

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

FILED  
AUG 15 2004  
BY: *[Signature]*  
CLERK

MARVIN E. SIKES, )  
 ) Case No. 3:00 CV 0004  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CRAIG A. WINN, THOMAS MORGAN, ) FINAL JUDGMENT AND ORDER  
 REX SCATENA and DEAN M. JOHNSON, )  
 )  
 Defendants. )

On August 13, 2004, this Court held a hearing to determine whether this Litigation should be certified as a class action pursuant to Federal Rule of Civil Procedure 23; whether the a proposed settlement of this Litigation is fair, just and reasonable; whether judgment should be entered as provided in ¶1.10 of the Stipulation of Settlement, dated March 18, 2004 (the “Stipulation”); whether the proposed Plan of Allocation should be approved; and whether Plaintiffs’ Counsel’s application for and award of fees and expenses should be granted. Notice having been given to the Class as required in the Court’s May 20, 2004 Order, it is hereby ORDERED that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation;
2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Class Members.
3. Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court finds that the Litigation may proceed as a class action on behalf of all person who purchased Value America common stock in the April 7, 1999 initial public offering, or at

any time in the open market between April 7, 1999 and October 6, 1999 (the “Class”). Excluded from the Class are Defendants, members of the immediate family of each of the Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any of the Defendants have a controlling interest, and the legal representatives, heirs, successors, predecessors in interest, affiliates or assigns of any of the Defendants. Also excluded from the Class are persons or entities, if any, who requested exclusion as identified in paragraph 6, below. The Court further finds and determines that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members of the Class is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the named representatives are typical of the claims of the Class they seek to represent; (d) Plaintiffs will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. The Court finds that the method of dissemination of both the published and the individual notices, as previously approved by the Court, to all Class Members who could be identified through reasonable effort, was adequate and reasonable and constituted the best notice practicable under the circumstances. The Court also finds that the notice, as given, complied with the requirements of Rule 23 of

the Federal Rules of Civil Procedure, satisfied the requirements of due process, Section 27(a)(7) of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7), and any other applicable law, and constituted due and sufficient notice of the matters set forth therein.

5. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the settlement as set forth in the Stipulation and finds that said settlement is, in all respects, fair, just, reasonable and adequate to the Class.
6. Except as to any individual claim of those Persons (identified in Schedule A, attached hereto) who have validly and timely requested exclusion from the Settlement Class, the Litigation and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as to Plaintiff and the other Class Members, as against each and all of the Released Persons. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.
7. The Court finds that the Stipulation and settlement are fair, just, reasonable and adequate as to each of the Parties, and that the Stipulation and settlement are hereby finally approved in all respects, and the Parties are hereby directed to perform its terms.
8. Upon the Effective Date hereof, Plaintiffs shall, and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released persons, whether or not such Class Member executes and delivers the Proof of Claim and Release.
9. All Class Members are hereby forever barred and enjoined from prosecuting any

of the Released Claims against any of the Released Persons.

10. Upon the Effective Date hereto, each of the Defendants shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Class Members and Plaintiffs' Counsel from all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Litigation or the Released Claims.
11. The method for the allocation of the Net Settlement Fund, as set forth in the notice, is approved as fair and reasonable. Plaintiffs' Lead Counsel and the Claims Administrator are directed to administer of the Plan of Allocation in accordance with its terms and provisions. The Court further declares that any appeal of the approval of the Plan of Distribution or the award of attorneys' fees or costs shall not prevent the Settlement from becoming effective.
12. Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement is an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants of their respective Related Persons. Defendants and/or their respective Related Parties may file the Stipulation and/or the Judgment from this action in any other action brought against them in order to support a defense or counterclaim based on principals of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.
13. Without affecting the finality of this Judgment in any way, this Court hereby

retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest and expenses in the Litigation; and (d) all parties hereto for the purpose of construing, enforcing and administering the Stipulation.

14. In the event that the settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants or their Insurance Carrier, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.
15. Plaintiffs' Counsel in the action are hereby awarded attorneys' fees amounting to 25 % of the Settlement Fund.<sup>1</sup> Plaintiffs' Counsel are further awarded reimbursement of expenses in the amount of \$149,538.57, plus interest on such expenses at the same rate as earned by the Settlement Fund from the date such expenses are awarded to the date they are actually paid. The foregoing award of fees and expenses shall be paid out of, and not in addition to, the Settlement Fund at the time and in the manner provided in the Settlement Agreement, and shall be turned over to Lead Counsel as provided in the Stipulation. Any and all allocations of attorneys' fees and expenses shall be allocated among Plaintiffs'

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<sup>1</sup> The Court explains the basis for this fee award in the accompanying Memorandum Opinion.

counsel at the direction of Plaintiffs' Lead Counsel at their discretion, who shall apportion the fees and expenses based upon their assessment, in their sole discretion, of the respective contributions to the litigation made by each counsel.

It is so Ordered.

The Clerk of the Court is directed to send a copy of this Order to all parties, and is further directed to strike this case from the docket.

ENTERED: *Norman E. Mean*  
U.S. District Judge  
*Aug 20, 2004*  
Date

# **SCHEDULE A**

SATISH YADAV  
117 VIRGINIA STREET  
WESTFIELD, NJ 07090

JULY 2, 2004

PHONE 908 232 6777

VALUE AMERICA, INC.  
SECURITIES LITIGATION  
C/O BERDON CLAIMS ADMIN. LLC  
P.O. BOX 9014  
JERICHO, NY 11753-8914

TO WHOM THIS MAY CONCERN:

REGARDING CIVIL ACTION NO: 3:00CV-0004 / MARVIN E SIXES  
V. CRAIG A. WINN, THOMAS MORGAN, REX SCATENA & DEAN M. JOHNSON

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I do not wish to be included in the Settlement Class in the above mentioned litigation and do not wish to participate in the proposed settlement. This letter is a request to exclude me from all proceedings arising out of the above mentioned litigation.

I had purchased 20 shares of Value America on April 8, 1999 and sold 20 shares of Value America on June 4, 1999. The purchase price per share was \$58.25 and the selling price was \$16.50 per share.

Any questions/concerns may be addressed to me at the above address.

Thank You,  
Sincerely,



**CHARLTON CHAN  
65 COLBORNE STREET  
GODERICH, ONT  
CANADA  
N7A 2V8**

July 16, 2004

Dear sir/madam,

Re: Value America, Inc. Securities Litigation  
c/o Berdon Claims Administration LLC  
P.O. Box 9014  
Jericho, NY 11753-8914  
Civil Action No. 3:00CV-0004

Name: Charlton Chan  
Address: 65 Colborne Street, Goderich, Ontario, Canada, N7A 2V8  
Phone: 519 524 4330  
Number of shares: one hundred (100)

Please be advised that I do not wish to participate in the proposed settlement of Civil Action No. 3:00CV-0004. I would like my name removed from the Settlement Class.

Thank you.

Sincerely,

  
CHARLTON CHAN