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21 Lead Counsel for Plaintiffs

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

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

26 Plaintiff,

27 vs.

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

Defendants.

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

CLASS ACTION

~~PROPOSED~~ ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE

AND ALL CONSOLIDATED ACTIONS.

1 WHEREAS, a consolidated class action is pending before this Court entitled *Dan Schmidt, et*
2 *al. v. Liberator Medical Holdings, Inc., et al.*, Master File No. A-15-728234-B (the “Litigation”);

3 WHEREAS, on February 21, 2018, the Court certified the following class pursuant to Rule
4 23 of the Nevada Rules of Civil Procedure:

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

12 WHEREAS, the Court-appointed Lead Plaintiffs and Class Representatives Peter K. Nagel,
13 Dr. Sidney Crain, and Dr. Lee Smith (“Plaintiffs” or “Class Representatives”) have made an
14 unopposed motion for an order preliminarily approving the settlement of this Litigation, in
15 accordance with a Stipulation of Settlement dated April 17, 2019 (the “Stipulation”), which, together
16 with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of
17 the Litigation between the Settling Parties and for dismissal of the Litigation against the Defendant
18 with prejudice upon the terms and conditions set forth therein; and the Court having read and
19 considered the Stipulation and the Exhibits annexed thereto; and

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

22 NOW, THEREFORE, IT IS HEREBY ORDERED:

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

27 2. A hearing shall be held before this Court on September 30, 2019, at 9:00 a.m. (a date
28 that is at least 110 calendar days from the date of this Order) (the “Final Approval Hearing”), before
the Honorable Elizabeth Gonzalez of the Eighth Judicial District Court of Clark County, Nevada,
200 Lewis Avenue, Las Vegas, Nevada, Courtroom 3E, to determine whether the proposed

1 Settlement is fair, reasonable, and adequate to the Class and should be approved by the Court; to
2 determine whether an Order and Final Judgment as provided in ¶1.15 of the Stipulation should be
3 entered; to determine whether the proposed Plan of Allocation should be approved; to determine the
4 amount of fees and expenses that should be awarded to Class Counsel; to hear any objections by
5 Class Members to the Settlement, Plan of Allocation and/or the award of fees and expenses to Class
6 Representatives' Counsel; and to consider such other matters the Court deems appropriate.

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

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

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

15 6. Not later than June 24, 2019 (the "Notice Date") (a date twenty-one (21) calendar
16 days after the Court signs and enters this Order), the Claims Administrator shall cause a copy of the
17 Notice and Proof of Claim and Release form, substantially in the forms annexed hereto, to be mailed
18 by First-Class Mail to all Class Members who can be identified with reasonable effort and to be
19 posted on its website at www.LiberatorSettlement.com.

20 7. Not later than July 5, 2019 (a date ten (10) calendar days after the Notice Date), the
21 Claims Administrator shall cause the Summary Notice to be published once in the national edition of
22 *The Wall Street Journal* and once over a national newswire service.

23 8. Not later than September 19, 2019 (a date seven (7) business days prior to the Final
24 Approval Hearing), Class Counsel shall serve on Defendant's counsel and file with the Court proof,
25 by affidavit or declaration, of such mailing and publishing.

26 9. Nominees who held LMH common stock for the beneficial ownership of Class
27 Members shall be requested to send the Notice and Proof of Claim and Release form to such
28 beneficial owners of LMH common stock within fifteen (15) calendar days after receipt thereof, or,

1 send a list of the names and addresses of such beneficial owners to the Claims Administrator within
2 fifteen (15) calendar days of receipt thereof, in which event the Claims Administrator shall promptly
3 mail the Notice and Proof of Claim and Release form to such beneficial owners.

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

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

20 12. Class Members who wish to participate in the Settlement shall complete and submit
21 the Proof of Claim and Release form in accordance with the instructions contained therein. Unless
22 the Court orders otherwise, all Proofs of Claim and Release must be postmarked or submitted
23 electronically no later than October 22, 2019 (a date one hundred and twenty (120) calendar days
24 from the Notice Date). Any Class Member who does not submit a Proof of Claim and Release
25 within the time provided shall be barred from sharing in the distribution of the proceeds of the Net
26 Settlement Fund, unless otherwise ordered by the Court, but shall nevertheless be bound by any final
27 judgment entered by the Court. Notwithstanding the foregoing, Class Counsel shall have the
28 discretion (but not the obligation) to accept late-submitted claims for processing by the Claims

1 Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby.
2 No person shall have any claim against the Class Representatives, Class Counsel or the Claims
3 Administrator by reason of the decision to exercise or not exercise such discretion.

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

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

17 15. Any Member of the Class may appear and object if he, she, or it has any reason why
18 the proposed Settlement of the Litigation should not be approved as fair, reasonable and adequate, or
19 why a judgment should not be entered thereon, why the Plan of Allocation should not be approved,
20 why fees and expenses should not be awarded to Class Counsel; provided, however, that no Class
21 Member or any other Person shall be heard or entitled to contest the approval of the terms and
22 conditions of the proposed Settlement, or, if approved, the judgment to be entered thereon approving
23 the same, or the order approving the Plan of Allocation, or any fees and expenses to be awarded to
24 Class Counsel, unless written objections and copies of any papers and briefs are received by Robbins
25 Geller Rudman & Dowd LLP, David Knotts, 655 West Broadway, Suite 1900, San Diego, CA
26 92101, and Akerman LLP, Brian P. Miller, Three Brickell City Centre, 98 Southeast Seventh Street,
27 Suite 1100, Miami, FL 33131, no later than September 9, 2019 (a date twenty-one (21) calendar days
28 before the Final Approval Hearing) and said objections, papers and briefs are filed with the Court, no

1 later than September 9, 2019. Any Member of the Class who does not make his, her, or its objection
2 in the manner provided for herein shall be deemed to have waived such objection and shall forever
3 be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the
4 proposed Settlement as incorporated in the Stipulation, to the Plan of Allocation, and to the Fee and
5 Expense Application, unless otherwise ordered by the Court. Attendance at the Final Approval
6 Hearing is not necessary. However, Persons wishing to be heard orally in opposition to the approval
7 of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application are required to
8 indicate in their written objection their intention to appear at the hearing. Class Members do not
9 need to appear at the Final Approval Hearing or take any other action to indicate their approval of
10 the Settlement.

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

14 17. All papers in support of the Settlement, Plan of Allocation, and any application by
15 Class Counsel for attorneys' fees and expenses shall be filed and served no later than August 26,
16 2019 (a date thirty-five (35) calendar days prior to the Final Approval Hearing) and any reply papers
17 shall be filed and served no later than September 23, 2019 (a date seven (7) calendar days prior to
18 the Final Approval Hearing).

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

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

25 20. All reasonable expenses incurred in identifying and notifying Class Members as well
26 as administering the Settlement Fund shall be paid as set forth in the Stipulation. In the event the
27 Court does not approve the Settlement, or it otherwise fails to become effective, none of the Class
28

1 Representatives nor any of Class Representatives' Counsel shall have any obligation to repay any
2 amounts actually and properly incurred or disbursed pursuant to ¶2.7 of the Stipulation.

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

19 22. All proceedings in the Litigation are stayed until further order of this Court, except as
20 may be necessary to implement the Settlement or comply with the terms of the Stipulation.

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

27 24. If the Settlement fails to become effective as defined in the Stipulation or is
28 terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as

1 expressly provided in the Stipulation, and this Order shall be null and void, of no further force or
2 effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in
3 any actions or proceedings by any person or entity against the Settling Parties, and they shall be
4 deemed to have reverted to their respective litigation positions in the Litigation as of February 4,
5 2019.

6 25. The Settling Parties agree and the Court hereby modifies the Stipulated
7 Confidentiality Agreement and Protective Order, filed with the Court on August 10, 2016 (the
8 "Protective Order") as follows: Plaintiffs and/or JMP Securities LLC ("JMP") may utilize all
9 discovery, pleadings, and filings from the Litigation in the matter captioned *Nagel v. JMP Securities*
10 *LLC*, No. CGC-18-567294 (the "California Action"), a related action pending in the Superior Court
11 of the State of California, County of San Francisco. When utilizing the discovery, pleadings, and
12 filings from the Litigation in the California Action, all documents or facts taken from documents that
13 were designated in the Litigation as "Confidential" or "Highly Confidential" (and are not publicly
14 available, including from the publicly available docket in the Litigation) must be submitted under
15 seal consistent with the applicable local rules. The 60-day time period for the return or destruction
16 of "Confidential" or "Highly Confidential" documents outlined in ¶18 of the Protective Order shall
17 not commence until the termination of the California Action. Plaintiffs' counsel shall immediately
18 advise Defendant's counsel upon the termination of the California Action.

19 IT IS SO ORDERED.

20 DATED: 3 June 2019


THE HONORABLE ELIZABETH GONZALEZ

21 Submitted by:

22 THE O'MARA LAW FIRM, P.C.


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