

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

In re: GENTIVA SECURITIES LITIGATION

Case No. 10-CV-05064 (ADS)(SIL)

ECF CASE

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT,  
FINAL APPROVAL HEARING, AND MOTION FOR ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES**

*A Federal Court authorized this Notice.*

*This is not a solicitation from a lawyer.*

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by a class action lawsuit pending in this Court (the "Action") if you purchased or otherwise acquired Gentiva Securities (as defined in paragraph 1 below) from July 31, 2008 to October 4, 2011, inclusive (the "Settlement Class Period").

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiff, Los Angeles City Employees' Retirement System ("Lead Plaintiff" or "LACERS"), on behalf of itself and the Settlement Class (defined below), have reached a proposed settlement of the Action with Defendant Ronald A. Malone ("Malone") and former Defendants Gentiva Health Services, Inc. ("Gentiva" or the "Company"), H. Anthony Strange ("Strange"), John R. Potapchuk ("Potapchuk") and Eric R. Slusser ("Slusser"), for a total of \$6.5 million in cash that will resolve all claims in the Action (the "Settlement").

**This Notice explains important rights you may have, including your possible receipt of cash from the Settlement. Your legal rights will be affected whether or not you act. Please read this Notice carefully and in its entirety!**

1. **Description of the Action and Settlement Class:** This Notice relates to the pendency and proposed settlement of a class action lawsuit against Malone, and, formerly, Gentiva, Strange, Potapchuk, and Slusser (collectively, the "Settling Defendants"). The "Settling Parties" refer to (i) Lead Plaintiff, on behalf of itself and the Settlement Class Members, and (ii) the Settling Defendants. The proposed Settlement, if approved by the Court, will settle certain claims of the Settlement Class.

2. **Description of the Settlement Class:** The Court has preliminarily certified a Settlement Class of all Persons who purchased or otherwise acquired Gentiva publicly traded common stock ("Gentiva Securities" or "Securities") during the Settlement Class Period of July 31, 2008 to October 4, 2011, inclusive, and allegedly suffered damages as a result. A "Person" means an individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, as well as each of their spouses, heirs, predecessors, successors, representatives, agents, trustees, estates, administrators, executors or assignees.

3. **Statement of the Settlement Class's Recovery:** Subject to Court approval and, as described more fully below, Lead Plaintiff, on behalf of itself and the Settlement Class, has agreed to settle all Released Claims (as defined in paragraph 39 below) against the Released Persons (as defined in paragraph 40 below) in exchange for a settlement payment of \$6,500,000.00 in cash (the "Settlement Amount") to be deposited into an interest-bearing escrow account (the Settlement Amount, plus the interest that will be accrued, is referred to in this Notice as the "Settlement Fund"). The Net Settlement Fund (the Settlement Fund less Taxes, Notice and Administration Costs, and attorneys' fees and certain Litigation Expenses awarded to Lead Counsel) will be distributed in accordance with a plan of allocation (the "Plan of Allocation") to be approved by the Court and which will determine how the Net Settlement Fund shall be allocated to the Members of the Settlement Class. The proposed Plan of Allocation is included in this Notice and may be modified by the Court without further notice.

4. **Statement of Average Amount of Recovery Per Security:** The Settlement Fund consists of \$6,500,000.00 in cash, plus interest earned. Your recovery will depend on the number of Securities you purchased or otherwise acquired, when and if you sold, and the timing and amount of those transactions. It will also depend on the number of valid Claim Forms that Members of the Settlement Class submit and the amount of such claims. Assuming that all of the investors who purchased or otherwise acquired the Securities during the Settlement Class Period participate in the Settlement, Lead Counsel estimates that the estimated average distribution will be approximately

\$0.20 per alleged damaged share, before the deduction of Court-approved fees and Litigation Expenses, as described below, and the Notice and Administration Costs. Historically, less than all eligible investors submit claims, resulting in higher average distributions per alleged damaged share.

5. **Statement of the Parties' Position on Damages:** The Settling Defendants deny all claims of wrongdoing, that they are liable to Lead Plaintiff and/or the Settlement Class or that Lead Plaintiff or other Members of the Settlement Class suffered any injury. Moreover, the parties do not agree on the amount of recoverable damages or on the average amount of damages per Security that would be recoverable if Lead Plaintiff was to prevail on any of its claims. Other issues on which the two sides disagree include, but are not limited to: (1) whether the statements made or facts allegedly omitted were material, false or misleading; and (2) whether any of the Settling Defendants are otherwise liable under the securities laws for those statements or omissions.

6. **Statement of Attorneys' Fees and Expenses Sought:** Lead Counsel will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 8% of the Settlement Amount, plus interest earned at the same rate and for the same period as earned by the Settlement Fund. In addition, Lead Counsel also will apply for the reimbursement of certain Litigation Expenses paid or incurred in connection with the prosecution and resolution of the Action in an amount not to exceed \$345,000.00, plus interest earned at the same rate and for the same period as earned by the Settlement Fund. Litigation Expenses may also include reimbursement of the expenses of Lead Plaintiff in an amount of up to \$1,000.00 in accordance with 15 U.S.C. § 78u-4(a)(4). Assuming that all of the investors who purchased or otherwise acquired the Securities during the Settlement Class Period participate in the Settlement, and if the Court approves Lead Counsel's fee and Litigation Expense application, Lead Counsel estimates that the average cost will be approximately \$0.02 per alleged damaged share.

7. **Identification of Attorney Representatives:** Lead Plaintiff and the Settlement Class are being represented by Court-appointed Lead Counsel Frederic S. Fox and Joel B. Strauss of Kaplan Fox & Kilsheimer LLP. Any questions regarding the Settlement should be directed to Mr. Strauss at Kaplan Fox & Kilsheimer LLP, 850 Third Avenue, 14<sup>th</sup> Floor, New York, NY 10022, (212) 687-1980, mail@kaplanfox.com.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>REMAIN A MEMBER OF THE SETTLEMENT CLASS</b>	This is the only way to receive a payment. If you wish to obtain a payment as a Member of the Settlement Class, you will need to file a claim form (the "Claim Form"), which is included with this Notice, postmarked no later than August 25, 2015.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN AUGUST 21, 2015.</b>	Receive no payment pursuant to this Settlement. This is the only option that allows you to pursue other litigation against any Released Person relating to the claims being released in connection with the Settlement.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN AUGUST 21, 2015.</b>	Write to the Court and explain why you do not like the Settlement, the proposed Plan of Allocation or the request for attorneys' fees and reimbursement of Litigation Expenses. You cannot object to the Settlement unless you are a Member of the Settlement Class and do not validly exclude yourself.
<b>IF YOU PLAN TO GO TO THE HEARING ON SEPTEMBER 11, 2015, AT 9:00 A.M., YOU MUST FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN AUGUST 21, 2015.</b>	Ask to speak in Court about the fairness of the Settlement, the proposed Plan of Allocation or the request for attorneys' fees and reimbursement of Litigation Expenses.
<b>DO NOTHING.</b>	Receive no payment, remain a Settlement Class Member, give up your rights and be bound by the Final Judgment and Order of Dismissal with Prejudice entered by the Court if it approves the Settlement, including, without limitation, the release of the Released Claims.

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## WHY DID I GET THIS NOTICE?

8. This Notice is being sent to you pursuant to an Order of the United States District Court for the Eastern District of New York (the “Court”) because you or someone in your family may have purchased or otherwise acquired Gentiva Securities during the Settlement Class Period. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement of this case. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court approves the Settlement, a claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. In this Action, the Court has appointed the Los Angeles City Employees’ Retirement System as Lead Plaintiff under a federal law governing lawsuits such as this one, and approved Lead Plaintiff’s selection of the law firm of Kaplan Fox & Kilsheimer LLP (“Lead Counsel”) to serve as Lead Counsel in the Action. The Settlement Class representative is the Lead Plaintiff. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together. Once the Settlement Class is certified, the Court must resolve all issues on behalf of the Settlement Class Members, except for any Persons who choose to exclude themselves from the Settlement Class. (For more information on excluding yourself from the Settlement Class, please read “What If I Do Not Want To Be A Part Of The Settlement? How Do I Exclude Myself?” located below.)

10. The Court in charge of this case is the United States District Court for the Eastern District of New York, and the case is known as *In re Gentiva Securities Litigation*. The Judge presiding over this case is the Honorable Arthur D. Spatt, Senior United States District Judge. The people who are suing are called plaintiffs, and those who are being sued are called defendants. In this case, the main plaintiff is referred to as the Lead Plaintiff, on behalf of itself and the Settlement Class, and the Settling Defendants are Gentiva, Malone, Strange, Potapchuk and Slusser.

11. This Notice explains the Action, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to receive them. The purpose of this Notice is to inform you of this case, that it is a class action, how you might be affected and how to exclude yourself from the Settlement Class if you wish to do so. It also is being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the proposed Settlement, the fairness and reasonableness of the proposed Plan of Allocation, and the application by Lead Counsel for attorneys’ fees and reimbursement of Litigation Expenses (the “Final Approval Hearing”).

12. The Final Approval Hearing will be held on September 11, 2015, at 9:00 a.m., before the Honorable Arthur D. Spatt, at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Courtroom 1020, Central Islip, New York 11722 to determine:

- whether the Court should grant final certification of the Settlement Class solely for purposes of the Settlement;
- whether the proposed Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class and should be approved by the Court;
- whether the Released Claims against the Settling Defendants and their related parties should be dismissed with prejudice and fully and finally released by Lead Plaintiff and the Settlement Class as set forth in the Stipulation of Settlement entered into by the Settling Parties (the “Stipulation”);
- whether the proposed Plan of Allocation is fair and reasonable and should be approved by the Court; and
- whether Lead Counsel’s request for an award of attorneys’ fees and reimbursement of Litigation Expenses should be approved by the Court.

13. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments to Authorized Claimants will be made after appeals, if any, are resolved, and after the completion of all claims processing. Please be patient.

## WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

14. Beginning on November 2, 2010, five putative shareholder class action complaints were filed in the United States District Court for the Eastern District of New York, asserting violations of the federal securities laws: *Endress v. Gentiva Health Servs., Inc., et al.*, Case No. 10-cv-05064-ADS; *Cement Masons & Plasterers Joint Pension Trust v. Gentiva Health Servs., Inc., et al.*, Case No. 11-cv-04433; *Int'l Union of Operating Engineers Pension Fund of Eastern Penn. and Del. v. Gentiva Health Servs., Inc., et al.*, Case No. 11-cv-04906; *Ark. Teacher Retirement Sys. v. Gentiva Health Servs., Inc., et al.*, Case No. 11-cv-05126; and *Dahlgard v. Gentiva Health Servs., Inc., et al.*, Case No. 11-cv-05199. On November 2, 2011, the Court consolidated civil actions 11-cv-04433, 11-cv-04906, 11-cv-05126, and 11-cv-05199 under the caption *In re Gentiva Securities Litigation*, Case No. 10-cv-05064-ADS. The Court also set a deadline of January 2, 2012 (which was later extended to January 3, 2012) for all motions by any putative class member seeking to be appointed lead plaintiff.

15. By Order dated January 27, 2012, the Court: (i) appointed LACERS as Lead Plaintiff for a putative class of all purchasers of Gentiva securities between July 31, 2008 and October 4, 2011, inclusive, pursuant to §21D(a)(3)(B) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §78u-4(a)(3)(B); and (ii) appointed Kaplan Fox & Kilsheimer LLP (“Kaplan Fox”) as lead counsel (“Lead Counsel”).

16. On April 16, 2012, Lead Plaintiff filed the Consolidated Class Action Complaint (the “Consolidated Complaint”). The Consolidated Complaint asserted claims against the Settling Defendants under Section 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) on behalf of a class of persons who purchased or otherwise acquired Gentiva securities between July 31, 2008 and October 4, 2011, inclusive. The Consolidated Complaint also asserted claims under Sections 11 and 15 of the Securities Act of 1933 (the “Securities Act”).

17. On June 15, 2012, the Settling Defendants moved to dismiss the Consolidated Complaint pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4(b) (the “PSLRA”). On August 14, 2012, Lead Plaintiff filed its opposition to such motion. On September 28, 2012, the Settling Defendants filed a reply brief in further support of their motion.

18. On March 25, 2013, the Court granted the Settling Defendants’ motion to dismiss in its entirety. Lead Plaintiff’s Securities Act claims were dismissed with prejudice. With respect to Lead Plaintiff’s Exchange Act claims, the Court granted Lead Plaintiff leave to amend those allegations solely with respect to the Section 10(b) element of scienter.

19. On May 10, 2013, in accordance with the Court’s March 25 Order, Lead Plaintiff filed the First Consolidated Amended Class Action Complaint (the “Amended Consolidated Complaint”). The Amended Consolidated Complaint asserted the same claims against the Settling Defendants as the Consolidated Complaint, although the Securities Act claims were included “without modification from the manner in which they were previously asserted . . . for the sole and exclusive purpose of preserving the rights of the Lead Plaintiff and the proposed class.” Amended Consolidated Complaint at 2.

20. On June 24, 2013, the Settling Defendants filed a motion to dismiss the Amended Consolidated Complaint pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure and the PSLRA, which motion Lead Plaintiff opposed on August 8, 2013. On September 9, 2013, the Settling Defendants filed a reply brief in further support of their motion.

21. On September 19, 2013, the Court granted in part and denied in part the Settling Defendants’ motion to dismiss. The Court dismissed all claims asserted against Strange and Slusser. With respect to Gentiva, Potapchuk, and Malone, the Court (i) dismissed the Exchange Act claims to the extent Lead Plaintiff sought to establish scienter based on a theory of “conscious misbehavior and recklessness;” and (ii) denied the motion to dismiss to the extent Lead Plaintiff sought to establish scienter based on a theory of “motive and opportunity.”

22. On October 3, 2013, Gentiva, Potapchuk and Malone moved for reconsideration of the Court’s September 19 Order (the “Motion for Reconsideration”). On December 10, 2013, the Court granted in part and denied in part the Motion for Reconsideration. Specifically, the Court dismissed all of the remaining claims against Potapchuk and Gentiva, but allowed the remaining claims against Malone to proceed.

23. On January 9, 2014, Malone filed his Answer to the Amended Consolidated Complaint, denying its material allegations and alleging affirmative defenses thereto.

24. On January 28, 2014, Lead Plaintiff moved for entry of judgment under Rule 54(b) of the Federal Rules of Civil Procedure. The Settling Defendants filed an opposition to that motion on February 14, 2014. On March 3, 2014, the Court granted in part and denied in part the motion for entry of judgment. Subsequent thereto, discovery commenced, including the production of documents by Malone, Lead Plaintiff and third parties.

25. On October 17, 2014, Lead Plaintiff filed a Motion for Class Certification.

26. On November 24, 2014, the Settling Parties participated in a mediation session before the Hon. Layn R. Phillips, former United States District Judge. The Settling Parties did not reach a settlement at the November 24 session. On December 4, 2014, after further mediated discussions, the Settling Parties reached an agreement-in-principle to settle the Action on the terms and conditions set forth herein, which agreement was subsequently memorialized in a preliminary term sheet dated December 10, 2014.

27. Lead Counsel has conducted extensive discovery relating to the claims and the underlying events and transactions alleged in the Action. Lead Counsel has analyzed evidence adduced in discovery, including analyzing a substantial volume of documents from the Settling Defendants and third parties, and has researched the applicable law with respect to the claims of Lead Plaintiff and the Settlement Class against the Settling Defendants, as well as the potential defenses thereto.

28. Lead Plaintiff, on behalf of itself and all other Class Members, and the Settling Defendants, agree that the Settlement Amount to be paid and the other terms of the Settlement set forth herein were negotiated at arm's-length and in good faith and reflect a Settlement that was reached voluntarily after consultation with experienced legal counsel.

29. On April 7, 2015, the Court preliminarily approved the Settlement, preliminarily certified the Settlement Class for settlement purposes only, authorized this Notice to be sent to potential members of the Settlement Class, and scheduled the Final Approval Hearing to consider whether to grant final approval of the Settlement.

#### **HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?**

30. If you are a Member of the Settlement Class, you are subject to the Settlement unless you timely request to be excluded. The Settlement Class consists of all Persons who purchased or otherwise acquired Gentiva Securities (as defined above) during the Settlement Class Period of July 31, 2008 to October 4, 2011, inclusive, and suffered alleged damages as a result. Excluded from the Settlement Class are: (i) Gentiva and the Individual Defendants; (ii) members of the immediate family of any of the Individual Defendants; (iii) any person who was an officer or director of Gentiva during the Settlement Class Period; (iv) any firm, trust, corporation, officer, or other entity in which any Individual Defendant has or had a controlling interest; and (v) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. Also excluded from the Settlement Class are any Persons who otherwise satisfy the above requirements for membership in the Settlement Class, but who exclude themselves by submitting a valid request for exclusion in accordance with the requirements set forth in the Notice (*see* "What If I Do Not Want To Participate In The Settlement Class And The Settlement? How Do I Exclude Myself?" below).

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU ARE ELIGIBLE TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU WISH TO BE POTENTIALLY ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT, YOU MUST SUBMIT THE ENCLOSED CLAIM FORM POSTMARKED NO LATER THAN AUGUST 25, 2015.**

#### **WHAT ARE THE SETTLING PARTIES' REASONS FOR THE SETTLEMENT?**

31. Lead Plaintiff and Lead Counsel believe that the claims asserted against the Settling Defendants have merit. Lead Plaintiff and Lead Counsel recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the Settling Defendants through trial and appeals, as well as the difficulties in establishing liability. Lead Plaintiff and Lead Counsel have considered the uncertain outcome and trial and appellate risk in complex lawsuits like this one.

32. In light of the amount of the Settlement and the immediacy of recovery to the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit now, namely \$6,500,000.00 (less the various deductions described in this Notice), as compared to the risk that the claims would produce a similar, smaller, or no recovery, after summary judgment, trial and appeals, possibly years in the future.

33. The Settling Defendants have denied and continue to deny (i) all of the claims alleged by Lead Plaintiff on behalf of itself and the Settlement Class, including all claims in the complaints referenced above; (ii) all allegations of wrongdoing, fault, liability or damages to Lead Plaintiff and the Settlement Class; and (iii) that they have committed any act or omission giving rise to any liability or violation of law, including the federal securities laws. The Settling Defendants believe they acted at all times properly, in good faith, and consistent with their legal duties and obligations. Although the Settling Defendants believe that the claims in the Action lack merit and that they ultimately would prevail at summary judgment or at trial, to eliminate the significant burden, expense and distraction of further litigation, the Settling Defendants wish to settle and resolve the Action on the terms and conditions set forth in the Stipulation and to put the claims to rest finally and forever without in any way acknowledging any wrongdoing, fault, liability or damages to Lead Plaintiff or the other Members of the Settlement Class.

### **WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

34. If there were no Settlement, and if Lead Plaintiff failed to establish any essential legal or factual element of its claims, neither Lead Plaintiff nor the Settlement Class would recover anything from the Settling Defendants. Also, if the sole remaining defendant, Malone, were to be successful in proving any of his defenses, the Settlement Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.

### **HOW MUCH WILL MY PAYMENT BE?**

35. Appendix A to this Notice explains the Plan of Allocation of the Net Settlement Fund among Authorized Claimants, as proposed by Lead Plaintiff. The Court may modify the Plan of Allocation, or enter a different plan of allocation, without further notice to the Settlement Class.

### **WHAT RIGHTS AM I GIVING UP BY AGREEING TO THE SETTLEMENT?**

36. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims asserted against the Settling Defendants in the Action and will provide that Lead Plaintiff and each of the other Settlement Class Members, for themselves and on behalf of each of their respective spouses, heirs, executors, beneficiaries, administrators, successors, assigns, and any other Person claiming (now or in the future) through or on behalf of any of them directly or indirectly, regardless of whether such Lead Plaintiff or Settlement Class Member ever seeks or obtains by any means (including, without limitation, by submitting a Claim to the Claims Administrator) any distribution from the Net Settlement Fund, (i) shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever released, relinquished, waived, discharged and dismissed each and all of the Released Claims (including Unknown Claims) against each and all of the Released Persons; (ii) shall have covenanted not to sue any Released Person with respect to any Released Claim except to enforce the releases and other terms and conditions contained in the Stipulation or the Judgment entered pursuant thereto; and (iii) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, intervening in, participating in (as a class member or otherwise) (except as a witness compelled by subpoena or court order and no remuneration is received for such action(s)), or receiving any benefits or other relief, from any action, suit, cause of action, arbitration, claim, demand or other proceeding, in any jurisdiction, whether in the United States or elsewhere, on their own or in a representative capacity, that is based upon, arises out of or relates to any and all of the Released Claims against any and all of the Released Persons. The foregoing provision shall not apply to any Person who independently would be a member of the Settlement Class and timely excludes himself, herself or itself.

37. The Judgment will also provide that, in accordance with 15 U.S.C. § 78u-4(f)(7)(A), upon the Effective Date, except as provided in paragraph 38 below, any and all Persons are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting or asserting any and all claims for contribution or indemnity (or any other claim when the alleged injury to that Person is that Person’s actual or threatened liability to the Settlement Class or a Settlement Class Member in the Action) based upon, relating to or arising out of the Released Claims, against each and every one of the Released Persons, whether arising under state, federal, common

or foreign law, as claims, cross-claims, counterclaims or third-party claims, in this Action or a separate action, in this Court, any federal or state court, or in any other court, arbitration proceeding, administrative proceeding or other forum, whether in the United States or elsewhere; and, except as provided in paragraph 38, the Released Persons are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting or asserting any and all claims for contribution or indemnity (or any other claim when the alleged injury to the Released Person is that Released Person's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Action) based upon, relating to or arising out of the Released Claims, against any Person, other than a Person whose liability to the Settlement Class has been extinguished pursuant to the Settlement and the Judgment, whether arising under state, federal, common or foreign law, as claims, cross-claims, counterclaims or third-party claims, in this Action or a separate action, in this Court, any federal or state court, or in any other court, arbitration proceeding, administrative proceeding or other forum, whether in the United States or elsewhere.

38. Notwithstanding paragraph 37 above, and for the avoidance of doubt, nothing in the Judgment shall (i) bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation, the Settlement, the Preliminary Approval Order, or the Judgment; or (ii) bar any action by the Released Persons to enforce the protections from liability granted to them under the Stipulation.

39. "Released Claims" means, collectively, any and all claims (including, without limitation, Unknown Claims), rights, actions, issues, controversies, causes of action, duties, obligations, demands, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every kind, nature and description, including both known claims and unknown claims, whether arising under federal, state or foreign law, or statutory, common or administrative law, or any other law, rule or regulation, whether asserted as claims, cross-claims, counterclaims or third party claims, whether fixed or contingent, choate or inchoate, accrued or not accrued, matured or unmatured, liquidated or un-liquidated, perfected or unperfected, whether class or individual in nature, that previously existed, currently exist, exist as of the date of the Court approval of the Settlement or that may arise in the future, that Lead Plaintiff or any Settlement Class Member asserted in the Amended Consolidated Complaint (or any of the original complaints, including the Consolidated Complaint) or could have asserted in the Action or in any other action or in any forum (including, without limitation, any federal or state court, or in any other court, arbitration proceeding, administrative agency or other forum, in the United States or elsewhere) that in any way arise out of, are based upon, relate to or concern the claims, allegations, transactions, facts, circumstances, events, acts, disclosures, statements, representations, omissions or failures to act alleged, set forth, referred to, involved in, or which could have been raised in the Action or the Amended Consolidated Complaint (or any of the original complaints, including the Consolidated Complaint), and that in any way arise out of, are based upon, relate to or concern the purchase, acquisition, disposition or sale of, or other transaction in, Gentiva Securities during the Settlement Class Period (as defined above), including, without limitation, claims that arise out of or relate to any disclosures (including in financial statements), United States Securities and Exchange Commission filings, press releases, investor calls, registration statements, offering memoranda, web postings, presentations or any other statements made by the Settling Defendants during the Settlement Class Period. Notwithstanding the description of Released Claims above, it is understood that former employees of Gentiva who are otherwise members of the Settlement Class and who have filed actions currently pending against Gentiva independent of this Action do not release those separate, non-securities fraud claims as a result of this Settlement. Released Claims also do not include claims to enforce the Settlement.

40. "Released Persons" means, collectively, each and all of the following: (a) each and every Settling Defendant; (b) the Settling Defendants' respective present and former parents, affiliates, subsidiaries, divisions, general partners and limited partners, successors-in-interest, including, without limitation, Kindred Healthcare Inc., its subsidiaries and affiliates, and any Person in which any Settling Defendant has or had a controlling interest; and (c) the present and former members of the immediate family, heirs, principals, trustees, trusts, executors, administrators, predecessors, successors, assigns, members, agents, subsidiaries, employees, officers, managers, directors, general partners, limited partners, bankers, attorneys, accountants, auditors, representatives, estates, divisions, advisors, estate managers, indemnifiers, insurers and reinsurers of each of the Persons listed in subparts (a) and (b) of this definition.

41. "Unknown Claims" means, collectively, any and all claims that Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims, and any claims that any Settling Defendant does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons' Claims, which, if known by him, her or it, might have affected his, her or its decision to enter into this Settlement with and release of the Released Persons (or Lead Plaintiff, its counsel or other Settlement Class Members, as appropriate), or might have affected his, her or its decision not to object to this Settlement or not exclude himself, herself or itself from the Settlement Class. Unknown Claims include, without limitation, those claims in which some or all of the facts composing the claim may be unsuspected, undisclosed, concealed or hidden. With respect to any and all Released Claims and Released Persons' Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and the Settling Defendants shall expressly waive and



relinquish, and each Settlement Class Member shall be deemed to have, and by operation of law and of the Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principal or common law or of international law, that is similar, comparable or equivalent in effect to 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 or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

It is understood that Lead Plaintiff and the other Settlement Class Members, or any of them, may hereafter discover facts in addition to or different from those that he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims (including Unknown Claims), but Lead Plaintiff shall expressly fully, finally and forever discharge, settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of law and of the Judgment shall have, expressly fully, finally and forever discharged, settled and released any and all Released Claims against the Released Persons, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that 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 that is negligent, grossly negligent, reckless, deliberately reckless or 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. Lead Plaintiff and the Settling Defendants acknowledge, and the Settlement Class Members by operation of law and of the Judgment shall be deemed to have acknowledged, that the foregoing waiver of Unknown Claims (and the inclusion of “Unknown Claims” in the definition of Released Claims and Released Persons’ Claims) was separately bargained for and is a material element of the Settlement.

42. The Judgment also will provide that upon the Effective Date, the Settling Defendants, for themselves and on behalf of their respective spouses, heirs, executors, beneficiaries, administrators, successors, assigns and any other Person claiming (now or in the future) through or on behalf of any of them directly or indirectly, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever released, relinquished, waived, discharged and dismissed each and all of the Released Persons’ Claims against (i) Lead Plaintiff in the Action, and its respective attorneys, and all other Settlement Class Members, the members of each Settlement Class Member’s immediate family, any entity in which any member of any Settlement Class Member’s immediate family has or had a controlling interest (directly or indirectly), any estate or trust of which any Settlement Class Member is the settlor or which is for the benefit of any Settlement Class Member and/or members of his or her family, and (ii) each and all of their respective past, present and future heirs, executors, administrators, predecessors, successors, assigns, employees, agents, affiliates, analysts, assignees, associates, attorneys, auditors, coinsurers, commercial bank lenders, consultants, controlling shareholders, directors, divisions, domestic partners, employers, financial advisors, general or limited partners, general or limited partnerships, insurers, investment advisors, investment bankers, investment banks, joint ventures and joint venturers, managers, marital communities, members, officers, parents, personal or legal representatives, principals, reinsurers, shareholders, spouses, subsidiaries (foreign or domestic), trustees, underwriters and retained professionals, in their respective capacities as such.

43. “Released Persons’ Claims” means all claims and causes of action of every nature and description, whether known or Unknown, whether arising under federal, state, common or foreign law, that the Released Persons could have asserted against any of Lead Plaintiff, Lead Counsel or any Settlement Class Member that arise out of or relate in any way to the institution, prosecution, or settlement of the Released Claims against Defendants, except for claims relating to the enforcement of the Settlement.

## **WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?**

44. Lead Counsel has not received any payment for its services in pursuing claims against Defendants on behalf of the Settlement Class, nor has Lead Counsel been reimbursed for its out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel intends to apply to the Court for an award of attorneys’ fees from the Settlement Fund in an amount not to exceed 8% of the Settlement Amount, plus interest at the same rate and for the same time period as earned by the Settlement Fund. At the same time, Lead Counsel also intends to apply for the reimbursement of certain Litigation Expenses in an amount not to exceed \$345,000.00 plus interest at the same rate and for the same time period as earned by the Settlement Fund. Litigation Expenses may also include reimbursement of the expenses of Lead Plaintiff in an amount of up to \$1,000.00 in accordance with 15 U.S.C. § 78u-4(a)(4). The sums approved by the Court will be paid from the Settlement Fund. Members of the Settlement Class are not personally liable for the payment of these sums.

## HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

45. If you purchased Gentiva Securities during the Settlement Class Period, and you are not excluded by the definition of the Settlement Class and you do not timely and validly elect to exclude yourself from the Settlement Class, then you are a Member of the Settlement Class and you will be bound by the proposed Settlement if the Court approves it, and by any judgment or determination of the Court affecting the Settlement Class. If you are a Member of the Settlement Class and wish to establish your potential eligibility to share in the Net Settlement Fund, you must submit a Claim Form and supporting documentation to the Claims Administrator. A Claim Form is included with this Notice, or you may go to the website maintained by the Claims Administrator for the Settlement to request that a Claim Form be mailed to you. The website is [www.gentivasecuritieslitigation.com](http://www.gentivasecuritieslitigation.com). You may also request a Claim Form by calling toll-free 888-593-7570 or e-mailing [info@gentivasecuritieslitigation.com](mailto:info@gentivasecuritieslitigation.com). Copies of the Claim Form can also be downloaded at [www.gentivasecuritieslitigation.com](http://www.gentivasecuritieslitigation.com) or from Lead Counsel's website at [www.kaplanfox.com](http://www.kaplanfox.com). Those who exclude themselves from the Settlement Class, and those who do not submit timely and valid Claim Forms with adequate supporting documentation, will not be eligible to share in the Settlement. If you are a Member of the Settlement Class and do not exclude yourself from the Settlement Class, regardless of whether you submit a Claim Form to the Claims Administrator, or seek any distribution from the Net Settlement Funds by any other means, and regardless of whether you obtain any distribution from the Net Settlement Fund, you will be bound by the proposed Settlement if the Court approves it, and by any judgment or determination of the Court affecting the Settlement Class, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Person concerning any Released Claim (including any Unknown Claim). Please retain all records of your ownership of, or transactions in, the Securities during the Settlement Class Period, as they may be needed to document your Claim.

46. As a Settlement Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her notice of appearance on the attorneys listed in the section below entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?"

47. If you do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section below entitled, "What If I Do Not Want To Be A Part Of The Settlement Class And The Settlement? How Do I Exclude Myself?"

48. If you wish to object to the Settlement or any of its terms, the proposed Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section below entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?"

## WHAT IF I DO NOT WANT TO BE A PART OF THE SETTLEMENT? HOW DO I EXCLUDE MYSELF?

49. Each Settlement Class Member, regardless of whether he, she or it submits a Claim to the Claims Administrator or obtains any distribution from the Net Settlement Fund, will be bound by all determinations and judgments in this lawsuit, including those concerning the Settlement, whether favorable or unfavorable, unless such Person mails or otherwise delivers a written Request for Exclusion from the Settlement Class, addressed to: Gentiva Securities Litigation, Exclusions, PO Box 3058, Portland, OR 97208-3058. The exclusion request must be received no later than August 21, 2015. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must provide the following information: (i) name, (ii) address, (iii) telephone number, (iv) number of Gentiva Securities purchased or otherwise acquired during the Settlement Class Period, (v) the date of each such purchase or acquisition of each such Gentiva Security and the price or other consideration paid for each such Security, (vi) the date of each sale or other disposal of any Gentiva Security during the Settlement Class Period and the price or other consideration received for each such Gentiva Security, (vii) the number of Gentiva Securities held at the close of trading on July 30, 2008 (*i.e.*, immediately before the commencement of the Settlement Class Period), and (viii) a statement that the Person wishes to be excluded from the Settlement Class in *In re Gentiva Securities Litigation*. Any request for exclusion must also be signed by the Person requesting exclusion. Exclusion requests may not be submitted by e-mail, unless otherwise ordered by the Court. Requests for exclusion will not be valid if they are not received within the time stated above, unless the Court orders otherwise. Keep a copy of everything you mail, in case something is lost during shipping or processing.

50. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration or other proceeding concerning any of the Released Claims.

51. If a Person requests to be excluded from the Settlement Class, that Person or entity will not receive any benefit provided for in the Settlement.

52. If, as specified in a separate confidential supplemental agreement between Plaintiff and the Settling Defendants (the "Supplemental Agreement"), the number of shares of Gentiva Securities purchased or acquired during the Settlement Class Period by Persons who would otherwise be Members of the Settlement Class, but who request exclusion from the Settlement Class, exceeds the threshold(s) specified in the Supplemental Agreement, the Settling Defendants, in consultation with Gentiva's insurance carrier, shall have the option to terminate this Settlement in accordance with the procedures set forth in the Supplemental Agreement.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?  
DO I HAVE TO COME TO THE HEARING?  
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

53. If you do not wish to object in person to the proposed Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and reimbursement of Litigation Expenses, you do not need to attend the Final Approval Hearing. You can object to or participate in the Settlement without attending the Final Approval Hearing.

54. The Final Approval Hearing will be held on September 11, 2015, at 9:00 a.m. before the Honorable Arthur D. Spatt, at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Courtroom 1070, Central Islip, New York 11722. The Court has the right to approve the Settlement, the Plan of Allocation or the request for attorneys' fees and reimbursement of Litigation Expenses at or after the Final Approval Hearing without further notice to the members of the Settlement Class.

55. Any member of the Settlement Class who does not request exclusion from the Settlement Class in the manner set forth herein may object to or oppose the Settlement, the Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections or oppositions must be in writing. You must file any written objection or opposition, together with copies of all other papers (including proof of purchase) and briefs, with the Clerk's Office at the United States District Court for the Eastern District of New York, at the address set forth below for receipt on or before August 21, 2015. You must also serve the papers, by hand or first-class mail, on Lead Counsel for the Settlement Class and counsel for the Settling Defendants at the addresses set forth below so that the papers are *received* on or before August 21, 2015.

**Clerk's Office**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF  
NEW YORK  
Clerk of the Court  
100 Federal Plaza  
Central Islip, NY 11722

**Representative of Lead Counsel for the  
Settlement Class**

KAPLAN FOX & KILSHEIMER LLP  
Frederic S. Fox  
Joel B. Strauss  
850 Third Avenue, 14<sup>th</sup> Floor  
New York, NY 10022

**Counsel for the Settling Defendants**

WEIL, GOTSHAL & MANGES LLP  
John A. Neuwirth  
Joshua S. Amsel  
767 Fifth Avenue  
New York, NY 10153

56. You may not object to the Settlement or any aspect of it if you are not a Member of the Settlement Class or if you excluded yourself from the Settlement Class.

57. You may file a written objection without having to appear at the Final Approval Hearing. Any objection must include: (a) the full name, address and phone number of the objecting Settlement Class Member; (b) a list and documentation of all of the Settlement Class Member's transactions involving Gentiva Securities during the Settlement Class Period, including brokerage confirmation receipts or other competent documentary evidence of such transactions, including the amount and date of each purchase or acquisition or sale or disposition and the price paid and/or received and an indication of the number of Gentiva Securities held, if any, at the close of trading on July 30, 2008 (*i.e.*, immediately before commencement of the Settlement Class Period); (c) a written statement of all grounds for the objection accompanied by any legal support for the objection; (d) copies of any papers, briefs or other documents upon which the objection is based; (e) a list of all persons who will be called to testify in support of the objection; (f) a statement of whether you intend to appear at the Final Approval Hearing; (g) a list of other cases in which you or your counsel have appeared either as settlement objectors or as counsel for objectors in the preceding five years; and (h) the objector's signature, even if represented by counsel. If you intend to appear at the Final Approval Hearing through counsel, the objection must also state the identity of all attorneys who will appear on your behalf at the Final Approval Hearing. Any Member of the Settlement Class who does not make his, her or its objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Settlement as reflected in the Stipulation, to the Plan of Allocation or to the application by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses. You may not appear at the Final Approval Hearing to present your objection, however, unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

58. If you wish to be heard orally at the Final Approval Hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you have filed and served a timely written objection as described above, you also must notify the above counsel on or before August 21, 2015, concerning your intention to appear. Persons who intend to object and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

59. If you object to the Settlement, the Plan of Allocation and/or Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses, or otherwise request to be heard at the Final Approval Hearing in the manner stated above, you are submitting to the jurisdiction of the Court with respect to the subject matter of the Settlement, including, but not limited to, the release of the Released Claims contained in the Final Judgment and Order of Dismissal with Prejudice. If the Court overrules your objection and approves the Settlement or the part of the Settlement to which you have objected, you only will potentially share in the Settlement Fund if you file a Claim Form in the manner stated herein and the Claims Administrator approves your Claim.

60. You are not required to hire an attorney to represent you in making written objections or in appearing at the Final Approval Hearing. If you decide to hire an attorney, which will be at your own expense, however, he or she must file a notice of appearance with the Court and serve it on Lead Counsel so that the notice is received on or before August 21, 2015.

61. The Final Approval Hearing may be postponed or adjourned by the Court without further written notice to the Settlement Class. If you intend to attend the Final Approval Hearing, you should confirm the date and time with Lead Counsel.

**UNLESS THE COURT ORDERS OTHERWISE, ANY SETTLEMENT CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED ABOVE WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT, THE PROPOSED PLAN OF ALLOCATION, OR LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES. SETTLEMENT CLASS MEMBERS DO NOT NEED TO APPEAR AT THE HEARING OR TAKE ANY OTHER ACTION TO INDICATE THEIR APPROVAL.**

#### **WHAT IF I BOUGHT SECURITIES ON SOMEONE ELSE'S BEHALF?**

62. If you purchased or otherwise acquired the Gentiva Securities described above for the beneficial interest of a person or organization other than yourself, you must either: (a) send the Notice and Claim Form to all such beneficial owners, postmarked within fourteen (14) calendar days of receipt of this Notice; or (b) send a list of the names and addresses of such beneficial owners to the Claims Administrator within fourteen (14) calendar days after receipt of this Notice, in which event the Claims Administrator will mail the Notice and Claim Form to such beneficial owners within seven (7) calendar days after receipt thereof. If you elect to send the Notice to beneficial

owners as set forth in option (a) above, you are directed to send a statement to the Claims Administrator confirming that the mailing was made as directed, and you must retain the list of names and addresses for use in connection with any possible future notice to the Settlement Class. Upon full compliance with this Notice, including the timely mailing of the Notice to beneficial owners, you may seek reimbursement of your reasonable expenses actually incurred in complying with this Notice by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought and reflecting compliance with these instructions, including timely mailing of the Notice, if you elected or elect to do so. Copies of this Notice may also be obtained by calling toll-free 888-593-7570, and may be downloaded from the settlement website, [www.gentivasecuritieslitigation.com](http://www.gentivasecuritieslitigation.com) or from Lead Counsel's website, [www.kaplanfox.com](http://www.kaplanfox.com).

**CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

63. This Notice contains only a summary of the terms of the proposed Settlement. More detailed information about the matters involved in the Action is available at [www.gentivasecuritieslitigation.com](http://www.gentivasecuritieslitigation.com), including, among other documents, copies of the Stipulation, the Claim Form and the Complaint.

64. All inquiries concerning this Notice or the Claim Form should be directed to:

Gentiva Securities Litigation  
PO Box 3058  
Portland, OR 97208-3058  
Toll-free 888-593-7570  
[www.gentivasecuritieslitigation.com](http://www.gentivasecuritieslitigation.com)  
[info@gentivasecuritieslitigation.com](mailto:info@gentivasecuritieslitigation.com)  
**Claims Administrator**

Joel B. Strauss  
KAPLAN FOX & KILSHEIMER LLP  
850 Third Avenue, 14<sup>th</sup> Floor  
New York, NY 10022  
(212) 687-1980  
[mail@kaplanfox.com](mailto:mail@kaplanfox.com)  
**Lead Counsel**

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF COURT REGARDING THIS NOTICE.**

Dated: April 7, 2015

By Order of the Clerk of Court  
United States District Court  
for the Eastern District of New York

## APPENDIX A

### PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

1. The objective of the Plan of Allocation is to equitably distribute the settlement proceeds to those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The Plan of Allocation generally measures the amount of loss that a Settlement Class Member can claim for purposes of making pro rata allocations of the Net Settlement Fund to Authorized Claimants. The Plan of Allocation is not a formal damage analysis. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making pro rata allocations of the Net Settlement Fund.

2. In developing the Plan of Allocation, Lead Plaintiff's damages consultant calculated the amount of estimated alleged artificial inflation in the per share closing prices of Gentiva common stock which purportedly was proximately caused by the Settling Defendants' alleged wrongful conduct. In calculating the estimated alleged artificial inflation allegedly caused by the Settling Defendants' alleged wrongful conduct, Lead Plaintiff's damages consultant considered price changes in Gentiva common stock in reaction to certain public announcements regarding Gentiva in which such wrongful conduct was alleged to have been finally revealed to the market (which are termed "corrective disclosures"), adjusting for price changes that were attributable to market or industry forces, the allegations in the Amended Consolidated Complaint and the evidence developed in support thereof, as advised by Lead Plaintiff's Counsel.

3. For the purposes of this Plan of Allocation, the alleged corrective disclosures that removed artificial inflation from the prices of Gentiva common stock are the May 13, 2010; July 1, 2010; October 3, 2011; and October 4, 2011 disclosures.<sup>1</sup> The alleged false and misleading statements that increased artificial inflation in the prices of Gentiva common stock were July 31, 2008; July 30, 2009; and July 29, 2010.<sup>2</sup>

4. Recognized Loss Amounts under Section 10(b) of the Exchange Act are based primarily on the change in the level of alleged artificial inflation in the prices of Gentiva common stock at the time of purchase or acquisition and at the time of sale. Accordingly, in order to have a Recognized Loss Amount under Section 10(b), a Settlement Class Member who purchased his, her or its shares of Gentiva common stock prior to May 13, 2010 must have held his, her or its shares of Gentiva common stock through at least the opening of trading on May 13, 2010 (the first alleged corrective disclosure). With respect to shares of Gentiva common stock purchased on May 13, 2010 through the close of trading on October 3, 2011, those Securities must have been held through at least one of the subsequent alleged corrective disclosures.

### **CALCULATION OF RECOGNIZED LOSS OR GAIN AMOUNTS**

5. For purposes of determining whether a Claimant has a Recognized Claim, purchases, acquisitions and sales of Gentiva common stock will first be matched on a First In/First Out basis as set forth in Paragraph 9 below.

### **SECTION 10(b) CLAIMS**

6. With respect to shares of Gentiva common stock purchased or acquired during the Settlement Class Period, a "Recognized Loss Amount" or a "Recognized Gain Amount" will be calculated as set forth below for each purchase or other acquisition of Gentiva common stock from July 31, 2008 through and including October 4, 2011 that is listed on the Claim Form and for which adequate documentation is provided. To the extent that a calculation of a Recognized Loss Amount or a Recognized Gain Amount results in a negative number, that number shall be set to zero.

7. For each share of Gentiva common stock purchased or otherwise acquired from July 31, 2008 through and including October 3, 2011 and:

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<sup>1</sup> The alleged corrective disclosure on July 13, 2010 was not used for artificial inflation because Gentiva's resulting common stock price decline was not statistically significant. The alleged corrective disclosures on July 21, 2010 and August 4, 2011 were not used for artificial inflation because the court has ruled that "...these disappointing earnings announcements may not qualify for purposes of loss causation."

<sup>2</sup> There were 3 dates that Lead Plaintiff alleges that Defendants made false and misleading statements during the Class Period that were accompanied by a statistically significant increase in Gentiva's common stock price: July 31, 2008; July 30, 2009; and July 29, 2010.

- A. sold before the opening of trading on May 13, 2010,
- i. the Recognized Loss Amount for each such share shall be zero; and
  - ii. the Recognized Gain Amount for each such share shall be the dollar inflation applicable to each such share on the date of sale as set forth in Table 1 below minus the dollar inflation applicable to each such share on the date of purchase as set forth in Table 1 below.
- B. sold after the opening of trading on May 13, 2010 and before the close of trading on October 3, 2011,
- i. the Recognized Loss Amount for each such share shall be the dollar inflation applicable to each such share on the date of purchase as set forth in Table 1 below minus the dollar inflation applicable to each such share on the date of sale as set forth in Table 1 below; and
  - ii. the Recognized Gain Amount for each such share shall be the dollar inflation applicable to each such share on the date of sale as set forth in Table 1 below minus the dollar inflation applicable to each such share on the date of purchase as set forth in Table 1 below.
- C. sold after the opening of trading on October 4, 2011 and before the close of trading on December 30, 2011,
- i. the Recognized Loss Amount for each such share shall be the lesser of:
    - a) the dollar inflation applicable to each such share on the date of purchase as set forth in Table 1 below; or
    - b) the actual purchase price of each such share (excluding all fees, taxes and commissions) minus the average closing price for the days following the last alleged corrective disclosure on October 4, 2011, ending on the date of sale as set forth in Table 2 below.
  - ii. the Recognized Gain Amount for each such share shall be zero.
- D. held as of the close of trading on December 30, 2011,
- i. the Recognized Loss Amount for each such share shall be the lesser of:
    - a) the dollar inflation applicable to each such share on the date of purchase as set forth in Table 1 below; or
    - b) the actual purchase price of each such share (excluding all fees, taxes and commissions) minus \$5.13.<sup>3</sup>
  - ii. the Recognized Gain Amount for each such share shall be zero.

8. For each share of Gentiva common stock purchased or otherwise acquired on October 4, 2011, the Recognized Loss Amount and the Recognized Gain Amount is zero.

#### **ADDITIONAL PROVISIONS**

9. **FIFO Matching:** If a Settlement Class Member has more than one purchase/acquisition or sale of Gentiva common stock during the Settlement Class Period, all purchases/acquisitions and sales of Gentiva common stock shall be matched on a First In, First Out (“FIFO”) basis. Settlement Class Period sales will be matched first against any holdings at the beginning of the Settlement Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Settlement Class Period.

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<sup>3</sup> Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act (“PSLRA”), “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 to the market.” Consistent with the requirements of the PSLRA, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Gentiva common stock during the 90-day look-back period. The mean (average) closing price for Gentiva common stock during this 90-day look-back period was \$5.13.

10. **“Purchase/Sale” Dates:** Purchases or acquisitions and sales of Gentiva common stock shall be deemed to have occurred on the “trade” date as opposed to the “settlement” date. The receipt or grant by gift, inheritance or operation of law of Gentiva common stock during the Settlement Class Period shall not be deemed a purchase, acquisition or sale of these shares of Gentiva common stock for the calculation of a Claimant’s Recognized Loss Amounts pursuant to the Section 10(b) calculations set forth above and such receipt or grant shall not be deemed an assignment of any claim relating to the purchase/acquisition of such shares of Gentiva common stock, unless: (i) the donor or decedent purchased or otherwise acquired such shares of Gentiva common stock during the Settlement Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares of Gentiva common stock.

11. **Short Sales:** With respect to Gentiva common stock, the date of covering a “short sale” is deemed to be the date of purchase or acquisition of the stock. The date of a “short sale” is deemed to be the date of sale of Gentiva common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount and Recognized Gain Amount on “short sales” is zero. In the event that a Claimant has an opening short position in Gentiva common stock, the earliest Settlement Class Period purchases or acquisitions shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

12. **Eligible Securities:** Gentiva common stock is the only security eligible for recovery under the Plan of Allocation. Options on Gentiva common stock are not securities eligible to participate in the Settlement. With respect to Gentiva common stock purchased or sold through the exercise of an option, the purchase/sale date of the Gentiva common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

13. **Netting Gains and Losses:** Gains and losses in Gentiva common stock trades will be netted for purposes of calculating whether a Claimant had an overall Section 10(b) gain or loss in his, her or its transactions. The netting will occur both with respect to the Section 10(b) calculated Recognized Gain and Loss Amounts as set forth in paragraphs 6-7 above as well as with respect to the Claimant’s gains or losses based on his, her or its market transactions.

A. **Netting of Calculated Section 10(b) Gains and Losses:** With respect to the calculations made pursuant to Section 10(b) Claims, the Claimant’s Section 10(b) Recognized Stock Losses will be totaled (the “Total Section 10(b) Loss”) and the Claimant’s Section 10(b) Recognized Stock Gains will be totaled (the “Total Section 10(b) Gain”). If the Total Section 10(b) Loss minus the Total Section 10(b) Gain is a positive number, that will be the Claimant’s Section 10(b) Recognized Loss Amount; if the number is a negative number, that will be the Claimant’s Section 10(b) Recognized Gain Amount.

B. **Netting of Market Gains and Losses:** With respect to all shares of Gentiva common stock purchased or acquired from July 3, 2008 through and including October 3, 2011, the Claims Administrator will also determine if the Claimant had a Market Gain or a Market Loss with respect to his, her or its overall transactions in those shares.<sup>4</sup> For purposes of making this calculation, the Claims Administrator shall determine the difference between (i) the Total Purchase Amount<sup>5</sup> and (ii) the sum of the Sales Proceeds<sup>6</sup> and the Holding Value.<sup>7</sup> This difference will be deemed a Claimant’s Market Gain or Market Loss with respect to his, her or its overall transactions in Gentiva common stock. Shares purchased on October 4, 2011 do not contribute to the gain or loss.

14. If a Claimant has a Section 10(b) Recognized Gain Amount or a Market Gain, the value of that Claimant’s Section 10(b) Claim will be zero. If the Claimant has a Section 10(b) Recognized Loss Amount and a Market Loss, the value of the Claimant’s Section 10(b) Claim will be the lesser of the two.

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<sup>4</sup> With respect to all shares of Gentiva common stock purchased or otherwise acquired on October 4, 2011, the Market Gain or Market Loss is zero.

<sup>5</sup> The “Total Purchase Amount” is the total amount the Claimant paid (excluding all fees, taxes and commissions) for all Gentiva common stock purchased or acquired during the period from July 31, 2008 through and including October 3, 2011.

<sup>6</sup> The Claims Administrator shall match any sales of Gentiva common stock during the Settlement Class Period, first against the Claimant’s opening position in Gentiva common stock (the proceeds of those sales matched to the Claimant’s opening position will not be considered for purposes of calculating market gains or losses). The total amount received for sales of the remaining Gentiva common stock during the period from July 31, 2008 through and including October 3, 2011 is the “Sales Proceeds.”

<sup>7</sup> The Claims Administrator shall ascribe a “Holding Value” to each share of Gentiva common stock purchased or acquired during the period from July 31, 2008 through and including October 3, 2011 that was still held as of the close of trading on October 3, 2011 of \$3.02 per share, which was the closing price of Gentiva’s common stock on October 4, 2011.



15. **Determination of Recognized Claim:** If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its pro rata share of the Net Settlement Fund. The pro rata share shall be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

16. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed pro rata to all Authorized Claimants entitled to receive payment.

17. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$20.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$20.00, it will not be included in the calculation (*i.e.*, the Recognized Claim will be deemed to be zero) and no distribution will be made to that Authorized Claimant.

18. To the extent that any monies remain in the Net Settlement Fund after the Claims Administrator has caused distributions to be made to all Authorized Claimants, whether by reason of un-cashed distributions or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distributions, any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall be re-distributed to Authorized Claimants who have cashed their initial distributions and who would receive at least \$20.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior distribution checks and who would receive at least \$20.00 on such additional re-distributions may occur thereafter if Lead Plaintiff's Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after the deduction of any additional fees and expenses that would be incurred with respect to such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance in the Net Settlement Fund shall be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s), to be recommended by Lead Plaintiff and approved by the Court.

19. Payment pursuant to the Plan of Allocation, or such other plan as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Lead Plaintiff's Counsel, the Settling Defendants, the Settling Defendants' Counsel or any of the other Releasees, or the claims administrator, or other agent designated by Lead Plaintiff's Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further orders of the Court. Lead Plaintiff, the Settling Defendants, the Settling Defendants' Counsel, Lead Plaintiff's damages consultant, and all other Releasees shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim or any actions taken (or not taken) by the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

20. The Plan of Allocation set forth herein is the plan that is being proposed by Lead Plaintiff's Counsel to the Court for approval. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any orders regarding a modification of the Plan of Allocation will be posted to the website for this Action, [www.gentivasecuritieslitigation.com](http://www.gentivasecuritieslitigation.com).

**TABLE 1 - INFLATION PER SHARE OF GENTIVA COMMON STOCK**

<b>Period Start</b>	<b>Period End</b>	<b>Inflation at Time of Purchase or Sale</b>
July 31, 2008	July 29, 2009	\$4.54
July 30, 2009	May 12, 2010	\$5.44
May 13, 2010	June 30, 2010	\$3.38
July 1, 2010	July 28, 2010	\$1.02
July 29, 2010	September 30, 2011	\$2.31
October 3, 2011	October 3, 2011	\$0.98
October 4, 2011	Onwards	\$0.00

**TABLE 2 – AVERAGE 90-DAY LOOK-BACK CLOSING PRICES**

<b>Date</b>	<b>Average Price</b>	<b>Date</b>	<b>Average Price</b>
10/4/2011	\$3.02	11/16/2011	\$4.21
10/5/2011	\$3.08	11/17/2011	\$4.25
10/6/2011	\$3.29	11/18/2011	\$4.30
10/7/2011	\$3.37	11/21/2011	\$4.35
10/10/2011	\$3.39	11/22/2011	\$4.38
10/11/2011	\$3.47	11/23/2011	\$4.41
10/12/2011	\$3.61	11/25/2011	\$4.43
10/13/2011	\$3.72	11/28/2011	\$4.46
10/14/2011	\$3.79	11/29/2011	\$4.49
10/17/2011	\$3.82	11/30/2011	\$4.52
10/18/2011	\$3.85	12/1/2011	\$4.56
10/19/2011	\$3.83	12/2/2011	\$4.58
10/20/2011	\$3.81	12/5/2011	\$4.62
10/21/2011	\$3.79	12/6/2011	\$4.65
10/24/2011	\$3.79	12/7/2011	\$4.68
10/25/2011	\$3.78	12/8/2011	\$4.71
10/26/2011	\$3.80	12/9/2011	\$4.74
10/27/2011	\$3.83	12/12/2011	\$4.76
10/28/2011	\$3.87	12/13/2011	\$4.79
10/31/2011	\$3.88	12/14/2011	\$4.81
11/1/2011	\$3.88	12/15/2011	\$4.83
11/2/2011	\$3.88	12/16/2011	\$4.85
11/3/2011	\$3.88	12/19/2011	\$4.88
11/4/2011	\$3.87	12/20/2011	\$4.91
11/7/2011	\$3.88	12/21/2011	\$4.95
11/8/2011	\$3.91	12/22/2011	\$4.99
11/9/2011	\$3.96	12/23/2011	\$5.02
11/10/2011	\$4.01	12/27/2011	\$5.05
11/11/2011	\$4.06	12/28/2011	\$5.08
11/14/2011	\$4.09	12/29/2011	\$5.11
11/15/2011	\$4.15	12/30/2011	\$5.13