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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

In re A10 NETWORKS, INC. SHAREHOLDER LITIGATION	Lead Case No. 1-15-CV-276207
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES
	Assigned for All Purposes to the Honorable Peter H. Kirwan
	DATE: January 13, 2017 TIME: 9:00 a.m. DEPT: 1 DATE ACTION FILED: 01/29/15

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

SECONDARY AUTHORITY

I. INTRODUCTION

Lead Counsel have obtained an all-cash settlement of $9,837,500 for the benefit of the Class in this consolidated class action (the "Litigation").[1] This is an excellent recovery obtained in the face of substantial risk and is the product of hard-fought litigation and arm's-length settlement negotiations. Counsel now respectfully move this Court for an award of attorneys' fees in the amount of 25% of the Settlement Amount, as well as payment of the litigation expenses they incurred in prosecuting this Litigation in the amount of $114,031.68, and interest on both amounts. Finally, Plaintiff Michael Kaveney respectfully requests payment of $1,000 for his time spent while prosecuting this Litigation on behalf of the Class.

As explained below, and in the Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), submitted herewith,[2] as well as in the previously filed Declaration of James I. Jaconette in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement, dated July 7, 2016 ("Jaconette Decl."), this Settlement represents a highly favorable recovery for the Class in view of the risks, costs, and duration of continued litigation. Absent settlement, this Litigation would likely have continued for years, through the completion of fact discovery, expert discovery, summary judgment, trial, and likely appeals. Plaintiffs and their counsel faced substantial obstacles in proving liability and damages, yet nevertheless reached a timely and substantial resolution for the Class.

Lead Counsel vigorously investigated and prosecuted this Litigation on behalf of the Class, as described below. Jaconette Decl., ¶28. As a result, Plaintiffs' Counsel and their paraprofessionals spent nearly 3,400 hours prosecuting this Litigation, resulting in a combined lodestar of $1,968,104.00.

On September 14, 2016, the Court entered an Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order"), pursuant to which the Settlement was

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[1] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Stipulation of Settlement dated June 30, 2016 ("Stipulation" or "Settlement").

[2] Because many of the factors supporting final approval of the Settlement also buttress the requested award of attorneys' fees and expenses, Lead Counsel incorporate herein the concurrently filed Settlement Memorandum.

preliminarily approved. The Preliminary Approval Order also approved the form and manner of notice to be given to the Class.

For their diligence and efforts in obtaining this favorable recovery on behalf of the Class, Lead Counsel respectfully request an award of attorneys' fees of 25% of the Settlement Amount and payment of expenses incurred in the prosecution of the Litigation in the amount of $114,031.68, plus interest on both amounts. The requested fee is fair and reasonable under the applicable standards and is well within the range of fees awarded by California Superior Courts and is supported by recent California Supreme Court precedent. On August 11, 2016, the California Supreme Court affirmed a one-third percentage-based fee award to class counsel in ***Laffitte v. Robert Half Int'l Inc.***, 1 Cal. 5th 480 (2016) (wage and hour case, $19 million settlement). Plaintiffs' Counsel's costs and expenses are likewise reasonable in amount, and were necessarily incurred in the successful prosecution of the Litigation. Finally, Plaintiff Kaveney's modest request is reasonable, given his efforts on behalf of the Class.

II. THE COURT SHOULD AWARD ATTORNEYS' FEES USING THE PERCENTAGE METHOD

A. The Common Fund Doctrine Allows Courts to Assess the Beneficiaries of the Fund with the Costs of Creating that Fund

Where, as here, litigation has created a common fund for the benefit of the named plaintiffs as well as others, courts have the power to award plaintiffs' counsel their reasonable attorneys' fees and expenses out of the fund created. The California Supreme Court has expressly affirmed "'the historic power of equity to permit . . . a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund of property itself or directly from the other parties enjoying the benefit.'" *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977).[3]

The common fund doctrine rests on two premises. The first one is the prevention of unjust enrichment – "'that all who will participate in the fund should pay the cost of its creation or protection and that this is best achieved by taxing the fund itself for attorney's fees.'" *Id.*, at 35 n.5; *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 27 (2000).

[3] Unless otherwise noted, citations are omitted throughout.

The second is a "salvage" rationale – "encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be promptly and directly compensated should his efforts be successful." *Estate of Stauffer*, 53 Cal. 2d 124, 132 (1959). The salvage purpose requires "'a flavor of generosity . . . in order that an appetite for efforts may be stimulated.'" *Melendres v. Los Angeles*, 45 Cal. App. 3d 267, 273 (1975).

While "[c]ourts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method," *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001), the United States Supreme Court has consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of counsel's fee should be determined on a percentage-of-the-fund basis. *See, e.g.*, *Trustees v. Greenough*, 105 U.S. 527, 532 (1882); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). California courts, including this Court, have long accepted the percentage approach for awarding fees in common fund cases as well. *See, e.g.*, *Steiner v. Whittaker Corp.*, No. 000817, Transcript at 8:9-11 (Los Angeles Super. Ct. Mar. 23, 1989) (attached as Ex. 1 hereto).[4]

If there was any doubt that the percentage method of awarding attorneys' fees in a common fund case in California courts was proper, the Supreme Court of California recently

> clarif[ied] . . . that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

Laffitte, 1 Cal. 5th at 503. In so doing, the Supreme Court recognized the advantages of using the percentage method of awarding attorneys' fees as a percentage of the common fund, including the "relative ease of calculation, alignment of incentives between counsel and the class, a better

[4] All unreported authorities cited herein are attached hereto.

approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." *Id.*

The *Laffitte* ruling is consistent with the United States Supreme Court's decision in *Blum v. Stenson*, where the Supreme Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class." 465 U.S. 886, 900 n.16 (1984). In the Ninth Circuit, the district court has discretion to award fees in common fund cases based on either the percentage-of-the-fund method or the so-called lodestar/multiplier method. *In re Wash. Pub. Power Supply Sys.*, 19 F.3d 1291, 1296 (9th Cir. 1994). The Ninth Circuit has expressly and repeatedly approved the use of the percentage method in common fund cases. *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268 (9th Cir. 1989); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370 (9th Cir. 1993); and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).[5] Indeed, the California Supreme Court recognized that "[c]urrently, all the circuit courts either mandate or allow their district courts to use the percentage method in common fund cases; none require sole use of the lodestar method [and] [m]ost state courts to consider the question in recent decades have also concluded the percentage method of calculating a fee award is either preferred or within the trial court's discretion in a common fund case." *Laffitte*, 1 Cal. 5th at 493-94.

As a result, Lead Counsel respectfully submit that an award should be made here on a percentage basis.

B. The Requested Fee of 25% of the Settlement Fund Created Is Reasonable in This Case

The Court of Appeals in *Laffitte* observed that "the trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action

[5] Since *Paul, Johnson* and its progeny, district courts in the Ninth Circuit have almost uniformly shifted to the percentage method in awarding fees in common fund representative actions. *See, e.g.*, *In re Apollo Grp., Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 U.S. Dist. LEXIS 55622, at *20 (D. Ariz. Apr. 20, 2012) ("'Because the benefit to the class is easily quantified in common-fund settlements,' courts can award attorneys a percentage of the common fund 'in lieu of the more often time-consuming task of calculating the lodestar.'") (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)).

lawsuits." *Laffitte v. Robert Half Int'l Inc.*, 231 Cal. App. 4th 860, 878 (2014). The court also quoted authority noting that "'[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.'" *Id.* The requested 25% fee here is well below that "average" (*id.*) and is less than what Lead Counsel believe would be appropriate in this case absent agreement between the Plaintiffs and their counsel as to the requested amount.

In determining the reasonableness of a fee request, California courts typically consider the following "basic factors": (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee agreement. *In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.*, No. 960886, 1998 WL 1031494, at *3 (Alameda Super. Ct. Oct. 22, 1998); *see also Serrano*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1810 n.21 (1996).

"However, no rigid formula applies and each factor should be considered only 'where appropriate.'" *Natural Gas Anti-Trust Cases*, No. 4221, 2006 WL 5377849, at *3 (San Diego Super. Ct. Dec. 11, 2006); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007) ("The Ninth Circuit has approved a number of factors which may be relevant to the district court's determination: . . . (2) the risk of litigation; . . . and (5) awards made in similar cases."); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 U.S. Dist. LEXIS 13555, at *70-*71 (C.D. Cal. June 10, 2005) (reaction of the class is a factor to be considered).

An analysis of the relevant factors supports the requested fee award.

1. The Result Achieved

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical

factor is the degree of success obtained"); *Omnivision*, 559 F. Supp. 2d at 1046 ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.").

In this case, a Settlement Amount of $9,837,500 in cash has been obtained solely through the efforts of Lead Counsel. Lead Counsel believe that at the time the Settlement was reached, the Settlement was the largest recovery for a Securities Act claim prosecuted in California state court. This is a highly favorable result given the risks of proving liability, causation, and damages, and provides an immediate and certain recovery for Class Members without the risk, expense and delay of the completion of discovery, summary judgment, trial and appeals.

2. The Time and Labor Required

Lead Counsel vigorously investigated and prosecuted this Litigation, and their efforts, including: (a) an extensive factual investigation of the events underlying A10's March 21, 2014 initial public offering (the "IPO") and the subsequent Q2 2014 and Q3 2014 earnings misses and other disclosures; (b) review and analysis of witness accounts of A10's operations given by former A10 employees developed through Lead Counsel's factual investigation; (c) researching and filing initial complaints, the consolidated complaint, and the operative Amended Complaint; (d) briefing and arguing for lifting the stay of discovery imposed by the Court during the pendency of a demurrer; (e) briefing, arguing in opposition and prevailing against Defendants' joint demurrer nearly in its entirety; (f) briefing, arguing in opposition and prevailing against the A10 Defendants' motion to strike the substantive allegations in the Complaint; (g) review and analysis of confidential data regarding A10's bookings, revenues, inventory and other financial and operational metrics and more than 93,000 pages of non-public confidential documents produced by A10 for purposes of mediation; (h) producing documents to the A10 Defendants for purposes of mediation evidencing City of Warren's and ARTRS's purchases of A10 common stock; (i) consulting with and obtaining a report from a consulting expert on damages and causation issues for purposes of mediation; (j) preparing and submitting settlement submissions to the mediator, the Hon. Layn R. Phillips (Ret.); (k) preparing for and participating in a day-long mediation session before Judge Phillips; and (l) participating in post-mediation negotiations facilitated by Judge Phillips, culminating in this Settlement, were well spent. Jaconette Decl., ¶28.

Although Lead Counsel make this application on a percentage-of-recovery basis, using the lodestar approach as a cross-check (although not required by the California Supreme Court in *Laffitte*) on the reasonableness of the requested fee further demonstrates that it is fair and should be awarded. In total, Plaintiffs' Counsel and their paraprofessionals expended 3,393.55 hours in the prosecution of this Litigation through October 31, 2016, resulting in a combined lodestar of $1,968,104.00.[6] The requested fee of 25%, or $2,459,375, represents a modest multiplier of 1.25. A "lodestar cross-check . . . provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage." *Laffitte*, 1 Cal. 5th at 504. That is not the case here. The requested fee results in a multiplier that is within the range of multipliers that have been deemed reasonable by courts in California and nationwide.

"Multipliers can range from 2 to 4 or even higher." *Wershba*, 91 Cal. App. 4th at 255.[7] Indeed, "numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees." *Natural Gas Anti-Trust Cases*, 2006 WL 5377849, at *4; *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for a lodestar enhancement of "two, three, four or otherwise"). In *Lealao*, the court held that a trial court's refusal to enhance the lodestar as a part of a fee award was an abuse of discretion, opining that a multiplier in excess of 3.5 was reasonable and not ruling out class counsel's original request for a multiplier of 8. *Lealao*, 82 Cal. App. 4th at 24, 52.

[6] The time and expenses devoted to the Litigation are set forth in the accompanying Declarations of James I. Jaconette, David J. Goldsmith and Geoffrey M. Johnson in Support of Application for Award of Attorneys' Fees and Expenses ("Plaintiffs' Counsel's Declarations").

[7] While a lodestar cross-check fully supports the requested fee, a lodestar cross-check is not required, *Laffitte*, 1 Cal. 5th at 506 ("We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.").

3. The Contingent Nature of the Case, Risk of Loss, and the Delay in Payment to Plaintiffs' Counsel

Plaintiffs' Counsel undertook this Litigation on a contingent-fee basis, assuming a significant risk that the Litigation would yield no recovery and leave them uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Plaintiffs' Counsel have not been compensated for any time or expense since this case began in January 2015. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000) (the level of risk taken by plaintiff's counsel is "'perhaps the foremost' factor" in considering the appropriate percentage award). This makes sense because in the legal marketplace, an attorney who takes a case on contingency expects a higher fee than an attorney who is paid as the case goes along, win or lose. *See Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962); *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal. App. 3d 914, 955 (1985) ("'riskiness,' difficulty or contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award"). As the Court of Appeals explained in *Cazares v. Saenz*, 208 Cal. App. 3d 279 (1989):

> In addition to compensation for the legal services rendered, there is the raison d'etre for the contingent fee: the contingency. The lawyer on a contingent fee contract receives nothing unless the plaintiff obtains a recovery. Thus, in theory, a contingent fee in a case with a 50 percent chance of success should be twice the amount of a noncontingent fee for the same case. . . .
>
> Finally, even putting aside the contingent nature of the fee, the lawyer under such an arrangement agrees to delay receiving his fee until the conclusion of the case, which is often years in the future. The lawyer in effect finances the case for the client during the pendency of the lawsuit. If a lawyer was forced to borrow against the legal services already performed on a case which took five years to complete, the cost of such a financing arrangement could be significant.

Id. at 288.

Plaintiffs faced significant risk concerning their ability to establish both liability and damages. While Plaintiffs believe they could have proven their Securities Act claims, success at trial was far from certain. Defendants have vigorously argued that Plaintiffs cannot demonstrate the falsity of the challenged statements made in connection and omissions from the Registration Statement issued in connection with the Company's IPO. More specifically, the A10 Defendants would continue to argue that

there was no undisclosed trend in bookings by North American service providers at the time of the IPO (and that there was in fact a positive trend in 2013), and no slowdown in such bookings occurred until after the IPO. The A10 Defendants would also argue that AX Series and Thunder Series products were fully interoperable and sold side-by-side, and that no material amount of sales in 2013 were "forced upgrades" to existing customers. Jaconette Decl., ¶44.

Moreover, even assuming that Plaintiffs demonstrated liability, there was no guarantee they would prevail on the issues of loss causation and damages. At summary judgment and trial, Defendants' experts would likely assert a negative causation defense and contend that all of the losses sustained by the Class were due to factors completely unrelated to Defendants' alleged false and misleading statements in the Registration Statement, thereby eliminating any potential recovery. More specifically, Defendants would argue that the losses suffered by the Class were attributable to unforeseen market-wide events affecting A10's key customers (service providers and wireless carriers) in key geographical markets (Japan and North America) months after the IPO. There was, therefore, a substantial risk that the finder of fact could agree with Defendants' contention that no damages could be linked to the Defendants' statements or omissions at issue, or that damages were substantially less than the amount Plaintiffs have asserted. *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) ("it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions"), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

In light of these risks, a quick settlement was not likely. Indeed, from the beginning of the case, it was clear that Defendants were prepared to litigate to judgment and through trial and appeals. Thus, from day one, Lead Counsel needed to commit the time and resources necessary to successfully take the case to trial. Indeed, more than 3,390 hours of attorney and paraprofessional time and more than $114,000 in expenses have been incurred. While Plaintiffs and their counsel believe that the Class would prevail at trial, the complexity of this case made the outcome at trial uncertain. The contingent nature of counsel's representation and the sizable financial risks borne by Lead Counsel support the percentage fee requested. As the court in *Xcel Energy* recognized, "[p]recedent is replete with

situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005); *see also Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming ruling that granted defendants' post-trial motion for summary judgment as a matter of law based on failure to prove loss causation, thereby overturning a jury verdict in plaintiff's favor).

4. Awards Made in Similar Cases

Lead Counsel are applying for a fee award of 25% of the Settlement Fund. This request falls squarely within the parameters of percentage fees awarded in other class action litigation in California. Indeed, California courts have routinely awarded attorneys' fees of up to 30% of the settlement amount in class actions. "'Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.'" *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008); *see also Lealao*, 82 Cal. App. 4th at 31 n.5 ("'whatever method is used and no matter what billing records are submitted . . ., the result is an award that almost always hovers around 30[%] of the fund created by the settlement'").

Courts have recently awarded fees as high as 33-1/3% fee in complex litigations such as this. *See, e.g.*, *In re Castlight Health, Inc. S'holder Litig.*, No. CIV533203, slip op. (San Mateo Super. Ct. Oct. 29, 2016) (approving 30% fee award); *Wiley v. Envivio, Inc.*, No. CIV517185, slip op. (San Mateo Super. Ct. June 22, 2015) (approving 25% fee award); *Plymouth Cnty. Ret. Sys. v. Model N, Inc.*, No. CIV530291, slip op. (San Mateo Super. Ct. Apr. 4, 2016) (approving 30% fee award); *In re CafePress Inc. S'holder Litig.*, No. CIV522744, slip op. (San Mateo Super. Ct. Aug. 11, 2015) (approving 30% fee award); *In re Pacific Biosciences of Cal., Inc. Sec. Litig.*, No. CIV509210, slip op. (San Mateo Super. Ct. Oct. 31, 2013) (approving 29% fee award); *Robinson v. Audience, Inc.*, No. 1:12-cv-232227, slip op. (Santa Clara Super. Ct. June 10, 2016) (Kirwan, J.) (awarding a fee of 30%); *West Palm Beach Police Pension Fund v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. (San Diego Super. Ct. June 28, 2012) (approving 33-1/3% fee award) (attached as Exhibits 2-8 hereto).

Percentage fees at or above the 25% "benchmark" fee are common in federal securities settlements in the Ninth Circuit. In *Paul, Johnson*, the Ninth Circuit established 25% of a common

fund as the "benchmark" award for attorneys' fees. 886 F.3d at 272; *see also Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at *18 (N.D. Cal. Feb. 11, 2016).

A recent study by NERA also found that the median award of attorneys' fees as a percentage of the settlement amount for shareholder class actions that settled between $5 million and $10 million from 1996-2015 was 30%. Svetlana Starykh & Stefen Boettrich, *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review*, at 36 (Figure 32) (NERA Jan. 25, 2016).

The fee requested is, therefore, consistent with the fees awarded in other shareholder class actions.

5. Experience, Reputation, Ability, and Quality of Counsel, and the Skill They Displayed in Litigation

The skill, experience, reputation, quality, and ability of the attorneys who prosecuted this case also support the requested fee award. Lead Counsel Robbins Geller Rudman & Dowd LLP and Labaton Sucharow LLP have earned national reputations for excellence through many years of litigating complex civil actions, particularly the prosecution of securities class actions. As set forth in the firm résumés filed concurrently herewith, Lead Counsel's experience, resources, and high-quality attorneys have allowed them to obtain significant recoveries throughout the country on behalf of their clients. *See* Résumés attached to the Declarations of James I. Jaconette and David J. Goldsmith in Support of Application for Award of Attorneys' Fees and Expenses, filed herewith.

The quality of opposing counsel is also important in evaluating the quality of the work done by Plaintiffs' Counsel. *See, e.g.*, *In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Plaintiffs' Counsel were opposed in this Litigation by experienced and skilled counsel from Wilson Sonsini Goodrich & Rosati, P.C. and O'Melveny & Myers LLP, large law firms with well-deserved reputations for vigorous advocacy on behalf of their clients. In the face of such knowledgeable and experienced opposition, Lead Counsel were able to develop a case that was sufficiently strong to persuade Defendants to settle the case for an amount that Lead Counsel believe is highly favorable to the Class. As a result, this factor weighs strongly in favor of the requested fee.

6. Continuing Obligations of Lead Counsel

Lead Counsel's work does not end with the approval of the Settlement. Continuing work will include supervising the claims process, answering shareholder calls and, if necessary, litigating appeals.

7. The Reaction of the Class

While the December 14, 2016 deadline for objecting to counsel's fee and expenses has not passed, to date, Lead Counsel are not aware of a single Class Member who has objected to the fee and expense request or opted-out of the Class. *See* accompanying Declaration of Adam D. Walter of A.B. Data, Ltd. Regarding (A) Mailing of the Notice of Proposed Settlement of Class Action and the Proof of Claim and Release Form, (B) Publication of the Summary Notice, (C) Internet Posting, and (D) Requests for Exclusion Received to Date, ¶14. "The absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable." *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, at *71.[8]

III. PLAINTIFFS' COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. County of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in making a determination if particular costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Here, Plaintiffs' Counsel are seeking payment of costs and expenses in an aggregate amount of $114,031.68. As itemized in Plaintiffs' Counsel's Declarations, counsel's expenses include: (1) expert and investigators' fees; (2) mediation fees; (3) legal filing and process server fees; (4) on-line legal, financial, and factual research; (5) transportation, meals, and hotels; (6) photocopying; and (7) overnight delivery and messenger service fees. The expenses for which Plaintiffs' Counsel seek

[8] Lead Counsel will address any objections in their reply memorandum, which will be filed on or before January 6, 2017, in accordance with this Court's Preliminary Approval Order.

payment are those which are normally charged to paying clients, over and above hourly fees. *Id.* ("Harris may recover as part of the award of attorneys' fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.'"). Further, the expenses which have been incurred and for which payment is sought were necessary for the successful prosecution of the Litigation, are reasonable in amount, and thus should be paid. *See Vincent v. Reser*, No. 11-03572 CRB, 2013 WL 621865, at *5 (N.D. Cal. Feb. 19, 2013) ("Attorneys who create a common fund are entitled to the reimbursement of expenses they advanced for the benefit of the class.").

IV. THE REQUEST FOR PLAINTIFF KAVENEY'S TIME IS APPROPRIATE

Plaintiff Michael Kaveney seeks a modest award of $1,000 for his time that was incurred as a result of his serving as a Plaintiff in this Litigation and ensuring that the Class was adequately represented. The service and time devoted to this Litigation by Mr. Kaveney are set forth in his declaration filed concurrently herewith. Courts "routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071 (RJH), 2005 U.S. Dist. LEXIS 24890, at *30 (S.D.N.Y. Oct. 24, 2005). *See also CafePress*, slip op. at 6 (awarding $2,500 to each plaintiff); *Pacific Biosciences*, slip op. at 7 (awarding plaintiffs $5,943.36 and $2,540.00); *Audience*, slip op. at 3 (awarding $2,500 to each class representative); *CardioNet*, slip op. at 8 (awarding lead plaintiff $4,500 for costs and expenses), attached as Exhibits 5-8 hereto.

V. CONCLUSION

For the reasons set forth herein, Lead Counsel respectfully submit that the motion for an award of attorneys' fees and expenses and payment of Plaintiff Kaveney's time is fair, reasonable, and appropriate under all the circumstances of this case and it should, therefore, be granted.

DATED: November 30, 2016

Respectfully submitted,

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EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 17 HONORABLE ELI CHERNOW, JUDGE

WILLIAM STEINER, ETC. ET AL., PLAINTIFFS,	)	
	)	SUPERIOR COURT
VS.	)	NO. CA 000817
WHITTAKER CORPORATION ETC., ET AL. DEFENDANTS.	)	CLASS ACTION

REPORTER'S TRANSCRIPT

MARCH 23, 1983

JUNE AGEE CSR 1097

OFFICIAL REPORTER

LOS ANGELES, CALIFORNIA 3 23 89 # 9:48 A.M.

DEPARTMENT 17 HON. ELI CHERNOW, JUDGE

--000--

THE COURT: WE WILL TRY AGAIN WITH WHITTIER.

MR. LERACH: BILL LERACH, STAR SOLTAN, AND KEITH PARK, MILBERG WEISS, BERSHAD, SPECTHRIE AND LERACH FOR PLAINTIFF.

MR. KRASNER: DAN KRASNER AND FRANK GREGOREK OF THE WOLF HALDENSTEIN FIRM, *LES WATERY, ABBY ELLIS FOR THE PLAINTIFFS,

MS. MCDOWELL: KATHY MCDOWELL, THE LONE PERSON APPEARING ON BEHALF OF ALL THE DEFENDANTS.

MR. LERACH: SHE WAS NOT ALWAYS SO OUTNUMBERED.

THE COURT: IS THERE ANYBODY ELSE WHO WANTS TO BE HEARD ON THIS MATTER? IS THERE ANY MEMBER OF THE CLASS, WHITTAKER SHAREHOLDER WHO WANTS TO BE HEARD ON ANY OF THE MATTERS ON OUR CALENDAR THIS MORNING?

NO ONE HAS EXPRESSED ANY DESIRE TO BE HEARD ON THAT.

ALL RIGHT. THE FIRST ISSUE IS THE CONFIRMATION OF THE SETTLEMENT. I THINK WE HAVE NOT RECEIVED ANY OPPOSITION.

MR. LERACH: THERE HAS BEEN NO OPPOSITION TO THE SETTLEMENT, YOUR HONOR.

THE COURT: ANYONE AWARE OF ANY OPPOSITION?

FINE. ALL RIGHT. THE COURT IS FAMILIAR WITH

THE SETTLEMENT. HAVING PARTICIPATED IN THE SETTLEMENT DISCUSSIONS, AND HAVING REVIEWED THE MATERIAL SUBMITTED IN SUPPORT OF IT, IT DOES APPEAR TO BE A FAIR, REASONABLE, JUST AND APPROPRIATE SETTLEMENT. THE SETTLEMENT IS APPROVED BY THE COURT.

MR. LERACH: I HAVE AN ORIGINAL AND FINAL JUDGMENT AND ORDER WHICH IF I CAN GIVE TO YOUR CLERK TO PASS UP TO YOU.

THE COURT: REMAIN AFTERWARDS AND THEN REVIEW IT WITH STEPHANIE.

ALL RIGHT. NOW THE OTHER ISSUE OF COURSE IS ATTORNEYS FEES. THERE HAS BEEN EXTENSIVE SUBMISSION ON ATTORNEY FEES NOT QUITE AS LARGE AS THE SUBMISSION ON THE SETTLEMENT, BUT EXTENSIVE.

IS THERE ANYBODY OTHER THAN PEOPLE AT THE COUNSEL TABLE WHO WANT TO BE HEARD AS TO THE PROPOSED ATTORNEY FEES, ANY MEMBER OF THE CLASS, WHITTAKER SHAREHOLDER WHO WANTS TO BE HEARD AS TO THAT?

OKAY, MR. LERACH.

MR. LERACH: THANK YOU. MAY IT PLEASE THE COURT, YOUR HONOR, YOU ARE VERY FAMILIAR WITH A GREAT AMOUNT OF THE CASE, ALTHOUGH A GREAT DEAL OF THE BATTLE WAS FOUGHT BEFORE WE WERE FORTUNATE TO ARRIVE AT DEPARTMENT 17.

I REALLY DO WANT TO ON BEHALF OF ALL THE LAWYERS, ACKNOWLEDGE TO YOUR HONOR THE IMPORTANT AND HELPFUL ROLE THE COURT PLAYED IN RESOLVING THIS DIFFICULT MATTER, THE PATIENCE YOU HAVE DISPLAYED, THE TIME YOU INVESTED IN IT TO CREATE AND HELP CREATE WHAT WE THINK IS A VERY FINE

RESULT FOR OUR CLIENT.

I JUST THOUGHT I WOULD TAKE A MINUTE, SO YOU MIGHT APPRECIATE FROM OUR PERSPECTIVE WHAT WENT ON IN THIS CASE. WE WORKED FOR FIVE AND A HALF YEARS WITHOUT BEING PAID ONE PENNY.

WE INVESTED OVER TEN THOUSAND HOURS OF OUR FIRM IN THE CASE, OVER $850,000 OF MONEY IN THE CASE SO IT COULD BE PROSECUTED AT A LEVEL OF COMPETENCE AND INTENSITY THAT COULD HELP CREATE THE RESULT ACHIEVED.

WE WERE AGAINST LITERALLY THE BEST LAWYERS THERE ARE ON THE OTHER SIDE, WHO WERE NOT CONSTRAINED BY LACK OF RESOURCES IN ANY WAY.

AT THE END OF THE DAY, WE RECOVERED $17.75 MILLION WHICH IS IN MY EXPERIENCE IN THE VERY FIRST TIER OF THE SIZE OF SETTLEMENTS OF THESE CASES.

UNDER THOSE CIRCUMSTANCES WE THINK THAT THE FEE REQUEST OF 35 PERCENT WHICH WORKS OUT TO A MULTIPLE OF 2.5 TIMES OUR CUSTOMARY HOURLY RATES OR LODESTAR IS FAIR.

I WOULD POINT OUT, YOUR HONOR, THAT THE AMOUNT THAT WE ENDED UP ASKING FOR IS FIVE PERCENT LESS THAN WAS IN THE NOTICE THAT WENT OUT. 19,500 NOTICES WERE MAILED, YOUR HONOR. NOT ONE OBJECTION HAS BEEN FILED WITH THE COURT.

THE COURT: THIS IS FIVE PERCENT LESS THAN THE AMOUNT?

MR. LERACH: AS WE NOTED WE COULD APPLY FOR UP TO 40 PERCENT PLUS EXPENSES. WE OPTED TO APPLIED FOR 35 PERCENT. IT IS A SIGNIFICANT DIFFERENCE OBVIOUSLY.

YOUR HONOR, MANY OF THE MEMBERS OF THE CLASS IN

THIS CASE ARE LARGE FINANCIAL INSTITUTIONS, MUTUAL FUNDS, BANKS, PENSION FUNDS AND THE LIKE, SOPHISTICATED CONSUMERS OF LEGAL SERVICES WHO HAVE THEIR OWN LEGAL DEPARTMENTS AND OWN COUNSEL AVAILABLE TO THEM.

I THINK IN THAT CONTEXT, THE LACK OF OBJECTION IS IMPORTANT BECAUSE THOSE KINDS OF PEOPLE HAVE A LOT AT STAKE. THEY HAVE THE ABILITY TO OBJECT IF THEY THINK THEY ARE BEING TREATED UNFAIRLY. THEY HAVE NOT OBJECTED.

I WISH I COULD TELL YOU THERE WAS NO OBJECTION WHATSOEVER FROM ANY SOURCE, BUT UNFORTUNATELY THERE WAS ONE OBJECTION. VERY LATE IN THE DAY WHICH CAME TO OUR ATTENTION. I WANT TO BRING IT TO YOUR ATTENTION. IT IS A LETTER THAT WAS WRITTEN.

I HAVE THE ORIGINAL, I AM GOING TO HAND UP A COPY. IT WAS A LETTER THAT WAS NOT FILED WITH THE COURT, AS REQUIRED BY THE NOTICE AND ORDER. IT WAS NOT SERVED ON COUNSEL, AS REQUIRED BY THE NOTICE IN THE ORDER.

IT WAS RATHER SENT TO THE CLAIMS PROCESSING CENTER, WHERE PROOFS OF CLAIM ARE TO BE SENT. AFTER THEY REALIZED WHAT IT WAS, THEY SENT IT ON TO US AND WE OF COURSE FELT WE SHOULD PRESENT IT TO YOU.

THE CLAIMS ADMINISTRATOR WROTE BACK TO MR. GARRETT, TOLD HIM THAT IF HE WANTED TO OBJECT HE HAD TO OBJECT THROUGH THE COURT, AND TO MY KNOWLEDGE MR. GARRETT HAS NOT DONE THAT.

I'D LIKE TO VERY BRIEFLY ADDRESS HIS OBJECTION. NUMBER 1, IT IS NOT CLEAR, YOUR HONOR, THAT MR. GARRETT IS A CLASS MEMBER OR HAS STANDING TO OBJECT. HIS LETTER DOES NOT

IDENTIFY WHEN HE PURCHASED WHITTAKER STOCK, OR IF HE CONTINUED TO HOLD HIS WHITTAKER STOCK.

THE COURT: LET'S ASSUME HE IS A MEMBER OF THE CLASS.

MR. LERACH: ASSUMING HE IS A MEMBER OF THE CLASS, OBVIOUSLY HIS OBJECTION IS NEITHER VALID NOR TIMELY WHICH IS IMPORTANT TO US FOR A NUMBER OF REASONS YOUR HONOR CAN APPRECIATE, BUT ON THE MERITS THE OBJECTION REALLY FALLS FAR SHORT.

I THINK IT IS EVIDENT FROM THE LANGUAGE USED THAT IT IS MORE OF AN EMOTIONAL THAN REASONED OBJECTION. TO DESCRIBE WHAT WE ARE RETESTING IS LEGALIZED THEORY, I THINK PROBABLY EXCEEDS THE BOUNDS OF FAIR ADVOCACY.

THE SUGGESTION WE SHOULD BE PAID FIFTEEN FOR FIVE HARD YEARS OF EFFORT I THINK IS A BIT PENURIOUS. I WOULD HOPE THAT YOUR HONOR WOULD BE MORE GENEROUS AND OBJECTIVE IN YOUR EVALUATION OF OUR EFFORTS.

THE COURT: WE WILL RECEIVE THIS AT THIS HEARING AS AN EXHIBIT, AS PART OF THE RECORD. I CAN'T HELP BUT COMMENT UNDOUBTEDLY, NOT UNDOUBTEDLY BUT LIKELY ONE OF THE REASONS MR. GARRETT SENT THIS WHERE HE DID IS THE ADMINISTRATOR, EVEN THOUGH THE NOTICE TO THE CLASS COMPLIED WITH THE COURT'S ORDER, DIRECTED THE ADMINISTRATOR TO BE IDENTIFIED AS THE CLAIMS ADMINSTRATOR, IN SOME SUCH MANNER AND NOT AS AN OFFICER OF THE COURT.

IT HAS COME TO THE COURT'S ATTENTION THAT THE RETURN ENVELOPE WAS ADDRESSED APPARENTLY TO ME; I AM NOT SURE, I THINK TO ME, THAT THE UNITED STATES DISTRICT COURT AT THE PO BOX IN THE COURT OF MADEIRA, THAT IS THE

ADMINISTRATOR'S, AND THAT WE DID NOT DEAL IN THE ORDER WITH HOW THE ENVELOPE WOULD BE ADDRESSED, BUT WE WOULD, IF I HAD REALIZED THAT WAS GOING TO BE AN ISSUE, PARTLY BECAUSE I DID NOT WANT TO MISLEAD CLASS MEMBERS THAT THEY WERE WRITING TO A COURT OFFICER AT THAT ADDRESS.

MR. LERACH: WHAT YOUR HONOR SAYS IS ACCURATE. WE HAD THE CLAIMS ADMINSTRATOR WRITE TO MR. GARRETT, WHICH HE DID, AND TELL HIM IF HE WANTED TO OBJECT HE SHOULD SEND IT TO THE COURT. TO MY KNOWLEDGE, NOTHING HAS BEEN RECEIVED BY THE COURT. NEVERTHELESS WE WANTED TO PRESENT IT TO YOU TODAY.

THE COURT: I THINK THAT IS YOUR OBLIGATION IN LIGHT OF THIS. BY IMPLICATION YOU ARE PRESENTING EVERYTHING THAT YOU AWARE OF THAT HAS GONE TO AN ADMINISTRATOR.

MR. LERACH: ABSOLUTELY, YOU ARE ABSOLUTELY CORRECT, YOUR HONOR.

THE COURT: WE WILL MAKE THAT EXHIBIT 1. WHITTAKER I BELIEVE IS NOT GOING TO PARTICIPATE IN THIS?

MS. MC DOWELL: THAT IS RIGHT, YOUR HONOR. WE HAVE NO STANDING TO DO SO.

THE COURT: I THINK I AGREE WITH MOST OF WHAT YOU HAVE SAID. THE ONE I SEE, THE LODESTAR FOR COUNSEL'S WORK IN THIS CASE FOR PLAINTIFFS' COUNSEL IS $2.4 MILLION, RAISES A NUMBER OF QUESTIONS FOR ME.

YOU ARE CORRECT, MR. LERACH, THIS COURT DID NOT BECOME INVOLVED WITH THE PROCEEDINGS UNTIL THE TIME CAME TO SERIOUSLY APPROACH TRIAL AND TO SET A TRIAL DATE. THIS COURT DID NOT PRESIDE OVER THE PRETRIAL DISCOVERY FIGHTS AND

MOTIONS THAT TOOK PLACE IN THE CLASS ACTION DEPARTMENT, SO THAT I REALLY AM NOT IN A POSITION TO REACH AN INDEPENDENT CONCLUSION ABOUT WHETHER THAT IS A REASONABLE FIGURE OR NOT.

WHEN I FIRST SAW IT, IT CERTAINLY STRUCK ME AS RATHER A HIGH FIGURE. CERTAINLY, IT RAISED THE QUESTION IN THE COURT'S MIND FOR EXAMPLE ABOUT WHETHER IT WAS REALLY NECESSARY TO HAVE QUITE SO MANY PEOPLE HERE FOR ALL OF THE APPEARANCES FOR EXAMPLE, OR WHETHER THERE ARE OTHER FACTORS THAT MIGHT APPROPRIATELY CAUSE SOME REDUCTION IN THE LODESTAR FIGURES. IT IS NOT NECESSARY TO REACH THAT. THE TOTALITY IS, I THINK THIS IS A REASONABLE REQUEST.

I THINK THAT IT IS PLAIN AS MANY OF THESE OTHER COURTS HAVE ALSO SAID THAT THE CALIBER OF THE LEGAL WORK WAS OF THE HIGHEST, VERY PROFESSIONAL, COMPLETE, THOROUGHLY AND CONCLUSIVELY HANDLED.

THE COURT HAS NO DOUBT THAT THE SETTLEMENT THAT WAS ULTIMATELY ARRIVED AT WAS ARRIVED AT IN PART BECAUSE OF THE DILIGENCE, COMPETENCE AND PROFESSIONALISM OF PLAINTIFFS' COUNSEL;

THAT THE REPUTATION OF COUNSEL INVOLVED, I AM SURE, DID ENHANCE THE RECOVERY THAT WAS ULTIMATELY ACHIEVED. AND THE REPUTATION OF THE DEFENDANT, BOTH, TO ACHIEVE THAT THAT RESULT.

I AM EVEN MORE CONVINCED THAT IN THE KIND OF CASES THAT WE MORE NORMALLY DEAL WITH IN STATE SUPERIOR COURT, THAT IS IN MANY CASES, IT IS QUITE POSSIBLE TO PUT A BRACKET ON THE VALUE OF THE CASE BECAUSE OF THE FREQUENCY WITH WHICH THEY ARE ARE TRIED IN THIS COURTHOUSE.

THE EXPERIENCED LAWYERS ON BOTH SIDES ARE ABLE TO MAKE REASONABLE ESTIMATES OF THE RANGE OF LIKELY VERDICTS.

IN THIS CASE WE DON'T HAVE A LOT OF EXPERIENCE WITH THOSE BEING TRIED IN STATE COURT. THEREFORE, THE RANGE OF VALUE IS QUITE WIDE INDEED; THEREFORE I THINK LESSER COUNSEL MIGHT HAVE ENDED UP WITH FEWER DOLLARS. I THINK THAT IS THE BOTTOM LINE IN THAT DISCUSSION.

35 PERCENT CERTAINLY IS NOT HIGH COMPARED TO THE KINDS OF CONTINGENT FEE ARRANGEMENTS THAT THE COURTS SEE ALL THE TIME FOR PLAINTIFFS' LITIGATION. IT IS ALSO TRUE WE DON'T OFTEN SEE QUITE SO MUCH MONEY TO WHICH THAT FIGURE IS APPLIED.

BALANCING THAT, AND THAT IS A FACTOR THAT CERTAINLY IS APPROPRIATE NOT TO ASK FOR AS MUCH AS MIGHT BE ASKED IN THE KIND OF CASE WHERE THE TOTAL RECOVERY MIGHT BE SMALLER, I DO THINK ALSO COUNSEL WAS QUITE AGGRESSIVE IN TAKING ADVANTAGE OF OPPORTUNITIES THAT PRESENTED THEMSELVES AND THAT THAT ENHANCED THE RECOVERY.

IT ALSO IS NOT THE CASE WHERE SOME INJURED PLAINTIFF WHO HAS LOST THE USE OF MAJOR PARTS OF THEIR BODY, ENDS UP WITH LESS MONEY THAN THE LAWYERS WHO MERELY PERFORM LEGAL SERVICES FOR THE BENEFIT OF THAT PERSON, WHICH RAISES SUBSTANTIAL QUESTIONS OF JUSTICE.

THIS IS A CASE IN WHICH THE NET RECOVERY FOR THE SHAREHOLDER AND FOR THE ATTORNEYS IS IN THE NATURE OF A VENTURE THAT DEPENDS QUITE LARGELY ON THE DEVELOPMENT BY COUNSEL OF FACTS IN DISCOVERY, LEGAL THEORIES ON WHICH TO

PROCEED, SO HAVING THE LAWYERS GET 35 PERCENT OF IT AND THE INJURED PARTY GETS 65, AFTER EXPENSES, IS I THINK IN THE MATTER ENTIRELY JUST AND APPROPRIATE.

THE FEE REQUEST FOR ATTORNEYS' FEES AND COSTS WILL BE APPROVED.

MR. LERACH: THANK YOU FOR YOUR KIND WORDS AS WELL AS THE AWARD. IF I COULD GIVE A ORDER TO YOU I WILL FILL IN THE BLANKS NOW THAT WE KNOW THAT, AND GIVE IT TO YOUR CLERK AND WAIT TO THE END OF COURT.

COMPETENCE OF DEFENSE COUNSEL IS NOT AT ISSUE IN THIS HEARING. FROM EXPERIENCE I CAN VOUCH FOR THAT.

THE COURT: THAT IS THE ONLY REASON I AM NOT ADDRESSING THAT AT GREATER LENGTH. IT IS CLEAR MR. LERACH'S INTEREST OF COURSE FOR THESE PURPOSES IS TO PUFF DEFENSE COUNSEL, AND TALK ABOUT WHAT GIANTS THEY ARE, BUT EVEN AFTER ONE DEFLATES THE PUFFING, IT IS ENTIRELY TRUE, DEFENSE COUNSEL ARE EQUALLY COMPETENT, AGGRESSIVE, AND PROFESSIONAL IN THIS MATTER, AND IT IS PLAIN.

IT WAS A PLEASURE FOR THE COURT TO HAVE THIS MATTER BEFORE IT.

(Proceedings Concluded)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 17 HON. ELI CHERNOW, JUDGE

WILLIAM STEINER, ETC. ET AL)

Plaintiffs,)

vs.) CASE NO. CA000817

) REPORTER'S

) CERTIFICATE

)

CLASS ACTION

WHITTAKER CORPORATION, ETC. ET AL)

Defendants.)

STATE OF CALIFORNIA)

) SS

COUNTY OF LOS ANGELES)

I, JUNE AGEE, OFFICIAL REPORTER FOR THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 9 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS REPORTED BY ME IN THE ABOVE ENTITLED MATTER ON MARCH 23, 1989 AT LOS ANGELES, CALIFORNIA.

DATED THIS 4th DAY OF May, 1988.

June Agee CSR 1097

OFFICIAL REPORTER

EXHIBIT 2

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Class Counsel for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

In re CASTLIGHT HEALTH, INC. SHAREHOLDER LITIGATION	Lead Case No. CIV533203
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT
	Assigned for All Purposes to the Honorable Marie S. Weiner
	DATE: October 28, 2016 TIME: 9:00 a.m. DEPT: 2 DATE ACTION FILED: 04/02/15

WHEREAS, the Court is advised that the Settling Parties,[1] through their counsel, have agreed, subject to Court approval following notice to the Class and a hearing, to settle this Litigation upon the terms and conditions set forth in the Stipulation of Settlement dated June 2, 2016 (the "Stipulation"), which was filed with the Court; and

WHEREAS, on July 13, 2016, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice, which preliminarily approved the settlement, and approved the form and manner of notice to the Class of the settlement, and said notice has been made, and the fairness hearing having been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records and proceedings herein, and it appearing to the Court upon examination that the settlement set forth in the Stipulation is fair, reasonable and adequate, and upon a Settlement Fairness Hearing having been held after notice to the Class of the settlement to determine if the settlement is fair, reasonable, and adequate and whether the Judgment should be entered in this Litigation;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

B. This Court has jurisdiction of the subject matter of this Litigation and over all of the Settling Parties and all Class Members.

C. With respect to the Class, the Court finds that:

(i) The Class Members are so numerous that their joinder in the Litigation is impracticable. There were more than 12 million shares of Castlight Class B common stock offered through the IPO. The Class is, therefore, sufficiently numerous to render joinder impracticable.

(ii) The Class is ascertainable because Class Members share common characteristics that are sufficient for persons to determine whether they are Class Members, *i.e.*, whether they

[1] As used herein, the term "Settling Parties" means Plaintiffs: Firerock Global Opportunity Fund LP, Oklahoma Firefighters Pension and Retirement System, Robert Spencer Wright, and Robert Kromphold, on behalf of themselves and the Class, and Defendants: Castlight Health, Inc., Giovanni M. Colella, John C. Doyle, Bryan Roberts, David Ebersman, Robert P. Kocher, Goldman, Sachs & Co., and Morgan Stanley & Co. LLC.

purchased Castlight Class B common stock pursuant or traceable to the Registration Statement issued in connection with Castlight's IPO on or before September 10, 2014.

(iii) There are questions of law and fact common to the Class. Those questions include whether the Defendants violated the Securities Act of 1933, whether the Registration Statement contained misstatements or omissions, whether any misstatements or omissions were material, and whether any misstatements or omissions caused harm to the Class Members.

(iv) The claims of the Plaintiffs are typical of the claims of the Class Members. Plaintiffs claim to have purchased the Castlight Class B common stock pursuant or traceable to the same Registration Statement as the Class Members. Consequently, Plaintiffs claim that they and the other Class Members sustained damages as a result of the same misconduct by Defendants.

(v) Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the Class Members. Plaintiffs have no interests in conflict with absent Class Members. The Court is satisfied that Class Counsel are qualified, experienced, and have represented the Class to the best of their abilities.

(vi) The questions of law or fact common to the Class Members predominate over any questions affecting only individual members.

(vii) A class action is the superior means of resolving the Litigation.

D. The form, content, and method of dissemination of notice given to the Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort.

E. Notice, as given, complied with the requirements of California law, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.

F. The settlement set forth in the Stipulation in the amount of $9,500,000 is fair, reasonable, and adequate.

(i) The settlement was vigorously negotiated at arm's length by Plaintiffs on behalf of the Class and by Defendants, all of whom were represented by highly experienced and skilled counsel. The case settled only after: (a) a mediation conducted by an experienced mediator who was thoroughly familiar with this Litigation; (b) the exchange of detailed mediation statements prior to the

mediation which highlighted the factual and legal issues in dispute; (c) Plaintiffs' Counsel's extensive investigation, which included, among other things, a review of Castlight's press releases, U.S. Securities and Exchange Commission filings, analyst reports, media reports, and other publicly disclosed reports and information about the Defendants; (d) the drafting and submission of detailed complaints; and (e) the review and analysis of non-public documents produced by Defendants. Accordingly, both the Plaintiffs and Defendants were well-positioned to evaluate the settlement value of this Litigation. The Stipulation has been entered into in good faith and is not collusive.

(ii) If the settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Plaintiffs' or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the settlement.

G. Plaintiffs and Class Counsel have fairly and adequately represented the interest of the Class Members in connection with the settlement.

H. Plaintiffs, all Class Members, and Defendants are hereby bound by the terms of the settlement set forth in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Class, defined in the Stipulation is finally certified as: "all Persons who purchased Castlight Class B common stock pursuant or traceable to the Registration Statement issued in connection with Castlight's March 14, 2014 initial public offering on or before September 10, 2014. Excluded from the Class are each of the Defendants and Previously Named Defendants, their directors and officers; members of their immediate families; any entity in which a Defendant or Previously Named Defendant has a controlling interest (but in the case of the Underwriter Defendants and the Previously Named Defendants, only such entities in which they have a majority ownership interest); any Person who validly requests exclusion from the Class; and the heirs, successors, and assigns of any such excluded party."

2. The settlement on the terms set forth in the Stipulation is finally approved as fair, reasonable, and adequate. The settlement shall be consummated in accordance with the terms and

provisions of the Stipulation. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

3. All Released Parties as defined in the Stipulation are released in accordance with, and as defined in, the Stipulation.

4. Upon the Effective Date, Plaintiffs and each Class Member shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, whether or not such Class Member executes and delivers a Proof of Claim and Release.

5. Upon the Effective Date, each of the Released Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released Plaintiffs, Plaintiffs' Counsel, and each and all of the Class Members from all Settled Defendants' Claims.

6. All Class Members who have not made their objections to the settlement in the manner provided in the Notice are deemed to have waived any objections by appeal, collateral attack, or otherwise.

7. All Class Members who have failed to properly submit requests for exclusion (requests to opt out) from the Class are bound by the terms and conditions of the Stipulation and this Final Judgment.

8. All other provisions of the Stipulation are incorporated into this Judgment as if fully rewritten herein.

9. Plaintiffs and all Class Members are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Released Claims against any of the Released Parties.

10. Neither the Stipulation nor the settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be, or may be used as, a presumption, concession, or admission of, or evidence of, the validity of any Released Claim or of any wrongdoing or liability of any of the Released Parties; or (b) is or may be deemed to be, or may be used, as a presumption, concession, or admission of, or evidence of, any fault or omission of any of the Released Parties in any civil, criminal, or administrative proceeding in any court,

administrative agency, or other tribunal; or (c) is or may be deemed to be an admission or evidence that any claims asserted by Plaintiffs were not valid in any civil, criminal, or administrative proceeding. Any of the Released Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. The Court hereby finds and concludes that the Litigation was brought, prosecuted and/or defended in good faith, with a reasonable basis.

12. Pursuant to and in full compliance with California law, this Court hereby finds and concludes that due and adequate notice was directed to all Persons and entities who are Class Members advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are Class Members to be heard with respect to the Plan of Allocation.

13. The Court hereby finds and concludes that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice of Proposed Settlement of Class Action (the "Notice") sent to Class Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the Stipulation among Class Members, with due consideration having been given to administrative convenience and necessity.

14. The Court hereby awards Plaintiffs' Counsel attorneys' fees of $2,850,000, plus expenses in the amount of $116,476.01, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given the contingent nature of the case and the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Class.

15. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Class Counsel from the Settlement Fund subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

16. Time and expenses are awarded to the following Plaintiffs in the amounts indicated: Oklahoma Firefighters Pension and Retirement System $2,500.00, Robert Spencer Wright $500.00, and Robert Kromphold $2,500.00. Such reimbursement is appropriate considering their active participation as Plaintiffs in this action, as attested to by the declarations submitted to the Court. Such reimbursement is to be paid from the Settlement Fund.

17. In the event that the Stipulation is terminated in accordance with its terms: (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Litigation shall proceed as provided in the Stipulation.

18. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest, and expenses in the Litigation; and (d) all parties hereto for the purpose of construing, enforcing, and administrating the Stipulation.

IT IS SO ORDERED.

DATED: 10/28/16

HONORABLE MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

EXHIBIT 3

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

JOE M. WILEY, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ENVIVIO, INC., et al., Defendants.	Master File No. CIV517185 Assigned for all Purposes to The Hon. Marie S. Weiner, Dept. 2 CLASS ACTION DATE: June 22, 2015 TIME: 2:00 p.m. DEPT: 2 JUDGE: The Honorable Marie S. Wein Date Action Filed: 10/05/12

[PROPOSED] FINAL JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CL ACTION SETTLEMENT

WHEREAS, the Court is advised that the Parties,[1] through their counsel, have agreed, subject to Court approval following notice to the Class and a hearing, to settle this Action (the "Action") upon the terms and conditions set forth in the Stipulation of Settlement (the "Stipulation" or "Settlement") which was filed with the Court on January 23, 2015; and

WHEREAS, on February 23, 2015, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice, which preliminarily approved the Settlement, conditionally certified the Class, and preliminarily approved notice to the Class of the Settlement, and said notice has been made, and the fairness hearing having been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and proceedings herein, and it appearing to the Court upon examination that the Stipulation and Settlement are fair, reasonable and adequate, and upon a Settlement Fairness Hearing having been held after notice to the Class of the Settlement to determine if the Stipulation and Settlement are fair, reasonable, and adequate and whether this Final Judgment should be entered in this Action based upon the Stipulation;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

B. This Court has jurisdiction of the subject matter of this Action and over all of the Parties and all Members of the Class.

C. The $8,500,000 Settlement set forth in the Stipulation is fair, reasonable, and adequate.

(i) The Settlement was vigorously negotiated at arm's length by Plaintiffs on behalf of the Class and by Defendants, all of whom were represented by highly experienced and skilled

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[1] As used herein, the term "Parties" means plaintiffs Joe M. Wiley, Michael Toth, Employees' Retirement System of the Government of the Virgin Islands ("GERS"), Regina Discenza, custodian for Christian Discenza, UTMA (collectively, the "Plaintiffs"), on behalf of themselves and the Class (as defined below), and defendants Envivio, Inc. ("Envivio" or the "Company"), Julien Signés, Erik E. Miller, Gianluca U. Rattazzi, Kevin E. Dillon, Corentin du Roy de Blicquy, R. David Spreng, Clifford B. Meltzer, Marcel Gani, Terry D. Kramer and Edward A. Gilhuly (collectively, the "Envivio Defendants") and the underwriters of the Company's April 24, 2012 initial public offering ("IPO"), specifically Deutsche Bank Securities Inc., Goldman, Sachs & Co., Stifel, Nicolaus & Company, Incorporated and William Blair & Company, L.L.C. (collectively, the "Underwriter Defendants"). The Envivio Defendants and the Underwriter Defendants shall be collectively referred to as the "Defendants").

counsel. The case settled only after: (a) a mediation conducted by an attorney who was thoroughly familiar with this Action; (b) Plaintiffs' Counsel conducted an extensive investigation, which included, among other things, a review of Envivio's press releases, Securities Exchange Commission filings, analyst reports, media reports and other publicly disclosed reports and information about the Defendants, as well as non-public documents, including documents produced by Defendants and various third parties; (c) the removal of this Action to federal court pursuant to the Securities Litigation Uniform Standards Act and a remand motion to state court; (d) the drafting and submission of a highly detailed Consolidated Amended Class Action Complaint for Violation of §§11, 12(a)(2) and 15 of the Securities Act of 1933 ("Complaint") that survived a demurrer; and (e) the certification of this Action as a class by this Court on September 12, 2014. Accordingly, both the Plaintiffs and Defendants were well-positioned to evaluate the settlement value of this Action. The Stipulation has been entered into in good faith and is not collusive.

(ii) If the Settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Plaintiffs' or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the Settlement.

D. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the interest of the Class Members in connection with the Settlement.

E. Plaintiffs, all Class Members, and Defendants are hereby bound by the terms of the Settlement set forth in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Stipulation and the Settlement embodied therein are approved as final, fair, reasonable and adequate. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

2. All Released Parties as defined in the Stipulation are released in accordance with, and as defined in, the Stipulation.

3. Upon the Effective Date, Plaintiffs and all Members of the Class shall be deemed to have, and by operation of this Final Judgment shall have, absolutely and unconditionally, fully, finally, and forever released, relinquished, and discharged any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, shareholders, partners, agents, employees, attorneys, advisors, and investment advisors, insurers, and any person, firm, trust, corporation, officer, director, or other individual or entity in which any Defendant has 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 ("Released Parties") from, and shall forever be enjoined from suing any or all of the Released Parties for, any and all claims, including "Unknown Claims" (as defined in the Stipulation), arising out of, relating to, or in connection with: (i) the facts and circumstances alleged in the Complaint filed in this Action; and (ii) the purchase of Envivio common stock, that were asserted or could have been asserted by any Plaintiff or Member of the Class against the Released Parties. "Settled Claims" also includes any and all claims arising out of, relating to, or in connection with the Settlement or resolution of the Action against the Released Parties (including Unknown Claims), except claims to enforce any of the terms of the Stipulation.

4. Upon the Effective Date, all Released Parties, shall be deemed to have, and by operation of this Final Judgment shall have, absolutely and unconditionally, fully, finally, and forever released, relinquished, and discharged any and all claims, including "Unknown Claims" (as defined in the Stipulation), relating to the institution, prosecution or settlement of the Action that have been or could have been asserted in the Action or any other forum by any of the Released Parties against Plaintiffs, Class Members, or their attorneys (except for claims to enforce any of the terms of the Stipulation) ("Settled Defendants' Claims").

5. The Releases granted herein shall be effective as a bar to any and all claims within the scope of their express terms and provisions that Plaintiffs or any Class Member does not know or suspect to exist in his, her, or its favor as of the Effective Date, and any claims against Plaintiffs which Defendants do not know or suspect to exist in their 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 Settled Claims (including Unknown Claims) and Settled Defendants' Claims (including Unknown Claims), the

Parties stipulate and agree that by operation of this Final Judgment, upon the Effective Date, the Plaintiffs and Defendants shall have expressly waived, and each Class Member shall be deemed to have waived, and by operation of this Final Judgment shall have expressly waived, the provisions, rights and benefits of 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;**

and 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. Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Settled Claims, but the Plaintiffs shall expressly fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever settled and released, any and all Settled 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 which 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. Plaintiffs and Defendants acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendants' Claims was separately bargained for and was a key element of the Settlement.

6. All Class Members who have not made their objections to the Settlement in the manner provided in the notice are deemed to have waived any objections by appeal, collateral attack, or otherwise.

7. All Class Members who have failed to properly file requests for exclusion (requests to opt out) from the Class are bound by the terms and conditions of the Stipulation and this Final Judgment.

8. All other provisions of the Stipulation are incorporated into this Final Judgment as if fully rewritten herein. To the extent that the terms of this Final Judgment conflict with the terms of the Stipulation, the Stipulation shall control.

9. Plaintiffs and all Class Members are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Settled Claims against any of the Released Parties.

10. Defendants and their successors or assigns are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting any of the Settled Defendants' Claims against Plaintiffs, Class Members or Plaintiffs' Counsel. The Court hereby decrees that neither the Stipulation nor this Final Judgment nor the fact of the Settlement is an admission or concession by the Released Parties, or any of them, of any liability or wrongdoing. This Final Judgment is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Neither the Stipulation nor this Final Judgment nor the fact of settlement nor the settlement proceedings nor the settlement negotiations nor any related documents shall be offered or received in evidence as an admission, concession, presumption or inference against any of the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Stipulation, or in an action or proceeding to determine the availability, scope, or extent of insurance coverage (or reinsurance related to such coverage) for the sums expended for the settlement and defense of this Action.

11. Pursuant to and in full compliance with California law, this Court hereby finds and concludes that due and adequate notice was directed to all Persons and entities who are Class Members advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are Class Members to be heard with respect to the Plan of Allocation.

12. The Court hereby finds and concludes that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice of Proposed Settlement of Class Action sent to Class Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net

Settlement Fund established by the Stipulation among Class Members, with due consideration having been given to administrative convenience and necessity.

13. The Court hereby awards Lead Counsel attorneys' fees of $2,125,000, plus expenses in the amount of $85,241.47, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given the contingent nature of the case and the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Class.

14. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶6 thereof, which terms, conditions and obligations are incorporated herein.

15. Each Plaintiff shall be awarded $2,500 for time and expenses in this Action. Such reimbursement is appropriate considering their active participation as Plaintiffs and class representatives in this Action, as attested to by the declarations submitted to the Court.

16. In the event that the Stipulation is terminated in accordance with its terms: (i) this Final Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; (ii) this Action shall proceed as provided in the Stipulation; and (iii) the Defendants shall be permitted to object to the certification of any proposed class in this Action.

17. Without affecting the finality of this Final Judgment in any way, this Court retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest and expenses in the Action; and (d) all Parties hereto for the purposed of construing, enforcing, and administrating the Stipulation.

IT IS SO ORDERED.

DATED: JUN 22 2015

MARIE S. WEINER

THE HONORABLE MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

EXHIBIT 4

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

PLYMOUTH COUNTY RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MODEL N, INC., et al., Defendants.	Master Case No. CIV530291 (Consolidated with Case No CIV532190) Assigned for all Purposes to The Hon. Marie S. Weiner, Dept. 2 CLASS ACTION DATE: April 4, 2016 TIME: 2:00 p.m. DEPT: 2 DATE ACTION FILED: 09/05/14

JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

File By Fax

WHEREAS, the Court is advised that the Settling Parties,[1] through their counsel, have agreed, subject to Court approval following notice to the Class and a hearing, to settle this Litigation upon the terms and conditions set forth in the Stipulation of Settlement dated November 20, 2015 (the "Stipulation"), which was filed with the Court; and

WHEREAS, on December 7, 2015, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice, which preliminarily approved the settlement, and approved the form and manner of notice to the Class of the settlement, and said notice has been made, and the Settlement Fairness Hearing having been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records and proceedings herein, and it appearing to the Court upon examination that the settlement set forth in the Stipulation is fair, reasonable and adequate, and upon a Settlement Fairness Hearing having been held after notice to the Class of the settlement to determine if the settlement is fair, reasonable, and adequate and whether the Judgment should be entered in this Litigation;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

B. This Court has jurisdiction of the subject matter of this Litigation and over all of the Settling Parties and all Members of the Class.

C. With respect to the Class, the Court finds that:

(i) The Members of the Class are so numerous that their joinder in the Litigation is impracticable. There were approximately 7.751 million shares of Model N common stock offered through the IPO. The Class is, therefore, sufficiently numerous to render joinder impracticable.

(ii) The Class is ascertainable because Members of the Class share common characteristics that are sufficient for persons to determine whether they are Members of the Class, *i.e.*,

[1] As used herein, the term "Settling Parties" means Plaintiffs: Plymouth County Retirement System, James Small, and Dwight Bucher, on behalf of themselves and the Class (as defined below), and Defendants: Model N, Inc. ("Model N" or the "Company"), Zack Rinat, Sujan Jain, James W. Breyer, Sarah Friar, Mark Garrett, Charles J. Robel, J.P. Morgan Securities LLC, Deutsche Bank Securities, Inc., Stifel, Nicolaus & Company, Incorporated, Pacific Crest Securities LLC, Piper Jaffray & Co., and Raymond James & Associates, Inc.

whether they purchased or otherwise acquired Model N common stock pursuant or traceable to the Registration Statement issued in connection with Model N's IPO.

(iii) There are questions of law and fact common to the Class. Those questions include whether the Defendants violated the Securities Act of 1933, whether the Registration Statement contained misstatements or omissions, whether any misstatements or omissions were material, and whether any misstatements or omissions caused harm to the Members of the Class.

(iv) The claims of the Plaintiffs are typical of the claims of the Class Members. Plaintiffs claim to have purchased or otherwise acquired the Model N common stock pursuant or traceable to the same Registration Statement as the Members of the Class. Consequently, Plaintiffs claim that they and the other Members of the Class sustained damages as a result of the same misconduct by Defendants.

(v) Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented and protected the interests of the Class Members. Plaintiffs have no interests in conflict with absent Members of the Class. The Court is satisfied that Plaintiffs' Counsel are qualified, experienced, and have represented the Class to the best of their abilities.

(vi) The questions of law or fact common to the Members of the Class predominate over any questions affecting only individual members.

(vii) A class action is the superior means of resolving the Litigation.

D. The form, content, and method of dissemination of notice given to the Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort.

E. Notice, as given, complied with the requirements of California law, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.

F. The settlement set forth in the Stipulation in the amount of $8,550,000 is fair, reasonable, and adequate.

(i) The settlement was vigorously negotiated at arm's length by Plaintiffs on behalf of the Class and by Defendants, all of whom were represented by highly experienced and skilled counsel. The case settled only after: (a) a mediation conducted by an experienced mediator who was

thoroughly familiar with this Litigation; (b) the exchange of detailed mediation statements prior to the mediation which highlighted the factual and legal issues in dispute; (c) Plaintiffs' Counsel's extensive investigation, which included, among other things, a review of Model N's press releases, U.S. Securities and Exchange Commission filings, analyst reports, media reports, and other publicly disclosed reports and information about the Defendants; (d) the removal of this Litigation to federal court and a successful remand motion to state court; (e) the drafting and submission of a detailed Consolidated Amended Class Action Complaint for Violations of the Securities Act of 1933 ("Complaint") that survived Defendants' demurrer; and (f) the review and analysis of non-public documents produced by Defendants. Accordingly, both the Plaintiffs and Defendants were well-positioned to evaluate the settlement value of this Litigation. The Stipulation has been entered into in good faith and is not collusive.

(ii) If the settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Plaintiffs' or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the settlement.

G. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the interest of the Class Members in connection with the settlement.

H. Plaintiffs, all Class Members, and Defendants are hereby bound by the terms of the settlement set forth in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Class, defined in the Stipulation as: "all Persons who purchased or otherwise acquired the common stock of Model N pursuant or traceable to the Registration Statement and Prospectus issued in connection with Model N's March 20, 2013 initial public offering. Excluded from the Class are: the Defendants and their respective successors and assigns; past and current officers and directors of Model N and the Underwriter Defendants; members of the immediate families of the Individual Defendants; the legal representatives, heirs, successors or assigns of the Individual Defendants; any entity in which any of the above excluded Persons have or had a majority ownership

interest; and any Person who validly requests exclusion from the Class," is certified solely for purposes of this settlement.

2. The settlement on the terms set forth in the Stipulation is finally approved as fair, reasonable, and adequate. The settlement shall be consummated in accordance with the terms and provisions of the Stipulation. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

3. All Released Parties as defined in the Stipulation are released in accordance with, and as defined in, the Stipulation.

4. Upon the Effective Date, Plaintiffs and each Class Member shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, whether or not such Class Member executes and delivers a Proof of Claim and Release.

5. Upon the Effective Date, each of the Released Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released Plaintiffs, Plaintiffs' Counsel, and each and all of the Class Members from all Settled Defendants' Claims.

6. All Class Members who have not made their objections to the settlement in the manner provided in the Notice are deemed to have waived any objections by appeal, collateral attack, or otherwise.

7. All Class Members who have failed to properly file requests for exclusion (requests to opt out) from the Class are bound by the terms and conditions of the Stipulation and this Final Judgment.

8. All other provisions of the Stipulation are incorporated into this Judgment as if fully rewritten herein.

9. Plaintiffs and all Class Members are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Released Claims against any of the Released Parties.

10. Neither the Stipulation nor the settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be, or may

be used as, a presumption, concession, or admission of, or evidence of, the validity of any Released Claim or of any wrongdoing or liability of the Defendants and the Released Parties; or (b) is or may be deemed to be, or may be used, as a presumption, concession, or admission of, or evidence of, any fault or omission of any of the Defendants and the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (c) is or may be deemed to be an admission or evidence that any claims asserted by Plaintiffs were not valid in any civil, criminal, or administrative proceeding. Defendants and the Released Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. Pursuant to and in full compliance with California law, this Court hereby finds and concludes that due and adequate notice was directed to all Persons and entities who are Class Members advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are Class Members to be heard with respect to the Plan of Allocation.

12. The Court hereby finds and concludes that the Litigation was brought, prosecuted and/or defended in good faith, with a reasonable basis.

13. The Court hereby finds and concludes that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice of Proposed Settlement of Class Action (the "Notice") sent to Class Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the Stipulation among Class Members, with due consideration having been given to administrative convenience and necessity.

14. The Court hereby awards Plaintiffs' Counsel attorneys' fees of $2,565,000, plus expenses in the amount of $67,155.72, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given

the contingent nature of the case and the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Class.

15. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Lead Counsel from the Settlement Fund subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

16. Plaintiffs Plymouth County Retirement System, James Small, and Dwight Bucher shall each be awarded $2,500 for their time and expenses in this Litigation. Such reimbursement is appropriate considering their active participation as Plaintiffs in this action, as attested to by the declarations submitted to the Court. Such reimbursement is to be paid from the Settlement Fund.

17. In the event that the Stipulation is terminated in accordance with its terms: (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Litigation shall proceed as provided in the Stipulation.

18. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest, and expenses in the Litigation; and (d) all parties hereto for the purpose of construing, enforcing, and administrating the Stipulation.

IT IS SO ORDERED.

DATED: APR 04 2016

MARIE S. WEINER

HONORABLE MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

EXHIBIT 5

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JUDGE'S COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

In re CAFEPRESS INC. SHAREHOLDER LITIGATION	Master File No. CIV522744
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	Assigned for All Purposes to Hon. Marie S. Weiner Dept. 2
	DATE: August 11, 2015 TIME: 9:00 a.m. DATE ACTION FILED: 07/10/13

JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, the Court is advised that the Settling Parties,[1] through their counsel, have agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle this Litigation upon the terms and conditions set forth in the Stipulation of Settlement dated April 2, 2015 (the "Stipulation"), which was filed with the Court; and

WHEREAS, on May 11, 2015, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice, which preliminarily approved the settlement, and approved the form and manner of notice to the Settlement Class of the settlement, and said notice has been made, and the fairness hearing having been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records and proceedings herein, and it appearing to the Court upon examination that the settlement set forth in the Stipulation is fair, reasonable and adequate, and upon a Settlement Fairness Hearing having been held after notice to the Settlement Class of the settlement to determine if the settlement is fair, reasonable, and adequate and whether the Judgment should be entered in this Litigation;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

B. This Court has jurisdiction of the subject matter of this Litigation and over all of the Settling Parties and all members of the Settlement Class.

C. With respect to the Settlement Class, the Court finds that:

(i) The members of the Settlement Class are so numerous that their joinder in the Litigation is impracticable. There were approximately 5.175 million shares of CafePress common stock

[1] As used herein, the term "Settling Parties" means (i) Plaintiffs Wallace J. Desmarais Jr. and Hussain Jinnah (collectively, "Plaintiffs") (on behalf of themselves and each of the Settlement Class Members), by and through their counsel of record; (ii) the Defendants CafePress Inc. ("CafePress" or the "Company"), Bob Marino, Monica N. Johnson, Fred E. Durham III, Brad W. Buss, Patrick J. Connolly, Douglas M. Leone and Michael Dearing (collectively, the "CafePress Defendants"); and (iii) underwriters of the Company's March 28, 2012 initial public offering ("IPO"), specifically J.P. Morgan Securities LLC, Jefferies & Company, Inc. (currently Jefferies LLC), Cowen and Company, LLC, Janney Montgomery Scott LLC and Raymond James & Associates, Inc. (the "Underwriter Defendants," and collectively with the CafePress Defendants, the "Defendants").

offered through the IPO. The Settlement Class is, therefore, sufficiently numerous to render joinder impracticable;

(ii) The Settlement Class is ascertainable because members of the Settlement Class share common characteristics that are sufficient for persons to determine whether they are members of the Settlement Class, *i.e.*, whether they purchased or otherwise acquired CafePress common stock pursuant or traceable to the Registration Statement issued in connection with CafePress' IPO;

(iii) There are questions of law and fact common to the Settlement Class. Those questions include whether the Defendants violated the Securities Act of 1933, whether the Registration Statement contained misstatements or omissions, whether any misstatements or omissions were material, and whether any misstatements or omissions caused harm to the members of the Settlement Class;

(iv) The claims of the Plaintiffs are typical of the claims of the Settlement Class Members. Plaintiffs claim to have purchased or otherwise acquired the common stock pursuant or traceable to the same Registration Statement as the members of the Settlement Class. Consequently, Plaintiffs claim that they and the other members of the Settlement Class sustained damages as a result of the same misconduct by Defendants;

(v) Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented and protected the interests of the Settlement Class Members. Plaintiffs have no interests in conflict with absent members of the Settlement Class. The Court is satisfied that Plaintiffs' Counsel are qualified, experienced and have represented the Settlement Class to the best of their abilities;

(vi) The questions of law or fact common to the members of the Settlement Class predominate over any questions affecting only individual members; and

(vii) A class action is the superior means of resolving the Litigation.

D. The form, content, and method of dissemination of notice given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort.

E. Notice, as given, complied with the requirements of California law, satisfied the requirements of due process and constituted due and sufficient notice of the matters set forth herein.

F. The settlement set forth in the Stipulation in the amount of $8 million is fair, reasonable, and adequate.

(i) The settlement was vigorously negotiated at arm's length by Plaintiffs on behalf of the Settlement Class and by Defendants, all of whom were represented by highly experienced and skilled counsel. The case settled only after: (a) a mediation conducted by an experienced mediator who was thoroughly familiar with this Litigation; (b) the exchange of detailed mediation statements prior to the mediation which highlighted the factual and legal issues in dispute; (c) Plaintiffs' Counsel's extensive investigation, which included, among other things, a review of CafePress' press releases, Securities and Exchange Commission filings, analyst reports, media reports and other publicly disclosed reports and information about the Defendants; (d) the removal of this Litigation to federal court and a successful remand motion to state court; (e) the drafting and submission of a detailed Consolidated Complaint for Violation of §§11 and 15 of the Securities Act of 1933 ("Complaint") that survived Defendants' demurrer; (f) the review and analysis of non-public documents produced by Defendants and third parties; (g) the Settling Parties' responses to interrogatories; and (h) extensive briefing on Plaintiffs' motion for class certification. Accordingly, both the Plaintiffs and Defendants were well-positioned to evaluate the settlement value of this Litigation. The Stipulation has been entered into in good faith and is not collusive.

(ii) If the settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Plaintiffs' or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the settlement.

G. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the interest of the Settlement Class Members in connection with the settlement.

H. Plaintiffs, all Settlement Class Members, and Defendants are hereby bound by the terms of the settlement set forth in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Settlement Class, defined in the Stipulation as: "all Persons who purchased or otherwise acquired the common stock of CafePress pursuant or traceable to the Registration Statement and Prospectus issued in connection with CafePress' March 28, 2012 initial public offering. Excluded from the Settlement Class are: the Defendants and their respective successors and assigns; past and current officers and directors of CafePress and the Underwriter Defendants; members of the immediate families of the Individual Defendants; the legal representatives, heirs, successors or assigns of the Individual Defendants; any trust or entity in which any of the above excluded Persons have or had a controlling interest or which is related to or affiliated with any of the Defendants; and any Person who validly requests exclusion from the Settlement Class," is certified solely for purposes of this Settlement.

2. The settlement on the terms set forth in the Stipulation is finally approved as fair, reasonable and adequate. The settlement shall be consummated in accordance with the terms and provisions of the Stipulation. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

3. All Released Parties as defined in the Stipulation are released in accordance with, and as defined in, the Stipulation.

4. Upon the Effective Date, Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, whether or not such Settlement Class Member executes and delivers a Proof of Claim and Release.

5. Upon the Effective Date, each of the Released Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released Plaintiffs, Plaintiffs' Counsel and each and all of the Settlement Class Members from all Settled Defendants' Claims.

6. All Settlement Class Members who have not made their objections to the settlement in the manner provided in the Notice are deemed to have waived any objections by appeal, collateral attack, or otherwise.

7. All Settlement Class Members who have failed to properly file requests for exclusion (requests to opt out) from the Settlement Class are bound by the terms and conditions of the Stipulation and this Final Judgment.

8. All other provisions of the Stipulation are incorporated into this Judgment as if fully rewritten herein. ~~To the extent that the terms of this Judgment conflict with the terms of the Stipulation, the Stipulation shall control.~~

9. Plaintiffs and all Settlement Class Members are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Released Claims against any of the Released Parties.

10. Neither the Stipulation nor the settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be, or may be used as, a presumption, concession, or admission of, or evidence of, the validity of any Released Claim or of any wrongdoing or liability of the Defendants and the Released Parties; or (b) is or may be deemed to be, or may be used, as a presumption, concession, or admission of, or evidence of, any fault or omission of any of the Defendants and the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (c) is or may be deemed to be an admission or evidence that any claims asserted by Plaintiffs were not valid in any civil, criminal or administrative proceeding. Defendants and the Released Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. Pursuant to and in full compliance with California law, this Court hereby finds and concludes that due and adequate notice was directed to all Persons and entities who are Settlement Class Members advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are Settlement Class Members to be heard with respect to the Plan of Allocation.

12. The Court hereby finds and concludes that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice of Proposed Settlement of Class Action (the "Notice") sent to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the Stipulation among Settlement Class Members, with due consideration having been given to administrative convenience and necessity.

13. The Court hereby awards Plaintiffs' Counsel attorneys' fees of $2,400,000, plus expenses in the amount of $131,445.81, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given the contingent nature of the case and the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Settlement Class.

14. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Plaintiffs' Counsel from the Settlement Fund subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions and obligations are incorporated herein.

15. Plaintiffs Wallace J. Desmarais Jr. and Hussain Jinnah shall each be awarded $2,500 for their time and expenses in this Litigation. Such reimbursement is appropriate considering their active participation as Plaintiffs in this action, as attested to by the declarations submitted to the Court. Such reimbursement is to be paid from the Settlement Fund.

16. In the event that the Stipulation is terminated in accordance with its terms: (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Litigation shall proceed as provided in the Stipulation.

17. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest and expenses in the Litigation; and (d) all parties hereto for the purposed of construing, enforcing, and administrating the Stipulation.

IT IS SO ORDERED.

DATED: 8/11/15

HONORABLE MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

EXHIBIT 6

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Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

IN RE PACIFIC BIOSCIENCES OF CALIFORNIA, INC. SECURITIES LITIGATION	Master File No. CIV509210
This Document Relates To: ALL ACTIONS.	CLASS ACTION ~~[PROPOSED] FINAL~~ JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT DATE: Submitted Matter TIME: Submitted Matter DEPT: 2 JUDGE: The Honorable Marie S. Weiner DATE ACTION FILED: 10/21/11

WHEREAS, the Court is advised that the Parties,[1] through their counsel, have agreed, subject to Court approval following notice to the Class and a hearing, to settle this Action (the "Action") upon the terms and conditions set forth in the Stipulation and Agreement of Settlement (the "Stipulation") which was filed with the Court; and

WHEREAS, the Court entered its Order Preliminarily Approving Settlement and Confirming Final Settlement Hearing, which preliminarily approved the settlement, conditionally certified the Class, and preliminarily approved notice to the Class of the settlement, and said notice has been made, and the fairness hearing having been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and proceedings herein, and it appearing to the Court upon examination that the Stipulation and Settlement are fair, reasonable and adequate, and upon a Settlement Fairness Hearing having been held after notice to the Class of the Settlement to determine if the Stipulation and Settlement are fair, reasonable, and adequate and whether the Final Judgment should be entered in this Action based upon the Stipulation;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

B. This Court has jurisdiction of the subject matter of this Action and over all of the Parties and all members of the Class.

C. All of the requirements for class certification under California law are met, and therefore this Action is properly maintained as a class action for purposes of settlement and the Class is properly certified. The Class is defined as:

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[1] As used herein, the term "Parties" means Plaintiffs Greg Young, Mathew Sandnas, Oklahoma Firefighters Pension Fund and Pompano Beach Police & Firefighters' Retirement System (collectively, "Plaintiffs"), on behalf of themselves and the Class (as defined below), and Defendants: Pacific Biosciences of California, Inc. ("Pacific Biosciences," "PACB," or the "Company"); current and former PACB officers and/or directors, Hugh C. Martin, Susan K. Barnes, Brian B. Dow, Brook Byers, William W. Ericson, Michael Hunkapiller, Randall S. Livingston, Susan Siegel, and David B. Singer (the "Individual Defendants," collectively with PACB, the "Issuer Defendants"), and the underwriters of the Company's October 27, 2010 initial public offering ("IPO"), specifically J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC (formerly Morgan Stanley & Co. Incorporated), Deutsche Bank Securities, Inc., and Piper Jaffray & Co. (the "Underwriter Defendants," collectively with the Issuer Defendants, "Defendants").

All persons or entities ("Persons") that purchased Pacific Biosciences common stock between October 27, 2010 and September 20, 2011 (inclusive), including those Persons that purchased the Company's stock pursuant or traceable to the Company's Registration Statement and Prospectus for the Company's October 27, 2010 IPO. Excluded from the Class are: the Defendants; any officers or directors of Pacific Biosciences or the Underwriter Defendants during or after the Class Period; any corporation, trust or other entity in which any Defendant has a controlling interest; and the members of the immediate families of the Individual Defendants, and the Individual Defendants' successors, heirs, assigns and legal representatives. Also excluded from the Class are Persons otherwise meeting the definition of the Class who submit valid and timely requests for exclusion from the Settlement (*see* paragraph 8 below).

D. With respect to the Class, the Court finds that:

(i) The members of the Class are so numerous that their joinder in the Action is impracticable. There were approximately 12.5 million shares of Pacific Biosciences stock offered through the IPO. The Class is, therefore, sufficiently numerous to render joinder impracticable.

(ii) There are questions of law and fact common to the Class. Those questions include whether the Registration Statement contained misstatements or omissions, whether any misstatements or omissions were material, and whether any misstatements or omissions caused harm to the members of the Class.

(iii) The claims of the Plaintiffs are typical of the claims of the Class Members. Plaintiffs claim to have purchased Pacific Biosciences stock between October 27, 2010 and September 20, 2011 pursuant or traceable to the same Registration Statement as the members of the Class. Consequently, Plaintiffs claim that they and the other members of the Class sustained damages as a result of the same misconduct by Defendants.

(iv) Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of the Class Members. Plaintiffs have no interests in conflict with absent members of the Class. The Court is satisfied that Lead Counsel are qualified, experienced and prepared to represent the Class to the best of their abilities. The law firms of Scott+Scott, Attorneys at Law, LLP and Robbins Geller Rudman & Dowd LLP are hereby appointed Lead Counsel for the Class.

(v) The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members.

E. The form, content, and method of dissemination of Notice given to the Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort.

F. Notice, as given, complied with the requirements of California law, satisfied the requirements of due process and constituted due and sufficient notice of the matters set forth herein.

G. The Settlement set forth in the Stipulation is fair, reasonable, and adequate.

(i) The Settlement was vigorously negotiated at arm's length by Plaintiffs on behalf of the Class and by Defendants, all of whom were represented by highly experienced and skilled counsel. The case settled only after: (a) a mediation conducted by a retired U.S. District Court Judge who was thoroughly familiar with this Action; (b) Plaintiffs' Counsel conducted an extensive investigation, which included, among other things, a review of Pacific Biosciences' press releases, Securities Exchange Commission filings, analyst reports, media reports and other publicly disclosed reports and information about the Defendants, as well as non-public documents, including documents produced by certain PACB customers who obtained limited production release versions of the *RS* System; (c) the removal of this Action to federal court pursuant to the Securities Litigation Uniform Standards Act and a remand motion to state court (*see Young v. Pacific Biosciences of California, Inc., et. al.*, Case Nos. 5:11-cv-05668, 5:11-cv-05669 EJD, 2012 WL 851509 (N.D. Cal. March 13, 2012); and (d) the drafting and submission of a highly detailed First Amended Consolidated Class Action Complaint ("Complaint") that survived a demurrer. Accordingly, both the Plaintiffs and Defendants were well-positioned to evaluate the settlement value of this Action. The Stipulation has been entered into in good faith and is not collusive.

(ii) If the Settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Plaintiffs' or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the Settlement.

H. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the interest of the Class Members in connection with the settlement.

I. Plaintiffs, all Class Members, and Defendants are hereby bound by the terms of the Settlement set forth in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Stipulation and the Settlement embodied therein are approved as final, fair, reasonable and adequate. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

2. All Released Parties as defined in the Stipulation are released in accordance with, and as defined in, the Stipulation.

3. Upon the Effective Date, Plaintiffs and all members of the Class shall be deemed to have, and by operation of the judgment shall have, absolutely and unconditionally, fully, finally, and forever released, relinquished, and discharged any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, shareholders, partners, agents, employees, attorneys, advisors, and investment advisors, insurers, and any person, firm, trust, corporation, officer, director, or other individual or entity in which any Defendant has 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 ("Released Parties") from, and shall forever be enjoined from suing any or all of the Released Parties for, any and all claims, including "Unknown Claims" (as defined in the Stipulation), arising out of, relating to, or in connection with: (i) the facts and circumstances alleged in the Complaint filed in this Action; and (ii) the purchase of PACB common stock, that were asserted or could have been asserted by any Plaintiff or member of the Class against the Released Parties. "Settled Claims" also includes any and all claims arising out of, relating to, or in connection with the Settlement or resolution of the Action against the Released Parties (including Unknown Claims), except claims to enforce any of the terms of the Stipulation.

4. Upon the Effective Date, all Released Parties, shall be deemed to have, and by operation of the judgment shall have, absolutely and unconditionally, fully, finally, and forever released, relinquished, and discharged any and all claims, including "Unknown Claims" (as defined in the Stipulation), relating to the institution, prosecution or settlement of the Action that have been or could

have been asserted in the Action or any other forum by any of the Released Parties against Plaintiffs, Class Members, or their attorneys (except for claims to enforce any of the terms of the Stipulation) ("Settled Defendants' Claims").

5. The Releases granted herein shall be effective as a bar to any and all claims within the scope of their express terms and provisions that Plaintiffs or any Class Member does not know or suspect to exist in his, her, or its favor as of the Effective Date, and any claims against Plaintiffs which Defendants do not know or suspect to exist in their 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 Settled Claims (including Unknown Claims) and Settled Defendants' Claims (including Unknown Claims), the Parties stipulate and agree that by operation of this Final Judgment, upon the Effective Date, the Plaintiffs and Defendants shall have expressly waived, and each Class Member shall be deemed to have waived, and by operation of the Final Judgment shall have expressly waived, the provisions, rights and benefits of 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;**

and 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. Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Settled Claims, but the Plaintiffs shall expressly fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever settled and released, any and all Settled 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 which 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. Plaintiffs and Defendants

acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendants' Claims was separately bargained for and was a key element of the Settlement.

6. All Class Members who have not made their objections to the settlement in the manner provided in the notice are deemed to have waived any objections by appeal, collateral attack, or otherwise.

7. All Class Members who have failed to properly file requests for exclusion (requests to opt out) from the Class are bound by the terms and conditions of the Stipulation and this Final Judgment.

8. The single request for exclusion, by Mr. Evan A. Powell, is accepted by the Court.

9. All other provisions of the Stipulation are incorporated into this Order as if fully rewritten herein. To the extent that the terms of this Order conflict with the terms of the Stipulation, the Stipulation shall control.

10. Plaintiffs and all Class Members are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Settled Claims against any of the Released Parties.

11. Defendants and their successors or assigns are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting any of the Settled Defendants' Claims against Plaintiffs, Class Members or Plaintiffs' Counsel. The Court hereby decrees that neither the Stipulation nor this Final Judgment nor the fact of the settlement is an admission or concession by the Released Parties, or any of them, of any liability or wrongdoing. This Final Judgment is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Neither the Stipulation nor this Final Judgment nor the fact of settlement nor the settlement proceedings nor the settlement negotiations nor any related documents shall be offered or received in evidence as an admission, concession, presumption or inference against any of the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Stipulation, or in an action or proceeding to determine the availability, scope, or extent of insurance coverage (or

reinsurance related to such coverage) for the sums expended for the settlement and defense of this Action.

12. Pursuant to and in full compliance with California law, this Court hereby finds and concludes that due and adequate notice was directed to all Persons and entities who are Class Members advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are Class Members to be heard with respect to the Plan of Allocation.

13. The Court hereby finds and concludes that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice of Pendency and Proposed Settlement of Class Action (the "Notice") sent to Class Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the Stipulation among Class Members, with due consideration having been given to administrative convenience and necessity.

14. The Court hereby awards Lead Counsel attorneys' fees of $2,260,000.00, plus expenses in the amount of $113,000.00, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given the contingent nature of the case and the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Class.

15. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶8 thereof, which terms, conditions and obligations are incorporated herein.

16. Time and expenses are awarded to the following Plaintiffs in the amounts indicated: Mathew Sandnas $2,540.00 and Oklahoma Firefighters Pension and Retirement System $5,943.36. Such reimbursement is appropriate considering their active participation as Plaintiffs in this action, as attested to by the declarations submitted to the Court.

17. In the event that the Stipulation is terminated in accordance with its terms: (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; (ii) this Action shall

proceed as provided in the Stipulation; and (iii) the Defendants shall be permitted to object to the certification of any proposed class in this Action.

18. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest and expenses in the Action; and (d) all parties hereto for the purposed of construing, enforcing, and administrating the Stipulation.

19. Final judgment shall be entered herein under the terms of the stipulation of settlement for the amount of $7,686,494.82 plus (i) with respect to the $256,000 held back by the Company's insurer to pay Wilson Sonsini's fees and costs to complete the settlement of this action, 80% of any amount not spent, and (ii) with respect to the $200,000 held back by the Company's insurer for Wilson Sonsini's fees and costs in connection with the *Primo* Federal Action, 80% of any amount not spent.

IT IS SO ORDERED.

DATED: OCT 31 2013

THE HONORABLE MARIE S. WEINER

EXHIBIT 7

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

BRENT T. ROBINSON, et al., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. AUDIENCE, INC., et al., Defendants.	Case No. 1:12-cv-232227 CLASS ACTION ~~[PROPOSED]~~ ORDER APPROVING CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES DATE ACTION FILED: 09/13/12

This is a securities class action by the shareholders of defendant Audience, Inc. ("Audience") arising out Audience's May 9, 2012 initial public offering ("IPO"). Plaintiffs Brent T. Robinson, Boyd Deel, Dorothy Kasian, and Daren Nowak allege that Audience's prospectus and registration statement contained false and misleading statements in violation of sections 11 and 15 of the Securities Act of 1933. Plaintiffs sue Audience and several of its officers and directors.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND

In the operative First Amended Complaint ("FAC"), plaintiffs allege that Audience provides voice and audio solutions in mobile devices, and is heavily reliant on its relationship with non-party Apple Inc. ("Apple"), which accounted for 82% and 75% of Audience's revenue in fiscal years 2010 and 2011, respectively.[2] Plaintiffs allege that Audience's May 2012 registration statement represented that "[t]hrough close, long-term relationships with [original equipment manufacturers or "OEMs"], we gain both a unique understanding of their product roadmaps and an ability to influence design decisions," and Audience touted its processors as having been incorporated in mobile device models sold by leading OEMs such as Apple.[3] The registration statement further stated that Audience "work[s] closely with OEMs throughout their design processes, using our proprietary AuViD graphical design tools to integrate our solutions into their mobile devices, which enables us to improve design efficiency, increase productivity and establish differentiated design relationships with OEMs."[4] The registration statement also discussed an August 6, 2008 agreement with Apple for Audience to "develop, supply and support a custom version of one of our processors and related software to Foxconn and Protek for use in

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[1] The named individual defendants are Peter B. Santos, Mohan S. Gyani, Kevin S. Palatnik, Forest Baskett, Marvin D. Burkett, Barry L. Cox, Rich Geruson, and George A. Pavlov. Plaintiffs also sued several underwriters for Audience's IPO, namely, J.P. Morgan Securities LLC, Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., and Pacific Crest Securities LLC. On April 3, 2013, the Court entered an order dismissing without prejudice the "Outside Directors" Gyani, Baskett, Burkett, Cox, Geruson, and Pavlov, as well as the underwriter defendants, leaving Audience, Santos, and Palatnik as the remaining defendants.

[2] FAC, ¶¶3, 30.

[3] FAC, ¶40.

[4] *Ibid.*

certain mobile phones" and "an additional license agreement with [Apple] in 2010 relating to a new generation of our processor IP[.]"[5]

The FAC alleges that 6,060,707 shares of Audience common stock were sold to the public at $17 per share during the IPO, raising over $103 million in gross proceeds for Audience and the selling shareholders; however, after the market closed on September 6, 2012, Audience issued a press release announcing that Apple, its key client, likely would not use Audience's earSmart voice isolation/noise cancellation technology in its much anticipated iPhone 5, expected to launch in mid-to-late September 2012.[6]

Plaintiffs allege that the registration statement was misleading because it failed to disclose that (1) Audience's relationship with Apple was not as close as indicated by its statements, and Audience did not have a unique understanding of Apple's products and (2) as demonstrated by the advanced technology required and the alterations to hardware and software necessary for the improved audio capabilities of the iPhone 5, together with the short lead-time between the IPO and the leaking of information revealing significant changes in the relationship with Apple, Apple had decided to replace Audience's earSmart technology in the iPhone 5 and had decided to handle the function in-house, integrating its own voice isolation/noise cancellation technology into its mobile devices.[7]

The FAC asserts two causes of action for (1) violation of Section 11 of the Securities Act of 1933 (against all defendants) and (2) violation of Section 15 of the Securities Act of 1933 (against Audience and the individual defendants). On January 16, 2015, the Court issued an order granting plaintiffs Robinson and Kasian's motion for class certification, appointing these plaintiffs as class representatives, and certifying the following class: "All persons or entities who acquired Audience common stock pursuant and/or traceable to the Registration Statement and Prospectus (Registration No. 33-179016) issued in connection with the Company's May 9, 2012 IPO (the "Class"). Excluded from the Class are defendants and their families, the officers, directors and affiliates of the defendants, at all

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[5] *Ibid.*

[6] FAC, ¶¶4-5.

[7] FAC, ¶49.

relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest."

After a year of litigation and two rounds of mediation with the assistance of experienced mediators, the parties reached an agreement in principle in July of 2015. Thereafter, Plaintiffs sought preliminary approval through this Court and the matter was scheduled for a preliminary approval hearing on November 13, 2015. At that time, the Court requested supplemental briefing to fully address the potential recovery by individual class members, more information about the requested fees associated with the claims administration procedure, revisions to the proposed class notice and an amended proposed order setting forth the full process to be employed by the claims administrator in providing notice to the class. The matter was continued to December 11, 2015 to allow the Plaintiffs to address these issues. Following review of the supplemental briefing, the Court issued its Order Granting Preliminary Approval on December 11, 2015.

Plaintiffs now move for Final Approval of Class Action Settlement.

II. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.).

The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching

by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at p. 245, citing *Dunk v. Ford Motor Co.*, *supra*, 48 Cal. App. 4th at p. 1802.)

III. PROVISIONS OF THE SETTLEMENT

Pursuant to the Stipulation of Settlement, all class members who do not opt out of the settlement will release claims pertaining to acts that were alleged or could have been alleged in this action in exchange for defendants' creation of an escrow account funded by a $6,050,000 payment from Audience's directors and officer's liability insurer(s).[8] This fund will be treated as a "Qualified Settlement Fund" within the meaning of Treasury Regulations section 1.468B-1 and will be controlled solely by Plaintiffs' counsel Robbins Geller Rudman & Dowd LLP subject to oversight by this Court.[9] The class's costs and expenses, including costs of claims administration and notice; attorney fees and/or expenses to be awarded to plaintiffs' counsel (in an amount to be determined by the Court during proceedings separate from its approval of the settlement); and any award to plaintiffs for their time and expense in representing the class (also to be determined by the Court in separate proceedings) shall be paid from the settlement.[10]

Without further order of the Court, class counsel may use the fund to pay certain costs associated with claims administration and notice, escrow fees and costs, and certain tax-related expenses not to exceed $400,000 prior to the effective date.[11] This amount corresponds to the $400,000

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[8] Stipulation of Settlement, §§1.4, 1.22, 2.1, 4.1-4.3.

[9] Stipulation of Settlement, §§2.1-2.8.

[10] Stipulation of Settlement, §§2.6, 6.1-6.7.

[11] Stipulation of Settlement, §2.7.

that the claims administrator estimates will be needed to administer the notice, claims processing, and settlement distribution aspects of the proposed settlement.[12] As provided in the Notice of Proposed Settlement of Class Action ("Notice"), plaintiffs' counsel will apply for an award of 30% of the settlement fund, plus expenses not to exceed $140,000.[13] In addition, each of the plaintiffs may seek payment of up to $2,500 for their time and expenses incurred in representing the class.

The parties have chosen Gilardi & Co. LLC to act as claims administrator.[14] Within 90 days after the mailing of the Notice, class members must submit a proof of claim substantially in the form and content of Exhibit A-2 to the Stipulation of Settlement or be barred from receiving any payments from the settlement.[15] The claims administrator will determine the extent to which claims are allowed, calculate authorized claims, and oversee the distribution of the settlement fund in accordance with the "Plan of Allocation," which is not a part of the Stipulation of Settlement,[16] but is set forth in the Notice.

The Plan of Allocation states that shares of Audience common stock were valued at $17 per share during Audience's IPO and at $6.82 per share when this action was filed.[17] For shares sold prior to the date this action was filed, the claim per share is the lesser of (i) the purchase price per share less the sales price per share or (ii) $17 less the sales price per share.[18] For shares retained or sold on or after the date this action was filed, the claim per share is the lesser of (i) the purchase price per share less $6.82 or (ii) $17 less $6.82.[19] For shares purchased after the close of trading on the date this action was filed, the recovery is zero.[20] In the likely event that the settlement fund is insufficient to cover the

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[12] Crudo Decl., ¶18.

[13] Stipulation of Settlement, Ex. A-1, Notice, p. 6.

[14] Stipulation of Settlement, §1.3.

[15] Stipulation of Settlement, §§5.3-5.4.

[16] Stipulation of Settlement, §§1.18, 5.5, 5.9.

[17] Notice, p. 3.

[18] *Ibid.*

[19] *Ibid.*

[20] Notice, p. 4.

total claim of each claimant, then each claimant shall receive the percentage of the fund that his or her claim bears to the total of all authorized claims.[21] If a class member has more than one purchase, acquisition, or sale of Audience common stock during the class period, all transactions will be matched on a first-in, first-out ("FIFO") basis for purposes of calculating a claim.[22] Claims will be limited to the amount of the claimant's total market loss, and if a claimant has an overall market gain, his or her recovery will be zero.[23] No distribution shall be made to claimants who would otherwise receive less than $10.[24]

In connection with the prior motion for preliminary approval of the class action settlement, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' claims. While the Court invited supplemental briefing on the potential size of the class and the estimated amount per share that the Claimants would receive from the net settlement fund, the Court ultimately concluded that the Plaintiffs had properly addressed these issues in their supplemental filing (Response to the Court's Order Requesting Additional Information) and concluded that the settlement was reached following extensive discovery and investigation by experienced counsel who negotiated at arms-length with the assistance of two experienced mediators. The final moving papers properly address the factors set forth above including the likelihood of prevailing at trial, the maximum potential recovery to class members and the risks and expenses associated with proceeding with the litigation. The Court finds no reason to deviate from this finding now, especially in light of the Plan of Allocation, the estimated benefit to Class Members and the fact that there are no objections or opt outs to the settlement.

According to the final approval papers, more than 9900 copies of the Notice of Proposed Settlement of Class Action ("Notice") were sent to potential Class Members and their nominees that explain the terms of the Settlement, the Plan of Allocation, counsel's request for an award of attorney's

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[21] Notice, p. 3.

[22] Notice, p. 4.

[23] *Ibid.*

[24] *Ibid.*

fees and expenses, as well as the options of Class Members to object or opt out. The deadline to object and/or opt out was March 30, 2016 and the papers indicate that not a single individual objected or opted out. The Declaration of Carole Sylvester (Director of Claims Administrator, Gilardi and Co. LLC) sets forth the steps taken by the Administrator to provide Notice to potential class members. In sum, a total of 9917 Claim Packages were sent to potential Class Members and Gilardi also established and continues to maintain a toll-free number to accommodate inquiries and a website dedicated to the litigation. Summary Notice was also published in *Investor's Business Daily* and transmitted over the *PR Newswire* on January 8, 2016. The Court finds that Notice was properly provided to potential Class Members and the steps taken by the Administrator were reasonable and sufficient to provide Notice.

Plaintiffs are also seeking an incentive award in the amount of $2500 for each of the representative plaintiffs. The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit. (*Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.) The Court has reviewed the Declarations of Brent Robinson and Dorothy Kasian and approves the request for an incentive award for each in the amount of $2500. The Court did not see a Declaration for Daren Nowak or Boyd Deel. As there does not appear to be any information about the involvement by Nowak or Deel, the Court is not in a position to approve their requested incentive award.

The Court also has an independent right and responsibility to review the requested attorney's fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal. App. 4th 123, 127-128.) The amount of attorney's fees requested by

Class Counsel is 30% of the settlement fund or $1,815,000. According to the moving papers, Class Counsel and their paraprofessionals spent over 3800 hours in prosecuting the lawsuit with a combined lodestar of $2,194,357.75. Counsel argues that the requested fee of $1,815,000 represents an approximate 17% reduction of this total lodestar figure. The moving papers also detail the efforts taken in prosecuting the case and the expenses incurred of $96,181.79. In further support of the request for attorney's fees, Class Counsel has submitted the Declarations of John K. Grant (Robbins, Geller, Rudman and Dowd LLP), Corey D. Holzer (Holzer and Holzer LLC), Stephen J. Oddo (Robbins Arroyo LLP), Francis Bottini (Bottini and Bottini, Inc.), and Ex Kano S. Sams II (Glancy Prongay and Murray LLP) which indicate the hourly rates and amount of time spent by each of the respective firms in prosecuting the lawsuit. The Grant Declaration provides a summary of the time spent by each timekeeper, the hourly rates, information relevant to the expertise of counsel in handling class actions and a breakdown of the expenses incurred by the firm. Similar information is provided in the remaining four Declarations referenced above. After a careful review of the information provided by counsel and recognizing the risks inherent in pursuing the litigation together with the benefit received by the Proposed Class, the Court approves the request for attorney's fees in the cumulative sum of $1,815,000. The Court further approves the request for expenses and costs in the sum of $96,181.79.

For the reasons set forth above, the Motion for Final Approval of Class Action Settlement is GRANTED.

IT IS SO ORDERED.

DATED: 6/10/16

Peter H. Kirwan

HONORABLE PETER H. KIRWAN
JUDGE OF THE SUPERIOR COURT

Submitted by:

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JOHN K. GRANT

s/ John K. Grant
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Additional Counsel for Plaintiffs

EXHIBIT 8

ORIGINAL

FILED
Clerk of the Superior Court
JUN 28 2012
By: R. LINDSEY-COOPER, Deputy

JUN 8'12 PM 3857

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

WEST PALM BEACH POLICE PENSION FUND, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

CARDIONET, INC., ARIE COHEN, JAMES M. SWEENEY, MARTIN P. GALVAN, FRED MIDDLETON, WOODROW MYERS JR., M.D., ERIC N. PRYSTOWSKY, M.D., HARRY T. REIN, ROBERT J. RUBIN, M.D., RANDY H. THURMAN, BARCLAYS CAPITAL, INC., CITIGROUP GLOBAL MARKETS INC., LEERINK SWANN LLC, THOMAS WEISEL PARTNERS LLC, BANC OF AMERICA SECURITIES LLC and COWEN AND COMPANY,

Defendants.

Case No. 37-2010-00086836-CU-SL-CTL

[~~PROPOSED~~] FINAL APPROVAL ORDER AND JUDGMENT OF DISMISSAL WITH PREJUDICE

Date: June 22, 2012
Time: 8:30 a.m.
Dept: C-65

Judge: Hon. Joan M. Lewis
Complaint Filed: March 5, 2010
Trial Date: June 15, 2012 [vacated]

FINAL APPROVAL ORDER AND JUDGMENT OF DISMISSAL WITH PREJUDICE

WHEREAS, the Court is advised that the Parties,[1] through their counsel, have agreed, subject to Court approval following notice to the Class and a hearing, to settle this Action (the "Action") upon the terms and conditions set forth in the Stipulation and Agreement of Settlement (the "Stipulation") which was filed with the Court; and

WHEREAS, the Court entered its Order Preliminarily Approving Settlement and Confirming Final Settlement Hearing which conditionally certified the Settlement Class and preliminarily approved notice to the Class (including notice of the proposed Settlement and of a fairness hearing thereon), and said notice has been made, and the fairness hearing has been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records and proceedings herein, and it appearing to the Court upon examination that the Stipulation and Settlement are fair, reasonable and adequate, and upon a Settlement Fairness Hearing having been held after notice to the Class of the proposed Settlement to determine if the Stipulation and Settlement are fair, reasonable and adequate and whether a Final Approval Order and Judgment of Dismissal with Prejudice should be entered in this Action based upon the Stipulation;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

B. This Court has jurisdiction of the subject matter of this Action and over all of the Parties and all members of the Class.

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[1] As used herein, the term "Parties" means Plaintiff West Palm Beach Police Pension Fund ("Plaintiff"), on behalf of itself and the Class (as defined herein), and Defendants: CardioNet, Inc. ("CardioNet" or the "Company"); current and former CardioNet officers and/or directors Arie Cohen, James M. Sweeney, Martin P. Galvan, Fred Middleton, Woodrow Myers Jr., M.D., Eric N. Prystowsky, M.D., Harry T. Rein, Robert J. Rubin, M.D., and Randy H. Thurman (the "Individual Defendants"); and underwriters Citigroup Global Markets Inc., Leerink Swann LLC, Thomas Weisel Partners LLC, Banc of America Securities LLC, Cowen and Company and Barclays Capital, Inc. (collectively, with the Individual Defendants and CardioNet, "Defendants").

C. All of the requirements for class certification under California law are met, and therefore this Action is properly maintained as a class action for purposes of settlement and the Class is properly certified. The Class is defined as:

> All Persons who purchased or acquired CardioNet's common stock pursuant or traceable to the Company's registration statements and prospectuses, as amended (collectively, the "Registration Statements"), filed with the Securities and Exchange Commission ("SEC") in connection with CardioNet's March 25, 2008 initial public offering ("IPO") and/or its August 6, 2008 secondary stock offering ("Secondary Offering"), and who claim to have been damaged thereby. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a majority interest. Also excluded from the Class are Persons otherwise meeting the definition of the Class who submit valid and timely requests for exclusion from the Settlement.

D. With respect to the Class, the Court finds that:

i. The members of the Class are so numerous that their joinder in the Action is impracticable. Based on the Company's stock transfer records, the Claims Administrator sent notice to 25,749 putative Class Members. The Class is, therefore, sufficiently numerous to render joinder impracticable. *See, e.g., Int'l Molders' and Allied Workers' Local Union No. 164 v. Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983) (numerosity generally met if the class consists of more than 40 members).

ii. There are questions of law and fact common to the Class. Those questions include whether the Registration Statements contained misstatements or omissions, whether any misstatements or omissions were material, and whether any misstatements or omissions caused harm to the members of the Class.

iii. The claims of the Plaintiff are typical of the claims of the Class Members. Plaintiff claims to have acquired CardioNet stock pursuant or traceable to the same Registration Statements as the members of the Class, and it claims that Defendants' conduct with respect to it and the members of the Class was

identical. Consequently, Plaintiff claims that it and the other members of the Class sustained damages as a result of the same misconduct by Defendants

iv. Plaintiff and Plaintiff's Counsel have fairly and adequately represented and protected the interests of the Class Members. Plaintiff has no interests in conflict with absent members of the Class. The Court is satisfied that Plaintiff's Counsel are qualified, experienced and prepared to represent the Class to the best of their abilities. The law firm of Scott+Scott LLP is hereby appointed Lead Counsel for the Class.

v. The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members.

E. The form, content and method of dissemination of Notice given to the Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort.

F. Notice, as given, complied with the requirements of California law, satisfied the requirements of due process and constituted due and sufficient notice of the matters set forth herein.

G. The Settlement set forth in the Stipulation is fair, reasonable and adequate.

i. The Settlement was negotiated vigorously and at arm's-length by the Plaintiff and its experienced counsel on behalf of the Class. The case settled only after: (a) a mediation conducted by a retired U.S. District Court Judge who was thoroughly familiar with this Action; (b) Plaintiff's Counsel conducted an extensive investigation, which included, among other things, a review of CardioNet's press releases, SEC filings, analyst reports, media reports and other publicly disclosed reports and information about the Defendants; (c) the removal of this Action to federal court pursuant to the Securities Litigation Uniform Standards Act and a remand motion to state court *(see West Palm Beach Police Pension Fund v. CardioNet, Inc.*, No. 10cv711–L(NLS), 2011 WL 1099815 (S.D. Cal. March 24, 2011)); and (d) the drafting and submission of a highly detailed

First Amended Complaint ("FAC") that survived a demurrer. Accordingly, both the Plaintiff and Defendants were well positioned to evaluate the settlement value of this Action. The Stipulation has been entered into in good faith and is not collusive.

ii. If the Settlement had not been achieved, both Plaintiff and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Plaintiff's or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the Settlement.

H. Plaintiff and Plaintiff's Counsel have fairly and adequately represented the interest of the Class Members in connection with the settlement.

I. Plaintiff, all Class Members and Defendants are hereby bound by the terms of the Settlement set forth in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Stipulation and the Settlement embodied therein are approved as final, fair, reasonable and adequate. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation. ~~[The Court has duly considered each objection that was filed to the proposed Settlement, and each objection is hereby overruled.]~~

2. The Action and all claims that are or have ever been contained therein, as well as all of the Settled Claims, are dismissed with prejudice as to the Plaintiff and the Class Members. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

3. All Released Parties as defined in the Stipulation are released in accordance with, and as defined in, the Stipulation.

4. Upon the Effective Date hereof, Plaintiff and all members of the Class shall be deemed to have, and by operation of the judgment shall have, absolutely and unconditionally, fully, finally, and forever released, relinquished, and discharged any and all of the Defendants and any and all of their families, parent entities, subsidiaries, associates, affiliates, or successors and each and all of their respective past, present or future officers, directors, executives, partners, stockholders, representatives,

employees, principals, trustees, attorneys, financial or investment advisors, consultants, accountants, auditors, banks or investment bankers, commercial bankers, insurers, reinsurers, advisors or agents, heirs, executors, trusts, general or limited partners or partnerships, personal representatives, estates, administrators, predecessors, successors, indemnitors, indemnitees, divisions, joint ventures, related or affiliated entities, any entity in which any Defendant has a majority interest, assignees, any trust of which any Individual Defendant is the settlor or which is for the benefit of any Individual Defendant and/or members of his family, and any other representatives of any of these Persons or entities or their successors ("Released Parties") from, and shall forever be enjoined from suing any or all of the Released Parties for, any and all claims, rights, causes of action, damages, or liabilities whatsoever, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, foreseen or unforeseen, whether class or individual in nature, including both known and unknown (including, but not limited to, Unknown Claims, as defined in the Stipulation), that were asserted or could have been asserted in this Action by Plaintiff or members of the Class against the Released Parties under United States federal, state, local, statutory or common law, or any other law, rule or regulation, whether foreign or domestic based upon, arising out of, or relating to, in any way, (i) the facts and circumstances alleged in the complaints filed in this Action, and (ii) the purchase of CardioNet's common stock pursuant or traceable to the Company's IPO and Secondary Offering Registration Statements. "Settled Claims" also includes any and all claims arising out of, relating to, or in connection with the Settlement or resolution of the Action against the Released Parties (including Unknown Claims), except claims to enforce any of the terms of this Stipulation.

5. Upon the Effective Date hereof, Defendants shall be deemed to have, and by operation of the judgment shall have, absolutely and unconditionally, fully, finally, and forever released, relinquished, and discharged any and all claims, rights, causes of action, damages, or liabilities whatsoever, whether based on United States federal, state, local, statutory or common law, or any other law, rule or regulation, whether foreign or domestic, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, foreseen or unforeseen, whether class or individual in nature, including both known claims and Unknown Claims (as defined in the

Stipulation), that have been or could have been asserted in the Action or any other forum by any of the Defendants or the successors or assigns of any of them against Plaintiff, Class Members or their attorneys, which arise out of or relate to the institution, prosecution, or settlement of the Action (except for claims to enforce the terms of the Stipulation) ("Settled Defendants' Claims").

6. The Releases granted herein shall be effective as a bar to any and all claims within the scope of their express terms and provisions that Plaintiff or any Class Member does not know or suspect to exits in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants' Claims that Defendants do not know or suspect to exist in their 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 Settled Claims and Settled Defendants' Claims, the Parties stipulate and agree that by operation of this Final Order and Judgment, upon the Effective Date, the Plaintiff and Defendants shall have expressly waived, and each Class Member shall be deemed to have waived, and by operation of this Final Order and Judgment shall have expressly waived, the provisions, rights and benefits of 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 RELESASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;**

and 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. Plaintiff and Defendants acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definitions of Settled Claims and Settled Defendants' Claims was separately bargained for and was a key element of the Settlement.

7. All Class Members who have not made their objections to the settlement in the manner provided in the notice are deemed to have waived any objections by appeal, collateral attack or otherwise.

8. All Class Members who have failed to properly file requests for exclusion (requests to opt out) from the Class are bound by the terms and conditions of the Stipulation and this Final Order

and Judgment and release and forever discharge the Released Parties from all Settled Claims as provided in the Stipulation.

9. Lead Counsel are hereby awarded 33 1/3 % of the Gross Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and $ 84,324.69 in reimbursement of expenses, which fees and expenses shall be paid within five (5) days of entry of this Order to Lead Counsel from the Gross Settlement Fund with interest from the date such Gross Settlement Fund was funded to the date of payment at the same rate earned by the Gross Settlement Fund. The aforementioned attorneys' fees shall be allocated by Lead Counsel in a manner which in its good faith judgment reflects each counsel's contribution to the institution, prosecution, and resolution of the Action.

10. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $7,250,000 in cash plus interest thereon and that Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Plaintiff's Counsel;

(b) Over 25,749 copies of the Notice were disseminated to putative Class Members indicating that Plaintiff's Counsel were moving for attorneys' fees in the amount of up to 33 1/3% of the Gross Settlement Fund and for reimbursement of expenses in an amount of approximately $100,000 and ~~only~~ [no] objections were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiff's Counsel contained in the Notice;

(c) Plaintiff's Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) The Action involves complex factual and legal issues, was actively prosecuted and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(e) Had Plaintiff's Counsel not achieved the Settlement there would remain a significant risk that Plaintiff and the Class may have recovered less or nothing from the Defendants; and

(f) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

11. The Court finds that an award to Plaintiff West Palm Beach Police Pension Fund for its reasonable costs and expenses (including lost wages) spent directly in its representation of the Settlement Class and prosecution of this action is fair and reasonable, and thus awards Plaintiff West Palm Beach Police Pension Fund $ 4500 from the Settlement Fund. The facts supporting reimbursement and the amount awarded are set forth in the declaration Plaintiff submitted to the Court in support of its request.

12. All other provisions of the Stipulation are incorporated into this Order as if fully rewritten herein. To the extent that the terms of this Order conflict with the terms of the Stipulation, the Stipulation shall control.

13. Plaintiff and all Class Members are hereby BARRED AND PERMANENTLY ENJOINED from instituting, commencing, maintaining or prosecuting in any court or tribunal any of the Settled Claims against any of the Released Parties.

14. Defendants and their successors or assigns are hereby BARRED AND PERMANENTLY ENJOINED from instituting, commencing, maintaining or prosecuting any of the Settled Defendants' Claims against Plaintiff, Class Members or Plaintiff's Counsel.

15. The Plan of Allocation set forth in the Notice is approved as fair and reasonable, and Plaintiff's Counsel are directed to arrange for the administration of the Settlement in accordance with its terms and provisions. Any modification or change in the Plan of Allocation that may hereafter be approved shall in no way disturb or affect this Final Order and Judgment or the releases provided hereunder and shall be considered separate from this Final Order and Judgment.

16. The Court hereby decrees that neither the Stipulation nor this Final Order and Judgment nor the fact of the settlement is an admission or concession by the Released Parties, or any of them, of any liability or wrongdoing. This Final Order and Judgment is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Neither the Stipulation nor this Final Order and Judgment nor the fact of settlement nor the settlement proceedings nor the settlement

negotiations nor any related documents shall be offered or received in evidence as an admission, concession, presumption or inference against any of the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Stipulation, or in an action or proceeding to determine the availability, scope, or extent of insurance coverage (or reinsurance related to such coverage) for the sums expended for the settlement and defense of this Action.

17. The Action is dismissed with prejudice; subject, however, to this Court retaining jurisdiction over compliance with the Stipulation and this Final Order and Judgment.

18. The Court hereby bars all future claims for contribution arising out of the Action (i) by any person against the settling Parties; and (ii) by the settling Parties against any person, other than a person whose liability has been extinguished by the settlement of the settling Parties.

19. Nothing in this Final Order and Judgment constitutes or reflects a waiver, release or discharge of any rights or claims of Defendants against their insurers, or their insurers' subsidiaries, predecessors, successors, assigns, affiliates, or representatives. Nothing in this Final Order and Judgment constitutes or reflects a waiver or release of any rights or claims relating to indemnification, advancement or any undertakings by an indemnified party to repay amounts advanced or paid by way of indemnification or otherwise.

20. In the event that the Stipulation is terminated in accordance with its terms, (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*, (ii) this Action shall proceed as provided in the Stipulation, (iii) the Defendants shall be permitted to object to the certification of any proposed class in this Action, and (iv) the Defendants shall not be judicially or equitably estopped from arguing against the certification of any class in this Action.

21. There is no just reason for delay, and this is a final, appealable order as of when it is stamped as received for filing.

22. Final judgment shall be entered herein.

23. Distribution Hearing is set for Nov. 30, 2012 @ 8:30 Am.

So ordered.

Dated: 6/28/12

Joan M. Lewis
HON. JOAN M. LEWIS

Submitted by:

SCOTT+SCOTT LLP

Geoffrey M. Johnson /s.w.k.

Geoffrey M. Johnson
12434 Cedar Road, Suite 12
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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on November 30, 2016, declarant served the **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES** by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 30, 2016, at San Diego, California.

JACLYN STARK

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