

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

IN RE FIREEYE, INC. SECURITIES  
LITIGATION

Lead Case No.: 1-14-cv-266866  
(Consolidated with Case No.  
1-14-CV-268110)

**[PROPOSED] ORDER FOR  
PRELIMINARY APPROVAL OF  
PROPOSED CLASS ACTION  
SETTLEMENT, ISSUANCE OF NOTICE,  
AND SETTING OF DATE FOR FINAL  
FAIRNESS HEARING**

[EXH. A TO STIP. OF SETTLEMENT]

WHEREAS, on February 6, 2017, the Parties<sup>1</sup> to the above-entitled action (the “Action”) entered into a Stipulation and Agreement of Settlement (the “Stipulation”) which is subject to review by this Court and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed Settlement of the claims alleged in the Action on the merits and dismissal of the Action with prejudice;

WHEREAS, the Court has reviewed and considered Lead Plaintiff’s Unopposed Motion For Preliminary Approval of Proposed Class Action Settlement and Order Directing Notice and Fairness Hearing (the “Motion”), and the accompanying Stipulation and exhibits thereto;

WHEREAS, by Order dated July 11, 2016, the Court has previously certified this Action as a class action, with the “Class” defined (as modestly amended with the approval of the Court on March 3, 2017) as:

All persons or entities who purchased shares of FireEye common stock in FireEye’s March 6, 2014 secondary public offering (the “Secondary Offering”), and were damaged thereby. Excluded from the Class are Defendants; their respective

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the same meanings as set forth in the Stipulation.

successors and assigns; the past and current executive officers and directors of FireEye and the Underwriter Defendants; the members of the immediate families of the Individual Defendants; the legal representatives, heirs, successors, or assigns of any excluded person, and any entity in which any of the above excluded persons have or had a majority ownership interest. Also excluded will be any person or entity that validly requests exclusion from the Class;

WHEREAS, by Order dated July 11, 2016, the Court has previously appointed: (a) the DeKalb County Employees Retirement Plan ("Lead Plaintiff") as Class Representative of the Class; (b) the law firm of Scott+Scott, Attorneys at Law, LLP ("Plaintiff's Lead Counsel") as Class Counsel for the Class; and (c) the law firm of Bottini & Bottini, Inc. as Liaison Counsel for the Class; and

WHEREAS, the Court, having reviewed the record and the Motion, and being advised of the consent of the Parties to the entry of this Order (the "Preliminary Order"), and being otherwise fully advised in the premises, and having reviewed certain changes to the form of Order and accompanying form of Notice, as directed by the Court in its tentative opinion dated March 2, 2017 and/or the Court's further clarifying comments and instructions discussed with the parties in open court on March 3, 2017, it is hereby

ORDERED AND ADJUDGED, that the Motion is GRANTED as follows:

**Preliminary Approval of the Proposed Settlement**

1. For the purposes of settlement only, the Court preliminarily approves the proposed settlement evidenced by the Stipulation, attached as an Exhibit to the Motion, and preliminarily finds that:

(a) the proposed settlement resulted from arms'-length negotiations under the auspices of a highly experienced mediator (the Hon. Layn Phillips, a retired U.S. District Judge) and was concluded only after the completion of substantial discovery and after Plaintiff's Counsel had duly investigated the issues raised by Plaintiff's claims and Defendants'

defenses;

(b) Plaintiff's Counsel, who are experienced in litigation of this type, have concluded that the proposed Settlement is fair, reasonable and adequate;

(c) the proposed settlement is sufficiently fair, reasonable and adequate to warrant sending Notice of this Action and the proposed settlement to members of the Class and holding a final approval hearing on the proposed settlement; and

(d) the proposed settlement fulfills the requirements of California Rule of Court 3.769.

**Setting of Date for Fairness Hearing**

2. A hearing (the "Settlement Fairness Hearing") is hereby scheduled to be held before the Court on August 4, 2017, at 9:00 a.m. in Department 19 at the Courthouse for the Superior Court of California for the County of Santa Clara, 191 North First Street, San Jose, California, 95113, for the following purposes:

(a) to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved by the Court;

(b) to determine whether the Final Judgment as provided under the Stipulation should be entered, dismissing the Amended Complaint filed in this Action, on the merits and with prejudice, and to determine whether the releases contemplated by the Stipulation should become effective;

(c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable, and should be approved by the Court;

(d) to consider Plaintiff's Counsel's application for an award of attorneys' fees and expenses;

(e) to consider Lead Plaintiff's request for a service and/or incentive award in connection with its role in prosecuting this Action on behalf of the Class;

(f) to determine whether an order should be entered barring and enjoining Lead Plaintiff and all Class Members from instituting, commencing, maintaining or prosecuting, either directly or indirectly, any action in any court or tribunal asserting any Released Claims against any of the Released Defendants' Parties; and

(g) to rule upon such other matters as the Court may deem appropriate in connection with the proposed settlement.

3. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Class, and to adjourn the Settlement Fairness Hearing without further notice to the Class. The Court reserves the right to enter its Final Judgment approving the Stipulation and dismissing the Action on the merits and with prejudice regardless of whether it has approved the Plan of Allocation, Lead Plaintiff's request for a service and/or incentive award, or Plaintiff's Counsel's application for an award of attorneys' fees and expenses.

#### **Issuance of Pre-Hearing Notice to Class Members**

4. The Court approves the form, terms and substance of the Notice of Proposed Settlement of Class Action (the "Notice"), the Summary Notice of Proposed Settlement of Class Action (the "Summary Notice") and the Proof of Claim and Release (the "Proof of Claim"), annexed hereto as Exhibits A-1, A-2 and A-3, respectively.

5. The Court approves the appointment of KCC Class Action Services LLC as the Claims Administrator.

(a) The Claims Administrator shall cause the Notice and Proof of Claim (collectively, the Claim Package”), substantially in the forms annexed hereto, to be mailed, by first class mail, postage prepaid, within fifteen (15) business days of the entry of this Order, to all Class Members who can be identified with reasonable effort, including each of the underwriting brokerage firms who are listed as having received an allocation of shares of FireEye common stock in the Secondary Offering in documents previously filed with the Court in connection with Lead Plaintiff’s motion for class certification. Within five (5) calendar days of this Order, or as soon as reasonably practicable thereafter, FireEye, at its expense, shall promptly make, or cause to made, the last known addresses of potential Class members (including nominees who hold on behalf of potential Class members), or other identifying information, as set forth in the books and records regularly maintained by FireEye or its transfer agent, available to the Claims Administrator for the purpose of identifying and giving notice to the Class.

(b) The Claims Administrator shall also cause the Summary Notice to be published once in the national edition of *The Wall Street Journal*, and once over the *PR Newswire*, within ten (10) calendar days after the mailing of the Notice.

6. In addition, the Claims Administrator shall also use reasonable efforts to give notice to additional nominee purchasers (notably brokerage firms) that may have purchased shares of FireEye common stock in the March 6, 2014 Secondary Offering as record owners, but not as beneficial owners, by sending copies of the Claim Package and an appropriate cover letter to each entity on its proprietary list of brokerage firms, banks or other nominees.

(a) All nominee purchasers identified under paragraphs 5 or 6 above are directed, within fourteen (14) calendar days of their receipt of the Notice, to either (i) provide the Claims Administrator with lists of the names and last known addresses of the beneficial owners (in

which case the Claims Administrator is ordered to thereafter send the Claim Package promptly to such identified beneficial owners by first-class mail); or (ii) request additional copies of the Claim Package from the Claims Administrator, and to thereafter, within ten (10) calendar days of receipt of such copies, send copies by first-class mail directly to the beneficial owners. Nominee purchasers who elect to send the Claim Package to their beneficial owners shall also send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Claim Package shall be made available to any record holders requesting such for the purpose of distribution to beneficial owners. Upon compliance with this Order, such record holders shall be reimbursed from the Settlement Fund, after receipt by the Claims Administrator of proper documentation, for their reasonable out-of-pocket expenses incurred in providing names and addresses of beneficial owners or sending the Notices and Proofs of Claim to beneficial owners.

(b) The Claims Administrator shall send an appropriate cover letter with the Claim Package to each nominee purchaser that will notify such entity of the pendency of this Action as a class action and of a proposed settlement, and shall inform them of their obligation (as set forth in sub-paragraph (a) above, to either (i) provide the names and addresses of their clients who may be Class members, or (ii) request copies of the Claim Package to provide directly to their customers who may be Class members.

(c) The Claims Administrator shall promptly mail the Claim Package to all potential Class members identified by any nominee purchasers. The Claims Administrator shall also send copies of the Claim Package directly to any nominee purchasers who indicate that they will directly forward the documents to their customers and clients who may be Class members.

(d) All name and address data obtained by the Claims Administrator shall be reviewed to identify and eliminate exact duplicates and incomplete data prior to mailing. Addresses will be checked against the United States Postal Service's ("USPS") National Change of Address database to identify address changes and obtain current mailing addresses where available. Any Claim Packages that are returned as undeliverable mail shall be reviewed to determine if alternative or updated address information is available from the USPS, and shall be re-mailed to the updated or alternative address. In cases where no address is available from the USPS, the Claims Administrator shall attempt to obtain updated or alternative address information from private databases, and will re-mail the Claim Package if such additional information is available.

(e) The Claims Administrator shall send supplemental notification letters or emails to any nominee purchaser who does not respond to its initial request for potential Class member names and addresses.

(f) The Claims Administrator shall cause the Claim Package to be published by the Depository Trust Corporation on the DTC Legal Notice System.

(g) The Claims Administrator shall maintain a toll-free number to accommodate potential Class members' inquiries throughout the notification and claims processing period.

(h) In addition to the Claim Package, the Claims Administrator shall also post on the settlement website, at [www.FEYEscuritieslitigation.com](http://www.FEYEscuritieslitigation.com), the Stipulation, Notice and Proof of Claim form, and a copy of this executed Preliminary Approval Order by the mailing deadline set forth in ¶5(a) above. The Claims Administrator shall also post to the settlement website the papers in support of final approval of the Settlement, the Plan of Allocation, any application by counsel for a Fee and Expense Award and any request for a service or expense reimbursement

award by Lead Plaintiff, promptly after they are filed. The Website shall also prominently highlight the date of the Settlement Fairness Hearing, and other deadlines set forth in this Order. All posted documents shall be available for downloading from the website.

7. Lead Plaintiff's Counsel shall, at least fourteen (14) calendar days before the Settlement Fairness Hearing, file an appropriate affidavit with the Court as to proof of mailing of the Notice and proof of publication of the Summary Notice.

8. The form and content of the Notice and the Summary Notice, and the method set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of California law and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

**Proofs of Claim and Procedures for Participating In, Objecting To  
or "Opting Out" Of, the Settlement**

9. In order to be entitled to participate in the Net Settlement Fund, in the event the Settlement is consummated in accordance with its terms as set forth in the Stipulation, each Class Member shall take the following actions and be subject to the following conditions:

(a) A properly executed Proof of Claim, substantially in the form attached hereto at Exhibit A-3 and signed under penalty of perjury, must be submitted to the Claims Administrator, at the Post Office box indicated in the Notice, not later than 120 calendar days from the date of the entry of this order. Such deadline may be further extended by Court Order. Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first class mail, postage prepaid), provided such Proof of Claim is actually received prior to any motion for an order of the Court approving distribution of the Net



Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice.

(b) The Proof of Claim submitted by each Class Member must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by such documents or proof as Plaintiff's Counsel and the Claims Administrator, in their discretion, may deem acceptable; (iii) it must contain a certification of his, her or its current authority to act on behalf of the Class Member if the Person executing the Proof of Claim is acting in a representative capacity; and (iv) it must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Proof of Claim, each Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall (subject to effectuation of the Settlement) release all Released Claims as provided in the Stipulation against the Released Defendants' Parties.

10. All Class Members shall be bound by the Stipulation and all determinations and judgments in this Action concerning the Settlement including, but not limited to, the releases provided for therein, whether favorable or unfavorable, unless they request exclusion from the Class in a timely and proper manner, as hereinafter provided. A Class Member wishing to make such request shall, no later than twenty-one (21) calendar days prior to the date scheduled herein for the Settlement Fairness Hearing, mail a request for exclusion in written form by first class mail postmarked to the Claims Administrator at the address designated in the Notice. Such request for exclusion shall clearly indicate the name, address and telephone number of the person

seeking exclusion, that the sender requests to be excluded from the Class and the Settlement, and must be signed by such person. Such persons requesting exclusion are also directed to (a) state the date, price, and number of shares of FireEye common stock that they purchased in the Secondary Offering, and to provide the additional information concerning their relevant transactions and holdings in FireEye common shares that is requested in Part B of the Proof of Claim form; and to (b) provide copies of documents evidencing all such transactions and holdings *except* that, unless requested by the Claims Administrator or directed by the Court, persons requesting exclusion who purchased 100 or fewer FireEye shares in the Offering need only provide documentation with respect to their purchases in the Offering. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, and the exclusion request is accepted by the Court. Class Members requesting exclusion from the Class shall not be entitled to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

11. The Court will consider any Class Member's objections to the Settlement, the Plan of Allocation, any requests for an incentive or service award to Lead Plaintiff, and/or Plaintiff's counsel's application for an award of attorneys' fees and reimbursement of expenses. Any person wanting to object may do so in writing and/or by appearing at the Settlement Fairness Hearing. To the extent any person wants to object in writing, (a) such objections and any supporting papers, accompanied by proof of Class membership, must be filed with the Clerk of the Court, Superior Court of California for Santa Clara County, 191 North First Street, San Jose, CA, 95113, and (b) copies of all such papers must be served not later than twenty-one (21) calendar days prior to the date scheduled herein for the Settlement Fairness Hearing upon the following: Beth A. Kaswan, Scott+Scott, Attorneys at Law, LLP, 230 Park Avenue, 17th Floor,

New York, NY 10169-1820, on behalf of the Lead Plaintiff and the Class. Persons who intend to object to the Settlement, the Plan of Allocation, the request for an incentive or service award to Lead Plaintiff and/or the Fee and Expense Application, and who desire to present evidence at the Settlement Fairness Hearing, must include in their written objections copies of any exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. If an objector hires an attorney to represent him, her or it for the purposes of making an objection, the attorney must both effect service of a notice of appearance on counsel listed above and file it with the Court by no later than twenty-one (21) calendar days before the Settlement Fairness Hearing. A Class Member who files a written objection does not have to appear at the Settlement Fairness Hearing for the Court to consider his, her or its objection. A Class Member who does not file a written objection may appear and object at the Settlement Fairness Hearing. Class Members do not need to appear at the hearing or take any other action to indicate their approval of the Settlement.

12. All motions and papers in support of the Settlement, the Plan of Allocation, and any application by Plaintiff's Counsel for an award of attorneys' fees and expenses, shall be filed and served no later than fourteen (14) calendar days prior to the objection deadline in ¶11. Plaintiff's Counsel should submit billing records and lodestar information prior to the final approval hearing so the Court can compare the lodestar information with the requested fees. By the same deadline, Lead Plaintiff or its counsel must also submit a declaration detailing Lead Plaintiff's participation in the case supporting any requested incentive or service award. By the same deadline, the claims administrator should also submit a declaration detailing its actual expenses to date associated with the settlement, and summarizing the results of the claims process to date. Any reply papers shall be filed no later than seven (7) calendar days prior to the Settlement Fairness Hearing.

13. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

14. The Claims Administrator shall promptly notify, within three (3) business days, Plaintiff's Lead Counsel and Defendant FireEye's Counsel upon receiving any Requests for Exclusion or any objections. In addition, Defendants' Counsel and Lead Plaintiff's Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

#### **Additional Provisions**

15. Pending final determination of whether the Settlement should be approved, this action shall be stayed and Lead Plaintiff, all Class Members, and Persons claiming through or on behalf them, shall not institute, commence, maintain or prosecute, and are hereby barred and enjoined from instituting, commencing, maintaining or prosecuting, any action in any court or tribunal that asserts any Released Claims against any of the Released Defendants' Parties.

16. All fees, costs and expenses incurred in identifying and notifying Class members of the Settlement shall be paid from the Settlement Fund as set forth in the Stipulation, and in no event shall Defendants, bear any responsibility for such fees, costs or expenses. As provided in the Stipulation, Lead Plaintiff's Counsel may authorize the payment to the Claims Administrator of the reasonable and customary fees and costs associated with giving Notice to the Class and the review of claims and administration of the Settlement, up to \$400,000, out of the Settlement Fund without further order of the Court. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Lead Plaintiff nor any of its counsel shall

have any obligation to repay amounts actually and properly disbursed, or due and owing from the Settlement Fund, except as provided for in the Stipulation.

17. If any specified condition to the Settlement set forth in the Stipulation is not satisfied and any of the Parties elects to terminate the Settlement, or if the Settlement is not finally approved or otherwise fails to become effective for any reason, then, in any such event, the Stipulation, including any amendment(s) thereof, and this Preliminary Order, shall be null and void, of no further force or effect, and without prejudice to any party, and may not be introduced as evidence or referred to in any action or proceedings by any person or entity for any purpose, and each party shall be restored to his, her or its respective litigation position as it existed on December 8, 2016, and the provisions of ¶29 of the Stipulation shall apply.

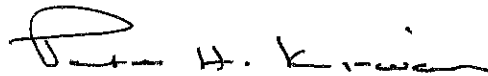
18. The Court may adjourn or continue the Settlement Fairness Hearing without further written notice.

19. The Court retains jurisdiction over the Action for settlement purposes with respect to (a) matters relating to approval of the Settlement, the approval of any requests for attorneys' fees and expenses, the approval of any Lead Plaintiff incentive or service award, and ruling on any opt-out requests; (b) the administration of the Settlement; and (c) such matters as to which continuing jurisdiction is required to effectuate the Settlement.

20. The Stipulation, the Settlement, and any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) shall not be offered or received against Defendants or the Released Defendants' Parties as evidence of a presumption, concession, or admission by Defendants, or any of them, with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that has been or could have been asserted in the Action or any litigation, or the deficiency of any defense that has been or could have been

asserted in the Action or any litigation; or (b) shall not be offered or received against Defendants or the Released Defendants' Parties as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendants, or any of them, in any other civil, criminal, or administrative action or proceeding in any court, arbitration proceeding, administrative agency, or forum or tribunal in which the Defendants are or become parties, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court and becomes effective pursuant to its terms, Defendants or the Released Defendants' Parties may refer to it and/or the Final Judgment to effectuate the liability protections granted them hereunder.

**DONE AND ORDERED** this 10 day of March, 2017 at the Courthouse for the Superior Court of California, County of Santa Clara.



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HON. PETER H. KIRWAN  
SUPERIOR COURT JUDGE