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E-FILED
8/10/2017 9:39 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
2014-1-CV-266866
Reviewed By: R. Walker

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~~ FINAL JUDGMENT
AND ORDER OF DISMISSAL
WITH PREJUDICE

1 WHEREAS, the Parties,¹ through their counsel, have agreed, subject to Court approval,
2 to settle this action (the "Action") upon the terms and conditions set forth in the Stipulation
3 and Agreement of Settlement dated February 6, 2017 (the "Stipulation"), which has been filed
4 with the Court;

5 WHEREAS, by Order dated July 11, 2016, the Court has previously certified this Action
6 as a class action, with the "Class" defined as:

7 All persons or entities who purchased shares of FireEye common stock in FireEye's
8 March 6, 2014 secondary public offering (the "Secondary Offering"), and were
9 damaged thereby. Excluded from the Class are Defendants; their respective successors
10 and assigns; the past and current executive officers and directors of FireEye and the
11 Underwriter Defendants; the members of the immediate families of the Individual
12 Defendants; the legal representatives, heirs, successors, or assigns of any excluded
13 person, and any entity in which any of the above excluded persons have or had a
14 majority ownership interest. Also excluded will be any person or entity that validly
15 requests exclusion from the Class;

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

21 WHEREAS, on March 10, 2017, the Court entered its Order for Preliminary Approval
22 of Proposed Class Action Settlement, Issuance of Notice, and Setting of Date for Final
23 Approval Hearing (the "Preliminary Order"), which preliminarily approved the proposed
24 Settlement and approved the issuance of Notice to the Class (which included notice of the
25 proposed Settlement and of the fairness hearing scheduled to be held thereon); and

26 WHEREAS, the Notice has been issued, the fairness hearing has been held pursuant to
27 the terms of the Notice and the Preliminary Order to determine if the terms of the Stipulation
28 and proposed Settlement are fair, reasonable, and adequate, and the members of the Class have
had the opportunity to be heard thereon in accordance with California law and due process;

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

1 NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and
2 proceedings herein, including the fairness hearing, and it appearing to the Court upon its due
3 consideration that the terms of the Stipulation and proposed Settlement are fair, reasonable,
4 and adequate, and that the Final Judgment and Order of Dismissal with Prejudice should be
5 entered in this Action as provided for in the Stipulation;

6 **THE COURT HEREBY FINDS AND CONCLUDES THAT:**

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

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

13 C. Notice, as given, complied with the requirements of California law (including
14 California Rule of Court 3.776(d)), satisfied the requirements of due process, and constituted
15 due and sufficient notice of the matters set forth therein.

16 D. This Court has subject matter jurisdiction over the claims asserted in this Action
17 (*see also* the Court's prior order dated April 1, 2016), as well as personal jurisdiction over all of
18 the Parties and the Class Members.

19 E. The Settlement set forth in the Stipulation is fair, reasonable, adequate and in the
20 best interests of the Class, and the Court further finds in connection therewith that:

21 i. The Settlement was negotiated vigorously and at arm's-length by
22 experienced and skilled counsel on behalf of Lead Plaintiff and the Class;
23 was reached only after a full-day mediation conducted under the auspices
24 of a highly experience mediator, the Hon. Layn Phillips (United States
25 District Judge, retired); and was entered into in good faith and is not
26 collusive;

27 ii. The mediation that resulted in the settlement was preceded by the conduct
28 of extensive discovery, including the Defendants' combined production to

1 Lead Plaintiff of, and Plaintiff's Counsel's review of, over 1,070,000
2 pages of documents, and the taking by Lead Plaintiff's Counsel of the
3 depositions of FireEye's former chief executive officer and of FireEye's
4 founder and former chief technology officer;

5 iii. As further detailed in the briefing in support of the proposed settlement,
6 had the Settlement not been achieved both Lead Plaintiff and the Class
7 members (as well as Defendants) faced substantial risks and uncertainties
8 (and associated costs and further delays) of extended litigation; and that,
9 although the Court takes no position on the merits of either Lead
10 Plaintiff's or Defendants' positions on the merits, such arguments are
11 evidence in support of the reasonableness of the Settlement;

12 iv. Lead Plaintiff and Plaintiff's Counsel have fairly and adequately
13 represented the interests of the Class Members in connection with the
14 Settlement; and

15 v. Although over 30,720 copies of the Notice were disseminated to putative
16 Class Members advising them of the terms of the Stipulation and proposed
17 Settlement, no objections to the proposed Settlement have been submitted;

18 **IT IS HEREBY ORDERED THAT:**

19 1. The Stipulation and the Settlement embodied therein are approved as fair,
20 reasonable and adequate, and the parties are directed to consummate the Settlement in
21 accordance with the terms and provisions of the Stipulation.

22 2. Lead Plaintiff, all Class Members, and Defendants are hereby bound by the terms
23 of the Settlement as set forth in the Stipulation.

24 3. The Action and all claims that are or have ever been contained therein, as well as
25 all of the Released Claims, are dismissed with prejudice as to the Lead Plaintiff, the Class
26 Members, and all other Releasing Persons.
27

1 4. All Released Defendants' Parties and Released Plaintiff's Parties are hereby
2 released in accordance with the terms of the Stipulation.

3 5. Each Party is to bear his, her or its costs, except as otherwise provided in the
4 Stipulation.

5 6. Upon the Effective Date of this Settlement, Lead Plaintiff and all Class Members,
6 on behalf of themselves and their successors, assigns, executors, administrators, representatives,
7 attorneys and agents in their capacities as such, shall be deemed to have, and by operation of this
8 Final Judgment shall have, fully, finally, and forever waived, released, relinquished, and
9 discharged all Released Claims against the Released Defendants' Parties, regardless of whether
10 such Class Member executed and delivered a Proof of Claim. All Class Members shall, as of the
11 Effective Date, be bound by the releases set forth herein whether or not they submit a valid and
12 timely Proof of Claim.
13

14 7. Upon the Effective Date of this Settlement, each of the Defendants and the
15 Released Defendants' Parties shall be deemed to have, and by operation of this Final Judgment
16 shall have, fully, finally, and forever released and discharged all Released Defendants' Claims
17 against the Released Plaintiff's Parties.
18

19 8. Any Class Members who have not submitted any actual or potential objection to
20 the Settlement in the manner provided in the Notice are deemed to have waived any objections
21 by appeal, collateral attack, or otherwise.
22

23 9. All Class Members who have failed to properly file Requests for Exclusion
24 (requests to opt-out) from the Class are bound by the terms and conditions of the Stipulation and
25 this Final Judgment, and are deemed to have released and forever discharged the Released
26 Defendants' Parties from all Released Claims as provided in the Stipulation and herein. Based
27 on the un rebutted Supplemental Declaration of Justin Hughes filed July 28, 2017, the Court
28 finds that no Persons have validly and timely filed a Request for Exclusion from the Class.

1 10. All other provisions of the Stipulation are incorporated into this Order as if fully
2 rewritten herein, except that, notwithstanding any language to the contrary in ¶8 of the
3 Stipulation, any costs and expenses associated with Notice to the Class or the administration of the
4 Settlement must be approved by the Court before being paid. To the extent that the terms of this
5 Order conflict with the terms of the Stipulation, the Stipulation shall control.
6

7 11. Lead Plaintiff, all Class Members, and all other Releasing Persons are hereby
8 barred and permanently enjoined from instituting, commencing, maintaining, or prosecuting in
9 any court or tribunal any of the Released Claims against any of the Released Defendants' Parties.

10 12. Defendants and each of the Released Defendants' Parties are hereby barred and
11 permanently enjoined from instituting, commencing, maintaining, or prosecuting any of the
12 Released Defendants' Claims against any of the Released Plaintiff's Parties, including Plaintiff's
13 Counsel.
14

15 13. Any rejection of, or modification or change to the Plan of Allocation that may
16 hereafter be entered or approved shall in no way disturb or affect this Final Judgment or the
17 releases provided hereunder.

18 14. The Court hereby decrees that the Stipulation, the Settlement, and any act
19 performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:
20 (a) shall not be offered or received against Defendants or any of the Released Defendants' Parties
21 as evidence of a presumption, concession, or admission by Defendants with respect to the truth of
22 any fact alleged by Lead Plaintiff or the validity of any claim that has been or could have been
23 asserted in the Action or any litigation, or the deficiency of any defense that has been or could
24 have been asserted in the Action or any litigation; (b) shall not be offered or received against
25 Defendants or any of the Released Defendants' Parties as evidence of a presumption, concession,
26 or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred
27 to for any other reason as against Defendants, in any other civil, criminal, or administrative action
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1 or proceeding in any court, arbitration proceeding, administrative agency, or forum or tribunal in
2 which the Defendants are or become parties, other than such proceedings as may be necessary to
3 effectuate the provisions of this Stipulation; and (c) shall not be construed as or received in
4 evidence as an admission, concession or presumption against any Plaintiff or any of the Class
5 Members that any of their claims are without merit, or that any defenses asserted by Defendants
6 have any merit.

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8 15. Without affecting the finality of this Judgment in any way, this Court retains
9 continuing jurisdiction over (a) implementation of this Settlement and any award or distribution of
10 the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; and
11 (c) all parties hereto for the purpose of construing, enforcing and administering the Settlement.

12 16. Nothing in this Final Judgment constitutes or reflects a waiver, release or discharge
13 of any rights or claims of any Defendant (or any other Released Defendants' Party) against their
14 insurers, or their insurers' subsidiaries, predecessors, successors, assigns, affiliates, or
15 representatives. Nothing in this Final Judgment constitutes or reflects a waiver or release of any
16 rights or claims relating to indemnification, advancement, or any undertakings by an indemnified
17 party to repay amounts advanced or paid by way of indemnification or otherwise.

18
19 17. The Court finds that during the course of the Action, the Parties and their respective
20 counsel at all times acted professionally and in compliance with the requirements of the California
21 Code of Civil Procedure, including §128.7 thereof and all similar statutes or court rules with
22 respect to the litigation or defense of this Action.

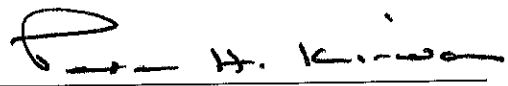
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24 18. In the event that the Stipulation is terminated in accordance with its terms, (i) this
25 Final Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*, and (ii) this
26 Action shall proceed as provided in ¶29 of the Stipulation.

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

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20. The Action is dismissed with prejudice, and Final judgment shall be, and hereby is, entered herein.

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



HON. PETER H. KIRWAN
JUDGE OF THE SUPERIOR COURT