

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: NETSOL TECHNOLOGIES,
INC. SECURITIES LITIGATION

No. CV 14-5787 PA (SHx)

ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR
NOTICE

WHEREAS, (i) Plaintiff Mike Clementi (“Plaintiff”) on his own behalf and on behalf of the Settlement Class, and (ii) NetSol Technologies, Inc. (“NetSol” or the “Company”) and Najeeb Ghauri (collectively, “Defendants”), have entered, by and through their respective counsel, into a settlement of the claims asserted in the Litigation, the terms of which are set forth in a Stipulation of Settlement, dated February 25, 2016 (the “Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions for the

1 proposed settlement of the claims alleged in the First Amended Consolidated
2 Complaint (the “Complaint”) filed in the Litigation; and the Court having read
3 and considered the Stipulation, the proposed “Notice of Pendency and Proposed
4 Settlement of Class Action” (“Notice”), the proposed “Summary Notice of
5 Pendency and Proposed Class Action Settlement” (“Summary Notice”), the
6 proposed Plan of Allocation of the Net Settlement Fund among the Settlement
7 Class, the proposed form of the Proof of Claim and Release (“Proof of Claim”),
8 the proposed form of Order and Final Judgment, and submissions made relating
9 thereto, and finding that substantial and sufficient grounds exist for entering this
10 Order;
11

12 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:
13

- 14 1. Capitalized terms used herein have the meanings defined in the
15 Stipulation.
- 16 2. Pursuant to this Court’s Order, this Litigation is certified as a class
17 action for settlement purposes only on behalf of all Persons (including, without
18 limitation, their beneficiaries) who purchased the common stock of NetSol
19 between October 24, 2013 and November 8, 2013, inclusive. Excluded from the
20 Settlement Class are (i) persons who suffered no compensable losses, *e.g.*, those
21 who bought NetSol common stock during the Class Period but sold prior to any
22 alleged corrective disclosure; (ii) Opt-Outs (*i.e.*, those persons who file valid
23 and timely requests for exclusion in accordance with this Order); and (iii)
24 Defendants and any entity in which the Defendants have a controlling interest,
25 and the officers, directors, affiliates, legal representatives, immediate family
26
27
28

1 members, heirs, successors, subsidiaries and/or assigns of any such individual
2 or entity in their capacity as such.

3 3. A hearing (the “Final Settlement Hearing”) pursuant to Federal
4 Rule of Civil Procedure 23(e) is hereby scheduled to be held before the Court
5 on June 27, 2016 at 1:30 p.m. for the following purposes:
6

- 7 a. to finally determine whether the Litigation satisfies the
8 applicable prerequisites for class action treatment under
9 Federal Rules of Civil Procedure 23(a) and (b);
- 10 b. to finally determine whether the Settlement is fair,
11 reasonable, and adequate, and should be approved by the
12 Court;
- 13 c. to finally determine whether the Final Judgment and Order
14 as provided under the Stipulation should be entered,
15 dismissing the Complaint on the merits and with prejudice,
16 and to determine whether the release by the Class of the
17 Released Parties as set forth in the Stipulation, should be
18 ordered, along with a permanent injunction barring efforts to
19 bring any claims extinguished by the release;
20
- 21 d. to finally determine whether the proposed Plan of Allocation
22 for the distribution of the Net Settlement Fund is fair and
23 reasonable and should be approved by the Court;
- 24 e. to consider the application of Plaintiffs’ Counsel for an
25 award of attorneys’ fees and expenses and a case
26 contribution award to Plaintiff;
27
28

- 1 f. to consider any Class Members' objections to the
2 Settlement, whether submitted previously in writing or
3 presented orally at the Final Settlement Hearing by Class
4 Members (or by counsel on their behalf); and
5
6 g. to rule upon such other matters as the Court may deem
7 appropriate.

8 4. The Court reserves the right to adjourn the Final Settlement
9 Hearing to a later date and to approve the Settlement with or without
10 modification and with or without further notice of any kind. The Court further
11 reserves the right to enter its Final Judgment and Order approving the
12 Settlement and dismissing the Complaint, on the merits and with prejudice,
13 regardless of whether it has approved the Plan of Allocation or awarded
14 attorneys' fees and expenses or a case contribution award.
15

16 5. The Court reserves the right to approve the Settlement with such
17 modifications as may be agreed upon or consented to by the Settling Parties and
18 without further notice to the Class where to do so would not impair the
19 Settlement Class members' rights in a manner inconsistent with Rule 23 and
20 due process of law.
21

22 6. Subject to the qualifications noted in the Court's Minute Order
23 dated March 28, 2016, the Court approves the form, substance and requirements
24 of (a) the Notice; (b) the Summary Notice; and (c) the Proof of Claim, all of
25 which are exhibits to the Stipulation.

26 7. Lead Counsel has the authority to enter into the Stipulation on
27 behalf of the Settlement Class and is authorized to act on behalf of the
28

1 Settlement Class with respect to all acts or consents required by or that may be
2 given pursuant to the Stipulation or such other acts that are reasonably
3 necessary to consummate the Settlement.

4 8. Strategic Claims Services is approved as the Claims Administrator
5 for the Settlement.

6 9. Lead Counsel, through the Claims Administrator, shall cause the
7 Notice and the Proof of Claim, substantially in the forms annexed hereto, to be
8 mailed, by first class mail, postage prepaid, within twenty-one (21) calendar
9 days of the entry of this Order, to all Settlement Class members who can be
10 identified with reasonable effort by the Claims Administrator.

11 10. Lead Counsel is authorized to disburse up to \$75,000 (Seventy
12 Five Thousand Dollars) for Administrative Costs (as defined in the Stipulation),
13 to be used for reasonable out-of-pocket costs in connection with providing
14 notice of the Settlement to the Settlement Class and for other reasonable out-of-
15 pocket administrative expenses.

16 11. NetSol and any and all issuers, securities firms or transfer agents
17 holding transfer records which indicate the legal owners of NetSol common
18 stock currently or during the Class Period are hereby ordered to produce such
19 transfer records in a usable electronic format to Lead Counsel or the Claims
20 Administrator within fourteen (14) calendar days of receipt of a copy of this
21 Order.

22 12. Lead Counsel, through the Claims Administrator, shall also make
23 all reasonable efforts to give notice to nominee owners such as brokerage firms
24 and other persons or entities who purchased NetSol common stock during the
25

1 Class Period. Such nominee purchasers are directed to forward copies of the
2 Notice and Proof of Claim to their beneficial owners or to provide the Claims
3 Administrator with lists of the names and addresses of the beneficial owners and
4 the Claims Administrator is ordered to send the Notice and Proof of Claim
5 promptly to such beneficial owners. Additional copies of the Notice shall be
6 made available to any record holder requesting same for the purpose of
7 distribution to beneficial owners, and such record holders shall be reimbursed
8 from the Settlement Fund, upon receipt by the Claims Administrator of proper
9 documentation, for the reasonable expense of sending the Notice and Proof of
10 Claim to beneficial owners.
11

12 13. Lead Counsel shall, at or before the Final Settlement Hearing,
13 serve upon NetSol's Counsel, and file with the Court, proof of mailing of the
14 Notice and Proof of Claim, both to the Settlement Class and to nominees.
15

16 14. Lead Counsel, through the Claims Administrator, shall cause the
17 Summary Notice to be published electronically once on the *Globe Newswire*
18 and in a print publication reasonably calculated to reach the Settlement Class
19 within thirty-five (35) calendar days after the entry of this Order. Lead Counsel
20 shall, at or before the Final Settlement Hearing, serve upon NetSol's Counsel
21 and file with the Court proof of publication of the Summary Notice.
22

23 15. In order to be entitled to participate in recovery from the Net
24 Settlement Fund after the Effective Date, each Settlement Class member shall
25 take the following action and be subject to the following conditions:

- 26 a. A properly completed and executed Proof of Claim must be
27 submitted to the Claims Administrator, at the Post Office
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Box indicated in the Notice, postmarked no later than June 13, 2016. Such deadline may be further extended by Order of the Court. Each Proof of Claim shall be deemed to have been submitted when legibly postmarked (if properly addressed and mailed by first-class mail) provided such Proof of Claim is actually received before the filing of a motion for an Order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received by the Administrator at the address designated in the Notice.

- b. The Proof of Claim submitted by each Settlement Class member must satisfy the following conditions: (i) it must be properly filled out, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator or Lead Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his current

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

authority to act on behalf of the Settlement Class member must be provided with the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

c. Once the Claims Administrator has considered a timely-submitted Proof of Claim, it shall determine whether such claim is valid, deficient or rejected. For each claim determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter or rejection letter as appropriate, describing the basis on which the claim was so determined. Persons who timely submit a Proof of Claim that is deficient or otherwise rejected shall be afforded a reasonable time (at least seven (7) calendar days) to cure such deficiency if it shall appear that such deficiency may be cured.

d. For the filing of and all determinations concerning their Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the Court.

16. All Settlement Class members who do not submit valid and timely Proof of Claim will be forever barred from receiving any payments from the Net Settlement Fund, but will in all other respects be subject to and bound by the provisions of the Stipulation and the Final Judgment and Order, if entered.

1 17. Settlement Class members shall be bound by all determinations and
2 judgments in the Litigation, whether favorable or unfavorable, unless such
3 persons request exclusion from the Class in a timely and proper manner, as
4 hereinafter provided. A Settlement Class member wishing to make such request
5 shall mail it, in written form, by first class mail, postage prepaid, or otherwise
6 deliver it, so that it is received no later than June 13, 2016, to the addresses
7 listed in the Notice. Such request for exclusion shall clearly indicate the name
8 and address, phone number, and email address (if any) of the person seeking
9 exclusion, state that the sender requests to be excluded from the Class, and must
10 be signed by such person. Such persons requesting exclusion are also required
11 to specify all their purchases and sales of NetSol common stock during the
12 Class Period, including the date, number of shares and price of the shares
13 purchased or sold. The request for exclusion shall not be effective unless it
14 provides the required information, is legible, and is made within the time stated
15 above, or the exclusion is otherwise accepted by the Court. Lead Counsel may
16 contact any person or entity filing a request for exclusion, or their attorney if
17 one is designated, to discuss the exclusion.

20 18. Settlement Class members requesting exclusion from the Class
21 shall not be entitled to receive any payment out of the Net Settlement Fund.

22 19. The Court will consider comments and/or objections to the
23 Settlement, the Plan of Allocation, or the application for attorneys' fees and
24 expenses and case contribution award only if such comments or objections and
25 any supporting papers are filed no later than June 6, 2016. Such comments
26
27
28

1 and/or objections are to be served upon each of the following no later than June
2 6, 2016:

3 **LEAD COUNSEL:**

4 Thomas J. McKenna

5 **GAINEY McKENNA & EGGLESTON**

6 440 Park Avenue South, 5th Floor

7 New York, New York 10016

8 Tel: (212) 983-1300

9 Fax: (212) 983-0383

10 Email: tjmckenna@gme-law.com

11 **COUNSEL FOR DEFENDANTS:**

12 Sean T. Prosser

13 **PERKINS COIE LLP**

14 11988 El Camino Real, Suite 350

15 San Diego, CA 92130

16 Tel: (858) 720-5700

17 Fax: (858) 720-5799

18 Email: sprosser@perkinscoie.com

19
20
21
22 20. Attendance at the Final Settlement Hearing is not necessary but
23 persons wishing to be heard orally in opposition to the Settlement, the Plan of
24 Allocation, and/or the application for attorneys' fees and expenses or case
25 contribution award are required to indicate in their written objection (or in a
26 separate writing that is submitted in accordance with the deadline) that they
27 intend to appear at the Final Settlement Hearing and identify any witnesses they
28

1 may call to testify or exhibits they intend to introduce into evidence at the Final
2 Settlement Hearing. Settlement Class members do not need to appear at the
3 Final Settlement Hearing or take any other action to indicate their approval.
4 Any Settlement Class member who does not object in the manner prescribed
5 above shall be deemed to have waived all such objections and shall forever be
6 foreclosed from making any objection to the fairness, adequacy or
7 reasonableness of the Settlement, the Final Judgment and Order to be entered
8 approving the Settlement, the Plan of Allocation, or the application for an award
9 of attorneys' fees and expenses and a case contribution award.
10

11 21. The Court reserves the right to adjourn the Final Settlement
12 Hearing without any further notice other than entry of an Order on the Court's
13 docket, and to approve the Settlement without further notice to the Settlement
14 Class.
15

16 22. All papers in support of the Settlement, the Plan of Allocation and
17 any application for attorneys' fees or expenses or a case contribution award
18 shall be filed and served no later than May 23, 2016.
19

20 23. Any submissions filed in response to any objections or in further
21 support of the Settlement, the Plan of Allocation and any application for
22 attorneys' fees or expenses or a case contribution award shall be filed no later
23 than June 13, 2016.
24


25 24. Neither Defendants nor their related parties shall have any
26 responsibility for the Plan of Allocation or any application for attorneys' fees or
27 expenses submitted by Plaintiff's counsel.
28

25. Neither the Stipulation, nor any of its terms or provisions, nor the

1 negotiations or proceedings connected with it, shall be construed as an
2 admission or concession by Defendants of the truth of any allegations in the
3 Complaint, or of any liability, fault, or wrongdoing of any kind.

4 26. In the event the Settlement is not consummated pursuant to its
5 terms, the Stipulation, except as otherwise provided therein, including any
6 amendment(s) thereto, and this Order, shall be null and void, of no further force
7 or effect, and without prejudice to any Settling Party, and may not be introduced
8 as evidence or referred to in any action or proceedings by any person or entity,
9 and each party shall be restored to his, her or its respective position as it existed
10 before the execution of the Stipulation, pursuant to the terms of the Stipulation.
11
12

13
14
15 Dated: March 28, 2016



Percy Anderson
UNITED STATES DISTRICT JUDGE