

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

IN RE TURBODYNE TECHNOLOGIES, INC.	)	Master File No.
SECURITIES LITIGATION	)	99 CV 00697 FMC (BQRx)
_____	)	
	)	Hon. Florence-Marie Cooper
This Document Relates to:	)	
	)	<u>CLASS ACTION</u>
ALL ACTIONS	)	
_____	)	

**NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION**

**TO: ALL PERSONS WHO PURCHASED THE COMMON STOCK OF TURBODYNE TECHNOLOGIES, INC. ("TURBODYNE") DURING THE PERIOD FROM MARCH 1, 1997 THROUGH AND INCLUDING JANUARY 22, 1999**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER (AS DEFINED BELOW), YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM POSTMARKED ON OR BEFORE DECEMBER 30, 2002. IF YOU WISH TO BE EXCLUDED FROM THE PROPOSED SETTLEMENT, YOU MUST REQUEST EXCLUSION ON OR BEFORE OCTOBER 11, 2002, OR YOU WILL BE BOUND BY THE RELEASES DISCUSSED BELOW.

This Notice has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Central District of California (the "Court"). The purpose of this Notice is to inform you of the proposed settlement of this class action litigation (the "Settlement") and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement. This Notice describes the rights you may have in connection with the Settlement and what steps you may take in relation to the Settlement and this class action litigation.

The proposed Settlement creates a fund which shall be at least \$2.9 million in cash (and which may slightly exceed that), and any interest that accrues on the fund prior to distribution. The Settlement Fund *may* reach \$7.9 million *if* Lead Plaintiffs prevail in collecting on an assignment of rights made by Defendants under one of Turbodyne's excess directors and officers liability insurance policies, which policy was issued by a presently insolvent insurer. Lead Plaintiffs and their counsel may at some point determine that the costs of pursuing the aforementioned assignment of rights exceed the benefits of pursuing the same, and abandon such efforts. Should counsel, in their professional judgment, deem this to be the case, there will be no additional notice in this regard.

Based on (1) Lead Plaintiffs' estimate of the number of shares entitled to participate in the Settlement; (2) the anticipated number of claims to be submitted by Class Members; and (3) without giving consideration to the contingent payment of the Reliance Assignment discussed above, the average distribution per share under the Settlement would be approximately \$.20 before deduction of Court-approved fees and expenses. However, your actual recovery from this fund will depend on a number of variables including the number of Claimants, the number of shares you purchased, the expense of administering the claims process, and the timing of your purchases and sales, if any.

Lead Plaintiffs and Defendants do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiffs were to have prevailed on each claim asserted. The issues on which they disagree include: (1) the appropriate economic model for determining the amount by which Turbodyne's common stock was allegedly artificially inflated (if at all) during the Class Period; (2) the amount by which Turbodyne's common stock was allegedly artificially inflated (if at all) during the Class Period; (3) the effect of various market forces influencing the trading price of Turbodyne's common stock at various times during the Class Period; (4) the extent to which external factors, such as general market conditions, influenced the trading price of Turbodyne's common stock at various times during the Class Period; (5) the extent to which the various matters that Lead Plaintiffs alleged were materially false or misleading influenced (if at all) the trading price of Turbodyne's common stock at various times during the Class Period; (6) the extent to which the various allegedly adverse material facts that Lead Plaintiffs alleged were omitted influenced (if at all) the trading price of Turbodyne's common stock at various times during the Class Period; (7) whether the statements made or facts allegedly omitted were false, material or otherwise actionable under the federal securities laws; and (8) whether Defendants acted with the requisite state of mind during the Class Period.

Lead Plaintiffs believe that the proposed Settlement is a good recovery and is in the best interests of the Class. Because of the risks associated with continuing to litigate and proceeding to trial, there was a danger that Plaintiffs would not have prevailed on any of their claims, in which case the Class would receive nothing. For example, Lead Plaintiffs faced the possibility that all or many of the claims in this case were subject to specific defenses. In addition, the amount of damages recoverable by the Class was and is challenged by Defendants. Recoverable damages in this case are limited to losses caused by conduct actionable under applicable law and, had the Litigation gone to trial, Defendants intended to assert that all or most of the losses of the Class were caused by non-actionable market, industry or general economic factors. Defendants would also assert that throughout the Class Period the uncertainties and risks associated with Turbodyne's business and financial condition were fully and adequately disclosed. In addition, even if the Class prevailed on its claims at trial, there was and is a risk that the Class would not be able to recover on these claims due to the financial condition of Turbodyne and one of its largest insurers.

Plaintiffs' counsel have not received any payment for their services in conducting this Litigation on behalf of the Lead Plaintiffs and the members of the Class, nor have they been reimbursed for their out-of-pocket expenditures. If the Settlement is approved by the Court, counsel for the Lead Plaintiffs will apply to the Court for attorneys' fees of 33-1/3% of the Settlement Fund (including any interest earned thereon) and reimbursement of out-of-pocket expenses not to exceed \$300,000, both to be paid from the Settlement Fund. If the amount requested by counsel is approved by the Court, the average cost per share would be \$.045.

This Notice is not an expression of any opinion by the Court about the merits of any of the claims or defenses asserted by any party in this Litigation or the fairness or adequacy of the proposed Settlement.

For further information regarding this Settlement you may contact: Lionel Z. Glancy, Glancy & Binkow LLP, 1801 Avenue of the Stars, Suite 311, Los Angeles, California 90067, telephone: (310) 201-9150. Please do not call any representative of Defendants.

## **I. NOTICE OF HEARING ON PROPOSED SETTLEMENT**

A settlement hearing will be held on October 28, 2002, at 10:00 a.m., before the Honorable Florence Marie Cooper, United States District Court Judge, at the United States Courthouse, Edward Roybal Center & Federal Building, 255 East Temple Street, Los Angeles, California (the "Settlement Hearing"). The purpose of the Settlement Hearing will be to determine: (1) whether the Settlement should be approved as fair, just, reasonable, and adequate to Class Members; (2) whether the proposed plan to distribute the Settlement proceeds (the "Plan of Allocation") is fair, just, reasonable, and adequate; (3) whether the application by Plaintiffs' Co-Lead Counsel for an award of attorneys' fees and reimbursement of expenses should be approved; and (4) whether the Litigation should be dismissed with prejudice. The Court may adjourn or continue the Settlement Hearing without further notice to the Class.

## **II. DEFINITIONS USED IN THIS NOTICE**

1. "Cash Payment Amount" means the amounts remaining in Defendants' primary and first excess insurance policies, which amount shall be contributed to the Settlement Fund and shall not be less than \$2.9 million.

2. "Class" means all Persons who purchased the common stock of Turbodyne (including foreign markets) during the period beginning March 1, 1997 through and including January 22, 1999. Excluded from the Class are Defendants, members of each of the immediate families of the individual Defendants, any entity in which any Defendant has or had a controlling interest, current and former directors and officers of Turbodyne and members of their immediate families, and the legal representatives, heirs, successors, or assigns of any such excluded Person or entity.

3. "Class Member" means a Person who falls within the definition of the Class as set forth in ¶1 above and who has not submitted a valid request for exclusion from the Class.

4. "Defendants" means Turbodyne, Edward Halimi, Leon Nowek and Walter Ware.

5. "Related Persons" means each of a Defendant's past or present directors, officers, employees, partners, members, principals, agents, underwriters, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants or auditors, banks or investment banks, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a controlling interest, any members of their immediate families, or any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his family.

6. "Released Claims" shall collectively mean all claims (including "Unknown Claims" as defined below), demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, whether or not concealed or hidden, asserted or that might have been asserted including, without limitation, claims for negligence, gross negligence, breach of duty of care and/or breach of duty of loyalty, fraud, breach of fiduciary duty, or violations of any state or federal statutes, rules or regulations, or those of any foreign land or jurisdiction, or any common law claims, by any Lead Plaintiff or Class Member against the Defendants (or any of them) arising out of, based upon or related to the purchase of Turbodyne common stock by any Class Member during the Class Period and the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act which were or could have been alleged in the Litigation, based upon the facts which were alleged. "Released Claims" does not include claims assigned pursuant to the Reliance Assignment.

7. "Released Persons" means each and all of the Defendants and their Related Persons.

8. "Reliance Assignment" means the assignment all of the rights and claims of each defendant under the Reliance Policy.

9. "Reliance Policy" means Turbodyne's \$5 million second excess directors and officers insurance policy with Reliance Insurance Company as successor-in-interest by merger to Reliance Insurance Company of Illinois ("Reliance"), Policy No. NDA0134732-99.

10. "Unknown Claims" means any Released Claims which any Lead Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date (as defined in the Stipulation), the Lead Plaintiffs shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived, the provisions, rights and benefits of California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Lead Plaintiffs shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of the United States, any state, any territory of the United States, or that of a foreign nation or of international law, or principle of common law which is similar, comparable and equivalent to California Civil Code §1542. Lead Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but each Lead Plaintiff shall expressly and each Class Member, upon the Effective Date, 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, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, 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. The Lead Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

### **III. THE LITIGATION**

Starting on January 22, 1999, the following class action lawsuits (the "Litigation") were filed:

- (1) *David Takeda v. Turbodyne Technologies, Inc.*, Case No. 99-CV-697 MMM (BQRx);
- (2) *Shmuel Zaks v. Turbodyne Technologies, Inc.*, Case No. 99-CV-743 MMM (BQRx);
- (3) *David Roy Linscott v. Turbodyne Technologies, Inc.*, Case No. 99-CV-933 MMM (BQRx);
- (4) *Helmut Siebert v. Turbodyne Technologies, Inc.*, Case No. 99-CV-1288 MMM (BQRx); and
- (5) *Ann Gentile v. Turbodyne Technologies, Inc.*, Case No. 99-CV-2194 MMM (BQRx).

These actions were consolidated for all pretrial purposes by Order dated May 28, 1999. The same Order appointed seven lead plaintiffs to oversee this action, and appointed the Glancy & Binkow LLP (formerly, Law Offices of Lionel Z. Glancy), Kirby McInerney & Squire, LLP and Finkelstein & Krinsk as Co-Lead Counsel for the Class. During the course of the Litigation, Plaintiffs filed three amended complaints, defendants filed two motions to dismiss and a motion to strike and Plaintiffs filed a motion for class certification.

Plaintiffs' Third Amended Consolidated Class Action Complaint, filed on or about January 27, 2001, asserted claims on behalf of all persons, other than Defendants, who purchased the common stock of Turbodyne Technologies, Inc. ("Turbodyne") between March 1, 1997 and January 22, 1999, inclusive (the "Class Period"). The Third Amended Consolidated Class Action Complaint asserted claims for violation of §§10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. Defendants in the Litigation were Turbodyne, Edward Halimi, Leon Nowek and Walter Ware.

### **IV. PRETRIAL PROCEEDINGS AND DISCOVERY IN THE LITIGATION**

Counsel for the Lead Plaintiffs have conducted a thorough investigation of the claims asserted in the Litigation. This investigation included, *inter alia*, (1) inspection and analysis of thousands of pages produced by Turbodyne; (2) consultation with experts in damages; (3) review of Turbodyne's public filings, annual reports and other public statements; (4) review of court filings, analyst reports and articles in the financial press relating to Turbodyne; and (5) research of the applicable law with respect to the claims asserted in the complaints filed in the Litigation, and the potential defenses thereto.

In Spring of 2001, Lead Plaintiffs and Defendants agreed to continue settlement negotiations with the assistance of a neutral mediator. Following a mediation session on June 13, 2001 before Antonio Piazza, Mediator, Lead Plaintiffs and Defendants reached an agreement to settle the Litigation with respect to all claims, the terms of which are described below and set forth more fully in the Stipulation.

### **V. LEAD PLAINTIFFS' CLAIMS AND THE BENEFITS OF SETTLEMENT**

Lead Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims. However, Plaintiffs' Co-Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against the Defendants through trial and through appeals. Plaintiffs' Co-Lead Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiffs' Co-Lead Counsel also are mindful of the inherent problems of proof under and possible defenses to the federal securities law violations asserted in the Litigation. Plaintiffs' Co-Lead Counsel believe that the Settlement set forth in the Stipulation confers substantial benefits upon the Class Members. Based on their evaluation, Plaintiffs' Co-Lead Counsel have determined that the Settlement set forth in the Stipulation is in the best interests of the Lead Plaintiffs and the Class Members, particularly in light of the financial condition of Turbodyne and its largest liability insurer.

### **VI. DEFENDANTS' STATEMENT AND DENIALS OF WRONGDOING AND LIABILITY**

Defendants have denied and continue to deny each and all of the claims and contentions alleged by Lead Plaintiffs in the Litigation. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also have denied and continue to deny, *inter alia*, (1) the allegations that Lead Plaintiffs or the Class have suffered damage; (2) that the price of Turbodyne common stock

was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise; (3) that the Lead Plaintiffs or the Class were harmed by the conduct alleged in the Litigation; and (4) that Defendants acted with the required state of mind to support liability.

Nonetheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Litigation. Defendants have, therefore, determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in the Stipulation.

## **VII. DEFENDANTS' INSURANCE**

During the Class Period, Defendants maintained insurance contracts which provided coverage for the claims asserted in the Litigation, including a policy with Reliance Insurance Company of Illinois ("Reliance").

On May 29, 2001, the Pennsylvania Commonwealth Court entered an order placing Reliance in rehabilitation and naming the Pennsylvania Insurance Commissioner as Rehabilitator of Reliance. On June 11, 2001, Reliance's corporate parent, Reliance Group Holdings, Inc. filed for bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of New York. On October 3, 2001, the Pennsylvania Commonwealth Court entered an order placing Reliance in liquidation, with the Commissioner being named Liquidator.

## **VIII. TERMS OF THE PROPOSED SETTLEMENT**

Defendants have paid or caused to be paid into an escrow account, pursuant to the terms of the Stipulation of Settlement dated as of February 8, 2002 (the "Stipulation"), all amounts remaining in Defendants' primary and first excess directors' and officers' insurance policies, which amount shall not be less than \$2.9 million, which has been earning and will continue to earn interest for the benefit of the Class Members. Defendants have also assigned, for the benefit of the Class, Defendants' rights under their \$5.0 million policy with Reliance. The Cash Payment Amount of up to \$2.9 million, together with the Reliance Assignment, constitutes the "Settlement Fund," which fund will be distributed to the Class pursuant to the Plan of Allocation set forth below.

Reliance has disputed Defendants' right to make the aforementioned assignment to Plaintiffs and the Class. The Settlement Fund may therefore, reach a total of \$7.9 million, but only in the event that plaintiffs are successful in collecting upon the Reliance Assignment. As noted, Reliance is in liquidation, and the amounts, if any, obtained from the Reliance Assignment will depend on the validity of the Reliance Assignment, and the outcome of the Reliance Liquidation. There can be no assurances provided as to how long it might take to collect on the Reliance Assignment, or the costs and fees or other impediments associated with such efforts. Plaintiffs' Lead Counsel, moreover, may determine in their professional judgment not to engage in further efforts to pursue or seek enforcement of the Reliance Assignment. There will be no further notice or hearing in connection with further actions or distributions relating to the Reliance Assignment.

A portion of the Settlement proceeds will be used for certain administrative expenses, including costs of printing and mailing this Notice, the cost of publishing a newspaper notice, payment of any taxes assessed against the Settlement Fund and costs associated with the processing of claims submitted. In addition, as explained below, a portion of the Settlement Fund may be awarded by the Court to Representative Plaintiffs' Counsel as attorneys' fees and for reimbursement of out-of-pocket expenses as well as reimbursement for the time and expenses of two of the Lead Plaintiffs. The balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the Plan of Allocation described below to Class Members who submit valid and timely Proof of Claim forms.

## **IX. PLAN OF ALLOCATION**

The Net Settlement Fund will be distributed to Class Members who submit valid, timely Proof of Claim forms ("Authorized Claimants") under the Plan of Allocation described below. The Plan of Allocation provides that you will be eligible to participate in the distribution of the Net Settlement Fund only if you have a net loss on all transactions in Turbodyne common stock during the Class Period.

For purposes of determining the amount an Authorized Claimant may recover under the Plan of Allocation, Plaintiffs' Co-Lead Counsel have consulted with their damages expert and the Plan of Allocation reflects an assessment of the damages that could have been recovered as well as Plaintiffs' Co-Lead Counsel's assessment of the likelihood of establishing liability.

To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive at least an amount equal to the Authorized Claimant's claim, as defined below. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

Each Authorized Claimant will be required to provide proof of his, her or its ownership position in Turbodyne common stock as of March 1, 1997 (the first day of the Class Period). Any sales of Turbodyne stock during the Class Period will first be offset against the Authorized Claimant's opening position in the stock. Remaining sales will be offset against the Authorized Claimant's purchases during the Class Period by matching the earliest subsequent sale with the earliest purchase and chronologically thereafter for purposes of the Claim calculations.

The total of all profits shall be subtracted from the total of all losses from transactions during the Class Period to determine if a Class Member has a claim. Only if a Class Member had a net loss, after all profits from transactions in Turbodyne stock during the Class Period are subtracted from all losses, will such Class Member be eligible to receive a distribution from the Net Settlement Fund.

A claim will be calculated as follows:

1. For Authorized Claimants who purchased Turbodyne shares between March 3, 1997 and August 3, 1998:
  - A. If such shares were still held as of the close of trading on July 2, 1999, the Recognized Claim on each share held shall be the difference between: (1) the purchase price (excluding commissions, fees, charges and taxes); and (2) \$1.697; provided such difference is greater than zero.<sup>1</sup>
  - B. If such shares were sold between March 3, 1997 and the close of trading on August 3, 1998, the Recognized Claim on each share shall be zero.
  - C. If such shares were sold between August 4, 1998, and the close of trading on January 21, 1999, the Recognized Claim on each share shall be the difference between: (1) the purchase price (excluding commissions, fees, charges and taxes); and (2) the sales price (excluding commissions, fees, charges and taxes), provided such difference is greater than zero.
  - D. If such shares were sold between January 22, 1999 and the close of trading on July 2, 1999, the Recognized Claim on each share shall be the difference between: (1) the purchase price (excluding commissions, fees, charges and taxes); and the greater of: (2a) the sales price (excluding commissions, fees, charges and taxes); or (2b) the cumulative average closing price as of the date of sale, if either difference is greater than zero.
2. For Authorized Claimants who purchased Turbodyne common stock between August 4, 1998 and January 21, 1999:
  - A. If such shares were still held as of the close of trading on July 2, 1999, the Recognized Claim on each share held shall be the difference between: (1) the purchase price (excluding commissions, fees, charges and taxes), and (2) \$1.697, the mean closing price of Turbodyne's stock during the 90 day period described in footnote 1, below; provided that such difference is greater than zero.
  - B. If such shares were sold between August 4, 1998 and the close of trading on January 21, 1999, the Recognized Claim on each share shall be the difference between: (1) the purchase price (excluding commissions, fees, charges and taxes); and (2) the sales price (excluding commissions, fees, charges and taxes), provided that such difference is greater than zero.
  - C. If such shares were sold between January 22, 1999 and the close of trading on July 2, 1999, the Recognized Claim on each share shall be the difference between: (1) the purchase price (excluding commissions, fees, charges and taxes); and the greater of: (2a) the sales price (excluding commissions, fees, charges and taxes); or (2b) the cumulative average closing price as of the date of sale, if either difference is greater than zero.

The date of purchase or sale is the "contract" or "trade" date as distinguished from the "settlement" date. The determination of the price paid per share and the price received per share, shall be exclusive of all commissions, taxes, fees and charges.

For Class Members who made multiple purchases or multiple sales during the Class Period, the earliest subsequent sale shall be matched with the earliest purchase and chronologically thereafter for purposes of the claim calculations.

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

#### **X. APPLICATION FOR FEES, EXPENSES AND AWARDS**

At the Settlement Hearing, Plaintiffs' Co-Lead Counsel will request the Court to award attorneys' fees of 33-1/3% of the Settlement Fund, plus reimbursement of the expenses, not to exceed \$300,000, which were advanced in connection with the Litigation, plus interest thereon.

To date, Plaintiffs' counsel have not received any payment for their services in conducting this Litigation on behalf of Plaintiffs and the Class, nor have counsel been reimbursed for their out-of-pocket expenses. The fee requested by Plaintiffs' Co-Lead Counsel would compensate Plaintiffs' counsel for their efforts in achieving the Settlement Fund for the benefit of the Class Members, and for their risk in undertaking this representation on a contingency basis.

#### **XI. ORDER CERTIFYING A CLASS AND PARTICIPATION IN THE CLASS**

Pursuant to agreement of the Parties, the Court has conditionally certified a settlement class. The Class is defined as all Persons who purchased the common stock of Turbodyne (including foreign markets) during the period beginning March 1, 1997 through and including January 22, 1999. Excluded from the Class are Defendants, members of each of the immediate families of the individual Defendants, any entity in which any Defendant has or had a controlling interest, current and former directors and officers of Turbodyne and members of their immediate families, and the legal representatives, heirs, successors, or assigns of any such excluded Person or entity.

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

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<sup>1</sup> Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, "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." The mean closing price of Turbodyne common stock during the 90-day period beginning on April 6, 1999 (the first date on which TRBD resumed trading after the end of the Class Period) and ending on July 2, 1999 was \$1.697.

If you fall within the definition of the Class, you will be a Class Member unless you elect to be excluded from the Class. If you do not request to be excluded from the Class, you will be bound by any judgment entered with respect to the Settlement in the Litigation whether or not you file a Proof of Claim.

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

**TO PARTICIPATE IN DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM AND RELEASE FORM THAT ACCOMPANIES THIS NOTICE.** The Proof of Claim and Release must be postmarked on or before December 30, 2002, and delivered to the Claims Administrator at the address below. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Stipulation and the Judgment.

You may request to be excluded from the Class. To do so, you must mail a written request stating that you wish to be excluded from the Class to:

Turbodyne Technologies, Inc. Securities Litigation  
c/o Gilardi & Co., LLC  
P.O. Box 990  
Corte Madera, CA 94976-090

The request for exclusion must state: (1) your name, address, and telephone number; and (2) all purchases and sales of Turbodyne common stock made during the Class Period, including the dates of each purchase or sale and the number of shares of Turbodyne common stock purchased or sold. **YOUR EXCLUSION REQUEST MUST BE POSTMARKED ON OR BEFORE OCTOBER 11, 2002.** 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 the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment.

If the proposed Settlement is approved, the Court will enter a Final Judgment and Order of Dismissal with Prejudice (the "Judgment"). The Judgment will dismiss the Released Claims with prejudice as to all Defendants.

The Judgment will provide that all members of the Class who do not validly and timely request to be excluded from the Class shall be deemed to have released and forever discharged all Released Claims (to the extent the Class Members have such claims) against all Released Persons.

### **XIII. THE RIGHT TO BE HEARD AT THE HEARING**

Any member of the Class who has not validly and timely requested to be excluded from the Class, and who objects to any aspect of the Settlement, the Plan of Allocation, the adequacy of representation by Plaintiffs' Co-Lead Counsel, or the application for attorneys' fees and expenses, may appear and be heard at the Settlement Hearing. Any such Person must submit and serve a written notice of objection, to be received on or before October 11, 2002, by each of the following:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
Edward Roybal Center & Federal Building  
255 East Temple Street  
Los Angeles, CA 90012

**For the Court**

GLANCY & BINKOW LLP  
LIONEL Z. GLANCY  
1801 Avenue of the Stars, Suite 311  
Los Angeles, CA 90067

**For Plaintiffs**

BROBECK, PHLEGER & HARRISON LLP  
HOWARD M. PRIVETTE  
550 South Hope Street  
Los Angeles, CA 90071

**For Defendants**

The notice of objection must demonstrate that the objecting Person is a Class Member, including the number of Turbodyne shares purchased and sold during the Class Period, and contain a statement of the reasons for objection. Only Class Members who have submitted written notices of objection in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise.

### **XIV. CONDITIONS FOR SETTLEMENT**

The Settlement is conditioned upon the occurrence of certain events described in the Stipulation. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Stipulation; and (2) expiration of the time to appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described in the Stipulation is not met, the Stipulation might be terminated and, if terminated, will become null and void, and the parties to the Stipulation will be restored to their respective positions as of June 12, 2001.

**XV. SPECIAL NOTICE TO NOMINEES**

If you hold any Turbodyne common stock purchased during the Class Period as nominee for a beneficial owner, then, within ten (10) days after you receive this Notice, you must either: (1) send a copy of this Notice and the Proof of Claim by first class mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

Turbodyne Technologies, Inc. Securities Litigation  
c/o Gilardi & Co., LLC  
P.O. Box 990  
Corte Madera, CA 94976-090

If you choose to mail the Notice and Proof of Claim yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

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

**XVI. EXAMINATION OF PAPERS**

This Notice is a summary and does not describe all of the details of the Stipulation. For full details of the matters discussed in this Notice, you may review the Stipulation filed with the Court, which may be inspected during business hours, at the office of the Clerk of the Court, Central District of California, Edward Roybal Center & Federal Building, 255 East Temple Street, Los Angeles, California.

If you have any questions about the Settlement of the Litigation, you may contact Plaintiffs' Co-Lead Counsel by writing:

GLANCY & BINKOW LLP  
LIONEL Z. GLANCY  
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For Plaintiffs

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

Dated: August 15, 2002

BY ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE CENTRAL  
DISTRICT OF CALIFORNIA