

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 CHAD C. SMITH, Individually and on :
4 behalf of all others similarly situated, :
5 : Case No. 4:19-cv-04801-JST
6 Plaintiff, :
7 v. :
8 NETAPP, INC., et al. :
9 Defendants. :

10 **STIPULATION OF SETTLEMENT**

11 This Stipulation of Settlement (the “Stipulation”), dated September 21, 2021, is entered
12 into by Lead Plaintiff Winston Derouin (“Derouin,” “Plaintiff,” or “Lead Plaintiff”), on behalf of
13 himself and each of the Settlement Class Members, and Defendant NetApp, Inc. (“NetApp” or
14 “Company”) and Individual Defendants George Kurian, Ronald J. Pasek, and Matthew K.
15 Fawcett (collectively with NetApp, “Defendants,” and with Plaintiff, “Parties”), through their
16 respective counsel of record relating to the above-captioned litigation (“Action”). This Stipulation
17 is intended to fully, finally, and forever resolve, discharge, and settle with prejudice all claims
18 asserted in this Action against Defendants subject to the approval of the United States District
19 Court for the Northern District of California (the “Court”).

20 **I. THE LITIGATION**

21 **A. Procedural History of the Litigation**

22 This class action lawsuit has been brought on behalf of persons who purchased or
23 otherwise acquired NetApp securities from May 23, 2019 to August 1, 2019, both dates inclusive
24 (the “Settlement Class Period”) for alleged violations of §§ 10(b) and 20(a) of the Securities
25 Exchange Act of 1934 (“Exchange Act”).

26 NetApp issued a revenue guidance range on May 22, 2019 for the first quarter of fiscal
27 year 2020 (“Q1 2020”) and for full fiscal year 2020. On June 18, 2019, NetApp issued an annual
28 report on Form 10-K (“2019 10-K”) in which it warned about the potential negative consequences
to its finances if its largest customers pushed out or cancelled their orders. The Amended Class

1 Action Complaint for Violations of the Federal Securities Laws (“Amended Complaint”) alleges
2 that Defendants knew that the May 22, 2019 forecast was false when made. The Amended
3 Complaint further alleges that when Defendants issued their 2019 10-K, they knew or recklessly
4 disregarded that the warning they published about large customers pushing out or cancelling their
5 orders had actually materialized, but failed to disclose this to investors.

6 On August 1, 2019, Defendants issued a press release, attached to a Form 8-K, stating that
7 NetApp would miss its quarterly revenue guidance range by up to \$243 million, and that investors
8 should no longer rely on the Company’s May 22, 2019 guidance for full fiscal year 2020.
9 Defendants further stated that there was a deterioration in close rates against its sales pipeline
10 with its largest customers pushing out or downsizing orders in the second half of Q1 2020. The
11 second half of Q1 2020 started on June 10, 2019. In response to this news, on August 1, 2019
12 NetApp’s share price dropped by \$11.67, over 20%, falling from \$57.71 to \$46.04.

13 This Action was commenced on August 14, 2019, alleging violations of §§10(b) and 20(a)
14 of the Exchange Act (Dkt. No. 1) (“Complaint”). On October 15, 2019, Derouin moved for
15 appointment as lead plaintiff and approval of lead counsel. (Dkt. No. 20). On November 12, 2019,
16 the Court granted his motion, appointing Derouin as Lead Plaintiff, and appointing The Rosen
17 Law Firm, P.A. as Lead Counsel. (Dkt. No. 36).

18 On January 24, 2020, Lead Plaintiff filed the Amended Complaint (Dkt. No. 41). On
19 March 26, 2020, Defendants filed their motion to dismiss the Amended Complaint (Dkt. No. 42),
20 including the declaration of Cheryl W. Fong (“Fong”) (Dkt. No. 43). The motion to dismiss
21 was fully briefed on July 9, 2020. (Dkt. No. 52). The Court dismissed the case in its entirety on
22 February 1, 2021 (Dkt. No. 58), and judgment was entered on February 26, 2021 (Dkt. No. 59).
23 Plaintiff filed his Notice of Appeal on March 26, 2021 (Dkt. No. 60).

24 **Settlement Negotiations**

25 The Parties participated in a mediation on July 21, 2021, through the Ninth Circuit’s
26 mediation program. The Parties agreed in principle to resolve the claims asserted in the Action
27 for \$2.25 million in return for a release of all claims against the Defendants, as further detailed
28 below.

1 **B. Lead Plaintiff's Assessment of the Claims and Benefits of Settlement**

2 Lead Plaintiff believes that the claims asserted in the Action have merit. Lead Counsel has
3 researched the applicable law and believes that any defenses Defendants raise can be refuted.
4 Nonetheless, Lead Plaintiff and Lead Counsel recognize the expense and length of continued
5 prosecution of the Action against Defendants through appeal in the Ninth Circuit, remand to this
6 Court, discovery, trial, and any subsequent appeals.

7 Lead Plaintiff and Lead Counsel believe that the Settlement set forth in this Stipulation
8 confers substantial benefits upon the Settlement Class, is fair, reasonable, adequate, and in the
9 best interests of the Settlement Class.

10 **C. Defendants' Denials of Wrongdoing and Liability**

11 Defendants have denied and continue to deny each and all of the claims asserted in the
12 Action and expressly deny, *inter alia*, that Defendants have engaged in any wrongdoing,
13 including, without limitation, that their public statements were false or misleading; that they have
14 committed any violations of law or breaches of duty to Plaintiff, NetApp shareholders, or anyone
15 else, or aided and abetted the same; that they failed to disclose any material information to
16 investors; that they acted in any deceitful manner or otherwise with the requisite scienter; and that
17 any investment losses sustained by Lead Plaintiff and the Settlement Class were caused by
18 Defendants' alleged misconduct. Defendants believe that the Action is without merit, that their
19 public statements during the Settlement Class Period contained no material misstatements or
20 omissions, and that they otherwise complied with all applicable rules, regulations, and laws. In
21 addition, Defendants maintain that they have meritorious defenses to all claims alleged in the
22 Action. Defendants maintain that they diligently and scrupulously complied with any and all
23 fiduciary and other legal duties, and make no admission of liability or any form of wrongdoing
24 whatsoever by entering into this Settlement.

25 Nonetheless, taking into account the uncertainty and risks, expenses, length of time, and
26 business distraction, among other things, inherent in any litigation, especially in complex
27 securities cases such as this Action, Defendants have concluded that further litigation of the
28 Action could be protracted, burdensome, and expensive, and that it is desirable and beneficial that

1 the claims asserted in the Action be fully and finally settled and terminated in the manner and
2 upon the terms and conditions set forth in this Stipulation.

3 **II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

4 **A. Introduction**

5 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
6 Lead Plaintiff (individually and on behalf of all members of the Settlement Class), and each of
7 them, and Defendants, and each of them, by and through their respective undersigned counsel or
8 attorneys of record, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules
9 of Civil Procedure, that in consideration of the benefits flowing to the Parties from the Settlement
10 set forth herein, the Action and the Settled Claims shall be finally and fully compromised, settled,
11 and released, and the Action shall be dismissed with prejudice, as to all Parties, upon and subject
12 to the terms and conditions of this Stipulation.

13 **B. Definitions**

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

15 1.0 “Action” means *Chad C. Smith v. NetApp Inc.*, et al., Case No. 4:19-cv-04801-JST
16 (N.D. Cal.).

17 1.1 “Authorized Claimant” means any member of the Settlement Class who is a
18 Claimant (as defined in ¶ 1.3) and whose claim for recovery has been allowed pursuant to the
19 terms of this Stipulation.

20 1.2 “Business Day” means any day except a Saturday or Sunday or other day on which
21 national banks are authorized by law or executive order to close in the State of California.

22 1.3 “Claimant” means any Settlement Class Member (as defined in ¶ 1.38) who files
23 a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

24 1.4 “Claims Administrator” means Strategic Claims Services, which shall administer
25 the Settlement.

26 1.5 “Compensatory Award” means the requested reimbursement to Lead Plaintiff for
27 his reasonable costs and expenses (including lost wages) directly related to Lead Plaintiff’s
28 representation of the Settlement Class in the Action.

1 1.6 “Court” means the United States District Court for the Northern District of
2 California.

3 1.7 “Defendants” means NetApp, George Kurian, Ronald J. Pasek, and Matthew K.
4 Fawcett.

5 1.8 “Defendants’ Counsel” means the law firm of Wilson Sonsini Goodrich & Rosati,
6 P.C.

7 1.9 “Effective Date” means the first date by which all of the events and conditions
8 specified in ¶ 10.0 of the Stipulation have been met and have occurred.

9 1.10 “Escrow Account” means an interest-bearing escrow account established by the
10 Escrow Agent wherein the Settlement Amount shall be deposited and held in escrow. The Escrow
11 Account shall be managed by the Escrow Agent, subject to the Court’s supervisory authority, for
12 the benefit of Lead Plaintiff and the Settlement Class in accordance with the terms of the
13 Stipulation and any order of the Court.

14 1.11 “Escrow Agent” means Huntington National Bank.

15 1.12 “Exchange Act” means the Securities Exchange Act of 1934, as amended.

16 1.13 “Final” means (1) the Court has entered a Judgment approving the Settlement in
17 all material respects, including but not limited to, *inter alia*, (a) certifying a Settlement Class, (b)
18 approving the scope of the Releases, and (c) ordering the Clerk of the Court to enter final
19 judgment in the form set forth in Exhibit B pursuant to Federal Rule 54(b), finding that there is
20 no just reason for delay of enforcement or appeal of the order, and (2) the Judgment has been
21 affirmed in all respects on any appeal or review and is no longer subject to further appeal or
22 review. Provided, however, and notwithstanding any provision to the contrary in this Settlement,
23 “Final” shall not include (and the Settlement is expressly not conditioned upon) the Court's
24 approval of attorneys’ fees and the reimbursement of expenses sought by Lead Counsel, or the
25 approval of payment of a Compensatory Award for the time and expenses expended by Lead
26 Plaintiff, or any appeals solely related thereto.

27 1.14 “Individual Defendants” means Defendants George Kurian, Ronald J. Pasek, and
28 Matthew K. Fawcett.

1 1.15 “Insurer” means the directors’ and officers’ liability insurers for the Defendants,
2 and is inclusive of their respective reinsurers.

3 1.16 “Judgment” means the proposed final order and judgment to be entered by the
4 Court approving the Settlement, substantially in the form attached hereto as Exhibit B or in such
5 other form as may be approved in writing by all of the Parties acting by and through their
6 respective counsel of record in the Action.

7 1.17 “Lead Counsel” means The Rosen Law Firm, P.A.

8 1.18 “Lead Plaintiff” means Winston Derouin.

9 1.19 “MOU” means the Memorandum of Understanding entered into on July 30, 2021
10 between Lead Counsel and Defendants’ Counsel.

11 1.20 “Notice” means collectively, the Postcard Notice, the Notice of Pendency and
12 Proposed Settlement of Class Action (“Long Notice”), and the Summary Notice of Pendency and
13 Proposed Settlement of Class Action (“Summary Notice”), which are to be made available to
14 Settlement Class Members substantially in the forms attached hereto as Exhibits A-1, A-2, and
15 A-4, respectively, on the Claims Administrator’s website and/or mailed or emailed to Settlement
16 Class Members.

17 1.21 “Notice Administration Fund” means an interest-bearing escrow account
18 established by the Claims Administrator to receive funds pursuant to ¶ 2.0(a).

19 1.22 “Order of Preliminary Approval” means the order certifying the Settlement Class
20 for settlement purposes only, preliminarily approving the Settlement, and authorizing notice
21 thereof and related matters set forth as Exhibit A hereto.

22 1.23 “Parties” means Lead Plaintiff and Defendants.

23 1.24 “Person” means an individual, corporation, partnership, limited partnership,
24 association, joint stock company, estate, legal representative, trust, unincorporated association,
25 government or any political subdivision or agency thereof, and any business or legal entity and
26 their spouses, heirs, predecessors, successors, representatives, or assigns.

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1 1.25 “Plan of Allocation” means a plan or formula for allocating the Net Settlement
2 Fund, as described in ¶ 7.5 below, to Authorized Claimants. Any Plan of Allocation is not part of
3 this Stipulation and Defendants shall have no responsibility or liability with respect thereto.

4 1.26 “Postcard Notice” means the postcard notice to be sent to Settlement Class
5 Members substantially in the form attached hereto as Exhibit A-1, which shall contain information
6 relating to, among other things, how to access the Long Notice, Stipulation, and file a Proof of
7 Claim.

8 1.27 “Proof of Claim” means the Proof of Claim and Release Form to be submitted by
9 Claimants, substantially in the form attached as Exhibit A-3.

10 1.28 “Releasing Parties” shall mean the: (1) Releasing Plaintiffs with respect to the
11 Released Claims Against Defendants; and (2) Defendants with respect to the Released Claims
12 Against Lead Plaintiff.

13 1.29 “Released Parties” means the Defendant Releasees and the Lead Plaintiff
14 Releasee.

15 (i) “Defendant Releasees” shall mean Defendants, and Defendants’ current or former
16 parents, subsidiaries, affiliates, predecessors, successors, divisions, joint ventures, and general or
17 limited partnerships, and each of their respective current or former officers, directors, trustees,
18 partners, contractors, auditors, principals, agents, managing agents, employees, attorneys,
19 accountants, investment bankers, underwriters, insurers or reinsurers in their capacities as such,
20 as well as each of the immediate family members, heirs, executors, personal or legal
21 representatives, estates, beneficiaries, predecessors, successors and assigns of the Defendants and
22 other individuals referred to in this paragraph.

23 (ii) “Lead Plaintiff Releasee” shall mean Derouin, and/or his immediate family
24 members, associates, affiliates, and each and all of his respective past, present employees,
25 attorneys, accountants, insurers, co-insurers and reinsurers, heirs, executors, trustees, general or
26 limited partners or partnerships, limited liability companies, members, personal or legal
27 representatives, estates, administrators, predecessors, successors and assigns or other individuals
28

1 or entities in which either Lead Plaintiff has a controlling interest or which is related to or
2 affiliated with any Lead Plaintiff.

3 1.30 “Released Claims” means collectively Released Claims Against Defendants and
4 Released Claims Against Lead Plaintiff.

5 1.31 “Released Claims Against Defendants” means any and all claims (including
6 “Unknown Claims” as defined in ¶ 1.42), demands, rights, causes of action and liabilities, of every
7 nature and description whatsoever, whether based in law or equity, arising under federal, state,
8 local, statutory or common law, or any other law, rule or regulation, including both known and
9 unknown claims with respect to the purchase or sales of NetApp securities during the Settlement
10 Class Period, relating either to: (a) the allegations of the Complaint or Amended Complaint or
11 otherwise asserted in the Action; or (b) any claims that the Releasing Plaintiffs have asserted,
12 could have asserted, or could have asserted, in any forum, that are based upon, arise out of, or
13 relate in any way to the facts, matters, transactions, allegations, claims, losses, damages,
14 disclosures, filings, events, representations, or statements that are set forth in the Complaint or
15 Amended Complaint or that are otherwise at issue in the Action. Released Claims Against
16 Defendants shall not include claims relating to the enforcement of the MOU or this Stipulation.

17 1.32 “Released Claims Against Lead Plaintiff” means all claims (including “Unknown
18 Claims” as defined in ¶ 1.42), rights, demands, suits, matters, issues, liabilities, or causes of
19 action, in law or in equity, of every nature and description whatsoever, under federal, state, local,
20 foreign law, or any other law, rule, or regulation, whether known or unknown, that arise out of or
21 relate in any way to the institution, prosecution, or settlement of claims against the Defendants,
22 including under Rule 11 of the Federal Rules of Civil Procedure. Released Claims Against Lead
23 Plaintiff shall not include claims relating to the enforcement of the MOU or this Stipulation.

24 1.33 “Releasing Plaintiffs” shall mean the Lead Plaintiff Releasee, the Settlement
25 Class, all Settlement Class Members, and the successors and assigns of Lead Plaintiff and of all
26 Settlement Class Members, in any capacity.

27 1.34 “Settled Claims” means all of the Released Claims.

28 1.35 “Settlement” means the settlement contemplated by this Stipulation.

1 1.36 “Settlement Amount” means Two Million Two Hundred Fifty Thousand Dollars
2 (\$2,250,000).

3 1.37 “Settlement Class” means all persons and entities who purchased or otherwise
4 acquired the publicly traded securities of NetApp between May 23, 2019 and August 1, 2019,
5 both dates inclusive. Excluded from the Settlement Class are Defendants, the officers and
6 directors of NetApp, members of the Individual Defendants’ immediate families and their legal
7 representatives, heirs, successors, or assigns and any entity in which the Individual Defendants
8 have or had a controlling interest. Also excluded from the Settlement Class are all putative
9 members of the Settlement Class who exclude themselves by filing a valid and timely request for
10 exclusion, and Persons with no compensable damages.

11 1.38 “Settlement Class Member” means any person or entity that falls within the
12 definition of the Settlement Class as set forth in ¶ 1.37.

13 1.39 “Settlement Class Period” means the period from May 23, 2019 to August 1, 2019,
14 both dates inclusive.

15 1.40 “Settlement Fund” means an interest-bearing escrow account established by the
16 Escrow Agent to receive the amounts of funds payable by ¶ 2.0(a).

17 1.41 “Summary Notice” means the Summary Notice of Pendency and Proposed
18 Settlement of Class Action to be published on a national business newswire, substantially in the
19 form attached as Exhibit A-4.

20 1.42 “Unknown Claims” shall collectively mean all claims, demands, rights, liabilities,
21 and causes of action of every nature and description which any Releasing Plaintiff (including the
22 Lead Plaintiff and any Settlement Class Member) does not know or suspect to exist in his, her, or
23 its favor at the time of the release of the Defendant Releasees which, if known by him, her, or it,
24 might have affected his, her or its settlement with and release of the Defendant Releasees, or
25 might have affected his, her, or its decision not to object to this Settlement. With respect to any
26 and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the
27 Releasing Parties shall expressly waive, and by operation of the Judgment shall have waived, the
28 provisions, rights and benefits of California Civil Code § 1542, which provides:

1 A general release does not extend to claims that the creditor or releasing
2 party does not know or suspect to exist in his or her favor at the time of
3 executing the release and that, if known by him or her, would have
4 materially affected his or her settlement with the debtor or released party.

5 Releasing Parties shall expressly waive, and by operation of the Judgment shall have, expressly
6 waived any and all provisions, rights, and benefits conferred by any law of any state or territory
7 of the United States, or principle of common law, which is similar, comparable, or equivalent to
8 California Civil Code § 1542. The Releasing Parties may hereafter discover facts in addition to
9 or different from those which he, she, or it now knows or believes to be true with respect to the
10 subject matter of the Released Claims, but Releasing Parties shall expressly, fully, finally, and
11 forever settle and release and upon the Effective Date, shall be deemed to have, and by operation
12 of the Judgment shall have, fully, finally, and forever settled and released any and all Released
13 Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or
14 not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or
15 equity now existing or coming into existence in the future, including, but not limited to, conduct
16 which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule,
17 without regard to the subsequent discovery or existence of such different or additional facts.
18 Releasing Parties acknowledge, and the Releasing Plaintiffs (including all Settlement Class
19 Members) shall be deemed by operation of the Judgment to have acknowledged, that the
20 foregoing waiver was separately bargained for and a key element of the Settlement of which this
21 release is a part.

22 **C. The Settlement**

23 **a. The Settlement Consideration**

24 2.0 In consideration of the full and final settlement of all claims asserted or which
25 could have been asserted against Defendants in this Action, Defendants shall cause to be paid to
26 the Class, the Settlement Amount as follows:

27 (a) Within twenty-one (21) calendar days after the later of (i) entry of an order
28 granting preliminary approval of the Settlement, and (ii) Defendants' Counsel's receipt of a W-9
and complete wire and transfer instructions for the Escrow Account, Defendants and/or its Insurer

1 shall cause to be wired to the Escrow Agent the Settlement Amount (\$2,250,000, Two Million
2 Two Hundred Fifty Thousand Dollars) to be deposited into the Settlement Fund.

3 **b. The Escrow Agent**

4 2.1 The Settlement Amount shall be invested exclusively in instruments or accounts
5 backed by the full faith and credit of the United States Government or fully insured by the United
6 States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that
7 is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured
8 by instruments backed by the full faith and credit of the United States Government. The Escrow
9 Agent shall reinvest the proceeds of these instruments as they mature in similar instruments at
10 their then-current market rates. Defendants shall not bear any responsibility for, or liability related
11 to the investment of the Settlement Amount by the Escrow Agent.

12 **c. Return of Funds in Certain Circumstances**

13 2.2 The Settlement Amount shall include all attorneys’ fees, administration costs,
14 notice costs, expenses, class member benefits, as well as any other costs, expenses, or fees of any
15 kind whatsoever associated with the resolution of the Action. The interest from the Escrow
16 Account will accrue to the benefit of the Settlement Class if the Court approves the Settlement
17 including the resolution of any appeals taken from the Court’s final approval. If the Court does
18 not approve the Settlement or if the approval is reversed or vacated on any appeal, the Settlement
19 Amount and interest thereon will be returned to Defendants and/or the Insurer who paid the
20 Settlement Amount, less any amount used to provide notice of the Settlement to the Settlement
21 Class.

22 2.3 The Settlement is not a claims-made settlement. Once the Settlement is final and
23 the time for any appeal has expired, or the Settlement has been affirmed on appeal, there will be
24 no reversion of any portion of the Settlement Amount to Defendants and/or the Insurers.

25 **d. Handling and Disbursement of Funds by the Escrow Agent**

26 2.4 No monies will be disbursed from the Settlement Fund until after the Effective
27 Date except:

1 (a) As provided in ¶ 2.10, as regards Taxes. Taxes and Tax Expenses shall be paid
2 out of the Settlement Fund, shall be considered to be a cost of administration of the Settlement,
3 and shall be timely paid by the Escrow Agent without prior order of the Court;

4 (b) As provided in ¶ 8.1, as regards attorneys' fees and expenses; and

5 (c) As provided in ¶ 2.8, to pay the reasonable fees and expenses incurred by, and the
6 reasonable fees charged by, the Claims Administrator in connection with the administration and
7 notice of the settlement.

8 2.5 The Escrow Agent shall not disburse the Settlement Fund except as provided in
9 this Stipulation, by an order of the Court, or with the written agreement of Defendants' Counsel
10 and Lead Counsel.

11 2.6 Subject to further order and/or direction as may be made by the Court, the Escrow
12 Agent is authorized to execute such transactions on behalf of the Class as are consistent with the
13 terms of this Stipulation.

14 2.7 All funds held by the Escrow Agent shall be deemed and considered to be in
15 *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such
16 time as such funds shall be distributed or returned to the parties who deposited such funds
17 pursuant to this Stipulation and/or further order(s) of the Court.

18 2.8 The Settlement Fund shall be used by the Escrow Agent to pay the reasonable fees
19 and expenses incurred by, and the reasonable fees charged by, the Claims Administrator in
20 connection with the administration and notice of the settlement upon presentation of customary
21 invoices therefor, which invoices have been approved by Lead Counsel, including, without
22 limitation: the cost of identifying and locating members of the Settlement Class; mailing Notice
23 and Proof of Claim and publishing the Summary Notice (such amounts shall include, without
24 limitation, the actual costs of publication in national newswires, printing and mailing the Notice,
25 and reimbursement to nominee owners for forwarding notice to their beneficial owners), soliciting
26 Settlement Class claims, assisting with the filing of claims, administering and distributing the Net
27 Settlement Fund (as defined below) to Authorized Claimants, processing Proof of Claim and
28 Release Forms, and paying escrow fees and costs, if any, and the administrative expenses incurred

1 and fees charged by the Claims Administrator in connection with providing notice and processing
2 the submitted claims (“Notice and Administration Costs”). Notwithstanding that the Effective
3 Date has not yet occurred, Plaintiff’s Counsel may authorize the Escrow Agent to pay from the
4 Escrow Account the actual costs of notice and settlement administration (not including any
5 attorney fees) and tax expenses up to \$250,000 without further order of the Court. It is understood
6 that, subject to court approval, class notice and administration expenses shall be paid solely from
7 the Escrow Account. Defendants shall not bear any cost or responsibility for class notice and
8 administration expenses, except that Defendants shall pay the costs of providing NetApp’s
9 transfer records and notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 et seq.
10 (“CAFA”), if any. In the event that the Settlement is not consummated, money reasonably paid
11 or incurred for this purpose, including any related fees, shall not be repaid or returned.

12 2.9 No later than ten (10) calendar days following the filing of this Stipulation with
13 the Court, NetApp shall serve on behalf of all Defendants the notice required under CAFA. At
14 least seven (7) calendar days before the Final Approval Hearing, NetApp shall cause to be served
15 on Lead Counsel and filed with the Court an affidavit or declaration regarding compliance with
16 the CAFA notice requirements.

17 **e. Handling of Taxes**

18 2.10

19 (a) The Parties and the Escrow Agent agree to treat the Settlement Funds as “qualified
20 settlement funds” within the meaning of Treasury Regulation §1.468B-1. In addition, the Escrow
21 Agent shall timely make such elections as necessary or advisable to carry out the provisions of
22 this ¶ 2.10, including the “relation-back election” (as defined in Treasury Regulation §1.468B-1)
23 back to the earliest permitted date. Such elections shall be made in compliance with the
24 procedures and requirements contained in such regulations. It shall be the responsibility of the
25 Escrow Agent to timely and properly prepare and deliver the necessary documentation for
26 signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

27 (b) The Claims Administrator shall timely and properly file all informational and other
28 tax returns necessary or advisable with respect to the Notice Administration and Settlement Funds

1 (including without limitation the returns described in Treasury Regulation §1.468B-2(k)). Such
2 returns (as well as the election described in ¶ 2.10(a)) shall be consistent with this ¶ 2.10 and in
3 all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties on the
4 income earned) shall be paid out of the Settlement Fund.

5 (c) All Taxes (including any estimated Taxes, interest or penalties) arising with
6 respect to the income earned by the Notice and Settlement Funds, and expenses and costs incurred
7 in connection with the operation and implementation of this ¶ 2.10 (including, without limitation,
8 expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses or
9 penalties relating to filing (or failing to file) the returns described in this ¶ 2.10) (“Tax Expenses”),
10 shall be paid out of the Settlement Fund.

11 (d) Defendants, Defendants’ Counsel, Lead Plaintiff, and Lead Counsel shall have no
12 liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be
13 treated as and considered to be a cost of administration of the Settlement and shall be timely paid
14 by the Escrow Agent out of the Settlement Fund without prior order from the Court.

15 (e) The Escrow Agent shall indemnify and hold each of the Defendants, Defendants’
16 Counsel, Lead Plaintiff, and Lead Counsel harmless for Taxes and Tax Expenses (including,
17 without limitation, Taxes payable by reason of any such indemnification).

18 (f) The Escrow Agent shall be obligated (notwithstanding anything herein to the
19 contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such
20 amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as
21 well as any amounts that may be required to be withheld under Treasury Regulation §1.468B-
22 2(l)(2)). Neither Defendants, Defendants’ Counsel, Lead Plaintiff, nor Lead Counsel are
23 responsible therefor, nor shall they have any liability with respect thereto.

24 (g) The Parties agree to cooperate with the Escrow Agent, each other, and any
25 involved tax attorneys and accountants to the extent reasonably necessary to carry out the
26 provisions of this ¶ 2.10. Defendants’ Counsel agree to promptly provide the Escrow Agent with
27 the statement described in Treasury Regulation §1.468B-3(e).

28

1 **f. Termination of Settlement**

2 2.11 Defendants shall, acting collectively, have the right to terminate the Settlement
3 and this Stipulation, by providing written notice of their election to do so to all other Parties within
4 ten (10) Business Days of: (a) the Court's denial of Lead Plaintiff's motion for preliminary
5 approval of the Settlement in any material respect without leave to amend and resubmit; (b) the
6 Court's refusal to approve this Stipulation or any material part of it without leave to amend and
7 resubmit; (c) the Court's declining to enter an Order and Final Judgment in any material respect
8 without leave to amend and resubmit; or (d) the date upon which the Order and Final Judgment
9 is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.
10 Any decision with respect to any Fee and Expense Application (defined below), or with respect
11 to any Plan of Allocation, shall not be considered material to this Stipulation and shall not be
12 grounds for termination.

13 2.12 If this Stipulation is terminated, the Settlement Amount, including any interest
14 accrued thereon, less expenses actually incurred or due and owing from the Settlement Fund for
15 the Notice and Administration Costs of Settlement pursuant to ¶ 2.8 above, shall be refunded by
16 check or wire transfer in accordance with the instructions to be provided by Defendants' Counsel.

17 2.13 Lead Plaintiff shall have the right to terminate the Settlement and this Stipulation,
18 by providing written notice of his election to do so to all other Parties within ten (10) days of: (a)
19 the Court's denial of Lead Plaintiff's motion for preliminary approval of the Settlement in any
20 material respect as to the Defendants without leave to amend and resubmit; (b) the Court's refusal
21 to approve this Stipulation or any material part of it without leave to amend and resubmit; (c) the
22 Court's declining to enter an Order and Final Judgment in any material respect as to the
23 Defendants without leave to amend and resubmit; (d) Defendants' failure to timely make full
24 payment of the Settlement Amount into the Escrow Account if, after notice to Defendants by
25 Plaintiff of such failure, Defendants have not cured such failure by making full payment of the
26 Settlement Amount into the Escrow Account within five (5) business days of receipt of such
27 notice from Plaintiff; or (e) the date upon which the Order and Final Judgment is modified or
28 reversed in any material respect by the Court of Appeals or the Supreme Court. Any decision with

1 respect to any Fee and Expense Application, or with respect to any Plan of Allocation, shall not
2 be considered material to this Stipulation and shall not be grounds for termination.

3 2.14 If the Settlement Amount is not paid into the Escrow Account in accordance with
4 ¶ 2.0 of this Stipulation, and, after notice to Defendants by Plaintiff of such failure, Defendants
5 have not cured such failure by making full payment of the Settlement Amount into the Escrow
6 Account within five (5) business days of receipt of such notice from Plaintiff, then Plaintiff on
7 behalf of the Settlement Class, and not Settling Defendants, shall have the right to (a) terminate
8 the Settlement and Stipulation by providing written notice to Defendants at any time prior to the
9 Court's entry of the Final Judgment; or (b) enforce the terms of the Settlement and this Stipulation
10 and seek a judgment effecting the terms herein.

11 2.15 If, prior to the Final Approval Hearing, any persons who otherwise would be
12 members of the Settlement Class have timely filed for exclusion from the Settlement Class in
13 accordance with the provisions of the Order of Preliminary Approval and the notice given
14 pursuant thereto, and such persons in the aggregate purchased a number of shares of NetApp
15 securities during the Settlement Class Period in an amount greater than the sum specified in a
16 separate "Supplemental Agreement" between the Parties, Defendants, in their sole discretion,
17 shall have the option to terminate this Stipulation in accordance with the procedures set forth in
18 the Supplemental Agreement. The Supplemental Agreement shall not be filed with the Court and
19 its terms shall not be disclosed in any other manner (other than the statements herein and in the
20 Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless
21 and until a dispute among the Parties concerning its interpretation or application arises. If
22 submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise
23 ordered by the Court, Lead Plaintiff and the Defendants will undertake to have the Supplemental
24 Agreement submitted to the Court *in camera*. Copies of all requests for exclusion received and
25 copies of all written revocations of requests for exclusion received shall be sent to counsel for the
26 Parties within a reasonable time of receipt by the Claims Administrator.

27 2.16 If: (i) Defendants exercise their right to terminate the Settlement as provided in
28 this Stipulation; or (ii) Lead Plaintiff exercises his right to terminate this Settlement as provided

1 in this Stipulation; or (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to
2 the Settlement otherwise fails to occur with respect to Defendants, then:

3 (a) The Settlement and the relevant portions of this Stipulation shall be canceled and
4 terminated without prejudice with respect to the Parties to whom the termination of the Settlement
5 applies and only those Parties, and this Stipulation shall be null and void and shall have no further
6 force or effect with respect to these Parties and only those Parties;

7 (b) The Parties to whom the termination of Settlement applies and only those Parties
8 shall revert to their respective positions in the Action on July 21, 2021, the date of the MOU's
9 execution.

10 **D. Class Certification**

11 3.0 Solely for purposes of this Settlement, the Parties hereby stipulate to certification
12 of the Settlement Class, appointment of Lead Plaintiff as Class Representative, and appointment
13 of Lead Counsel as Class Counsel, pursuant to Rule 23(b)(3) of the Federal Rules of Civil
14 Procedure. The certification of the Settlement Class shall be binding only with respect to the
15 Settlement and only if the Judgment becomes Final. If the Court does not approve the Settlement
16 for any reason, Defendants reserve the right to oppose class certification, appointment of any
17 plaintiff as class representative, and/or appointment of class counsel in any future proceedings.

18 **E. Preliminary Approval Order**

19 4.0 Promptly after execution of this Stipulation, Lead Counsel shall submit this
20 Stipulation together with its Exhibits to the Court and shall request entry of an Order of
21 Preliminary Approval (substantially in the form of Exhibit A) that will, *inter alia*, grant
22 preliminary approval to the Settlement; certify the Settlement Class; and authorize notification of
23 the Settlement Class substantially in the form of Exhibits A-1, A-2, and A-4 hereto, along with
24 provision of a Proof of Claim substantially in the form of Exhibit A-3.

25 4.1 The Long Notice shall describe the Settlement; the proposed Plan of Allocation;
26 the requests for awards of attorneys' fees and expenses and Lead Plaintiff's Compensatory Award
27 (consistent with ¶¶ 8.0 and 9.0); the date of the Final Approval Hearing; Settlement Class
28 Members' rights to opt out, object or otherwise be heard with regard to these matters; and

1 Settlement Class Members' opportunity to file claims upon the Settlement Fund.

2 4.2 No later than seven (7) Business Days after entry of the Order of Preliminary
3 Approval, NetApp shall obtain from its transfer agent, at NetApp's expense, a list of certificate
4 or record holders who may have purchased shares of NetApp securities during the Settlement
5 Class Period. NetApp shall provide and/or cause its transfer agent to provide, to the Claims
6 Administrator a list of the names and addresses of the record owners of NetApp securities during
7 the Settlement Class Period in a usable electronic format, such as an Excel spreadsheet. This
8 information will be kept confidential and not used for any purpose other than to provide the notice.

9 4.3 The Stipulation of Settlement, Notice, Proof of Claim, and all papers submitted in
10 support thereof shall be posted on a website to be maintained by the Claims Administrator.

11 **F. Releases and Covenants Not to Sue**

12 5.0 The obligations incurred pursuant to this Stipulation shall be a full and Final
13 disposition of the Action.

14 5.1 Upon the Effective Date, the Releasing Plaintiffs shall be deemed to have, and by
15 operation of the Judgment shall have, fully, finally, and forever released, relinquished, dismissed
16 with prejudice, and discharged all Released Claims Against Defendants and each of the Defendant
17 Releasees, whether or not any individual Settlement Class Member executes and delivers the
18 Proof of Claim. This release shall not apply to any person or entity who or which submits a
19 request for exclusion from the Settlement Class that is accepted by the Court.

20 5.2 Upon the Effective Date, Defendants, and each of the Defendant Releasees, shall
21 be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever
22 released, relinquished and discharged all Released Claims Against Lead Plaintiff, the Lead
23 Plaintiff Releasees, Settlement Class Members, and Lead Counsel. This release shall not apply to
24 any person or entity who or which submits a request for exclusion from the Settlement Class that
25 is accepted by the Court.

26 **G. Proof of Claims**

27 6.0 Only those Settlement Class Members filing valid and timely Proofs of Claim shall
28 be entitled to participate in the Settlement and receive a distribution from the Settlement Fund.

1 The Proof of Claim to be executed by Settlement Class Members shall release all Settled Claims
2 against the Released Parties and shall be substantially in the form contained in Exhibit A-3
3 attached hereto.

4 6.1 No Settling Defendant, and no other Released Defendant Party shall be permitted
5 to review, contest or object to any Claim, or any decision of the Claims Administrator or Class
6 Counsel with respect to accepting or rejecting any Claim for payment by a Settlement Class
7 Member. Lead Counsel shall have the right, but not the obligation, to waive what it deems to be
8 formal or technical defects in any Proof of Claim submitted in the interests of achieving
9 substantial justice.

10 6.2 All Settlement Class Members not submitting valid and timely requests for
11 exclusion shall be bound by the Releases, whether or not they submit a valid and timely Proof of
12 Claim.

13 **H. Administration and Calculation of Claims, Final Awards, and Supervision**
14 **and Distribution of the Settlement Fund**

15 7.0 The Claims Administrator shall administer and calculate the claims submitted by
16 Settlement Class Members and shall oversee distribution of the Net Settlement Fund (defined
17 below) to Authorized Claimants. The distribution checks will be drawn upon the Settlement Fund.

18 7.1 Defendants shall have no responsibility or liability for the allocation of the
19 Settlement Fund among the Settlement Class Members or the allocation of any awards of Lead
20 Plaintiff's attorneys' fees, costs, and expenses. Any such awards shall be paid solely by the
21 Settlement Fund.

22 7.2 The Settlement Fund shall be applied as follows:

23 (i) To pay the Taxes and Tax Expenses described in ¶ 2.10 above;

24 (ii) To pay all the costs and expenses reasonably and actually incurred in
25 connection with settlement administration, including, but not limited to, locating Settlement Class
26 Members, providing Notice, soliciting Settlement Class claims, assisting with the filing of claims,
27 processing Proofs of Claim, making administrative determinations concerning the acceptance or
28 rejection of submitted claims, administering and distributing the Settlement Fund to Authorized

1 Claimants, paying escrow fees and costs, if any, and paying the fees and expenses of the Claims
2 Administrator;

3 (iii) To pay Lead Counsel's attorneys' fees and expenses, as provided in ¶ 8.1,
4 to the extent allowed by the Court;

5 (iv) To pay Compensatory Award to the Lead Plaintiff as provided in ¶ 9.0, to
6 the extent allowed by the Court;

7 (v) To pay the Claims Administrator's fees and expenses reasonably incurred
8 in the claims administration of the Settlement; and

9 (vi) Upon court approval, to distribute the balance of the Settlement Fund, that
10 is, the total Settlement Fund less the items set forth in ¶¶ 7.2(i), (ii), (iii), (iv) and (v) (the "Net
11 Settlement Fund"), to the Authorized Claimants as allowed by this Stipulation, the Plan of
12 Allocation, or the Court.

13 7.3 Upon the entry of the Judgment and thereafter, subject to ¶ 2.3 and in accordance
14 with the terms of the Plan of Allocation, or such further approval and further order(s) of the Court
15 as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed
16 to Authorized Claimants subject to and in accordance with the following:

17 (i) Each Settlement Class Member claiming to be an Authorized Claimant
18 shall be required to submit to the Claims Administrator a completed Proof of Claim, substantially
19 in the form of Exhibit A-3 hereto, signed under penalty of perjury and supported by such
20 documents as specified in the Proof of Claim or such other documents or proof, as are reasonably
21 available to the Authorized Claimant, as Lead Counsel, in their discretion, may deem acceptable,
22 unless otherwise ordered by the Court;

23 (ii) Except as otherwise ordered by the Court, all Settlement Class Members
24 who fail to timely submit a Proof of Claim, or such other period as may be ordered by the Court,
25 or otherwise allowed, or who file a Proof of Claim that is rejected, shall be forever barred from
26 receiving any payments pursuant to this Stipulation and Settlement, but will in all other respects
27 be subject to and bound by the provisions of this Stipulation, the releases contained herein, and
28

1 the Judgment, and will be barred and enjoined from bringing any action against the Released
2 Parties concerning the Settled Claims.

3 7.4 No Person shall have any claim against Lead Plaintiff, Lead Counsel, Defendants,
4 Defendants' Counsel, the Claims Administrator, the Escrow Agent or any other agent designated
5 by Lead Counsel based on distribution determinations or claim rejections made substantially in
6 accordance with this Stipulation and the Settlement contained therein, the Plan of Allocation, or
7 further orders of the Court.

8 7.5 The Net Settlement Fund shall be distributed to the Authorized Claimants
9 substantially in accordance with a Plan of Allocation to be described in the Long Notice and
10 approved by the Court. However, if there is any balance remaining in the Net Settlement Fund
11 after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason
12 of tax refunds, uncashed checks, or otherwise), the Claims Administrator under the supervision
13 of Lead Counsel shall, if feasible, reallocate such balance among Authorized Claimants in an
14 equitable and economic fashion. Thereafter, any balance that still remains in the Net Settlement
15 Fund shall be donated to not-for-profit charitable organizations(s) selected by Lead Counsel,
16 specifically the Investor Justice and Education Clinic (IJEK). See
17 <http://law.howard.edu/content/investor-justice-and-education-clinic-ijec>.

18 7.6 This is not a claims-made settlement and, if all conditions of the Stipulation are
19 satisfied and the Settlement becomes Final, no portion of the Settlement Fund will be returned to
20 the Defendants or the Insurers who paid the Settlement Amount.

21 7.7 Defendants and Defendant Releasees shall have no responsibility for, interest in,
22 or liability whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of
23 Allocation, the determination, administration, or calculation of claims, the payment or
24 withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith.

25 7.8 It is understood and agreed by the Parties that any proposed Plan of Allocation of
26 the Net Settlement Fund including, but not limited to, any adjustments to an Authorized
27 Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered by the
28 Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of

1 the Settlement set forth in this Stipulation, and any order or proceedings relating to the Plan of
2 Allocation shall not operate to terminate or cancel this Stipulation or affect the finality of the
3 Court's Judgment approving this Stipulation and the Settlement set forth therein, or any other
4 orders entered pursuant to this Stipulation.

5 **I. Attorneys' Fees and Expenses**

6 8.0 Lead Counsel may submit an application or applications (the "Fee and Expense
7 Application") for payments to Lead Counsel from the Settlement Fund for: (a) an award of
8 attorneys' fees; plus (b) reimbursement of actual costs and expenses, including experts or
9 consultants, incurred in connection with prosecuting the Action as may be awarded by the Court.
10 Lead Counsel reserves the right to make additional applications for fees and expenses incurred,
11 if necessary.

12 8.1 Any award of attorneys' fees, costs, and expenses approved by the Court shall be
13 payable to Lead Counsel solely from the Settlement Fund, for distribution by Lead Counsel in its
14 sole discretion among itself, no later than five (5) Business Days after final approval of the
15 Settlement and the Court's entry of an order awarding fees and expenses ("Fee and Expense
16 Award"), notwithstanding any appeals that may be taken. Should an appellate court later reverse
17 the Court's final approval of the Settlement, Lead Counsel shall be jointly and severally obligated
18 to repay all such attorney's fees and expenses awarded. If the Settlement is terminated or if, as a
19 result of any appeal or further proceedings, the Fee and Expense Award is reduced or reversed,
20 Lead Counsel shall repay fees and expenses accordingly, including accrued interest at the same
21 net rate as is earned by the Settlement Fund.

22 8.2 Lead Counsel further agrees to refund to the Settlement Fund any award of
23 attorney's fees and expenses by the Court paid to Lead Counsel in the event that this Settlement
24 does not become Final; in such situation, payment of all of the Fee and Expense Award shall be
25 made by Lead Counsel into the Settlement Fund within ten (10) calendar days thereof, and shall
26 thereafter be distributed by the Escrow Agent pursuant to the terms of ¶ 10.3.

27 8.3 If the Fee and Expense Award is reduced or reversed on appeal, Lead Counsel
28 shall make all necessary refunds and repayments into the Settlement Fund no later than fifteen

1 (15) calendar days after any order that reverses or reduces any award of attorneys' fees or
2 expenses, which shall be distributed by the Escrow Agent to the Settlement Class pursuant to the
3 manner directed in the Final order.

4 8.4 The procedure for and allowance or disallowance by the Court of any application
5 by Lead Counsel for attorneys' fees and expenses, including the fees and expenses of experts and
6 consultants, to be paid out of the Settlement Fund, are not part of the Settlement set forth in this
7 Stipulation and are to be considered by the Court separately from the Court's consideration of the
8 fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation. Any order or
9 proceedings relating to the Fee and Expense Application, or any appeal from any order relating
10 thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this
11 Stipulation, or affect or delay the finality of the Judgment approving this Stipulation and the
12 Settlement of the Action.

13 8.5 Defendants and the Defendant Releasees shall have no responsibility for, and no
14 liability whatsoever with respect to, the Fee and Expense Award or for any payment to Lead
15 Counsel and/or any other Person who receives payment from the Settlement Fund.

16 8.6 Defendants and the Defendant Releasees shall have no responsibility for, and no
17 liability whatsoever with respect to, the allocation among Lead Counsel and/or any other Person
18 who may assert some claim thereto, of any Fee and Expense Award that the Court may make in
19 the Action.

20 **J. Lead Plaintiff's Compensatory Award**

21 9.0 Lead Counsel may submit an application to the Court to authorize the payment of
22 a Compensatory Award from the Settlement Fund for the time and expenses expended by the
23 Lead Plaintiff in assisting Lead Counsel in the litigation of this Action. Subject to the payment
24 terms in ¶ 2.0, payment for any Compensatory Award payable in cash shall be payable to the Lead
25 Plaintiff five (5) days after the Effective Date. Defendants and the Defendant Releasees shall have
26 no responsibility for, and no liability whatsoever with respect to, any such Compensatory Award.

1 **K. Effect of Disapproval, Cancellation or Termination**

2 10.0 The Effective Date of the Stipulation shall be conditioned upon the occurrence of
3 all of the following events:

4 (a) Defendants have caused the contributions to be made to the Settlement Fund, as
5 required by ¶ 2.0 above;

6 (b) the Court has entered the Judgment, or a judgment substantially in the form of
7 Exhibit B attached hereto; and

8 (c) the Judgment has become Final, as defined in ¶ 1.13 hereof.

9 Any appeal or delay in (a) the approval of the Plan of Allocation, (b) the determination of
10 the Fee and Expense Award, or (c) the granting of a Compensatory Award to Lead Plaintiff, shall
11 not affect, alter, or delay the occurrence of the Effective Date.

12 10.1 Upon the occurrence of the Effective Date, any and all interest or right of
13 Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished,
14 except as set forth in this Stipulation. The Settlement Fund shall be distributed in accordance with
15 ¶ 7.2 hereof.

16 10.2 In the event that this Stipulation is not approved by the Court, or the Effective Date
17 does not occur, then this Stipulation shall be canceled and terminated subject to ¶ 10.3 unless
18 Lead Counsel and Defendants' Counsel mutually agree in writing to proceed with this Stipulation.
19 None of the Parties, or any of them, shall have any obligation whatsoever to proceed under any
20 terms other than provided for and agreed herein. Without limitation of any Party's other rights or
21 remedies at law or in equity to enforce its rights against any other Party that breaches its
22 obligations under this Stipulation, no breach by any Party of its obligations under this Stipulation
23 shall permit any other Party to terminate this Stipulation or, after the Effective Date, affect or
24 impair the disposition of the Action or release of claims contemplated by ¶¶ 1.30-1.32.

25 10.3 Unless otherwise ordered by the Court, in the event the Stipulation is terminated,
26 or is canceled, or shall not become effective for any reason, within ten (10) Business Days after
27 written notification of such event is sent by Defendants' Counsel or Lead Counsel to the Escrow
28 Agent, subject to the terms of ¶ 2.10 hereof, the Settlement Fund (including accrued interest), less

1 any expenses and any costs which have either been properly disbursed pursuant to ¶¶ 2.3-2.6
2 hereof, or are determined to be chargeable to the Settlement Fund or the notice and administration
3 of the Settlement pursuant to ¶ 2.8 hereof, shall be refunded by the Escrow Agent to NetApp, plus
4 accrued interest, by check or wire transfer pursuant to written instructions from NetApp. At
5 NetApp's request, the Escrow Agent or its designee shall apply for any tax refund owed to the
6 Settlement Fund and pay the proceeds, after deduction of any fees or expenses reasonably incurred
7 in connection with such application(s) for refund, to NetApp.

8 10.4 In the event the Stipulation is not approved by the Court or the Settlement set forth
9 in the Stipulation is terminated or fails to become final in accordance with its terms, the Parties
10 shall be restored to their respective positions in the Action immediately prior to the execution of
11 this Stipulation. In such event, the terms and provisions of the Stipulation, with the exception of
12 ¶¶ 1.0-1.42 and ¶¶ 10.2-10.5 hereof, shall have no further force and effect and shall not be used
13 in this Action or in any other proceeding for any purpose, and any judgment or order entered by
14 the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro*
15 *tunc*. No order of the Court or modification or reversal on appeal of any order of the Court
16 concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses, and
17 interest awarded by the Court to Lead Counsel shall constitute grounds for cancellation or
18 termination of the Stipulation.

19 10.5 If the Effective Date does not occur, neither Lead Plaintiff nor Lead Counsel shall
20 have any obligation to repay any amounts actually and properly disbursed from the Notice
21 Administration Fund. In addition, any expenses already incurred and properly chargeable to the
22 Notice Administration Fund pursuant to this Stipulation at the time of such termination or
23 cancellation, but which have not been paid, shall be paid by the Escrow Agent in accordance with
24 the terms of the Stipulation prior to the balance being refunded in accordance with ¶ 10.3.

25 **L. Miscellaneous Provisions**

26 11.0 This Stipulation, and all related documents, shall not be construed as or deemed to
27 be evidence of any presumption, admission, or concession on the part of any Defendant,
28 Defendants' Counsel, Insurer, or any of the Defendant Releasees (as defined in ¶ 1.29(i)), with

1 respect to any claim of any fact alleged by Lead Plaintiff or any Settlement Class Member, the
2 validity of any claim that was or could have been asserted by Lead Plaintiff or any Settlement
3 Class Member, or any deficiency of any defense that has been or could have been asserted by the
4 Defendants in this Action or in any other litigation. Further, this Stipulation, and all related
5 documents, shall not be construed as or deemed to be evidence of any deception, negligence,
6 fault, liability, wrongdoing, or damage whatsoever and of any kind of any Defendant or any of
7 the Defendant Releasees or in any way referred to for any other reason as against any Defendant
8 or any of the Defendant Releasees, in any civil, criminal, or administrative action or proceeding.
9 The Parties, and each of them, shall not assert or pursue any action, claim or rights that any party
10 hereto violated any provision of Rule 11 of the Federal Rules of Civil Procedure. Further, the
11 Parties, and each of them, will not deny in any statement made to any media representative that
12 the Action is being settled voluntarily after consultation with competent counsel. The Parties, and
13 each of them, and their respective counsel agree that the Action was resolved in good faith,
14 following arm's length bargaining.

15 11.1 The Parties acknowledge that it is their intent to consummate this Stipulation. The
16 Parties agree, subject to their fiduciary and other legal obligations, to cooperate to the extent
17 reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and
18 to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this
19 Stipulation. Lead Counsel and Defendants' Counsel agree to cooperate with one another in
20 seeking Court approval of the Order of Preliminary Approval, the Stipulation, and the Settlement,
21 and to promptly agree upon and execute all such other documentation as may be reasonably
22 required to obtain final approval of the Settlement.

23 11.2 The Parties intend this Stipulation to be a final and complete resolution of all
24 disputes between them with respect to the Action as well as any disputes which could have been
25 raised in the Action by Lead Plaintiff, the Settlement Class, and the Releasing Plaintiffs, and each
26 or any of them, against Defendants and Defendant Releasees, Defendants' Counsel, and each or
27 any of them, on the one hand, and by Defendants and each or any of them, against Lead Plaintiff
28 and the Lead Plaintiff Releasees, and each or any of them, on the other hand. Accordingly, the

1 Parties agree not to assert in any forum or in any statement made to any media representative
2 (whether or not for attribution), that the Action was brought by Lead Plaintiff or defended by any
3 the Defendants, or each or any of them, in bad faith, or without a reasonable basis. The Judgment
4 will contain a statement that during the course of the Action, the parties and their respective
5 counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil
6 Procedure. The Parties further agree that the amount paid to the Settlement Fund and the other
7 terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and
8 reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

9 11.3 Except as otherwise provided herein, all agreements made and orders entered
10 during the course of the Action relating to the confidentiality of information shall survive this
11 Stipulation.

12 11.4 The Settlement contemplated herein is not subject to or contingent upon
13 confirmatory discovery, or other discovery.

14 11.5 The MOU executed by the Parties shall remain confidential after this Stipulation
15 is filed with the Court. Upon the execution of the Stipulation, the Stipulation will supersede the
16 MOU.

17 11.6 Whether or not the Effective Date occurs or this Stipulation is terminated, neither
18 this Stipulation nor the Settlement contained herein, nor any act performed or document executed
19 pursuant to or in furtherance of this Stipulation or the Settlement:

20 (i) may be deemed, or shall be used, offered, or received against any of the Defendants
21 or Defendant Releasees, or each or any of them, as an admission, concession, or evidence of the
22 validity of any of the Released Claims Against Defendants, the truth of any fact alleged by Lead
23 Plaintiff, the deficiency of any defense that has been or could have been asserted in the litigation,
24 or of any alleged wrongdoing, liability, negligence, or fault of any of the Defendants and
25 Defendant Releasees;

26 (ii) may be deemed, or shall be used, offered or received against any of Lead Plaintiff,
27 the Settlement Class, or the Lead Plaintiff Releasees, as an admission, concession, or evidence
28 of, the validity or invalidity of any of the Released Claims Against Lead Plaintiff, the infirmity

1 or strength of any claims raised in the Action, the truth or falsity of any fact alleged by Defendants,
2 or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

3 If this Stipulation is approved by the Court, any party or any of the Released Parties may
4 file this Stipulation and/or Judgment in any action that may be brought against such party or
5 parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral
6 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim
7 preclusion or issue preclusion or similar defense or counterclaim.

8 11.7 The headings used herein are used for the purpose of convenience only and are not
9 meant to have legal effect.

10 11.8 The waiver by one party of any breach of this Stipulation by any other party shall
11 not be deemed as a waiver of any other prior or subsequent breaches of this Stipulation.

12 11.9 All of the Exhibits to this Stipulation are material and integral parts hereof and are
13 fully incorporated herein by this reference.

14 11.10 This Stipulation may be amended or modified only by a written instrument signed
15 by or on behalf of all Parties or their respective successors-in-interest.

16 11.11 This Stipulation and the Exhibits attached hereto constitute the entire agreement
17 among the Parties hereto and no representations, warranties or inducements have been made to
18 any party concerning this Stipulation or its Exhibits other than the representations, warranties and
19 covenants contained and memorialized in such documents. Except as otherwise provided herein,
20 each Party shall bear its own costs.

21 11.12 Each counsel or other Person executing this Stipulation, any of its Exhibits, or any
22 related settlement documents on behalf of any party hereto hereby warrants and represents that
23 such Person has the full authority to do so and that such person has the authority to take
24 appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its
25 terms.

26 11.13 This Stipulation may be executed in one or more counterparts. All executed
27 counterparts and each of them shall be deemed to be one and the same instrument provided that
28 counsel for the Parties to this Stipulation all exchange original signed counterparts.

1 11.14 This Stipulation shall be binding upon, and inure to the benefit of, the successors
2 and assigns of the parties hereto and the Released Parties and the Releasing Plaintiffs.

3 11.15 The Parties acknowledge that the Court will retain jurisdiction with respect to
4 implementation and enforcement of the terms of this Stipulation and submit to the jurisdiction of
5 the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation.

6 11.16 This Stipulation and the Exhibits thereto shall be considered to have been
7 negotiated, executed and delivered, and to be wholly performed, in the State of California, and
8 the rights and obligations of the parties to this Stipulation shall be construed and enforced in
9 accordance with, and governed by, the internal, substantive laws of the State of California without
10 giving effect to that State's choice of law principles.

11 11.17 This Stipulation is deemed to have been prepared by counsel for all parties, as a
12 result of arm's length negotiations among the parties. Whereas all parties have contributed
13 substantially and materially to the preparation of this Stipulation, it shall not be construed more
14 strictly against one party than another.

15 11.18 Whenever this Stipulation requires or contemplates that a Party shall or may give
16 notice to the other, notice shall be provided by electronic mail, or next-day (excluding Saturday
17 and Sunday) express delivery service as follows and shall be deemed effective upon such
18 transmission or delivery to the address set forth below:

19
20 If to Lead Plaintiff, then to:

Jacob A. Goldberg
THE ROSEN LAW FIRM, P.A.
101 Greenwood Avenue, Suite 440
Jenkintown, PA 19046
jgoldberg@rosenlegal.com

21
22
23 If to Defendants, then to:

Benjamin M. Crosson
**WILSON SONSINI GOODRICH &
ROSATI, P.C.**
650 Page Mill Road
Palo Alto, CA 94304
bcrosson@wsgr.com

24
25
26
27
28 11.19 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

1 Stipulation or by order of the Court, the day of the act, event, or default from which the designated
2 period of time begins to run shall not be included.

3 11.20 The Parties reserve the right, subject to the Court’s approval, to make any
4 reasonable extensions of time that might be necessary to carry out any of the provisions of this
5 Stipulation.

6 IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed,
7 by their duly authorized attorneys, dated September 21, 2021.

8 **THE ROSEN LAW FIRM, P.A.**

9 

10 _____
11 Jacob A. Goldberg
12 Gonen Haklay
13 101 Greenwood Avenue, Suite 440
14 Jenkintown, PA 19046
15 Tel: (215) 600-2817
16 Fax: (212) 2020-3827
17 jgoldberg@rosenlegal.com
18 ghaklay@rosenlegal.com

19 *Lead Counsel for Plaintiff*

20 **WILSON SONSINI GOODRICH & ROSATI,**

21 **P.** DocuSigned by:

22 

23 /s/ _____
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*Counsel for Defendants-Appellees NetApp, Inc.,
George Kurian, Ronald J. Pasek, and Matthew K.
Fawcett*

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHAD C. SMITH, Individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NETAPP, INC., et al.

Defendants.

Case No. 4:19-cv-04801-JST

**[PROPOSED] ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE**

Hon. Jon S. Tigar

1 WHEREAS, Lead Plaintiff Winston Derouin (“Plaintiff”) and Defendants NetApp, Inc.
2 (“NetApp” or “Company”), George Kurian, Ronald J. Pasek, and Matthew K. Fawcett have
3 entered into the Stipulation of Settlement, dated September 21, 2021 (“Stipulation”), which is
4 subject to review under Rule 23 of the Federal Rules of Civil Procedure, and which, together with
5 the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement and
6 dismissal with prejudice of the securities class action pending before the Court titled, *Chad C.*
7 *Smith v. NetApp, Inc., et al.*, Case No. 4:19-cv-04801-JST (N.D. Cal.) (the “Action”); and the
8 Court having read and considered the Stipulation and the exhibits thereto and submissions made
9 relating thereto, and finding that substantial and sufficient grounds exist for entering this Order;
10 and the Parties having consented to the entry of this Order;

11 NOW, THEREFORE, IT IS HEREBY ORDERED, this ____ day of _____, 2021,
12 that:

- 13 1. Capitalized terms used herein have the meanings defined in the Stipulation.
- 14 2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for
15 the purposes of the Settlement only, the Action is hereby preliminarily certified as a class action
16 on behalf of all persons and entities who purchased or otherwise acquired the publicly traded
17 securities of NetApp between May 23, 2019 and August 1, 2019, both dates inclusive (“Settlement
18 Class Period”). Excluded from the Settlement Class are Defendants, the officers and directors of
19 NetApp, members of the Individual Defendants’ immediate families and their legal
20 representatives, heirs, successors, or assigns and any entity in which the Individual Defendants
21 have or had a controlling interest. Also excluded from the Settlement Class are all putative
22 members of the Settlement Class who exclude themselves by filing a valid and timely request for
23 exclusion, and persons with no compensable damages.
- 24 3. This Court finds, preliminarily and for purposes of the Settlement of the Action
25 only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of
26 Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so
27 numerous that joinder of all members of the Settlement Class is impracticable; (b) there are
28 questions of law and fact common to the Settlement Class; (c) Lead Plaintiff’s claims 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

1 Settlement Class; and (f) a class action is superior to other available methods for the fair and
2 efficient adjudication of the Action.

3 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for
4 the purposes of the Settlement of the Action only, Lead Plaintiff is certified as the class
5 representative on behalf of the Settlement Class (“Class Representative”) and Lead Counsel,
6 selected by Lead Plaintiff and previously appointed by the Court, is hereby appointed as class
7 counsel for the Settlement Class (“Class Counsel”).

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

12 6. The Court hereby preliminarily approves the Settlement, subject to further
13 consideration at a hearing (the “Final Approval Hearing”) pursuant to Federal Rules of Civil
14 Procedure 23(e), which is hereby scheduled to be held before the Court on _____ at
15 __:___ .m. for the following purposes:

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

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

20 (c) to determine finally whether the Judgment, substantially in the form of
21 Exhibit B to the Stipulation, should be entered, dismissing the Action on the merits and
22 with prejudice, and to determine whether the release by the Releasing Parties of the
23 Released Claims against the Released Parties, as set forth in the Stipulation, should be
24 ordered, along with a permanent injunction barring efforts to prosecute or attempt to
25 prosecute any Released Claims extinguished by the release against any of the Released
26 Parties, as also set forth in the Stipulation;

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

1 (e) to consider the applications of Class Counsel for awards of attorneys' fees
2 with interest and expenses to Class Counsel and Compensatory Award to Class
3 Representative;

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

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

9 7. The Court reserves the right to adjourn the Final Approval Hearing to a later date
10 and to approve the Settlement without modification, or with such modifications as may be agreed
11 to by the Parties, and with or without further notice of any kind. The Court may decide to hold the
12 Final Approval Hearing telephonically or by other virtual means without further notice. The Court
13 further reserves the right to enter its Judgment approving the Settlement and dismissing the Action,
14 on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or
15 awarded attorneys' fees and expenses.

16 8. The Court approves the form, substance and requirements of (a) the Notice of
17 Pendency and Proposed Settlement of Class Action ("Long Notice"), (b) the Summary Notice of
18 Pendency and Proposed Settlement of Class Action ("Summary Notice"), (c) the Postcard Notice,
19 and (d) the Proof of Claim and Release Form ("Proof of Claim"), all of which are exhibits to the
20 Stipulation.

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

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

28 11. The Escrow Agent may, at any time after entry of this Order and without further
approval from Defendants or the Court, disburse at the direction of Class Counsel up to \$250,000
(two hundred fifty thousand dollars) from the Settlement Fund prior to the Effective Date to pay
Notice and Administration Costs.

1 12. No later than seven (7) Business Days after the date of entry of this Order, NetApp
2 shall obtain from its transfer agent, at NetApp's expense, a list containing the names and addresses
3 of certificate or record holders who may have purchased shares of NetApp securities during the
4 Settlement Class Period. NetApp shall provide and/or cause its transfer agent to provide to the
5 Claims Administrator a list of the record owners of NetApp securities during the Class Period in a
6 usable electronic format, such as an Excel spreadsheet. This information will be kept confidential
7 and not used for any purpose other than to provide the notice.

8 13. Within twenty (20) Business Days of the entry of this Order, Class Counsel, through
9 the Claims Administrator, shall either (a) email links to the location of the Long Notice and Proof
10 of Claim to Settlement Class Members for whom the Claims Administrator is able to obtain email
11 addresses, substantially in the form annexed to the Stipulation as Exhibit A-2 and Exhibit A-3 or
12 (b) cause the Postcard Notice, substantially in the form annexed to the Stipulation as Exhibit A-1,
13 if no electronic mail address can be obtained, mailed, by first class mail, postage prepaid, to
14 Settlement Class Members who can be identified with reasonable effort by Class Counsel, through
15 the Claims Administrator.

16 14. Class Counsel, through the Claims Administrator, shall make all reasonable efforts
17 to give notice to nominees or custodians who held NetApp securities during the Settlement Class
18 Period as record owners but not as beneficial owners. Such nominees or custodians shall, within
19 ten (10) calendar days of receipt of the notice, either: (i) request copies of the Postcard Notice
20 sufficient to send the Postcard Notice to all beneficial owners for whom they are nominee or
21 custodian, and within ten (10) calendar days after receipt thereof send copies to such beneficial
22 owners; (ii) request links to the location of the Long Notice and Proof of Claim and email the links
23 to each beneficial owner for whom they are nominee or custodian within ten (10) calendar days
24 after receipt thereof; or (iii) provide the Claims Administrator with lists of the names, last known
25 addresses and email addresses (to the extent known) of such beneficial owners, in which event the
26 Claims Administrator shall promptly deliver the Postcard Notice to such beneficial owners. If the
27 Claims Administrator receives an email address, it will send a link to the location of the Long
28 Notice and Proof of Claim electronically. Nominees or custodians who elect to email links to the
Long Notice and Proof of Claim or send the Postcard Notice to their beneficial owners shall send
a written certification to the Claims Administrator confirming that the mailing or emailing has
been made as directed. Copies of the Postcard Notice shall be made available to any nominee or

1 custodian requesting same for the purpose of distribution to beneficial owners. The Claims
2 Administrator shall, if requested, reimburse nominees or custodians out of the Settlement Fund
3 solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial
4 owners, which expenses would not have been incurred except for the providing names and
5 addresses, of up to \$0.05 per name, address, and email address provided to the Claims
6 Administrator; up to \$0.05 per unit for each Postcard Notice actually mailed, plus postage at the
7 pre-sort rate used by the Claims Administrator; or up to \$0.05 per email notice sent, and subject to
8 further order of this Court with respect to any dispute concerning such reimbursement.

9 15. Class Counsel shall, at least seven (7) calendar days before the Final Approval
10 Hearing, serve upon counsel for Defendants and file with the Court proof of the mailing of the
11 Postcard Notice as required by this Order.

12 16. Within sixteen (16) calendar days of the entry of this Order Class Counsel, through
13 the Claims Administrator, shall cause the Stipulation and its exhibits, this Order, and a copy of the
14 Long Notice and Proof of Claim to be posted on the Claims Administrator's website
15 contemporaneously with the mailing of the Postcard Notice and/or emailing links to the Long
16 Notice and Proof of Claim.

17 17. Class Counsel, through the Claims Administrator, shall cause the Summary Notice
18 to be published electronically once on the *GlobeNewswire* and in print once in the *Investor's*
19 *Business Daily* within ten (10) calendar days after the Postcard Notice mailing or emailing links
20 to the location of the Long Notice and Proof of Claim. Class Counsel shall, at least seven (7)
21 calendar days before the Settlement Hearing, serve upon counsel for Defendants and file with the
22 Court proof of publication of the Summary Notice.

23 18. The forms and methods set forth herein of notifying the Settlement Class Members
24 of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of
25 the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Securities Exchange Act of
26 1934, 15 U.S.C. 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995;
27 constitute the best notice practicable under the circumstances; and constitute due and sufficient
28 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.

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

4 (a) A properly completed and executed Proof of Claim must be submitted to
5 the Claims Administrator: (a) electronically through the Claims Administrator’s website,
6 www.strategicclaims.net, by 11:59 p.m. EST on _____, 2021; or (b) at the Post
7 Office Box indicated in the Notice, postmarked no later than _____, 2021 (thirty
8 (30) calendar days prior to the Final Approval Hearing). Such deadline may be further
9 extended by Order of the Court. Each Proof of Claim shall be deemed to have been
10 submitted when: (a) the claim receives a confirmation notice from Strategic Claims
11 Services for electronic submissions; or (b) legibly postmarked (if properly addressed and
12 mailed by first class mail) provided such Proof of Claim is actually received before the
13 filing of a motion for an Order of the Court approving distribution of the Net Settlement
14 Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been
15 submitted when it was actually received by the Claims Administrator at the address
16 designated in the Notice.

17 (b) The Proof of Claim submitted by each Settlement Class Member must
18 satisfy the following conditions: (i) it must be properly completed, signed and submitted
19 in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it
20 must be accompanied by adequate supporting documentation for the transactions reported
21 therein, in the form of broker confirmation slips, broker account statements, an authorized
22 statement from the broker containing the transactional information found in a broker
23 confirmation slip, or such other documentation as is deemed adequate by the Claims
24 Administrator or Class Counsel; (iii) if the person executing the Proof of Claim is acting
25 in a representative capacity, a certification of their current authority to act on behalf of the
26 Settlement Class Member must be provided with the Proof of Claim; and (iv) the Proof of
27 Claim must be complete and contain no material deletions or modifications of any of the
28 printed matter contained therein and must be signed under penalty of perjury.

 (c) Once the Claims Administrator has considered a timely submitted Proof of
Claim, it shall determine whether such claim is valid, deficient, or rejected. For each claim
determined to be either deficient or rejected, the Claims Administrator shall send a

1 deficiency letter or rejection letter as appropriate, describing the basis on which the claim
2 was so determined. Persons who timely submit a Proof of Claim that is deficient or
3 otherwise rejected shall be afforded a reasonable time (at least ten (10) calendar days) to
4 cure such deficiency, if it shall appear that such deficiency may be cured. If any Claimant
5 whose claim has been rejected in whole or in part wishes to contest such rejection, the
6 Claimant must, within ten (10) calendar days after the date of mailing of the notice, serve
7 upon the Claims Administrator a notice and statement of reasons indicating the Claimant's
8 ground for contesting the rejection along with any supporting documentation, and
9 requesting a review thereof by the Court. If an issue concerning a claim cannot be otherwise
10 resolved, Class Counsel shall thereafter present the request for review to the Court.

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

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

20 21. Settlement Class Members shall be bound by all determinations and judgments in
21 the Action whether favorable or unfavorable, unless such Persons request exclusion from the
22 Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class
23 Member wishing to make such request for exclusion from the Settlement shall mail it, in written
24 form, by first class mail, postage prepaid, or otherwise deliver it, so that it is received no later than
25 _____, 2021 (twenty-one (21) calendar days prior to the Final Approval Hearing) (the
26 "Exclusion Deadline"), to the address listed in the Long Notice. In order to be valid, such request
27 for exclusion must (A) indicate the name, address, phone number and e-mail contact information
28 (if any) of the Person seeking exclusion, and state that the sender specifically "requests to be
excluded from the Settlement of *Chad C. Smith v. NetApp, Inc., et al.*, Case No. 4:19-cv-04801-
JST (N.D. Cal.)" and (B) state the date, number of shares, and dollar amount of each NetApp
purchase or acquisition and, if applicable, each sale during the Settlement Class Period, as well as

1 the number of NetApp securities held by the Person as of the opening and closing of the Settlement
2 Class Period. In order to be valid, such request for exclusion must be submitted with documentary
3 proof: (i) of each purchase or acquisition and, if applicable, sale transaction of NetApp securities
4 during the Settlement Class Period; and (ii) demonstrating the Person's status as a beneficial owner
5 of the NetApp securities. Any such request for exclusion must be signed and submitted by the
6 beneficial owner under penalty of perjury. The request for exclusion shall not be effective unless
7 it provides the required information, is legible, and is made within the time stated above, or the
8 exclusion is otherwise accepted by the Court. Class Counsel may contact any Person filing a
9 request for exclusion, or their attorney if one is designated, to discuss the request for exclusion.

10 22. The Claims Administrator shall provide all requests for exclusion and supporting
11 documentation submitted therewith (including untimely requests and revocations of requests) to
12 counsel for the Parties as soon as possible and no later than the Exclusion Deadline or upon the
13 receipt thereof (if later than the Exclusion Deadline). The Settlement Class will not include any
14 Person who delivers a valid and timely request for exclusion that has not been thereafter revoked.

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

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

21 25. The Court will consider comments and/or objections to the Settlement, the Plan of
22 Allocation, or the Fee and Expense Application, provided, however, that no Settlement Class
23 Member or other Person shall be heard or entitled to contest the approval of the terms and
24 conditions of the proposed Settlement, the Plan of Allocation, or the Fee and Expense Application,
25 or any other order relating thereto, unless that Person has (at least twenty-one (21) calendar days
26 prior to the Final Approval Hearing date) filed said objection(s) with the Court at Clerk of the
27 Court, U.S. District Court, Northern District of California, 1301 Clay Street, Suite 400 S, Oakland,
28 CA 94612. 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 NetApp 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,

1 her, or its counsel; (4) the name, address and telephone number of all counsel who represent the
2 Settlement Class Member, including former or current counsel who may be entitled to
3 compensation in connection with the objection; and (5) the number of times the Settlement Class
4 Member and/or his, her, or its counsel has filed an objection to a class action settlement in the last
5 five years, the nature of each such objection in each case, the jurisdiction in each case, and the
6 name of the issuer of the security or seller of the product or service at issue in each case. Attendance
7 at the Final Approval Hearing is not necessary, but Persons wishing to be heard orally in opposition
8 to the approval of the Stipulation, the Plan of Allocation, and/or the Fee and Expense Application
9 are required to indicate in their written objection (or in a separate writing that is submitted in
10 accordance with the deadline and instructions pertinent to the submission of a written objection)
11 that they intend to appear at the Final Approval Hearing and identify any witnesses they may call
12 to testify or exhibits they intend to introduce into evidence at the Final Approval Hearing.
13 Settlement Class Members do not need to appear at the Final Approval Hearing or take any other
14 action to indicate their approval.

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

20 27. The Court reserves the right to adjourn the Final Approval Hearing without any
21 further notice other than entry of an Order on the Court's docket and to approve the Settlement
22 without further notice to the Settlement Class Members.

22 28. All papers in support of the Settlement, the Plan of Allocation, and/or the Fee and
23 Expense Application shall be filed and served no later than thirty-five (35) calendar days before
24 the Final Approval Hearing.

24 29. Any submissions filed in response to any objections or in further support of the
25 Settlement, the Plan of Allocation, and/or the Fee and Expense Application shall be filed no later
26 than seven (7) calendar days prior to the Final Approval Hearing.
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1 30. Defendants, their counsel, and other Released Parties shall have no responsibility
2 for, or liability with respect to, the Plan of Allocation or any application for attorneys' fees and
3 interest, or expenses or payments to the Class Representative submitted by Class Counsel, and
4 such matters will be considered separately from the fairness, reasonableness, and adequacy of the
5 Settlement.

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

11 32. All funds held by the Escrow Agent shall be deemed and considered to be in the
12 custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as
13 such funds shall be distributed or returned pursuant to the Stipulation and Plan of Allocation and/or
14 further order(s) of the Court.

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

23 34. In the event the Settlement is not consummated in accordance with the terms of the
24 Stipulation, then the Stipulation and this Order (including any amendment(s) thereof, and except
25 as expressly provided in the Stipulation or by order of the Court) shall be null and void, of no
26 further force or effect, and without prejudice to any Party, and may not be introduced as evidence
27 or used in any action or proceeding by any Person against the Parties or the Released Parties, and
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1 each Party shall be restored to his, her, or its respective litigation positions as they existed prior to
2 September 21, 2021, pursuant to the terms of the Stipulation.

3 35. The Court reserves the right to alter the time or the date of the Final Approval
4 Hearing without further notice to the Settlement Class Members, provided that the time or the date
5 of the Final Approval Hearing shall not be set at a time or date earlier than the time and date set
6 forth in ¶ 6 above. The Court retains exclusive jurisdiction over the Action to consider all further
7 matters arising out of, or relating to, the Stipulation, including by way of illustration and not
8 limitation, any dispute concerning any Proof of Claim submitted and any future requests by one
9 or more of the Parties that the Judgment, the releases and/or the permanent injunction set forth in
10 the Stipulation be enforced.

11 Dated: _____, 2021

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13 _____
14 HON. JON S. TIGAR
15 UNITED STATES DISTRICT JUDGE
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EXHIBIT A-1

<p style="text-align: center;">Court-Ordered Legal Notice</p> <p style="text-align: center;">Forwarding Service Requested</p> <p><i>A federal court authorized this notice. This is not a solicitation from a lawyer.</i></p> <p><i>This Notice may affect your legal rights. You may be entitled to a payment from this securities class action settlement.</i></p> <p style="text-align: center;"><i>Please read it carefully.</i></p>	<p>NetApp, Inc. Securities Litigation c/o Strategic Claims Services 600 N. Jackson Street, Suite 205 Media, PA 19063</p>
<p><i>Smith v. NetApp, Inc., et al. Case No. 4:19-cv-04801-JST (N.D. Cal)</i></p> <p>THIS CARD ONLY PROVIDES LIMITED INFORMATION ABOUT THE SETTLEMENT.</p> <p>PLEASE VISIT WWW.STRATEGICCLAIMS.NET/NETAPP OR CALL 1-866-274-4004 FOR MORE INFORMATION.</p>	
<p>There has been a proposed Settlement of all claims against NetApp, Inc. (“NetApp”) and three of its current and/or former officers (collectively, “Defendants”). The Settlement resolves a lawsuit in the United States District Court for the Northern District of California (“Court”) in which Plaintiff alleges that, in violation of the federal securities laws, Defendants made public statements at certain times in 2019 that were materially false and misleading or omitted material information, causing damages to persons who purchased or otherwise acquired NetApp securities. Defendants deny any wrongdoing.</p> <p>You received this Notice because you or someone in your family or household may have purchased or otherwise acquired NetApp common stock during the period between May 23, 2019 and August 1, 2019, both dates inclusive (“Settlement Class Period”). The Settlement provides that, in exchange for the dismissal of this action and release of claims known and unknown against Defendants, Defendants will pay or cause to be paid into a settlement fund \$2,250,000 in cash (“Settlement Fund”). The Settlement Fund, less attorneys’ fees and expenses and a compensatory award to the Lead Plaintiff, will be divided among all Settlement Class Members who submit a valid Proof of Claim and Release Form (“Proof of Claim”). For a full description of the Settlement, your rights, and how to make a claim, please view the Stipulation of Settlement and Notice of Pendency and Proposed Settlement of Class Action (“Notice”) at www.strategicclaims.net/NetApp and please request a copy of the Notice and Proof of Claim by contacting the Claims Administrator in any of the following ways: (1) by mail: NetApp, Inc. Securities Litigation, c/o Strategic Claims Services, 600 N. Jackson St., Ste. 205, P.O. Box 230, Media, PA 19063; (2) by phone: toll free, (866) 274-4004; (3) by fax: (610) 565-7985; (4) by email: info@strategicclaims.net; or (5) by visiting the website: www.strategicclaims.net.</p> <p>To qualify for payment, you must submit a Proof of Claim to the Claims Administrator. PROOFS OF CLAIM ARE DUE BY _____ 2021 TO: NETAPP, INC. SECURITIES LITIGATION, C/O STRATEGIC CLAIMS SERVICES, P.O. BOX 230, 600 N. JACKSON STREET, SUITE 205, MEDIA, PA 19063, OR SUBMITTED ONLINE AT WWW.STRATEGICCLAIMS.NET/NETAPP. If you DO NOT want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by _____, 2021 or you will not be able to sue the Defendants about the legal claims in this case. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement, you may object to it by _____, 2021. The Notice and Stipulation of Settlement explain how to opt-out or to object.</p> <p>The Court will hold a hearing in this case on _____ 2021 at _____ at 1301 Clay Street, Courtroom 6, 2nd Floor, Oakland, CA 94612, to consider whether to approve the Settlement, the Plan of Allocation, a request for attorneys’ fees of up to 25%, plus actual expenses up to \$25,000 for litigating the case and negotiating the Settlement, and a compensatory award to Plaintiff not to exceed \$2,000 (“Final Approval Hearing”). You may attend the hearing and ask to be heard by the Court, but you do not have to. The Court reserves the right to hold the Final Approval Hearing telephonically or by other virtual means. For more information, call toll-free (866) 274-4004, or visit the website, www.strategicclaims.net/NetApp.</p>	

EXHIBIT A-2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHAD C. SMITH, Individually and on behalf of all others similarly situated,	:	
	:	
Plaintiff,	:	Case No. 4:19-cv-04801-JST
	:	
v.	:	
	:	
NETAPP, INC., et al.	:	
	:	
Defendants.	:	

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

If you purchased or otherwise acquired the publicly traded securities (“Stock”) of NetApp, Inc. (“NetApp” or the “Company”) between May 23, 2019 and August 1, 2019, both dates inclusive (“Settlement Class Period”), you could get a payment from a class action settlement (the “Settlement”).

A federal court has authorized this notice. This is not a solicitation from a lawyer.

- If approved by the Court, the Settlement will provide \$2,250,000 plus interest (the “Settlement Amount”), to pay claims of investors who purchased NetApp Stock during the period between May 23, 2019 and August 1, 2019, both dates inclusive, and were damaged thereby.
- The Settlement represents an estimated average recovery of \$.08 per Plaintiff’s estimate of damaged share of NetApp Stock. This is not an estimate of the actual recovery per share you should expect. Your actual recovery will depend on the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold NetApp Stock, and the total number of claims filed.
- Attorneys for Lead Plaintiff (“Lead Counsel”) intend to ask the Court to award them fees of up to \$562,500 or twenty-five percent (25%) of the Settlement Amount, reimbursement of litigation expenses of no more than \$25,000, and a Compensatory award to Plaintiff for his representation of the Settlement Class, not to exceed \$2,000. If approved by the Court, these amounts will be paid from the Settlement Fund.
- If the above amounts are requested and approved by the Court, the average cost per share of Stock will be approximately \$.02 per estimated damaged share, making the estimated recovery per estimated damaged share after fees and expenses approximately \$.06 This estimate is based on the assumptions set forth in the preceding paragraph. Your actual

recovery, if any, will vary depending on your purchase price and sales price, and the number and amount of claims filed.

- The Settlement resolves the lawsuit concerning allegations that NetApp and certain of NetApp’s current and/or former executive officers made false and misleading statements, in violation of federal securities laws, based upon the allegations set forth in the Amended Class Action Complaint for Violations of the Federal Securities Laws (“Amended Complaint”), including that Defendants knowingly issued a false revenue forecast and warned hypothetically about negative financial consequences of its largest customers pushing out or reducing their purchases when the largest customers were already doing so. Defendants deny any wrongdoing.
- 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 NO LATER THAN _____, 202__	The only way to get a payment.
EXCLUDE YOURSELF NO LATER THAN _____, 202__	Get no payment. This is the only option that allows you to be part of any other lawsuit against the Defendants about the legal claims in this case.
OBJECT NO LATER THAN _____, 202__	Write to the Court about why you do not like the settlement.
GO TO A HEARING ON _____, 202__	You may ask to speak in Court about the fairness of the Settlement.
DO NOTHING	Get no payment. Give up rights.

INQUIRIES

Please do not contact the Court regarding this notice. All inquiries concerning this Notice, the Proof of Claim form, or any other questions by Class Members should be directed to:

NetApp 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

or

Jacob A. Goldberg, Esq.
THE ROSEN LAW FIRM, P.A.
101 Greenwood Avenue, Suite 440
Jenkintown, PA 19046
Tel.: 215-600-2817
Fax: 212-202-3827
jgoldberg@rosenlegal.com

info@strategicclaims.net

DEFINITIONS

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation of Settlement, dated September 21, 2021 (the “Stipulation”).

COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT

1. Why did I get this Notice?

You or someone in your family may have acquired NetApp Stock during the Settlement Class Period.

2. What is this lawsuit about?

The case is known as *Smith v. NetApp, Inc., et al.*, Case No. 19-cv-04801-JST (the “Action”), and the court in charge of the case is the United States District Court for the Northern District of California (the “Court”).

The Action involves allegations that Defendants violated the federal securities laws because the Company allegedly made false and misleading statements to the investing public as set out in the Amended Complaint, including that Defendants knowingly issued a false revenue forecast and warned hypothetically about negative financial consequences of its largest customers pushing out or reducing their purchases when the largest customers were already doing so. Defendants deny any wrongdoing. The Settlement resolves all of the claims in the Action against Defendants.

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 validly 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 with respect to liability or the average amount of damages per share that would be recoverable if Lead Plaintiff was to prevail at trial on each claim. The issues on which the Lead Plaintiff and Defendants disagree include: (1) whether Defendants made materially false and misleading statements; (2) whether Defendants made these statements with the intent to defraud the investing public; (3) whether the statements were the cause of the Settlement Class Members’ alleged damages; and (4) the amount of damages, if any, suffered by the Settlement Class Members.

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 Action. The 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. Even if Lead Plaintiff were to win at trial, and also withstood Defendants' inevitable challenge on appeal, Lead Plaintiff might not be able to collect some, or all, of the judgment.

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

To be a Settlement Class Member, you must have purchased NetApp Stock during the period between May 23, 2019 and August 1, 2019, both dates inclusive.

6. Are there exceptions to being included?

Yes. Excluded from the Settlement Class are (i) persons who suffered no compensable losses; (ii) persons who validly exclude themselves from the Settlement Class, as described below; (iii) Defendants, the officers and directors of NetApp, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors, or assigns and any entity in which the Individual Defendants have or had a controlling interest.

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

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

8. What does the Settlement provide?

(a) What is the Settlement Fund?

The proposed Settlement calls for the creation of a Settlement Fund (the "Settlement Fund") in the amount of \$2,250,000. 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 Lead Counsel's attorneys' fees and reasonable litigation expenses and any Compensatory Award to Plaintiff for reimbursement of reasonable costs and expenses (including lost wages) directly relating to their representation of the Settlement Class. A portion of the Settlement Fund also will be used to pay taxes due on interest earned by the Settlement Fund, if necessary, and any notice and claims administration expenses permitted by the Court. 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 valid claims.

(b) **What can I 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; (ii) the dates you purchased and sold NetApp 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 Lead Plaintiff and Lead counsel for attorneys' fees, costs, and expenses.

The Claims Administrator will determine each Class Member's *pro rata* share of the Net Settlement Fund based upon each Class Member's "Recognized Loss." The Recognized Loss formula is not intended to be an estimate of the amount that a 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.

The Net Settlement Fund will be distributed to Class Members who submit valid, timely claim forms ("Authorized Claimants") under the below Plan of Allocation, which reflects Lead Plaintiff's contention that because of the alleged misrepresentations and omissions made by Defendants, the price of NetApp Stock was artificially inflated during the Settlement Class Period and that disclosure of the true facts caused changes in the inflated stock price. 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.

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/NetApp/.

The Claims Administrator shall determine the *pro rata* share of the Net Settlement Fund of each Authorized Claimant 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 following paragraphs. 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 following paragraphs (*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 Notice and 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 common shares purchased between May 23, 2019 and June 18, 2019, inclusive, the Recognized Loss shall be calculated as follows:
- A. For shares retained at the end of trading on October 30, 2019, the Recognized Loss shall be 10% of the lesser of:
 - (i) \$11.67 per share; or
 - (ii) the difference between the purchase price per share and \$51.22 per share.¹
 - B. For shares sold on or before August 1, 2019, the Recognized Loss per share shall be \$0.
 - C. For shares sold between August 2, 2019 and October 30, 2019, inclusive, the Recognized Loss shall be 10% of the lesser of:
 - i) \$11.67 per share; or

¹Pursuant 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." \$51.22 per share was the mean (average) daily closing trading price of the Company's common shares during the 90-day period beginning on August 2, 2019 and ending on October 30, 2019.

- 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.

II) For common shares purchased between June 19, 2019 and August 1, 2019, inclusive, the Recognized Loss shall be calculated as follows:

A. For shares retained at the end of trading on October 30, 2019, the Recognized Loss shall be the lesser of:

- i) \$11.67 per share; or
 ii) the difference between the purchase price per share and \$51.22 per share.

B. For shares sold on or before August 1, 2019, the Recognized Loss per share shall be \$0.

C. For shares sold between August 2, 2019 and October 30, 2019, inclusive, the Recognized Loss shall be the lesser of:

- i) \$11.67 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>
8/2/2019	\$46.04	\$46.04	9/18/2019	\$54.93	\$49.21
8/5/2019	\$45.16	\$45.60	9/19/2019	\$54.43	\$49.36
8/6/2019	\$46.01	\$45.74	9/20/2019	\$54.10	\$49.50
8/7/2019	\$46.27	\$45.87	9/23/2019	\$54.53	\$49.64
8/8/2019	\$47.75	\$46.25	9/24/2019	\$52.96	\$49.73
8/9/2019	\$46.58	\$46.30	9/25/2019	\$53.81	\$49.84
8/12/2019	\$46.11	\$46.27	9/26/2019	\$53.69	\$49.94
8/13/2019	\$46.99	\$46.36	9/27/2019	\$53.91	\$50.03
8/14/2019	\$44.71	\$46.18	9/30/2019	\$52.51	\$50.09
8/15/2019	\$46.47	\$46.21	10/1/2019	\$51.99	\$50.14
8/16/2019	\$46.76	\$46.26	10/2/2019	\$51.38	\$50.17
8/19/2019	\$47.01	\$46.32	10/3/2019	\$51.42	\$50.20
8/20/2019	\$46.09	\$46.30	10/4/2019	\$52.06	\$50.24
8/21/2019	\$46.89	\$46.35	10/7/2019	\$52.03	\$50.28
8/22/2019	\$46.78	\$46.37	10/8/2019	\$50.56	\$50.28
8/23/2019	\$45.43	\$46.32	10/9/2019	\$51.37	\$50.31
8/26/2019	\$46.56	\$46.33	10/10/2019	\$49.78	\$50.30
8/27/2019	\$46.51	\$46.34	10/11/2019	\$51.49	\$50.32
8/28/2019	\$46.82	\$46.37	10/14/2019	\$52.20	\$50.36
8/29/2019	\$47.90	\$46.44	10/15/2019	\$53.04	\$50.41
8/30/2019	\$48.06	\$46.52	10/16/2019	\$53.22	\$50.46

9/3/2019	\$47.41	\$46.56	10/17/2019	\$54.02	\$50.53
9/4/2019	\$49.15	\$46.67	10/18/2019	\$53.49	\$50.58
9/5/2019	\$51.76	\$46.88	10/21/2019	\$54.57	\$50.65
9/6/2019	\$51.98	\$47.09	10/22/2019	\$55.18	\$50.73
9/9/2019	\$54.78	\$47.38	10/23/2019	\$56.01	\$50.82
9/10/2019	\$54.51	\$47.65	10/24/2019	\$55.45	\$50.90
9/11/2019	\$56.22	\$47.95	10/25/2019	\$56.01	\$50.99
9/12/2019	\$56.36	\$48.24	10/28/2019	\$55.86	\$51.07
9/13/2019	\$56.57	\$48.52	10/29/2019	\$55.47	\$51.14
9/16/2019	\$56.84	\$48.79	10/30/2019	\$56.37	\$51.22
9/17/2019	\$56.54	\$49.03			

To the extent a Claimant had a trading gain or “broke even” from his, her, or its overall transactions in NetApp 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 NetApp 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.²

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 NetApp shares shall not be deemed a purchase or acquisition of NetApp 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 (Cusip number: 64110D104).

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 NetApp common shares during the time period from May 23, 2019 through and including October 30, 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 Defendants, Defendants’ Counsel, Lead Plaintiff, Lead Counsel, or the Claims Administrator or other agent designated by Lead Counsel based on the distributions made substantially in accordance with the Stipulation and

² In order to determine the Claimant’s overall trading loss, the Claims Administrator will calculate the total purchase cost of the NetApp common stock shares that the Claimant purchased during the Settlement Class Period, less the total amount received for any NetApp common stock shares that the Claimant sold between May 23, 2019 through and including October 30, 2019, and less the value of any NetApp common stock shares the Claimant held at the close of trading on October 30, 2019 (which will be calculated with a value of \$51.22 per share). Any shares held at the beginning of the Settlement Class Period and sold during the Settlement Class Period are not included in the calculation of the overall trading loss.

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 Proof of Claim and Release 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 form is attached to this Notice. You may also obtain this form on the Internet at www.strategicclaims.net/NetApp. Read the instructions carefully, fill out the form, 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/NetApp by 11:59 p.m. EST on _____, 202__; or (2) by mailing the claim form together with all documentation requested in the form, postmarked no later than _____, 202__, to the Claims Administrator at:

NetApp, 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.

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

Unless you validly exclude yourself by the _____ deadline, you will remain in the Settlement Class. That means that if the Settlement is approved, you and all 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 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 NetApp 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 NetApp Stock during the Settlement Class Period. The specific terms of the release are included in the Stipulation.

10. 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 Defendants on your own based on the legal claims raised in the Action, then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting out” of – the Settlement. To validly 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 *Smith v. NetApp, Inc., et al.*, Case No. 19-cv-04801-JST” and (B) states the date, number of shares and dollar amount of each purchase, acquisition, and sale of NetApp Stock during the Settlement Class Period, as well as the number of shares of NetApp Stock held by you as of October 30, 2019. In order to be valid, such request for exclusion must be submitted with documentary proof: (i) of each purchase and, if applicable, sale transaction during the Settlement Class Period; and (ii) demonstrating your status as a beneficial owner of the NetApp 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 _____, 202__**, to the Claims Administrator at the following address:

NetApp, 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 ask to be excluded, you will not receive a settlement payment, and you cannot object to the Settlement. If you ask to be excluded in conformity with this Notice, you will not be legally bound by anything that happens in this Action.

11. If I do not exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this Settlement resolves, or the Released Claims as defined above. If you have a pending lawsuit, speak to your lawyer in that case immediately, since you may have to exclude yourself from this Settlement Class to continue your own lawsuit.

12. Do I have a lawyer in this case?

The Court has appointed The Rosen Law Firm, P.A. as Lead Counsel to represent the Settlement Class Members for the purposes of this settlement. You have the option to retain your own separate counsel at your own cost and expense. You need not retain your own separate counsel to opt-out, object, submit a Proof of Claim, or appear at the Final Approval Hearing. Contact information for Lead Counsel is provided below.

13. How will the lawyers be paid?

Lead Counsel have expended considerable time litigating this action on a contingent fee basis, have paid for the expenses of the litigation themselves, and have not been paid any attorneys' fees in advance of this Settlement. Lead Counsel have done so with the expectation that if they are successful in recovering money for the 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. Lead Counsel will not receive attorneys' fees or be reimbursed for their litigation expenses except from the Settlement Fund. Therefore, Lead Counsel will file a motion asking the Court at the Final Approval Hearing to make an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund and for reimbursement of reasonable litigation expenses not to exceed \$_____, and a Compensatory Award to Plaintiff for reimbursement of reasonable costs and expenses (including lost wages) directly relating to his representation of the Class, in an amount not to exceed \$2,000. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

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

You can ask the Court to deny approval by filing an objection to any part of the Settlement, or Lead Counsel's motion for attorneys' fees and expenses and application for a Compensatory Award to Lead Plaintiff, and explaining that you think the Court should not approve the Settlement. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. To file an objection, you must mail a letter stating that you object to the Settlement in the matter of *Smith v. NetApp, Inc., et al.*, Case No. 19-cv-04801-JST. Be sure to include: (1) your name, address, and telephone number; (2) a list of all purchases and sales of NetApp Stock 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 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 who may be entitled to compensation in connection with the objection; 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 Final Approval Hearing is not necessary. Objectors wishing to be heard orally at the Final Approval 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 Final Approval Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Final Approval Hearing. Objections must be in writing. Objections can be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, California 94612, or by filing them in person at any location of the United

States District Court for the Northern District of California, and (c) be filed or postmarked on or before _____.

15. What is the difference between objecting and requesting exclusion?

Objecting is simply telling the Court you do not like something about the Settlement. 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 and you will be bound by any order issued by the Court.

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

The Court will hold a Final Approval Hearing on _____, 202__ at __: __, __m., at the United States District Court, Northern District of California, Oakland Courthouse, 1301 Clay Street, Courtroom 6, 2nd Floor, Oakland, CA 94612.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and whether to approve the Settlement. If there are objections, the Court will consider them, and the Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to award Lead Counsel for attorneys' fees and expenses and how much to award Plaintiff in a Compensatory Award.

The Final Approval Hearing may be adjourned by the Court without further written notice to the Settlement Class. If you intend to attend the Final Approval Hearing, you should confirm the date and time with Lead Counsel, check the Claims Administrator's website at www.strategicclaims.net/NetApp, or the Court's Public Access to Court Electronic Records ("PACER") system at <https://ecf.cand.uscourts.gov>. The Court may decide to hold the Final Approval Hearing telephonically or by other virtual means without further notice.

17. 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.

18. What happens if I do nothing at all?

If you do nothing, you will not receive a payment from the Settlement. However, unless you validly exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the claims made in this case ever again.

19. Can I See the Court File? Whom Should I Contact if I Have Questions?

This Notice contains only a summary of the terms of the proposed Settlement. For the precise terms and conditions of the settlement, please see the Stipulation available at

www.strategicclaims.net/NetApp, by contacting Lead Counsel at (215) 600-2817, by accessing the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, California 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays

All inquiries concerning this Notice and the Claim Form should be directed to the Claims Administrator or Lead Counsel at:

NetApp 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

Jacob A. Goldberg, Esq.
THE ROSEN LAW FIRM, P.A.
101 Greenwood Avenue, Suite 440
Jenkintown, PA 19046
Tel.: 215-600-2817
Fax: 212-202-3827
jgoldberg@rosenlegal.com

**DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S
OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE
CLAIMS PROCESS.**

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If, between May 23, 2019 and August 1, 2019, both dates inclusive, you purchased, otherwise acquired, or sold NetApp Stock for the beneficial interest of a person or organization other than yourself, the Court has directed that, **WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS NOTICE**, you either (a) provide to the Claims Administrator the name, last known address, and email address of each person or organization for whom or which you purchased such NetApp Stock during such time period; (b) request a link to the location where the Long Notice and Proof of Claim are hosted and, within ten (10) days of receipt, email the link to all such beneficial owners of the NetApp Stock for whom valid email addresses are available; 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 owners of the NetApp Stock. If you choose to follow either alternative procedure (b) or (c), the Court has directed that, upon such mailing or emailing, you send a statement to the Claims Administrator confirming that the mailing or emailing 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 a maximum of \$0.05 plus postage at the pre-sort rate unit by the Claims Administrator per Postcard Notice mailed, \$0.05 per link to the electronic Long Notice and Proof of Claim emailed; or \$0.05 per name and address provided to the Claims Administrator. 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: _____, 2021

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA

EXHIBIT A-3

PROOF OF CLAIM AND RELEASE FORM

Deadline for Submission: _____

If you purchased or otherwise acquired the publicly traded securities of NetApp, Inc. (“NetApp”) during the period from May 23, 2019 through August 1, 2019, both dates inclusive (the “Settlement Class Period”), you are a “Settlement Class Member” and you may be entitled to share in the settlement proceeds. (Excluded from the Settlement Class are Defendants and any entity in which the Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, immediate family members, heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such.)

If you are a Settlement Class Member, you must complete and submit this Proof of Claim and Release Form (“Proof of Claim”) in order to be eligible for any Settlement benefits. You can complete and submit the electronic version of this Proof of Claim by 11:59 p.m. EST on _____, 202__ at www.strategicclaims.net/NetApp.

If you do not complete and submit an electronic version of this Proof of Claim, you must complete and sign this Proof of Claim and mail it by first class mail, postmarked no later than _____, 202__ to Strategic Claims Services, the Claims Administrator, at the following address:

NetApp, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
P.O. Box 230
Media, PA 19063
Tel.: 866-274-4004
Fax: 610-565-7985
info@strategicclaims.net

Your failure to submit your claim by _____, 202__ 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, 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 does not assure that you will share in the proceeds of the Settlement.

CLAIMANT'S STATEMENT

1. I (we) purchased the common stock of NetApp, Inc. ("NetApp") during the Settlement Class Period. (Do not submit this Proof of Claim if you did not purchase NetApp common stock during the Settlement Class Period.)
2. By submitting this Proof of Claim, 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. 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.
4. I (we) have set forth where requested below all relevant information with respect to each purchase or acquisition of NetApp common stock during the Settlement Class Period, and each sale, if any, of such common stock. 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, acquisition, and sale of NetApp 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 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 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 September 21, 2021 ("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 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 Released Claims against any of the Released Parties.
9. "Released Parties" has the meaning laid out in the Stipulation.
10. "Released Claims" has the meaning laid out in the Stipulation.
11. "Unknown Claims" has the meaning laid out in the Stipulation.
12. I (we) acknowledge that I (we) may hereafter discover facts in addition to or different from those which I (we) now know or believe to be true with respect to the subject matter of the Released Claims, but expressly fully, finally and forever settle and release, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of fiduciary duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.
13. I (We) acknowledge that the inclusion of "Unknown Claims" in the definition of claims released pursuant to the Stipulation was separately bargained for and is a material element of the Settlement of which this release is a part.
14. 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, 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.

15. NOTICE REGARDING ELECTRONIC FILES: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Proof of Claim 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 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.

I. CLAIMANT INFORMATION

Beneficial Owner Name:		
Address:		
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 NETAPP COMMON STOCK

Beginning Holdings:

A. State the total number of shares of NetApp common stock held at the close of trading on May 22, 2019 (*must be documented*). If none, write “zero” or “0.”

--

Purchases/Acquisitions:

B. Separately list each and every purchase or acquisition of NetApp common stock between May 23, 2019 and October 30, 2019, both dates inclusive, and provide the following information (*must be documented*):

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

Sales:

C. Separately list each and every sale of NetApp common stock between May 23, 2019 and October 30, 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 NetApp common stock held at the close of trading on October 30, 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 under the terms of the Stipulation of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Northern District of California with respect to my (our) claim as a Settlement Class Member 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 NetApp 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 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 SUBMITTED ELECTRONICALLY AT WWW.STRATEGICCLAIMS.NET/NETAPP BY 11:59 P.M. EST ON _____, 2021, OR MAILED TO THE CLAIMS ADMINISTRATOR AT THE BELOW ADDRESS, POSTMARKED NO LATER THAN _____:

NetApp, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
P.O. Box 230
Media, PA 19063
Tel.: 866-274-4004
Fax: 610-565-7985
info@strategicclaims.net

A Proof of Claim received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by _____ 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 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. Please notify the Claims Administrator of any change of address.

REMINDER CHECKLIST

- Please be sure to sign this Proof of Claim on page 7. If this Proof of Claim is submitted on behalf of joint claimants, then both claimants 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 or any supporting documents.
- 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 to deliver payment to you.

EXHIBIT A-4

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHAD C. SMITH, Individually and on	:	
behalf of all others similarly situated,	:	
	:	Case No. 4:19-cv-04801-JST
Plaintiff,	:	
	:	
v.	:	
	:	
NETAPP, INC., et al.	:	
	:	
Defendants.	:	

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

TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED THE PUBLICLY TRADED SECURITIES OF NETAPP, INC. (“NETAPP”) BETWEEN MAY 23, 2019 AND AUGUST 1, 2019, BOTH DATES INCLUSIVE

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Northern District of California, that a hearing will be held on _____, 2021 at ___:___m. before the Honorable Jon S. Tigar, United States District Judge of the Northern District of California, Oakland Courthouse, 1301 Clay Street, Courtroom 6, 2nd Floor, Oakland, CA 94612 (the “Final Approval Hearing”) for the purpose of determining: (1) whether the proposed Settlement consisting of the sum of \$2,250,000 in cash 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 for an award of attorneys’ fees of no more than 25% of the Settlement Amount (or \$562,500) and reimbursement of expenses of no more than \$25,000 and a Compensatory Award of reasonable costs and expenses (including lost wages) directly relating to his representation of the Settlement Class of no more than \$2,000 for Lead Plaintiff should be approved; and (4) whether the Action should be dismissed with prejudice

as set forth in the Stipulation of Settlement, dated September 21, 2021 (the “Stipulation”). The Court reserves the right to hold the Final Approval Hearing telephonically or by other virtual means.

If you purchased or otherwise acquired NetApp common stock between May 23, 2019 and August 1, 2019, both dates inclusive (the “Settlement Class Period”), your rights may be affected by the Settlement of this action. If you have not received a detailed Notice of Pendency and Proposed Settlement of Class Action (“Long Notice”) and a copy of the Proof of Claim and Release Form (“Proof of Claim”), you may obtain copies by contacting the Claims Administrator at: NetApp, Inc. Securities Litigation, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson St., Ste. 205, Media, PA 19063, Telephone: (866) 274-4004, Facsimile: (610) 565-7985, info@strategicclaims.net. You can also download copies of the Long Notice and submit your Proof of Claim online at www.strategicclaims.net/NetApp. 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 properly completed Proof of Claim electronically or postmarked no later than _____, 2021 to the Claims Administrator, establishing that you are entitled to recovery.

If you are a Settlement Class Member and desire to be excluded from the Settlement Class, you must submit a request for exclusion to the Claims Administrator postmarked no later than _____, 2021, in the manner and form explained in the detailed Long Notice. 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.

Any objection to the Settlement, Plan of Allocation, Lead Counsel’s request for an award of attorneys’ fees and reimbursement of expenses, or the Compensatory Award to Lead Plaintiff must be in the manner and form explained in the detailed Long Notice and filed with the Court no

later than _____, 2021, at the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, California 94612.

If you have any questions about the Settlement, you may call or write to Lead Counsel:

Jacob A. Goldberg, Esq.
THE ROSEN LAW FIRM, P.A.
101 Greenwood Avenue, Suite 440
Jenkintown, PA 19046
215-600-2817
jgoldberg@rosenlegal.com

DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

DATED: _____, 2021

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA

EXHIBIT B

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHAD C. SMITH, Individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NETAPP, INC., et al.

Defendants.

Case No. 4:19-cv-04801-JST

**[PROPOSED] ORDER AND FINAL
JUDGMENT**

Hon. Jon S. Tigar

1 On the ____ day of _____, 202____ a hearing having been held before this Court
2 to determine: (1) whether the terms and conditions of the Stipulation of Settlement, dated
3 September 21, 2021 (“Stipulation”) are fair, reasonable and adequate for the settlement of all
4 claims asserted by the Settlement Class against Defendants (as defined in the Stipulation),
5 including the release of the Released Claims against the Released Parties, and should be approved;
6 (2) whether judgment should be entered dismissing the Action with prejudice; (3) whether to
7 approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net
8 Settlement Fund among Settlement Class Members; (4) whether and in what amount to award
9 Lead Counsel fees and reimbursement of expenses; and (5) whether and in what amount to award
10 the Compensatory Award to Lead Plaintiff; and

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

12 It appearing in the record that the Long Notice substantially in the form approved by the
13 Court in the Court’s Order Preliminarily Approving Settlement and Providing for Notice, dated
14 _____ __, 2021 (“Preliminary Approval Order”) was mailed to all reasonably identifiable
15 Settlement Class Members and posted to the website of the Claims Administrator, both in
16 accordance with the Preliminary Approval Order and the specifications of the Court; and

17 It appearing in the record that the link to the location of the electronic Long Notice and
18 Proof of Claim substantially in the form approved by the Court in the Preliminary Approval Order
19 was emailed to identifiable Settlement Class Members when an email address was provided to the
20 Claims Administrator in accordance with the Preliminary Approval Order and the specifications
21 of the Court; and

22 It appearing in the record that the Summary Notice substantially in the form approved by
23 the Court in the Preliminary Approval Order was published electronically once on the
24 *GlobeNewswire* and in print once in the *Investor’s Business Daily*.

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

27 1. This Order and Judgment incorporates by reference the definitions in the
28 Stipulation, and all capitalized terms used herein shall have the same meanings as set forth therein.

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

1 3. The Court finds that, for settlement purposes only, the prerequisites for a class
2 action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in
3 that:

- 4 a. the number of Settlement Class Members is so numerous that joinder of all
5 members thereof is impracticable;
- 6 b. there are questions of law and fact common to the Settlement Class;
- 7 c. the claims of the Lead Plaintiff are typical of the claims of the Settlement Class
8 they seek to represent;
- 9 d. Lead Plaintiff and Lead Counsel fairly and adequately represent the interests of the
10 Settlement Class;
- 11 e. questions of law and fact common to the members of the Settlement Class
12 predominate over any questions affecting only individual members of the
13 Settlement Class; and
- 14 f. a class action is superior to other available methods for the fair and efficient
15 adjudication of this Action, considering:
- 16 i. the interests of the Settlement Class Members in individually
17 controlling the prosecution of the separate actions;
- 18 ii. the extent and nature of any litigation concerning the controversy
19 already commenced by Settlement Class Members;
- 20 iii. the desirability or undesirability of concentrating the litigation of
21 these claims in this particular forum; and
- 22 iv. the difficulties likely to be encountered in the management of the
23 class action.

24 4. The Court hereby finally certifies this action as a class action for purposes of the
25 Settlement only, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on
26 behalf of all persons and entities who purchased or otherwise acquired the publicly traded
27 securities of NetApp between May 23, 2019 and August 1, 2019, both dates inclusive. Excluded
28 from the Settlement Class are Defendants, the officers and directors of NetApp, members of the
Individual Defendants' immediate families and their legal representatives, heirs, successors, or
assigns and any entity in which the Individual Defendants have or had a controlling interest. Also
excluded from the Settlement Class are all putative members of the Settlement Class who exclude

1 themselves by filing a valid and timely request for exclusion, and persons with no compensable
2 damages. All persons who filed valid and timely requests for exclusion are listed on Exhibit A
3 hereto.

4 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for the purposes of
5 this Settlement only, Lead Plaintiff is certified as the class representative on behalf of the
6 Settlement Class (“Class Representative”) and Lead Counsel previously selected by Lead Plaintiff
7 and appointed by the Court is hereby appointed as Class Counsel for the Settlement Class (“Class
8 Counsel”).

9 6. In accordance with the Court’s Preliminary Approval Order, the Court hereby finds
10 that the forms and methods of notifying the Settlement Class of the Settlement and its terms and
11 conditions met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure,
12 and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as
13 amended by the Private Securities Litigation Reform Act of 1995; constituted the best notice
14 practicable under the circumstances; and constituted due and sufficient notice of these proceedings
15 and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons and
16 entities entitled to such notice. No Settlement Class Member is relieved from the terms and
17 conditions of the Settlement, including the releases provided for in the Stipulation, based upon the
18 contention or proof that such Settlement Class Member failed to receive actual or adequate notice.
19 A full opportunity has been offered to the Settlement Class Members to object to the proposed
20 Settlement and to participate in the hearing thereon. The Court further finds that the notice
21 provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is
22 hereby determined that all Settlement Class Members are bound by this Order and Judgment
23 except those persons listed on Exhibit A to this Order and Judgment.

24 7. The Settlement is approved as fair, reasonable, and adequate under Rule 23 of the
25 Federal Rules of Civil Procedure. This Court further finds that the Settlement set forth in the
26 Stipulation is the result of good faith, arm’s-length negotiations between experienced counsel
27 representing the interests of Class Representative, Settlement Class Members, and Defendants.
28 The Parties are directed to consummate the Settlement in accordance with the terms and provisions
of the Stipulation.

1 8. The Action and all claims contained therein, as well as the Released Claims, are
2 dismissed with prejudice as against Defendants and the Released Parties. The Parties are to bear
3 their own costs, except as otherwise provided in the Stipulation.

4 9. The Releasing Parties, on behalf of themselves, their successors and assigns, and
5 any other Person claiming (now or in the future) through or on behalf of them, regardless of
6 whether any such Releasing Party ever seeks or obtains by any means, including without limitation
7 by submitting a Proof of Claim and Release Form, any disbursement from the Settlement Fund,
8 shall be deemed to have, and by operation of this Order and Judgment shall have, fully, finally,
9 and forever released, relinquished, and discharged all Released Claims against the Released
10 Parties. The Releasing Parties shall be deemed to have, and by operation of this Order and
11 Judgment shall have, covenanted not to sue the Released Parties with respect to any and all
12 Released Claims in any forum and in any capacity. The Releasing Parties shall be and hereby are
13 permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting,
14 instigating, or in any way participating in the commencement or prosecution of any action or other
15 proceeding, in any forum, asserting any Released Claim, in any capacity, against any of the
16 Released Parties, including Defense Counsel. Nothing contained herein shall, however, bar the
17 Releasing Parties from bringing any action or claim to enforce the terms of the Stipulation or this
18 Order and Judgment.

19 10. Defendants, on behalf of themselves and their Related Parties, shall be deemed to
20 have, and by operation of this Judgment shall have, fully, finally, and forever released,
21 relinquished, and discharged Class Representative, Settlement Class Members, Class Counsel, and
22 their respective Related Parties from all Claims, whether known or unknown, which arise out of,
23 concern or relate to the institution, prosecution, settlement or dismissal of the Action (the
24 “Defendants’ Released Claims”), and shall be permanently enjoined from prosecuting the
25 Defendants’ Released Claims against Class Representative, Settlement Class Members, Class
26 Counsel, and their respective Related Parties. Nothing contained herein shall, however, bar the
27 Defendants or their Related Parties from bringing any action or claim to enforce the terms of the
28 Stipulation or this Order and Judgment.

 11. To the fullest extent permitted by law, all Persons shall be permanently enjoined,
barred, and restrained from bringing, commencing, prosecuting, or asserting any claims, actions,
or causes of action for contribution, indemnity or otherwise against any of the Released Parties

1 seeking as damages or otherwise the recovery of all or any part of any liability, judgment, or
2 settlement that they pay or are obligated to pay or agree to pay to the Settlement Class or any
3 Settlement Class Member arising out of, relating to, or concerning such Persons' participation in
4 any acts, facts, statements, or omissions that were or could have been alleged in the Action,
5 whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-
6 party claims, or otherwise, in the Court or any other federal, state, or foreign court, or in any
7 arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or
8 forum. Further, nothing in the Stipulation or this Order and Judgment shall apply to bar or
9 otherwise affect any claim for insurance coverage by any Defendant.

10 12. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable
11 method to allocate the Net Settlement Fund among Settlement Class Members, and Class Counsel
12 and the Claims Administrator are directed to administer the Plan of Allocation in accordance with
13 its terms and the terms of the Stipulation.

14 13. The Court finds that the Parties and their counsel have complied with all
15 requirements of Rule 11 of the Federal Rules of Civil Procedure and the Private Securities
16 Litigation Reform Act of 1995 as to all proceedings herein.

17 14. Neither this Order and Judgment, the Stipulation (nor the Settlement contained
18 therein), nor any of its terms and provisions, nor any of the negotiations, documents or proceedings
19 connected with them:

- 20 a. is or may be deemed to be, or may be used as an admission, concession, or evidence
21 of the validity or invalidity of any Released Claims, the truth or falsity of any fact
22 alleged by Class Representative, the sufficiency or deficiency of any defense that
23 has been or could have been asserted in the Action, or of any wrongdoing, liability,
24 negligence, or fault of Defendants, the Released Parties, or each or any of them;
- 25 b. is or may be deemed to be or may be used as an admission of, or evidence of, any
26 fault or misrepresentation or omission with respect to any statement or written
27 document attributed to, approved by, or made by Defendants or Released Parties in
28 any civil, criminal, or administrative proceeding in any court, administrative
agency, or other tribunal;
- c. is or may be deemed to be or shall be used, offered, or received against the Parties,
Defendants, or the Released Parties, or each or any of them, as an admission,

1 concession, or evidence of the validity or invalidity of the Released Claims, the
2 infirmity or strength of any claim raised in the Action, the truth or falsity of any
3 fact alleged by Class Representative, the Settlement Class, or the availability or
4 lack of availability of meritorious defenses to the claims raised in the Action;

5 d. is or may be deemed to be or shall be construed as or received in evidence as an
6 admission or concession against Defendants, or the Released Parties, or each or any
7 of them, that any of Class Representative's or Settlement Class Members' claims
8 are with or without merit, that a litigation class should or should not be certified,
9 that damages recoverable in the Action would have been greater or less than the
10 Settlement Fund, or that the consideration to be given pursuant to the Stipulation
11 represents an amount equal to, less than, or greater than the amount that could have
12 or would have been recovered after trial.

13 15. The Released Parties may file the Stipulation and/or this Order and Judgment in
14 any other action that may be brought against them in order to support a defense or counterclaim
15 based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith
16 settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion
17 or similar defense or counterclaim. The Parties may file the Stipulation and/or this Order and
18 Judgment in any proceedings that may be necessary to consummate or enforce the Settlement
19 Stipulation, the Settlement, or this Order and Judgment.

20 16. Except as otherwise provided herein or in the Stipulation, all funds held by the
21 Escrow Agent shall be deemed to be in *custodia legis* and shall remain subject to the jurisdiction
22 of the Court until such time as the funds are distributed or returned pursuant to the Stipulation
23 and/or further order of the Court.

24 17. Without affecting the finality of this Order and Judgment in any way, this Court
25 hereby retains continuing exclusive jurisdiction over the Parties and the Settlement Class Members
26 for all matters relating to the Action, including the administration, interpretation, effectuation, or
27 enforcement of the Stipulation and this Order and Judgment, and including any application for fees
28 and expenses incurred in connection with administering and distributing the Settlement proceeds
to the Settlement Class Members.

18. Without further order of the Court, Defendants and Class Representative may agree
to reasonable extensions of time to carry out any of the provisions of the Stipulation.

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

4 20. The finality of this Order and Judgment shall not be affected, in any manner, by
5 rulings that the Court may make on Class Counsel's application for an award of attorneys' fees
6 and expenses to Class Counsel or award to Class Representative.

7 21. In the event the Settlement is not consummated in accordance with the terms of the
8 Stipulation, then the Stipulation and this Order and Judgment (including any amendment(s)
9 thereof, and except as expressly provided in the Stipulation or by order of the Court) shall be null
10 and void, of no further force or effect, and without prejudice to any Party, and may not be
11 introduced as evidence or used in any action or proceeding by any Person against the Parties or
12 the Released Parties, and each Party shall be restored to his, her, or its respective litigation
13 positions as they existed prior to September 21, 2021 pursuant to the terms of the Stipulation.

14 Dated: _____, 202__

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16 HON. JON S. TIGAR
17 UNITED STATES DISTRICT JUDGE
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