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10 *Lead Counsel for Lead Plaintiff*
Carl Schwartz and the Settlement Class

11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 TODD SCHUENEMAN, on behalf of
15 himself and all others similarly
situated,

16 Plaintiff,

17 vs.

18 ARENA PHARMACEUTICALS,
INC., JACK LIEF, ROBERT E.
19 HOFFMAN, DOMINIC P. BEHAN,
WILLIAM R. SHANAHAN, and
20 CHRISTY ANDERSON,

21 Defendants.

Case No. 3:10-cv-01959-CAB (BLM)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR DISTRIBUTION OF
NET SETTLEMENT FUND**

Judge: Hon. Cathy Ann Bencivengo
Courtroom: 4C
Hearing Date: June 25, 2020
Hearing Time: 10:00 a.m.

**[PER CHAMBER RULES, NO
ORAL ARGUMENT UNLESS
SEPARATELY ORDERED BY THE
COURT]**

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23 *[additional captions on following pages]*
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WILLIAM SUTLIFF and JEAN SUTLIFF, on behalf of themselves and all others similarly situated,

Plaintiff,

vs.

ARENA PHARMACEUTICALS, INC., JACK LIEF and WILLIAM SHANAHAN, JR.

Defendants.

Case No. 3:10-cv-01961-CAB (BLM)

WILLIAM PRATT, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

ARENA PHARMACEUTICALS, INC., JACK LIEF, ROBERT E. HOFFMAN, DOMINIC P. BEHAN, WILLIAM R. SHANAHAN, JR. and CHRISTY ANDERSON,

Defendants.

Case No. 3:10-cv-01977-CAB (BLM)

CRAIG RUBENSTEIN, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

ARENA PHARMACEUTICALS, INC., JACK LIEF, ROBERT E. HOFFMAN, DOMINIC P. BEHAN, WILLIAM R. SHANAHAN, JR. and CHRISTY ANDERSON,

Defendants.

Case No. 3:10-cv-01984-CAB (BLM)

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RODNEY VELASQUEZ, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

ARENA PHARMACEUTICALS, INC.,
JACK LIEF, ROBERT E. HOFFMAN,
DOMINIC P. BEHAN, WILLIAM R.
SHANAHAN, JR. and CHRISTY
ANDERSON,

Defendants.

Case No. 3:10-cv-02026-CAB (BLM)

THONG VU, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

ARENA PHARMACEUTICALS, INC.,
JACK LIEF, ROBERT E. HOFFMAN,
DOMINIC P. BEHAN, WILLIAM R.
SHANAHAN, and CHRISTY
ANDERSON,

Defendants.

Case No. 3:10-cv-02086-CAB (BLM)

ARIC D. JACOBSON, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

ARENA PHARMACEUTICALS, INC.,
JACK LIEF, ROBERT E. HOFFMAN,
DOMINIC P. BEHAN, WILLIAM R.
SHANAHAN, JR., and CHRISTY
ANDERSON,

Defendants.

Case No. 3:10-cv-02335-CAB (BLM)

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RULES

Federal Rules of Civil Procedure	
Rule 23(e).....	1

1 Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Court-
 2 appointed Lead Plaintiff Carl Schwartz (“Lead Plaintiff”), by and through his counsel
 3 Kaplan Fox & Kilsheimer LLP (“Lead Counsel”), respectfully submits this
 4 Memorandum of Points and Authorities in support of his motion for an order
 5 approving the distribution of the Net Settlement Fund as set forth in the accompanying
 6 Declaration of Stephanie Amin-Giwner in Support of Motion for Distribution of Net
 7 Settlement Fund (“Amin-Giwner Declaration”), submitted on behalf of the Court-
 8 approved Claims Administrator, Epiq Class Action & Claims Solutions, Inc.
 9 (“Epiq”).^{1,2}

10 I. INTRODUCTION

11 Lead Plaintiff obtained a recovery of \$24 million in cash³ for the benefit of the
 12 Settlement Class in exchange for the dismissal of all claims brought in the Action and
 13 a full release of claims against Defendants and the other Released Parties. Pursuant
 14 to the terms of the Stipulation, by April 16, 2018, Arena paid, or caused to be paid,
 15 \$24 million into an Escrow Account, and the funds have been invested for the benefit
 16 of the Settlement Class.⁴ As of May 19, 2020, the value of the Net Settlement Fund

17 ¹ Unless otherwise defined, capitalized terms herein have the same meaning as set
 18 forth in the Stipulation and Agreement of Settlement, dated November 3, 2017
 (“Stipulation”) [ECF No. 152].

19 ² Pursuant to the Court’s Order Preliminarily Approving Settlement and Providing for
 20 Notice of Proposed Settlement (“Preliminary Approval Order”), dated November 30,
 2017 [ECF No. 156], the Court appointed Garden City Group, LLC (“GCG”) as
 21 Claims Administrator for this Settlement. Epiq acquired GCG on June 18, 2018, and,
 as such, became successor Claims Administrator. Amin-Giwner Decl. ¶ 2 n.1.

22 ³ Pursuant to the Stipulation, Defendant Arena Pharmaceuticals, Inc. (“Arena”) was
 23 to pay \$12,025,000 in cash and Arena common stock to be issued with a value of
 24 \$11,975,000 (“Settlement Shares”). *Id.* ¶ 1.24. Arena, however, had the option to
 pay all or part of the Settlement Shares in cash at the time Arena was to issue the
 Settlement Shares. *Id.* ¶ 3.4. At the time Arena was to issue the Settlement Shares,
 Arena chose to pay all of the Settlement Shares in cash.

25 ⁴ The Settlement Class is defined in the Stipulation as “all Persons who purchased
 26 Arena common stock between March 17, 2008 and January 27, 2011, inclusive, and
 27 were damaged thereby....” *Id.* ¶ 1.26. Excluded from the Settlement Class includes
 28 “anyone named as a defendant in the Action including the Company; members of the
 immediate family of the Individual Defendants; Arena’s directors and officers; any
 entity in which any Defendant has a controlling interest; and the legal representatives,
 heirs, successor, and assigns of such excluded parties.” *Id.* Also excluded “are those

1 (including interest, less disbursements of Court-approved attorneys’ fees and
2 expenses, but before payment of tax preparation fees, full payment of estimated taxes,
3 if any, escrow fees, and payment of Epiq’s fees and expenses) is \$20,935,779.38.

4 In accordance with the Preliminary Approval Order, Epiq (as successor to
5 GCG) was authorized to act as the Claims Administrator in connection with the
6 Settlement of this Action. As set forth in the Amin-Giwner Declaration, as Claims
7 Administrator, Epiq has implemented the terms of the Settlement by, among other
8 things: (i) mailing over 139,000 Notice Packets, consisting of the Notice of Pendency
9 and Proposed Settlement of Class Action (the “Notice”) and the Proof of Claim and
10 Release Form (the “Proof of Claim”) to potential Class Members, brokers, and other
11 nominees; (ii) creating and maintaining a toll-free helpline for inquiries during the
12 course of the administration; (iii) creating and maintaining a settlement website and
13 posting case-specific documents on it; (iv) causing the Summary Notice to be
14 published in *The Wall Street Journal* and over a national newswire service;
15 (v) providing, upon request, additional copies of the Notice Packets to brokers and
16 nominees; and (vi) receiving and processing Proofs of Claim.

17 The Notice, Summary Notice, and website informed potential Class Members
18 of the April 13, 2018 deadline for submitting a Proof of Claim. As set forth in the
19 Amin-Giwner Declaration and discussed below, the Claims Administrator received
20 and processed 10,025 Proofs of Claim. *Id.* ¶ 5.

21 Paragraph 6.9 of the Stipulation requires Lead Counsel to apply to the Court,
22 with reasonable advance notice to Defendants, for a Distribution Order: (i) approving
23 the Claims Administrator’s administrative determinations concerning the acceptance
24 and rejection of the Claims submitted; (ii) approving payment of any outstanding
25 administration fees and expenses associated with the administration of the Settlement
26

27 _____
28 Persons who timely and validly request[ed] exclusion from the Class pursuant to the
Notice.” *Id.*

1 from the Escrow Account; and (iii) if the Effective Date has occurred, directing
2 payment of the Net Settlement Fund to Authorized Claims from the Escrow Account.

3 The Effective Date—the date by which the Final Judgment and Order of
4 Dismissal with Prejudice has been entered and the time for appeal has expired—has
5 now occurred. Accordingly, Lead Counsel now seeks, among other things, approval
6 of the distribution of the Net Settlement Fund to Authorized Claimants as determined
7 by Epiq.

8 **II. SUMMARY OF CLAIMS PROCESSING**

9 As detailed in the accompanying Amin-Giwner Declaration, Epiq mailed over
10 139,000 Notice Packets to potential Settlement Class Members or their nominees. *Id.*
11 ¶ 4. Of the 10,025 Proofs of Claims, Epiq received 3,937 paper Proofs of Claim and
12 6,088 electronically filed Proofs of Claim (“Electronic Claims”). *Id.* ¶ 11.

13 **A. Deficiency Notices**

14 Of the paper and online Proofs of Claim initially submitted, approximately
15 76.5% were initially incomplete, not signed, not properly documented, duplicative,
16 resulted in no recognized loss, or filed by a claimant who had not purchased relevant
17 shares of Arena common stock during the Class Period. *Id.* ¶ 18. If a Proof of Claim
18 was determined to be defective, a “Notice of Conditional Rejection of Part of Your
19 (or Entire) Claim” (“Deficiency Notice”) was sent to the Claimant describing the
20 defect(s) with his, her, or its Proof of Claim and what, if anything, was necessary to
21 cure the defect(s) in the Proof of Claim. *Id.* ¶¶ 18-22. The Deficiency Notice advised
22 the Claimant that the submission of the appropriate information and/or documentary
23 evidence to complete the Proof of Claim had to be sent within twenty (20) days from
24 the date of the Deficiency Notice or the Proof of Claim would be recommended for
25 rejection to the extent the deficiency or condition of ineligibility was not cured. *Id.*
26 The Deficiency Notice also advised Claimants that if they desired to contest Epiq’s
27 administrative determination, they were required to submit a written statement to Epiq
28 requesting Court review of their Proof of Claim and setting forth the basis for their

1 request. *Id.* ¶ 21. An example of the Deficiency Notices sent to notify Claimants of
2 the deficiencies in or ineligibility of their Proofs of Claim is attached as Exhibit A to
3 the Amin-Giwner Declaration.

4 In addition, Epiq contacted the banks, brokers, claimants, and other filers who
5 submitted their data electronically to confirm their submissions and to notify the filer
6 of any deficiencies or Electronic Claims that were ineligible. *Id.* ¶¶ 11-15. Epiq
7 provided all Electronic Claim submissions email notification with a spreadsheet
8 which notified the filer with any discrepancies in the data. *Id.* Epiq’s Quality
9 Assurance personnel and Electronic Filing Team worked with filers to ensure that
10 fully completed Proofs of Claim were considered. *Id.*

11 **B. Disputed Claims**

12 Epiq carefully reviewed Claimants’ responses to the Deficiency Notice, and
13 responses to the Status Emails, and worked with Claimants and filers to resolve
14 deficiencies where possible. *Id.* ¶¶ 18, 22. However, twelve Disputed Claims subject
15 to Court review were submitted by Claimants. *Id.* ¶ 25. The Claims Administrator
16 rejected each Disputed Claim for either failing to come to a Recognized Loss or for
17 failure to provide substantiation. *See id.*, Ex. B-1-2.

18 Three Disputed Claims were rejected based on lack of a Recognized Loss
19 Amount. *See id.*, Exs. B-1#1-3. Claimant 73 purchased 3,000 shares on
20 September 17, 2009, but sold all 3,000 shares on September 25, 2009, prior to the
21 September 17, 2010 corrective disclosure date. *Id.*, Ex. B-1#1. According to the Plan
22 of Allocation, “[f]or shares sold from March 17, 2008 through September 13, 2010,
23 the Recognized Loss shall be zero.” Accordingly, Claimant 73 has no Recognized
24 Loss Amount.

25 Two Claimants purchased shares during a period where there was no allegation
26 that the stock prices were inflated. Claimant 1037145 purchased 1,000 shares on
27 November 19, 2010 and another 1,000 shares on November 23, 2010, and sold the
28 shares on November 22 and 23, 2010. *Id.*, Ex. B-1#2. Claimant 1076465 purchased

1 20,000 shares on December 8, 2010. *Id.*, Ex. B-1#3. However, according to the Plan
2 of Allocation, “[p]urchasers of Arena common stock from September 17, 2010
3 through December 21, 2010 purchased Arena common stock during a period when
4 Arena common stock was not alleged to have been inflated as a result of any of
5 Defendants’ alleged misrepresentations.” Accordingly, Claimants 1037145 and
6 1037145 have no Recognized Loss Amount under the Plan of Allocation.

7 With respect to six Disputed Claims, the Claims Administrator rejected them
8 for failure to provide supporting documentation. *See id.*, Ex. B-2#1 (Claimant
9 1001856 provided Proof of Claim but no supporting documentation); B-2#2
10 (Claimant 1001860 provided Proof of Claim but no supporting documentation); B-
11 2#3 (Claimant 1002175 provided Proof of Claim but no supporting documentation);
12 B-2#4 (Claimant 1003606, who is the same individual as Claimant 1002175, provided
13 Proof of Claim but no supporting documentation); B-2#7 (Claimant 1052328
14 provided Proof of Claim but no supporting documentation); B-2#9 (Claimant
15 1092516 provided Proof of Claim but no supporting documentation).

16 With respect to Claimant 1030450, the Claims Administrator rejected his
17 claim for failure to provide complete information. *Id.*, Ex. B-2#5. While Claimant
18 1030450 provided information as to when he purchased his 5,000 shares of Arena
19 common stock, he failed to provide information as to when he sold the stock, if at all.
20 *Id.* The Claims Administrator informed Claimant 1030450 that his claim did “not
21 ‘balance’ because [he] did not provide information about all of [his] transactions,” but
22 Claimant 1030450 did not thereafter provide the requested substantiation. Similarly,
23 Claimant 1043584 (the same individual as Claimant 1030450) not only failed to
24 provide information as to when he allegedly purchased 6,290 shares of Arena common
25 stock, but also when he sold his 6,290 shares of Arena stock, if at all. *Id.*, Ex. B-2#6.

26 Claimant 1076446 originally provided a Proof of Claim and Release form but
27 with no supporting documentation. *Id.*, Ex. B-2#8. However, Claimant 1076446
28 provided adequate documentation. *Id.* Nonetheless, the Claims Administrator

1 rejected the claim because Claimant 1076446 purchased his 546 shares on October 12,
2 2010 and sold his shares on October 15, 2010. Because “[p]urchasers of Arena
3 common stock from September 17, 2010 through December 21, 2010 purchased
4 Arena common stock during a period when Arena common stock was not alleged to
5 have been inflated as a result of Defendants’ alleged misrepresentations,” Claimant
6 1076446 has no Recognized Loss Amount.

7 Lead Counsel has reviewed the Disputed Claims and agrees with the Claims
8 Administrator’s determination that these Claims should be rejected for the reasons
9 indicated above. The rejected claims are attached to the Amin-Giwner Declaration as
10 Exhibit B.⁵ Lead Counsel will cause Epiq to notify the Claimants of the Disputed
11 Claims of this motion and the deadlines to file responses, and will also post the motion
12 papers on the settlement website. In the event that any Claimants submit responses,
13 Lead Plaintiff will address them in his reply brief.

14 **III. LATE BUT OTHERWISE ELIGIBLE CLAIMS**

15 The Stipulation expressly contemplates that, as is customary in securities class
16 action settlements, the deadline for Settlement Class Members to submit Proofs of
17 Claim to be potentially eligible to participate in the settlement recovery may be
18 extended. *See* Stip. ¶ 6.7 (“Lead Counsel shall have the discretion (but not the
19 obligation) to accept late-submitted claims for processing by the Claims
20 Administrator, so long as the distribution of the Net Settlement Fund to Authorized
21 Claimants is not materially delayed thereby.”); *see also* Prelim. Appr. Order, ¶ 14
22 (“Lead Counsel may, in their discretion, recommend acceptance of late-submitted
23 claims for processing by the Claims Administrator so long as distribution of the Net
24 Settlement Fund to Authorized Claimants is not materially delayed thereby.”).

25
26
27 ⁵ In order to protect the Claimants’ personal information, other than the information
28 necessary for the Court to determine whether the Claimant has an eligible claim,
personal and confidential information has been redacted from the documents
submitted as Exhibit B to the Amin-Giwner Declaration.

1 The deadline for filing Proofs of Claim was April 13, 2018 (120 calendar days
2 following the Notice Date). Of the 10,025 Proofs of Claim, 676 were received after
3 the April 13, 2018 deadline. Amin-Giwner Decl. ¶¶ 5, 23. Epiq processed all late
4 Proofs of Claim and determined that 123 of them are otherwise eligible in whole or
5 in part (the “Late, but Otherwise Eligible Claims”). *Id.* ¶ 23. Epiq has not rejected
6 any Claims solely based on their late submission, and Epiq believes no delay has
7 resulted from the provisional acceptance of the Late, but Otherwise Eligible Claims.
8 *Id.* Lead Counsel agrees that, when the equities are balanced, it would be unfair to
9 prevent an otherwise valid Claim from participating in the Net Settlement Fund solely
10 because it was submitted after the original filing deadline, if it was submitted while
11 other Claims were still being processed.

12 However, there must be a final cut-off date after which no more Proofs of
13 Claim will be processed so that there may be a proportional distribution of the Net
14 Settlement Fund. The processing of any Proof of Claim received after preparation of
15 this application would necessarily require a delay in the distribution. Accordingly,
16 Lead Plaintiff respectfully requests that this Court order that no further Proofs of
17 Claim may be accepted after May 15, 2020. *Id.* ¶ 24.

18 Lead Plaintiff requests that the Court approve Epiq’s administrative
19 determinations accepting Claims (including the Late, but Otherwise Eligible Claims)
20 and rejecting Claims as set forth in the Amin-Giwner Declaration.

21 **IV. DISTRIBUTION OF THE NET SETTLEMENT FUNDS**

22 Epiq has determined that 2,830 Proofs of Claim (2,707 Timely Eligible Claims
23 and 123 Late, but Otherwise Eligible Claims) should be accepted. *Id.* ¶¶ 23, 32, 34.
24 The Proofs of Claim recommended for acceptance represent a total Recognized Loss
25 of \$134,678,047.72 associated with purchases or acquisitions of Arena Shares during
26 the Settlement Class Period (including \$131,694,643.09 from Timely Eligible Claims
27 and \$2,983,404.63 from Late, but Otherwise Eligible Claims). *Id.* ¶¶ 34, 35. Lead
28 Plaintiff respectfully requests that the Court adopt the distribution plan for the Net

1 Settlement Fund set forth in the Amin-Giwner Declaration which would authorize an
2 Initial Distribution of the Net Settlement Fund to the Authorized Claimants listed in
3 Exhibits C-1 and C-2 to the Amin-Giwner Declaration. *Id.* ¶ 33.

4 In the Initial Distribution, Epiq will determine a Distribution Amount for each
5 Authorized Claimant based on the sum of the Authorized Claimant's *pro rata* share
6 of the Net Settlement Fund in accordance with the Plan of Allocation. *See id.* ¶¶ 36-
7 44. As provided for in the Court-approved Plan of Allocation, Authorized Claimants
8 whose Distribution Amount is less than \$10.00 will receive no payment. *See* Notice
9 at 23 ("If any Authorized Claimant's Distribution Amount calculates to less than
10 \$10.00, it will not be included in the calculation and no distribution will be made to
11 such Authorized Claimant."). In accordance with the Plan of Allocation, each
12 Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund
13 based on his, her or its Recognized Loss. Amin-Giwner Decl. ¶ 39. To the extent the
14 reserve is not depleted, the remainder will be distributed in subsequent distributions.
15 *See id.* ¶ 44.

16 **V. DISTRIBUTION OF ANY UNCLAIMED/UNCASHED BALANCE**

17 In order to encourage Authorized Claimants to cash their distribution checks
18 promptly and to avoid or reduce future expenses relating to uncashed checks, Lead
19 Plaintiff proposes that the distribution checks bear a notation "CASH PROMPTLY;
20 VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED WITHIN
21 90 DAYS AFTER ISSUE DATE." *Id.* ¶ 42. The Claims Administrator will also issue
22 replacement checks and respond to inquiries about distribution amounts. *Id.* ¶ 41.

23 If any amounts remain in the Net Settlement Fund after the Initial Distribution,
24 and if cost effective, Lead Plaintiff proposes that a second distribution of the Net
25 Settlement Fund (the "Second Distribution") be conducted, pursuant to which any
26 amounts remaining in the Net Settlement Fund after the Initial Distribution, after
27 paying any amounts mistakenly omitted from the initial disbursement, deducting
28 Epiq's fees and expenses incurred in connection with administering the Settlement for

1 which it has not yet been paid (including the estimated costs of such Second
2 Distribution), and after the payment of any estimated taxes, the costs of preparing
3 appropriate tax returns, and any escrow fees, will be distributed to all Authorized
4 Claimants in the Initial Distribution who (1) cashed their distribution payment and
5 (2) are entitled to at least \$10.00 from the redistribution based on their *pro rata* share
6 of the remaining funds. *See* Amin-Giwner Decl. ¶ 44. If cost effective, subsequent
7 distributions of funds remaining in the Net Settlement Fund will take place. *Id.*

8 After such time as Epiq and Lead Counsel determine that further re-
9 distribution is not cost-effective, Lead Counsel will dispose the balance of the Net
10 Settlement Fund, if any, after payment of any unpaid expenses or fees incurred in
11 connection with administering the Net Settlement Fund and after the payment of any
12 estimated escrow fees or taxes and the costs of preparing appropriate tax returns, to
13 the Legal Aid Society of San Diego, Inc.⁶ *Id.*

14 **VI. FEES AND EXPENSES OF THE CLAIMS ADMINISTRATOR**

15 The Stipulation (¶ 3.12), the Court's Preliminary Approval Order (¶ 23), and
16 the Court's April 12, 2018 Final Approval of Class Settlement and Awards of
17 Attorneys' Fees, Costs and Expenses (ECF No. 162) provide that Lead Counsel may
18 direct payment from the Escrow Account, without further approval from Defendants
19 or further order of the Court, all reasonable Notice and Administration Costs in an
20 amount not to exceed \$250,000.00.

21 Epiq was engaged in this matter after a formal and competitive bidding
22 process, including providing for unit charges for certain aspects of the administration
23 and offering a discount on the hourly rates it charged. Amin-Giwner Decl. ¶ 47. Epiq
24 also prepared deficiency letters, processed responses, and completed and will perform

25 _____
26 ⁶ The Stipulation provides that, once the balance remaining in the Net Settlement
27 Fund is *de minimus*, such remaining funds, after payment of any further Notice and
28 Administration Costs and Taxes, shall be donated to the Legal Aid Society of San
Diego, Inc. *See* Stipulation ¶ 6.10. Once redistribution becomes no longer feasible,
and in the event that residual funds remain, Lead Counsel will donate the remaining
balance to the Legal Aid Society of San Diego, Inc.

1 further audit services relating to those claims. *Id.* ¶¶ 26-31, 50. Processing and
2 receiving 10,025 Proofs of Claim, Epiq charged a per claim fee for each claim
3 processed, including for formatting and loading electronic claims. *Id.* ¶ 50.

4 As reflected in the Amin-Giwner Declaration, the total amount of Epiq's fees
5 and out-of-pocket expenses incurred is \$392,676.98. *Id.* ¶¶ 45, 48-50; *see also id.*,
6 Ex. D. To date, Epiq has received \$151,085.53 in payment. *Id.* ¶ 46. Accordingly,
7 there is a total amount of \$241,591.45 for claims administration fees and expenses
8 payable to Epiq. *Id.* Lead Counsel has reviewed Epiq's invoices and respectfully
9 requests the Court approve payment of all of Epiq's fees and costs associated with
10 claims administration.

11 Epiq anticipates incurring an additional \$40,463.07 related to distribution,
12 maintaining the telephone and settlement website, and filing tax returns. *Id.* ¶ 51; *see*
13 *id.*, Ex. D. Lead Counsel respectfully requests that any fees and expenses actually
14 incurred by Epiq in connection with the distribution be paid from the Settlement Fund.
15 Should the total fees and expenses of the Claims Administrator exceed \$50,000.00,
16 Lead Counsel will seek further approval from the Court for the payment thereof.

17 **VII. RELEASE OF CLAIMS**

18 In order to allow the full and final distribution of the Net Settlement Fund, it
19 is necessary to bar any further claims against the Net Settlement Fund beyond the
20 amount allocated to Authorized Claimants, and to provide that all persons involved in
21 the review, verification, calculation, tabulation, or any other aspect of the processing
22 of the Proofs of Claim submitted herein, or otherwise involved in the administration
23 or taxation of the Settlement Fund or the Net Settlement Fund, be released and
24 discharged from any and all claims arising out of such involvement. Accordingly,
25 Lead Plaintiff requests that the Court release and discharge all persons involved in the
26 review, verification, calculation, tabulation, or any other aspect of the processing of
27 the Proofs of Claim submitted herein, or otherwise involved in the administration or
28 taxation of the Settlement Fund or the Net Settlement Fund, from any and all claims

1 arising out of such involvement, and bar all Class Members, whether or not they
2 receive payment from the Net Settlement Fund, from making any further claims
3 against the Net Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims
4 Administrator, the Escrow Agent or any other agent retained by Lead Plaintiff or Lead
5 Counsel in connection with the administration or taxation of the Settlement Fund or
6 the Net Settlement Fund beyond the amount allocated to Authorized Claimants.

7 **VIII. CONCLUSION**

8 For the foregoing reasons, Lead Plaintiff respectfully request that his Motion
9 for Distribution of the Net Settlement Fund be approved, and the proposed Order
10 Approving Distribution of the Net Settlement Fund be entered.

11 Respectfully submitted,

12 DATED: May 21, 2020

KAPLAN FOX & KILSHEIMER LLP

13 By: /s/ Laurence D. King
14 Laurence D. King

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*Lead Counsel for Lead Plaintiff Carl Schwartz
and the Settlement Class*