Understanding on December 10, 2012.

39. Following the mediation, negotiations among the parties concerning the terms of the Settlement continued until December \_\_, 2012, at which time the Stipulation was executed. A copy of the Stipulation has been filed with the Court and is also available on the internet at \_\_\_\_\_.

40. Throughout the settlement negotiations, consultants, including individuals with expertise in accounting, the estimation of damages, and market efficiency advised Lead Plaintiff and Co-Lead Counsel.

#### **WHAT ARE THE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENT?**

41. Lead Plaintiff believes that his claims have merit and that the evidence developed to date supports the claims alleged in the Complaint. However, Lead Plaintiff recognizes and acknowledges the expense and length of continued proceedings, trial and appeals. Lead Plaintiff also has taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Class Action, as Lead Plaintiff is also mindful of the inherent problems of proof under and possible defenses to the federal securities law violations, including the defenses asserted by Defendants in their respective motions to dismiss and during settlement negotiations.

42. Lead Plaintiff has further taken into account that Penson is in poor financial condition and that the Company has represented that its only significant assets are proceeds of a Director and Officer policy, which is a wasting policy that would continue to waste if this Action continued.

43. The Settlement was reached as part of arms-length negotiations before an experienced mediator concerning the parties' divergent views about the merits and value of the claims.

44. In light of the foregoing, Lead Plaintiff believes that the Settlement set forth in the Stipulation confers substantial benefits upon the Settlement Class. Based on its evaluation, Lead Plaintiff has determined that the Settlement set forth in the Stipulation is in the best interests of the Settlement Class.

#### **WHY HAVE DEFENDANTS AGREED TO THE SETTLEMENT?**

45. The Defendants have denied and continue to deny each and all of the claims and contentions alleged by the Lead Plaintiff on behalf of the Settlement Class in the Complaint. The Defendants also have denied and continue to deny, among other things, the allegations that the price of Penson common stock was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, or that any harm was caused by the conduct alleged. The Defendants believe that they fully disclosed their true opinions about Penson and made no misrepresentations of material facts.

46. Nonetheless, the Defendants have concluded that further conduct of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation in order to limit further expense, inconvenience and distraction, to dispose of the burden of protracted litigation. The Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as this litigation.

47. The Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in the Stipulation. The Defendants entered into the Stipulation without in any way acknowledging any fault, liability, or wrongdoing of any kind.

#### **HOW MUCH WILL MY PAYMENT BE? WHAT IS THE PLAN OF ALLOCATION?**

48. A "Recognized Loss Amount" or a "Recognized Gain Amount" will be calculated as set forth below. To the extent that a calculation of a Recognized Loss Amount or a Recognized Gain Amount results in a negative number, that number shall be set to zero.

49. For shares of Penson common stock either: (1) purchased between March 30, 2007 and August 4, 2011; or 2) held at the close of trading on March 29, 2007 and entitled to vote on the election of Penson's directors in 2009, 2010 and 2011:

- A. For shares sold between March 30, 2007 and May 8, 2011, the Recognized Loss shall be zero.
- B. For shares sold between May 9, 2011 and August 4, 2011, the Recognized Loss shall be that number of shares multiplied by the lesser of:
  - (1) the artificial inflation per share figure on the purchase date, as set forth in Table A, less the artificial inflation per share on the date of the date of the sale, as set forth in Table A; or



- (2) the difference between the purchase price per share and the sales price.
- C. For shares sold between August 5, 2011 and November 2, 2011, the Recognized Loss shall be the lesser of:
- (1) the artificial inflation per share figure on the purchase date, as found in Table A; or
  - (2) the difference between the purchase price per share and the average closing price of Penson common stock between August 5, 2011 and the date of sale.<sup>3</sup>
- D. For shares held at the end of trading on November 2, 2011, the Recognized Loss shall be that number of shares multiplied by the lesser of:
- (1) the artificial inflation per share figure on the purchase date, as found in Table A; or
  - (2) the difference between the purchase price per share and \$1.72.<sup>4</sup>

**Table A**

<u>Purchase or Sale Date Range</u>	<u>Artificial Inflation Per Share</u>
Prior to March 30, 2007	\$2.78
March 30, 2007 through May 9, 2011	\$2.78
May 10, 2011	\$2.43
May 11, 2011	\$1.27
May 12, 2011 through August 4, 2011	\$0.45

50. The Defendants and/or their insurers have agreed to pay \$6,500,000 in cash, plus interest. Attorneys’ fees and expenses, notification costs, any compensatory award to the Lead Plaintiff, and claims administration costs will be deducted from the Settlement Amount. The Settlement Amount minus these fees, costs, expenses and awards shall be distributed to the Settlement Class on a pro rata basis.

51. To receive a portion of the Distribution Amount, Settlement Class Members must complete a Proof of Claim and Release and mail it and all required documentation to the Settlement Administrator **postmarked on or before** \_\_\_\_\_. Settlement Class Members who do not submit acceptable Proofs of Claim and Releases will not share in the Settlement proceeds. Settlement

---

<sup>3</sup> Pursuant to Section 21(D)(e)(2) of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff’s damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.”

<sup>4</sup> Pursuant to Section 21(D)(e)(1) of the PSLRA “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated.” \$1.72 was the mean closing price of Penson common stock during the 90-day period beginning on August 5, 2011 and ending on November 2, 2011.

Class Members who do not submit either a request for exclusion or an acceptable Proof of Claim and Release will nevertheless be bound by the Settlement and the Order of Final Judgment and Dismissal (“Final Judgment”), dismissing the claims against the Defendants.

52. If a Settlement Class Member has more than one purchase or sale of Penson common stock during the Settlement Class Period, all purchases and sales shall be matched on a First In, First Out (“FIFO”) basis. Settlement Class Period sales will be matched first against any holdings at the beginning of the Class Period, and then against purchases in chronological order, beginning with the earliest purchase made during the Class Period.

53. **“Purchase/Sale” Dates:** Purchases or sales of Penson common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance or operation of law of Penson common stock during the Settlement Class Period shall not be deemed a purchase or sale of these shares of Penson common stock for the calculation of a Claimant’s Recognized Loss Amounts pursuant to the Section 10(b) calculations set forth above and such receipt or grant shall not be deemed an assignment of any claim relating to the purchase of such shares of Penson common stock, unless (i) the donor or decedent purchased such shares of Penson common stock during the Settlement Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares of Penson.

54. For purposes of calculating a Claimant’s Recognized Loss Amounts pursuant to the Section 14(a) calculations set forth above, the receipt or grant by gift, inheritance or operation of law of Penson common stock shall not be deemed an assignment of any claim relating to such shares of Penson common stock, unless (i) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares of Penson common stock.

55. **Short Sales:** With respect to Penson common stock, the date of covering a “short sale” is deemed to be the date of purchase of the stock. The date of a “short sale” is deemed to be the date of sale of Penson common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" is zero. In the event that a Claimant has an opening short position in Penson common stock, the earliest Class Period purchases shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

56. Lead Plaintiff may alter the Plan of Allocation plan set forth in paragraph \_\_ (subject to Court approval) without any further notice to Settlement Class Members, unless such Settlement Class Members expressly request notice of alteration of the Plan of Allocation. Therefore, in order to receive such notice, you must send a written request no later than \_\_\_\_\_ by contacting the Settlement Administrator as set forth below in ¶\_\_.

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

58. No person shall have any claim against Lead Counsel, the Settlement Administrator or other agent designated by Co-Lead Counsel, or any Defendant or any Defendants’ counsel based on any distribution made substantially in accordance with the Stipulation and the Plan of Allocation, or further orders of the Court.

59. The Court also may modify the Plan of Allocation without further notice to the Settlement Class.

60. To the extent that any monies remain in the Net Settlement Fund after the Settlement Administrator has caused distributions to be made to all Authorized Claimants, whether by reason of uncashed distributions or otherwise, then, after the Settlement Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distributions, any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall be re-distributed to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior distribution checks and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Co-Lead Counsel, in consultation with the Settlement Administrator, determine that additional re-distributions, after the deduction of any additional fees and expenses that would be incurred with respect to such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance in the Net Settlement Fund shall be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s), to be recommended by Co-Lead Counsel and approved by the Court.

**HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?**

61. If you fall within the Settlement Class as defined above, you will remain a Settlement Class Member unless you elect to be excluded therefrom. If you do not request to be excluded from the Settlement Class, you will be bound by any judgment entered in the Class Action whether or not you file a Proof of Claim and Release, including the dismissal with prejudice of any Released Claims (as defined in Section VII of the Proof of Claim and Release) you may possess against the Defendants under Federal law, or the law of any state relating to the claims alleged in the Complaint.

62. If you wish to remain a Settlement Class Member, you need do nothing (other than timely request and file a Proof of Claim and Release if you wish to participate in the distribution of the Settlement Amount). Your interests will be represented by Co-Lead Counsel. If you choose, you may enter an appearance individually or through your own counsel at your own expense.

**63. To participate in the distribution of the Settlement Amount, you must timely complete and return the Proof of Claim and Release form.**

64. The Proof of Claim and Release must be **postmarked on or before** \_\_\_\_\_, and mailed to the Settlement Administrator at the address set forth in ¶ \_\_\_\_. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim and Release, you will be barred from receiving any distribution from the Settlement Amount, but will in all other respects be bound by the provisions of the Stipulation and the Final Judgment.

**WHAT RIGHTS AM I GIVING UP BY AGREEING TO THE SETTLEMENT?**

65. If the Settlement is approved, the Court will enter the Final Judgment. The Final Judgment will dismiss the claims against the Defendants with prejudice and provide that Lead Plaintiff and all other Settlement Class Members, except those who validly and timely request to be excluded from the Settlement Class, shall upon the entry of the Final Judgment be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged the Defendants from all Released Claims (including Unknown Claims as defined in the Stipulation and set forth below).

66. “Released Claims” are defined as all claims, demands, rights, liabilities, and causes of action, known or unknown, whether direct, individual, or representative thereof, arising under federal, state, local or foreign statutory or common law or any other law, rule or regulation, to the fullest extent that the law permits their release, asserted or that might have been asserted by Lead Plaintiff or any member of the Settlement Class in any forum against the Released Parties arising out of, based upon, or in any way related to their purchase, sale, or holding of Penson stock during the Class Period and the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint including all claims that were or could have been asserted in the Class Action.

67. The Released Claims contemplated by this Settlement shall extend to Unknown Claims. “Unknown Claims” means any and all claims, demands, rights, liabilities, and causes of action of every nature and description which Lead Plaintiff, any member of the Settlement Class or any Defendant does not know or suspect to exist in his, her or its favor at or after the Execution Date and including, without limitation, those which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the parties hereto stipulate and agree that, upon the Effective Date, Lead Plaintiff and Defendants shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Judgment shall have waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

68. Lead Plaintiff and Defendants and the members of the Settlement Class may hereafter discover facts in addition to or different from those that any of them now know or believe to be true with respect to the subject matter of the Released Claims, or the Defendants’ Released Claims but Lead Plaintiff and Defendants shall expressly have, and each member of the Settlement Class shall be deemed to have and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims or Defendants’ Released Claims known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that 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.

69. Lead Plaintiff and Defendants acknowledge, and the members of the Settlement Class by operation of the Judgment shall be deemed to have acknowledged, that the waivers contained in this paragraph, and the inclusion of “Unknown Claims” in the definition of Released Claims and the Defendants’ Released Claims were separately bargained for and are key elements of the Settlement.

70. “Released Parties” means Defendants, and each of their immediate family members, heirs, executors, administrators, successors, and assigns; Defendants’ present, former and future employees, insurers, officers, directors, partners, attorneys, accountants, legal representatives, receivers, assigns, subrogees, trustees, heirs, beneficiaries, servants, representatives, agents, and all other Persons in privity with any of them; any Person or entity which is or was related to or affiliated with any Defendant,

or in which any Defendant has or had a controlling interest; and the present, former and future parents, subsidiaries, divisions, affiliates, predecessors, successors, employees, officers, directors, principals, partners, attorneys, accountants, assigns, and agents of all of the foregoing.

71. The Final Judgment will provide that each of the Released Parties shall release and be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever, released, relinquished, settled and discharged the Lead Plaintiff, the members of the Settlement Class and their attorneys from the Defendants' Released Claims (as defined in the Stipulation and set forth below) and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any Defendants' Released Claims against any of them directly, indirectly or in any other capacity.

72. "Defendants' Released Claims" means any and all claims, rights, or causes of action or liabilities whatsoever, whether based in federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Released Parties or any of them or the successors and assigns of any of them, or any Released Parties against the Lead Plaintiff, Settlement Class Members or their attorneys (except for claims to enforce the Settlement).

73. If the Settlement is approved, Settlement Class Members who have not requested exclusion from the Settlement Class will release all Released Claims, even if they bring, or have brought a lawsuit, arbitration or other proceeding against the Released Parties relating to the Released Claims. If you have such proceedings, you should consult legal counsel as to whether you should exclude yourself from this Settlement pursuant to the procedures set forth in ¶\_\_ below in order to preserve your rights.

**IF I DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT, HOW DO I EXCLUDE MYSELF?**

74. **You may request to be excluded from the Settlement Class.** To do so, you must mail a written request to the Settlement Administrator at: \_\_\_\_\_. The request for exclusion must: (a) state your name, address, and telephone number; (b) provide documentation reflecting all shares of Penson common stock held as of March 29, 2007 and all purchases and sales of Penson common stock made during the Settlement Class Period, including the dates, the number of shares, and price paid or received per share for each such purchase or sale; and (c) state that you wish to be excluded from the Settlement Class. **TO BE VALID, A REQUEST FOR EXCLUSION MUST STATE ALL OF THE FOREGOING INFORMATION. YOUR EXCLUSION REQUEST MUST BE RECEIVED ON OR BEFORE \_\_\_\_\_.**

75. If you submit a valid and timely request for exclusion, you shall have no rights under the Settlement, shall not share in the distribution of funds from the Settlement, and shall not be bound by the Stipulation or the Final Judgment.

76. **If you do exclude yourself from the Settlement Class, your ability to subsequently initiate a litigation, arbitration or other proceeding against the Defendants concerning the Released Claims may be impacted by the relevant statute of limitations. You should consult your own legal counsel concerning this issue.**

**WHAT PAYMENTS ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS AND THE LEAD PLAINTIFF SEEKING FOR THEIR WORK IN THIS CASE?**

77. Co-Lead Counsel have not received any payment for their services in pursuing this lawsuit on behalf of the Settlement Class, nor have they been reimbursed for their out-of-pocket expenses.

Co-Lead Counsel intend to apply to the Court for an award of attorneys' fees on its behalf not to exceed 33 1/3% of the Settlement Amount. In addition, Co-Lead Counsel intends to apply for reimbursement of litigation expenses advanced in connection with the Action in an amount not to exceed \$250,000. All such fees and expenses will be paid out of the Settlement Amount.

**ARE THERE OTHER CONDITIONS THAT MAY AFFECT  
THE SETTLEMENT OR AN AWARD THEREFROM?**

78. The Settlement is conditioned upon the occurrence of certain events. Those events include, among other things: (a) entry of the Final Judgment by the Court, as provided for in the Stipulation; (b) expiration of the time to appeal from the Final Judgment, or if an appeal is taken, a final resolution of the appeal in favor of the Final Judgment; and (c) in the event that a petition for relief is or has been filed under the Bankruptcy Code with respect to one or more of the Defendants, any required approval or authorization with respect to this Settlement, including, to the extent necessary, an order authorizing the use of insurance proceeds to fund the Settlement Amount. If, for any reason, any one of the conditions described in the Stipulation is not met, that Stipulation might be terminated and, if terminated, will become null and void, and the parties to that Stipulation will be restored to their respective positions as of the execution of the Stipulation.

79. The Penson Defendants and BDO have respective options to terminate the Settlement in the event that purchasers who collectively purchased more than a certain amount of Penson Common Stock choose to exclude themselves from the Settlement Class, as set forth in a separate confidential agreement executed among the Parties (the "Supplemental Agreement"). In the event that Penson elects to exercise its option to terminate pursuant to the Supplemental Agreement, then the Settlement shall terminate only as to Penson but not as to BDO, and in the event that BDO elects to exercise its option to terminate pursuant to the Supplemental Agreement, then the Settlement shall terminate only as to BDO but not as to Penson. Thus, if Penson but not BDO elects to terminate pursuant to the Supplemental Agreement, then this Settlement remains in effect with respect to BDO but not Penson, and if BDO but not Penson elects to terminate pursuant to the Supplemental Agreement, then this Settlement remains in effect with respect to Penson but not BDO.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE  
THE SETTLEMENT AND RELATED MATTERS? DO I HAVE TO COME TO  
THE HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE  
SETTLEMENT OR OTHER MATTERS REFERENCED IN THIS NOTICE?**

80. If you do not wish to object to the proposed Settlement, the Plan of Allocation, or the application for attorneys' fees and reimbursement of litigation expenses, you need not attend the Settlement Hearing scheduled for \_\_\_\_\_.

81. Any Settlement Class Member who has not validly and timely requested to be excluded from the Settlement Class, and who objects to any aspect of the Settlement, the Plan of Allocation, or the application for attorneys' fees, costs and expenses may appear and be heard at the Settlement Hearing. Any such Settlement Class Member must submit a written notice of objection, which must be received on or before \_\_\_\_\_, to each of the following: (i) Clerk of the Court, United States District Court for the Northern District of Texas, 1100 Commerce Street, Dallas, Texas 75242-1003; (ii) Jeffrey P. Campisi, Kaplan Fox & Kilsheimer LLP, 850 Third Avenue, New York, New York 10022 (Co-Lead Counsel for Lead Plaintiff and the proposed Class); (iii) M. Scott Barnard, Akin Gump Strauss Hauer & Feld LLP, 1700 Pacific Avenue, Suite 4100, Dallas, Texas 75201 (Counsel for the Penson Defendants); (iv) Robb L. Voyles, Baker Botts L.L.P., 2001 Ross Avenue, Suite 600, Dallas, Texas 75201 (Counsel for

BDO); and (v) Greg Weselka, Secore & Waller, L.L.P., 12222 Merit Drive, Suite 1350, Dallas, Texas 75251 (Counsel for Thomas Johnson).

82. The notice of objection must demonstrate the objecting Settlement Class Member's membership in the Settlement Class, including documentation reflecting the number of shares of Person Common Stock held at the beginning of the Settlement Class Period purchased and sold during the Settlement Class Period, and must contain a statement of the reasons for objection. Only Settlement Class Members who have submitted written notices of objection and related documentation in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise.

83. The Settlement Hearing may be delayed from time to time by the Court without further written notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Co-Lead Counsel.

84. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described herein will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the application for attorneys' fees and reimbursement of litigation expenses, and/or the proposed Plan of Allocation. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

**WHAT IF I AM A BROKER, BANK OR OTHER NOMINEE  
THAT BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?**

85. If you hold or held any Person Common Stock at the beginning of or purchased during the Settlement Class Period as nominee for a beneficial owner, then, within ten (10) days after your receive this Notice, you must either: (a) provide a list of the names and addresses of such beneficial owners to the Settlement Administrator, **preferably in an MS Excel data table, setting forth (i) title/registration; (ii) street address; (iii) city/state/zip; electronically in MS Word or WordPerfect files; or on computer-generated mailing labels (label size Avery 5162);** or (b) send a copy of this Notice by first class mail to all such beneficial owners, providing written confirmation to the Settlement Administrator of having done so. If you choose to mail the Notice yourself, you may obtain (without cost to you) as many additional copies of this document as you will need to complete the mailing by contacting the Settlement Administrator as set forth in ¶ \_\_, below.

86. Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement of **reasonable** administrative costs actually incurred in connection with forwarding the Notice and Proof of Claim and Release and which would not have been incurred but for the obligation to forward the Notice, after submission to the Settlement Administrator of appropriate documentation.

**CAN I SEE THE COURT FILE?  
WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

87. This Notice is a summary only and does not describe all of the details of the Stipulation. Nothing in this Notice can vary or supersede the terms of the Stipulation. All capitalized terms that are not defined herein are defined in the Stipulation. For full details of the matters discussed in this Notice, you may desire to review the Stipulation filed with the Court, which may be inspected during business hours, at the office of the Clerk of the Court, United States District Court for the Northern District of Texas, 1100 Commerce Street, Dallas, Texas 75242-1003 or on the internet at \_\_\_\_\_.

88. You may also review, at www.\_\_\_\_\_, the Complaint, the Stipulation, the Notice, the Proof of Claim and Release, the Order Preliminarily Approving Settlement and Scheduling Final Approval Settlement Hearing. These documents will be available on or before \_\_\_\_\_. The papers filed in support of the Settlement, and the applications for an award of attorneys' fees and expenses for Lead Counsel will be available after they are filed with the Court.

89. If you need additional copies of this Notice, or if you have a question about filing a claim, you may contact the Settlement Administrator at: \_\_\_\_\_.

**DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE**

Dated: \_\_\_\_\_

BY ORDER OF THE COURT