

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

MARJORIE MISHKIN, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

ZYNEX, INC., f/k/a ZYNEX MEDICAL HOLDINGS,
INC., THOMAS SANDGAARD and FRITZ G. ALLISON,

Defendants.

Civil Action No. 09-cv-00780-REB-KLM

(Consolidated with Civil Action Nos.
09-cv-00816-REB-KLM and
09-cv-00829-REB-KLM)

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

***IF YOU PURCHASED ZYNEX, INC. COMMON STOCK BETWEEN
MAY 21, 2008 AND MARCH 31, 2009, YOU COULD RECEIVE A PAYMENT
FROM A CLASS ACTION SETTLEMENT.***

A federal court authorized this Notice. This is not a solicitation from a lawyer.

Securities and Time Period: Zynex, Inc. (“Zynex” or the “Company”) common stock purchased between May 21, 2008 and March 31, 2009, inclusive.

Settlement Fund: \$2,500,000 in cash. Your recovery will depend on the amount of stock purchased on or between May 21, 2008 and March 31, 2009 and the timing of your purchases and any sales. If claims are submitted for 100% of the number of eligible shares and options (which is not expected to occur), the estimated average distribution per share of common stock will be approximately \$0.308 before deduction of Court-approved fees and expenses. Historically, actual claim rates are less than 100% and result in higher distributions.

Settlement Class: The Court has certified for purposes of this settlement a Settlement Class of all Persons who purchased Zynex common stock between May 21, 2008 and March 31, 2009, inclusive (“Class”). Excluded from the Class are Defendants, members of the immediate families of the Individual Defendants, any entity in which any Defendant has or had a controlling interest, current or former directors and officers of Zynex, and the legal representatives, heirs, successors, or assigns of any such excluded person or entity. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action.

Reasons for Settlement: Avoids the costs and risks associated with continued litigation, including the danger of no recovery, and provides a substantial benefit to the Class now.

If the Case Had Not Settled: The settlement must be compared to the risk of no recovery after contested motions, trial and likely appeals. While Lead Counsel were prepared to go to trial and were confident about the case, a trial is a risky proposition and Lead Plaintiffs might not have prevailed. The claims in this case involve numerous complex legal and factual issues that would require extensive and costly expert testimony. Among the issues about which the two sides do not agree, in substance or relevance, are: (1) whether the challenged statements were material, false, misleading or otherwise actionable under the securities laws; (2) whether the Defendants made reasonable good faith estimates for calculating reserves based on prior operating history and other factors; (3) whether changes in collection rates were the result of unanticipated and unforeseen circumstances; (4) the method for determining whether Zynex common stock was artificially inflated during the relevant period; (5) the amount of any such inflation; (6) the extent that

various facts alleged by Lead Plaintiffs were materially false or misleading; (7) the extent that various facts alleged by Lead Plaintiffs influenced the trading price of Zynex common stock during the relevant period; (8) whether the case could be properly certified as a class action; (9) the amount of damages that could be recovered at trial; and (10) whether the Lead Plaintiffs' sources of information referenced in the complaint were knowledgeable or credible.

Attorneys' Fees and Expenses: Lead Counsel have not received any payment for their work investigating the facts, conducting this litigation and negotiating the settlement on behalf of the Lead Plaintiffs and the Class. Court-appointed Lead Counsel will ask the Court for attorneys' fees of 30% of the Settlement Fund and payment of expenses not to exceed \$137,000.00 to be paid from the Settlement Fund. If the above amounts are requested and approved by the Court, the average cost per share of common stock will be \$0.11. The Lead Plaintiffs may also seek reimbursement for their expenses (including lost wages) incurred in representing the Class in an amount not to exceed \$8,000.00.

Deadlines:

Submit Claim: October 1, 2012
 Request Exclusion: August 17, 2012
 File Objection: August 17, 2012

Court Hearing on Fairness of Settlement: September 14, 2012 at 9:00 a.m.

More Information: 1-888-308-0176 (toll-free)

Claims Administrator:
 Zynex Securities Claims Administrator
 c/o Class Action Administration, Inc.
 PO Box 6847
 Broomfield, CO 80021

Lead Counsel's Representative:
 Kip B. Shuman, Esq.
 The Shuman Law Firm
 885 Arapahoe Ave.
 Boulder, Co 80302

Your legal rights are affected whether you act or choose not to act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to receive a payment.
EXCLUDE YOURSELF	Receive no payment. This is the only option that allows you to participate in another lawsuit against the Defendants relating to the claims being released in this case.
OBJECT	You may write to the Court if you do not like this settlement.
GO TO THE HEARING	You may ask to speak in Court about the fairness of the settlement.
DO NOTHING	Receive no payment.

- These rights and options – *and the deadlines to exercise them* – are explained in this Notice.
- The Court in charge of this case must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and, if there are any appeals, after appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why Did I Receive This Notice Package?

You or someone in your family may have purchased shares of Zynex common stock between May 21, 2008 and March 31, 2009, inclusive.

The Court sent you this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it and after any objections or appeals are resolved, the Claims Administrator appointed by the Court will make the payments that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the District of Colorado, and the case is known as *Mishkin v. Zynex, Inc., et al.*, Civil Action No. 1:09-cv-00780-REB-KLM. The people who sued are called the Lead Plaintiffs, and the company and the individuals they sued, Zynex, Inc., Thomas Sandgaard, and Fritz G. Allison, are called the Defendants.

2. What Is This Lawsuit About?

The action is brought on behalf of those who purchased Zynex publicly traded securities between May 21, 2008 and March 31, 2009. Lead Plaintiffs allege that Defendants made false and misleading statements, assert claims for violations of the federal securities laws, and seek compensatory damages and other relief. The operative complaint is primarily based upon allegations of wrongdoing in connection with the Company's announcement of its intention to restate previously issued financial statements for the first three fiscal quarters ended of 2008.

The Defendants have denied and continue to deny each and all of the claims and contentions alleged by the Lead Plaintiffs in the lawsuit. Defendants assert they employed reasonable reserve estimates and that any changes in collection experience, which resulted in the restatement of previously issued financial statements, were the result of unanticipated developments. The Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the lawsuit.

3. Why Is This a Class Action?

In a class action, one or more people called class representatives (in this case the Court-appointed Lead Plaintiffs, John Trommald, Heather Trommald, and Howard Makler), sue on behalf of people who have similar claims. Here, all these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who timely and validly exclude themselves from the Class. Judge Robert E. Blackburn is in charge of this class action.

4. Why Is There a Settlement?

The Court did not decide in favor of Lead Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost and uncertainty of further litigation and a trial, and eligible Class Members who submit valid claims will receive compensation. The Lead Plaintiffs and their attorneys think the settlement is fair, reasonable, and adequate.

WHO IS IN THE SETTLEMENT

To see if you will receive money from this settlement, you first have to determine if you are a Class Member.

5. How Do I Know if I Am Part of the Settlement?

The Class includes all Persons who purchased Zynex common stock between May 21, 2008 and March 31, 2009, inclusive, except those persons and entities that are excluded, as described below.

6. What Are the Exceptions to Being Included?

You are not a Class Member if you are a Defendant, a member of the immediate family of one of the individual defendants, an entity in which any Defendant has or had a controlling interest, a current or former director or officer of Zynex, a legal representative, heir, successor, or assign of any excluded party.

If you sold Zynex common stock between May 21, 2008 and March 31, 2009, that alone does not make you a Class Member. You are a Class Member only if you purchased Zynex common stock between May 21, 2008 and March 31, 2009.

7. I'm Still Not Sure if I Am Included.

If you are still not sure whether you are included, you can ask for free help. You can call the Zynex Securities Claims Administrator at 1-888-308-0176 for more information. Or you can fill out and return the claim form described in question 10, to see if you qualify.

THE SETTLEMENT BENEFITS — WHAT YOU GET

8. What Does the Settlement Provide?

Defendants have agreed to pay \$2.5 million in cash. The balance of this fund after payment of Court-approved attorneys' fees and expenses and Lead Plaintiffs' expenses and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing newspaper notice (the "Net Settlement Fund") will be divided among all eligible Class Members who send in valid claim forms.

9. How Much Will My Payment Be?

The Net Settlement Fund will be distributed to Class Members who submit valid, timely Proof of Claim and Release forms ("Authorized Claimants") under the Plan of Allocation described below. The Plan of Allocation provides that you will be eligible to participate in the distribution of the Net Settlement Fund only if you have a net loss on all transactions in Zynex common stock during the Class Period.

For purposes of determining the amount an Authorized Claimant may recover under the Plan of Allocation, Lead Counsel have consulted with their damage consultants and the Plan of Allocation reflects an assessment of the damages that they believe could have been recovered had Lead Plaintiffs prevailed at trial.

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, 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.

Zynex, Inc. Securities Litigation Proposed Plan of Allocation.

A claim will be calculated as follows for shares of common stock purchased between May 21, 2008 and March 31, 2009, inclusive:

- A. For shares held at the end of trading on June 29, 2009, the Recognized Loss shall be that number of shares multiplied by the lesser of:
 - (1) the applicable purchase date artificial inflation per share figure, as found in Table A; or
 - (2) the difference between the purchase price per share and \$0.82.¹

- B. For shares sold between May 21, 2008 and March 31, 2009, inclusive, the Recognized Loss shall be that number of shares multiplied by the lesser of:
 - (1) the applicable purchase date artificial inflation per share figure less the applicable sale date artificial inflation per share figure, as found in Table A; or
 - (2) the difference between the purchase price per share and the sales price.

¹ Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, "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." \$0.82 was the mean closing price of Zynex, Inc. common stock during the 90-day period beginning on April 1, 2009 and ending on June 29, 2009.

C. For shares sold between April 1, 2009 and June 29, 2009, the Recognized Loss shall be that number of shares multiplied by the lesser of:

- (1) the applicable purchase date artificial inflation per share figure, as found in Table A; or
- (2) the difference between the purchase price per share and the average closing price of Zynex, Inc. common stock between April 1, 2009 and the date of sale.²

Table A

<u>Purchase or Sale Date Range</u>	<u>Artificial Inflation Per Share</u>
05/21/2008 – 11/03/2008	\$3.68
11/04/2008 – 11/19/2008	\$1.85
11/20/2008 – 03/31/2009	\$0.65

The date of purchase or sale is the “contract” or “trade” date as distinguished from the “settlement” date.

For Class Members who held Zynex common stock at the beginning of the Class Period or made multiple purchases or sales during the Class Period, the first-in, first-out (“FIFO”) method will be applied to such holdings, purchases and sales for purposes of calculating a claim. Under the FIFO method, sales of shares during the Class Period will be matched, in chronological order, first against securities held at the beginning of the Class Period. The remaining sales of securities during the Class Period will then be matched, in chronological order, against securities purchased during the Class Period.

A Class Member will be eligible to receive a distribution from the Net Settlement Fund only if a Class Member had a net loss, after all profits from transactions in Zynex common stock during the Class Period are subtracted from all losses. However, the proceeds from sales of securities which have been matched against stock held at the beginning of the Class Period will not be used in the calculation of such net loss. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

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

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Authorized Claimants. No Person shall have any claim against Lead Counsel or any claims administrator or Defendants or other person designated by Lead Counsel or Defendants or Defendants’ counsel based on distributions made substantially in accordance with the Stipulation and the settlement contained therein, the Plan of Allocation, or further orders of the Court. All Class Members who fail to complete and submit a valid and timely Proof of Claim and Release form shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

HOW YOU OBTAIN A PAYMENT — SUBMITTING A CLAIM FORM

10. How Will I Obtain a Payment?

To qualify for payment, you must be an eligible Class Member, send in a valid claim form, and properly document your claim as requested in the claim form. A claim form is enclosed with this Notice. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign it, and mail it in the enclosed envelope **postmarked no later than October 1, 2012.**

² Pursuant to Section 21(D)(e)(2) of the Private Securities Litigation Reform Act of 1995, “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, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff’s damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.”

11. When Will I Receive My Payment?

The Court will hold a hearing on September 14, 2012, to decide whether to approve the settlement. If Judge Backburn approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps several years. Everyone who sends in a claim form will be informed of the determination with respect to their claim. Please be patient.

12. What Am I Giving Up to Receive a Payment or Stay in the Class?

Unless you timely and validly exclude yourself, you are staying in the Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants about the Released Claims in this case. It also means that all of the Court's orders will apply to you and legally bind you and you will release your claims in this case against the Defendants. The terms of the release are included in the claim form that is enclosed.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue or continue to sue the Defendants on your own for the Released Claims in this case, then you must take steps to get out of the Class. This is called excluding yourself or is sometimes referred to as opting out of the Class.

13. How Do I Get out of the Class?

To exclude yourself from the Class, you must send a letter by mail stating that you want to be excluded from *Mishkin v. Zynex, Inc., et al.*, Civil Action No. 1:09-cv-00780-REB-KLM. You must include your name, address, telephone number, your signature, and the number of shares of Zynex stock you purchased between May 21, 2008 and March 31, 2009, the number of shares sold during this time period, if any, and the dates of such purchases and sales. You must mail your exclusion request **postmarked no later than August 17, 2012** to:

Zynex Securities Claims Administrator
c/o Class Action Administration, Inc.
PO Box 6847
Broomfield, CO 80021

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you are not eligible to receive any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

14. If I Do Not Exclude Myself, Can I Sue the Defendants for the Same Thing Later?

No. Unless you timely and validly exclude yourself, you give up any right to sue the Defendants for the Released Claims in this settlement. If you have a pending lawsuit against any of the Defendants, speak to your lawyer in that case immediately. Remember, the exclusion deadline is August 17, 2012.

15. If I Exclude Myself, Can I Receive Money from This Settlement?

No. If you exclude yourself, do not send in a claim form. But, you may be able to sue, continue to sue, or be part of a different lawsuit involving the Released Claims against the Defendants.

THE LAWYERS REPRESENTING YOU

16. Do I Have a Lawyer in This Case?

The Court appointed The Shuman Law Firm and Glancy, Binkow & Goldberg LLP to represent you and other Class Members. These lawyers are called Lead Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How Will the Lawyers Be Paid?

Lead Counsel will ask the Court for attorneys' fees of 30% of the Settlement Fund and for payment of their expenses up to \$137,000.00 (an average cost of \$0.11 per share of common stock), which were incurred in connection with the litigation. Lead Plaintiffs may also request payment for their expenses (including lost wages) incurred in Questions? Call toll-free 1-888-308-0176

representing the Class in an amount not to exceed \$8,000. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

The attorneys' fees and expenses requested will be the only payment to Lead Counsel for their efforts in achieving this settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Lead Counsel have not been paid for their services in conducting this litigation on behalf of the Lead Plaintiffs and the Class, nor for their substantial expenses. The fee requested will compensate Lead Counsel for their work in achieving the Settlement Fund and is within the range of fees awarded to class counsel under similar circumstances in other cases of this type. The Court may award less than this amount.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

18. How Do I Tell the Court that I Do Not Like the Settlement?

If you are a Class Member, you can object to the settlement if you do not like any part of it, including the Plan of Allocation and the request for attorneys' fees and expenses. In order to object, you must file with the Clerk of the United States District Court for the District of Colorado, **on or before August 17, 2012**: (i) a statement submitted under penalty of perjury of the number of shares of Zynex common stock you purchased and sold during the Class Period, including the date(s) of acquisition or disposition of any such stock with proof thereof; (ii) a statement of your specific objections to the settlement and the judgment to be entered thereon, and/or the award of attorneys' fees and expenses to Plaintiffs' counsel; and (iii) all other documents, writing and other evidence that you desire the Court to consider. You must also deliver these documents by hand no later than August 20, 2012, or send them by first class mail so that the documents arrive no later than August 20, 2012, to each of the following counsel of record: The Shuman Law Firm, Kip B. Shuman, 885 Arapahoe Avenue, Boulder, Colorado 80302; and Fulbright & Jaworski L.L.P., William J. Leone, 370 17th Street, Suite 2150, Denver, Colorado 80202. The statement regarding the number of shares of Zynex common stock the Person purchased and sold during the Class Period does not need to be notarized, and the following sentence at the end of the statement and before the signature shall be sufficient to satisfy the certification requirement: "I declare under the penalty of perjury that the foregoing is true and correct." Any Class Member who does not make his, her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement.

19. What's the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object *only if* you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to.

20. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a fairness hearing at 9:00 a.m., on September 14, 2012, at the Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, Colorado. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Blackburn will listen to people who have asked to speak at the hearing. The Court will also consider how much to pay to Lead Counsel and the Lead Plaintiffs. The Court may decide these issues at the hearing or take them under consideration. We do not know how long these decisions will take.

21. Do I Have to Come to the Hearing?

No. Lead Counsel will answer questions Judge Blackburn may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

22. May I Speak at the Hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter saying that it is your intention to appear in *Mishkin v. Zynex, Inc., et al.*, Civil Action No. 1:09-cv-00780-REB-KLM. Be sure to include your name, address, telephone number, your signature, the number of shares of Zynex stock purchased and sold between May 21, 2008 and March 31, 2009, inclusive. Your notice of intention to appear must be sent to the Clerk of the Court, Lead Counsel, and Defendants' counsel, at the addresses listed in question 18 by August 20, 2012. You cannot speak at the hearing if you exclude yourself from the Class.

IF YOU DO NOTHING

23. What Happens if I Do Nothing at All?

If you do nothing, you will be a Settlement Class Member, but you will not receive any money from this settlement because it is necessary to submit a valid claim form. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants about the Released Claims in this case.

GETTING MORE INFORMATION

24. Are There More Details About the Settlement?

This Notice summarizes the proposed settlement. More details are in the Stipulation of Settlement dated as of November 8, 2011 ("Stipulation"). You can obtain a copy of the Stipulation from the Claims Administrator, or from the Clerk's office at the United States District Court for the District of Colorado, 901 19th Street, Denver, Colorado during regular business hours.

25. How Do I Get More Information?

You can call the Zynex Securities Litigation Claims Administrator at 1-888-308-0176.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE

SPECIAL NOTICE TO NOMINEES

The Court has ordered that if you hold or held shares of Zynex common stock purchased between May 21, 2008 and March 31, 2009, inclusive, as nominee for a beneficial owner, then, within ten (10) days after you receive this Notice, you must either: (1) send a copy of this Notice 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:

Zynex Securities Claims Administrator
c/o Class Action Administration, Inc.
PO Box 6847
Broomfield, CO 80021

If you choose to mail the Notice and Proof of Claim 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 which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DATED: May 3, 2012

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO