

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(SOUTHERN DIVISION)

In re BIOLASE TECHNOLOGY, INC.  
SECURITIES LITIGATION

This Document Relates to:  
ALL ACTIONS

Master File No. 8:04-cv-00947

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION,  
MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT  
OF EXPENSES AND SETTLEMENT FAIRNESS HEARING**

***IF YOU PURCHASED OR OTHERWISE ACQUIRED BIOLASE TECHNOLOGY, INC. ("BIOLASE") COMMON STOCK FROM OCTOBER 29, 2003 THROUGH JULY 16, 2004 ("CLASS PERIOD") YOU COULD RECEIVE A PAYMENT FROM A CLASS ACTION SETTLEMENT.***

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

**Settlement Fund:** The Settlement will provide a one million nine hundred and fifty thousand dollar (\$1,950,000) cash settlement fund for the benefit of persons and entities who purchased or acquired Biolase common stock during the Class Period (the "Settlement Fund").

**Final Settlement Hearing** will be held on: August 6, 2007 at 8:30 a.m.

**The Lawsuit:** The Settlement resolves class action litigation over whether Biolase's statements, including its filings with the United States Securities and Exchange Commission ("SEC"), contained misrepresentations and omissions of material information concerning Biolase's business, prospects and operations, and whether these alleged misrepresentations and omissions inflated the price of Biolase common stock during the Class Period causing financial injury to the Class. *See* "The Status of the Lawsuit" and Question 2 below for more information.

**Attorneys' Fees and Expenses:** Co-Lead Counsel have litigated this Action on a contingent basis and have conducted this Action and advanced the expenses of litigation with the expectation that if they were successful in recovering money for the Class, they would receive fees and be reimbursed for their expenses from the Settlement Fund, as is customary in this type of litigation. Court-appointed Co-Lead Counsel will apply to the Court for an award of attorneys' fees not to exceed 25% of the Settlement Fund and reimbursement of out-of-pocket expenses not to exceed \$195,000, plus interest on both amounts at the same rate as earned by the Settlement Fund, all to be paid from the Settlement Fund. If the above amounts are requested and approved by the Court, the average cost per share of Biolase common stock will be \$0.04.

**Deadlines:**

Submit Claim:	September 7, 2007
Request Exclusion:	June 29, 2007
File Objection:	June 29, 2007

**Court Hearing on Fairness of Settlement:** August 6, 2007

**More Information:**

Claims Administrator:

Berdon Claims Administration LLC  
P.O. Box 9014  
Jericho, NY 11753-8914  
Telephone: (800) 766-3330  
Facsimile: (516) 931-0810  
Website: [www.berdonclaims.com](http://www.berdonclaims.com)

Co-Lead Counsel:

Robert I. Harwood, Esq.  
Jeffrey M. Norton, Esq.  
Harwood Feffer LLP  
488 Madison Avenue, 8th Floor  
New York, NY 10022  
Telephone: 212-935-7400

Kay E. Sickles, Esq.  
Eric Lechtzin, Esq.  
Schiffrin Barroway Topaz & Kessler, LLP  
280 King of Prussia Road  
Radnor, PA 19087  
Telephone: 610-667-7706

- **Also enclosed is a Proof of Claim and Release form (“Proof of Claim”) that you must complete and submit via mail postmarked no later than September 7, 2007 to participate in the Settlement.**
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.

**Statement of Recovery**

Lead Plaintiffs estimate that approximately 17,758,774 shares of Biolase common stock were purchased and/or acquired during the Class Period. Lead Plaintiffs estimate that the average recovery per share of Biolase common stock under the Settlement will be \$0.11 before the deduction of attorneys’ fees, costs, and expenses, as approved by the Court. The actual recovery per share of Biolase common stock will depend on: (1) the number of claims filed; (2) when Class Members sold their shares of Biolase common stock; (3) administrative costs, including the costs of notice, for the Action; and (4) the amount awarded by the Court for attorneys’ fees and expenses. Distributions to Class Members will be made based on the Plan of Allocation set forth in this Notice. *See* the Plan of Allocation on pages 5 to 7.

**The Circumstances of the Settlement**

The principal reason for Lead Plaintiffs’ agreement to the Settlement is to provide a benefit to the Class now. This benefit must be compared to the risk that no recovery might be achieved after contested motions, a contested trial and likely appeals, possibly years into the future. While Co-Lead Counsel were prepared to go to trial and were confident in their ability to present a case, they recognize that a trial is a risky proposition and that Lead Plaintiffs and the Class might not have prevailed on all their claims. Further, the claims advanced by the Class involve numerous complex legal, financial and accounting issues, which would require voluminous discovery, including extensive expert discovery and testimony, and would add considerably to the expense and duration of the Action. Even after extensive investigation, questions remain regarding the extent of Defendants’ liability, if any, the extent a jury might find them liable, if at all, and the true measure of the Class’ damages, if any. In particular, Defendants have asserted throughout the Action that Lead Plaintiffs will be unable to prove their losses were caused by any misrepresentations made by Defendants. This Settlement therefore enables the Class to recover without incurring any additional risk or costs. As a result, Lead Plaintiffs believe this Settlement is a fair, reasonable, and adequate recovery for the Class.

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## **BASIC INFORMATION**

### **1. Why Did I Receive This Notice Package?**

You or someone in your family may have purchased or otherwise acquired Biolase common stock from October 29, 2003 through July 16, 2004, inclusive.

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

### **2. What Is This Lawsuit About?**

Defendant Biolase designs, manufactures and markets proprietary dental laser systems used by dentists and oral surgeons to perform a broad range of common dental procedures, including cosmetic procedures.

Nine federal securities class action complaints were filed on or after August 6, 2004 against Biolase and two of the Company's officers Jeffrey W. Jones ("Jones") and Edson J. Rood ("Rood") (collectively, the "Defendants") alleging violations of the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). These actions were subsequently consolidated by the Court on November 12, 2004.

This Action asserted claims under Sections 10(b) and 20(a) of the Exchange Act and Sections 11, 12 and 15 of the Securities Act on behalf of all persons who purchased or acquired Biolase common stock from October 29, 2003 through July 16, 2004, inclusive. Following two amendments to the complaint, a motion to dismiss by Defendants, and the Court's adverse ruling for plaintiffs on Defendants' motion to dismiss, plaintiffs filed their Third Amended Consolidated Class Action Complaint (the "TAC") on behalf of those who purchased or otherwise acquired Biolase common stock pursuant to the Company's February 27, 2004 Secondary Offering on March 10, 2006. Specifically, the TAC asserted that the Company's Offering Documents contained materially false and misleading statements and omissions concerning the Company's financial statements, including, *inter alia*, that: (a) Biolase recorded revenue from sales that were "pre-funded" by a leasing company without corresponding purchase orders from dentists and from highly questionable sales through the leasing company; (b) Biolase stuffed its international distribution channels; (c) Biolase lacked adequate internal controls over its accounting for international sales; and (d) Biolase recorded revenue for cancelled orders that were shipped to warehouses operated by a freight company and, on some occasions, double-booked sales of the same units when the Company found real purchasers. On May 8, 2006, Defendants filed a motion to dismiss the TAC, and by order dated July 25, 2006, the Court dismissed the TAC without prejudice based on plaintiffs' lack of standing to assert Section 11 claims, while sustaining the underlying Section 11 claims. On August 23, 2006, plaintiffs filed the Fourth Amended Consolidated Class Action Complaint (the "Complaint") on behalf of substituted plaintiffs – the Lead Plaintiffs. Defendants filed their answer to the Complaint on October 20, 2006, denying all claims and particularly that any improper revenue recognition occurred.

Shortly thereafter, the parties agreed to pursue mediation to discuss the possibility of a settlement of the Action and participated in a formal mediation session on January 5, 2007 with the assistance of a mediator. Although the parties did not come to an agreement on the resolution of the Action at the mediation, the parties continued negotiations with the assistance of the mediator before reaching a tentative resolution of the Action.

### **3. Why Is This Action a Class Action?**

In a class action, one or more people called class representatives (in this case the Court-appointed Lead Plaintiffs, Sandy Greene and Adam R. Klein), sue on behalf of people who have similar claims. All of these people who have similar claims are referred to collectively as a Class, or individually as Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Settlement. The U.S. District Court for the Central District of California, the Honorable David O. Carter, 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 risks of further litigation and trial. As explained above, the Lead Plaintiffs and their attorneys believe the Settlement is best for all Class Members.

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

The Class includes: *all persons and entities who purchased or otherwise acquired Biolase common stock from October 29, 2003 through July 16, 2004, inclusive*, except those persons and entities that are excluded, as described in Question 6 below.

#### **6. Who Is Excluded From the Class?**

Excluded from the Class are: (a) Defendants and members of their immediate families; (b) the officers and directors of the Company, at all relevant times, and members of their immediate families; (c) the legal representatives, heirs, successors or assigns of any excluded party; and (d) any entity in which Defendants have or had a controlling interest. Also excluded from the Class are those persons and entities who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in this Notice as described in Question 13 below.

#### **7. What If I Am Still Not Sure if I Am Included?**

If you are still not sure whether you are included, you can contact the Claims Administrator, Berdon Claims Administration LLC by phone at (800) 766-3330, by fax at (516) 931-0810, or via the website at [www.berdonclaims.com](http://www.berdonclaims.com)

### **THE SETTLEMENT BENEFITS**

#### **8. What Does the Settlement Provide?**

Defendants have agreed to create a \$1.95 million cash Settlement Fund. The balance of this fund, after payment of Court-approved attorneys' fees and expenses and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing notice (the "Net Settlement Fund"), will be divided among all Class Members who submit timely and valid claim forms.

### **PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS**

#### **9. How Much Will My Payment Be?**

Each person or entity claiming to be an Authorized Claimant shall be required to submit a separate Proof of Claim signed under penalty of perjury and supported by such documents as specified in the Proof of Claim as are reasonably available to the Authorized Claimant. **All Proofs of Claim must be postmarked or received by September 7, 2007**, addressed as follows:

**Biolase Technology, Inc. Securities Litigation  
c/o Berdon Claims Administration LLC  
Claims Administrator  
P.O. Box 9014  
Jericho, NY 11753-8914**

The Net Settlement Fund will be distributed to Authorized Claimants pursuant to the terms of the Plan of Allocation described below. The Plan of Allocation provides that a Class Member will be eligible to participate in the distribution of the Net Settlement Fund only if he, she, or it has a net loss on all transactions in Biolase

common stock as a result of purchases and/or acquisitions of Biolase common stock made from October 29, 2003 through July 16, 2004, including purchases pursuant to the Company's February 27, 2004 Secondary Offering for \$18.50 per share. Under no circumstances will a Recognized Loss exceed the out-of-pocket loss, exclusive of commissions, taxes or other fees.

For Class Members who held Biolase common stock as of the close of trading on October 28, 2003, or made multiple purchases, acquisitions or sales pursuant to the Company's February 27, 2004 Secondary Offering, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases, acquisitions and sales for purposes of calculating a Recognized Loss. Under the FIFO method, sales will be matched, in chronological order, first against your holdings prior to your purchases during the Class Period, and thereafter, in chronological order, against subsequent purchases during the Class Period.

This Plan of Allocation is not a formalized damage study, but rather, a simplified methodology designed solely to compare one class member to another. The Plan of Allocation formula is also not intended to be an estimate of the amount of what a Class Member might have been able to recover after a trial; nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the settlement. The Plan of Allocation formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants.

- a. For **shares of Biolase common stock purchased and/or acquired in the February 27, 2004 Secondary Offering**, the "Recognized Loss" amount shall be the amount calculated below:
  - i. For such shares **sold on or before July 16, 2004**, an Authorized Claimant's "Recognized Loss" shall be \$0.00. The inflation incurred at the time of purchase was recouped at the time of sale.
  - ii. For shares **retained as of the close of trading on July 16, 2004**, an Authorized Claimant's "Recognized Loss shall mean the LESSER OF:
    - \$2.21; or
    - the difference, if a loss, between the purchase price and \$9.90 per share.
- b. For **shares of Biolase common stock** who purchased during the Class Period, but **not** pursuant to the February 27, 2004 Secondary Offering, the "Recognized Loss" amount shall be the amount calculated below:
  - i. For Biolase common stock purchased *and sold* between October 29, 2003 and July 16, 2004, inclusive, the Recognized Loss shall be \$0.00. The inflation incurred at the time of purchase was recouped at the time of sale.
  - ii. For Biolase common stock purchased between October 29, 2003 and July 16, 2004, inclusive, and retained at the end of trading on July 16, 2004, the Recognized Loss shall be the LESSER OF:
    - \$0.11; or
    - the difference between the purchase price per share and \$9.90 multiplied by 5%.

### **General Provisions:**

- a. In processing claims, the first-in, first-out basis will be applied to purchases and sales.
- b. The date of purchase is the "contract" or "trade" date as distinguished from the "settlement" date. Therefore, all purchases and/or acquisitions of Biolase common stock between October 29, 2003 and July 16, 2004, inclusive, including shares purchased or acquired pursuant to the Company's February 27, 2004 Secondary Offering for \$18.50 per share, and sales thereof must be listed.
- c. Brokerage commissions and transfer taxes paid by you in connection with your purchase(s), acquisition(s) and sale(s) of Biolase common stock during the Class Period should be excluded from the purchase and sale price.



- d. Shares originally sold short will have a zero Recognized Loss.
- e. All profits will be subtracted from all losses, both computed in the manner described above.
- f. 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 claims of all Authorized Claimants.
- g. The Court has reserved jurisdiction to allow, disallow or adjust the claim of any Class Member on equitable grounds.
- h. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement.
- i. No distribution will be made on a claim where the potential distribution amount is \$10.00 or less in cash.
- j. Payment in this manner described herein shall be deemed conclusive against all Authorized Claimants.
- k. No person or entity shall have any claim against the Lead Plaintiffs or their counsel; or any claims administrator or other agent designated by the Lead Plaintiffs or their counsel, or against 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.

### **SUBMITTING A CLAIM FORM**

#### **10. How Will I Receive a Payment?**

To qualify for payment, you must be an eligible Class Member and you must submit a Proof of Claim. A Proof of Claim form is annexed to this Notice. You may also visit [www.berdonclaims.com](http://www.berdonclaims.com) (click on "Cases: Current and Completed") to access a copy of the claim form. Please fill out the form, sign it, include all requested documents, and mail your materials in an envelope **postmarked no later than September 7, 2007**. Please read the instructions carefully before completing the Proof of Claim. Retain a copy of everything you mail, in case the materials are lost or destroyed during shipping.

#### **11. When Will I Receive My Payment?**

The Court will hold a hearing on August 6, 2007, to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals, which can take several years to resolve. Please note that the Claims Administrator must process all of the Proof of Claims. The processing is complicated and will take many months. Please be patient.

#### **12. What Am I Giving Up By Staying in the Class?**

Unless you exclude yourself, you will remain a Class Member, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants or the Released Parties about the claims being released in this Settlement. 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 Action 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 about the same claims being released in this Settlement, then you must take steps to exclude yourself from the Settlement.

If you exclude yourself from the Class, you will not receive any payment from the Settlement Fund.

### **13. How Do I Exclude Myself from the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from the Settlement in *In re Biolase Technology, Inc. Securities Litigation*, Master File No. 8:04-cv-00947. You must include your name, address, telephone number, your signature, the number of shares of Biolase common stock you purchased and/or acquired from October 29, 2003 through July 16, 2004, inclusive, the number of shares sold, and the dates of each sale. You must **mail** your exclusion request so that it is received no later than June 29, 2007 to:

**Biolase Technology, Inc. Securities Litigation  
c/o Berdon Claims Administration LLC  
Claims Administrator  
P.O. Box 9014  
Jericho, NY 11753-8914**

You cannot exclude yourself over the phone or by e-mail.

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

No. Unless you exclude yourself, you give up any right to sue the Defendants or the Released Parties for the claims being released by this Settlement. If you have a pending lawsuit relating to the claims being released in this case against any of the Defendants, speak to your lawyer in that case immediately. Remember, the exclusion deadline is June 29, 2007.

### **15. If I Exclude Myself, Can I Receive a Payment from This Settlement?**

No. If you exclude yourself, do not send in a claim form. You will not be able to receive any share of the Settlement Fund.

## **THE LAWYERS REPRESENTING YOU**

### **16. Do I Have a Lawyer in This Case?**

The Court appointed the law firms of Harwood Feffer LLP and Schiffrin Barroway Topaz & Kessler, LLP to represent you and the other Class Members. These lawyers are called Co-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?**

Co-Lead Counsel will apply to the Court for an award of attorneys' fees not to exceed 25% of the Settlement Fund and for reimbursement of their out-of-pocket expenses up to \$195,000 (collectively, an average of \$0.04 per share of common stock), which were advanced in connection with the Action, plus interest on both amounts at the same rate as earned by the Settlement Fund. *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 Co-Lead Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Co-Lead Counsel have not been paid for their services for conducting this Action on behalf of Lead Plaintiffs and the Class or for their substantial out-of-pocket expenses. The fee requested will compensate Co-Lead Counsel for their work in achieving the Settlement Fund and is well within the range of fees awarded to class counsel under similar circumstances in other cases of this type. The Court may, however, award less than this amount.



## OBJECTING TO THE SETTLEMENT

### 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, Plan of Allocation, or application for attorneys' fees and reimbursement of expenses by writing to the Court. You must include your name, address, telephone number and your signature, and reference *In re Biolase Technology, Inc. Securities Litigation*, Master File No. 8:04-cv-00947. You must also provide information concerning your purchase(s), acquisition(s) and sale(s) of Biolase common stock from October 29, 2003 through July 16, 2004, inclusive, and the reasons you object to the Settlement. You can object **only if** you stay in the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. Any objection to the Settlement must be received by *each of the following* by June 29, 2007:

<b>COURT</b>	<b>LEAD COUNSEL</b>	<b>DEFENDANTS' COUNSEL</b>
Clerk of the Court United States District Court Central District of California Santa Ana Courthouse 411 West Fourth Street Santa Ana, CA 92701-4516	Robert I. Harwood, Esq. Jeffrey M. Norton, Esq. <b>Harwood Feffer LLP</b> 488 Madison Avenue, 8th Fl. New York, NY 10022  Kay E. Sickles, Esq. Eric Lechtzin, Esq. <b>Schiffirin Barroway Topaz &amp; Kessler LLP</b> 280 King of Prussia Road Radnor, PA 19087	Walter J. Robinson, Esq. <b>Pillsbury Winthrop Shaw Pittman LLP</b> 2475 Hanover Street Palo Alto, CA 94304-1114  Bruce A. Ericson, Esq. <b>Pillsbury Winthrop Shaw Pittman LLP</b> 50 Fremont Street San Francisco, CA 94105

## THE COURT'S SETTLEMENT FAIRNESS HEARING

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

The Court will hold a fairness hearing at 8:30 a.m., on August 6, 2007, at the United States District Court for the Central District of California, Santa Ana Courthouse, 411 West Fourth Street, Santa Ana, California 92701-4516, Courtroom 9D. At this hearing the Court will consider whether the Settlement and the Plan of Allocation are fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have requested in writing by June 29, 2007 to speak at the hearing. The Court may also consider Co-Lead Counsels' application for an award of attorneys' fees and reimbursement of expenses.

### 20. Do I Have to Come to the Hearing?

No. Co-Lead Counsel will answer any questions Judge Carter 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.

### 21. May I Speak at the Hearing?

You may ask the Court for permission to speak at the Settlement Fairness Hearing. To do so, you must send a letter stating your intention to appear in *In re Biolase Technology, Inc. Securities Litigation*, Master File No. 8:04-cv-00947. Be sure to include your name, address, telephone number, your signature, and the number of shares of Biolase common stock purchased and/or acquired during the period from October 29, 2003 through July 16, 2004, inclusive. Your notice of intention to appear must be received no later than June 29, 2007, and be sent to the Clerk of the Court, Co-Lead Counsel, and Defendants' Counsel, at the addresses listed in Question 18. You cannot speak at the hearing if you exclude yourself from the Settlement.

## **IF YOU DO NOTHING**

### **22. What Happens if I Do Nothing at All?**

If you do nothing, you will receive no money from this Settlement and you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants or the Released Parties about the same claims being released in this Settlement.

## **OBTAINING MORE INFORMATION**

### **23. Are There More Details About the Settlement?**

This Notice summarizes the proposed Settlement. More details are contained in the Stipulation of Settlement dated March 23, 2007 (the "Stipulation"). You can obtain a copy of the Stipulation from the Clerk's office at the United States District Court for the Central District of California, Santa Ana Courthouse, 411 West Fourth Street, Santa Ana, California 92701-4516, during regular business hours. You can also obtain more information about the Settlement by writing to Harwood Feffer LLP, 488 Madison Avenue, 8th Floor, New York, NY 10022, or Schiffrin Barroway Topaz & Kessler, LLP, 280 King of Prussia Road, Radnor, PA 19087, or by contacting the Claims Administrator at [www.berdonclaims.com](http://www.berdonclaims.com) or at (800) 766-3330.

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

## **SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

The Court has ordered that if you purchased and/or acquired shares of Biolase common stock, **CUSIP number 090911108**, during the period October 29, 2003 through July 16, 2004, inclusive, as nominee for a beneficial owner, then, the Court has ordered that within ten (10) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice by first class mail to all such beneficial owners and provide the Claims Administrator with written confirmation of having done so; or (2) provide a list of the names and last-known addresses of such beneficial owners to the Claims Administrator, **preferably in an MS Excel data table, setting forth: (a) title/registration, (b) street address, (c) city/state/zip; or electronically in MS Word or WordPerfect files (Avery size 5162); or on computer-generated mailing labels.**

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

Biolase Technology, Inc. Securities Litigation  
c/o Berdon Claims Administration LLC  
P.O. Box 9014  
Jericho, NY 11753-8914  
Telephone: (800) 766-3330  
Facsimile: (516) 931-0810  
Website: [www.berdonclaims.com](http://www.berdonclaims.com)

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

Dated: May 10, 2007

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(SOUTHERN DIVISION)

In re BIOLASE TECHNOLOGY, INC.  
SECURITIES LITIGATION

This Document Relates to:  
ALL ACTIONS

Master File No. 8:04-cv-00947

**PROOF OF CLAIM AND RELEASE**

**I. GENERAL INSTRUCTIONS**

A. To recover as a member of the Class based on your claims in the action entitled *In re Biolase Technology, Inc. Securities Litigation*, Master File No. 8:04-cv-00947 (the “Action”), you must complete this Proof of Claim and Release form (“Proof of Claim”). If you fail to submit a Proof of Claim by the deadline, your claim may be rejected and you may be precluded from any recovery from the Settlement Fund created in connection with the proposed Settlement of the Action.

B. Submission of this Proof of Claim, however, does not assure that you will share in the proceeds of Settlement Fund created in this Action.

C. YOU MUST COMPLETE AND SUBMIT YOUR PROOF OF CLAIM VIA MAIL **POSTMARKED ON OR BEFORE SEPTEMBER 7, 2007**, ADDRESSED TO THE CLAIMS ADMINISTRATOR AS FOLLOWS:

**Biolase Technology, Inc. Securities Litigation  
c/o Berdon Claims Administration LLC  
P.O. Box 9014  
Jericho, NY 11753-8914**

If you are NOT a member of the Class, as defined in the Notice of Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Reimbursement of Expenses and Settlement Fairness Hearing (the “Notice”), DO NOT submit a Proof of Claim form.

D. If you are a member of the Class, you are bound by the terms of any judgment entered in the Action, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

**II. INSTRUCTIONS FOR CLAIMANT IDENTIFICATION SCHEDULE**

A. If you purchased or otherwise acquired Biolase Technology, Inc. (“Biolase”) common stock during the period between October 29, 2003 and July 16, 2004 (“Class Period”) and held the share(s) in your name, you are the beneficial purchaser as well as the record purchaser. If, however, the share(s) were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is the record purchaser.

B. Use Part IV of this form entitled “Claimant Identification Schedule” to identify each owner of record (“nominee”), if different from the beneficial owner of shares of Biolase common stock which form the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNER(S), OR THE



LEGAL REPRESENTATIVE OF SUCH OWNER(S) OF THE SHARES OF BIOLASE COMMON STOCK UPON WHICH THIS CLAIM IS BASED.

C. All joint owners must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of persons or entities represented by them and their authority must accompany this claim and their titles or capacities must be stated.

D. The Social Security (or other 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.

**III. INSTRUCTIONS FOR SCHEDULE OF TRANSACTIONS**

A. Use Part V of this form to supply **all** of the requested information with respect to each share of Biolase common stock purchased or otherwise acquired during the Class Period including shares purchased pursuant to the Company’s February 27, 2004 Secondary Offering for \$18.50 per share. If you need more space, attach separate sheets giving all of the required information in substantially the same form. Sign and print your name and Social Security (or other tax identification) number at the top of each additional sheet. Failure to report all such transactions may result in the rejection of your claim.

B. List each purchase and sale separately and in chronological order by “trade” date (as distinguished from “settlement” date), beginning with the earliest and providing month, day and year for each transaction.

C. In processing claims, the first-in, first-out basis (“FIFO”) will be applied to purchases and sales.

D. Brokerage commissions, fees and taxes should be excluded from the purchase and sale price.

E. Shares originally sold short will have a zero Recognized Loss.

F. All profits will be subtracted from all losses, both computed in the manner described in the Plan of Allocation. (See Question 9).

G. **Copies** of broker confirmations or other documentation of your transactions in Biolase common stock should be attached to your claim. A complete list of acceptable supporting documentation can be found on the Claims Administrator’s website: [www.berdonclaims.com](http://www.berdonclaims.com). Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

H. The Claims Administrator may request additional information and/or documentation as required to efficiently and reliably calculate your losses.

I. If your trading activity exceeds 50 transactions, you must provide, in an electronic file, all purchase and sale information required in the Schedule of Transactions. For a copy of instructions and parameters concerning such a submission, contact the Claims Administrator by phone at (800) 766-3330; by fax at (516) 931-0810; or via the website at [www.berdonclaims.com](http://www.berdonclaims.com).



**BIOLASE**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(SOUTHERN DIVISION)

*In re Biolase Technology, Inc. Securities Litigation*

**PROOF OF CLAIM**

**Must be received by Claims Administrator postmarked no later than September 7, 2007**

**IV. CLAIMANT IDENTIFICATION**

*Please Type or Print*

Beneficial Owner's Name *(as it appears on your brokerage statement)*

Joint Beneficial Owner's Name *(as it appears on your brokerage statement)*

Street Address

City

State

Zip Code

Foreign Province

Foreign Country

Social Security Number

or

Taxpayer Identification Number

Specify one of the following:

- Individuals       Corporation       UGMA Custodian       IRA
- Partnership       Estate       Trust       Other: \_\_\_\_\_

\_\_\_\_\_  
 Area Code      Telephone Number      (Day)      \_\_\_\_\_      \_\_\_\_\_ (Evening)  
 Area Code      Telephone Number

Facsimile Number

E-Mail Address

Record Owner's Name and Address *(if different from beneficial owner listed above)*

DETACH HERE





**V. SCHEDULE OF TRANSACTIONS IN BIOLASE COMMON STOCK**

- A. State the total number of shares of Biolase common stock **owned** at the close of trading on October 28, 2003, long or short (*must be documented*): \_\_\_\_\_
- B. State the total number of shares of Biolase common stock **purchased** in the Secondary Offering at \$18.50 per share, issued pursuant to the Offering Documents dated February 27, 2004 (*must be documented*): \_\_\_\_\_
- C. Separately list each and every **purchase** of Biolase common stock between October 29, 2003 and July 16, 2004 (inclusive) **except** those purchased in the Secondary Offering at \$18.50 per share issued pursuant to the Offering Documents dated February 27, 2004 and provide the following information (*must be documented*):

Trade Date (list chronologically) Month/Day/Year	Number of Shares Purchased	Price per Share (excluding commissions, taxes and fees)

- D. Separately list each and every **sale** of Biolase common stock during the period October 29, 2003 **through** July 16, 2004 (inclusive) and provide the following information (*must be documented*):

Trade Date (list chronologically) Month/Day/Year	Number of Shares Sold	Price per Share (excluding commissions, taxes and fees)

- E. State the total number of shares of Biolase common stock **owned** at the close of trading on July 16, 2004 long or short (*must be documented*): \_\_\_\_\_

**If you need additional space, attach the required information on separate, numbered sheets in the same format as above and print your name and Social Security (or other taxpayer identification) number at the top of each additional sheet.**

**YOU MUST READ THE RELEASE AND SIGN ON PAGE 17**

DETACH HERE







## **VI. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I/We submit this Proof of Claim and Release under the terms of the Stipulation of Settlement dated as of March 23, 2007 (the “Stipulation”). I/We also submit to the jurisdiction of the United States District Court for the Central District of California, with respect to my/our claim as a Class Member (as defined in the Notice) 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 Co-Lead Counsel to support this claim if required to do so. I/We have not submitted any other claim covering the same purchases, acquisitions and sales of Biolase common stock and know of no other person or entity having done so on my/our behalf.

## **VII. DEFINITIONS AND RELEASE**

A. I/We hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release, relinquish and discharge all of the Settled Claims against each and all of the Defendants and the Released Parties, defined above.

B. “Released Claims” means any and all claims, debts, demands, rights or causes of action or liabilities, including without limitation claims for negligence, breach of fiduciary duty and fraud, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (as defined below): (1) that have been asserted in this Action by the Lead Plaintiffs or Class Members or any of them against any of the Released Parties; or (2) that could have been asserted in any forum by the Lead Plaintiffs or Class Members or any of them against any of the Released Parties which arise out of or relate to the allegations, facts, events, statements, disclosures, misrepresentations and omissions that have been, or that could have been asserted in the Action and relate to the purchase, acquisition, retention or sale of Biolase common stock during the Class Period.

C. “Released Defendants’ Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims (as defined below), that have been or could have been asserted in the Action or any forum by the Defendants, or the successors or assigns of any of them against the Lead Plaintiffs, any of the Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action except for obligations under the Stipulation of Settlement.

D. “Released Parties” means the Defendants, their past or present subsidiaries, affiliates, parents, successors, and predecessors, estates and assigns, and their respective present and former officers, directors, agents, legal representatives, subsidiaries, trustees, employees, attorneys, insurers, reinsurers, advisors, underwriters and investment advisors, accountants, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has or had a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of the Defendants.

E. “Unknown Claims” means any and all Released Claims that Lead Plaintiffs or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Released Defendants’ Claims which any Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Released Defendants’ Claims, the Parties stipulate and agree

DETACH HERE





that upon the Effective Date, Lead Plaintiffs and the Defendants shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Order and Final 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 Cal. Civ. 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 Plaintiffs, the Class Members, and the Released Parties have acknowledged that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but shall be deemed, by operation of the Final Order and Judgment, to have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, and without regard to the subsequent discovery or existence of such additional or different facts. Lead Plaintiffs and the Defendants acknowledge, and the Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims and Released Defendants’ Claims was separately bargained for and was a key element of the Settlement.

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

G. 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.

H. I/We hereby warrant and represent that I/we have included information about all of my/our transactions in Biolase common stock that were purchased or acquired during the period between October 29, 2003 and July 16, 2004, inclusive.

### **VIII. CERTIFICATION**

UNDER THE PENALTY OF PERJURY I/WE CERTIFY THAT:

A. The number shown on this form is my correct TIN; and

B. I/We certify that I am/we are NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code.

NOTE: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, you must cross out the word “NOT” in paragraph B above.

DETACH HERE





C. I/We declare under penalty of perjury, under the laws of the United States of America, that the foregoing information supplied by the undersigned and the supporting documents attached hereto, are true, correct and complete to the best of my/our knowledge, information and belief, and that this Proof of Claim and Release form was executed this \_\_\_\_ day of \_\_\_\_\_, 2007 in \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
(Print your name here)

\_\_\_\_\_  
Signature of Joint Claimant, if any

\_\_\_\_\_  
(Print your name here)

\_\_\_\_\_  
Signature of person signing on behalf of Claimant

\_\_\_\_\_  
(Print your name here)

\_\_\_\_\_  
Capacity of person signing on behalf of Claimant, if other than an individual (e.g., Executor, President, Custodian, etc.)

DETACH HERE





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

**Reminder Checklist:**

1. Remember to sign the above Release and Certification.
2. If this claim is being made on behalf of joint claimants, both must sign.
3. Remember to attach only **copies** of acceptable supporting documentation, a complete list of which can be found on the Claims Administrator's website.
4. Do not send originals of securities certificates.
5. Keep copies of the completed claim form and documentation for your own records.
6. If you desire an acknowledgment of receipt of your claim form, please send it by Certified Mail, Return Receipt Requested, or its equivalent. **You will bear all risks of delay or non-delivery of your claim.**
7. If your address changes in the future, or if these documents were sent to an old or incorrect address, please send us **written** notification of your new address.
8. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at:

Biolase Technology, Inc. Securities Litigation  
c/o Berdon Claims Administration LLC  
P.O. Box 9014  
Jericho, NY 11753-8914  
Telephone: (800) 766-3330  
Fax: (516) 931-0810  
Website: [www.berdonllp.com/claims](http://www.berdonllp.com/claims)

**This form and your supporting documentation  
must be postmarked no later than September 7, 2007.**



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