

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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MTB INVESTMENT PARTNERS, LP, on behalf of itself and all others similarly situated,	)	Case No. 2:12-cv-00340-SDW-MCA
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
SIEMENS HEARING INSTRUMENTS, INC.,	)	
	)	
Defendant.	)	

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

TO: ALL PERSONS WHO SOLD OR OTHERWISE DISPOSED OF PUBLICLY TRADED COMMON STOCK OF HEARUSA, INC. (“HEARUSA COMMON STOCK”) BETWEEN JANUARY 18, 2011 AND JULY 31, 2011, INCLUSIVE (THE “CLASS PERIOD”)

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS ACTION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. **TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM POSTMARKED ON OR BEFORE OCTOBER 27, 2014.**

This Notice has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of New Jersey (the “Court”). The purpose of this Notice is to inform you of the proposed Settlement of this securities class action litigation and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement. The Settlement resolves the Class’s claims asserted against Defendant. This Notice describes the rights you may have in connection with the Settlement and what steps you may take in relation to the Settlement and this class action litigation.

The proposed settlement (the “Settlement”) creates a fund in the amount of Three Million, Six Hundred Thousand Dollars (\$3,600,000.00) in cash and will include interest that accrues on the fund prior to distribution. Based on the information currently available to Lead Plaintiff, it is estimated that if Class Members submit claims for 100% of the HearUSA Common Stock eligible for distribution, the estimated average distribution per share of HearUSA Common Stock will be approximately \$0.1393 before deduction of Court-approved fees and expenses. Historically, actual claims rates are less than 100%, which result in higher distributions per security. Your actual recovery from this fund will depend on a number of variables, including the number of claimants, the amount of

HearUSA Common Stock you and they sold, the expense of administering the claims process, and the timing of your sales (see the Plan of Distribution below for a more detailed description of how the settlement proceeds will be allocated among Class Members).

Defendant has denied and continues to deny specifically each and all of the claims and contentions alleged in this action. The issues on which the parties disagree include: (1) whether the statements made or facts allegedly omitted in Defendant's January 18, 2011 and March 17, 2011 filings with the Securities and Exchange Commission ("SEC") on Schedule 13D were false, material, or otherwise actionable under the federal securities laws; (2) the extent to which the Class suffered damages; (3) whether the value of HearUSA Common Stock declined due to Defendant's actions; and (4) the extent to which external factors, such as general market conditions, influenced the trading prices of HearUSA Common Stock. Lead Plaintiff and Defendant do not agree on the average amount of damages per share of HearUSA Common Stock that would be recoverable if Lead Plaintiff were to have prevailed on each claim asserted. Defendant denies that it has violated the federal securities laws or any laws.

Lead Plaintiff believes that the proposed Settlement is in the best interests of the Class in light of the risk that no recovery might be achieved after summary judgment, trial, or possible appeals. If Defendant prevailed at any of those stages, the Class would receive nothing. In addition, the amount of damages recoverable by the Class was and is challenged by Defendant. Recoverable damages in this case are limited to losses caused by conduct actionable under applicable law and, had this action gone to trial, Defendant intended to assert that all of the losses of Class Members were caused by non-actionable market, industry, or general economic factors. Defendant would also assert that its January 2011 and March 2011 filings with the SEC on Schedule 13D disclosed the required information, were not misleading, and were filed for precisely the reasons those reports disclosed.

Lead Counsel has not received any payment for their services in conducting this action on behalf of Lead Plaintiff and the members of the Class, nor have they been paid for their litigation expenses. If the Settlement is approved by the Court, Lead Counsel will apply to the Court for attorneys' fees of 27.78% of the Settlement proceeds (\$1,000,000) plus expenses not to exceed \$35,000, both to be paid from the Settlement Fund. If the amount requested by Lead Counsel is approved by the Court, the average cost per share of HearUSA Common Stock sold would be approximately \$0.04. In addition, the Lead Plaintiff may seek its expenses in prosecuting this action on behalf of the Class in an amount not to exceed \$5,600.

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

For further information regarding this Settlement you may contact: Shareholder Relations, c/o Christopher Pegram, Hausfeld LLP, 1700 K St., N.W., Suite 650, Washington, D.C. 20006. Please do not call any representative of the Defendant or the Court.

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

A hearing (the "Settlement Hearing") will be held on December 4, 2014, at 2:00 p.m., before the Honorable Madeline Cox Arleo, United States Magistrate Judge, at the United States District Court, Martin Luther King Building and United States Courthouse, 50 Walnut Street, Newark, NJ 07101. The purpose of the Settlement Hearing will be to determine: (1) whether the Settlement consisting of Three Million, Six Hundred Thousand Dollars (\$3,600,000.00) in cash plus accrued interest on the Settlement Fund, and fifty (50) percent of all notice and administration costs up to Two Hundred Thousand Dollars (\$200,000.00) should be approved as fair, reasonable, and adequate to the Class; (2) whether the proposed plan to distribute the settlement proceeds (the "Plan of Distribution") is fair, reasonable, and adequate; (3) whether the application by Lead Counsel for an award of attorneys' fees and expenses and the Lead Plaintiff's expenses should be approved; and (4) whether the action should be dismissed with prejudice. The Court may adjourn or continue the Settlement Hearing without further notice to the Class.

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

1. "Authorized Claimant" means any member of the Class who submits a timely and valid Proof of Claim and Release form and whose claim for recovery has been allowed pursuant to the terms of the Stipulation of Settlement (the "Stipulation").

2. "Claims Administrator" means Heffler Claims Group.

3. "Class" means all Persons who sold or otherwise disposed of HearUSA Common Stock between January 18, 2011 and July 31, 2011, inclusive. Excluded from the Class are:

(a) Persons or entities who submit valid and timely requests for exclusion from the Class; and

(b) Defendant Siemens Hearing Instruments, Inc. and each and all of its present or former related entities, including but not limited to all parents, subsidiaries, affiliates (as defined in 17 C.F.R. §210.1-02(b)), successors and assigns; any person, firm, trust, corporation, officer, director or other individual or entity in which Defendant and each and all of its present or former related entities have or had a controlling interest during the Class Period; the officers and directors of Defendant and each and all of its present or former related entities during the Class Period; and legal representatives, agents, executors, heirs, successors, or assigns of any such excluded Person.

4. "Class Member" means a Person who falls within the definition of the Class as set forth above.

5. "Class Period" means the period between January 18, 2011 and July 31, 2011, inclusive.

6. "Court" means the United States District Court for the District of New Jersey where *MTB Investment Partners, LP v. Siemens Hearing Instruments, Inc.*, Case No. 2:12-cv-00340-SDW-MCA is pending.

7. "Defendant" or "SHI" means Siemens Hearing Instruments, Inc.

8. “Effective Date” means the first date by which all of the events and conditions specified in ¶8.1 of the Stipulation have been met and have occurred.
9. “Escrow Agent” means Citibank, N.A. or its successor(s).
10. “Final Approval” means when the last of the following with respect to the Judgment approving the Settlement shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) the expiration of the time in which to appeal the Judgment without any appeal having been taken; and (iii) if any motion to alter or amend is filed or if any appeal is taken, the determination of any such motion or appeal in such a manner as to permit the consummation of the Settlement, in accordance with the terms and conditions of the Stipulation. For purposes of this paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of this Settlement, but shall not include any appeal which concerns only the issue of attorneys’ fees and expenses or any Plan of Distribution of the Settlement Fund.
11. “Judgment” means the final judgment and order of dismissal with prejudice to be rendered by the Court upon approval of the Settlement, substantially in the form attached to the Stipulation as Exhibit B.
12. “HearUSA Common Stock” means the publicly traded common stock of HearUSA, Inc.
13. “Lead Counsel” means Hausfeld LLP, 1700 K Street, N.W., Suite 650, Washington, DC 20006.
14. “Liaison Counsel” means Schnader Harrison Segal & Lewis LLP, Woodland Falls Corporate Park, 220 Lake Drive East, Suite 200, Cherry Hill, NJ 08002-1165.
15. “Lead Plaintiff” means MTB Investment Partners, LP.
16. “Net Settlement Fund” means the portion of the Settlement Fund that shall be distributed to Authorized Claimants as allowed by the Stipulation, the Plan of Distribution, or the Court, after provision for the amounts set forth in ¶7.2 of the Stipulation and, to the extent the aggregate number of shares of HearUSA Common Stock sold during the Class Period by such Persons opting out (“Opt-outs”) equals or exceeds 5% of the HearUSA Common Stock issued as of January 18, 2011 (excluding the shares of HearUSA common stock held by Defendant as of that date), any *pro rata* reduction of the Settlement Fund with respect to Opt outs, as provided in ¶8.3 of the Stipulation.
17. “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and his, her or its spouses, agents, heirs, predecessors, successors, representatives, or assignees.

18. “Plan of Distribution” means a plan or formula of allocation of the Net Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized Claimants. Any Plan of Distribution is not part of the Stipulation and the Released Persons shall have no responsibility or liability with respect thereto.

19. “Released Claims” means all claims (including Unknown Claims), that were asserted or could have been asserted in this action by Lead Plaintiff or members of the Class, against the Released Persons based upon, arising out of, or relating to either: (i) the claims or facts and circumstances asserted in this action, and (ii) the sale of HearUSA Common Stock during the Class Period by Class Members.

20. “Released Persons” means Defendant and each and all of its present or former related entities, including but not limited to all parents, subsidiaries, affiliates (as defined in 17 C.F.R. §210.1-02(b)), successors and assigns, and each and all of their present or former officers, directors, employees, employers, attorneys, accountants, financial advisors, commercial bank lenders, insurers, investment bankers, representatives, general and limited partners and partnerships, heirs, executors, administrators, successors, affiliates, and assigns of each of them.

21. “Settlement Fund” means Three Million, Six Hundred Thousand Dollars (\$3,600,000.00) in cash, together with all interest and income earned thereon.

22. “Settling Parties” means, collectively, Defendant and Lead Plaintiff on behalf of itself and the Class Members.

23. “Unknown Claims” means any claims which Lead Plaintiff or any Class Members do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, to the fullest extent permitted by law, Lead Plaintiff shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his 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.**

Lead Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. Lead Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows, believes or suspects to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all

Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

### **III. THE LITIGATION**

On January 18, 2012, Plaintiff MTB Investment Partners, LP through its attorneys, Hausfeld LLP, filed the Action, on its own behalf and on behalf of the Class in the United States District Court for the District of New Jersey for alleged violations of federal securities laws against SHI, alleging that SHI violated Sections 9(a)(2), 10, and 18 of the Securities Exchange Act of 1934;

On February 19, 2013, the Court issued an order denying in part and granting in part Defendant SHI's motion to dismiss the Action;

SHI would assert a number of defenses to Lead Plaintiff's claims if the Action proceeded further;

SHI has denied and continues to deny, *inter alia*, the allegations that it made any material misstatements or omissions; that any member of the Class has suffered damages; that the price of HearUSA Common Stock was unlawfully suppressed by reason of the alleged misrepresentations, omissions, or otherwise; that the members of the Class were harmed by the conduct alleged in this Action; that Defendant knew or was reckless with respect to the alleged misconduct; and that it has violated the federal securities laws or any laws;

SHI has, after taking into account the uncertainty, risks, and costs inherent in any litigation, concluded that further conduct of this Action could be protracted and distracting and determined that it is desirable and beneficial to it that this Action be settled in the manner and upon the terms and conditions set forth in this Stipulation;

Lead Plaintiff and Lead Counsel believe that the claims asserted in this Action have merit, but recognize that expense and length of continued proceedings necessary, and uncertainty associated with any litigation, combined with the benefits of this Settlement render the Settlement in the best interests of the Class; and after arm's length negotiations, counsel for the parties reached an agreement-in-principle concerning the proposed settlement of the Action in its entirety, and Lead Plaintiff's Liaison Counsel so advised the Court in a letter dated September 18, 2013.

### **IV. CLAIMS OF THE LEAD PLAINTIFF AND BENEFITS OF SETTLEMENT**

Lead Plaintiff and Lead Counsel believe that the claims asserted in this Action have merit. However, Lead Plaintiff and Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute this Action against Defendant through discovery and trial. Lead Plaintiff and Lead Counsel also have taken into account

the uncertain outcome and the risk of any litigation, as well as the risks posed by the difficulties and delays inherent in such litigation. Lead Plaintiff and Lead Counsel also are aware of the defenses to the securities law violations asserted in this Action. Lead Plaintiff and Lead Counsel believe that the settlement set forth in this Stipulation confers substantial benefits upon the Class in light of the circumstances present here. Based on their evaluation, Lead Plaintiff and Lead Counsel have determined that the settlement set forth in this Stipulation is in the best interests of Lead Plaintiff and the Class.

## **V. DEFENDANT’S DENIALS OF WRONGDOING AND LIABILITY**

Defendant has denied and continues to deny that it has violated the federal securities laws or any laws. Defendant has denied and continues to deny specifically each and all of the claims and contentions alleged in this Action, along with all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in this Action. Defendant also has denied and continues to deny, *inter alia*, the allegations that it made any material misstatements or omissions; that any member of the Class has suffered damages; that the price of HearUSA Common Stock was unlawfully suppressed by reason of the alleged misrepresentations, omissions, or otherwise; that the members of the Class were harmed by the conduct alleged in this Action; or that Defendant knew or was reckless with respect to the alleged misconduct. In addition, Defendant maintains that it has meritorious defenses to all claims alleged in this Action.

Nonetheless, taking into account the uncertainty, risks, and costs inherent in any litigation, Defendant has concluded that further conduct of this Action could be protracted and distracting. Defendant has, therefore, determined that it is desirable and beneficial to it that this Action be settled in the manner and upon the terms and conditions set forth in this Stipulation. As set forth in ¶¶9.3 and 9.4 of the Stipulation, the Stipulation shall in no event be construed as, or deemed to be evidence of, an admission or concession by Defendant with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

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

The sum of Three Million, Six Hundred Thousand Dollars (\$3,600,000.00) has been transferred to the Escrow Agent. The principal amount of \$3,600,000.00, plus any accrued interest, constitutes the Settlement Fund. A portion of the settlement proceeds will be used for certain administrative expenses, including costs of printing and mailing this Notice, the cost of publishing newspaper and internet notice, payment of any taxes assessed against the Settlement Fund, and costs associated with the processing of claims submitted (“Notice and Administration Costs”). Under the Settlement, Defendant has agreed to pay fifty (50) percent of all such Notice and Administration Costs up to Two Hundred Thousand Dollars (\$200,000.00). The sum of One Hundred Thousand Dollars (\$100,000.00) has been transferred to the Escrow Agent. The \$100,000.00 constitutes Defendant’s maximum contribution to Notice and Administration Costs under the Settlement.

In addition, as explained below, a portion of the Settlement Fund may be awarded by the Court to Lead Counsel as attorneys’ fees and for expenses in litigating the case, and to the Lead Plaintiff for its expenses. The balance of the Settlement Fund (the “Net Settlement Fund”) will be distributed according to the Plan of Distribution described below to Class Members who submit valid and timely Proofs of Claim and Release.

## VII. PLAN OF DISTRIBUTION

The Net Settlement Fund will be distributed to Class Members who submit valid and timely Proof of Claim and Release forms (“Authorized Claimants”) under the Plan of Distribution described below. The Plan of Distribution provides that you will be eligible to participate in the distribution of the Net Settlement Fund only if an Authorized Claimant experienced a Recognized Loss for its transactions in the Class Period. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.

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

### Calculation of Recognized Loss

- A. A claim will be calculated as follows:
  - (a) For shares of HearUSA Common Stock that were owned prior to January 18, 2011 and sold between January 18, 2011 and July 31, 2011, inclusive, the Recognized Loss per share is the difference between \$0.92 and the actual sales price. If the difference is a negative number (*i.e.*, a gain), the Recognized Loss will be \$0.00 for those shares.
  - (b) For shares of HearUSA Common Stock that were owned prior to January 18, 2011 and still owned as of the close of business on July 31, 2011, the Recognized Loss per share shall be \$0.00.
  - (c) For shares of HearUSA Common Stock that were purchased between January 18, 2011 and July 31, 2011, the Recognized Loss per share shall be \$0.00.
- B. All purchases and sales of HearUSA Common Stock will be accounted for and matched using the first-in-first-out method of accounting. This means that any sales made during the Class Period will be matched to the beginning balance of shares before being matched to a purchase during the Class Period.
- C. For all purposes, the transaction (“trade”) date and not the settlement date shall be used in the calculation of the Recognized Loss.
- D. “Short” sales will not be recognized for any amount of loss on the cover or purchase transaction, and no Recognized Loss will be computed for any such covering purchase transaction.
- E. No Recognized Loss will be computed for any transactions in shares of HearUSA Common Stock engaged in by market makers or specialists.
- F. Shares “transferred out” or “delivered out” of Claimant’s account will not be considered part of the Claimant’s claim unless the Claimant can show the



shares were sold during the Class Period in another account still owned by the Claimant.

- G. Any shares sold during the Class Period as the result of a purchase, sale, assignment or exercise of a stock option will have no Recognized Loss.

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

### **VIII. PARTICIPATION IN THE CLASS**

If you fall within the definition of the Class, you are a Class Member unless you elect to be excluded from the Class pursuant to this Notice. If you do not request to be excluded from the Class, you will be bound by any judgment entered with respect to the Settlement in the litigation against Defendant whether or not you file a Proof of Claim and Release form.

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

**TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM AND RELEASE FORM THAT ACCOMPANIES THIS NOTICE.** The Proof of Claim and Release form must be postmarked on or before October 27, 2014, and be delivered to the Claims Administrator at: HearUSA Securities Litigation, Claims Administrator, P.O. Box 58818, Philadelphia, PA 19102-8818. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim and Release form, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Stipulation and the Judgment.

### **IX. EXCLUSION FROM THE CLASS**

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

*HearUSA Securities Litigation*  
EXCLUSIONS  
Claims Administrator  
P.O. Box 58818  
Philadelphia, PA 19102-8818

The request for exclusion must state: (1) your name, address, and telephone number; (2) information regarding all sales of HearUSA Common Stock made during the Class Period, including the dates, the amount of HearUSA Common Stock sold, and the total sales price received for each such sale; and (3) that you wish to be excluded from the Class. **YOUR EXCLUSION REQUEST MUST BE POSTMARKED ON OR BEFORE OCTOBER 27, 2014.** If you submit a valid and timely request for exclusion, you shall have no rights under the Settlement or Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment.

## **X. DISMISSAL AND RELEASES**

If the proposed Settlement is approved, the Court will enter a final judgment. The Judgment will dismiss the Released Claims with prejudice as to Defendant and the Released Persons as provided in the Stipulation.

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

## **XI. APPLICATION FOR ATTORNEYS' FEES AND EXPENSES**

At the Settlement Hearing, Lead Counsel will request the Court to award attorneys' fees of 27.78% of the Settlement Fund (\$1,000,000), plus expenses not to exceed \$35,000. In addition, the Lead Plaintiff may seek its expenses incurred in representing the Class in this action, in an amount not to exceed \$5,600. Class Members are not personally liable for any such fees, expenses, or compensation.

To date, Lead Counsel have not received any payment for their services in conducting this action on behalf of Lead Plaintiff and the members of the Class, nor have counsel been reimbursed for their expenses. The fee requested by Lead Counsel would compensate counsel for their efforts in achieving the Settlement Fund for the benefit of the Class, and for their risk in undertaking this representation on a contingency basis. The fee requested is within the range of fees awarded to plaintiffs' counsel under similar circumstances in litigation of this type.

## **XII. CONDITIONS FOR SETTLEMENT**

The Settlement is conditioned upon the occurrence of certain events described in the Stipulation. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Stipulation; and (2) expiration of the time to appeal from or alter or amend the Judgment. Pending the Court's consideration of this Settlement, the Court has stayed all proceedings, and Class Members are precluded from bringing or pursuing any litigation that seeks to prosecute the Released Claims.

If, for any reason, any one of the conditions described in the Stipulation is not met, the Stipulation might be terminated and, if terminated, will become null and void, and the Settling Parties to the Stipulation will be restored to their respective positions as of September 18, 2013.

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

Any Class Member who has not validly and timely requested to be excluded from the Class, and who objects to any aspect of the Settlement, the Plan of Distribution, or the application for attorneys' fees and expenses or Lead Plaintiff's expenses may appear and

be heard at the Settlement Hearing.<sup>1</sup> Any such Person must submit and serve a written notice of objection, to be filed on or before October 9, 2014, with the Clerk of the Court, as follows:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Martin Luther King Building  
and United States Courthouse  
50 Walnut Street, Room 4015  
Newark, NJ 07101

Any such person must also serve their written notice of objection, to be received on or before October 27, 2014, upon each of the following:

HAUSFELD LLP  
WILLIAM P. BUTTERFIELD  
BRIAN A. RATNER  
TIMOTHY S. KEARNS  
NATHANIEL C. GIDDINGS  
1700 K St., N.W., Suite 650  
Washington, D.C. 20006

Lead Counsel for Plaintiffs

SCHNADER HARRISON SEGAL & LEWIS LLP  
LISA J. RODRIGUEZ  
Woodland Falls Corporate Park  
220 Lake Drive East, Suite 200  
Cherry Hill, NJ 08002-1165

Liaison Counsel for Plaintiffs

KIRKLAND & ELLIS LLP  
JAMES GILLESPIE, P.C.  
BRANT W. BISHOP, P.C.  
655 15th St., N.W.  
Washington, D.C. 20005

Lead Counsel for Defendant Siemens Hearing Instruments, Inc.

BLANK ROME LLP  
STEPHEN ORLOFSKY  
DAVID C. KISTLER  
301 Carnegie Center  
3rd Floor  
Princeton, NJ 08650

Liaison Counsel for Defendant Siemens Hearing Instruments, Inc.

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<sup>1</sup> Lead Counsel's pleadings in support of these matters will be filed with the Court on or before September 29, 2014.

The notice of objection must demonstrate the objecting Person's membership in the Class, including the amount of HearUSA Common Stock sold during the Class Period, and contain a statement of the reasons for objection. Only Class Members who have submitted written notices of objection in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise.

#### **XIV. SPECIAL NOTICE TO BANKS, BROKERS AND OTHER NOMINEES**

If you sold or otherwise disposed of any HearUSA Common Stock during the Class Period as nominee for a beneficial owner, then, within ten (10) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice and the Proof of Claim and Release form by First-Class Mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

*HearUSA Securities Litigation*  
Claims Administrator  
P.O. Box 58818  
Philadelphia, PA 19102-8818

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

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

#### **XV. EXAMINATION OF PAPERS**

This Notice is a summary and does not describe all of the details of the Stipulation. For full details of the matters discussed in this Notice, you may review the Stipulation filed with the Court, which may be inspected during business hours, at the office of the Clerk of the Court, United States District Court, District of New Jersey, Martin Luther King Building and United States Courthouse, 50 Walnut Street, Newark, NJ 07101. The motion papers, with exhibits, including the Stipulation, are also available on the Court's ECF website (for a fee). Certain papers relating to the Settlement, including the Stipulation, are also available at the settlement website [www.hearusasecuritieslitigation.com](http://www.hearusasecuritieslitigation.com).

If you have any questions about the settlement of this action, you may contact a representative of Lead Counsel: Christopher Pegram, c/o Shareholder Relations, Hausfeld LLP, 1700 K St., N.W., Suite 650, Washington, D.C. 20006, or by telephone at 202-540-7200.

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

DATED: AUGUST 22, 2014

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

\_\_\_\_\_  
MTB INVESTMENT PARTNERS, LP, on  
behalf of itself and all others similarly situated,

Plaintiff,

v.

SIEMENS HEARING INSTRUMENTS, INC.,

Defendant.

Case No. 2:12-cv-00340-SDW-MCA

**PROOF OF CLAIM AND RELEASE**

**I. GENERAL INSTRUCTIONS**

1. To recover as a member of the Class based on your claims in the action entitled *MTB Investment Partners, LP v. Siemens Hearing Instruments, Inc.*, Case No. 2:12-cv-00340-SDW-MCA, you must complete pages 1 and 2 of the Proof of Claim and Release form and, on page 4 thereof<sup>1</sup>, sign the Proof of Claim and Release form. If you fail to file a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release form, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed settlement of this action.

2. Submission of this Proof of Claim and Release form, however, does not assure that you will share in the proceeds of the settlement of this action.

3. **YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE FORM POSTMARKED ON OR BEFORE OCTOBER 27, 2014, ADDRESSED AS FOLLOWS:**

*HearUSA Securities Litigation*  
Claims Administrator  
c/o Heffler Claims Group  
P.O. Box 58818  
Philadelphia, PA 19102-8818

If you are NOT a member of the Class (as defined in the Notice of Pendency and Proposed Settlement of Class Action (the "Notice")), DO NOT submit a Proof of Claim and Release form.

4. If you are a member of the Class and you do not timely request exclusion in connection with the proposed settlement, you will be bound by the terms of any judgment entered in the action, including the releases provided therein, **WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.**

<sup>1</sup> The Proof of Claim and Release Form follows these instructions.

## II. CLAIMANT IDENTIFICATION

If you sold publicly traded common stock of HearUSA, Inc. (“HearUSA Common Stock”) and the HearUSA Common Stock was held in your name, you were the beneficial owner at the time the stock was sold as well as the seller of record. If, however, you sold HearUSA Common Stock and it was registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner and the third party is the seller of record.

Use Section A of this form entitled “Claimant Identification”, Part 1 or Part 2 to identify each seller of record (“nominee”), if different from the beneficial owner of the HearUSA Common Stock that forms the basis of this claim. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNER(S)/SELLER(S) OR THE LEGAL REPRESENTATIVE OF SUCH SELLER(S), OF THE HEARUSA COMMON STOCK UPON WHICH THIS CLAIM IS BASED.**

All joint sellers must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

If you are acting in a representative capacity on behalf of a Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.

**NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of sales may request to, or may be requested to, submit information regarding their sales in electronic files. All claimants **MUST** submit a manually signed paper Proof of Claim and Release form listing all their sales whether or not they also submit electronic copies. If you wish to file your claim electronically, you must visit the Claims Administrator’s website at [www.hearusasecuritieslitigation.com](http://www.hearusasecuritieslitigation.com) to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgement of receipt and acceptance of electronically submitted data.

## III. CLAIM FORM

Use Section B of this form entitled “Schedule of Sales of HearUSA Common Stock” to supply all required details of your holdings, purchases and sales of HearUSA Common Stock. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to **all** of your sales of HearUSA Common Stock which took place at any time between January 18, 2011 and July 31, 2011, inclusive (the “Class Period”), whether such sales resulted in a profit or a loss.

List each sale in the Class Period separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day and year of each sale you list.

Copies of stockbroker confirmation slips, stockbroker statements, or other documents evidencing your sales of HearUSA Common Stock should be attached to your claim. If any such documents are not in your possession, please obtain a copy or equivalent documents from your broker because these documents are necessary to prove and process your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.



**SECTION B – SCHEDULE OF SALES OF HEARUSA COMMON STOCK**

A. Number of shares of HearUSA common stock owned as of the close of trading on January 17, 2011:

B. Number of shares of HearUSA common stock purchased during the period from January 18, 2011 through July 31, 2011, inclusive:

C. (i.) Sales of HearUSA Common Stock made during the time period January 18, 2011 through July 31, 2011, inclusive:

	<u>Trade Date</u> Month/Day/Year	<u>Amount of HearUSA</u> <u>Common Stock Sold</u>	<u>Sale Price</u> <u>Per Share</u>	<u>Total Sale Price</u> <u>(excluding commissions)</u>
1.)	<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>
2.)	<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>
3.)	<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>
4.)	<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>
5.)	<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>
6.)	<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>
7.)	<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>
8.)	<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/>

(ii.) Total number of shares of HearUSA common stock sold during the period from January 18, 2011 through July 31, 2011, inclusive:

D. Number of shares of HearUSA common stock owned as of the close of trading on July 31, 2011:        (A+B-C(ii))

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOUR SIGNATURE ON PAGE 4 WILL CONSTITUTE YOUR  
ACKNOWLEDGMENT OF THE RELEASE.**



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CLAIM





#### IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim and Release form under the terms of the Stipulation of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the District of New Jersey with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the action. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim covering the same sales of HearUSA Common Stock during the Class Period and know of no other person having done so on my (our) behalf.

#### V. RELEASE

1. I/We hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever release, relinquish and discharge (i) all Released Claims (as defined below) against the Released Persons (as defined below); and (ii) against each and all of the Released Persons all claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the action or Released Claims, and that I/we shall forever be barred and enjoined from instituting or prosecuting any other action asserting any Released Claim in any court against the Released Persons.

2. "Released Claims" means all claims (including Unknown Claims), that were asserted or could have been asserted in this action by Lead Plaintiff or members of the Class, against the Released Persons based upon, arising out of, or relating to either: (i) the claims or facts and circumstances asserted in this action, and (ii) the sale of HearUSA Common Stock during the Class Period by Class Members.

3. "Released Persons" means Defendant Siemens Hearing Instruments, Inc. and each and all of its present or former related entities, including but not limited to all parents, subsidiaries, affiliates (as defined in 17 C.F.R. §210.1-02(b)), successors and assigns, and each and all of its present or former officers, directors, employees, employers, attorneys, accountants, financial advisors, commercial bank lenders, insurers, investment bankers, representatives, general and limited partners and partnerships, heirs, executors, administrators, successors, affiliates, and assigns of each of them.

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

**A general release does not extend to claims which the creditor does not know or suspect to exist in his 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.**

Lead Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. Lead Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes or suspects to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed,



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CLAIM



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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, 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 acknowledges, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

5. This release shall be of no force or effect unless and until the Court approves the Stipulation and the settlement becomes effective on the Effective Date.

6. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

7. I (We) hereby warrant and represent that I (we) have included information about all of my (our) sales of HearUSA Common Stock which occurred during the Class Period.

8. Substitute Form W-9. The claimant is NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant is exempt from backup withholding or (b) the claimant has not been notified by the IRS that he/she/it is subject to backup withholding as a result of failure to report all interest or dividends or (c) the IRS has notified the claimant that he/she/it is no longer subject to backup withholding. **If the IRS has notified the claimant that he/she/it is subject to backup withholding, please strike out the word NOT in the preceding sentence indicating that the claim is not subject to backup withholding.** I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_,  
(Month/Year)

in \_\_\_\_\_  
(City) (State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Joint Claimant, if any, sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing,  
*e.g.*, Beneficial Owner,  
Executor or Administrator)



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CLAIM



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**ACCURATE CLAIMS PROCESSING TAKES A  
SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and declaration.
2. Remember to attach copies of supporting documentation, if available.
3. Do not send original stock certificates.
4. Keep a copy of your claim form for your records.
5. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
6. If you move, please send us your new address.

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