

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK COLWELL, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

EXICURE, INC., DAVID A. GILJOHANN,
BRIAN C. BOCK, and GRANT T. CORBETT,

Defendants.

Case No. 1:21-CV-06637

Honorable John F. Kness

**MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S
UNOPPOSED MOTION TO APPROVE SETTLEMENT DISTRIBUTION**

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I. INTRODUCTION

The Court has approved the \$5,625,000 settlement of this securities class action. (ECF No. 117.) Lead Plaintiff James Mathew (“Plaintiff”) now moves for entry of the [Proposed] Order Authorizing Distribution of the Net Settlement Fund (the “Distribution Order”), which will: (i) approve the Claims Administrator’s administrative recommendations accepting and rejecting claims received through and including July 24, 2025; (ii) direct the distribution of the Net Settlement Fund to Authorized Claimants whose Recognized Claims have been accepted as valid and approved by the Court, according to the plan for the distribution of the Net Settlement Fund set forth in the Kimball Declaration, submitted on behalf of the independent Claims Administrator, Epiq Class Action & Claims Solutions, Inc. (“Epiq” or the “Claims Administrator”); (iii) impose a Final Bar Date of July 24, 2025, meaning that any claims, or documentation to cure previously defective claims, received after that date will be automatically rejected; and (iv) approve the fees and expenses incurred by the Claims Administrator in connection with the Settlement.¹

The Claims Administrator has completed the processing of claims submitted through July 24, 2025. Plaintiff respectfully requests that the Court approve Epiq’s administrative recommendations (a) to accept the 3,402 claims deemed acceptable in whole or in part, listed in Exhibits B-1 and B-2 to the Kimball Declaration, and (b) to reject the 16,339 claims that Epiq has wholly rejected, listed in Exhibit B-3 to the Kimball Declaration. (Kimball Decl. ¶¶32-34.) The 3,402 claims recommended for acceptance represent a total of \$9,879,969.57 in Recognized Claims calculated in accordance with the Court-approved Plan of Allocation. (*Id.* ¶34.) In

¹ Capitalized terms not defined herein have the meanings stated in the Stipulation of Settlement (the “Stipulation”) (ECF No. 99). Emphasis is added, and citations omitted, unless otherwise noted.

accordance with the Plan of Allocation, each Authorized Claimant with a Recognized Claim shall receive a *pro rata* share of the Net Settlement Fund.

II. BACKGROUND

The Court granted final approval of the Settlement, and approved the Plan of Allocation, on January 13, 2025 (ECF Nos. 114, 115 & 117).

As described in the Kimball Declaration, Epiq has processed all claims received by Epiq through and including July 24, 2025, in accordance with the terms of the Stipulation and the Court-approved Plan of Allocation, and now submits its administrative determinations accepting and rejecting those claims.

III. CLAIMS ADMINISTRATION

A. The Notice Program and Claims Received

Epiq has caused a total of 8,175 copies of the Notice to be mailed or emailed to potential Settlement Class Members or their nominees; caused the Summary Notice to be published in *Investor's Business Daily* and transmitted over *PR Newswire*; and established and continues to maintain the Settlement Website, as well as a telephone number, email address, and P.O. Box each dedicated to the Settlement and to assisting potential Settlement Class Members. (See Kimball Decl. ¶¶3-4.) As stated in the Court-approved Notice, each Settlement Class Member who wished to be potentially eligible to receive a distribution from the Net Settlement Fund was required to complete and provide to Epiq a properly executed Proof of Claim and Release Form and supporting documentation for the transactions and holdings reported therein, postmarked or electronically submitted by no later than January 27, 2025.

Pursuant to the Stipulation (ECF No. 99 ¶6.5), in its discretion Lead Counsel determined to recommend that late-submitted, valid claims received by Epiq through and including July 24, 2025, receive payment from the distribution of the Net Settlement Fund. As of July 24, 2025, Epiq

has received 19,741 claims: 112 paper claims and 19,629 claims submitted electronically by nominees on behalf of beneficial owners. (Kimball Decl. ¶¶3, 6, 9.)

B. Measures to Address Deficient Claims and Protect Against Fraud

Epiq reviewed all claims to ensure that they were not submitted by or on behalf of persons or entities excluded from the definition of the Settlement Class. (Kimball Decl. ¶14; *see* ECF No. 99 ¶1.42.) Specifically, Epiq excluded claims submitted by or on behalf of persons or entities who were known by Epiq to be Defendants and other excluded persons and entities as described in the Court’s Order granting final approval of the Settlement. (*See id.*)

Epiq devoted significant effort to identifying deficient claims and working to resolve those deficiencies where possible. Of the claims received through July 24, 2025, 16,341 claims were partially or wholly deficient for one or more reasons and therefore were subject to additional processing, correspondence, and telephonic communications. (Kimball Decl. ¶¶17, 20.) Epiq has communicated these deficiencies so the affected claimants have had the opportunity to cure them. The deficiency process involved sending a “Notice of Deficient Proof of Claim Form Submission” (a “Deficiency Notice”) to all claimants who had submitted deficient claims, and additional correspondence with individual claimants in response to their inquiries. (*Id.* ¶¶18-21.) As a result of this process, several previously defective claims have been cured and are now recommended as eligible for participation in the settlement. (*Id.* ¶¶19, 21.)

Each Deficiency Notice advised the affected claimants that, if they disagreed with Epiq’s administrative determinations, they had the right to request the Court’s review of their claim. Each Deficiency Notice also explained that this deficiency process provided the claimant with the opportunity to cure the deficiencies in the claim (to the extent the deficiencies could be cured), and that a claimant who wished to request Court review of a claim was required to submit within 20 days a written statement to the Claims Administrator requesting review of the claim and setting

forth the bases for their request. (*Id.* ¶¶18, 20.) After responses to these Deficiency Notices were received and evaluated, Epiq again contacted each claimant with still-deficient claims to provide them with an additional opportunity to cure any remaining deficiencies. (*Id.* ¶¶19, 21.)

Epiq also conducted a Quality Assurance review and used Quality Assurance personnel throughout the administration to ensure that claims were processed properly. (*Id.* ¶¶27-29.)

Epiq also deployed various other fraud protection controls throughout the claims administration. Epiq checked all claims against Epiq's database of known questionable filers, which contains names, addresses, and aliases of individuals who have been investigated by government agencies for fraudulent claim filing, as well as the names and contact information compiled from previous settlements that Epiq has administered where fraudulent claims were received. (*Id.* ¶30.) Further, Epiq has performed searches to identify and exclude potential payments to payees whose names may appear on the federal government's restricted persons list or who reside in countries to which payments are prohibited in accordance with the regulations and guidelines of the U.S. Treasury Department, Office of Foreign Assets Control. (*Id.*)

Epiq's team also performed a final Quality Assurance wrap-up to ensure the correctness and completeness of all claims. (*Id.* ¶29.)

IV. THE DISTRIBUTION ORDER SHOULD BE ENTERED

After final approval of a securities class action settlement, the Court-appointed claims administrator completes the processing of claims. Once processing is complete, the claims administrator's recommendations to accept and reject claims, along with the proposed plan to distribute the settlement fund, are presented to the Court for approval. Upon Court approval, the claims administrator issues payments to approved claimants.

Here, Plaintiff respectfully requests the Court's approval of the Distribution Order, submitted herewith, so Epiq may begin distributions to Authorized Claimants. As set forth in the

Kimball Declaration, Epiq has completed the processing of the 19,741 claims received through July 24, 2025, and has determined that 3,383 are acceptable in whole and 19 are acceptable in part, while 16,339 should be wholly rejected because they are not eligible for payment. (Kimball Decl. ¶31.)

A list of all the claims submitted through and including July 24, 2025 and their recommended disposition is contained in the Claims Administrator's Report attached to the Kimball Declaration as Exhibit B. Exhibit B-1, titled "Timely Eligible Claims," lists all timely-filed accepted claims and states their Recognized Loss. Exhibit B-2, titled "Late But Otherwise Eligible Claims," lists all late-filed accepted claims and states their Recognized Loss. Exhibit B-3, titled "Rejected Claims," lists all wholly rejected claims and states the reason for their rejection.

For privacy reasons, Exhibit B provides only the claimant's Claim Number and Recognized Loss or Reason for Rejection; no names, addresses, Taxpayer ID, Social Security or Social Insurance Numbers are disclosed. (Kimball Decl. ¶33.)

A. The Claims Recommended for Acceptance

The 3,402 claims recommended for acceptance represent a total of \$9,879,969.57 in Recognized Claims calculated in accordance with the Court-approved Plan of Allocation. (*Id.* ¶34.) In accordance with the Plan of Allocation, each Authorized Claimant with a Recognized Claim shall receive a *pro rata* share of the Net Settlement Fund. (*Id.* ¶39(a).)²

B. The Claims Recommended for Rejection

The 16,339 wholly rejected claims are ineligible for one or more of the following reasons:
(i) there were no eligible purchases or acquisitions of Exicure common stock during the Class

² As provided in the Plan of Allocation, if an Authorized Claimant's Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and the Authorized Claimant will not receive any distribution. (*Id.* ¶39(a)(ii)-(iii).)

Period; (ii) the transactions submitted in the Proof of Claim did not yield a Recognized Loss; (iii) the claim contained one or more uncured deficiencies; (iv) the claim was a duplicate of another claim; or (v) the Proof of Claim was withdrawn or voided by request. (*Id.* ¶32.)

V. DISTRIBUTION OF THE NET SETTLEMENT FUND

As detailed above, the Claims Administrator has completed processing the claims received through July 24, 2025. With respect to these claims, Plaintiff respectfully requests that the Court approve Epiq's administrative recommendations (a) to accept the 3,402 claims deemed acceptable in whole or in part, listed in Exhibits B-1 and B-2 to the Kimball Declaration, and (b) to reject the 16,339 claims that Epiq has wholly rejected, listed in Exhibit B-3 to the Kimball Declaration. (Kimball Decl. ¶¶31-34.)

Upon entry of the Court's Distribution Order, Epiq will execute the following distribution plan (the "Distribution Plan") (Kimball Decl. ¶39):

- a. Epiq will conduct an initial distribution (the "Initial Distribution") of the Net Settlement Fund, after deducting the payments previously allowed and requested herein, and after payment of any Taxes, the costs of preparing appropriate tax returns, and any escrow fees, as follows:
 - i. Epiq will calculate award amounts to all Authorized Claimants by calculating their *pro rata* share of the Net Settlement Fund in accordance with the Plan of Allocation.
 - ii. Epiq will, pursuant to the terms of the Plan of Allocation, eliminate from the Initial Distribution any Authorized Claimant whose *pro rata* share of the Net Settlement Fund, as calculated under subparagraph (a)(i) above, is less than \$10.00. Such claimants will not receive any distribution from the Net Settlement

Fund and Epiq will send letters to those Authorized Claimants advising them of that fact.

- iii. After eliminating claimants who would have received less than \$10.00, Epiq will calculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more pursuant to the calculations described in subparagraph (a)(i) above (“Distribution Amount”).
 - iv. In order to encourage Authorized Claimants to promptly deposit their payments, all distribution checks will bear a notation “DEPOSIT PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT NEGOTIATED WITHIN 90 DAYS OF ISSUE DATE.”
 - v. Authorized Claimants who do not cash their Initial Distribution checks within the time allotted will irrevocably forfeit all recovery from the Settlement. The funds allocated to all such stale-dated checks will be available to be re-distributed to other Authorized Claimants in the Second Distribution as discussed below. Similarly, Authorized Claimants who do not cash their second or subsequent distributions (should such distributions occur) within the time allotted will irrevocably forfeit any further recovery from the Net Settlement Fund.
- b. After Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, Epiq will conduct a second distribution of the Net Settlement Fund (the “Second Distribution”). The Second Distribution will include any unclaimed amounts remaining in the Net Settlement Fund after the Initial Distribution, after deducting Epiq’s fees and expenses incurred in connection with

- administering the Settlement for which it has not yet been paid (including the estimated costs of such Second Distribution), and after the payment of any Taxes, the costs of preparing appropriate tax returns, and any escrow fees. These remaining funds will be distributed to all Authorized Claimants in the Initial Distribution who cashed their Initial Distribution check and would receive at least \$10.00 from the Second Distribution based on their *pro-rata* share of the remaining funds.
- c. In order to allow a final distribution of any funds remaining in the Net Settlement Fund after completion of the Second Distribution, whether by reason of returned funds, tax refunds, interest, uncashed checks, or otherwise:
- i. If cost effective, Epiq will conduct a further distribution of the Net Settlement Fund, in which all funds remaining in the Net Settlement Fund, after deducting Epiq's unpaid fees and expenses incurred or to be incurred in connection with administering the Settlement (including the estimated costs of such distribution), and after the payment of any Taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to Authorized Claimants who cashed their Second Distribution checks in an equitable and economic fashion. Additional re-distributions, after deduction of costs and expenses as described above and subject to the same conditions, may occur thereafter until Lead Counsel, in consultation with Epiq, determines that further re-distribution is not cost-effective. At that point, and as set forth in the Stipulation of Settlement, the residual balance will be donated to a non-profit, charitable organization serving the public interest and unaffiliated with the Parties or their counsel, selected by Lead Counsel.

VI. FINAL BAR DATE OF JULY 24, 2025

Plaintiff further requests that the Court set a final bar date of July 24, 2025 (the “Final Bar Date”), meaning that any claims received after the Final Bar Date, or purported cures of deficiencies received after the Final Bar Date, will be rejected without further notice.

This is necessary to provide finality and allow the timely, complete distribution of the Net Settlement Fund to Authorized Claimants. The Final Bar Date is more than five months after the Court-approved January 27, 2025 deadline to submit claims. Thus, potential Settlement Class Members have had ample time to submit claims and cure any deficiencies. Indeed, the rate of new claims and adjustments to previously filed claims has significantly diminished, and Epiq has not received any new claims or cures for any deficiencies since June 13, 2025. (Kimball Decl. ¶25.)

The Settlement Website will be updated to indicate that Plaintiff has sought a Final Bar Date of July 24, 2025, and if the Final Bar Date is approved by the Court, any claims received after the Final Bar Date, or purported cures of deficiencies received after the Final Bar Date, will be rejected without further notice.

VII. PAYMENT TO THE CLAIMS ADMINISTRATOR

As set forth in the Court-authorized and implemented Stipulation, Lead Counsel may use up to \$100,000 of the Settlement Fund to pay reasonable Notice and Administration Costs actually incurred without further order of the Court (ECF No. 99 ¶2.9); none of this amount has been disbursed to date. Epiq now seeks payment of a total of \$118,217.49 in fees and expenses for its work as Claims Administrator, including its work performed on behalf of the Settlement Class to date and Epiq’s estimated fees and expenses to conduct the initial distribution of the Settlement Fund. (Kimball Decl. ¶37.) These amounts qualify as Notice and Administration Costs pursuant to the Stipulation. (ECF No. 99 ¶2.9.)

Plaintiff requests authorization to pay Epiq \$118,217.49 for its services from the Settlement Fund.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion and enter the proposed Distribution Order submitted herewith.

Dated: July 24, 2025

By: /s/ Joseph A. Fonti

Joseph A. Fonti (*pro hac vice*)
Evan A. Kubota (*pro hac vice*)
BLEICHMAR FONTI & AULD LLP
300 Park Avenue, Suite 1301
New York, NY 10022
Tel.: (212) 789-1340
jfonti@bfalaw.com
ekubota@bfalaw.com

*Counsel for Lead Plaintiff James Mathew
and Lead Counsel for the Class*

Elizabeth A. Fegan
FEGAN SCOTT LLC
150 S. Wacker Dr., 24th Floor
Chicago, IL 60606
Telephone: (312) 741-1019
beth@feganscott.com

*Local Counsel for Lead Plaintiff James
Mathew*

Brian Schall (*pro hac vice*)
THE SCHALL LAW FIRM
2049 Century Park East, Suite 2460
Los Angeles, California 90067
Telephone: (424) 303-1964
brian@schallfirm.com

*Additional Counsel for Lead Plaintiff
James Mathew*