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

13 MICHAEL YOUNG, and DAN
14 DOLAR, individually and on behalf of
15 other similarly situated individuals,

Case No. 8:19-cv-00827-JVS-DFM

16 Plaintiffs,

FINAL JUDGMENT AND ORDER
APPROVING AMENDED
SETTLEMENT

17 v.

Hearing Date: November 5, 2020

Time: 9:30 a.m.

Location: Courtroom 10C, Santa Ana

Judge Hon. James V. Selna

19 MOPHIE, INC., a California
20 corporation,

21 Defendant.

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ORDER

WHEREAS, this matter came before the Court for hearing on November 5, 2020 (the “Settlement Hearing”), on motion of Plaintiffs in the above-captioned action (the “Action”) to, among other things, determine (i) whether the terms and conditions set forth in the Settlement Agreement dated as of October 1, 2020 (the “Settlement Agreement”), as amended on October 26, 2020 (the “Amendment”) (collectively, the “Amended Settlement Agreement”), are fair, reasonable, and adequate and should be approved by the Court; and (ii) whether a judgment providing for, among other things, the entry of an injunction and the dismissal with prejudice of the Action against Defendant as provided for in the Amended Settlement Agreement, should be entered; and

WHEREAS, at the Settlement Hearing, Plaintiffs moved for approval of the Amended Settlement Agreement and the grant of Service Awards; and

WHEREAS, at the Settlement Hearing, Class Counsel moved for an award of Class Counsel’s Fees and Expenses; and

WHEREAS, the Settlement Hearing was duly held before this Court; and

WHEREAS, this Court has considered all matters submitted to it at the Settlement Hearing, and all papers filed in this Action, and proceedings had herein, and otherwise being fully informed in the premises, and finds that there is good cause appearing therefore.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Amended Settlement Agreement is incorporated by reference in this Judgment and Order as though fully set forth herein. All capitalized terms used herein shall have the meanings set forth in the Settlement Agreement and the Amendment thereto.

2. The Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Class Members.

1 3. Pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil
2 Procedure, and for the purposes of the settlement only, the Action is hereby finally
3 certified as a class action on behalf of all persons who purchased any of the Covered
4 Products within the United States.

5 4. The Court finds, for the purposes of the settlement only, that the
6 prerequisites for a class action under Rules 23(a) and (b)(2) of the Federal Rules of
7 Civil Procedure have been satisfied in that: (a) the number of class members in the
8 Settlement Class is so numerous that joinder of all members thereof is impracticable;
9 (b) there are questions of law or fact common to the Settlement Class; (c) the claims
10 of Plaintiffs are typical of the claims of the Settlement Class they seek to represent;
11 (d) Plaintiffs and Class Counsel have and will fairly and adequately represent the
12 interests of the Settlement Class; and (e) Defendant has acted or refused to act on
13 grounds that apply generally to the Settlement Class, so that final injunctive relief is
14 appropriate with respect to the class as a whole.

15 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the
16 purposes of the Settlement only, Plaintiffs Dan Dolar and Michael Young are certified
17 as the Class Representatives and E. Michelle Drake of the law firm of Berger
18 Montague P.C. and D. Greg Blankinship of the law firm of Finkelstein, Blankinship,
19 Frei-Pearson & Garber, LLP are certified to serve as Class Counsel, and for no other
20 purpose.

21 6. The Court finds that notice to the Settlement Class is unnecessary,
22 notwithstanding the Class Injunctive Release by the Settlement Class, because the
23 settlement falls under Rule 23(b)(2) of the Federal Rules of Civil Procedure and,
24 pursuant to Section 5 of the Settlement Agreement, the Class Injunctive Release does
25 not extend to any claims or potential claims for monetary damages that any member
26 of the Settlement Class may have against Mophie or any of the Mophie Entities,
27 except to the Plaintiffs who provided full and complete general releases of all Claims.

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1 7. The Court finds also that the appropriate state and federal officials were
2 timely notified of the Amended Settlement Agreement under the Class Action
3 Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, and that ninety (90) days have
4 passed without comment or objection from any government entity.

5 8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court
6 hereby approves the settlement as set forth in the Amended Settlement Agreement
7 and finds that settlement, including but not limited to the terms of the Settlement
8 Agreement and the Amendment thereto, is, in all respects, fair, reasonable, and
9 adequate, and in the best interests of the members of the Settlement Class, including
10 the Class Representatives. This Court further finds that the settlement set forth in the
11 Amended Settlement Agreement is the result of arm’s-length negotiations between
12 experienced counsel representing the interests of the Parties, and that Class Counsel
13 has concluded that the proposed settlement is fair, reasonable, and adequate.
14 Accordingly, the settlement embodied in the Amended Settlement Agreement is
15 hereby approved in all respects and shall be consummated in accordance with the
16 terms and provisions of the Settlement Agreement and Amendment thereto.

17 9. The Action and all claims asserted therein are dismissed with prejudice
18 and without costs, as such costs are identified in 28 U.S.C. § 1920.

19 10. Class Counsel are hereby awarded attorney fees and expenses (“Class
20 Counsel Fees and Expenses”) of \$325,000, which sum the Court finds to be fair and
21 reasonable. In making this award, the Court has considered and found that:

22 (a) The Action involves complex factual and legal issues, was actively
23 prosecuted, and, in the absence of the Settlement, would involve further lengthy
24 proceedings with uncertain resolution of the complex factual and legal issues;

25 (b) E. Michelle Drake of the law firm of Berger Montague P.C. and D. Greg
26 Blankinship and his firm of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP
27 skillfully and zealously pursued the Action on behalf of the Plaintiffs and the Class;

28 (c) The hourly rates charged by Class Counsel are reasonable;

1 (d) Had Class Counsel not achieved the settlement, there would remain a
2 significant risk that Plaintiffs and the Settlement Class would recover nothing from
3 the Defendant;

4 (e) The amount of the Class Counsel Fees and Expenses awarded herein is
5 consistent with awards in similar cases; and

6 (f) Class Counsel shall be responsible for allocating and distributing the
7 Class Counsel Fees and Expenses to Plaintiffs' counsel.

8 11. The Court finds that an award to Plaintiffs for their time and effort in
9 representing the Settlement Class in the prosecution of the Action is fair and
10 reasonable, and thus awards each of the Plaintiffs a Service Award in the amount of
11 \$5,000.00.

12 12. This Judgment and Order, the Settlement Agreement and Amendment
13 thereto, any of their terms and provisions, any of the negotiations or proceedings
14 connected with it, and any of the documents or statements referred to therein:

15 (a) shall not be offered or received against Defendant or any other Released
16 Party as evidence of, or construed as, or deemed to be evidence of any presumption,
17 concession, or admission by Defendant or the Mophie Entities with respect to the truth
18 of any fact alleged by the Plaintiffs or the validity of any claim that was or could have
19 been asserted against any Defendant or the Mophie Entities in the Action or in any
20 litigation, or of any liability, fault, misconduct, or wrongdoing of any kind of any of
21 the Defendant or the Mophie Entities;

22 (b) Shall not be offered or received against Defendant or the Mophie Entities
23 as evidence of a presumption, concession, or admission of any liability, fault,
24 misconduct, or wrongdoing by any Defendant or the Mophie Entities or against the
25 Plaintiffs or any member of the Settlement Class as evidence of any infirmity in the
26 claims of the Plaintiffs or the other members of the Settlement Class;

27 (c) Shall not be offered or received against Defendant or the Mophie
28 Entities, or against Plaintiffs or any other member of the Settlement Class, as evidence

1 of a presumption, concession, or admission with respect to any liability, fault,
2 misconduct, or wrongdoing of any kind, or in any way referred to for any other reason
3 as against any Defendant or the Mophie Entities, in any other civil, criminal,
4 regulatory or administrative action or proceeding, other than such proceedings as may
5 be necessary to effectuate the provisions of the Amended Settlement Agreement and
6 this Judgment and Order; provided, however, that Defendant or any of the other
7 Mophie Entities may refer to this Judgment and Order and the Amended Settlement
8 Agreement to effectuate the protection from liability granted them thereunder;

9 (d) Shall not be construed against any Defendant or the Mophie Entities, or
10 against Plaintiffs or any other member of the Settlement Class as an admission,
11 concession, or presumption that the consideration to be given hereunder represents
12 the amount which could be or would have been recovered after trial; and

13 (e) Shall not be construed against Plaintiffs or any other member of the
14 Settlement Class as an admission, concession, or presumption that any of their claims
15 are without merit or that damages would not be recoverable under the Complaint or
16 Amended Complaint in this Action.

17 13. The Court reserves jurisdiction, without affecting in any way the finality
18 of this Judgment and Order, over (a) the implementation and enforcement of this
19 Settlement; (b) enforcing and administering this Judgment and Order; and (c) other
20 matters related or ancillary to the foregoing.

21 14. In the event that this Judgment and Order does not become Final or the
22 Settlement is terminated pursuant to the terms of the Amended Settlement Agreement,
23 then this Judgment and Order shall be rendered null and void to the extent provided
24 by and in accordance with the Amended Settlement Agreement, and shall be vacated
25 to the extent provided by the Amended Settlement Agreement and, in such event: (a)
26 all Orders entered and releases delivered in connection herewith shall be null and void
27 to the extent provided by and in accordance with the Amended Settlement Agreement;
28 and (b) the fact of the Settlement shall not be admissible in any trial of the Action and

1 the Settling Parties shall be deemed to have reverted to their respective status in the
2 Action immediately prior to October 1, 2020.

3 15. Without further order of the Court, the parties may agree to reasonable
4 extensions of time to carry out any of the provisions of the Amended Settlement
5 Agreement.

6 16. There is no just reason for delay in the entry of this Judgment and Order
7 and immediate entry by the Clerk of the Court is expressly directed.

8 NOW, THEREFORE, THE COURT HEREBY ENTERS THE FOLLOWING
9 INJUNCTION:

10 The following pertains to all Covered Products ordered by Mophie from
11 manufacturers 90 days or more after the date of final approval of the settlement (by
12 entry of this Judgment and Order in the form approved by the Parties and in
13 compliance with Section 8 of the Amended Settlement Agreement):

14 1. In circumstances where Mophie includes the mAh rating on its
15 package, where the rating is determined based on the capacity of the internal battery,
16 Mophie shall use the following or substantially similar language: “contains a XXXX
17 mAh internal battery”.

18 2. Mophie has no obligation to revise packaging for products that were
19 ordered by Mophie from manufacturers prior to the expiration of 90 days after the
20 date of final approval of the settlement (by entry of this Judgment and Order in the
21 form approved by the Parties and in compliance with Section 8 of the Amended
22 Settlement Agreement).

23 3. If Mophie references the mAh rating on its website for a product where
24 the rating is determined based on the capacity of the internal battery, not later than
25 90 days after the date of final approval of the settlement (by entry of this Judgment
26 and Order in the form approved by the Parties and in compliance with Section 8 of
27 the Amended Settlement Agreement), Mophie shall include the following or
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1 substantially similar language on the website for that product: “contains a XXXX
2 mAh internal battery”.

3 Nothing in this Judgment and Order shall preclude Mophie from making further
4 changes to any of its product labels or marketing that (1) Mophie reasonably believes
5 are necessary to comply with applicable rules, guidelines, or decisions, or any other
6 statute, regulation, or other law of any kind; (2) are permitted by product changes or
7 additional testing or development work and/or to ensure Mophie provides accurate
8 product descriptions; or (3) are more detailed than those required by this Amended
9 Settlement Agreement.

10 NOW, THEREFORE, WITH RESPECT TO RELEASES, THE COURT
11 HEREBY ORDERS THE FOLLOWING:

12 1. The Amended Settlement Agreement, as incorporated in this Judgment
13 and Order, shall be the sole and exclusive remedy for any and all Claims of all
14 Parties against all other Parties. No Party shall be subject to liability of any kind to
15 any Party with respect to any Claim. As of the Effective Date, and excepting only
16 the obligations created by the Amended Settlement Agreement, the Parties shall be
17 permanently barred and enjoined from initiating, asserting, and/or prosecuting any
18 Claim against any other Party in any court or any forum, as specified in Section 4
19 of the Amended Settlement Agreement.

20 2. As of the Effective Date, each Party shall be deemed to have released
21 and forever discharged each of the other Parties of and from any and all liability for
22 any and all Claims, as specified in Section 4 of the Amended Settlement Agreement.

23 3. As of the Effective Date, the Settlement Class shall be deemed to have
24 released and forever discharged Mophie and each of the Mophie Entities of and from
25 any and all injunctive relief, consistent with the Class Injunctive release, as specified
26 in Section 5 of the Amended Settlement Agreement.

27 4. As of the Effective Date, without further action, for good and valuable
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1 consideration, as specified in Section 4 of the Amended Settlement Agreement,
2 Plaintiffs and Mophie shall be deemed to have fully, finally, and forever expressly
3 waived and relinquished with respect to the Claims, any and all provisions, rights,
4 and benefits of Section 1542 of the California Civil Code and any and all similar
5 provisions, rights, and benefits conferred by any law of any state or territory of the
6 United States or principle of common law that is similar, comparable, or equivalent
7 to Section 1542 of the California Civil Code, which provides:

8 **A general release does not extend to claims that the**
9 **creditor or releasing party does not know or suspect**
10 **to exist in his or her favor at the time of executing the**
11 **release and that, if known by him or her, would have**
12 **materially affected his or her settlement with the**
13 **debtor or released party.**

14 5. As of the Effective Date, each of the Parties shall be deemed to have
15 released and forever discharged each of the Parties and their respective counsel, for
16 all Claims, except to enforce terms and conditions contained in the Amended
17 Settlement Agreement.

18 6. The Court shall retain exclusive and continuing jurisdiction over the
19 Parties and the members of the Settlement Class to interpret and enforce the terms,
20 conditions, and obligations this Judgment and Order and the Amended Settlement
21 Agreement.

22 Dated: November 30, 2020



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25 HONORABLE JAMES V. SELNA
26 UNITED STATES DISTRICT JUDGE
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