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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

IN RE MERIT MEDICAL SYSTEMS,
INC. SECURITIES LITIGATION

Case No. 8:19-cv-2326-DOC-ADS

**REPLY IN FURTHER SUPPORT
OF (I) LEAD PLAINTIFFS'
MOTION FOR FINAL APPROVAL
OF PROPOSED CLASS ACTION
SETTLEMENT AND PLAN OF
ALLOCATION AND (II) LEAD
COUNSEL'S MOTION FOR
ATTORNEYS' FEES AND
LITIGATION EXPENSES**

Judge: Hon. David O. Carter
Courtroom: 9D
Date: April 13, 2022
Time: 8:30 a.m.

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1 Court-appointed Lead Plaintiffs, City of Atlanta Police Pension Fund and City
 2 of Atlanta Firefighters' Pension Fund (collectively, the "Atlanta Funds"), and the
 3 Employees' Retirement System of the City of Baton Rouge and Parish of East Baton
 4 Rouge ("Baton Rouge" and, together with the Atlanta Funds, the "Lead Plaintiffs")
 5 respectfully submit this memorandum in further support of (i) Lead Plaintiffs'
 6 motion for final approval of the Settlement and approval of the proposed Plan of
 7 Allocation (ECF No. 107); and (ii) Lead Counsel's motion for attorneys' fees and
 8 Litigation Expenses (ECF No. 109) (together, the "Motions").¹

9 I. INTRODUCTION

10 The overwhelmingly positive reaction of the Settlement Class confirms that
 11 the proposed \$18.25 million Settlement here is an excellent result. Following a
 12 robust Court-approved notice program—including mailing a total of 25,886 Notice
 13 Packets to potential Settlement Class Members and nominees and publication of a
 14 summary notice in multiple media—not a single member of the Settlement Class
 15 objected to any aspect of the Settlement, the Plan of Allocation, or the requested fees
 16 and expenses. Further, not a single institutional investor has requested exclusion
 17 from the Settlement Class in connection with the Settlement, and only one request
 18 for exclusion was received from an individual investor who purchased a *de minimis*
 19 number of shares and was not damaged by the alleged fraud.

20 In addition, Lead Plaintiffs—sophisticated, institutional investors with
 21 billions of dollars in combined assets under management—have expressly endorsed
 22 in sworn declarations the Settlement, Plan of Allocation, and requested attorneys'
 23 fees and expenses. *See* ECF Nos. 111-1, ¶¶7-12, 15; and 111-2, ¶¶7-9, 13.

24
 25 ¹ Unless otherwise noted, capitalized terms have the meaning set forth in the
 26 Stipulation and Agreement of Settlement (ECF No. 105-1), all internal citations and
 27 quotation marks are omitted, and all emphasis is added.

As explained herein, this favorable reaction of the Settlement Class further supports a finding that the proposed Settlement, Plan of Allocation, and motion for attorneys' fees and Litigation Expenses are all fair and reasonable and should be approved. Accordingly, the Motions should be granted.

II. THE REACTION OF THE SETTLEMENT CLASS SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION, AND THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES

Lead Plaintiffs and Lead Counsel respectfully submit that their opening papers demonstrate that the Settlement, Plan of Allocation, and request for attorneys' fees are fair and reasonable. Now that the time for submitting objections and exclusions has passed, the lack of any objections and single request for exclusion provide additional strong support for approval of the Motions.

A. The Court-Approved Notice Program

Pursuant to the Court's Preliminary Approval Order (ECF No. 106), the Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), conducted a robust notice program under Lead Counsel's supervision, which included mailing over 25,000 Notice Packets to potential Settlement Class Members and nominees, publishing the Summary Notice in *Investor's Business Daily* and over *PR Newswire*, and posting the Notice, along with the opening papers, on the dedicated website for the Action—www.MeritMedicalSecuritiesLitigation.com.²

² The notice program is described in the previously filed Declaration of Eric J. Miller Regarding (A) Mailing of the Notice and Proof of Claim Form; (B) Proof of Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections Received to Date, dated March 8, 2022 (ECF No. 111-3), at ¶¶2-12. *See also* Supplemental Declaration of Eric J. Miller ("Suppl. Miller Decl."), attached hereto as Exhibit 1, at ¶2. In addition, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b), notice of the Settlement was also provided by Defendants

1 The Notice informed Settlement Class Members of the terms of the proposed
 2 Settlement and Plan of Allocation, and that Lead Counsel would apply for an award
 3 of attorneys' fees in an amount not to exceed 30% of the Settlement Fund and
 4 payment of Litigation Expenses in an amount not to exceed \$250,000. *See* Notice
 5 ¶¶2-3, 5; Appendix A ¶¶3-8, 10, 18. The Notice also advised Settlement Class
 6 Members of their right to object to the proposed Settlement, the Plan of Allocation
 7 and/or the request for attorneys' fees and expenses, and the March 23, 2022 deadline
 8 for doing so. *See* Notice at pp. 3-4 and ¶¶53-57, 62-68.³ Following this extensive
 9 notice program, *not a single* Settlement Class Member has objected to the
 10 Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and
 11 Litigation Expenses. Moreover, only *one* individual has requested exclusion from
 12 the Settlement Class.

13 In short, following a comprehensive notice program, the Settlement Class's
 14 reaction to the Settlement has been overwhelmingly positive.

15 **B. The Reaction of the Settlement Class Supports Approval of the**
 16 **Settlement and Plan of Allocation**

17 "The absence of any objections to the Settlement [] among Class Members
 18 supports final approval." *Cheng Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at
 19 *7 (C.D. Cal. Oct. 10, 2019); *see Sudunagunta v. NantKwest, Inc.*, 2019 WL
 20 2183451, at *5 (C.D. Cal. May 13, 2019) ("It is established that the absence of a
 21 large number of objections to a proposed class action settlement raises a strong

22 _____
 23 to the United States Attorney General and the Attorneys General of all U.S. states
 and territories. ECF No. 113.

24 ³ As noted above, the Summary Notice, which informed readers of the proposed
 25 Settlement, how to obtain copies of the Notice and Claim Form, and the deadlines
 26 for the submission of Claim Forms and objections, was published in *Investor's*
Business Daily and released over the *PR Newswire*.

1 presumption that the terms of a proposed class settlement action are favorable to the
2 class members”). Indeed, courts have found that “[t]he absence of a single objection
3 to the settlement is compelling evidence that the Proposed Settlement is fair, just,
4 reasonable, and adequate.” *Patel v. Axesstel, Inc.*, 2015 WL 6458073, at *6 (S.D.
5 Cal. Oct. 23, 2015).

6 Furthermore, the fact that there was only one request for exclusion from the
7 Settlement Class further supports final approval. *See In re Extreme Networks, Inc.*
8 *Sec. Litig.*, 2019 WL 3290770, at *9 (N.D. Cal.) (“[T]here were only two requests
9 for exclusion ... This positive response from the class confirms that the settlement
10 is fair and reasonable.”); *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *14 (N.D.
11 Cal. Feb. 11, 2016) (“the small number of exclusions representing a very small
12 portion of the total shares at issue further supports settlement”). Notably, the single
13 individual investor who requested exclusion purchased just 20 shares of Merit
14 common stock during the Class Period, sold those shares for a gain before the first
15 corrective disclosure, and thus suffered no damage from the alleged fraud and was
16 not even a member of the Settlement Class to start with. *See* Exhibit 1 to Suppl.
17 Miller Decl. Of further note, the single exclusion request does not criticize or take
18 issue with any aspect of the Settlement, the Plan of Allocation, or the requested fees
19 and expenses. *Id.*

20 Moreover, the absence of any objections from institutional investors,
21 sophisticated investors with ample means and incentive to object to the Settlement
22 if they deemed it unsatisfactory, is further evidence of the Settlement’s fairness. *See*
23 *Extreme Networks*, 2019 WL 3290770, at *9 (“Many potential class members are
24 sophisticated institutional investors; the lack of objections from such institutions
25 indicates that the settlement is fair and reasonable.”); *In re Regulus Therapeutics*
26 *Inc. Sec. Litig.*, 2020 WL 6381898, at *6 (S.D. Cal. Oct. 30, 2020) (same); *Hefler v.*

1 *Wells Fargo & Co.*, 2018 WL 6619983, at *9 (N.D. Cal. Dec. 18, 2018) (“[T]hat not
2 one sophisticated institutional investor objected to the Proposed Settlement is indicia
3 of its fairness.”).

4 The lack of objections also supports approval of the Plan of Allocation. *See*,
5 *e.g.*, *Axesstel*, 2015 WL 6458073, at *7 (approving plan of allocation where it “was
6 laid out in detail in the notice, and no class members objected”); *In re Heritage Bond*
7 *Litig.*, 2005 WL 1594403, at *11 (C.D. June 10, 2005) (“The fact that there has been
8 no objection to this plan of allocation favors approval of the Settlement.”).

9 **C. The Reaction of the Settlement Class Supports Approval of the Fee**
10 **and Expense Request**

11 The overwhelmingly positive reaction of the Settlement Class should also be
12 considered with respect to Lead Counsel’s motion for attorneys’ fees and Litigation
13 Expenses. Respectfully, the absence of *any* objections by Settlement Class
14 Members to the requested fees and expenses supports a finding that these requests
15 are fair and reasonable. *See, e.g., Rentech*, 2019 WL 5173771, at *10 (“no objections
16 . . . supports granting the requested fees” of one-third of the settlement fund);
17 *Axesstel*, 2015 WL 6458073, at *8 (S.D. Cal. Oct. 23, 2015) (“lack of any objection
18 from the class members” supported approval of “the requested 30% attorneys’ fee
19 award”); *In re Nuvelo, Inc. Secs. Litig.*, 2011 WL 2650592, at *3 (N.D. July 6, 2011)
20 (finding only one objection to the fee request to be “a strong positive response from
21 the class, supporting an upward adjustment of the benchmark [fee award]”);
22 *Heritage Bond*, 2005 WL 1594403, at 21 (“The absence of objections or disapproval
23 by class members to Class Counsel’s fee request further supports finding the fee
24 request reasonable.”).

25 Additionally, “[a]s with the Settlement itself, the lack of objections from
26 institutional investors who presumably had the means, the motive, and the

sophistication to raise objections weighs in favor of approval” of the requested attorneys’ fees. *See Wells Fargo*, 2018 WL 6619983, at *15.

III. CONCLUSION

Based on the foregoing and for all of the reasons discussed in their opening papers, Lead Plaintiffs and Lead Counsel respectfully request that the Court approve the Settlement and the Plan of Allocation, and approve the motion for attorneys’ fees and Litigation Expenses.

Attached hereto as Exhibit 2 is a copy of the proposed Judgment Approving Class Action Settlement, which is the same as the Judgment previously submitted to the Court as Exhibit B to the Stipulation (ECF No. 105-1), except that certain dates and the list of persons excluded from the Settlement Class have been filled in. Attached hereto as Exhibits 3 and 4, respectively, are the proposed Order Approving Plan of Allocation of Net Settlement Fund and proposed Order Awarding Attorneys’ Fees and Litigation Expenses.

Dated: April 6, 2022

Respectfully submitted,

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/s/ David R. Kaplan

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Class*

Exhibit 1

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

IN RE MERIT MEDICAL SYSTEMS,
INC. SECURITIES LITIGATION

Case No. 8:19-cv-2326-DOC-ADS

**SUPPLEMENTAL DECLARATION
OF ERIC J. MILLER
REGARDING: (A) MAILING OF
THE NOTICE AND PROOF OF
CLAIM FORM; AND (B) REPORT
ON REQUESTS FOR EXCLUSION
RECEIVED**

Judge: Hon. David O. Carter
Courtroom: 9D
Date: April 13, 2022
Time: 8:30 a.m.

1 I, Eric J. Miller, hereby declare under penalty of perjury as follows:

2 1. I am a Senior Vice President of A.B. Data, Ltd.'s Class Action
3 Administration Company ("A.B. Data"), whose Corporate Office is located in
4 Milwaukee, Wisconsin. Pursuant to the Court's January 3, 2022 Order Preliminarily
5 Approving Settlement and Providing for Notice of the Settlement (ECF No. 106)
6 (the "Preliminary Approval Order"), A.B. Data was authorized to act as the Claims
7 Administrator in connection with the above-captioned action (the "Action"). I
8 submit this Declaration as a supplement to my earlier declaration, the Declaration of
9 Eric J. Miller Regarding (A) Mailing of the Notice and Proof of Claim Form;
10 (B) Proof of Publication of the Summary Notice; and (C) Report on Requests for
11 Exclusion and Objections Received to Date (ECF No. 111-3) (the "Initial Mailing
12 Declaration"). I am over 21 years of age and am not a party to the Action. I have
13 personal knowledge of the facts set forth herein and, if called as a witness, could and
14 would testify competently thereto.

15 **CONTINUED DISSEMINATION OF THE NOTICE PACKET**

16 2. Since the execution of my Initial Mailing Declaration, A.B. Data has
17 continued to disseminate copies of the Notice and Claim Form (the "Notice Packet")
18 in response to additional requests from potential members of the Settlement Class,
19 brokers, and nominees. Through April 5, 2022, A.B. Data has mailed a total of
20 25,886 Notice Packets to potential Settlement Class Members and nominees. In
21 addition, A.B. Data has re-mailed a total of 124 Notice Packets to persons whose
22 original mailing was returned by the U.S. Postal Service and for whom updated
23 addresses were provided to A.B. Data by the Postal Service.

24 **TELEPHONE HELPLINE AND WEBSITE**

25 3. A.B. Data continues to maintain the toll-free telephone number (1-877-
26 242-2522) with an interactive voice response system ("IVR") and live operators
27 during business hours to accommodate any inquiries from potential members of the
28

1 Settlement Class. Throughout the administration of the Settlement, A.B. Data has
2 received 14 in-bound calls, which included 1 hour and 18 minutes spent by callers
3 interacting with the IVR and 1 hour 17 minutes speaking with A.B. Data's live
4 operators. A.B. Data has made 7 out-bound calls to respond to messages left or to
5 follow up on earlier communications.

6 4. A.B. Data also continues to maintain the dedicated website for the
7 Action (www.MeritMedicalSecuritiesLitigation.com) in order to assist potential
8 members of the Settlement Class. On March 10, 2022, A.B. Data posted to the
9 website copies of the papers filed in support of the motion for final approval of the
10 Settlement and Plan of Allocation and in support of Lead Counsel's motion for
11 attorneys' fees and litigation expenses. A.B. Data will continue maintaining and, as
12 appropriate, updating the website and toll-free telephone number until the
13 conclusion of the administration.

14 **REPORT ON REQUESTS FOR EXCLUSION RECIEVED**

15 5. The Notice provided Settlement Class Members with an opportunity to
16 request exclusion from the Settlement Class by submitting a request for exclusion
17 by March 23, 2022. Specifically, the Notice informed potential Settlement Class
18 Members that requests for exclusion from the Settlement Class were to be mailed or
19 otherwise delivered, addressed to *Merit Medical Securities Litigation,*
20 EXCLUSIONS, c/o A.B. Data, Ltd., P.O. Box 173001, Milwaukee, WI 53217, such
21 that they were received by A.B. Data no later than March 23, 2022. A.B. Data has
22 received one request for exclusion. The request for exclusion received is attached
23 hereto as Exhibit 1. In the interests of privacy, the request has been redacted to
24 remove the investor's street address and telephone number.

1 I declare under penalty of perjury that the foregoing is true and correct.
2 Executed on April 5, 2022, at Palm Beach Gardens, Florida.

3
4 

5 _____
Eric J. Miller

EXHIBIT 1

Merit Medical - 54533
144916133



MAR 15 2022

Sally C. Peterson



March 9th, 2022

Merit Medical Securities Litigation,
EXCLUSIONS,
c/o A.B. Data Ltd.,
P.O. Box 173001
Milwaukee WI 53217

TO WHOM IT MAY CONCERN

Sally C Peterson requests exclusion from the Settlement Class in In re Merit Medical Systems, Inc. Securities Litigation, Master File No. No. 8:19-cv-02326-DOC-ADS (C.D. Cal.)

(A) Number of Shares of Merit common stock owned as of opening of trading on February 26th 2019 = Zero.

(B) Number of Shares of Merit common stock purchased on May 3rd 2019 = 20 at a purchase price of \$55.4344 per share.

Number of Shares of Merit common stock sold on June 21st 2019 = 20 at a sale price of \$60.80510.

Signed:



Sally C. Peterson

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NOTES



Merit Medical Securities Litigation
EXCLUSIONS,
c/o A.B. Data, Att'd.
P.O. Box 173001,
Milwaukee, WI. 53217

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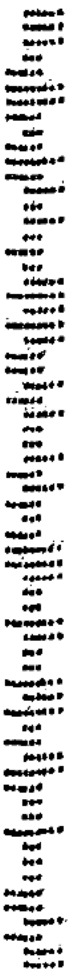


Exhibit 2

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IN RE MERIT MEDICAL SYSTEMS,
INC., SECURITIES LITIGATION

No. 8:19-cv-02326-DOC-ADS

**[PROPOSED] JUDGMENT
APPROVING CLASS
ACTION SETTLEMENT**

JUDGMENT APPROVING
CLASS ACTION SETTLEMENT

1 WHEREAS, a securities class action is pending in this Court entitled *In re Merit*
2 *Medical Systems, Inc. Securities Litigation*, No. 8:19-cv-02326-DOC-ADS (the
3 “Action”);

4 WHEREAS, (a) Lead Plaintiffs City of Atlanta Police Officers’ Pension Fund,
5 City of Atlanta Firefighters’ Pension Fund, and Employees’ Retirement System of the
6 City of Baton Rouge and Parish of East Baton Rouge (collectively, “Lead Plaintiffs”),
7 on behalf of themselves and the Settlement Class; and (b) Defendants Merit Medical
8 Systems, Inc. (“Merit” or the “Company”), Fred P. Lampropoulos, and Raul Parra
9 (collectively, “Defendants”) have entered into a Stipulation and Agreement of
10 Settlement dated December 21, 2021 (the “Stipulation”), that provides for a complete
11 dismissal with prejudice of the claims asserted in the Action on the terms and
12 conditions set forth in the Stipulation, subject to the approval of this Court (the
13 “Settlement”);

14 WHEREAS, unless otherwise defined in this Judgment, the capitalized terms
15 herein shall have the same meaning as they have in the Stipulation;

16 WHEREAS, by Order dated January 3, 2022 (the “Preliminary Approval
17 Order”), this Court: (a) found, pursuant to Rule 23(e)(1)(B), that (i) the Court would
18 likely be able to approve the Settlement as fair, reasonable, and adequate under Rule
19 23(e)(2) and (ii) the Court would likely be able to certify the Settlement Class for
20 purposes of the Settlement; (b) ordered that notice of the proposed Settlement be
21 provided to potential Settlement Class Members; (c) provided Settlement Class
22 Members with the opportunity either to exclude themselves from the Settlement Class
23 or to object to the proposed Settlement; and (d) scheduled a hearing regarding final
24 approval of the Settlement;

25 WHEREAS, due and adequate notice has been given to the Settlement Class;

26 WHEREAS, the Court conducted a hearing on April 13, 2022 (the “Settlement
27 Hearing”) to consider, among other things, (a) whether the terms and conditions of the
28 Settlement are fair, reasonable, and adequate to the Settlement Class, and should

1 therefore be approved; and (b) whether a judgment should be entered dismissing the
2 Action with prejudice as against the Defendants; and

3 WHEREAS, the Court having reviewed and considered the Stipulation, all
4 papers filed and proceedings held herein in connection with the Settlement, all oral
5 and written comments received regarding the Settlement, and the record in the Action,
6 and good cause appearing therefor;

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

8 1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the
9 Action, and all matters relating to the Settlement, as well as personal jurisdiction over
10 all of the Parties and each of the Settlement Class Members.

11 2. **Incorporation of Settlement Documents** – This Judgment incorporates
12 and makes a part hereof: (a) the Stipulation filed with the Court on December 22,
13 2021; and (b) the Notice and the Summary Notice, both of which were filed with the
14 Court on December 22, 2021.

15 3. **Class Certification for Settlement Purposes** – The Court hereby
16 certifies for the purposes of the Settlement only, the Action as a class action pursuant
17 to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the
18 Settlement Class consisting of all persons who purchased Merit common stock from
19 February 26, 2019 through October 30, 2019, inclusive (the “Class Period”), and who
20 were damaged thereby. Excluded from the Settlement Class are Defendants, the
21 Officers and directors of Merit at all relevant times, and all such excluded persons’
22 Immediate Family Members, legal representatives, heirs, agents, affiliates,
23 predecessors, successors, and assigns, and any entity in which any excluded person
24 has or had a controlling interest. Also excluded from the Settlement Class is the person
25 listed on Exhibit 1 hereto who is excluded from the Settlement Class pursuant to her
26 request.

27 4. **Settlement Class Findings** – For purposes of the Settlement only, the
28 Court finds that each element required for certification of the Settlement Class

pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiffs and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

5. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby appoints Lead Plaintiffs as Class Representatives for the Settlement Class and appoints Lead Counsel as Class Counsel for the Settlement Class. Lead Plaintiffs and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

6. **Notice** – The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Lead Counsel's motion for attorneys' fees and Litigation Expenses; (iv) their right to object to any aspect of the Settlement, the Plan of Allocation and/or Lead Counsel's motion for attorneys' fees and Litigation Expenses; (v) their right to exclude themselves from the Settlement Class; and (vi) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the

1 requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States
2 Constitution (including the Due Process Clause), the Private Securities Litigation
3 Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable laws and
4 rules. The Court further finds that the notice requirements set forth in the Class Action
5 Fairness Act of 2005, 28 U.S.C. § 1715, have been satisfied.

6 7. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and
7 in accordance with, Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court
8 hereby fully and finally approves the Settlement set forth in the Stipulation in all
9 respects (including, without limitation, the amount of the Settlement, the Releases
10 provided for therein, and the dismissal with prejudice of the claims asserted against
11 Defendants in the Action), and finds that the Settlement is, in all respects, fair,
12 reasonable and adequate to the Settlement Class. Specifically, the Court finds that (a)
13 Lead Plaintiffs and Lead Counsel have adequately represented the Settlement Class;
14 (b) the Settlement was negotiated by the Parties at arm's length; (c) the relief provided
15 under the Settlement is adequate taking into account the costs, risks, and delay of trial
16 and appeal, the proposed means of distributing the Settlement Fund to the Settlement
17 Class, and the proposed attorneys' fee award; and (d) the Settlement treats members
18 of the Settlement Class equitably relative to each other. The Parties are directed to
19 implement, perform, and consummate the Settlement in accordance with the terms and
20 provisions contained in the Stipulation.

21 8. The Action and all of the claims asserted against Defendants in the Action
22 by Lead Plaintiffs and the other Settlement Class Members are hereby dismissed with
23 prejudice as to all Defendants. The Parties shall bear their own costs and expenses,
24 except as otherwise expressly provided in the Stipulation.

25 9. **Binding Effect** – The terms of the Stipulation and of this Judgment shall
26 be forever binding on Defendants, Lead Plaintiffs, and all other Settlement Class
27 Members (regardless of whether or not any individual Settlement Class Member
28 submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund),

1 as well as their respective successors and assigns. The person listed on Exhibit 1
2 hereto is excluded from the Settlement Class pursuant to her request and is not bound
3 by the terms of the Stipulation or this Judgment.

4 10. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation,
5 together with the definitions contained in paragraph 1 of the Stipulation relating
6 thereto, are expressly incorporated herein in all respects. The Releases are effective
7 as of the Effective Date. Accordingly, this Court orders that:

8 (a) Without further action by anyone, and subject to paragraph 11
9 below, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the other
10 Settlement Class Members, on behalf of themselves, and their respective heirs,
11 executors, administrators, predecessors, successors, and assigns, in their capacities as
12 such, shall be deemed to have, and by operation of law and of this Judgment shall
13 have, fully, finally, and forever compromised, settled, released, resolved, relinquished,
14 waived, and discharged each and every Released Plaintiffs' Claim against Defendants
15 and the other Defendants' Releasees, and shall forever be barred and enjoined from
16 prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants'
17 Releasees.

18 (b) Without further action by anyone, and subject to paragraph 11
19 below, upon the Effective Date of the Settlement, Defendants, on behalf of themselves,
20 and their respective heirs, executors, administrators, predecessors, successors, and
21 assigns, in their capacities as such, shall be deemed to have, and by operation of law
22 and of this Judgment shall have, fully, finally, and forever compromised, settled,
23 released, resolved, relinquished, waived, and discharged each and every Released
24 Defendants' Claim against Lead Plaintiffs and the other Plaintiffs' Releasees, and shall
25 forever be barred and enjoined from prosecuting any or all of the Released Defendants'
26 Claims against any of the Plaintiffs' Releasees. This Release shall not apply to the
27 person listed on Exhibit 1 hereto.
28

1 11. Notwithstanding paragraphs 10(a) – (b) above, nothing in this Judgment
2 shall bar any action by any of the Parties to enforce or effectuate the terms of the
3 Stipulation or this Judgment.

4 12. **Rule 11 Findings** – The Court finds and concludes that the Parties and
5 their respective counsel have complied in all respects with the requirements of Rule
6 11 of the Federal Rules of Civil Procedure in connection with the institution,
7 prosecution, defense, and settlement of the Action.

8 13. **No Admissions** – Neither this Judgment, the Stipulation, including the
9 exhibits thereto and the Plan of Allocation contained therein (or any other plan of
10 allocation that may be approved by the Court), the negotiations leading to the
11 execution of the Stipulation, nor any proceedings taken pursuant to or in connection
12 with the Stipulation, or the approval of the Settlement (including any arguments
13 proffered in connection therewith):

14 (a) shall be offered against any of the Defendants' Releasees as
15 evidence of, or construed as, or deemed to be evidence of any presumption,
16 concession, or admission by any of the Defendants' Releasees with respect to
17 the truth of any fact alleged by Lead Plaintiffs or the validity of any claim that
18 was, could have been, or could in the future be asserted or the deficiency of any
19 defense that has been, could have been, or could in the future be asserted in this
20 Action or in any other litigation, or of any liability, negligence, fault, or other
21 wrongdoing of any kind of any of the Defendants' Releasees or in any way
22 referred to for any other reason as against any of the Defendants' Releasees, in
23 any civil, criminal, arbitration, or administrative action or proceeding, other
24 than such proceedings as may be necessary to effectuate the provisions of the
25 Stipulation;

26 (b) shall be offered against any of the Plaintiffs' Releasees, as
27 evidence of, or construed as, or deemed to be evidence of any presumption,
28 concession, or admission by any of the Plaintiffs' Releasees that any of their

1 claims are without merit, that any of the Defendants' Releasees had meritorious
2 defenses, or that damages recoverable under the Complaint would not have
3 exceeded the Settlement Amount or with respect to any liability, negligence,
4 fault, or wrongdoing of any kind, or in any way referred to for any other reason
5 as against any of the Plaintiffs' Releasees, in any civil, criminal, arbitration, or
6 administrative action or proceeding, other than such proceedings as may be
7 necessary to effectuate the provisions of this Stipulation; or

8 (c) shall be construed against any of the Releasees as an admission,
9 concession, or presumption that the consideration to be given hereunder
10 represents the amount which could be or would have been recovered after trial;
11 *provided, however*, that the Parties and the Releasees and their respective counsel may
12 refer to this Judgment and the Stipulation to effectuate the protections from liability
13 granted hereunder and thereunder or otherwise to enforce the terms of the Settlement.

14 14. **Retention of Jurisdiction** – Without affecting the finality of this
15 Judgment in any way, this Court retains continuing and exclusive jurisdiction over:
16 (a) the Parties for purposes of the administration, interpretation, implementation, and
17 enforcement of the Settlement, including enforcement of the permanent injunctions
18 included therein; (b) the disposition of the Settlement Fund; (c) any motion for an
19 award of attorneys' fees and/or Litigation Expenses by Lead Counsel in the Action
20 that will be paid from the Settlement Fund; (d) any motion to approve the Plan of
21 Allocation; (e) any motion to approve the Class Distribution Order; and (f) the
22 Settlement Class Members for all matters relating to the Action.

23 15. Separate orders shall be entered regarding approval of a plan of allocation
24 and the motion of Lead Counsel for attorneys' fees and Litigation Expenses. Such
25 orders shall in no way affect or delay the finality of this Judgment and shall not affect
26 or delay the Effective Date of the Settlement.

27 16. **Modification of the Agreement of Settlement** – Without further
28 approval from the Court, Lead Plaintiffs and Defendants are hereby authorized to

agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Lead Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

17. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Lead Plaintiffs, the other Settlement Class Members, and Defendants, and the Parties shall revert to their respective positions in the Action as of November 16, 2021, as provided in the Stipulation.

18. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Action.

SO ORDERED this day of , 2022.

The Honorable David O. Carter
United States District Judge

Exhibit 1

List of Persons Excluded from the Settlement Class

Pursuant to Request

Sally C. Peterson
Gainesville, VA

Exhibit 3

1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**

3
4 IN RE MERIT MEDICAL SYSTEMS,
5 INC., SECURITIES LITIGATION

No. 8:19-cv-02326-DOC-ADS

6 **[PROPOSED] ORDER**
7 **APPROVING PLAN OF**
8 **ALLOCATION OF NET**
9 **SETTLEMENT FUND**
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1 This matter came on for hearing on April 13, 2022 (the “Settlement Hearing”)
2 on Lead Plaintiffs’ motion to determine whether the proposed plan of allocation of the
3 Net Settlement Fund (“Plan of Allocation”) created by the Settlement achieved in the
4 above-captioned class action (the “Action”) should be approved. The Court having
5 considered all matters submitted to it at the Settlement Hearing and otherwise; and it
6 appearing that notice of the Settlement Hearing substantially in the form approved by
7 the Court was mailed to all Settlement Class Members who or which could be
8 identified with reasonable effort, and that a summary notice of the hearing
9 substantially in the form approved by the Court was published in *Investor’s Business*
10 *Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the
11 Court; and the Court having considered and determined the fairness and
12 reasonableness of the proposed Plan of Allocation,

13 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14 1. This Order approving the proposed Plan of Allocation incorporates by
15 reference the definitions in the Stipulation and Agreement of Settlement dated
16 December 21, 2021 (ECF No. 105-1) (the “Stipulation”) and all capitalized terms not
17 otherwise defined herein shall have the same meanings as set forth in the Stipulation.

18 2. The Court has jurisdiction to enter this Order approving the proposed Plan
19 of Allocation, and over the subject matter of the Action and all parties to the Action,
20 including all Settlement Class Members.

21 3. Notice of Lead Plaintiffs’ motion for approval of the proposed Plan of
22 Allocation was given to all Settlement Class Members who could be identified with
23 reasonable effort. The form and method of notifying the Settlement Class of the
24 motion for approval of the proposed Plan of Allocation satisfied the requirements of
25 Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution
26 (including the Due Process Clause), the Private Securities Litigation Reform Act of
27 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law and rules,
28

1 constituted the best notice practicable under the circumstances, and constituted due
2 and sufficient notice to all persons and entities entitled thereto.

3 4. Copies of the Notice, which included the Plan of Allocation, were mailed
4 to over 25,000 potential Settlement Class Members and nominees. There are no
5 objections to the Plan of Allocation.

6 5. The Court hereby finds and concludes that the formula for the calculation
7 of the claims of Claimants as set forth in the Plan of Allocation mailed to Settlement
8 Class Members provides a fair and reasonable basis upon which to allocate the
9 proceeds of the Net Settlement Fund among Settlement Class Members with due
10 consideration having been given to administrative convenience and necessity.

11 6. The Court hereby finds and concludes that the Plan of Allocation is, in all
12 respects, fair and reasonable to the Settlement Class.

13 7. There is no just reason for delay in the entry of this Order, and immediate
14 entry by the Clerk of the Court is expressly directed.

15
16 SO ORDERED this _____ day of _____, 2022.

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19 _____
20 The Honorable David O. Carter
21 United States District Judge
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Exhibit 4

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IN RE MERIT MEDICAL SYSTEMS,
INC., SECURITIES LITIGATION

No. 8:19-cv-02326-DOC-ADS

**[PROPOSED] ORDER
AWARDING ATTORNEYS'
FEES AND LITIGATION
EXPENSES**

1 This matter came on for hearing on April 13, 2022 (the “Settlement Hearing”)
2 on Lead Counsel’s motion for attorneys’ fees and Litigation Expenses. The Court
3 having considered all matters submitted to it at the Settlement Hearing and otherwise;
4 and it appearing that notice of the Settlement Hearing substantially in the form
5 approved by the Court was mailed to all Settlement Class Members who or which
6 could be identified with reasonable effort, and that a summary notice of the Settlement
7 Hearing substantially in the form approved by the Court was published in *Investor’s*
8 *Business Daily* and was transmitted over the *PR Newswire* pursuant to the
9 specifications of the Court; and the Court having considered and determined the
10 fairness and reasonableness of the award of attorneys’ fees and Litigation Expenses,

11 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

12 1. This Order incorporates by reference the definitions in the Stipulation and
13 Agreement of Settlement dated December 21, 2021 (ECF No. 105-1) (the
14 “Stipulation”) and all capitalized terms not otherwise defined herein shall have the
15 same meanings as set forth in the Stipulation.

16 2. The Court has jurisdiction to enter this Order and over the subject matter
17 of the Action and all parties to the Action, including all Settlement Class Members.

18 3. Notice of Lead Counsel’s motion for attorneys’ fees and Litigation
19 Expenses was given to all Settlement Class Members who could be identified with
20 reasonable effort. The form and method of notifying the Settlement Class of the motion
21 for attorneys’ fees and Litigation Expenses satisfied the requirements of Rule 23 of
22 the Federal Rules of Civil Procedure, the United States Constitution (including the
23 Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C.
24 § 78u-4, as amended, and all other applicable law and rules, constituted the best
25 notice practicable under the circumstances, and constituted due and sufficient notice
26 to all persons and entities entitled thereto.

27 4. Lead Counsel are hereby awarded attorneys’ fees in the amount of 30%
28 of the Settlement Fund and \$104,686.68 for Lead Counsel’s litigation expenses (which

1 fees and expenses shall be paid from the Settlement Fund), which sums the Court finds
2 to be fair and reasonable.

3 5. In making this award of attorneys' fees and Litigation Expenses to be
4 paid from the Settlement Fund, the Court has considered and found that:

- 5 a) The Settlement has created a fund of \$18,250,000 in cash that has been
6 funded into escrow pursuant to the terms of the Stipulation, and that
7 numerous Settlement Class Members who submit acceptable Claim
8 Forms will benefit from the Settlement that occurred because of the
9 efforts of Lead Counsel;
 - 10 b) The fee sought by Lead Counsel has been reviewed and approved as
11 reasonable by Class Representatives, the two institutional investor Lead
12 Plaintiffs which oversaw the prosecution and resolution of the Action;
 - 13 c) Copies of the Notice were mailed to over 25,000 potential Settlement
14 Class Members and nominees stating that Lead Counsel would apply for
15 attorneys' fees in an amount not to exceed 30% of the Settlement Fund
16 and Litigation Expenses in an amount not to exceed \$250,000;
 - 17 d) There were no objections to the requested attorneys' fees and Litigation
18 Expenses;
 - 19 e) Lead Counsel have conducted the litigation and achieved the Settlement
20 with skill, perseverance, and diligent advocacy;
 - 21 f) The Action raised a number of complex and novel issues;
 - 22 g) Had Lead Counsel not achieved the Settlement there would remain a
23 significant risk that Class Representatives and the other members of the
24 Settlement Class may have recovered less or nothing from Defendants;
 - 25 h) Lead Counsel devoted over 6,550 hours, with a lodestar value of over
26 \$3.8 million, to achieve the Settlement; and
- 27
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1 i) The amount of attorneys' fees awarded and expenses to be paid from the
2 Settlement Fund are fair and reasonable and consistent with awards in
3 similar cases.

4 6. Lead Plaintiffs City of Atlanta Police Officers' Pension Fund and City of
5 Atlanta Firefighters' Pension Fund are hereby awarded \$5,500.00 from the Settlement
6 Fund as reimbursement for their reasonable costs and expenses directly related to their
7 representation of the Settlement Class.

8 7. Lead Plaintiff Employees' Retirement System of the City of Baton Rouge
9 and Parish of East Baton Rouge is hereby awarded \$3,392.01 from the Settlement
10 Fund as reimbursement for its reasonable costs and expenses directly related to its
11 representation of the Settlement Class.

12 8. Any appeal or any challenge affecting this Court's approval regarding
13 any attorneys' fees and expense application shall in no way disturb or affect the finality
14 of the Judgment.

15 9. Exclusive jurisdiction is hereby retained over the parties and the
16 Settlement Class Members for all matters relating to this Action, including the
17 administration, interpretation, effectuation or enforcement of the Stipulation and this
18 Order.

19 10. In the event that the Settlement is terminated or the Effective Date of the
20 Settlement otherwise fails to occur, this Order shall be rendered null and void to the
21 extent provided by the Stipulation.

22 11. There is no just reason for delay in the entry of this Order, and immediate
23 entry by the Clerk of the Court is expressly directed.

1 SO ORDERED this _____ day of _____, 2022.
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The Honorable David O. Carter
United States District Judge
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