



**GRANTED**

**IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE**

KENNETH RICHE, On Behalf of  
Himself and All Others Similarly  
Situated,

Plaintiff,  
v.

JAMES C. PAPPAS, JOHN H.  
WALKER, DOUGLAS J. GLASPEY,  
PAUL LARKIN, LELAND "ROY"  
MINK, RANDOLPH J. HILL, and ALI  
G. HEDAYAT,

Defendants.

C.A. No. 2018-0177-JTL

**[PROPOSED] ORDER APPROVING PLAN OF ALLOCATION**

Upon Plaintiff's Motion for an Order Approving the [Proposed] Plan of Allocation, the entire matter having been considered by the Court, and for good cause shown, IT IS HEREBY ORDERED, this \_\_\_\_ day of \_\_\_\_, 2020, as follows:

1. Plaintiff's Motion for an Order Approving the [Proposed] Plan of Allocation is Granted;

## 2. **Definitions**<sup>1</sup>

- a. “Closing” means the consummation of the Merger on April 24, 2018, as of which date each outstanding share of U.S. Geothermal common stock was converted into the right to receive the \$5.45 in cash Merger Consideration.
- b. “Closing Security Position” means, for each DTC Participant, the number of shares of U.S. Geothermal common stock reflected on the DTC allocation report used by DTC to distribute the \$5.45 per share Merger Consideration on April 24, 2018.
- c. “DTC” Means the Depository Trust Company.
- d. “DTC Participants” means the DTC participants to which DTC distributed the \$5.45 per share Merger Consideration on April 24, 2018.
- e. “Eligible Class Member” means Class Members who held shares of U.S. Geothermal common stock at the Closing of the April 24, 2018 Merger and therefore received or were entitled to receive the \$5.45 Merger Consideration for the Eligible Shares; provided, however, that no Excluded Stockholder may be an Eligible Class

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the same meaning as ascribed to them in the May 14, 2020 Stipulation and Agreement of Compromise, Settlement, and Release (the “Stipulation”) executed in this action.

Member and no distribution or payment shall be made to any Excluded Stockholder.

f. “Eligible Shares” means shares of U.S. Geothermal common stock held by Eligible Class Members as of the Closing of the April 24, 2018 Merger and for which Eligible Class Members received or were entitled to receive the \$5.45 Merger Consideration; provided, however, that no Excluded Shares may be Eligible Shares and no distribution or payment shall be made on account of any Excluded Share.

g. “Eligible Share Distribution” means an amount of the Net Common Fund equal to the product of (a) the Net Common Fund and (b) a fraction, the numerator of which is the number of Eligible Shares held by such Eligible Class Member and the denominator of which is a number representing the total number of Eligible Shares owned by all Eligible Class Members.

h. “Excluded Stockholders” means Defendants James C. Pappas, John H. Walker, Douglas J. Glaspey, Paul Larkin, Leland “Roy” Mink, Randolph J. Hill, and Ali G. Hedayat, members of the immediate family of any Defendant, any entity in which a Defendant has or had a controlling interest, officers of defendants, and the

associates, affiliates, legal representatives, heirs, successors in interest, transferees and assigns of any such excluded person or entity. For the avoidance of doubt, “Excluded Stockholders” specifically includes, but it not limited to, JCP Investment Partnership, LP, JCP Investment Partners, LP, JCP Investment Holdings, LLC, JCP Investment Management, LLC, Maryanna Capital Inc., and any other entity through which any of the named Defendants indirectly or directly held U.S. Geothermal stock and/or otherwise had a controlling interest.

i. “Excluded Shares” means the shares of U.S. Geothermal common stock beneficially owned by the Excluded Stockholders as of the Closing of the April 24, 2018 Merger, as reflected by suppression letters provided pursuant to ¶2(h) of the Stipulation.

j. “Merger Consideration” means the \$5.45 in cash per share of U.S. Geothermal common stock that was paid to U.S. Geothermal stockholders in conjunction with the Merger.

k. The “Net Common Fund” means the \$6,500,000.00 Common Fund less (a) the Court-approved expenses of \$250,760.81; (b) the Court-approved fee award of \$1,875,000.00 (which includes a \$7,500.00 incentive award for Plaintiff) and (c) Administrative Costs,

which are the costs and expenses associated with retaining RG/2, providing Notice of the Settlement to the Class, administering and distributing the Common Fund and otherwise carrying out the terms of the Stipulation, the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees. As set forth in the Declaration of Tina Chiango (the Director of Claims Administration for RG/2), as of September 23, 2020, RG/2 had incurred a total of \$22,477.00 and expects to incur an additional \$16,662.00 in Administrative Costs.

1. "RG/2" means RG/2 Claims Administration LLC, the Administrator of the Settlement in this matter.

3. Within 15 days of the entry of a court order approving this Plan of Allocation, and to the extent not already provided, Defendants shall use good faith efforts to (a) provide or cause to be provided to Plaintiff's Counsel and/or RG/2 a complete list of shares held by each Defendant and the Excluded Stockholder(s) with which each Defendant is respectively affiliated and (b) execute any necessary suppression letters with respect to Excluded Shares held by each Defendant and the Excluded Stockholder(s) with which each Defendant is respectively affiliated, both as sufficient to permit the RG/2 to take appropriate steps to ensure that no

Excluded Stockholders inadvertently receive any payment from the Common Fund.

4. RG/2 shall make distributions from the Net Common Fund to Eligible Class Members in the following manner and subject to the following conditions.

5. Eligible Shares Held of Record by Cede & Co., as nominee for DTC.

With respect to Eligible Shares held of record as of the Closing by Cede & Co. (“Cede”), as nominee for DTC, RG/2 shall pay to DTC an amount equal to the Eligible Share Distribution times the number of Eligible Shares for which Cede was the record holder. DTC shall then distribute to each DTC Participant an amount equal to each DTC Participant’s Closing Security Position times the Eligible Share Distribution, using the same mechanism that DTC used to distribute the Merger Consideration and subject to payment suppression instructions with respect to shares owned by Excluded Stockholders and their Excluded Shares. The DTC Participants and their respective customers, including any intermediaries, shall then ensure payment to each Eligible Class Member of an amount equal to the Eligible Share Distribution times the Eligible Class Member’s Closing Security Position.

6. All Other Eligible Shares Held. With respect to Eligible Shares held of record as of the Closing by Eligible Class Members that held Eligible Shares other than through DTC, RG/2 shall pay to such Eligible Class Members an

amount equal to the Eligible Share Distribution times the number of Eligible Shares held by each Eligible Class Member.

7. For the avoidance of doubt, to the extent that any record owner, any DTC Participants, or their respective customers, including any intermediaries, took or permitted actions that had the effect of increasing the number of shares of U.S. Geothermal common stock entitled to payment of the \$5.45 Merger Consideration, whether through permitting naked short-selling or the cash settlement of short positions or through any other means (“Increased Merger Consideration Entitlements”), such record owners, DTC Participants, or their respective customers (including intermediaries) shall be responsible for paying to the ultimate beneficial owners of such Increased Merger Consideration Entitlements an amount equal to the Eligible Share Distribution times the number of the Increased Merger Consideration Entitlements. Increased Merger Consideration Entitlements shall not increase the number of Eligible Shares. Whether DTC, any DTC Participant, or DTC Participants’ customers are entitled to receive such funds from any such short-seller is not before this Court. However, in no event shall the payment of the Eligible Share Distributions be in any way diluted or reduced to cover amounts due as a result of any Increased Merger Shares.

8. For the avoidance of doubt, a person who acquired shares of U.S. Geothermal common stock on or before April 24, 2018 (the date the Merger

closed) but had not settled those shares at the Closing (“Non-Settled Shares”) shall be treated as an Eligible Class Member with respect to those Non-Settled Shares (except for the Excluded Shares held by the Excluded Stockholders), and a person who sold those Non-Settled Shares on or before April 24, 2018 shall not be treated as an Eligible Class Member with respect to those Non-Settled Shares.

9. For the avoidance of doubt, no payment described above shall be made (i) in respect of any Excluded Shares, (ii) to any Excluded Stockholder, or (iii) to any former stockholder of U.S. Geothermal for any shares of U.S. Geothermal common stock that such stockholder sold into the market at any time before the Closing of the April 24, 2018 Merger. In the event that any Excluded Stockholder learns that it has received payment from the Common Fund, he, she, or it shall provide reasonable notice to RG/2 and take steps reasonably requested by RG/2 to promptly return said funds.

10. With respect to common stock held of record as of the Closing by Cede, inquiries by Eligible Class Members regarding payment of the Net Common Fund should be made directly to DTC Participants, such as banks or brokerage firms, through which they beneficially owned their shares. Other than monitoring the settlement’s toll free number for two months after the distribution, RG/2’s effort will end once the Net Common Fund distributions have been made to DTC



and to Eligible Class Members that held Eligible Shares other than through DTC, as set forth above.

11. In order to encourage the prompt cashing of checks, and to avoid or reduce future expenses relating to unpaid checks, all distribution checks may bear the following notation: “CASH PROMPTLY, VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [6 MONTHS AFTER ISSUE DATE].”

12. In the event that any payment from the Net Common Fund is undeliverable or not cashed more than six months from the check’s issue date, DTC Participants and Eligible Class Members that held Eligible Shares other than through DTC shall follow their respective policies with respect to further attempted distribution or escheatment. In the event that funds remain in the Net Common Fund after the distribution (because of uncashed checks, returned payments, tax refunds, return of a payment made in error to an Excluded Stockholder, or for any other reason), then, at least six months from the date of the initial distribution, RG/2 shall determine whether it is feasible, economical, and cost-effective to conduct a second distribution of the Net Common Fund. To the extent that it is not feasible, economical, and cost-effective to conduct a second distribution of any such remaining balance in the Net Common Fund, any such remaining balance shall (after payment of any additional Notice expenses, Administrative Costs, and

taxes) be donated to an appropriate not-for-profit charitable organization or organizations serving the public interest proposed by Plaintiff and approved by the Court.

13. Payment made pursuant to this Plan of Allocation shall be final and conclusive against all Eligible Class Members and release and discharge all persons involved in the investment, administration, distribution, or taxation of the Common Fund or the Net Common Fund from any and all claims arising out of such involvement, and bar all Class Members, whether or not they receive payment from the Net Common Fund, from making any further claims against the Net Common Fund, Plaintiff, Plaintiff's Counsel, RG/2, or any other agent retained by Plaintiff or Plaintiff's Counsel in connection with the investment, administration, distribution, or taxation of the Common Fund or the Net Common Fund beyond the amounts allocated to Eligible Beneficial Owners.

14. RG/2's fees and expenses incurred in connection with the administration of the Settlement and estimated to be incurred in connection with the distribution of the Net Common Fund, as set forth in the Declaration of Tina Chiango, are approved, and Plaintiff's Counsel is authorized to direct payment out of the Common Fund to RG/2 in payment of any such outstanding fees and expenses.

15. RG/2 may destroy paper copies of all supporting documentation one year after the distribution and electronic copies of the same one year after all funds in the Net Common Fund have been distributed.

16. The Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as the Court deems appropriate.

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Vice Chancellor J. Travis Laster

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** J Travis Laster

**File & Serve**

**Transaction ID:** 65994465

**Current Date:** Oct 08, 2020

**Case Number:** 2018-0177-JTL

**Case Name:** CLOSED - CONF ORD/ Kenneth Riche, et al. v. James C. Pappas, et al.

**Court Authorizer:** J Travis Laster

/s/ Judge J Travis Laster