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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ERVIN DERR, and PETER  
SHOEMAKER, Individually and on  
Behalf of All Others Similarly  
Situated,

Plaintiffs,

v.

RA MEDICAL SYSTEMS, INC.,  
DEAN IRWIN, ANDREW  
JACKSON, MELISSA BURSTEIN,  
MARTIN BURSTEIN, RICHARD  
HEYMANN, MAURICE  
BUCHBINDER, MARTIN  
COLOMBATTO, RICHARD MEJIA,  
JR., MARK E. SAAD, and WILLIAM  
ENQUIST, JR.,

Defendants.

Case No. 3:19-cv-01079

**AMENDED ORDER:**

- 1) GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [Dkt. 73];**
- 2) DENYING MOTION TO DISMISS WITHOUT PREJUDICE [Dkt. 60]; and**
- 3) DENYING MOTION FOR CONSIDERATION OF DOCUMENTS WITHOUT PREJUDICE [Dkt. 61]**

Lead Plaintiffs Ervin Derr and Peter Shoemaker brought this action against Defendant Ra Medical Systems, Inc. (“Ra Medical”), Andrew Jackson, Richard Heymann, Maurice Buchbinder, Martin Colombatto, Mark Saad, William Enquist, Jr., Dean Irwin, Melissa Burstein, and Martin Burstein (collectively, the “Individual Defendants,” and together with Ra Medical, “Defendants”) on behalf of a putative class of investors in Ra Medical. The

1 parties have reached a mutually satisfactory Stipulation and Agreement of  
2 Settlement (the “Stipulation”), and Lead Plaintiffs now apply for an order  
3 preliminarily approving the settlement effected by that Stipulation (the  
4 “Settlement”) and permitting Lead Plaintiffs’ counsel to send notice to  
5 members of the putative class.<sup>1</sup>

6 The Court may preliminarily approve the settlement and direct the  
7 parties to send notice to the class only if the parties show that the Court “will  
8 likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify  
9 the class for purposes of judgment on the proposal.” Fed. R. Civ. P.  
10 23(e)(1)(B). Based on (a) Lead Plaintiffs’ motion for preliminary approval of  
11 the Settlement, and the papers filed and arguments made in connection with  
12 that motion, and (b) the Stipulation and its attached exhibits, the motion for  
13 preliminary approval is **GRANTED**. As described in greater detail below, the  
14 Court sets the hearing on final approval of the settlement for **June 13, 2022**  
15 **at 11:30 a.m.**

16 The Court **ORDERS**:

17 1. **Class Certification for Settlement Purposes** – Pursuant to  
18 Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court finds  
19 that it will likely be able to certify the proposed Settlement Class solely for  
20 purposes of effectuating the proposed Settlement. That Settlement Class  
21 would consist of all persons and entities that purchased or otherwise  
22 acquired Ra Medical common stock: (a) pursuant and/or traceable to Ra  
23 Medical’s IPO; and/or (b) between September 27, 2018 and November 27,  
24 2019, inclusive. Excluded from that Settlement Class would be: (a) persons  
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26 <sup>1</sup> Unless otherwise defined in this Order, all capitalized words shall have the same  
27 meanings as they have in the Stipulation.

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1 and entities who or which suffered no compensable losses; and (b)(i)  
2 Defendants and the Underwriters; (ii) any person who served as a partner,  
3 control person, executive officer, and/or director of Ra Medical or the  
4 Underwriters during the Settlement Class Period, and their Immediate  
5 Family Members; (iii) present and former parents, subsidiaries, assigns,  
6 successors, affiliates, and predecessors of Ra Medical and the  
7 Underwriters; (iv) any entity in which the Defendants or Underwriters have or  
8 had a controlling interest; (v) any trust of which any Individual Defendant is  
9 the settler or which is for the benefit of any Individual Defendant and/or their  
10 Immediate Family Members; (vi) Defendants' liability insurance carriers; and  
11 (vii) the legal representatives, heirs, successors, and assigns of any person  
12 or entity excluded under provisions (i) through (vi) hereof. Also excluded  
13 from the Settlement Class are any persons and entities who or which submit  
14 a request for exclusion from the Settlement Class that is accepted by the  
15 Court. For the avoidance of doubt, (a) any Investment Vehicle shall not be  
16 excluded from the Settlement Class; and (b) "affiliates" are persons or  
17 entities that directly, or indirectly through one or more intermediaries,  
18 control, are controlled by or are under common control with one of the  
19 Defendants.

20       2.     **Class Findings** – Solely for purposes of the proposed  
21 Settlement of this Action, the Court finds that each element required for  
22 certification of the Settlement Class pursuant to Rule 23 of the Federal  
23 Rules of Civil Procedure will likely be met: (a) the members of the  
24 Settlement Class are likely so numerous that their joinder in the Action  
25 would be impracticable; (b) there are likely questions of law and fact  
26 common to the Settlement Class which predominate over any individual  
27 questions; (c) the claims of Lead Plaintiffs in the Action are likely typical of  
28 the claims of the Settlement Class; (d) Lead Plaintiffs and Lead Counsel

1 appear to have and likely will fairly and adequately represent and protect the  
2 interests of the Settlement Class; and (e) a class action is likely superior to  
3 other available methods for the fair and efficient adjudication of the Action.

4 3. The Court preliminarily finds that, pursuant to Rule 23 of the  
5 Federal Rules of Civil Procedure and for the purposes of the Settlement  
6 only, Lead Plaintiffs Ervin Derr and Peter Shoemaker are adequate class  
7 representatives and preliminarily certifies them as Class Representatives for  
8 the Settlement Class. The Court also appoints Lead Counsel Glancy  
9 Prongay & Murray LLP as Class Counsel for the Settlement Class, pursuant  
10 to Rule 23(g) of the Federal Rules of Civil Procedure.

11 4. **Preliminary Approval of the Settlement** – The Court will likely  
12 be able to approve the Settlement, as embodied in the Stipulation, as being  
13 fair, reasonable, and adequate to the Settlement Class, subject to further  
14 consideration at the Settlement Hearing to be conducted as described  
15 below. On that basis, the Court preliminarily approves the Settlement.

16 5. **Settlement Hearing** – The Court will hold a settlement hearing  
17 (the “Settlement Hearing”) on **June 13, 2022 at 11:30 a.m.** in Courtroom  
18 14A of the United States Courthouse, 333 West Broadway, San Diego, CA  
19 92101, for the following purposes: (a) to determine whether the proposed  
20 Settlement on the terms and conditions provided for in the Stipulation is fair,  
21 reasonable, and adequate to the Settlement Class, and should be approved  
22 by the Court; (b) to determine whether the Settlement Class can be finally  
23 approved; (c) to determine whether a Judgment substantially in the form  
24 attached as Exhibit B to the Stipulation should be entered dismissing the  
25 Action with prejudice against Defendants; (d) to determine whether the  
26 proposed Plan of Allocation for the proceeds of the Settlement is fair and  
27 reasonable and should be approved; (e) to determine whether the motion by  
28 Lead Counsel for an award of attorneys’ fees and reimbursement of

1 Litigation Expenses should be approved; and (f) to consider any other  
2 matters that may properly be brought before the Court in connection with the  
3 Settlement. Notice of the Settlement and the Settlement Hearing shall be  
4 given to Settlement Class Members as set forth in paragraph 7 of this Order.  
5 As set forth in the Notice, the Court reserves the right to hold the Settlement  
6 Hearing telephonically or via videoconference.

7         6. The Court may adjourn the Settlement Hearing without further  
8 notice to the Settlement Class, and may approve the proposed Settlement  
9 with such modifications as the Parties may agree to, if appropriate, without  
10 further notice to the Settlement Class.

11         7. **Retention of Claims Administrator and Manner of Giving**

12 **Notice** – Lead Counsel is hereby authorized to retain Epiq Class Action &  
13 Claims Solutions, Inc. (the “Claims Administrator”) to supervise and  
14 administer the notice procedure in connection with the proposed Settlement  
15 as well as the processing of Claims as more fully set forth below. Notice of  
16 the Settlement and the Settlement Hearing shall be given by Lead Counsel  
17 as follows:

18                 (a) within five (5) business days of the date of entry of this  
19 Order, Ra Medical shall provide or cause to be provided to the Claims  
20 Administrator in electronic format (at no cost to the Settlement Fund, Lead  
21 Counsel, or the Claims Administrator) its lists (consisting of names and  
22 addresses) of shareholders of record of Ra Medical common stock during  
23 the Settlement Class Period;

24                 (b) not later than twenty (20) business days after the date of  
25 entry of this Order (the “Notice Date”), the Claims Administrator shall cause  
26 a copy of the Notice and the Claim Form, substantially in the forms attached  
27 hereto as Exhibits 1 and 2, respectively (the “Notice Packet”), to be mailed  
28 by first-class mail to potential Settlement Class Members at the addresses

1 set forth in the records provided by Ra Medical or in the records which Ra  
2 Medical caused to be provided, or who otherwise may be identified through  
3 further reasonable effort;

4 (c) contemporaneously with the mailing of the Notice Packet,  
5 the Claims Administrator shall cause copies of the Notice and the Claim  
6 Form to be posted on a website to be developed for the Settlement, from  
7 which copies of the Notice and Claim Form can be downloaded;

8 (d) not later than ten (10) business days after the Notice Date,  
9 the Claims Administrator shall cause the Summary Notice, substantially in  
10 the form attached hereto as Exhibit 3, to be published once in *Investor's*  
11 *Business Daily* and to be transmitted once over the *PR Newswire*; and

12 (e) not later than seven (7) calendar days prior to the  
13 Settlement Hearing, Lead Counsel shall serve on Defendants' Counsel and  
14 file with the Court proof, by affidavit or declaration, of such mailing and  
15 publication.

16 8. **Approval of Form and Content of Notice** – The Court (a)  
17 approves, as to form and content, the Notice, the Claim Form, and the  
18 Summary Notice, attached hereto as Exhibits 1, 2, and 3, respectively, and  
19 (b) finds that the mailing and distribution of the Notice and Claim Form and  
20 the publication of the Summary Notice in the manner and form set forth in  
21 paragraph 7 of this Order (i) is the best notice practicable under the  
22 circumstances; (ii) constitutes notice that is reasonably calculated, under the  
23 circumstances, to apprise Settlement Class Members of the pendency of the  
24 Action, the effect of the proposed Settlement (including the Releases to be  
25 provided thereunder), Lead Counsel's motion for an award of attorneys' fees  
26 and reimbursement of Litigation Expenses, their right to object to the  
27 Settlement, the Plan of Allocation and/or Lead Counsel's motion for  
28 attorneys' fees and reimbursement of Litigation Expenses, their right to

1 exclude themselves from the Settlement Class, and their right to appear at  
2 the Settlement Hearing; (iii) constitutes due, adequate and sufficient notice  
3 to all persons and entities entitled to receive notice of the proposed  
4 Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal  
5 Rules of Civil Procedure, the United States Constitution (including the Due  
6 Process Clause), the Private Securities Litigation Reform Act of 1995, 15  
7 U.S.C. § 78u-4 and 15 U.S.C. § 77z-1, as amended, and all other applicable  
8 law and rules. The date and time of the Settlement Hearing shall be  
9 included in the Notice and Summary Notice before they are mailed and  
10 published, respectively.

11       9.     **Nominee Procedures** – Brokers and other nominees who  
12 purchased or otherwise acquired Ra Medical Stock during the Settlement  
13 Class Period for the benefit of another person or entity shall (a) within seven  
14 (7) calendar days of receipt of the Notice, request from the Claims  
15 Administrator sufficient copies of the Notice Packet to forward to all such  
16 beneficial owners and within seven (7) calendar days of receipt of those  
17 Notice Packets forward them to all such beneficial owners; or (b) within  
18 seven (7) calendar days of receipt of the Notice, send a list of the names  
19 and addresses of all such beneficial owners to the Claims Administrator in  
20 which event the Claims Administrator shall promptly mail the Notice Packet  
21 to such beneficial owners. Upon full compliance with these directions, such  
22 nominees may seek reimbursement of their reasonable expenses actually  
23 incurred, up to a maximum of \$0.50 per Notice Packet mailed; \$0.05 per  
24 Notice Packet transmitted by email; or \$0.10 per name, mailing address, and  
25 email address (to the extent available) provided to the Claims Administrator,  
26 by providing the Claims Administrator with proper documentation supporting  
27 the expenses for which reimbursement is sought. Such properly  
28 documented expenses incurred by nominees in compliance with the terms of

1 this Order shall be paid from the Settlement Fund, with any disputes as to  
2 the reasonableness or documentation of expenses incurred subject to  
3 review by the Court.

4 10. **Participation in the Settlement** – Settlement Class Members  
5 who wish to participate in the Settlement and to be eligible to receive a  
6 distribution from the Net Settlement Fund must complete and submit a Claim  
7 Form in accordance with the instructions contained therein. Unless the  
8 Court orders otherwise, all Claim Forms must be postmarked no later than  
9 one hundred twenty (120) calendar days after the Notice Date.  
10 Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept  
11 for processing late Claims provided such acceptance does not delay the  
12 distribution of the Net Settlement Fund to the Settlement Class. By  
13 submitting a Claim, a person or entity shall be deemed to have submitted to  
14 the jurisdiction of the Court with respect to his, her, or its Claim and the  
15 subject matter of the Settlement.

16 11. Each Claim Form submitted must satisfy the following conditions:  
17 (a) it must be properly completed, signed and submitted in a timely manner  
18 in accordance with the provisions of the preceding paragraph; (b) it must be  
19 accompanied by adequate supporting documentation for the transactions  
20 and holdings reported therein, in the form of broker confirmation slips, broker  
21 account statements, an authorized statement from the broker containing the  
22 transactional and holding information found in a broker confirmation slip or  
23 account statement, or such other documentation as is deemed adequate by  
24 Lead Counsel or the Claims Administrator; (c) if the person executing the  
25 Claim Form is acting in a representative capacity, a certification of his, her,  
26 or its current authority to act on behalf of the Settlement Class Member must  
27 be included in the Claim Form to the satisfaction of Lead Counsel or the  
28 Claims Administrator; and (d) the Claim Form must be complete and contain

1 no material deletions or modifications of any of the printed matter contained  
2 therein and must be signed under penalty of perjury.

3 12. Any Settlement Class Member that does not timely and validly  
4 submit a Claim Form or whose Claim is not otherwise approved by the  
5 Court: (a) shall be deemed to have waived his, her, or its right to share in the  
6 Net Settlement Fund; (b) shall be forever barred from participating in any  
7 distributions therefrom; (c) shall be bound by the provisions of the Stipulation  
8 and the Settlement and all proceedings, determinations, orders, and  
9 judgments in the Action relating thereto, including, without limitation, the  
10 Judgment or Alternate Judgment, if applicable, and the Releases provided  
11 for therein, whether favorable or unfavorable to the Settlement Class; and  
12 (d) will be barred from commencing, maintaining, or prosecuting any of the  
13 Released Plaintiffs' Claims against each and all of the Released Defendants'  
14 Parties, as more fully described in the Stipulation and Notice.  
15 Notwithstanding the foregoing, late Claim Forms may be accepted for  
16 processing as set forth in paragraph 10 above.

17 13. **Exclusion From the Settlement Class** – Any member of the  
18 Settlement Class who wishes to exclude himself, herself or itself from the  
19 Settlement Class must request exclusion in writing within the time and in the  
20 manner set forth in the Notice, which shall provide that: (a) any such request  
21 for exclusion from the Settlement Class must be mailed or delivered such  
22 that it is received no later than twenty-one (21) calendar days prior to the  
23 Settlement Hearing, to: *Ra Medical Systems, Inc. Securities Litigation*,  
24 EXCLUSIONS, c/o Epiq, P.O. Box 5189, Portland, OR 97208-5189, and  
25 (b) each request for exclusion must (i) state the name, address, and  
26 telephone number of the person or entity requesting exclusion, and in the  
27 case of entities, the name and telephone number of the appropriate contact  
28 person; (ii) state that such person or entity “requests exclusion from the

1 Settlement Class in *Derr v. Ra Medical Systems, Inc., et al.*, Case No. 3:19-  
2 cv-01079”; (iii) state the number of shares of Ra Medical common stock that  
3 the person or entity requesting exclusion purchased/acquired and/or sold  
4 during the Settlement Class Period, as well as the dates and prices of each  
5 such purchase/acquisition and sale; and (iv) be signed by the person or  
6 entity requesting exclusion or an authorized representative. A request for  
7 exclusion shall not be effective unless it provides all the required information  
8 and is received within the time stated above, or is otherwise accepted by the  
9 Court.

10 14. Any person or entity who or which timely and validly requests  
11 exclusion in compliance with the terms stated in this Order and is excluded  
12 from the Settlement Class shall not be a Settlement Class Member, shall not  
13 be bound by the terms of the Settlement or any orders or judgments in the  
14 Action, and shall not receive any payment out of the Net Settlement Fund.

15 15. Any Settlement Class Member who or which does not timely and  
16 validly request exclusion from the Settlement Class in the manner stated in  
17 this Order: (a) shall be deemed to have waived his, her, or its right to be  
18 excluded from the Settlement Class; (b) shall be forever barred from  
19 requesting exclusion from the Settlement Class in this or any other  
20 proceeding; (c) shall be bound by the provisions of the Stipulation and  
21 Settlement and all proceedings, determinations, orders, and judgments in  
22 the Action, including, but not limited to, the Judgment or Alternate Judgment,  
23 if applicable, and the Releases provided for therein, whether favorable or  
24 unfavorable to the Settlement Class; and (d) will be barred from  
25 commencing, maintaining, or prosecuting any of the Released Plaintiffs’  
26 Claims against any of the Released Defendants’ Parties, as more fully  
27 described in the Stipulation and Notice.

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1           16. **Appearance and Objections at Settlement Hearing** – Any  
2 Settlement Class Member who does not request exclusion from the  
3 Settlement Class may enter an appearance in the Action, at his, her, or its  
4 own expense, individually or through counsel of his, her, or its own choice,  
5 by filing with the Clerk of Court and delivering a notice of appearance to both  
6 Lead Counsel and Defendants’ Counsel, at the addresses set forth in  
7 paragraph 17 below, such that it is received no later than twenty-one (21)  
8 calendar days prior to the Settlement Hearing, or as the Court may  
9 otherwise direct. Any Settlement Class Member who does not enter an  
10 appearance will be represented by Lead Counsel.

11           17. Any Settlement Class Member who does not request exclusion  
12 from the Settlement Class may file a written objection to the proposed  
13 Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s motion  
14 for an award of attorneys’ fees and reimbursement of Litigation Expenses  
15 and appear and show cause, if he, she or it has any cause, why the  
16 proposed Settlement, the proposed Plan of Allocation and/or Lead Counsel’s  
17 motion for attorneys’ fees and reimbursement of Litigation Expenses should  
18 not be approved; *provided, however*, that no Settlement Class Member shall  
19 be heard or entitled to contest the approval of the terms and conditions of  
20 the proposed Settlement, the proposed Plan of Allocation and/or the motion  
21 for attorneys’ fees and reimbursement of Litigation Expenses unless that  
22 person or entity has filed a written objection with the Court and served  
23 copies of such objection on Lead Counsel and Defendants’ Counsel at the  
24 addresses set forth below such that they are received no later than twenty-  
25 one (21) calendar days prior to the Settlement Hearing.

<b><u>Lead Counsel</u></b>	<b><u>Defendants’ Counsel</u></b>
Glancy Prongay & Murray LLP	Wilson Sonsini Goodrich & Rosati,
Casey E. Sadler, Esq.	P.C.
1925 Century Park East, Suite 2100	Gregory L. Watts, Esq.

1 Los Angeles, CA 90067

701 Fifth Avenue, Suite 5100  
Seattle, WA 98104

2 18. Any objections, filings and other submissions by the objecting  
3 Settlement Class Member: (a) must state the name, address, and telephone  
4 number of the person or entity objecting and must be signed by the objector;  
5 (b) must contain a statement of the Settlement Class Member's objection or  
6 objections, and the specific reasons for each objection, including any legal  
7 and evidentiary support the Settlement Class Member wishes to bring to the  
8 Court's attention; and (c) must include documents sufficient to prove  
9 membership in the Settlement Class, including the number of shares of Ra  
10 Medical common stock that the objecting Settlement Class Member  
11 purchased/acquired and/or sold during the Settlement Class Period, as well  
12 as the dates and prices of each such purchase/acquisition and sale.  
13 Objectors who enter an appearance and desire to present evidence at the  
14 Settlement Hearing in support of their objection must include in their written  
15 objection or notice of appearance the identity of any witnesses they may call  
16 to testify and any exhibits they intend to introduce into evidence at the  
17 hearing.

18 19. Any Settlement Class Member who or which does not make an  
19 objection in the manner provided herein shall be deemed to have waived the  
20 right to object to any aspect of the proposed Settlement, the proposed Plan  
21 of Allocation, and Lead Counsel's motion for an award of attorneys' fees and  
22 reimbursement of Litigation Expenses and shall be forever barred and  
23 foreclosed from objecting to the fairness, reasonableness, or adequacy of  
24 the Settlement, the Plan of Allocation, or the requested attorneys' fees and  
25 Litigation Expenses, or from otherwise being heard concerning the  
26 Settlement, the Plan of Allocation, or the requested attorneys' fees and  
27 Litigation Expenses in this or any other proceeding.  
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1           20. **Stay and Temporary Injunction** – Until otherwise ordered by  
2 the Court, the Court stays all proceedings in the Action other than  
3 proceedings necessary to carry out or enforce the terms and conditions of  
4 the Stipulation. Pending final determination of whether the Settlement  
5 should be approved, the Court bars and enjoins Lead Plaintiffs, and all other  
6 members of the Settlement Class, from commencing or prosecuting any and  
7 all of the Released Plaintiffs’ Claims against each and all of the Defendants’  
8 Releasees.

9           21. **Settlement Administration Fees and Expenses** – All  
10 reasonable costs incurred in identifying Settlement Class Members and  
11 notifying them of the Settlement as well as in administering the Settlement  
12 shall be paid as set forth in the Stipulation without further order of the Court.

13           22. **Settlement Fund** – The contents of the Settlement Fund held by  
14 The Huntington National Bank (which the Court approves as the Escrow  
15 Agent), shall be deemed and considered to be *in custodia legis* of the Court,  
16 and shall remain subject to the jurisdiction of the Court, until such time as  
17 they shall be distributed pursuant to the Stipulation and/or further order(s) of  
18 the Court.

19           23. **Taxes** – Lead Counsel is authorized and directed to prepare any  
20 tax returns and any other tax reporting form for or in respect to the  
21 Settlement Fund, to pay from the Settlement Fund any Taxes owed with  
22 respect to the Settlement Fund, and to otherwise perform all obligations with  
23 respect to Taxes and any reporting or filings in respect thereof without  
24 further order of the Court in a manner consistent with the provisions of the  
25 Stipulation.

26           24. **Termination of Settlement** – If the Settlement is terminated as  
27 provided in the Stipulation, the Settlement is not approved, or the Effective  
28 Date of the Settlement otherwise fails to occur, this Order shall be vacated,

1 rendered null and void and be of no further force and effect, except as  
2 otherwise provided by the Stipulation, and this Order shall be without  
3 prejudice to the rights of Lead Plaintiffs, the other Settlement Class  
4 Members and Defendants, and the Parties shall revert to their respective  
5 positions in the Action as of October 1, 2021, as provided in the Stipulation.

6       25. **Use of this Order** – Neither this Order, the Term Sheet, the  
7 Stipulation (whether or not consummated), including the exhibits thereto and  
8 the Plan of Allocation contained therein (or any other plan of allocation that  
9 may be approved by the Court), the negotiations leading to the execution of  
10 the Term Sheet and the Stipulation, nor any proceedings taken pursuant to  
11 or in connection with the Term Sheet, the Stipulation and/or approval of the  
12 Settlement (including any arguments proffered in connection therewith): (a)  
13 shall be offered against any of the Released Defendants’ Parties as  
14 evidence of, or construed as, or deemed to be evidence of any presumption,  
15 concession, or admission by any of the Released Defendants’ Parties with  
16 respect to the truth of any fact alleged by Lead Plaintiffs or the validity of any  
17 claim that was or could have been asserted or the deficiency of any defense  
18 that has been or could have been asserted in this Action or in any other  
19 litigation, or of any liability, negligence, fault, or other wrongdoing of any kind  
20 of any of the Released Defendants’ Parties or in any way referred to for any  
21 other reason as against any of the Released Defendants’ Parties, in any  
22 civil, criminal or administrative action or proceeding, other than such  
23 proceedings as may be necessary to effectuate the provisions of the  
24 Stipulation; (b) shall be offered against any of the Released Plaintiffs’  
25 Parties, as evidence of, or construed as, or deemed to be evidence of any  
26 presumption, concession, or admission by any of the Released Plaintiffs’  
27 Parties that any of their claims are without merit, that any of the Released  
28 Defendants’ Parties had meritorious defenses, or that damages recoverable

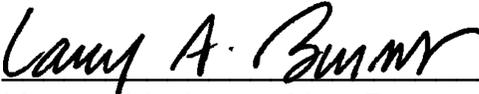
1 under the Complaint would not have exceeded the Settlement Amount or  
2 with respect to any liability, negligence, fault, or wrongdoing of any kind, or  
3 in any way referred to for any other reason as against any of the Released  
4 Plaintiffs' Parties, in any civil, criminal, or administrative action or  
5 proceeding, other than such proceedings as may be necessary to effectuate  
6 the provisions of the Stipulation; or (c) shall be construed against any of the  
7 Releasees as an admission, concession, or presumption that the  
8 consideration to be given under the Settlement represents the amount which  
9 could be or would have been recovered after trial; *provided, however*, that if  
10 the Stipulation is approved by the Court, the Parties and the Releasees and  
11 their respective counsel may refer to it to effectuate the protections from  
12 liability granted thereunder or otherwise to enforce the terms of the  
13 Settlement.

14       26. **Supporting Papers** – Lead Counsel shall file and serve the  
15 opening papers in support of the proposed Settlement, the Plan of  
16 Allocation, and Lead Counsel's motion for an award of attorneys' fees and  
17 reimbursement of Litigation Expenses no later than forty-two (42) calendar  
18 days prior to the Settlement Hearing; and reply papers, if any, shall be filed  
19 and served no later than seven (7) calendar days prior to the Settlement  
20 Hearing.

21       27. **Pending Motions** – Defendants' Motion to Dismiss Plaintiffs'  
22 Second Amended Complaint, (Dkt. 60), and their Motion for Consideration of  
23 Documents Incorporated by Reference and Judicially Noticeable, (Dkt. 61),  
24 are **DENIED WITHOUT PREJUDICE**.

25       **IT IS SO ORDERED.**

26 Date: February 11, 2022



27 Honorable Larry Alan Burns  
28 United States District Judge