

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT PATRON, individually and on behalf
of all others similarly situated,

Plaintiff,

KEVIN M. DOTTS and KEITH SOLDAN,

Defendants.

Case No. 1:19-cv-05362-PGG

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Stipulation”), dated June 8, 2020, is entered into among Lead Plaintiff Robert Patron (“Lead Plaintiff”) (on behalf of himself and each of the other Settlement Class Members), and Defendants Kevin Dotts (“Dotts”) and Keith Soldan (“Soldan”) (the “Defendants”), and former defendant Matthew Rosen (“Rosen”) (collectively with Defendants, the “Settling Defendants”), through their respective counsel of record relating to the above-captioned litigation. This Stipulation is intended to fully, finally and forever resolve, discharge and settle all claims asserted in the Action against Settling Defendants subject to the approval of the United States District Court for the Southern District of New York (the “Court”) as set forth herein. Capitalized terms have the meaning given each such term in Section II.B hereof.

I. THE LITIGATION

A. Procedural History of the Litigation

On June 7, 2019, Plaintiff Grand Slam Capital Master Fund, Ltd. filed a securities fraud class action complaint (Dkt. No. 1) in the United States District Court for the Southern District of

New York against the Settling Defendants¹ asserting claims under Sections §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) & 78t(a), and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission (“SEC”), 17 C.F.R. §240.10b-5, alleging that the Settling Defendants made material misstatements and omissions during the Settlement Class Period.

By Order dated July 23, 2019 (Dkt. No. 27), Robert Patron was appointed Lead Plaintiff and The Rosen Law Firm, P.A. was appointed Lead Counsel. On December 6, 2019, Lead Plaintiff filed the First Amended Complaint (Dkt. No. 40) against the Defendants, asserting claims under Sections §§10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5 alleging that the Defendants made material misstatements and omissions during the Settlement Class Period.

On January 21, 2020, the Defendants filed their motion to dismiss the Action (Dkt. No. 44).

On March 10, 2020, counsel for Lead Plaintiff, Defendants, and Defendants’ insurance carriers participated in a full-day mediation before Jed Melnick, Esq. of Judicial Arbitration and Mediation Services (“JAMS”). After subsequent continued negotiations, the Settling Parties reached an agreement to settle the Action, which they memorialized in a Term Sheet dated March 31, 2020 (the “Term Sheet”).

B. Lead Plaintiff’s Assessment of the Claims and Benefits of Settlement

Lead Plaintiff believes that the claims asserted in the Action have merit and support his claims. Additionally, Lead Counsel is familiar with the applicable law underlying the alleged claims and believes that any defenses Defendants raise can be refuted and overcome.

Nonetheless, Lead Plaintiff and Lead Counsel recognize the expense and length of any further prosecution of the Action through completion of discovery, trial, and appeals. Lead

¹ Rosen was named as a defendant in the original Complaint, but was not named as a defendant in the Amended Complaint filed on December 6, 2019.

Plaintiff and Lead Counsel are also mindful of inherent problems of proof, possible defenses to the violations asserted in the litigation, and practical impediments to judgment enforcement. Lead Plaintiff and Lead Counsel, based upon their thorough evaluation, believe that the Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class Members and that it confers substantial benefits upon the Settlement Class Members. Lead Plaintiff and Lead Counsel shall use their best efforts to obtain final Court approval of this Stipulation and the Settlement contained herein.

C. Settling Defendants' Denials of Wrongdoing

The Settling Defendants have denied and continue to deny, *inter alia*, that they engaged in any wrongdoing of any kind, including, without limitations, that they violated or breached any law, regulation or duty owed to Lead Plaintiff or the Settlement Class, that their public statements were misleading; that they failed to disclose any material information to investors; that they acted in any deceitful manner; that any investment losses sustained by Lead Plaintiff and the Settlement Class were caused by Settling Defendants' alleged misconduct, and that they have liability as a result of any and all allegations made in the Action.

Nonetheless, taking into account the uncertainty and risks inherent in any litigation, especially in complex cases such as this one, the Settling Defendants have concluded that further litigation of the Action would be protracted, burdensome, and expensive, and that it is desirable and beneficial that the Released Claims be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Stipulation.

II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

A. Introduction

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Lead Plaintiff, the Settlement Class, and each of them, and the Settling Defendants, and each of

them, by and through their respective undersigned counsel or attorneys of record that, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, the Action and the Released Claims shall be finally and fully compromised, settled and released, and the Action shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of this Stipulation.

B. Definitions

As used in this Stipulation, the following terms have the meanings specified below:

1.0 “Action” means case *Patron v. Dotts and Soldan*, Case No. 1:19-cv-05362-PGG (originally captioned as *Grand Slam Master Fund, Ltd. v. Rosen*), pending in the United States District Court for the Southern District of New York, and including any and all complaints filed in this Action.

1.1 “Authorized Claimant” means a Settlement Class Member who submits a timely and valid Proof of Claim Form in accordance with the requirements established by the Court and whose claim for recovery has been allowed pursuant to the terms of this Stipulation.

1.2 “CAFA Notice” means the proper notice of this Settlement that counsel for the Settling Defendants shall serve upon the United States Attorney General and each State Attorney General, in accordance with the Class Action Fairness Act (“CAFA”), no later than ten (10) calendar days after this Stipulation is filed with the Court. Simultaneously, the Settling Defendants shall provide a copy of such notice as well as proof of service of such notice to Lead Counsel.

1.3 “Claimant” means a Settlement Class Member who submits a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.4 “Claims Administrator” means Strategic Claims Services (“SCS”), the firm retained by Lead Counsel to administer the Settlement, including sending a mailed Notice to Settlement Class Members in the form of Exhibit A-4 hereto, or emailing Notice to Settlement Class Members, arranging for publication of Notice in the form of Exhibit A-3 hereto, processing claims, and performing such other administrative functions as are required under this Stipulation.

1.5 “Court” means the United States District Court for the Southern District of New York.

1.6 “Defendant Claims” means any and all counterclaims and bases for relief, whether known or Unknown Claims, that the Settling Defendants, the Released Parties, or any of their current or former officers and directors, could have raised in the Action against Lead Plaintiff, Plaintiff’s Counsel, or any Settlement Class Member, whether arising under state, federal, common, or foreign law, including but not limited to those related to or arising from the commencement and prosecution of the Action (except for claims to enforce the Settlement) and claims for violations of Fed. R. Civ. P. 11 or any other fee or cost-shifting claim.

1.7 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 8.0 of this Stipulation have occurred and/or been met.

1.8 “Escrow Account” means an interest-bearing escrow account established by the Escrow Agent. The Escrow Account shall be managed by the Escrow Agent, subject to the Court’s supervisory authority, for the benefit of Lead Plaintiff and the Settlement Class in accordance with the terms of this Stipulation and any order of the Court.

1.9 “Escrow Agent” means Strategic Claims Services or its appointed agents. The Escrow Agent shall perform the duties as set forth in this Stipulation and any order of the Court.

1.10 “Exchange Act” means the Securities Exchange Act of 1934, as amended.

1.11 “Fee and Expense Application” shall have the definition as set forth herein in § II.H., *infra*.

1.12 “Fee and Expense Award” shall have the definition as set forth herein in § II.H., *infra*.

1.13 “Final,” with respect to the Settlement, means that (i) the Court has entered an order finally approving the Settlement in all material respects, including but not limited to certifying a Settlement Class for settlement purposes only, approving the scope of the Releases, and entering the Judgment; and (ii) the time to appeal has expired or the Judgment has been affirmed in all respects in any appeal or review and is no longer subject to further appeal or review. However, the Settlement and the degree to which it is Final are expressly not conditioned upon the Court’s approval of a Fee and Expense Award to Lead Counsel or compensatory award to Plaintiffs or any appeals solely related thereto.

1.14 “Judgment” means the Order and Final Judgment to be entered by the Court approving the Settlement, certifying the Settlement Class for settlement purposes only, approving the release of the Released Claims, and dismissing the Released Claims with prejudice and without costs to any party, substantially in the form attached hereto as Exhibit B or in similar form adopted by the Court.

1.15 “Lead Counsel” means The Rosen Law Firm, P.A.

1.16 “Net Settlement Fund” means the Settlement Fund less any Taxes and Tax Expenses, any Fee and Expense Award to Lead Counsel, any compensatory award to Lead Plaintiff or any Settlement Class Member approved by the Court, and Notice & Administration Costs.

1.17 “Notice” means collectively, the Notice of Pendency and Proposed Settlement of Class Action (“Long Notice”), the Summary Notice of Pendency and Proposed Class Action Settlement (“Summary Notice”), and the Postcard Notice, which are to be made available to Settlement Class Members substantially in the forms attached hereto as Exhibits A-1, A-3, and A-4 on the Claims Administrator’s website and/or mailed or emailed to Settlement Class Members.

1.18 “Notice & Administration Costs” means the costs and expenses reasonably and actually incurred by, and the reasonable fees charged by, the Claims Administrator in connection with notice dissemination and claims administration upon presentation of customary invoices therefor, which invoices have been approved by Lead Counsel, including, without limitation: the cost of identifying and locating members of the Settlement Class; mailing Postcard Notice and publishing the Summary Notice (such amounts shall include, without limitation, the actual costs of publication in national newswires, printing and mailing the Postcard Notice, and reimbursement to nominee owners for forwarding notice to their beneficial owners), soliciting claims from Settlement Class Members, assisting with the filing of claims, processing Proof of Claim and Release Forms, administering and distributing the Net Settlement Fund to Authorized Claimants, and paying escrow fees and costs, if any.

1.19 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their heirs, successors-in-interest, or assigns.

1.20 “Plaintiff’s Counsel” means Lead Counsel and Wolf Haldenstein Adler Freeman & Herz LLP who, at the direction and under the supervision of Lead Counsel, performed services on behalf of the Settlement Class in the Action.

1.21 “Plan of Allocation” means a plan or formula for allocating the Net Settlement Fund to Authorized Claimants, to be designed by Lead Counsel in its sole discretion, subject to the approval of the Court. Any Plan of Allocation is not part of this Stipulation and Settling Defendants shall have no responsibility or liability with respect thereto.

1.22 “Preliminary Approval Order” means an order by the Court, as set forth as Exhibit A hereto, certifying the Settlement Class for settlement purposes only, preliminarily approving the Settlement, and authorizing Notice thereof to the Settlement Class and related matters.

1.23 “Postcard Notice” means the postcard notice to be sent to Settlement Class Members substantially in the form attached hereto as Exhibit A-4, and which shall contain information relating to, among other things, how to access the Long Notice, this Stipulation, and file a Proof of Claim.

1.24 “Proof of Claim” means the Proof of Claim and Release Form to be submitted by Claimants, substantially in the form attached as Exhibit A-2.

1.25 “Summary Notice” means the Summary Notice of Pendency and Proposed Settlement of Class Action to be published on a national business newswire, substantially in the form attached as Exhibit A-3.

1.26 “Released Claims” means the Settlement Class Claims and the Defendant Claims.

1.27 “Released Parties” means Settling Defendants Dotts, Soldan, and former Defendant Rosen; and Fusion Connect, Inc.’s (“Fusion”) insurance carrier(s).

1.28 “Releases” means the release of Released Claims against Released Parties pursuant to ¶¶ 5.0–5.2.

1.29 “Releasing Parties” means the Lead Plaintiff and the Settlement Class Members.

1.30 “Settlement” means the settlement contemplated by this Stipulation.

1.31 “Settlement Account” means an interest-bearing escrow account established by the Escrow Agent to receive the Settlement Amount.

1.32 “Settlement Amount” means the Settlement consideration being paid by the insurance carrier for the Settling Defendants in the principal amount of eight hundred thousand U.S. dollars (U.S. \$800,000).

1.33 “Settlement Class” means, for purposes of this Settlement only, all persons or entities who purchased Fusion common stock during the Settlement Class Period. Excluded from the Settlement Class are the Settling Defendants, any officer or director of Fusion or Birch Communications Holdings, Inc. during the Settlement Class Period, and the successors, heirs, and members of immediate families, assigns, and any entity in which any of the Settling Defendants, or any person excluded under this subsection, has or had a majority ownership interest at any time. Also excluded from the Settlement Class are those Persons who (i) suffered no compensable losses, (ii) submit a request for exclusion from the Settlement Class in such form and manner, and within such time, as the Court shall prescribe.

1.34 “Settlement Class Claims” means any and all claims, rights, demands, suits, liabilities, or causes of action, in law or in equity, accrued or unaccrued, fixed or contingent, direct, individual or representative, of every nature and description whatsoever, under federal, state, local, foreign law, or any other law, rule, or regulation, both known and Unknown Claims alleged or which could have been alleged by Lead Plaintiff or any other Settlement Class

Member in the Action against the Settling Defendants or against any other of the Released Parties, or in any court of competent jurisdiction or any other adjudicatory tribunal, that arise out of, are based upon, in any way related to, or are in consequence of any of the facts, allegations, transactions, matters, events, disclosures, non-disclosures, occurrences, representations, statements, acts, omissions, or failures to act that were involved, set forth, or referred to in any of the complaints filed in the Action, or that otherwise would have been barred by res judicata had the Action been fully litigated to a final judgment; *and* (ii) relate to the purchase or sale of Fusion common stock during the Settlement Class Period. Provided, however, that Settlement Class Claims do not include (i) any claims relating to the enforcement of the Settlement, or (ii) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court.

1.35 “Settlement Class Member” means a person or entity that is a member of the Settlement Class that does not exclude himself, herself or itself by filing a request for exclusion in accordance with the requirements set forth in the Notice. “Settlement Class Members” means all such Persons.

1.36 “Settlement Class Period” means the period between May 11, 2018 and April 2, 2019, both dates inclusive.

1.37 “Settlement Distribution Order” means the Order approving the Claims Administrators’ administrative determinations concerning the acceptance and rejection of the claims submitted by potential Settlement Class Members; approving of any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator; and directing the distribution of the Net Settlement Fund to Authorized Claimants.

1.38 “Settlement Fairness Hearing” means a hearing to be held before the Court to determine whether the proposed Settlement of the Action on the terms and conditions provided for in this Stipulation is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; to determine whether the Judgment as provided in the Stipulation should be entered; to determine whether the proposed Plan of Allocation should be approved; to determine any amount of fees, costs and expenses that should be awarded to Lead Counsel (to be distributed by Lead Counsel, in Lead Counsel’s discretion, to any other counsel who contributed to the outcome obtained by Lead Plaintiff for the Settlement Class) for their efforts and any compensatory awards that should be awarded to Lead Plaintiff for his service to the Settlement Class; to hear any objections by Settlement Class Members to this Stipulation, Plan of Allocation, or any award of fees and expenses to Lead Counsel or compensatory award to Lead Plaintiff; and to consider such other matters as the Court may deem appropriate.

1.39 “Settlement Fund” means the Settlement Amount before any of the expenditures authorized herein, the payment of which will reduce it as described in the Net Settlement Fund definition, *supra*.

1.40 “Settling Defendants” means Defendants Dotts, Soldan, and former defendant Rosen.

1.41 “Settling Parties” means Lead Plaintiff, on behalf of himself and the Settlement Class Members, and the Settling Defendants.

1.42 “Taxes” and “Tax Expenses” means: (1) all federal, state, and/or local taxes of any kind on any income earned by the Settlement Fund, together with any interest, penalties, or additions to tax imposed with respect to them; and (ii) the reasonable and necessary costs and expenses incurred in connection with the implementation of ¶ 2.8 of this Stipulation, including,

without limitation, the reasonable and necessary costs and expenses of tax attorneys and accountants.

1.43 “Unknown Claims” means and includes (i) any and all Settlement Class Claims that Lead Plaintiff or any Settlement Class Member do not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement; and (ii) any and all Defendant Claims that any Settling Defendant or Released Party does not know or suspect to exist in his, her, or its favor, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement. With respect to the Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Lead Plaintiff and the Settling Defendants shall expressly waive, and each Settlement Class Member and Released Party shall be deemed to have waived, and by operation of the Judgment shall have expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or principle of common law, that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties acknowledge, and the Settlement Class Members and the Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Settlement Class Claims and Defendant Claims was separately bargained for and a material element of the Settlement.

C. The Settlement

a. Settlement Amount

2.0 In consideration of the full and final settlement of the Released Claims, Fusion's insurance carriers shall pay or cause to be paid the Settlement Amount to the Escrow Agent for deposit into the Settlement Fund within twenty-one (21) business days after the later of (i) the Court granting Preliminary Approval of the Settlement, and (ii) the receipt by Fusion's counsel of complete payment instructions and a Form W-9 providing the tax identification number for the Escrow Account. The Settling Defendants have represented that Fusion has a contract in place with its insurance carrier(s) obligating such carrier(s) to pay the full Settlement Amount as required hereunder. As such, in no case shall either the Settling Defendants or the Released Parties be responsible for payment of any portion of the Settlement Amount.

2.1 The Settling Defendants' and Released Parties' sole financial obligation to Lead Plaintiff, the Settlement Class Members and Plaintiff's Counsel under this Stipulation shall be as set forth in § 2.0, and under no circumstances shall the Settling Defendants, any Released Parties or Fusion's insurance carriers have any obligation to make any other or greater payment to them for any purpose pursuant to the Settlement. All payments made to Authorized Claimants pursuant to the Plan of Allocation as approved by the Court, the Fee and Expense Award by the Court to Lead Counsel for distribution by Lead Counsel in its discretion among itself and Plaintiff's Counsel involved in the Action, and any compensatory award to Lead Plaintiff as awarded by the Court, and all administrative and other approved expenses of the Settlement, including Taxes and Tax Expenses, shall be paid from the Settlement Fund.

b. The Escrow Agent

2.2 At the written direction of Lead Counsel, the Settlement Fund shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States

Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation or (b) secured by instruments backed by the full faith and credit of the United States Government. At Lead Counsel's direction, the Escrow Agent shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Settling Defendants and Released Parties shall not bear any responsibility for or liability related to the investment of the Settlement Fund by the Escrow Agent.

c. Handling and Disbursement of Funds by the Escrow Agent

2.3 Subject to further order and/or direction as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class as are consistent with the terms of this Stipulation. The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the written agreement of Settling Defendants' counsel and Lead Counsel.

2.4 No monies will be disbursed from the Settlement Fund until after the Effective Date except as provided in ¶¶ 2.6–2.7 regarding Notice & Administration Costs, ¶ 2.8 regarding Taxes, and ¶ 7.1 regarding Attorneys' Fees and Expenses.

2.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned to the Persons who deposited such funds pursuant to this Stipulation and/or further order of the Court. Once the Settlement and Judgment become Final, there shall be no reversion whatsoever of any of the Settlement Amount to any of the Settling Defendants or their insurance carriers.

d. Notice & Administration Costs

2.6 At any time after the Court grants preliminary approval of the Settlement, the Escrow Agent may, without further approval from the Court or the Settling Defendants, disburse at the direction of Lead Counsel up to one hundred fifty thousand dollars (\$150,000.00) from the Settlement Fund prior to the Effective Date to pay Notice and Administration Costs. The Escrow Agent shall maintain a record of all funds disbursed. Notice and Administration Costs in excess of \$150,000.00 shall be disbursed from the Settlement Fund only with prior approval from the Court.

2.7 Lead Plaintiff and Plaintiff's Counsel, Settling Defendants and Settling Defendants' counsel, and the Released Parties shall not bear any liability for Notice and Administration Costs.

e. Taxes

2.8 The following provisions shall govern the treatment of Taxes and Tax Expenses:

(a) The Escrow Agent will, to the extent possible, agree to treat the Settlement Fund as a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 2.8, including the "relation-back election" (as defined in Treasury Regulation § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in ¶ 2.8(a)) shall be consistent with this ¶ 2.8 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties on the income earned) shall be paid out of the Settlement Fund.

(c) All Taxes and Tax Expenses relating to the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

(d) Taxes and Tax Expenses shall be treated as and considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court.

(e) Settling Defendants, Settling Defendants' counsel, the Released Parties, Lead Plaintiff, the Settlement Class Members, and Plaintiff's Counsel shall have no liability or responsibility for Taxes and Tax Expenses. The Escrow Agent shall indemnify and hold each of the Settling Defendants, Settling Defendants' counsel, the Released Parties, Lead Plaintiff, the Settlement Class Members, and Plaintiff's Counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification).

(f) The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay expenses relating to the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(l)(2)). Neither Settling Defendants, Settling Defendants' counsel, the Released Parties, Lead

Plaintiff, the Settlement Class Members nor Plaintiff's Counsel are responsible therefor, nor shall they have any liability with respect thereto.

(g) The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 2.8. Upon written request, the Settling Defendants agree to promptly provide the Escrow Agent with the statement described in Treasury Regulation § 1.468B-3(e).

f. Termination of Settlement

2.9 The Defendants shall, acting collectively, have the right to terminate the Settlement and this Stipulation, notwithstanding preliminary approval that may be provided by the Court, by providing written notice of their election to do so to all other Settling Parties within ten (10) business days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect without leave to amend and resubmit; (b) the Court's refusal to approve this Stipulation or any material part thereof without leave to amend and resubmit; (c) the Court's declining to enter the Judgment in any material respect without leave to amend and resubmit; or (e) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. Any decision with respect to any Plan of Allocation, Fee and Expense Award to Lead Counsel, or compensatory award to Lead Plaintiff shall not be considered material to this Stipulation and shall not be grounds for termination.

2.10 Lead Plaintiff shall have the right to terminate the Settlement and this Stipulation, notwithstanding preliminary approval that may be provided by the Court, by providing written notice of their election to do so to all other Settling Parties within ten (10) business days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect without leave to amend and resubmit; (b) the Court's refusal to approve this Stipulation or any material

part thereof without leave to amend and resubmit; (c) the Court's declining to enter the Judgment in any material respect as to Defendants without leave to amend and resubmit;; or (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. Any decision with respect to any Plan of Allocation, Fee and Expense Award, or compensatory award shall not be considered material to this Stipulation and shall not be grounds for termination.

2.11 If the Settlement Amount is not paid into the Escrow Account in accordance with ¶ 2.0 of this Stipulation, then Lead Plaintiff, on behalf of the Settlement Class, and not the Settling Defendants, shall have the right to: (a) terminate the Settlement; or (b) reduce the Settlement Amount to a judgment against the Settling Defendants and enforce the judgment against Defendants, but only if (a) Lead Counsel has first notified Settling Defendants' counsel in writing of Lead Plaintiff's intent to terminate or pursue a judgment pursuant to this paragraph, and (b) the entire Settlement Amount is not deposited in the Escrow Account within ten (10) business days after Lead Counsel has provided such written notice.

2.12 If, before the Settlement Fairness Hearing, any persons who otherwise would be members of the Settlement Class have timely filed for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto, and such persons in the aggregate have purchased a number of securities during the Settlement Class Period in an amount greater than the sum specified in a separate supplemental agreement ("Supplemental Agreement") between the Settling Parties, the Settling Defendants, acting collectively and in their sole discretion, shall have the option to terminate this Stipulation in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement shall not be filed with the Court and its terms shall not be disclosed in any other

manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until a dispute arises among the Settling Parties concerning its interpretation or application. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Settling Parties will undertake to have the Supplemental Agreement submitted to the Court in camera.

2.13 If (i) the Settling Defendants exercise their right to terminate the Settlement as provided in this Stipulation; or (ii) Lead Plaintiff exercise his right to terminate this Settlement as provided in this Stipulation, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated without prejudice, and this Stipulation shall be null and void and shall have no further force or effect (except for ¶¶ 2.9, 2.10, 2.11, 2.12, 8.2, 8.3, 8.4, 9.1, 9.16);

(b) The Settlement Amount including any interest accrued thereon, less expenses actually incurred or due and owing for the Notice & Administration Costs pursuant to ¶ 2.6 above, shall be refunded by check or wire transfer in accordance with the instructions to be provided by counsel for the Settling Defendants; and

(c) The Settling Parties shall revert to their respective positions in the Action prior to the execution of the Term Sheet, the execution of the Stipulation, and the entry of any orders pursuant to the Stipulation.

D. Class Certification

3.0 For the sole purpose of this Settlement, the Settling Parties hereby stipulate, agree, and consent to: (i) certification of the Action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3); (b) appointment of Lead Plaintiff as class representative; and (c) appointment of Lead Counsel as class counsel pursuant to Fed. R. Civ. P. 23(g). Following execution of this

Stipulation, Lead Plaintiff, with consent of the Settling Defendants, shall apply to the Court for entry of the Preliminary Approval Order substantially in the form attached as Exhibit A hereto, which will certify the Action to proceed as a class action for settlement purposes only. The certification of the Settlement Class shall be binding only with respect to the Settlement and only if the Judgment becomes Final.

E. Preliminary Approval Order

4.0 Within fourteen (14) calendar days after execution of this Stipulation, Lead Counsel and Settling Defendants' counsel shall jointly submit this Stipulation together with its Exhibits to the Court and shall request entry of a Preliminary Approval Order (substantially in the form of Exhibit A) that will, inter alia, (1) grant preliminary approval to the Settlement; (2) certify the Settlement Class for settlement purposes only; (3) authorize dissemination of notice to the Settlement Class substantially in the form of Exhibits A-1, A-3, and A-4 hereto, along with provision of a Proof of Claim and Release Form substantially in the form of Exhibit A-2; and (4) schedule the Settlement Fairness Hearing.

4.1 The Notice shall describe the Settlement; the proposed Plan of Allocation; the requests for a Fee and Expense Award for Lead Counsel, for distribution by Lead Counsel in its discretion among itself and other Plaintiffs' Counsel that were involved in the Action, and a compensatory award to Lead Plaintiff; the date of the Settlement Fairness Hearing; Settlement Class Members' rights to opt out, object, or otherwise be heard with regard to these matters; and Settlement Class Members' opportunity to file claims upon the Settlement Fund. The Stipulation of Settlement, Notice, Proof of Claim and Release Form, and all papers submitted in support thereof shall be posted on a website to be maintained by the Claims Administrator.

4.2 Within ten (10) business days after the Court enters a Preliminary Approval Order, Settling Defendants shall assist the Claims Administrator in obtaining, from Fusion's

transfer agent, at no cost to Lead Plaintiff or Plaintiff's Counsel, records of ownership sufficient to identify Settlement Class Members. The cost, if any, associated with compiling and/or delivering these records from the transfer agent to the Claims Administrator shall be payable to the transfer agent from the Settlement Fund. Lead Plaintiff and the Claims Administrator agree to maintain this information in confidence and only for the purpose of administering the Settlement.

F. Releases

5.0 The obligations incurred pursuant to this Stipulation shall be in full and final settlement of the Action as to the Settling Defendants, the Released Parties, and any and all Released Claims.

5.1 Upon the Effective Date of the Settlement, Lead Plaintiff and all Settlement Class Members (whether or not they submit a Proof of Claim or share in the Settlement Fund) on behalf of themselves, their personal representatives, heirs, executors, administrators, and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged each and every one of the Settlement Class Claims, and shall be deemed by the Settlement to, and shall be forever enjoined from prosecuting each and every one of the Settlement Class Claims.

5.2 Upon the Effective Date of the Settlement, and as a material condition of the dismissal with prejudice of the Action, the Settling Defendants, on behalf of themselves, their personal representatives, heirs, executors, administrators, successors, and assigns; any of their current or former officers and directors; and all of the Released Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and every one of the Defendant Claims, and shall be deemed by the Settlement to, and shall be forever enjoined from prosecuting each and every one of the Defendant Claims.

G. Administration and Calculation of Claims, Plan of Allocation, and Distribution of the Settlement Fund

6.0 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants. The distribution checks will be drawn upon the Net Settlement Fund.

6.1 Settling Defendants and their insurance carriers shall have no involvement in reviewing or challenging claims and shall have no responsibility or liability for the allocation of the Settlement Fund among the Settlement Class Members or the allocation of any Fee and Expense Award to Lead Counsel or compensatory award to Lead Plaintiff. Any such awards shall be paid solely by the Settlement Fund.

6.2 The Settlement Fund shall be applied as follows: to pay Taxes and Tax Expenses; to pay Notice & Administration Costs; to pay a Fee and Expense Award to Lead Counsel to the extent allowed by the Court; to pay a compensatory award to Lead Plaintiff to the extent allowed by the Court; and, upon Court approval, to distribute the Net Settlement Fund to the Authorized Claimants as allowed by this Stipulation, and the Plan of Allocation.

6.3 After the Effective Date, Lead Counsel, on behalf of Lead Plaintiff, shall apply to the Court, on notice to the Settling Defendants, for the Settlement Fund Distribution Order. The Settlement Fund shall be distributed to the Authorized Claimants, pursuant to the Settlement Fund Distribution Order, only after the Effective Date and after (a) all claims have been processed, (b) all matters with respect to the Fee and Expense Application, the Fee and Expense Award, and any Settlement administration costs and expenses have been resolved by the Court and such resolution is Final; and (c) all costs of the Settlement administration have been paid. The Net Settlement Fund shall be distributed to Authorized Claimants subject to and in accordance with the following:

(i) Each Settlement Class Member claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim, substantially in the form of Exhibit A-2 hereto, supported by such documents as are designated therein, including proof of the transactions claimed and the losses incurred thereon, or such other documents or proof as the Claims Administrator, in its discretion, may deem acceptable;

(ii) Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim and Release Form, or who file a Proof of Claim that is rejected, shall be forever barred from receiving any payments pursuant to this Stipulation and Settlement, but will in all other respects be subject to and bound by the provisions of this Stipulation, the Releases, and the Judgment and will be barred and enjoined from bringing any action against the Released Parties concerning the Released Claims. Notwithstanding the foregoing, Lead Counsel shall have the discretion to accept late-submitted claims for processing by the Claims Administrator but shall not incur any liability for declining to do so.

6.4 Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity of the amount of the Claimant's claim. No discovery shall be allowed of the Claimants, whether on the merits of the Action or Settlement or otherwise, in conjunction with the processing of the Proofs of Claim.

6.5 Payment pursuant to this Stipulation shall be deemed final and conclusive against all Claimants. No Person shall have any claim against Lead Plaintiff, Plaintiff's Counsel, Settling Defendants, Settling Defendants' counsel, the Claims Administrator, the Escrow Agent

or any other agent designated by Lead Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court.

6.6 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation designed by Lead Counsel, to be described in the Notice, and approved by the Court. However, if there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), the Claims Administrator under the supervision of Lead Counsel shall, if feasible, reallocate such balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any balance that still remains in the Net Settlement Fund shall be donated to a not-for-profit organization directed or approved by the Court.

6.7 This is not a claims-made settlement. If all conditions of the Stipulation are satisfied and the Settlement becomes Final, no portion of the Settlement Fund will be returned to the Settling Defendants or their insurance carriers.

6.8 Settling Defendants, their insurance carriers, and their respective legal counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission or determination of Lead Counsel, the Escrow Agent or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the administration, management, investment, allocation or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Settlement Fund; (vi) the payment or

withholding of any Taxes and Tax Expenses or (vii) any failure of Notice or failure to identify Settlement Class Members pursuant to ¶ 4.2 above.

6.9 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation, and any order or proceedings relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect the finality of the Court's Judgment approving this Stipulation and the Settlement set forth therein, or any other orders entered pursuant to this Stipulation.

H. Attorneys' Fees and Expenses

7.0 Lead Counsel may submit an application or applications (a "Fee and Expense Application") for payments to Lead Counsel from the Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of actual costs and expenses, including without limitation the fees and expenses of experts, consultants, and investigators incurred in connection with prosecuting the Action. Lead Counsel reserves the right to make additional applications for fees and expenses incurred, if necessary.

7.1 Any award of attorneys' fees, costs, and expenses approved by the Court ("Fee and Expense Award") shall be payable to Lead Counsel, for distribution by Lead Counsel in its sole discretion among itself and the other Plaintiff's Counsel that were involved in the Action, solely from the Settlement Fund no later than three (3) business days after the entry of the Court's order awarding such fees and expenses, notwithstanding any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to the joint and several obligation of all counsel who receive any award of

attorneys' fees and costs to refund such award to the Settlement Fund, plus interest earned thereon if, as a result of any appeal and/or further proceedings on remand or successful collateral attack, the award is lowered or the Settlement is disapproved by a Final order.

7.2 If the Fee and Expense Award is reduced or reversed on appeal, Lead Counsel and any other Plaintiff's Counsel to whom Lead Counsel has distributed payments shall make all necessary refunds and repayments into the Settlement Fund no later than thirty (30) calendar days after Plaintiff's Counsel's receipt from the Court of notice of any order that reverses or reduces any award of attorneys' fees or expenses, which shall be distributed by the Escrow Agent to the Settlement Class pursuant to the manner directed in the Final order.

7.3 The Fee and Expense Application is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation. Any order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Judgment approving this Stipulation and the Settlement of the Action.

I. Effect of Disapproval, Cancellation or Termination

8.0 The Effective Date shall be conditioned upon the occurrence of all of the following events:

- (a) Approval by the Court of the Settlement, following the period set forth for CAFA Notice, and following notice to the Settlement Class and the Settlement Fairness Hearing, as prescribed by Fed. R. Civ. P. 23;
- (b) The Settlement Amount has been paid into the Settlement Fund; and
- (c) Entry by the Court of the Judgment, which has become Final, or in the event that the Court enters an order of judgment not in all material respects in the form of the Judgment and

none of the Settling Parties elects to terminate this Settlement, the date that such alternative judgment becomes Final.

Any appeal or delay in (i) the approval of the Plan of Allocation, (ii) the consideration of any Fee and Expense Application, or (iii) the granting of a compensatory award to the Lead Plaintiff or any Settlement Class Member, shall not affect, alter, or delay the occurrence of the Effective Date.

8.1 Upon the occurrence of the Effective Date, any and all interest or right of Settling Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation. The Settlement Fund shall be distributed in accordance with ¶ 6.3 hereof.

8.2 Unless otherwise ordered by the Court, in the event this Stipulation is terminated, or is canceled, or fails to become effective for any reason, no later than ten (10) business days after written notification of such event is sent by Settling Defendants' counsel or Lead Counsel to the Escrow Agent, subject to the terms of ¶¶ 2.9 or 2.10 hereof, the Settlement Amount (including accrued interest), less any expenses and any costs which have either been properly disbursed pursuant to ¶ 2.6 hereof, or are determined to be chargeable to the Settlement Fund or the notice and administration of the Settlement pursuant to ¶ 2.6 hereof, shall be refunded by the Escrow Agent to the appropriate sources of the funds in proportion to their contribution to the Settlement Fund, plus accrued interest attributable to that amount, by check or wire transfer pursuant to written instructions from Settling Defendants' counsel.

8.3 In the event this Settlement is terminated as provided in ¶¶ 2.9 or 2.10, then the terms and provisions of this Stipulation, with the exception of ¶¶ 2.9, 2.10, 2.11, 2.12, 8.2, 8.3, 8.4, 9.1, 9.16 hereof, shall have no further force and effect and shall not be used in the Action or

in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, nunc pro tunc. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses and interest awarded by the Court to Lead Counsel shall constitute grounds for cancellation or termination of the Stipulation.

8.4 In the event this Settlement is terminated as provided in ¶¶ 2.9 or 2.10, Lead Plaintiff, the Settlement Class Members, Plaintiff's Counsel, the Claims Administrator, and the Escrow Agent shall not have any obligation to repay any Notice and Administration Costs actually and properly disbursed from the Settlement Fund. In addition, any expenses already incurred and properly chargeable to Notice and Administration Costs pursuant to this Stipulation at the time of such termination or cancellation, but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of this Stipulation before the balance is refunded in accordance with ¶ 8.2.

J. Miscellaneous Provisions

9.0 The Settling Defendants deny any wrongdoing whatsoever, and this Stipulation shall in no event be construed or deemed to be evidence of, or an admission or concession on the part of Settling Defendants with respect to, any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any defenses that Settling Defendants have asserted or could assert in the Action or any other action.

9.1 This Stipulation, whether or not consummated, and any proceedings taken pursuant to it, shall not be deemed to be, and may not be, argued to be offered or received:

(a) Against any of the Settling Defendants or the Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Settling Defendants or the Released Parties with respect to the truth of any fact alleged by Lead Plaintiff

in the Action or the validity of any claim that has been or could have been asserted against any of the Settling Defendants or the Released Parties in the Action, or the deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing or liability by any of the Settling Defendants or the Released Parties.

(b) Against any of the Settling Defendants or the Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Settling Defendants.

(c) Against any of the Settling Defendants, the Released Parties, Lead Plaintiff, or any Settlement Class Member as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Settling Defendants, the Released Parties, Lead Plaintiff, or any Settlement Class Member with respect to any liability, negligence, fault, or wrongdoing as against any of the Settling Defendants, the Released Parties, Lead Plaintiff, or any Settlement Class Member in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation, provided, however, that if this Stipulation is approved by the Court, the Settling Defendants, the Released Parties, Lead Plaintiff, and any Settlement Class Member may refer to it to effectuate the liability protection granted them hereunder;

(d) Against any of the Settling Defendants or the Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of them that the Settlement Amount represents the amount which could or would have been received after trial of the Action against them;

(e) Against Lead Plaintiff or any Settlement Class Member as evidence of, or construed as evidence of, any presumption, concession, or admission by Lead Plaintiff or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by the Settling Defendants in the Action have any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund;

(f) Against Lead Plaintiff or any Settlement Class Member or Plaintiff's Counsel as evidence of, or construed as evidence of, any infirmity of the claims alleged by Lead Plaintiff in the Amended Complaint or the Action or of any lack of merit to the claims or the Action or of any bad faith, dilatory motive, or inadequate prosecution of the claims or the Action; and

(g) As evidence of, or construed as evidence of, any presumption, concession, or admission that class certification is appropriate in the Action, except for purposes of this Settlement.

9.2 The Settling Parties intend the Settlement to be a final and complete resolution of all disputes which have been asserted, could have been asserted, or could be asserted by Lead Plaintiff or the Settlement Class Members against the Settling Defendants and their counsel and all Released Parties concerning the Settlement Class Claims and against Lead Plaintiff and Settlement Class Members and their counsel by the Settling Defendants concerning the Defendant Claims. Accordingly, Settling Parties agree not to assert in any forum that the litigation was brought by Lead Plaintiff or defended by the Settling Defendants in bad faith or without a reasonable basis. The Settling Parties, and each of them, shall not assert or pursue any action, claim or rights that any party hereto violated any provision of Fed. R. Civ. P. 11 or otherwise seek reimbursement or shifting of attorneys' fees or other costs associated with the Action. The Settling Parties, and each of them, and their respective counsel agree that the Action

was resolved in good faith, following arm's length bargaining, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

9.3 The Settling Parties (a) acknowledge that it is their intent to consummate this Settlement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Stipulation. Subject to their fiduciary and legal obligations to their clients, Lead Counsel and Settling Defendants' counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation, and the Settlement, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

9.4 Neither Lead Plaintiff, the Settlement Class Members, nor the Settling Defendants shall be bound by this Stipulation if the Court modifies material terms thereof, provided, however, that it shall not be a basis for Settlement Class Members to terminate the Settlement if the Court modifies any proposed Plan of Allocation or criteria for allocation of the Net Settlement Fund amongst Settlement Class Members or if the Plan of Allocation is modified on appeal. Nor shall it be a basis to terminate this Stipulation if the Court disapproves of or modifies the terms of this Stipulation with respect to the distribution of the Net Settlement Fund. Nor shall it be a basis to terminate this Stipulation if the Court denies, in whole or in part, Lead Counsel's Fee and Expense Application.

9.5 The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the

purpose of entering orders providing the Fee and Expense Award to Lead Counsel (including for distribution among any other Plaintiff's Counsel) and enforcing the terms of this Stipulation.

9.6 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

9.7 The waiver by one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed as a waiver by the waiving Settling Party of any other prior or subsequent breaches of this Stipulation or a waiver by any other Settling Party of any breach of this Stipulation.

9.8 All of the Exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by this reference. Notwithstanding the foregoing, in the event of a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of this Stipulation shall prevail.

9.9 This Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

9.10 Other than the Supplemental Agreement (as described in ¶ 2.12, *supra*), this Stipulation and the Exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any party concerning this Stipulation or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

9.11 Each counsel or other Person executing this Stipulation, any of its Exhibits, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such Person has the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

9.12 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

9.13 This Stipulation shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Settling Parties.

9.14 The Court shall retain jurisdiction with respect to enforcement of the terms of this Stipulation, and the Settling Parties submit to the jurisdiction of the Court for purposes of enforcing the Settlement embodied in this Stipulation.

9.15 Any disputes arising out of finalizing and implementing this Stipulation or the Settlement itself shall be resolved by JAMS mediator Jed Melnick. If such mediation fails to produce an agreed resolution, the dispute shall be submitted to the Court.

9.16 This Stipulation and the Exhibits thereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York and the rights and obligations of the Settling Parties shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles.

9.17 This Stipulation is deemed to have been prepared by counsel for all Settling Parties, as a result of arm's length negotiations among the Settling Parties. As all Settling Parties have contributed substantially and materially to the preparation of this Stipulation, it shall not be construed more strictly against one party than another.

9.18 Whenever this Stipulation requires or contemplates that a Settling Party shall or may give notice to the other, notice shall be in writing and shall be deemed to have been duly given upon receipt of overnight courier, or emailed PDF or similar-format electronic document. Notice shall be provided as follows:

If to Lead Counsel, then to:

Laurence M. Rosen
Phillip C. Kim
Yu Shi
THE ROSEN LAW FIRM, P.A.
275 Madison Avenue, 40th Floor
New York, NY 10016
Tel: (212) 686-1060
Fax: (212) 202-3827
Email: lrosen@rosenlegal.com
pkim@rosenlegal.com
yshi@rosenlegal.com

Lead Counsel for Lead Plaintiff and the Settlement
Class

If to Settling Defendants, then to:

David Kistenbroker
Joni Jacobsen
DECHERT LLP
35 West Wacker, Suite 3400
Chicago, IL 60601
Tel: (312) 646-5800
Fax: (312) 646-5858
Email: david.kistenbroker@dechert.com
joni.jacobsen@dechert.com

Counsel for Settling Defendants Kevin Dotts, Keith
Soldan and Matt Rosen

9.19 All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

9.20 The Settling Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation.

IN WITNESS WHEREOF, the Settling Parties have caused this Stipulation to be executed, by their duly authorized attorneys, dated June 8, 2020.

DocuSigned by:



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Phillip C. Kim
Laurence M. Rosen
Yu Shi
THE ROSEN LAW FIRM, P.A.
275 Madison Avenue, 40th Floor
New York, NY 10016

Lead Counsel for Lead Plaintiff and the Settlement Class

DocuSigned by:



33EB3DC1E52A403...
David Kistenbroker
Joni Jacobsen
DECHERT LLP
35 West Wacker, Suite 3400
Chicago, IL 60601

Counsel for Defendants Kevin Dotts and Keith Soldan and former defendant Matt Rosen

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT PATRON, individually and on behalf
of all others similarly situated,

Plaintiff,

KEVIN M. DOTTS and KEITH SOLDAN,

Defendants.

Case No. 1:19-cv-05362-PGG

**[PROPOSED] ORDER GRANTING LEAD PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, Lead Plaintiff Robert Patron (“Plaintiff”) (on behalf of himself and each of the Class Members) (“Lead Plaintiff”), and defendants Kevin Dotts (“Dotts”) and Keith Soldan (“Soldan”) (“Defendants”) and collectively with former defendant Matthew Rosen (“Rosen”) (the “Settling Defendants”), through their respective counsel of record relating to the above-captioned litigation, have entered into the Stipulation of Settlement, dated June 8, 2020 (the “Settlement Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement and dismissal of the class action pending before the Court entitled *Patron v. Dotts and Soldan*, Case No. 1:19-cv-05362-PGG (S.D.N.Y.) (the “Action”)¹; and the Court having read and considered the Settlement Stipulation and the exhibits thereto and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and the Settling Parties having consented to the entry of this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED, this ____ day of _____, 2020, that:

¹ The Action was originally filed as *Grand Slam Master Fund, Ltd. v. Rosen*.

1. Capitalized terms used herein have the meanings defined in the Settlement Stipulation.

2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Action is hereby preliminarily certified as a class action on behalf of all Persons (including, without limitation, their beneficiaries) who purchased Fusion Connect, Inc. (“Fusion”) common stock between May 11, 2018 and April 2, 2019, both dates inclusive. Excluded from the Class are (i) the Settling Defendants, all current and former directors and officers of Fusion or Birch Communications Holdings, Inc., and the successors, heirs, and members of immediate families, assigns, and any entity in which any of the Defendants, or any person excluded under this subsection, has or had a majority ownership interest at any time; (ii) Opt-Outs; and (iii) Persons who have no compensable damages.

3. This Court finds, preliminarily and for purposes of this Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members of the Settlement Class is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Lead Plaintiff are typical of the claims of the Settlement Class they seek to represent; (d) Lead Plaintiff fairly and adequately represents the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of this Settlement only, Lead Plaintiff is certified as the class representative on

behalf of the Settlement Class (“Class Representative”) and Lead Counsel, The Rosen Law Firm, P.A., previously selected by Lead Plaintiff and appointed by the Court, is hereby appointed as Lead Counsel for the Settlement Class (“Class Counsel”).

5. The Court finds that (a) the Settlement Stipulation resulted from good faith, arm’s length negotiations, and (b) the Settlement Stipulation is sufficiently fair, reasonable and adequate to the Settlement Class Members to warrant providing notice of the Settlement to Settlement Class Members and holding a Settlement Hearing.

6. The Court hereby preliminarily approves the Settlement, subject to further consideration at a hearing (the “Settlement Hearing”) pursuant to Federal Rule of Civil Procedure 23(e), which is hereby scheduled to be held before the Court on ____, 2020 at __:____.m. for the following purposes:

(a) to determine finally whether the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b) are satisfied;

(b) to determine finally whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to determine finally whether the Order and Final Judgment as provided under the Settlement Stipulation should be entered, dismissing the Action on the merits and with prejudice, and to determine whether the release by the Releasing Parties of the Released Claims against the Released Parties, as set forth in the Settlement Stipulation, should be ordered, along with a permanent injunction barring efforts to prosecute or attempt to prosecute any Released Claims extinguished by the release against any of the Released Parties, as also set forth in the Settlement Stipulation;

(d) to determine finally whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

(e) to consider the application of Class Counsel for an award of attorneys' fees and expenses and a Compensatory Award to the Class Representative;

(f) to consider Settlement Class Members' objections to the Settlement, if any, whether submitted previously in writing or presented orally at the Settlement Hearing by Settlement Class Members (or by counsel on their behalf) provided that they gave proper notice that they intend to appear at the Settlement Hearing; and

(g) to rule upon such other matters as the Court may deem appropriate.

7. The Court reserves the right to adjourn the Settlement Hearing to a later date and to approve the Settlement without modification, or with such modifications as may be agreed to by the Settling Parties, and with or without further notice of any kind. The Court further reserves the right to enter its Order and Final Judgment approving the Settlement and dismissing the Action, on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

8. The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means. In the event the Court decides to hold the Settlement Hearing telephonically or by other virtual means, Class Counsel will issue a press release on *GlobeNewswire* notifying Settlement Class Members, and the Claims Administrator will update its website regarding the Settlement Hearing's telephonic or virtual format.

9. The Court approves the form, substance and requirements of (a) the Notice, (b) the Postcard Notice, (c) the Summary Notice, and (c) the Proof of Claim and Release Form, all of which are exhibits to the Settlement Stipulation.

10. Class Counsel have the authority to enter into the Settlement on behalf of the Settlement Class and have the authority to act on behalf of the Settlement Class with respect to all acts or consents required by or that may be given pursuant to the Settlement Stipulation or such other acts that are reasonably necessary to consummate the Settlement.

11. For settlement purposes only, Strategic Claims Services is appointed and approved as the Claims Administrator to supervise and administer the notice procedure as well as the processing of claims.

12. Within twenty-one (21) business days after (i) entry of an Order of Preliminary Approval of the Settlement, and (ii) transmission to Defendants' Counsel of payee information for the Notice Administration Fund (including the name, tax identification number, and Form W-9), the Settling Defendants shall cause to be wired or paid by check or draft, at the sole election of the Insurers, to the Escrow Agent eight hundred thousand dollars (\$800,000) to be deposited into the Settlement Fund.

13. The Escrow Agent may, at any time after entry of this Order and without further approval from Settling Defendants or the Court, disburse at the direction of Class Counsel up to \$150,000.00 (One Hundred Fifty Thousand Dollars) from the Settlement Fund to pay Notice and Administration Costs.

14. No later than fourteen (14) Business Days after entry of this Order, Fusion or its counsel, shall make reasonable efforts to provide, and/or cause its transfer agent to provide, to Class Counsel a list of the record owners of Fusion securities during the Class Period in a usable

electronic format, such as an excel spreadsheet. This information will be kept confidential and not used for any purpose other than to provide the notice contemplated by this Order.

15. Class Counsel, through the Claims Administrator, shall cause the Settlement Stipulation and its exhibits, this Order, a copy of the Notice, and the Proof of Claim and Release Form to be posted on the Claims Administrator's website within twenty-eight (28) calendar days after entry of this Order.

16. Class Counsel, through the Claims Administrator, shall cause the Publication Notice to be published electronically once on the *GlobeNewswire* and in print once in the *Investor's Business Daily* within twenty-eight (28) calendar days of entry of this Order. Class Counsel shall, at least seven (7) calendar days before the Settlement Hearing, serve upon counsel for Defendants and file with the Court proof of publication of the Publication Notice.

17. Class Counsel, through the Claims Administrator, shall cause the Postcard Notice, the Summary Notice, or links to the Notice and Proof of Claim and Release Form, substantially in the forms annexed to the Settlement Stipulation, (i) to be mailed, where disseminating the Postcard Notice, by first class mail, postage prepaid, within twenty-eight (28) calendar days of entry of this Order, to all Settlement Class Members who can be identified with reasonable effort by Class Counsel, through the Claims Administrator; or (ii) to be emailed, where disseminating the Summary Notice or links to the Notice and Proof of Claim and Release Form, within twenty-eight (28) calendar days of the entry of this Order, to all Settlement Class Members for whom email addresses may be obtained with reasonable effort, through the Claims Administrator.

18. Class Counsel, through the Claims Administrator, shall make all reasonable efforts to give notice to nominees or custodians who held Fusion common stock as record owners but not as beneficial owners. Such nominees or custodians shall, within ten (10) calendar

days of receipt of the notice, either: (i) request copies of the Postcard Notice sufficient to send the Postcard Notice to all beneficial owners for whom they are nominee or custodian, and within ten (10) calendar days after receipt thereof send copies to such beneficial owners; (ii) request an electronic copy of the Summary Notice and either email the Summary Notice in electronic format or links to the Notice and Proof of Claim and Release Form to each beneficial owner for whom they are nominee or custodian within ten (10) calendar days after receipt thereof; or (iii) provide the Claims Administrator with lists of the names, last known addresses and email addresses (to the extent known) of such beneficial owners, in which event the Claims Administrator shall promptly deliver the Summary Notice, if email addresses are available, or Postcard Notice to such beneficial owners, if last known addresses are provided. If the Claims Administrator receives an email address, it will send a Summary Notice electronically. Nominees or custodians who elect to email the Summary Notice or send the Postcard Notice to their beneficial owners shall send a written certification to the Claims Administrator confirming that the mailing has been made as directed. Copies of the Postcard Notice shall be made available to any nominee or custodian requesting same for the purpose of distribution to beneficial owners. The Claims Administrator shall, if requested, reimburse nominees or custodians out of the Settlement Fund solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners, which expenses would not have been incurred except for the providing of names and addresses, in amounts up to: (i) \$0.05 per name and address provided; (ii) \$0.05 per email for emailing notice; or (iii) \$0.05 per postcard, plus postage at the pre-sort rate used by the Claims Administrator, for mailing the Postcard Notice, subject to further order of this Court with respect to any dispute concerning such reimbursement.

19. Class Counsel shall, at least seven (7) calendar days before the Settlement Hearing, serve upon counsel for Defendants and file with the Court proof of the mailing and emailing of Notice, as required by this Order.

20. The forms and methods set forth herein of notifying the Settlement Class Members of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled thereto. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

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

(a) A properly completed and executed Proof of Claim and Release Form must be submitted to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than _____, 2020 (twenty-one (21) calendar days prior to the Settlement Hearing). Such deadline may be further extended by Order of the Court. Each Proof of Claim and Release Form shall be deemed to have been submitted when legibly postmarked (if properly addressed and mailed by first class mail) provided such Proof of Claim and Release Form 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 and Release Form submitted in any

other manner shall be deemed to have been submitted when it was actually received by the Claims Administrator at the address designated in the Notice.

(b) The Proof of Claim and Release Form submitted by each Settlement Class Member must satisfy the following conditions: (i) it must be properly completed, 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 Class Counsel; (iii) if the person executing the Proof of Claim and Release Form is acting in a representative capacity, a certification of his current authority to act on behalf of the Settlement Class Member must be provided with the Proof of Claim and Release Form; and (iv) the Proof of Claim and Release Form 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 and Release Form, 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 and Release Form that is deficient or otherwise rejected shall be afforded a reasonable time (at least ten (10) calendar days) to cure such deficiency if it shall appear that such deficiency may be cured. If any Claimant whose claim has been rejected in whole or in part wishes to contest such rejection, the Claimant must, within

ten (10) calendar days after the date of mailing of the notice, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's ground for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If an issue concerning a claim cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to the Court.

(d) As part of the Proof of Claim and Release Form, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall, upon the Effective Date, release all claims as provided in the Settlement Stipulation. No discovery shall be allowed on the merits of the Action or the Settlement in connection with processing of the Proof of Claim and Release Forms, nor shall any discovery from or of Settling Defendants be allowed on any topic.

22. All Settlement Class Members who do not submit valid and timely Proof of Claim and Release Forms 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 Settlement Stipulation and the Order and Final Judgment, if entered.

23. Settlement Class Members shall be bound by all determinations and judgments in this Action whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such request for exclusion shall mail it, in written form, by first class mail, postage prepaid, or otherwise deliver it, so that it is received no later than _____, 2020 (twenty-one (21) calendar days prior to the Settlement Hearing) (the "Exclusion Deadline"), to the addresses listed in the Notice. In order to be valid, such request for exclusion (A) must clearly indicate the name and address and phone number and e-mail contact information (if any)

of the Person seeking exclusion, and state that the sender specifically “requests to be excluded from the Settlement Class in *Patron v. Dotts and Soldan*, Case No. 1:19-cv-05362-PGG (S.D.N.Y.). In order to be valid, such request for exclusion must be submitted with documentary proof (i) of each purchase or acquisition and, if applicable, sale transaction of Fusion securities during the Settlement Class Period and (ii) demonstrating the Person’s status as a beneficial owner of the Fusion securities. Any such request for exclusion must be signed and submitted by the beneficial owner under penalty of perjury. The request for exclusion shall not be effective unless it provides the required information, is legible, and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Class Counsel may contact any Person filing a request for exclusion, or their attorney if one is designated, to discuss the exclusion.

24. The Claims Administrator shall provide all requests for exclusion and supporting documentation submitted therewith (including untimely requests and revocations of requests) to counsel for the Settling Parties promptly as received, and in no case later than the Exclusion Deadline or upon the receipt thereof (if later than the Exclusion Deadline). The Settlement Class will not include any Person who delivers a valid and timely request for exclusion.

25. Any Person that submits a request for exclusion may thereafter submit to the Claims Administrator a written revocation of that request for exclusion, provided that it is received no later than two (2) Business Days before the Settlement Hearing, in which event that Person will be included in the Settlement Class.

26. All Persons who submit a valid, timely and unrevoked request for exclusion will be forever barred from receiving any payments from the Net Settlement Fund.

27. The Court will consider comments and/or objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, provided, however, that no Settlement Class

Member or other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement or, if approved, the Order and Final Judgment, or any other order relating thereto, unless that Person has served copies of any objections, papers and briefs to each of the following counsel at least twenty-one (21) calendar days prior to the Settlement Hearing Date:

CLASS COUNSEL:

Phillip C. Kim
Yu Shi
THE ROSEN LAW FIRM, P.A.
275 Madison Avenue, 40th Floor
New York, NY 10016
Tel: (212) 686-1060
Fax: (212) 202-3827

COUNSEL FOR DEFENDANTS:

David Kistenbroker
Joni Jacobsen
DECHERT LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601

and that Person has (at least twenty-one (21) calendar days prior to the Settlement Hearing date) filed said objections, papers and briefs, showing due proof of service upon counsel identified above, with the Clerk of the Court, U.S. District Court, Southern District of New York, Thurgood Marshall, United States Courthouse, 40 Foley Square, New York, NY 10007. To be valid, any such objection must contain the Settlement Class Member's (1) name, address, and telephone number; (2) a list of all purchases and sales of Fusion securities during the Settlement Class Period in order to show membership in the Settlement Class; (3) all grounds for the objection, including any legal support known to the Settlement Class Member and/or his, her, or its counsel; (4) the name, address and telephone number of all counsel who represent the Settlement Class

Member, including former or current counsel who may be entitled to compensation in connection with the objection; and (5) the number of times the Settlement Class Member and/or his, her, or its counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection in each case, the jurisdiction in each case, and the name of the issuer of the security or seller of the product or service at issue in each case. Attendance at the Settlement Hearing is not necessary, but Persons wishing to be heard orally in opposition to the approval of the Settlement Stipulation, the Plan of Allocation, and/or the Fee and Expense Application are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and after instruction pertinent to the submission of a written objection) that they intend to appear at the Settlement Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Settlement Hearing. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

28. Any Settlement Class Member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Order and Final Judgment to be entered approving the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, unless otherwise ordered by the Court; shall be bound by all the terms and provisions of the Settlement Stipulation and by all proceedings, orders and judgments in the Action; and shall also be foreclosed from appealing from any judgment or order entered in this Action.

29. The Court reserves the right to adjourn the Settlement Hearing without any further notice other than entry of an Order on the Court's docket, and to approve the Settlement without further notice to the Settlement Class.

30. All papers in support of the Settlement, the Plan of Allocation and/or the Fee and Expense Application shall be filed and served no later than twenty-eight (28) calendar days before the Settlement Hearing.

31. Any submissions filed in response to any objections or in further support of the Settlement, the Plan of Allocation and/or the Fee and Expense Application shall be filed no later than seven (7) calendar days prior to the Settlement Hearing.

32. The Settling Defendants, their counsel, their Insurers and other Released Parties shall have no responsibility for, or liability with respect to, the Plan of Allocation or any application for attorneys' fees and interest, or expenses or payments to the Class Representative submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

33. Pending final determination of whether the Settlement should be approved, all Releasing Parties shall be enjoined from commencing, prosecuting, or attempting to prosecute any Released Claims against any Released Party in any court or tribunal or proceeding. Unless and until the Settlement Stipulation is cancelled and terminated pursuant to the Settlement Stipulation, all proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement Stipulation, are hereby stayed and suspended until further order of the Court.

34. All funds held by the Escrow Agent shall be deemed and considered to be in the custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as

such funds shall be distributed or returned pursuant to the Settlement Stipulation and Plan of Allocation and/or further order(s) of the Court.

35. Neither the Settlement Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Settling Defendants, their counsel, their Insurers or any of the other Released Parties of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing or any kind and shall not be construed as, or deemed to be evidence of or an admission or concession that Class Representative or any Settlement Class Members have suffered any damages, harm, or loss. Further, neither the Settlement Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, nor this Order shall be construed as an admission or concession by the Class Representative of the validity of any factual or legal defense or of the infirmity of any of the claims or facts alleged in this Action.

36. In the event the Settlement is not consummated in accordance with the terms of the Settlement Stipulation, then the Settlement Stipulation and this Order (including any amendment(s) thereof, and except as expressly provided in the Settlement Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Settling Parties or the Released Parties, and each Settling Party shall be restored to his, her or its respective litigation positions as they existed prior to April 1, 2020, pursuant to the terms of the Settlement Stipulation.

37. The Court reserves the right to alter the time or the date of the Settlement Hearing without further notice to the Class Members, provided that the time or the date of the Settlement Hearing shall not be set at a time or date earlier than the time and date set forth in ¶ 6 above. The

Court retains exclusive jurisdiction over the Action to consider all further matters arising out of, or relating to, the Settlement Stipulation, including by way of illustration and not limitation, any dispute concerning any Proof of Claim and Release Form submitted and any future requests by one or more of the Parties that the Order and Final Judgment, the releases and/or the permanent injunction set forth in the Settlement Stipulation be enforced.

Dated: _____, 2020

HON. PAUL G. GARDEPHE
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT PATRON, Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

KEVIN M. DOTTS and KEITH SOLDAN

Defendants.

Case No.: 1:19-cv-05362-PGG

CLASS ACTION

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

If you purchased common stock of Fusion Connect, Inc. (“Fusion” or the “Company”) during the period from May 11, 2018 through April 2, 2019, both dates inclusive (“Settlement Class Period”), you could get a payment from a class action settlement (the “Settlement”).

Under law, a federal court has authorized this Notice. This is not attorney advertising.

- If approved by the Court, the Settlement will provide eight hundred thousand dollars (\$800,000) (the “Settlement Fund”) gross, plus interest as it accrues, minus attorneys’ fees, costs, administrative expenses, and net of any taxes on interest, to pay claims of investors who purchased Fusion common stock in the Settlement Class Period.
- The Settlement represents an estimated average recovery of \$0.13 per share for the approximately 6,320,000 shares of Fusion common stock allegedly damaged during the Settlement Class Period. This is not an estimate of the actual recovery per share you should expect. Your actual recovery, if any, will depend on the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold Fusion common stock, the purchase and sales prices, and the total number and amount of claims filed.
- Lead Counsel will ask the Court to award attorneys’ fees in an amount not to exceed 28% of the Settlement Fund, reimbursement of no more than \$35,000 in litigation expenses, and a case contribution award to the Lead Plaintiff not to exceed \$10,000. Collectively, the attorneys’ fees and expenses and Lead Plaintiff award are estimated to average \$0.04 per allegedly damaged share of Fusion common stock. If approved by the Court, these amounts will be paid from the Settlement Amount.
- The average approximate recovery, after deduction of attorneys’ fees and expenses approved by the Court, is \$0.09 per alleged damaged share of Fusion common stock. This estimate is based on the assumptions set forth in the preceding paragraphs. This is not an estimate of the actual recovery per share you should expect. Your actual recovery, if any,

will depend on the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold Fusion common stock, the purchase and sales prices, and the total number and amount of claims filed.

- The Settlement resolves the Action concerning whether Kevin M. Dotts and Keith Soldan (“Defendants”)¹ knowingly or recklessly misrepresented the financial condition of Birch Communications Holdings, Inc. (“Birch”) in connection with the merger of Fusion and Birch, and continued to issue false financial statements of Fusion subsequent to the merger. The Settling Defendants have denied and continue to deny each, any and all allegations of wrongdoing, fault, liability or damage whatsoever. The Settling Defendants have also denied, among other things, the allegations that Lead Plaintiff or the Settlement Class have suffered damages or that Lead Plaintiff or the Settlement Class were harmed by the conduct alleged in the Action. The Settling Defendants continue to believe the claims asserted against them in the Action are without merit.
- Your legal rights will be affected whether you act or do not act. If you do not act, you may permanently forfeit your right to recover on this claim. Therefore, you should read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim Form	Fill out the attached Proof of Claim and Release Form and submit it no later than _____. This is the only way to get a payment.
Exclude Yourself from the Class	Submit a request for exclusion no later than _____. This is the only way you can ever be part of any other lawsuit against the Settling Defendants or the other Released Parties relating to the legal claims in this case. If you exclude yourself, you will receive no payment and cannot object or speak at the hearing.
Object	Write to the Court no later than _____ about why you do not like the Settlement. You can still submit a Proof of Claim and Release Form. If the Court approves the Settlement, you will be bound by it.
Go to the Hearing	Ask to speak in Court about the fairness of the Settlement at the hearing on _____. You can still submit a Proof of Claim and Release. If the Court approves the Settlement, you will be bound by it.

¹ All claims against former defendant, Matthew Rosen (“Rosen”), are also released as part of this Settlement. “Settling Defendants” is defined to include Defendants and former defendant Rosen.

Do Nothing	Get no payment AND give up your right to bring your own individual action relating to the claims asserted in the Action.
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INQUIRIES

Please do not contact the Court regarding this Notice. All inquiries concerning this Notice, the Proof of Claim and Release Form, or the Settlement should be directed to:

Fusion Connect, Inc. Securities Litigation c/o Strategic Claims Services P.O. Box 230 600 N. Jackson St., Ste. 205 Media, PA 19063 Tel.: (866) 274-4004 Fax: (610) 565-7985 info@strategicclaims.net	or	Phillip Kim THE ROSEN LAW FIRM, P.A. 275 Madison Ave, 40th Floor New York, NY 10016 Tel: (212) 686-1060 Fax: (212) 202-3827 info@rosenlegal.com
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DEFINITIONS

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation of Settlement, dated June 8, 2020 (the “Settlement Stipulation”).

COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT

1. Why did I get this Notice?

You or someone in your family may have purchased Fusion common stock during the period from May 11, 2018 through April 2, 2019, both dates inclusive.

2. What is this lawsuit about?

The case is known as *Patron v. Dotts and Soldan*, 1:19-cv-05362-PGG (the “Action”).² The Court in charge of the case is the United States District Court for the Southern District of New York.

The Action involves allegations that Defendants issued false financial statements to Fusion investors. The complaint alleges that the misstatements artificially inflated the price of Fusion common stock, and that the common stock prices dropped in response to certain subsequent disclosures. The Settling Defendants have denied and continue to deny each, any and all allegations of wrongdoing, fault, liability or damage whatsoever asserted in the Action. The Settlement shall in no event be construed as, or deemed to be evidence of, liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or

² This case was originally filed as *Grand Slam Master Fund, Ltd. v. Rosen*.

omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damages to Lead Plaintiff or any other Settlement Class Member.

3. Why is this a class action?

In a class action, one or more persons and/or entities, called plaintiffs, sue on behalf of all persons and/or entities who have similar claims. All of these persons and/or entities are referred to collectively as a class, and these individual persons and/or entities are known as class members. One court resolves all of the issues for all class members, except for those class members who exclude themselves from the class.

4. Why is there a Settlement?

Lead Plaintiff and Defendants do not agree regarding the merits of Lead Plaintiff's allegations or the average amount of damages per share, if any, that would be recoverable if Lead Plaintiff were to prevail at trial on each claim. The issues on which Lead and Defendants disagree include: (1) whether Defendants made any allegedly misleading statements or omissions; (2) whether Defendants acted knowingly or were grossly reckless in making the alleged misleading statements; (3) whether the alleged disclosures corrected the alleged misleading disclosures; (4) whether the alleged misstatements or omissions caused any loss in the value of Fusion common stock; and (4) the amount of alleged damages, if any, that could be recovered at trial.

This matter has not gone to trial and the Court has not decided in favor of either Lead Plaintiff or Defendants. Instead, Lead Plaintiff and Defendants have agreed to settle the case. Lead Plaintiff and Lead Counsel believe the Settlement is best for all Settlement Class Members because of the risks associated with continued litigation and the nature of the defenses raised by Defendants. Among the reasons that Lead Plaintiff and Lead Counsel believe the Settlement is fair is the fact that there is uncertainty about whether they will be able to prove that any challenged statement was false or misleading, that the alleged misstatements and omissions actually caused the Settlement Class any damages, and the amount of damages, if any, and the financial condition of the Company.

Even if Lead Plaintiff were to win at trial, and also prevail on any on appeal, Lead Plaintiff might not be able to collect some, or all, of any judgment they are awarded. Moreover, it appears that, even if Lead Plaintiff's allegations were found to be true, the total amount of damages to which Settlement Class Members would be entitled could be small.

5. How do I know if I am part of the Settlement?

The Settlement Class consists of all persons and entities who purchased Fusion common stock from May 11, 2018 through April 2, 2019, both dates inclusive. Excluded from the Class are Settling Defendants; the present and former officers and directors of Fusion and Birch at all relevant times; members of such excluded persons' immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which any of the Settling Defendants, or any excluded person, has or had a majority ownership interest at any time.

6. Are there exceptions to being included?

Yes. Excluded from the Settlement Class are Settling Defendants; the present and former officers and directors of Fusion and Birch at all relevant times; members of such excluded persons' immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which any of the Settling Defendants, or any excluded person, has or had a majority ownership interest at any time. You are also excluded from recovering any portion of the Settlement Fund if you have a net profit in purchases and sales of Fusion common stock or otherwise suffered no compensable damages during the Settlement Class Period. You may choose to be excluded from the Settlement Class by filing a valid and timely request for exclusion as described below in the response to question 11.

7. I am still not sure whether I am included.

If you are still not sure whether you are included in the Settlement Class, you can ask for free help. For more information, you can contact the Claims Administrator, Strategic Claims Services, by phone at (866) 274-4004, by email at info@strategicclaims.net, or by facsimile at (610) 565-7985; visit the website www.strategicclaims.net; or fill out and return the Proof of Claim and Release Form described in Question 9, to see if you qualify.

8. What does the Settlement provide?

a. What is the Settlement Fund?

The proposed Settlement provides for Settling Defendants and/or their insurers to pay eight hundred thousand dollars (\$800,000) into a settlement fund (the "Settlement Fund"). The Settlement is subject to Court approval. Also, subject to the Court's approval, a portion of the Settlement Fund will be used to pay attorneys' fees with interest and reasonable litigation expenses to Plaintiff's Counsel, and any award to Lead Plaintiff. A portion of the Settlement Fund also will be used to pay taxes due on interest earned by the Settlement Fund, if necessary, and the costs of the claims administration, including the costs of printing and mailing and/or emailing notice and the costs of publishing notice. After the foregoing deductions from the Settlement Fund have been made, the amount remaining (the "Net Settlement Fund") will be distributed to Settlement Class Members who submit timely, valid claims, according to the Plan of Allocation to be approved by the Court.

b. What can you expect to receive under the proposed Settlement?

Your share of the Net Settlement Fund will or may depend on: (i) the number of claims filed by all Settlement Class Members; (ii) the dates you purchased and sold Fusion common stock; (iii) the prices of your purchases and sales; (iv) the amount of administrative costs, including the costs of notice; and (v) the amount awarded by the Court to Plaintiff's Counsel for attorneys' fees, costs, and expenses and award to Lead Plaintiff.

The Net Settlement Fund will be distributed to Settlement Class Members who submit a Proof of Claim and Release Form and whose claims for recovery are allowed by the Claims Administrator pursuant to the terms of the Settlement Stipulation or by order of the Court under the below Plan of Allocation ("Authorized Claimants"), which reflects Lead

Plaintiff's contention that because of the alleged misrepresentations made by Defendants, the price of Fusion common stock was artificially inflated during the Settlement Class Period and that certain subsequent disclosures caused reductions in the inflated price of Fusion common stock. Settling Defendants have denied and continue to deny these allegations and any and all allegations of wrongdoing, fault, liability or damage whatsoever asserted in the Action.

The Claims Administrator will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's valid "Recognized Loss." The Recognized Loss formula is not intended to be an estimate of the amount that a Settlement Class Member might have been able to recover after a trial; it also is not an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Settlement Class Members with valid claims.

PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Court may approve the Plan of Allocation with or without modifications agreed to among the Parties, or another plan of allocation, without further notice to Settlement Class Members. Any orders regarding a modification of the Plan of Allocation will be posted to the Claims Administrator's website, www.strategicclaims.net.

The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Loss. **Please Note:** The Recognized Loss formula, set forth below, is not intended to be an estimate of the amount of what a Settlement Class Member might have been able to recover after a trial, nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's Recognized Loss and subject to the provisions in the preceding paragraph. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total Recognized Loss of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Loss bears to the total Recognized Losses of all Authorized Claimants and subject to the provisions in the preceding paragraph (*i.e.*, "*pro rata* share"). Payment in this manner shall be deemed conclusive against all Authorized Claimants. No distribution will be made on a claim where the potential distribution amount is less than ten dollars (\$10.00) in cash.

If any funds remain in the Net Settlement Fund by reason of uncashed checks, or otherwise, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, then any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be used: (i) first, to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants; (ii) second, to pay any additional

Administration Costs incurred in administering the Settlement; and (iii) finally, to make a second distribution to Authorized Claimants who cashed their checks from the initial distribution and who would receive at least \$10.00 from such second distribution, after payment of the estimated costs or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. If six (6) months after such second distribution, if undertaken, or if such second distribution is not undertaken, any funds shall remain in the Net Settlement Fund after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in this Settlement cash their checks, any funds remaining in the Net Settlement Fund shall be donated to a non-profit charitable organization(s) selected by Lead Counsel.

THE BASIS FOR CALCULATING YOUR RECOGNIZED LOSS:

Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Loss as compared to the total Recognized Losses of all Authorized Claimants. Recognized Losses will be calculated as follows:

- I) For Fusion common shares purchased between May 11, 2018 and April 2, 2019, inclusive, the Recognized Loss shall be calculated as follows:
- A. For shares retained at the end of trading on July 1, 2019, the Recognized Loss shall be the lesser of:
 - (i) \$.99 per share; or
 - (ii) the difference between the purchase price per share and \$.11 per share³.
 - B. For shares sold on or before April 2, 2019, the Recognized Loss per share shall be \$0.
 - C. For shares sold between April 3, 2019 and July 1, 2019, inclusive, the Recognized Loss shall be the lesser of:
 - i) \$.99 per share; or
 - ii) the difference between the purchase price per share and the average closing price per share as of date of sale provided in table A below.

Table A

<u>Date</u>	<u>Closing Price</u>	<u>Average Closing Price</u>	<u>Date</u>	<u>Closing Price</u>	<u>Average Closing Price</u>

³Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated." \$.11 per share was the mean (average) daily closing trading price of the Company's common shares during the 90-day period beginning on April 3, 2019 and ending on July 1, 2019.

EXHIBIT A-1

4/3/2019	\$0.22	\$0.21	5/17/2019	\$0.09	\$0.17
4/4/2019	\$0.35	\$0.23	5/20/2019	\$0.10	\$0.16
4/5/2019	\$0.28	\$0.26	5/21/2019	\$0.10	\$0.16
4/8/2019	\$0.27	\$0.26	5/22/2019	\$0.10	\$0.16
4/9/2019	\$0.26	\$0.27	5/23/2019	\$0.10	\$0.16
4/10/2019	\$0.27	\$0.26	5/24/2019	\$0.10	\$0.16
4/11/2019	\$0.26	\$0.26	5/28/2019	\$0.09	\$0.16
4/12/2019	\$0.29	\$0.26	5/29/2019	\$0.08	\$0.15
4/15/2019	\$0.27	\$0.27	5/30/2019	\$0.08	\$0.15
4/16/2019	\$0.26	\$0.27	5/31/2019	\$0.07	\$0.15
4/17/2019	\$0.24	\$0.27	6/3/2019	\$0.06	\$0.15
4/18/2019	\$0.24	\$0.27	6/4/2019	\$0.04	\$0.14
4/22/2019	\$0.20	\$0.26	6/5/2019	\$0.05	\$0.14
4/23/2019	\$0.20	\$0.25	6/6/2019	\$0.05	\$0.14
4/24/2019	\$0.13	\$0.25	6/7/2019	\$0.05	\$0.14
4/25/2019	\$0.13	\$0.24	6/10/2019	\$0.04	\$0.14
4/26/2019	\$0.09	\$0.23	6/11/2019	\$0.03	\$0.13
4/29/2019	\$0.09	\$0.22	6/12/2019	\$0.02	\$0.13
4/30/2019	\$0.11	\$0.22	6/13/2019	\$0.02	\$0.13
5/1/2019	\$0.10	\$0.21	6/14/2019	\$0.02	\$0.13
5/2/2019	\$0.08	\$0.21	6/17/2019	\$0.02	\$0.12
5/3/2019	\$0.09	\$0.20	6/18/2019	\$0.02	\$0.12
5/6/2019	\$0.08	\$0.20	6/19/2019	\$0.01	\$0.12
5/7/2019	\$0.09	\$0.19	6/20/2019	\$0.01	\$0.12
5/8/2019	\$0.09	\$0.19	6/21/2019	\$0.02	\$0.12
5/9/2019	\$0.09	\$0.18	6/24/2019	\$0.02	\$0.11
5/10/2019	\$0.14	\$0.18	6/25/2019	\$0.02	\$0.11
5/13/2019	\$0.11	\$0.18	6/26/2019	\$0.02	\$0.11
5/14/2019	\$0.09	\$0.18	6/27/2019	\$0.02	\$0.11
5/15/2019	\$0.09	\$0.17	6/28/2019	\$0.05	\$0.11
5/16/2019	\$0.09	\$0.17	7/1/2019	\$0.05	\$0.11

To the extent a Claimant had a trading gain or “broke even” from his, her or its overall transactions in Fusion shares during the Settlement Class Period, the value of the Recognized Loss will be zero and the Claimant will not be entitled to a share of the Net Settlement Fund. To the extent that a Claimant suffered a trading loss on his, her or its overall transactions in Fusion shares during the Settlement Class Period, but that trading loss was less than the Recognized Loss calculated above, then the Recognized Loss shall be limited to the amount of the Claimant’s actual trading loss.

For purposes of calculating your Recognized Loss, the date of purchase, acquisition or sale is the “contract” or “trade” date and not the “settlement” or “payment” date. The receipt or grant by gift, inheritance or operation of law of Fusion shares shall not be deemed a purchase, acquisition or sale of Fusion shares for the calculation of an Authorized Claimant’s Recognized Loss. The

covering purchase of a short sale is not an eligible purchase. Only publicly traded common shares are eligible purchases.

For purposes of calculating your Recognized Loss, all purchases, acquisitions and sales shall be matched on a First In First Out (“FIFO”) basis in chronological order. Therefore, on the Proof of Claim and Release Form enclosed with this Notice, you must provide all of your purchases and acquisitions of Fusion common shares during the time period from May 11, 2018 through and including July 1, 2019.

Payment pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Settling Defendants, Defendants’ Counsel, Plaintiffs, Plaintiffs’ Counsel or the Claims Administrator or other agent designated by Plaintiffs’ Counsel based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant’s Claim Form. All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted in connection with the Settlement, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund shall be released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they are to receive payment from the Net Settlement Fund, will be barred from making any further claim against the Net Settlement Fund beyond the amount allocated to them as provided in any distribution orders entered by the Court.

9. How can I get a payment?

To qualify for a payment, you must send in a form entitled “Proof of Claim and Release Form.” This Proof of Claim and Release Form is attached to this Notice. You may also obtain a Proof of Claim and Release Form at www.strategicclaims.net. Read the instructions carefully, fill out the form, and sign it in the location indicated. The Proof of Claim and Release Form may be completed in two ways: (1) by completing and submitting it electronically at www.strategicclaims.net **by 11:59 p.m. EST on _____, 2020**; or (2) by mailing the claim form together with all documentation requested in the form, **postmarked no later than _____, 2020**, to:

Fusion Connect, Inc. Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson St., Ste. 205
Media, PA 19063
Fax: (610) 565-7985
info@strategicclaims.net

The Claims Administrator will process your claim and determine whether you are an Authorized Claimant.

10. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself from the Settlement Class by the _____, 2020 deadline, you will remain a member of the Settlement Class, receive your share of the Net Settlement Fund if you are an Authorized Claimant and submitted a valid Proof of Claim and Release Form, and will be bound by the release of claims against the Settling Defendants and other Released Parties if the Settlement is approved. That means you and all other Settlement Class Members and each of their respective parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates will release (agreeing never to sue, continue to sue, or be part of any other lawsuit) as against the Settling Defendants and other Released Parties any and all claims which arise out of, are based upon or relate in any way to the purchase or acquisition of Fusion common stock during the Settlement Class Period. It means that all of the Court's orders will apply to you and legally bind you. That means you will accept a share of the Net Settlement Fund as sole compensation for any losses you suffered in the purchase, acquisitions, sale or ownership of Fusion common stock during the Settlement Class. The specific terms of the release are included in the Settlement Stipulation.

11. How do I get out of the Settlement?

If you do not want to receive a payment from this Settlement, and you want to keep any right you may have to sue or continue to sue the Settling Defendants or other Released Parties on your own, at your own expense, about the claims being released in this Settlement, then you must take steps to exclude yourself from the Settlement. To exclude yourself from the Settlement, you must mail a letter that (A) clearly indicates your name, address, phone number and e-mail contact information (if any) and states that you "request to be excluded from the Settlement Class in *Patron v. Dotts and Soldan*, 1:19-cv-05362-PGG (S.D.N.Y)" and (B) states the number of shares of publicly-traded Fusion common stock that you (i) owned as of the opening of trading on May 11, 2018 and (ii) purchased and/or sold during the Settlement Class Period (*i.e.*, from May 11, 2018 through April 2, 2019, inclusive), as well as the dates, number of shares, and prices of each such purchase and sale. In order to be valid, such request for exclusion must be submitted with documentary proof: (i) of each purchase and, if applicable, sale transaction of Fusion common stock during the Settlement Class Period; and (ii) demonstrating your status as a beneficial owner of the Fusion common stock. Any such request for exclusion must be signed and submitted by you, as the beneficial owner, under penalty of perjury. You must mail your exclusion request, to be **received no later than** _____, 2020, to the Claims Administrator at the following address:

Fusion Connect, Inc. Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson St., Ste. 205
Media, PA 19063

You cannot exclude yourself by telephone or by e-mail.

If you properly exclude yourself, you will *not* receive a payment from the Net Settlement Fund, you cannot object to the Settlement, and you will not be legally bound by the judgment in this case.

12. If I do not exclude myself, can I sue Settling Defendants or the other Released Parties for the same thing later?

No. Unless you followed the procedure outlined in the Notice to exclude yourself, you give up any right to sue the Settling Defendants or the Released Parties for the claims being released in this Settlement. If you have a pending lawsuit related to any Released Claims, speak to your lawyer in that case immediately, since you must exclude yourself from this Settlement Class to continue your own lawsuit.

13. Do I have a lawyer in this case?

The Court appointed The Rosen Law Firm, P.A. as Lead Counsel to represent you and the other Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense. Contact information for The Rosen Law Firm, P.A. is provided below.

14. How will the lawyers be paid?

Plaintiff's Counsel have expended considerable time litigating this Action on a contingent fee basis and have paid for the expenses of the case themselves. They have not been paid attorneys' fees or reimbursed for their expenses in advance of this Settlement. Plaintiff's Counsel have done so with the expectation that, if they are successful in recovering money for the Settlement Class, they will receive attorneys' fees and be reimbursed for their litigation expenses from the Settlement Fund, as is customary in this type of litigation. Plaintiff's Counsel will not receive attorneys' fees or be reimbursed for their litigation expenses except from the Settlement Fund. Therefore, Lead Counsel will apply to the Court for an award of attorneys' fees for Plaintiff's Counsel in an amount not to exceed 28% of the Settlement Fund plus interest, reimbursement of litigation expenses of no more than \$35,000, and an award to Lead Plaintiff not to exceed \$10,000. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

15. How do I tell the Court that I do not like the Settlement?

You can tell the Court you do not agree with the Settlement, any part of the Settlement, and/or to Lead Counsel's motion for attorneys' fees and expenses and application for an award to Lead Plaintiff, and/or that you think the Court should not approve the Settlement, by mailing a letter stating that you object to the Settlement in the matter of *Patron v. Dotts and Soldan*, 1:19-cv-05362-PGG (S.D.N.Y). Be sure to include: (1) your name, address,

and telephone number; (2) a list of all purchases and sales of Fusion common stock during the Settlement Class Period; (3) all grounds for the objection, including any legal support known to you or your counsel; (4) the name, address and telephone number of all counsel, if any, who represent you, including your former or current counsel; and (5) the number of times you and/or your counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection in each case, the jurisdiction in each case, and the name of the issuer of the security or seller of the product or service at issue in each case. Attendance at the Settlement Hearing is not necessary. Objectors wishing to be heard orally at the Settlement Hearing are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and after instruction pertinent to the submission of a written objection) that they intend to appear at the Settlement Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Settlement Hearing. Be sure to serve copies of any objections, papers and briefs to **each** of the addresses listed below, to be **received no later than** _____, 2020:

Clerk of the Court United States District Court Southern District of New York Thurgood Marshall U.S. Courthouse 40 Foley Square New York, NY 10007	Phillip Kim, Esq. The Rosen Law Firm, P.A. 275 Madison Ave 40th Floor New York, NY 10016 <i>Lead Counsel</i>	David Kistenbroker, Esq. Dechert LLP 35 W. Wacker Drive Suite 3400 Chicago, IL 60601 <i>Counsel for Settling Defendants</i>
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16. What is the difference between objecting and requesting exclusion?

Objecting is simply telling the Court you do not like something about the Settlement or some portion thereof. You can object only if you stay in the Settlement Class. Requesting exclusion is telling the Court you do not want to be part of the Settlement Class and Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer concerns you. If you stay in the Settlement Class and object, but your objection is overruled, you will not be allowed a second opportunity to exclude yourself.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Settlement Hearing on _____, 2020, at __:__.m., at the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse, Courtroom 705, 40 Foley Square, New York, NY 10007. The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means. In the event the Court decides to hold the Settlement Hearing telephonically or by other virtual means, Lead Counsel will issue a press release notifying Settlement Class Members, and the Claims Administrator will update its website, on the page dedicated to this Settlement, to note the telephonic or other virtual means Settlement Hearing.

18. Do I have to come to the hearing?

No. Lead Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection on time, the Court will consider it.

19. What happens if I do nothing at all?

If you do nothing, you will not receive a payment from the Settlement. However, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or the Released Parties about the Settled Claims (as defined in the Settlement Stipulation) ever again.

SPECIAL NOTICE TO BROKERS AND OTHER NOMINEES

If, during the Settlement Class Period, you purchased, otherwise acquired, or sold Fusion securities for the beneficial interest of a person or organization other than yourself, the Court has directed that, **WITHIN TEN (10) CALENDAR DAYS OF YOUR RECEIPT OF NOTICE**, you either (a) provide to the Claims Administrator the name, email address, and last known address of each person or organization for whom or which you purchased such Fusion securities during such time period; (b) request an electronic copy of the Summary Notice and, within ten (10) days after receiving the Summary Notice, email the Summary Notice or email links to the Notice and Proof of Claim and Release Form to the email address to each beneficial purchaser/owner of Fusion common stock; or (c) request additional copies of the Postcard Notice, which will be provided to you free of charge, and within ten (10) days mail the Postcard Notice directly to the beneficial purchaser/owners of the Fusion common stock. If you choose to follow alternative procedures (b) or (c), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable out-of-pocket expenses actually incurred in connection with the foregoing up to \$0.05 for providing names, addresses and email addresses to the Claims Administrator; up to a maximum of \$0.05 per Postcard Notice mailed by you, plus postage at the pre-sort rate used by the Claims Administrator; or \$0.05 per notice sent by email. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications regarding the foregoing should be addressed to the Claims Administrator at the address listed on page 3 above.

DATED:

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM AND RELEASE FORM

Deadline for Submission: _____

IF YOU PURCHASED FUSION CONNECT, INC. (“FUSION” OR THE “COMPANY”) COMMON STOCK FROM MAY 11, 2018 THROUGH APRIL 2, 2019, BOTH DATES INCLUSIVE (“SETTLEMENT CLASS PERIOD”), YOU ARE A “SETTLEMENT CLASS MEMBER” AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS.

IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT THIS PROOF OF CLAIM AND RELEASE FORM (“PROOF OF CLAIM AND RELEASE FORM”) IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS. YOU CAN COMPLETE AND SUBMIT THE ELECTRONIC VERSION OF THIS PROOF OF CLAIM AND RELEASE FORM BY 11:59 P.M. EST ON _____, 2020 AT WWW.STRATEGICCLAIMS.NET.

IF YOU DO NOT COMPLETE AND SUBMIT AN ELECTRONIC VERSION OF THIS PROOF OF CLAIM AND RELEASE FORM, YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND RELEASE FORM AND MAIL IT BY FIRST CLASS MAIL, POSTMARKED NO LATER THAN _____, 2020 TO THE CLAIMS ADMINISTRATOR, STRATEGIC CLAIMS SERVICES, AT THE FOLLOWING ADDRESS:

Fusion Connect, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
P.O. Box 230
Media, PA 19063
Fax: (610) 565-7985
info@strategicclaims.net

YOUR FAILURE TO SUBMIT YOUR CLAIM BY _____, 2020 WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOU FROM RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS ACTION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR COUNSEL, AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR. IF YOU ARE A SETTLEMENT CLASS MEMBER AND DO NOT SUBMIT A PROPER PROOF OF CLAIM AND RELEASE FORM, YOU WILL NOT SHARE IN THE SETTLEMENT, BUT YOU NEVERTHELESS WILL BE BOUND BY THE ORDER AND FINAL JUDGMENT OF THE COURT UNLESS YOU EXCLUDE YOURSELF.

SUBMISSION OF A PROOF OF CLAIM AND RELEASE FORM DOES NOT ASSURE THAT YOU WILL SHARE IN THE PROCEEDS OF THE SETTLEMENT.

CLAIMANT'S STATEMENT

1. I (we) purchased Fusion Connect, Inc. ("Fusion") common stock during the Settlement Class Period. (Do not submit this Proof of Claim and Release Form if you did not purchase Fusion common stock during the Settlement Class Period.)
2. By submitting this Proof of Claim and Release Form, I (we) state that I (we) believe in good faith that I am (we are) a Settlement Class Member(s) as defined above and in the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), or am (are) acting for such person(s); that I am (we are) not a Defendant in the Action or anyone excluded from the Settlement Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund, as defined in the Notice; that I (we) elect to participate in the proposed Settlement described in the Notice; and that I (we) have not filed a request for exclusion. (If you are acting in a representative capacity on behalf of a Settlement Class Member [e.g., as an executor, administrator, trustee, or other representative], you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)
3. I (we) consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Proof of Claim and Release Form. I (we) understand and agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Settlement Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim and Release Form.
4. I (we) have set forth where requested below all relevant information with respect to each purchase of Fusion common stock, and each sale, if any, of such securities. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.
5. I (we) have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase and sale of Fusion common stock listed below in support of my (our) claim. (IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER OR TAX ADVISOR BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)
6. I (we) understand that the information contained in this Proof of Claim and Release Form is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your Recognized Loss. In some cases, the Claims Administrator may condition acceptance of the claim based upon the production of additional information, including, where applicable, information concerning transactions in any derivatives securities such as options.)
7. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise and discharge by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) of each of the "Released Parties" of all "Released Claims," as those terms are defined in the Stipulation of Settlement, dated June 8, 2020 (the "Settlement Stipulation").

8. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a covenant by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) to permanently refrain from prosecuting or attempting to prosecute any Settled Class Claims against any of the Released Parties.
9. "Released Parties" has the meaning laid out in the Settlement Stipulation.
10. "Settled Class Claims" has the meaning laid out in the Settlement Stipulation.
11. "Unknown Claims" has the meaning laid out in the Settlement Stipulation.
12. I (We) acknowledge that the inclusion of "Unknown Claims" in the definition of claims released pursuant to the Settlement Stipulation was separately bargained for and is a material element of the Settlement of which this release is a part.
13. NOTICE REGARDING INSTITUTIONAL FILERS: Representatives with authority to file on behalf of (a) accounts of multiple Settlement Class Members and/or (b) institutional accounts with large numbers of transactions ("Representative Filers") must submit information regarding their transactions in an electronic spreadsheet format. If you are a Representative Filer, you must contact the Claims Administrator at efile@strategicclaims.net or visit their website at www.strategicclaims.net to obtain the required file layout. Claims which are not submitted in electronic spreadsheet format and in accordance with the Claims Administrator's instructions may be subject to rejection. All Representative Filers MUST also submit a manually signed Proof of Claim and Release Form, as well as proof of authority to file (see Item 2 of the Claimant's Statement), along with the electronic spreadsheet format. No claims submitted in electronic spreadsheet format will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgment of receipt and acceptance of electronically submitted data.
14. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Proof of Claim and Release Form hosted at www.strategicclaims.net. If you are not acting as a Representative Filer, you do not need to contact the Claims Administrator prior to filing; you will receive an automated e-mail confirming receipt once your Proof of Claim and Release Form has been submitted. If you are unsure if you should submit your claim as a Representative Filer, please contact the Claims Administrator at info@strategicclaims.net or (866) 274-4004. If you are not a Representative Filer, but your claim contains a large number of transactions, the Claims Administrator may request that you also submit an electronic spreadsheet showing your transactions to accompany your Proof of Claim and Release Form.

I. CLAIMANT INFORMATION

Beneficial Owner Name
Address

EXHIBIT A-2

City	State	ZIP
Foreign Province	Foreign Country	
Day Phone	Evening Phone	
Email		
Social Security Number (for individuals):	OR	Taxpayer Identification Number (for estates, trusts, corporations, etc.):

II. SCHEDULE OF TRANSACTIONS IN FUSION CONNECT, INC. COMMON STOCK**Beginning Holdings:**

- A. State the total number of shares of Fusion Connect, Inc. ("Fusion") common stock held at the close of trading on May 10, 2018 (*must be documented*). If none, write "zero" or "0."

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Purchases/Acquisitions:

- B. Separately list each and every purchase or acquisition of Fusion common stock from May 11, 2018 through July 1, 2019, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day/Year)	Number of Shares Purchased	Price per Share	Total Cost (Excluding Commissions, Taxes, and Fees)

Sales:

- C. Separately list each and every sale of Fusion common stock from May 11, 2018 through July 1, 2019, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Price per Share	Amount Received (Excluding Commissions, Taxes, and Fees)

Ending Holdings:

D. State the total number of shares of Fusion common stock held at the close of trading on July 1, 2019 (*must be documented*).

--

If additional space is needed, attach separate, numbered sheets, giving all required information, substantially in the same format, and print your name and Social Security or Taxpayer Identification number at the top of each sheet.

III. SUBSTITUTE FORM W-9

Request for Taxpayer Identification Number:

Enter taxpayer identification number below for the Beneficial Owner(s). For most individuals, this is your Social Security Number. The Internal Revenue Service ("I.R.S.") requires such taxpayer identification number. If you fail to provide this information, your claim may be rejected.

Social Security Number (for individuals)	or	Taxpayer Identification Number (for estates, trusts, corporations, etc.)

IV. CERTIFICATION

I (We) submit this Proof of Claim and Release Form under the terms of the Settlement Stipulation described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of New York with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the release and covenant not to sue set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in this Action. I (We) have not submitted any other claim covering the same purchases or sales of Fusion common stock during the Settlement Class Period and know of no other Person having done so on my (our) behalf.

I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(c) of the Internal Revenue Code because: (a) I am (We are) exempt from backup withholding; or (b) I (We) have not been notified by the I.R.S. that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the I.R.S. that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

UNDER THE PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES, I (WE) CERTIFY THAT ALL OF THE INFORMATION I (WE) PROVIDED ON THIS PROOF OF CLAIM AND RELEASE FORM IS TRUE, CORRECT AND COMPLETE.

Signature of Claimant (If this claim is being made
on behalf of Joint Claimants, then each must sign):

(Signature)

(Signature)

(Capacity of person(s) signing, e.g. beneficial
purchaser(s), executor, administrator, trustee, etc.)

☐ Check here if proof of authority to file is enclosed.
(See Item 2 under Claimant's Statement)

Date: _____

THIS PROOF OF CLAIM AND RELEASE FORM MUST BE POSTMARKED NO LATER THAN _____, 2020 AND MUST BE MAILED TO:

Fusion Connect, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
P.O. Box 230
Media, PA 19063
Fax: (610) 565-7985
info@strategicclaims.net

A Proof of Claim and Release Form received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by _____, 2020 and if a postmark is indicated on the envelope and it is mailed first class and addressed in accordance with the above instructions. In all other cases, a Proof of Claim and Release Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to process fully all of the Proof of Claim and Release Forms and to administer the Settlement. This work will be completed as promptly as time permits, given the need to investigate and tabulate each Proof of Claim and Release Form. Please notify the Claims Administrator of any change of address.

REMINDER CHECKLIST

- Please be sure to sign this Proof of Claim and Release Form on page _____. If this Proof of Claim and Release Form is submitted on behalf of joint claimants, then each claimant must sign.
- Please remember to attach supporting documents. Do NOT send any stock certificates. Keep copies of everything you submit.
- Do NOT use highlighter on the Proof of Claim and Release Form or any supporting documents.
- If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested, or its equivalent.
- If you move or change your address, telephone number or email address, please submit the new information to the Claims Administrator, as well as any other information that will assist us in contacting you. NOTE: Failure to submit updated information to the Claims Administrator may result in the Claims Administrator's inability to contact you regarding issues with your claim or deliver payment to you.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT PATRON, Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

KEVIN M. DOTTS and KEITH SOLDAN

Defendants.

Case No.: 1:19-cv-05362-PGG

CLASS ACTION

**SUMMARY NOTICE OF PENDENCY AND
PROPOSED CLASS ACTION SETTLEMENT**

TO: ALL PERSONS WHO PURCHASED FUSION CONNECT, INC. (“FUSION”) COMMON STOCK FROM MAY 11, 2018 THROUGH APRIL 2, 2019, INCLUSIVE.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Southern District of New York, that a hearing will be held on _____, 2020, at __:___ .m. before the Honorable Paul G. Gardephe, United States District Judge of the Southern District of New York, Thurgood Marshall U.S. Courthouse, 40 Foley Square, Courtroom 705, New York, NY 10007 for the purpose of determining: (1) whether the proposed Settlement of the claims in the above-captioned Action for consideration including the sum of \$800,000 should be approved by the Court as fair, reasonable, and adequate; (2) whether the proposed plan to distribute the Settlement proceeds is fair, reasonable, and adequate; (3) whether the application of Lead Counsel for an award of attorneys’ fees of up to 28% plus interest of the Settlement Amount, reimbursement of expenses of not more than \$35,000 and an incentive payment of no more than \$10,000 in total to Lead Plaintiff, should be approved; and (4) whether this Action should be dismissed with prejudice as set forth in the Stipulation and Agreement of Settlement, dated June 8, 2020 (the

“Settlement Stipulation”). The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means.

If you purchased Fusion common stock during the period from May 11, 2018 through April 2, 2019, both dates inclusive, your rights may be affected by this Settlement, including the release and extinguishment of claims you may possess relating to your ownership interest in Fusion common stock. If you have not received a detailed Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and a copy of the Proof of Claim and Release Form, you may obtain copies by writing to or calling the Claims Administrator: Fusion Connect, Inc. Securities Litigation, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson St., Ste. 205, Media, PA 19063; (Tel) (866) 274-4004; (Fax) (610) 565-7985; info@strategicclaims.net. You can also download copies of the Notice and submit your Proof of Claim and Release Form online at www.strategicclaims.net. If you are a member of the Settlement Class, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release Form electronically or postmarked no later than _____, 2020 to the Claims Administrator, establishing that you are entitled to recovery. Unless you submit a written exclusion request, you will be bound by any judgment rendered in the Action whether or not you make a claim.

If you desire to be excluded from the Settlement Class, you must submit to the Claims Administrator a request for exclusion so that it is received no later than _____, 2020, in the manner and form explained in the Notice. All members of the Settlement Class who have not requested exclusion from the Settlement Class will be bound by any judgment entered in the Action pursuant to the Settlement Stipulation.

Any objection to the Settlement, Plan of Allocation, or Lead Counsel’s request for an award of attorneys’ fees and reimbursement of expenses and award to Lead Plaintiff must be in the

manner and form explained in the detailed Notice and received no later than _____, 2020,
to each of the following:

Clerk of the Court United States District Court Southern District of New York Thurgood Marshall U.S. Courthouse 40 Foley Square New York, NY 10007	Phillip Kim, Esq. The Rosen Law Firm, P.A. 275 Madison Ave 40th Floor New York, NY 10016 <i>Lead Counsel</i>	David Kistenbroker, Esq. Dechert LLP 35 W. Wacker Drive Suite 3400 Chicago, IL 60601 <i>Counsel for Defendants</i>
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If you have any questions about the Settlement, you may call or write to Lead Counsel:

Phillip Kim, Esq.
THE ROSEN LAW FIRM, P.A.
275 Madison Ave
40th Floor
New York, NY 10016
Tel: (212) 686-1060
info@rosenlegal.com

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE.

DATED:

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Fusion Connect, Inc. Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
Media, PA 19063

PRESORTED
FIRST-CLASS
MAIL U.S.
POSTAGE PAID

**Court-Ordered Legal Notice
Forwarding Service Requested**

*Important Notice about a Securities
Class Action Settlement*

*You may be entitled to a payment.
This Notice may affect your legal
rights.*

Please read it carefully.

Case No. 1:19-cv-05362 (S.D.N.Y.)

Case Pending in the United States District Court for the
Southern District of New York

[NAME 1]
[NAME 2]
[NAME 3]
[ADDRESS 1]
[ADDRESS 2]

THIS CARD PROVIDES ONLY LIMITED INFORMATION ABOUT THE SETTLEMENT.

PLEASE VISIT WWW.STRATEGICCLAIMS.NET OR CALL 1-866-274-4004 FOR MORE INFORMATION.

The United States District Court for the Southern District of New York (the “Court”) has preliminarily approved a proposed Settlement of claims against Defendants in the above-referenced action (collectively, the “Defendants”). The proposed Settlement would resolve a class action lawsuit alleging that, in violation of the federal securities laws, Defendants made misrepresentations the investing public concerning Fusion Connect, Inc. (“Fusion”)’s financial statements. Defendants deny the allegations.

You received this notice because you may have purchased Fusion common stock between May 11, 2018 and April 2, 2019, both dates inclusive. The Settlement dismisses and releases claims against Defendants and creates a fund consisting of \$800,000, less attorneys’ fees and expenses, which will be divided among Settlement Class Members who timely submit valid Proof of Claim and Release Forms (“Proof of Claim”). For a full description of the Settlement and your rights and to make a claim, please view the Stipulation and Agreement of Settlement and obtain a copy of the Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and Proof of Claim by visiting the website: www.strategicclaims.net. You may also request copies of the Notice and Proof of Claim from the Claims Administrator by: (1) mail: Fusion Connect, Inc. Securities Litigation, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson St, Ste. 205, Media, PA 19063; (2) toll-free phone: (866) 274-4004; (3) fax: (610) 565-7985; or (4) email: info@strategicclaims.net.

To qualify for payment, you must submit a Proof of Claim, which can be found on the website www.strategicclaims.net. PROOFS OF CLAIM ARE DUE BY _____, 2020 TO FUSION CONNECT, INC. SECURITIES LITIGATION, C/O STRATEGIC CLAIMS SERVICES, P.O. BOX 230, 600 N. JACKSON ST, STE 205, MEDIA, PA 19063 or submitted electronically at www.strategicclaims.net. If you do not want to be legally bound by the Settlement, you must exclude yourself by _____, 2020. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement, you may object to it by _____, 2020. The Notice explains how to exclude yourself or to object.

The Court will hold a hearing in this case on _____, 2020 at ____:____.m. at the Court, 40 Foley Square, Courtroom 705, New York, NY 10007, to consider whether to approve the Settlement, the Plan of Allocation, and a request by Lead Counsel for up to 28% of the Settlement Fund in attorneys’ fees, plus up to \$35,000 in expenses, and Award to Lead Plaintiff of no more than \$10,000, for litigating the case and negotiating the Settlement. You may, but do not have to, attend the hearing and ask to be heard by the Court. The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT PATRON, Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

KEVIN M. DOTTS and KEITH SOLDAN

Defendants.

Case No. 1:19-cv-05362-PGG

CLASS ACTION

[PROPOSED] ORDER AND FINAL JUDGMENT

On the ____ day of _____, 20____, a hearing having been held before this Court to determine whether the terms and conditions of the Stipulation of Settlement dated June 8, 2020 (the “Settlement Stipulation”) are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against the Settling Defendants; and

The Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing that the Notice substantially in the form approved by the Court in the Court’s Order Preliminarily Approving Settlement and Providing For Notice (“Preliminary Approval Order”) was provided to all reasonably identifiable Settlement Class Members and posted to the website of the Claims Administrator; and

It appearing that the Summary Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with that Order and the specifications of the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
THAT:

1. All capitalized terms used herein have the same meanings as set forth and defined in the Settlement Stipulation.

2. The Court has jurisdiction over the subject matter of the Action, Lead Plaintiff, all Settlement Class Members and Settling Defendants.

3. For purposes of this Settlement, this is a class action on behalf of all Persons (including, without limitation, their beneficiaries) who purchased Fusion Connect, Inc. (“Fusion”) common stock between May 11, 2018 and April 2, 2019, both dates inclusive. Excluded from the Class are (i) the Settling Defendants, all current and former directors and officers of Fusion or Birch Communications Holdings, Inc., and the successors, heirs, and members of immediate families, assigns, and any entity in which any of the Defendants, or any person excluded under this subsection, has or had a majority ownership interest at any time; (ii) Opt-Outs; and (iii) Persons who have no compensable damages.

4. The Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled thereto of these proceedings and the matters set forth herein. No Settlement Class Member is relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were

fully discharged. Thus, it is hereby determined that all members of the Settlement Class are bound by this Order and Final Judgment.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Settlement Stipulation and Settlement are, in all respects, fair, reasonable, and adequate and in the best interests of the Settlement Class and each of the Settlement Class Members. This Court further finds the Settlement set forth in the Settlement Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of Lead Plaintiff, Class Members, and Settling Defendants. Accordingly, the Settlement embodied in the Settlement Stipulation is hereby finally approved in all respects, and shall be consummated in accordance with its terms and provisions. The Settling Parties are hereby directed to perform the terms of the Settlement Stipulation.

6. The Action and the Amended Class Action Complaint ("Complaint") are hereby dismissed with prejudice. The Settling Parties shall bear their own costs and expenses, except as and to the extent provided in the Settlement Stipulation and herein.

7. In accordance with the terms of the Settlement Stipulation, the Releasing Parties hereby forever release, relinquish, and discharge the Released Parties from any and all Settlement Class Claims. The Releasing Parties, and anyone acting or purporting to act for any of them, are hereby permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claims, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties.

8. In accordance with the terms of the Settlement Stipulation, each of the Settling Defendants, on behalf of themselves, and, as applicable, their heirs, executors, predecessors,

successors and assigns, hereby forever releases, relinquishes, and discharges any and all Defendant Claims which arise out of, concern or relate to the institution, prosecution, settlement, or dismissal of the Action against the Lead Plaintiff, any of the Class Members and any of their counsel, including Plaintiff's Counsel.

9. In accordance with 15 U.S.C. § 78u-4(f)(7) and any other applicable law or regulation, any and all claims which are brought by any Person or entity against Settling Defendants (a) for contribution or indemnification arising out of any Released Claim, or (b) where the damage to the claimant is measured by reference to the claimant's liability to the Lead Plaintiff or the Settlement Class, are hereby permanently barred and discharged. Any such claims brought by Settling Defendants against any Person or entity (other than Persons or entities whose liability to Lead Plaintiffs or the Settlement Class is extinguished by this Order and Final Judgment) are likewise permanently barred and discharged, provided, however, that nothing in this Order and Final Judgment shall apply to bar or otherwise affect any claim for insurance coverage by any Settling Defendant.

10. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

11. Neither this Order and Final Judgment, the Settlement Stipulation, nor any of the negotiations, documents or proceedings connected with them shall be:

(a) referred to or used against Settling Defendants or against Lead Plaintiff or the Settlement Class as evidence of wrongdoing by anyone;

(b) construed against Settling Defendants or against Lead Plaintiff or the Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

(c) construed as, or received in evidence as, an admission, concession or presumption against the Settlement Class or any of them, that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the Settlement Fund; or

(d) used or construed as an admission of any fault, liability or wrongdoing by any person or entity, or offered or received in evidence as an admission, concession, presumption or inference against any of the Settling Defendants in any proceeding other than such proceedings as may be necessary to consummate or enforce the Stipulation.

12. Exclusive jurisdiction is hereby retained over Settling Defendants and the Settlement Class Members for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Stipulation or Settlement and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the Settlement Class Members.

13. Without further order of the Court, Settling Defendants and Lead Plaintiff may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

14. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

15. The finality of this Order and Final Judgment shall not be affected, in any manner, by rulings that the Court may make with respect to the proposed Plan of Allocation or on Lead Counsel's application for an award of attorneys' fees and expenses and/or case contribution awards to Lead Plaintiff.

16. In the event that the Settlement does not become final and effective in accordance with the terms and conditions set forth in the Settlement Stipulation, then this Order and Final Judgment shall be rendered null and void and be vacated. The terms and conditions of the Settlement Stipulation shall govern any termination or the effect of any termination thereof.

Dated: _____, 20__

HON. PAUL G. GARDEPHE
UNITED STATES DISTRICT JUDGE