

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE TOLLGRADE COMMUNICATIONS, INC.  
DERIVATIVE AND CLASS ACTION LITIGATION

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EQUITY BENEFIT PARTNERS, on behalf  
of Itself and All Others Similarly Situated,

Plaintiff,

vs.

EDWARD H. KENNEDY, SCOTT C. CHANDLER,  
RICHARD H. HEIBEL, M.D., CHARLES E.  
HOFFMAN, ROBERT W. KAMPMEINERT,  
EDWARD B. MEYERCORD, III, JEFFREY M.  
SOLOMON, and GOLDEN GATE PRIVATE  
EQUITY, INC.,

Defendants.

) CIVIL DIVISION  
)  
) Consolidated Case No.:  
) GD 11-003755

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)  
) Coordinated Case No.:  
) GD 11-006562

)  
) JUDGE CHRISTINE A. WARD

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)  
) **ORDER OF COURT**  
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Kampmeinert, Edward B. Meyercord, III, and  
Jeffrey M. Solomon, and Tollgrade  
Communications, Inc.***



adequate notice has been given in accordance with the Order For Notice and Scheduling of Hearing of Settlement (the "Notice Order") and that such notice was adequate and sufficient, and the parties having appeared by their attorneys of record; and the attorneys for the respective parties having been heard in support of the Settlement of the Actions for which the Stipulation provides therein; and an opportunity to be heard having been given to all other persons desiring to be heard as provided in the Notice; and the entire matter of the Settlements having been heard and considered by the Court;

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. This Court has jurisdiction over the subject matter of the Actions and over all parties to the Actions, including but not limited to, Plaintiffs, all members of the Settlement Class (as defined in paragraph 3), and the Defendants.

2. The Court finds that each of the requirements of Pa. R.C.P. 1702 *et. seq.*, has been satisfied for purposes of this settlement, in that (a) the Settlement Class (as defined in paragraph 3) is so numerous that joinder of all members is impracticable, (b) there are questions of law and fact common to the Settlement Class, (c) the claims or defenses of the Settlement Class Representatives are typical of the claims or defenses of the Settlement Class, (d) the Settlement Class Representatives and their counsel have, and will continue to, fairly and adequately protect the interests of the Settlement Class, under the criteria set forth in Pa. R.C.P. 1708 in that neither of the Settlement Class Representatives has a conflict of interest in the maintenance of the class action and both of them have or can acquire adequate financial resources to assure that the interests of the Class will not be harmed, (e) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Pa. R.C.P. 1708 in that (1) the common questions of law or fact predominate over any question affecting only individual

members; (2) the Settlement Class Representatives have indicated that they anticipate no difficulties in the management of the action as a class action; (3) the prosecution of separate actions by or against individual members of the class would create a risk of (i) inconsistent or varying adjudications with respect to individual members of the class which would confront Defendants with incompatible standards of conduct; (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications and/or substantially impair or impede their ability to protect their interests; (4) other than the above captioned actions, there are no other actions by members of the Settlement Class involving any of the same issues pending, (5) the present forum is appropriate for the litigation of the claims of the entire class; (6) in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions; (7) it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action and (f) Plaintiffs' claim that Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole.

3. Pursuant to Pa. R.C.P. 1702 *et. seq.*, the Court hereby certifies a class consisting of all persons who were record or beneficial owners of Tollgrade common stock from February 21, 2011, through and including May 10, 2011, including any and all of their respective successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them (the "Settlement Class"). Defendants are

excluded from the Settlement Class as are any of their immediate family members and any corporate subsidiary or affiliate of a Defendant.

4. Plaintiffs Stephen Tencza and Equity Benefit Partners are hereby certified as the Settlement Class Representatives. The Court finds that the Settlement Class Representatives and their counsel have fairly and adequately represented the interests of the Settlement Class in their respective actions.

5. Commencing on or about December 20, 2012, the Notice of Pendency and Proposed Settlement of Class Action (the "Notice") was sent to the Settlement Class pursuant to and in the manner directed by the Notice Order. A full opportunity to be heard has been afforded to all parties, the Settlement Class and persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and is due and sufficient notice to the Settlement Class members pursuant to Pennsylvania law and due process, and it is further determined that all members of the Settlement Class are bound by this Order and Final Judgment.

6. The Court finds that the Settlements set forth in the Stipulation should be approved. Accordingly, the Stipulation and the terms of the Settlements as described in the Stipulation are hereby approved in their entirety, pursuant to the requirements of Pa. R.C.P. 1714(a). The parties to the Settlements are hereby directed to consummate the Settlements in accordance with the terms and provisions of the Stipulation. Plaintiffs, all Settlement Class Members and Defendants are hereby bound by the terms of the Settlements as set forth in the Stipulation.

7. Plaintiff's counsel in the *Tencza* Actions are hereby awarded attorneys' fees in the amount of \$ 378,000.- and \$ 76,700.- in reimbursement of expenses incurred

in the prosecution of the *Tencza* Actions, which fees and expenses Tollgrade or its successor in interest are directed to pay.

8. Plaintiff's counsel in the *EBP* Action are awarded attorneys' fees in the amount of \$ 378,000 and \$ 15,162.25 in reimbursement of expenses incurred in the prosecution of the *EBP* Action, which fees and expenses Tollgrade or its successor in interest are directed to pay.

9. The Court approves the Settlements and dismisses the Actions without court costs to any party as against any other party and permanently bars and enjoins the institution and prosecution by Plaintiffs and any member of the Settlement Class of any other action against any Released Person (as defined in the Stipulation) in any court asserting any Settled Claims (as defined in the Stipulation).

10. This Order and Final Judgment shall not constitute any evidence, or an admission by any Defendant, Plaintiffs, any member of the Settlement Class or any of the Released Persons (as defined in the Stipulation), that any acts of wrongdoing have been committed or not been committed and shall not be deemed to create any inference that there is any liability or lack of liability on the part of any of the Released Persons.

11. The Court reserves jurisdiction, without affecting the finality of this Judgment, over the enforcement and administration of the Settlement.

12. There being no just reason for delay, the Court hereby directs that this Order and Final Judgment be entered by the Clerk of the Court. All prior orders of this Court, to the extent not inconsistent with this order, shall remain in effect.

Dated: February 27, 2013

Christine Ward  
The Honorable Christine A. Ward