

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE COMMVault SYSTEMS, INC.
SECURITIES LITIGATION

Civil Action No. 14-5628 (PGS)(LHG)

[PROPOSED] ORDER APPROVING DISTRIBUTION PLAN

This matter comes before the Court by way of Lead Plaintiff’s Motion for an Order approving a distribution plan for the Net Settlement Fund to Authorized Claimants in the above-captioned class action (the “Action”). Having reviewed and considered all the materials and arguments submitted in support of Lead Plaintiff’s motion, including the Memorandum in Support of Lead Plaintiff’s Motion for Approval of Distribution Plan and the Declaration of Stephanie Amin-Giwner in Support of Lead Plaintiff’s Motion for Approval of Distribution Plan (the “Amin-Giwner Declaration”), and for good cause shown

It is on this _____ day of December, 2019 hereby

ORDERED that this Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated November 30, 2017 (ECF No. 117-1) (the “Stipulation”), and the Amin-Giwner Declaration, and all capitalized terms used in this Order shall have the same meanings as defined in the Stipulation or in the Amin-Giwner Declaration; it is further

ORDERED that this Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members; it is further

ORDERED that Lead Plaintiff's proposed plan for distribution of the Net Settlement Fund to Authorized Claimants is **APPROVED**. Accordingly:

(a) The administrative recommendations of the Court-approved Claims Administrator, Garden City Group, LLC ("GCG"), to accept the Timely Eligible Claims stated in Exhibit E to the Amin-Giwner Declaration and the Late But Otherwise Eligible Claims stated in Exhibit F to the Amin-Giwner Declaration, are adopted;

(b) The Claims Administrator's administrative recommendations to reject wholly ineligible Claims, as stated in Exhibit G to the Amin-Giwner Declaration, including the Disputed Claim discussed in paragraphs 28 to 32 of the Amin-Giwner Declaration and Exhibit D to the Amin-Giwner Declaration, are adopted;

(c) GCG is directed to conduct an Initial Distribution of the Net Settlement Fund, after deducting all payments previously allowed and the payments approved by this Order, and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, while maintaining a 5% reserve from the Net Settlement Fund to address

any tax liability and claims administration-related contingencies that may arise, as stated in paragraph 43(a) of the Amin-Giwner Declaration. Specifically, as stated in paragraph 43(a) of the Amin-Giwner Declaration: (1) GCG will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. In accordance with the Court-approved Plan of Allocation, GCG will calculate each Authorized Claimant's *pro rata* share of the Net Settlement Fund as stated in subparagraph 43(a)(1) of the Amin-Giwner Declaration; (2) GCG will, in accordance with the terms of the Court-approved Plan of Allocation, calculate the total amount each Authorized Claimant would recover in accordance with the calculations stated in subparagraph (c)(1) above and then it will eliminate from the distribution any Authorized Claimant whose total *pro rata* share of the Net Settlement Fund is less than \$10.00. These Claimants will not receive any payment from the Net Settlement Fund and will be so notified by GCG; (3) After eliminating Claimants who would have received less than \$10.00 in the Initial Distribution, GCG will calculate the *pro rata* shares of the Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more (the "Distribution Amount"); (4) Authorized Claimants whose Distribution Amount calculates to less than \$100.00 under subparagraph (c)(3) above will be paid their full Distribution Amount in the Initial Distribution ("Claims Paid in

Full”). These Authorized Claimants will get no additional funds in subsequent distributions; (5) 95% of the remaining balance of the Net Settlement Fund will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$10.00 or more under subparagraph (c)(3) above. The remaining 5% of the Net Settlement Fund will be held in reserve (the “Reserve”) to address any tax liability and claims administration-related contingencies that may arise. To the extent the Reserve is not depleted, the remainder will be distributed in the “Second Distribution” described in subparagraph (f) below.

(d) In order to encourage Authorized Claimants to promptly cash their checks, all distribution checks will bear the following notation: “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” Lead Counsel and GCG are authorized to take appropriate action to locate and contact any Authorized Claimant who has not cashed his, her, or its check within said time as detailed in paragraph 43(b) footnote 5 of the Amin-Giwner Declaration;

(e) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions stated in paragraph 43(b) footnote 5 of the Amin-Giwner Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allocated to all such stale-dated checks will be available to be distributed to other Authorized Claimants in the second

distribution. Similarly, Authorized Claimants who do not cash their second or subsequent distributions (should such distributions occur) within the time allotted or on the conditions stated in paragraph 43(b) footnote 5 of the Amin-Giwner Declaration will irrevocably forfeit any further recovery from the Net Settlement Fund;

(f) After GCG has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks (as provided in paragraph 43(b) footnote 5 of the Amin-Giwner Declaration), but not earlier than nine (9) months after the Initial Distribution, GCG will, after consulting with Lead Counsel, conduct a second distribution (the “Second Distribution”), in which any amount remaining in the Net Settlement Fund after the Initial Distribution (including from the Reserve and the funds for all void stale-dated checks), after deducting GCG’s fees and expenses incurred in administering the Settlement for which it has not yet been paid (including GCG’s estimated costs of the Second Distribution), and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants in the Initial Distribution who cashed their Initial Distribution check and are entitled to receive at least \$10.00 from the Second Distribution based on their *pro rata* share of the remaining funds. Additional distributions, after deduction of costs and expenses as described

above and subject to the same conditions, may occur thereafter in six-month intervals until Lead Counsel, in consultation with GCG, determines that further distribution is not cost-effective;

(g) At such time as Lead Counsel, in consultation with GCG, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after November 6, 2019, such Claims will be processed, and any such Claims that are otherwise valid, as well as any earlier-received Claims for which an adjustment was received after the submission of Lead Plaintiff's motion that resulted in an increased Recognized Claim, will be paid in accordance with subparagraph (h) below. If any funds remain in the Net Settlement Fund after payment of such late or late-adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court; and

(h) No new Claims may be accepted after November 6, 2019, and no further adjustments to previously received Claims that would result in an

increased Recognized Claim amount may be made, subject to the following exception. If Claims are received or modified that would have been eligible for payment or additional payment under the Plan of Allocation if timely received, then, at the time that Lead Counsel, in consultation with GCG, determines that a redistribution is not cost-effective as provided in subparagraph (g) above, and after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, such Claimants, at the discretion of Lead Counsel, may be paid the distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent possible; it is further

ORDERED that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted, or who are otherwise involved in the administration or taxation of the Settlement Fund, are hereby released and discharged from any and all claims arising out of that involvement, and all Settlement Class Members and other Claimants, whether or not they receive payment from the Net Settlement Fund, are hereby barred from making any further claims against the Net Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiff

or Lead Counsel in connection with the administration or taxation of the Settlement Fund, or any other person released under the Settlement beyond the amounts allocated to Authorized Claimants; it is further

ORDERED that all of GCG's fees and expenses incurred in the administration of the Settlement and estimated to be incurred in connection with the Initial Distribution of the Net Settlement Fund as stated in the invoices attached as Exhibit H to the Amin-Giwner Declaration are approved, and Lead Counsel is directed to pay the outstanding balance of \$117,608.69 out of the Settlement Fund to GCG; it is further

ORDERED that, unless otherwise ordered by the Court, GCG may destroy the paper copies of the Claims and all supporting documentation one year after the Initial Distribution, and one year after all funds have been distributed, GCG may destroy electronic copies of the same; and it is further

ORDERED that this Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and any other and further relief that this Court deems appropriate.

SO ORDERED.

Hon. Peter G. Sheridan, U.S.D.J