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E-FILED 06/22/09

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JERRY MICHAEL CRAFTON,
Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

POWERWAVE TECHNOLOGIES,
INC.; BRUCE C. EDWARDS;
RONALD J. BUSCHUR and
KEVIN T. MICHAELS,

Defendant.

Case No. SACV-07-0065-PSG (MLGx)

CLASS ACTION

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING
FOR NOTICE**

1 THIS MATTER having been presented to the Court, pursuant to the Stipulation
2 and Agreement of Settlement dated May 14, 2009 (“Stipulation”) by Plaintiffs’ Co-
3 Lead Counsel and counsel for Defendants, who seek preliminary approval of the
4 settlement to which the parties have agreed, authorization to disseminate Notice to
5 the Settlement Class, approval of the form and content thereof, and the scheduling of
6 a final hearing on the fairness and adequacy of the proposed settlement and the Court
7 having considered said application and any opposition thereto, it is hereby
8 ORDERED, as follows:
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12 1. All capitalized terms used herein having the meanings defined in the
13 Stipulation:

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15 2. The Court preliminarily approves the Stipulation and the settlement set
16 forth therein, subject to further consideration at the Settlement Fairness Hearing
17 described below.

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19 3. A hearing (the “Settlement Fairness Hearing”) pursuant to Federal Rule
20 of Civil Procedure 23(e) is hereby scheduled to be held before the Court on October
21 19, 2009 at 2:30 p.m. for the following purposes:

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23 (a) to determine whether the proposed Settlement on the terms and
24 conditions provided for in the Stipulation is fair, reasonable, and adequate, and
25 should be approved by the Court;

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27 (b) to determine whether the Final Order and Judgment as provided
28 under the Stipulation should be entered dismissing the Litigation, and to determine

1 whether the release by the Settlement Class of the Settled Claims, as set forth in the
2 Stipulation, should be provided to the Released Parties;

3 (c) to determine whether the proposed Plan of Allocation for the
4 proceeds of the Settlement is fair and reasonable, and should be approved by the
5 Court;
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7 (d) to consider Plaintiffs' Co-Lead Counsel's application for an award
8 of attorneys' fees and reimbursement of expenses and the application of Lead
9 Plaintiff for reimbursement for expenses expended (including lost time) in
10 representing the Settlement Class; and
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12 (e) to rule upon such other matters as the Court may deem
13 appropriate. The Court may reschedule or adjourn the Settlement Fairness Hearing
14 without further notice to the Members of the Settlement Class.
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17 4. For purposes of Settlement only, pursuant to Federal Rules of Civil
18 Procedure 23(a) and (b), the Court hereby preliminarily certifies a Settlement Class
19 consisting of all Persons who purchased or otherwise acquired the common stock of
20 Powerwave Technologies Inc. ("Powerwave" or the "Company") between May 2,
21 2005 and November 2, 2006, inclusive (the "Settlement Class Period"), held shares
22 purchased during the Settlement Class Period through the close of trading on
23 November 2, 2006 and were damaged thereby (the "Settlement Class"). Excluded
24 from the Settlement Class are the Defendants, any entity in which any Defendant or
25 any excluded person has or had a controlling ownership interest, the current and
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1 former officers and directors of Powerwave, members of their immediate families,
2 and the legal affiliates, representatives, heirs, controlling persons, successors, and
3 predecessors in interest or assigns of any such excluded party. Also excluded from
4 the Settlement Class are those Persons who timely and validly request exclusion from
5 the Settlement Class pursuant to the Notice. The Court conditionally certifies Lead
6 Plaintiff John Both as the Settlement Class Representative and Plaintiffs' Co-Lead
7 Counsel, The Brualdi Law Firm, P.C., and Weiss & Lurie, as counsel for the
8 Settlement Class.
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11 5. The Court reserves the right to approve the settlement with or without
12 modification and with or without further notice of any kind. The Court further
13 reserves the right to enter its Final Order and Judgment approving the Stipulation and
14 dismissing the First Amended Consolidated Class Action Complaint on the merits
15 and with prejudice regardless of whether it has approved the Plan of Allocation or
16 awarded attorneys' fees and expenses.
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19 6. With respect to the Settlement Class, this Court preliminarily finds for
20 purposes of effectuating this settlement that: (a) the Members of the Settlement Class
21 are so numerous that joinder of all Settlement Class Members in the Litigation is
22 impracticable; (b) there are questions of law and fact common to the Settlement Class
23 which predominate over any individual questions; (c) the claims of the Lead Plaintiff
24 are typical of the claims of the Settlement Class; (d) the Lead Plaintiff and Plaintiffs'
25 Co-Lead Counsel have fairly and adequately represented and protected the interests
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1 of all of the Settlement Class Members; and (e) a class action is superior to other
2 available methods for the fair and efficient adjudication of the controversy,
3 considering: (i) the interests of the Members of the Settlement Class in individually
4 controlling the prosecution of the separate actions; (ii) the extent and nature of any
5 litigation concerning the controversy already commenced by Members of the
6 Settlement Class; (iii) the desirability or undesirability of continuing the litigation of
7 these claims in this particular forum; and (iv) the difficulties likely to be encountered
8 in the management of the Litigation.
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11 7. The Court approves the form, substance and requirements of the Notice,
12 the Proof of Claim and Release form and Summary Notice, annexed hereto as
13 Exhibits A-1 through A-3, respectively, and finds that the mailing and distribution of
14 the Notice and publishing the Summary Notice substantially in the manner and form
15 set forth in §§8-10 of this Order meet the requirements of Federal Rule of Civil
16 Procedure 23, §21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-
17 4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995 and due
18 process and is the best notice practicable under the circumstances and shall constitute
19 due and sufficient notice to all Persons entitled thereto.
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23 8. The Court approves the appointment of Berdon Claims Administration
24 LLC as the Claims Administrator. The Claims Administrator shall cause the Notice
25 and the Proof of Claim, substantially in the forms annexed hereto, to be mailed, by
26 first class mail, postage prepaid, on or before August 12, 2009, to all Settlement Class
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1 Members who can be identified with reasonable effort. No later than ten (10) days
2 before the date on which the Notice and the Proof of Claim must be mailed,
3 Powerwave or its transfer agent shall provide the Claims Administrator with a list
4 containing the names and addresses of all record holders of Powerwave common
5 stock who purchased or acquired their Powerwave common stock during the
6 Settlement Class Period (the "List"). Defendants and/or their transfer agent shall bear
7 all costs or expenses associated with providing the Claims Administrator with the
8 List. The List shall be provided to the Claims Administrator in electronic format
9 (ASCII, Microsoft Excel or comma delimited text). The Claims Administrator shall
10 use reasonable efforts to give notice to nominee purchasers, such as brokerage firms
11 and other persons or entities who purchased Powerwave common stock during the
12 Settlement Class Period as record owners but not as beneficial owners. Nominee
13 purchasers are directed, within seven (7) days of receipt of their Notice, (a) to provide
14 the Claims Administrator with lists of the names and addresses of the beneficial
15 owners, and the Claims Administrator is ordered to send the Notice and Proof of
16 Claim promptly to such identified beneficial owners, or (b) to request additional
17 copies of the Notice and Proof of Claim from the Claims Administrator and within
18 seven (7) days of receipt of the copies of the Notices and Proof of Claim forms from
19 the Claims Administrator to mail the Notice and Proof of Claim to the beneficial
20 owners. Nominee purchasers who elect to send the Notice and Proof of Claim to
21 their beneficial owners shall send a statement to the Claims Administrator confirming
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1 that the mailing was made as directed. Additional copies of the Notice shall be made
2 available to any record holder requesting such for the purpose of distribution to
3 beneficial owners, and such record holders shall be reimbursed from the Settlement
4 Fund, after receipt by the Claims Administrator of proper documentation, for the
5 reasonable expense of sending the Notices and Proofs of Claim to beneficial owners
6 which expenses would not have been incurred except for the sending of such Notice,
7 subject to further order of this Court with respect to any dispute concerning such
8 compensation. Plaintiffs' Co-Lead Counsel shall, at or before the Settlement Fairness
9 Hearing, file with the Court proof of mailing of the Notice and Proof of Claim.
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13 9. The Court approves the form of Summary Notice of the proposed
14 settlement of this Litigation in substantially the form and content annexed hereto as
15 Exhibit A-3 (the "Summary Notice") and directs that Plaintiffs' Co-Lead Counsel
16 shall cause the Summary Notice to be published on two (2) days over *Business Wire*
17 on the tenth and twentieth days (or the first business day after each such date if such
18 day falls on a weekend or holiday) after the mailing of the Notice. Plaintiffs' Co-
19 Lead Counsel shall, at or before the Settlement Fairness Hearing, file with the Court
20 proof of publication of the Summary Notice.
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24 10. In order to be entitled to participate in the Settlement Fund, in the event
25 the settlement is effected in accordance with the terms and conditions set forth in the
26 Stipulation, each Settlement Class Member shall take the following actions and be
27 subject to the following conditions:
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1 (a) A properly executed Proof of Claim (the "Proof of Claim"),
2 substantially in the form attached hereto as Exhibit A-2, must be submitted to the
3 Claims Administrator, at the Post Office Box indicated in the Notice, postmarked not
4 later than November 4, 2009. Such deadline may be further extended by Court
5 Order. Each Proof of Claim shall be deemed to have been submitted when
6 postmarked (if properly addressed and mailed by first class mail, postage prepaid)
7 provided such Proof of Claim is actually received prior to the motion for an order of
8 the Court approving distribution of the Settlement Fund. Any Proof of Claim
9 submitted in any other manner shall be deemed to have been submitted when it was
10 actually received at the address designated in the Notice.
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14 (b) The Proof of Claim submitted by each Class Member must satisfy
15 the following conditions: (i) it must be properly completed, signed and submitted in a
16 timely manner in accordance with the provisions of the preceding subparagraph; (ii) it
17 must be accompanied by adequate supporting documentation as specified in the Proof
18 of Claim and Release and as reasonably available to the Authorized Claimant for the
19 transactions reported therein, in the form of broker confirmation slips, broker account
20 statements, an authorized statement from the broker containing the transactional
21 information found in a broker confirmation slip, or such other documentation as is
22 deemed adequate by Plaintiffs' Co-Lead Counsel; (iii) if the person executing the
23 Proof of Claim is acting in a representative capacity, a certification of his current
24 authority to act on behalf of the Class Member must be included in the Proof of
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1 Claim; and (iv) the Proof of Claim must be complete and contain no material
2 deletions or modifications of any of the printed matter contained therein and must be
3 signed under penalty of perjury.
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5 (c) Any Settlement Class Member who does not timely submit a
6 Proof of Claim within the time provided for shall be barred from sharing in the
7 distribution of the proceeds of the Settlement Fund, unless otherwise ordered by the
8 Court. Notwithstanding the foregoing, Plaintiffs' Co-Lead Counsel may, in their
9 discretion, accept late-submitted claims for processing by the Claims Administrator
10 so long as distribution of the Net Settlement Fund is not materially delayed thereby.
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12 (d) As part of the Proof of Claim, each Settlement Class Member
13 shall submit to the jurisdiction of the Court with respect to the claim submitted, and
14 shall (subject to effectuation of the Settlement) release all Settled Claims as provided
15 in the Stipulation.
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18 11. Settlement Class Members shall be bound by all determinations and
19 judgments in this Litigation, whether favorable or unfavorable, unless such persons
20 request exclusion from the Settlement Class. The persons and entities who request
21 exclusion from the Settlement Class will be excluded from the Settlement Class and
22 shall not be entitled to submit any Proof of Claim forms and shall not be entitled to
23 receive any payment out of the Net Settlement Fund as described in the Stipulation
24 and in the Notice. To request exclusion from the Settlement Class, a putative
25 Settlement Class Member must send a letter, postmarked no later than October 5,
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1 2009, sent to the Claims Administrator, Berdon Claims Administration LLC, P.O.
2 Box 9014, Jericho, New York 11753-8914. For a request for exclusion to be valid,
3 the putative Settlement Class Member's request for exclusion must include the
4 Settlement Class Member's name, current address, and daytime or evening telephone
5 numbers, the dates of all such Settlement Class Member's purchases and/or sales of
6 Powerwave common stock during the Settlement Class Period; the number of shares
7 purchased and/or sold on each such date, the prices paid and/or received for all such
8 shares on each such date, and a clear and unambiguous statement that such putative
9 Settlement Class Member wishes to be excluded from the Settlement Class. No
10 further opportunity to request exclusion will be given in this Litigation.
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14 12. To retract or withdraw a prior request for exclusion, a Settlement Class
15 Member must provide to the Claims Administrator no later than October 15, 2009 a
16 written notice stating his or her desire to retract or withdraw the request for exclusion
17 previously mailed, and must include the Settlement Class Member's name, address
18 and signature. Requests to retract or withdraw a request for exclusion may be sent by
19 regular or overnight mail or by fax.
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22 13. The Court will consider comments and/or objections to the settlement,
23 the Plan of Allocation, or the award of attorneys' fees and reimbursement of expenses
24 to Plaintiffs' Lead Counsel or the award to Lead Plaintiff only if such comments or
25 objections and any supporting papers are filed in writing with the Clerk of the Court,
26 United States District Court for the Central District of California, Western Division,
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1 Roybal Federal Building and U.S. Courthouse, 255 East Temple Street, Los Angeles,
2 California 90012, and copies of all such papers are served by hand or first class mail,
3 on or before October 5, 2009, upon each of the following: Richard B. Brualdi, Esq.,
4 The Brualdi Law Firm, P.C., 29 Broadway, Suite 2400, New York, New York 10006
5 and Jordan Lurie, Esq., Weiss & Lurie, 10940 Wilshire Boulevard, Suite 2300, Los
6 Angeles, California 90024 on behalf of the Lead Plaintiff and the Settlement Class;
7 and Amy Jane Longo, Esq., O'Melveny & Myers LLP, 400 South Hope Street, Los
8 Angeles, California 90071 on behalf of the Defendants. Attendance at the hearing is
9 not necessary; however, persons wishing to be heard orally in opposition to the
10 approval of the settlement, the Plan of Allocation, the request for attorneys' fees and
11 expenses and/or the Lead Plaintiff award, are required to indicate in their written
12 objection their intention to appear at the hearing. Persons who intend to object to the
13 Settlement, the Plan of Allocation, and/or counsel's application for an award of
14 attorneys' fees and expenses, and/or the Lead Plaintiff award, and desire to present
15 evidence at the Settlement Fairness Hearing must include in their written objections
16 the identity of any witnesses they may call to testify and exhibits they intend to
17 introduce into evidence at the Settlement Fairness Hearing. Class Members do not
18 need to appear at the hearing or take any other action to indicate their approval. Any
19 member of the Settlement Class may enter an appearance in the Litigation, at their
20 own expense, individually or through counsel of their own choice. If they do not
21 enter an appearance, they will be represented by Plaintiffs' Co-Lead Counsel.
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1 14. Any Settlement Class Member who does not object to the settlement
2 and/or the Plan of Allocation, Plaintiffs' Co-Lead Counsel's application for an award
3 of attorneys' fees and reimbursement of litigation expenses, or the Lead Plaintiff
4 reimbursement award, in the manner prescribed in the Notice shall be deemed to have
5 waived such objection and shall forever be foreclosed from making any objection to
6 the fairness, adequacy or reasonableness of the proposed settlement, the Judgment to
7 be entered approving the settlement, the Plan of Allocation, the application by
8 Plaintiffs' Co-Lead Counsel for an award of attorneys' fees and reimbursement of
9 expenses and/or the application by the Lead Plaintiff for reimbursement for expenses
10 directly related to his representation of the Settlement Class.
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14 15. Pending final determination of whether the settlement should be
15 approved, Lead Plaintiff and all other Settlement Class Members, and anyone who
16 acts or purports to act on their behalf, shall not institute, commence or prosecute any
17 action which asserts Settled Claims against any Released Party.
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19 16. As provided in the Stipulation, the Claims Administrator may take the
20 reasonable fees and costs associated with giving notice to the Settlement Class and
21 the review of claims and administration of the settlement out of the Settlement Fund
22 without further order of the Court.
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25 17. All funds held by the Escrow Agent shall be deemed and considered to
26 be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the
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1 Court, until such time as such funds shall be distributed pursuant to the Stipulation
2 and/or further order(s) of the Court.

3 18. All papers in support of the settlement, the Plan of Allocation, any
4 application by Plaintiffs' Co-Lead Counsel for attorneys' fees and expenses and any
5 application for a reimbursement award to the Lead Plaintiff shall be filed and served
6 no later than October 13, 2009.
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8 19. Neither Defendants nor their Related Parties shall have any
9 responsibility for the Plan of Allocation or any application for attorneys' fees or
10 expenses submitted by Plaintiffs' Co-Lead Counsel and such matters will be
11 considered separately from the fairness, reasonableness and adequacy of the
12 settlement.
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14 20. At or after the Settlement Fairness Hearing, the Court shall determine
15 whether the Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel, any
16 application for attorneys' fees or expenses and any application for a reimbursement
17 award to the Lead Plaintiff shall be approved.
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19 21. All reasonable expenses incurred in identifying and notifying Settlement
20 Class Members, as well as administering the Settlement Fund, shall be paid as set
21 forth in the Stipulation.
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23 22. Neither the Stipulation, nor any of its terms or provisions, nor any of the
24 negotiations or proceedings connected with it, shall be construed as an admission or
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1 concession by Defendants of the truth of any of the allegations in the Litigation, or
2 any liability, fault or wrongdoing of any kind.

3 23. The Court reserves the right to adjourn the date of the Settlement
4 Fairness Hearing without further notice to Members of the Settlement Class and
5 retains jurisdiction to consider all further applications arising out of or connected with
6 the proposed settlement. The Court may approve the settlement, with such
7 modifications as may be agreed to by the Settling Parties, if appropriate, without
8 further notice to the Settlement Class.
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10 24. If the settlement is terminated because any specified condition to the
11 settlement set forth in the Stipulation is not satisfied then, in such event, the
12 Stipulation, including any amendment(s) thereof, and this Preliminary Order shall be
13 null and void, of no further force or effect, and without prejudice to any party, and
14 may not be introduced as evidence or referred to in any actions or proceedings by any
15 person or entity, and each party shall be restored to his, her or its respective position
16 as it existed immediately before execution of the Stipulation.
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18 25. The Court retains exclusive jurisdiction over the Litigation to consider
19 all further matters arising out of or connected with the settlement.
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21 IT IS SO ORDERED

22 Dated: 06/22/, 2009

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25 _____
26 HONORABLE PHILIP S. GUTIERREZ
27 UNITED STATES DISTRICT JUDGE
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