

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

JOSEPH P. NOLFF, ANDREW TATE and  
BRUCE PALENSKE, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ATERIAN, INC., YANIV SARIG,  
FABRICE HAMAIDE, and ARTURO  
RODRIGUEZ,

Defendants.

**CASE No.: 1:21-cv-04323-VM**

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement and all exhibits thereto (“Stipulation”) by and among (i) Plaintiffs (defined below), on behalf of themselves and on behalf of the Settlement Class (defined below), and (ii) Defendants (defined below), by and through their undersigned attorneys, states all of the terms of the settlement and resolution of this matter by the Settling Parties (defined below) and is intended by the Settling Parties to fully, finally, and forever release, resolve, remise, and discharge the Released Claims (defined below) against the Released Parties (defined below), subject to the approval of the United States District Court for the Southern District of New York (“Court”).

Throughout this Stipulation, all terms used with initial capitalization but not immediately defined shall have the meanings ascribed to them in Section 1 below.

**WHEREAS:**

**A. The Action**

On May 13, 2021, Andrew Tate filed a putative class action, asserting claims under the Securities Exchange Act of 1934 (“Exchange Act”) on behalf of all investors who purchased or otherwise acquired Aterian, Inc. securities between December 1, 2020 and May 3, 2021, inclusive, in a case captioned *Tate v. Aterian, Inc., et. al.*, 21-cv-04323-VM (“Tate Action”).

On June 10, 2021, Jeff Coon filed a similar putative class action, in a case captioned *Coon v Aterian, Inc., et. al.*, 21-cv-05163-VM (“Coon Action”).

On August 10, 2021, the Court consolidated the Tate Action and the Coon Action into the Action (defined below), appointed Joseph Nolff (“Nolff”) as lead plaintiff, and appointed The Rosen Law Firm, P.A. lead counsel (ECF No. 47).

On October 12, 2021, Nolff and named plaintiff Bruce Palenske (“Palenske”) filed an Amended Consolidated Complaint (ECF No. 55).

On November 3, 2021, with Defendants’ consent, Plaintiffs filed the Second Amended Consolidated Complaint (ECF No. 66).

On December 23, 2021, Aterian filed with the United States Securities and Exchange Commission (“SEC”) amended Form 4s, revising previous disclosures about individuals’ trades during the Class Period (defined below). In response to these amended Form 4s, pursuant to an agreement of the parties, on January 5, 2022, Plaintiffs filed the operative Third Amended Class Action Complaint for Violation of The Federal Securities Laws (“Complaint”) (ECF No. 75).

On January 17, 2022, pursuant to the Individual Practices of United States District Judge Victor Marrero, Section IIB, Defendants Aterian, Inc., Yaniv Sarig, Arturo Rodriguez and, separately, Defendant Fabrice Hamaide, transmitted to Plaintiffs and the Court pre-motion letters,

describing the reasons the Complaint failed adequately to plead violations of the Exchange Act and SEC Rules, promulgated thereunder.

On February 7, 2022, Plaintiffs transmitted to Defendants and the Court their response letters, summarizing the reasons why the Court would deny the motions to dismiss Defendants intended to file. Defendants' reply letters in further support of the motions to dismiss they intended to file were due on March 9, 2022. The Settling Parties stipulated to, and the Court granted, an extension for Defendants to file these letters to March 18, 2022 (ECF No. 78).

In January 2022, while simultaneously litigating the Action, the Settling Parties agreed to also pursue mediation in an attempt to settle the Action. On March 9, 2022, the Settling Parties participated in a mediation session with Robert A. Meyer of JAMS. Prior to the mediation session, the Settling Parties prepared and exchanged detailed mediation statements, including their respective analyses of damages and loss causation. The Settling Parties then reached a settlement in principle on March 10, 2022, exchanging a full release of all claims in this Action against all Defendants from all Settlement Class Members that do not exclude themselves in exchange for a cash payment from Aterian totaling \$1,300,000.

On March 17, 2022, the Settling Parties executed a Memorandum of Understanding (“MOU”), broadly setting forth the terms of the Settlement, in principle. The Settling Parties alerted the Court to the Settlement, in principle, and, on March 18, 2022, the Court ordered a stay of all proceedings, pending its consideration of Plaintiffs' anticipated motion for preliminary approval of the Settlement (ECF Nos. 80 - 81).

This Stipulation memorializes the agreement between the Settling Parties fully, finally, and forever to settle the Action and release all Released Claims with prejudice in return for specified consideration. This Stipulation supersedes and replaces the MOU in all respects.

**B. The Defendants' Denial of Wrongdoing and Liability**

Throughout the course of the Action and in this Stipulation, Defendants have denied and continue to deny each allegation of wrongdoing, fault, liability, or damage whatsoever that has been asserted in the Action. Defendants continue to believe the claims asserted against them in the Action are without merit and that the Action itself should not be certified as a class action for purposes of trial and adjudication of liability and damages. Defendants have not conceded or admitted any wrongdoing or liability, are not doing so by entering into this Stipulation, and disclaim any and all wrongdoing and liability whatsoever.

Defendants have agreed to enter into this Stipulation solely to avoid the uncertainties, burden, and expense of further litigation and to put the Released Claims to rest finally and forever. Nothing in this Stipulation shall be construed as or deemed evidence supporting an admission by either Defendants or any of the Released Parties with respect to any of Plaintiffs' allegations or claims, or of any wrongdoing, fault, liability, or damages whatsoever.

**C. Claims of Plaintiffs and Benefits of Settlement**

Plaintiffs believe that the claims asserted in the Action have merit. Plaintiffs, however, recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeals. Plaintiffs have also carefully considered the uncertain outcome and the risk of any litigation. In particular, Plaintiffs have considered the inherent problems of proof and possible defenses to the federal securities law violations they allege in the Action, including the defenses that Defendants have asserted or could have asserted during the motion to dismiss, motion for class certification, motion for summary judgment, and trial stages of the Action. Plaintiffs have therefore determined that the Settlement

set forth in this Stipulation is fair, adequate, reasonable, and in the best interests of the Settlement Class.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among Plaintiffs, on behalf of themselves and each Settlement Class Member, and Defendants, by and through their respective undersigned counsel, that, subject to the approval of the Court, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, the Action and the Released Claims as against the Released Parties shall be finally and fully compromised, settled and released, the Action shall be dismissed fully, finally and with prejudice, and the Released Claims shall be finally and fully released as against the Released Parties, upon and subject to the terms and conditions of this Stipulation, as follows:

## **1. Definitions**

In addition to the terms defined above, the following capitalized terms, used in this Stipulation, shall have the meanings specified below:

**1.1.** “Action” means the consolidated putative class action, captioned *Nolff, et al., v. Aterian, Inc., et al.*, 21-cv-004323-VM (S.D.N.Y.), which for the avoidance of doubt, includes the Tate Action and the Coon Action, and all pleadings and papers filed therein.

**1.2.** “Administrative Costs” means all costs and expenses associated with providing notice of the Settlement to the Settlement Class and otherwise administering or carrying out the terms of the Settlement. Such costs may include, without limitation: escrow agent costs, the costs of publishing the Summary Notice, the costs of printing and mailing, and/or emailing of the Notice and Proof of Claim, as directed by the Court, and the costs of allocating and distributing the Net Settlement Fund (as defined in ¶ 7.2(d) of this Stipulation) to the Authorized Claimants. Such costs do not include legal fees.

**1.3.** “Authorized Claimant” means any Settlement Class Member who is a Claimant and whose claim for recovery has been allowed pursuant to the terms of this Stipulation, the exhibits hereto, and any order of the Court.

**1.4.** “Award to Plaintiffs” means the requested reimbursement to Plaintiffs for their reasonable costs and expenses (including lost wages) directly related to Plaintiffs’ representation of the Settlement Class in the Action.

**1.5.** “Business Day” means any day except Saturday or Sunday or any other day on which national banks are authorized by law or executive order to close in the State of New York.

**1.6.** “Claimant” means any Settlement Class Member who files a Proof of Claim in such form and manner, and within such time, as this Stipulation and the Court shall prescribe.

**1.7.** “Claims” means any and all manner of claims, debts, demands, controversies, obligations, losses, costs, interest, penalties, fees, expenses, rights, duties, judgments, sums of money, suits, contracts, agreements, promises, damages, actions, causes of action and liabilities, of every nature and description in law or equity (including, but not limited to, any claims for damages, whether compensatory, special, incidental, consequential, punitive, exemplary or otherwise, injunctive relief, declaratory relief, rescission or rescissory damages, interest, attorneys’ fees, expert or consulting fees, costs, or expenses), accrued or unaccrued, known or unknown (including, without limitation, Unknown Claims (defined below)), arising under federal, state, common, administrative, or foreign law, or any other law, rule, or regulation.

**1.8.** “Claims Administrator” means Strategic Claims Services (“SCS”), which shall transmit notice to potential Settlement Class Members and administer the Settlement.

**1.9.** “Defendants” means Aterian, Inc. (“Aterian”), Yaniv Sarig, Fabrice Hamaide, and Arturo Rodriguez.

**1.10.** “Escrow Account” means an interest-bearing escrow account established by the Escrow Agent. The Escrow Account shall be managed by the Escrow Agent, subject to the Court’s supervisory authority, for the benefit of Plaintiffs and the Settlement Class in accordance with the terms of the Stipulation and any order of the Court. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis*, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

**1.11.** “Escrow Agent” means Huntington Bank or its appointed agents. The Escrow Agent shall perform the duties as set forth in this Stipulation and any order of the Court.

**1.12.** “Effective Date” shall have the meaning set forth in ¶ 10.4 of this Stipulation.

**1.13.** “Final Judgment” means the order and judgment to be entered by the Court finally approving the Settlement and dismissing the Action, substantially in the form attached hereto as Exhibit B, or otherwise ordered by the Court. “Final,” when used in conjunction with and with respect to the “Final Judgment” means after the exhaustion of all possible appeals, meaning (i) if no appeal or request for review is filed, the day after the date of expiration of any time for appeal or review of the Final Judgment, and (ii) if an appeal or request for review is filed, the day after the date all appeals or requests for review are dismissed, or the Final Judgment is upheld on appeal or review in all material respects, and is not subject to further review on appeal or by certiorari or otherwise.

**1.14.** “Insurer(s)” means the insurers under director and officer liability policies under which Aterian was covered during the Class Period.

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

**1.16.** “Notice” means collectively, the Notice of Pendency and Proposed Settlement of Class Action (“Long Notice”), the Summary Notice of Pendency and Proposed Class Action Settlement (“Summary Notice”), and the Postcard Notice (“Postcard Notice”), that are to be made available to Settlement Class Members substantially in the forms attached hereto as Exhibits A-1, A-3, and A-4 (or other substantially similar forms mutually agreed to by the Settling Parties or otherwise ordered by the Court) on the Claims Administrator’s website and/or mailed or emailed to Settlement Class Members.

**1.17.** “Opt-Out” shall have the meaning set forth in ¶ 10.6 of this Stipulation.

**1.18.** “Person” means a natural person, an individual, corporation, firm, fund, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and/or any business or legal entity or organization, and includes any Person’s spouse, marital community, heirs, predecessors, successors, representatives, and/or assigns.

**1.19.** “Plan of Allocation” means a plan or formula for allocating the Settlement Fund to Authorized Claimants after payment of Administrative Costs, Taxes and Tax Expenses (as defined in ¶ 4.1 of this Stipulation), and such attorneys’ fees, costs, and expenses as may be awarded by the Court. Any Plan of Allocation is not a condition to the effectiveness of this Stipulation, and the Defendants and Defendants’ Related Parties shall have no responsibility or liability with respect thereto.

**1.20.** “Plaintiffs” means Lead Plaintiff Joseph Nolff and Bruce Palenske, as identified in the opening paragraph of the Complaint.

**1.21.** “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing notice thereof to the Settlement Class substantially in the form attached hereto as Exhibit A, or otherwise ordered by the Court.

**1.22.** “Proof of Claim” means the Proof of Claim and Release Form to be submitted by Claimants, substantially in the form attached hereto as Exhibit A-2, or otherwise ordered by the Court.

**1.23.** “Related Parties” means, with respect to a Released Party, such Released Party’s present and former employees, officers, directors, successors, predecessors, assigns, heirs, executors, trustees, administrators, immediate family members, spouses, attorneys, legal representatives, contractors, accountants, insurers, reinsurers, investment advisors, consultants, principals, controlling shareholders, partners, members, managers, agents, joint ventures, direct and/or indirect parents, subsidiaries, divisions, affiliates, and/or administrators, as well as any trust of which such Released Party is the settlor or that is for the benefit of such Released Party and/or any member of such Released Party’s immediate family, and/or any Person that is or was related to or affiliated with such Released Party or in which such Released Party has a controlling interest.

**1.24.** “Released Claims” means any or all of the Released Defendants’ Claims and the Released Plaintiffs’ Claims.

**1.25.** “Released Defendants’ Claims” means any and all Claims and causes of action of every nature and description, whether known or unknown (including, for the avoidance of doubt, Unknown Claims), asserted or unasserted, whether arising under federal, state, common

or foreign law arising from the institution, prosecution, or settlement of the Action, except (i) any Claims relating to the enforcement of the Settlement, and (ii) any Claims against any Opt-Out.

**1.26.** “Released Party” or “Released Parties” means any or all of the Persons receiving a release under this Stipulation.

**1.27.** “Released Plaintiffs’ Claims” means any and all Claims and causes of action of every nature and description, whether known or unknown (including, for the avoidance of doubt, Unknown Claims), asserted or unasserted, whether arising under federal, state, common or foreign law, whether class or individual in nature, (i) asserted in the Action, (ii) arising out of, based upon, or relating in any way to the underwriting, purchase, acquisition, holding, sale, or disposition of Aterian securities during the Class Period, and the allegations, acts, facts, transactions, events, matters, occurrences, statements or omissions involved, set forth, alleged or referred to in any of the pleadings (including the exhibits thereto) or other documents filed in the Action, or which could have been alleged in the Action, or (iii) arising out of, based upon, or relating in any way to the Settlement, except claims to enforce the Settlement.

**1.28.** “Releasing Party” means any one of, and “Releasing Parties” means all of, the Persons providing a release under this Stipulation.

**1.29.** “Settlement” means the settlement contemplated by this Stipulation.

**1.30.** “Settlement Amount” means the sum of \$1,300,000 (one million three hundred thousand U.S. dollars), in cash.

**1.31.** “Settlement Class” means all persons who purchased or otherwise acquired Aterian securities between August 24, 2020, and May 3, 2021, both days inclusive (“Class Period”), excluding: (i) the officers and directors of Aterian and its affiliates and subsidiaries; (ii) members of the officers’ and directors’ immediate families and their legal

representatives, heirs, successors or assigns; (iii) any entity in which Defendants have or had a controlling interest; and (iv) Opt-Outs.

**1.32.** “Settlement Class Member” means any one of, and “Settlement Class Members” means all of, the members of the Settlement Class.

**1.33.** “Settlement Fund” means all funds transferred to the Escrow Account pursuant to this Stipulation and any interest or other income earned thereon.

**1.34.** “Settlement Hearing” means the hearing at or after which the Court will make a final decision pursuant to Rule 23 of the Federal Rules of Civil Procedure as to whether the Settlement contained in the Stipulation is fair, reasonable and adequate, and therefore, should receive final approval from the Court.

**1.35.** “Settling Party” means any one of, and “Settling Parties” means all of, the parties to the Stipulation, namely (i) Defendants and (ii) Plaintiffs (on behalf of themselves and the Settlement Class and each of the Settlement Class Members).

**1.36.** “Unknown Claims” means and includes any and all claims that one or more Releasing Parties does not know or suspect to exist in their favor at the time of the release of the Released Parties. This includes claims which, if known by him, her or it, might have affected their settlement with and release of the Released Parties, or might have affected their decision(s) with respect to the Settlement and the Released Claims, including their decision to object or not to object to this Settlement. The Settling Parties and the Releasing Parties, by operation of the Final Judgment shall be deemed to, and expressly acknowledge that he, she, it or they shall have, and shall be deemed to have expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any other jurisdiction,

or principle of common law that is, or is similar, comparable, or equivalent to California Civil Code ¶ 1542, which provides:

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

Plaintiffs, Releasing Parties, and/or Released Parties may hereafter discover facts, legal theories, or authorities in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs and Defendants expressly, fully, finally, and forever settle and release, and each other Releasing Party and Released Party shall be deemed to have settled and released, and upon the Effective Date and by operation of the Final Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Settling Parties expressly acknowledge, and each other Releasing Party and Released Party by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and a material element of the Settlement.

## **2. The Settlement Consideration**

**2.1.** In consideration of the full and final release, settlement and discharge of all Released Claims against the Released Parties, Aterian will pay or cause the payment of the Settlement Amount into the Escrow Account (subject to ¶ 10.9) within ten (10) Business Days following the entry of the Preliminary Approval Order by the Court; and (ii) receipt by Aterian from Plaintiffs of an executed Form W-9 and all wire transfer instructions necessary to effectuate

a transfer of funds, which Plaintiffs will provide no later than three (3) Business Days following entry of the Preliminary Approval Order by the Court.

**2.2.** Under no circumstances will Aterian be required to pay, or cause payment of, more than the Settlement Amount pursuant to this Stipulation and the Settlement for any reason whatsoever, including, without limitation, as compensation to any Settlement Class Member, as payment of attorneys' fees and expenses awarded by the Court, in payment of any fees or expenses incurred by any Settlement Class Member or Lead Counsel, as Administrative Costs, or as interest on the Settlement Amount of any kind and relating to any time period (including prior to the payment of the Settlement Amount into the Escrow Account). Under no circumstances will Defendants or Defendants' Related Parties other than Aterian or its Insurer(s) be required to pay, or cause the payment of, any amount pursuant to this Stipulation and the Settlement for any reason whatsoever, including, without limitation, as compensation to any Settlement Class Member, as payment of attorneys' fees and expenses awarded by the Court, in payment of any fees or expenses incurred by any Settlement Class Member or Lead Counsel, as Administrative Costs, or as interest on the Settlement Amount of any kind and relating to any time period (including prior to the payment of the Settlement Amount into the Escrow Account).

**2.3.** The Settlement Amount is an all-in settlement number, with no right of reversion, meaning that the Settlement Amount includes all attorneys' fees, administration costs, notice costs, expenses, Settlement Class member benefits, and costs of any kind associated with the resolution of this matter (with the exception of any costs and expenses related to the mailing requirements of the Class Action Fairness Act, if necessary, that Defendants will bear), and that no payor has any right to the remainder, if any, of the Settlement Amount.

**3. Handling and Disbursement of Funds by the Escrow Agent**

**3.1.** No monies will be disbursed from the Settlement Fund until after the

Effective Date except:

- (a) As provided in ¶ 3.4 of this Stipulation;
- (b) As provided in ¶ 8.2 of this Stipulation;
- (c) As provided in ¶ 10.3 of this Stipulation, if applicable; and
- (d) To pay Taxes and Tax Expenses (as defined in ¶ 4.1 of this Stipulation) on

the income earned by the Settlement Fund. Taxes and Tax Expenses shall be paid out of the Settlement Fund and shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent without prior Order of the Court.

**3.2.** The Escrow Agent shall invest the Settlement Fund in short term instruments backed by the full faith and credit of the United States government or fully insured by the United States government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Escrow Agent shall bear all responsibility and liability for managing the Escrow Account and cannot assign or delegate its responsibilities without approval of the Settling Parties and the Insurer(s). Defendants, their counsel, their Insurer(s) and Defendants' Related Parties shall have no responsibility for, interest in, or any liability whatsoever with respect to any investment or management decisions executed by the Escrow Agent. The Settlement Fund shall bear all risks related to the investments of the Settlement Amount in accordance with the guidelines set forth in this ¶ 3.2.

**3.3.** The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the written agreement of counsel for Defendants.

**3.4.** At any time after the Court grants preliminary approval of the Settlement, the Escrow Agent may, without further approval from Defendants or the Court, disburse at the direction of Lead Counsel up to \$150,000.00 (One Hundred Fifty Thousand U.S. Dollars) from the Settlement Fund to pay Administrative Costs.

#### **4. Taxes**

**4.1.** The Settling Parties agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1. In addition, Lead Counsel or their designee shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 4.1, including the “relation-back election” (as defined in Treasury Regulation § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Lead Counsel or their designee to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

**(a)** For purposes of § 1.468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation § 1.468B-2(k)(3) promulgated thereunder, the “administrator” shall be Lead Counsel or their designee. Lead Counsel or their designee shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this

¶ 4.1) shall be consistent with this ¶ 4.1 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

(b) All Taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants, their counsel, their Insurer(s), or Defendants' Related Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes ("Taxes"), and all expenses and costs incurred in connection with the operation and implementation of this ¶ 4.1 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses or penalties relating to filing (or failing to file) the returns described in this ¶ 4.1) ("Tax Expenses"), shall be paid out of the Settlement Fund, as appropriate. Defendants, their counsel, their Insurer(s), and Defendants' Related Parties shall have no liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid out of the Settlement Fund without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be withheld under Treasury Regulation § 1.468B-2(1)(2)). Defendants, their counsel, their Insurer(s) and Defendants' Related Parties shall have no responsibility for, interest in, or any liability whatsoever with respect to the foregoing provided in this ¶

4.1. The Settling Parties agree to cooperate with each other, and their tax attorneys and accountants, to the extent reasonably necessary to carry out the provisions of this ¶ 4.1.

**5. Preliminary Approval Order, Notice Order, and Settlement Hearing**

**5.1.** As soon as practicable after execution of this Stipulation and in compliance with the Orders of the Court (Docket No. 81), Lead Counsel shall submit this Stipulation and its exhibits to the Court and shall apply for preliminary approval of the Settlement, entry of the Preliminary Approval Order (Exhibit A), and approval for the dissemination of Notice. The Preliminary Approval Order to be submitted to the Court shall contain the exhibits substantially in the form set forth in: (i) the Long Notice (Exhibit A-1); (ii) the Proof of Claim (Exhibit A-2); (c) the Summary Notice (Exhibit A-3); and (d) the Postcard Notice (Exhibit A-4). The Notice shall include the general terms of the Settlement and the provisions of the Plan of Allocation and shall set forth the procedure by which recipients of the Notice may object to the Settlement, Lead Counsel's Fee and Expense Application (as defined in ¶ 8.1 of this Stipulation), the Award to Plaintiffs or the Plan of Allocation, or request to be excluded from the Settlement Class. The date and time of the Settlement Hearing shall be added to the Long Notice, Summary Notice and Postcard Notice before they are disseminated or otherwise provided to Settlement Class Members. Dissemination of Notice shall be solely the responsibility of Lead Counsel. Defendants shall not object to, or have any responsibility for, the dissemination of Notice or Lead Counsel's proposed Plan of Allocation.

**5.2.** At the time of the submission described in ¶ 5.1 of this Stipulation, Lead Counsel shall request that, after the Notice is provided and the Settlement Class Members are notified of the Settlement, the Court hold the Settlement Hearing and (i) approve the Settlement

as set forth herein and (ii) enter the Final Judgment substantially in the form of Exhibit B hereto, as promptly after the Settlement Hearing as possible.

## **6. Releases and Covenants Not To Sue**

**6.1.** Upon the Effective Date, Plaintiffs and the Settlement Class Members, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them (regardless of whether any such Releasing Party ever seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim, any disbursement from the Settlement Fund), shall be deemed to have, and by operation of the Final Judgment shall have (i) fully, finally, and forever released, relinquished, and discharged all Released Plaintiffs' Claims against Defendants and Defendants' Related Parties, (ii) covenanted not to sue any Defendants or Defendants' Related Parties with respect to all such Released Plaintiffs' Claims, and (iii) been permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any of the Released Plaintiffs' Claims against any Defendants or Defendants' Related Parties, *except that* this Release does not include three shareholder derivative actions currently pending in the United States District Court for the Southern District of New York, filed on October 21, October 25 and November 10, 2021, on behalf of nominal defendant Aterian by derivative plaintiffs Shaoxuan Zhang, Michael Sheller and Tyler Magnus (the "Derivative Plaintiffs"), alleging breaches of fiduciary duty against Yaniv Sarig, Fabrice Hamaide, Arturo Rodriguez, Greg B. Petersen, Bari A. Harlam, Amy von Walter, William Kurtz, Roi Zion Zahut, Joseph A. Risico, Tomer Pascal and Mihal Chaouat-Fix, currently consolidated under S.D.N.Y. Case Number 21 Civ. 08657 (the "Derivative Actions").

**6.2.** Upon the Effective Date, Defendants, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them shall be deemed to have, and by operation of the Final Judgment shall have (i) fully, finally, and forever released, relinquished, and discharged all Released Defendants' Claims against Plaintiffs, the Settlement Class Members, Lead Counsel, and Plaintiffs' and Settlement Class Members' Related Parties, (ii) covenanted not to sue Plaintiffs, the Settlement Class Members, Lead Counsel, and Plaintiffs' and Settlement Class Members' Related Parties with respect to all such Released Defendants' Claims, and (iii) been permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any of the Released Defendants' Claims against any Plaintiffs, Settlement Class Members, Lead Counsel, or Plaintiffs' and Settlement Class Members' Related Parties, *except that* this Release does not include any claims or defenses Defendants or Defendants' Related Parties may have or wish to assert relating to the Derivative Actions or the Derivative Plaintiffs.

**6.3.** In addition to the Released Defendants' Claims, the Settlement is subject to entry of a bar order constituting the final discharge of all obligations of the Defendants arising out of the Action. The bar order shall be the broadest permitted under the Securities Exchange Act, 15 U.S.C. §78u-4(f)(7), and shall bar all claims for contribution and indemnity, as allowed by law. The bar order shall not release any claim by the Defendants for insurance coverage.

**6.4.** Nothing contained herein shall bar the Settling Parties from bringing any action or claim to enforce the terms of this Stipulation or the Final Judgment

**7. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of the Settlement Fund**

**7.1.** Under the supervision of Lead Counsel, acting on behalf of the Settlement Class, and subject to such supervision and direction of the Court as may be necessary or as circumstances may require, the Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund (as defined in ¶ 7.2 of this Stipulation) to Authorized Claimants.

**7.2.** The Settlement Fund shall be applied as follows:

- (a) To pay the Taxes and Tax Expenses described in ¶ 4.1 of this Stipulation;
- (b) To pay Administrative Costs;
- (c) To pay Lead Counsel attorneys' fees with interest and expenses and the Award to Plaintiffs ("Fee and Expense Award"), to the extent allowed by the Court; and
- (d) To distribute the balance of the Settlement Fund, that is, the Settlement Fund less the items set forth in ¶¶ 7.2(a), (b), and (c) of this Stipulation ("Net Settlement Fund"), plus accrued interest, to the Authorized Claimants as allowed by this Stipulation, the Plan of Allocation, or the Court.

**7.3.** Upon and after the Effective Date, the Net Settlement Fund shall be distributed to Authorized Claimants in accordance with the terms of the Plan of Allocation set forth in the Notice and any orders of the Court.

**7.4.** This is not a claims-made settlement, and if all conditions of the Stipulation are satisfied and the Final Judgment becomes Final, no portion of the Settlement Fund will be returned to Aterian. Defendants, their counsel, their Insurer(s) and Defendants' Related

Parties shall have no responsibility for, involvement in, interest in, or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claims against Lead Counsel, the Claims Administrator or any other agent designated by Lead Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or orders of the Court. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proof of Claim filed where doing so is in the interest of achieving substantial justice.

**7.5.** The Settling Parties understand and agree that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a condition of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or proceedings relating to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Final Judgment and the releases contained therein, or any other orders entered pursuant to this Stipulation.

**7.6.** To assist Lead Counsel with respect to the dissemination of the Notice, Aterian will make reasonable, good faith efforts to provide and/or facilitate the provision by its transfer agent to Lead Counsel names and addresses of potential Settlement Class Members and nominees or custodians, to the extent such information exists in Aterian's transfer records. The Settling Parties acknowledge that any information provided to Lead Counsel by Aterian or any

transfer agent pursuant to this Paragraph shall be treated as confidential and will be used by Lead Counsel solely to deliver the Notice and/or implement the Settlement, including the Plan of Allocation, and shall, to the extent possible, delete such information promptly following delivery of the Notice and/or implementation of the Settlement.

**7.7.** If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, 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, 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 who receive at least a \$10.00 payment; (ii) second, to pay any additional Administrative 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 any funds shall remain in the Net Settlement Fund six (6) months after such second distribution, then such balance shall be contributed to a non-sectarian charity or any not-for-profit successor of it chosen by Lead Counsel.

**8. Lead Counsel's Attorneys' Fees and Reimbursement of Expenses**

**8.1.** Lead Counsel may apply to the Court for distributions from the Settlement Fund to Lead Counsel for: (i) an award of attorneys' fees with interest from the Settlement Fund; (ii) reimbursement of actual costs and expenses, including the fees and expenses of any experts or consultants, incurred in connection with prosecuting the Action; and (iii) an

Award to Plaintiffs (“Fee and Expense Application”). Defendants shall take no position with respect to the Fee and Expense Application(s).

**8.2.** Except as otherwise provided in this Paragraph, the Fee and Expense Award awarded by the Court shall be paid to Lead Counsel from the Settlement Fund within ten (10) calendar days after the date the Court enters the Final Judgment and an order awarding such fees and expenses, notwithstanding any objections to or appeals of such order or of the Final Judgment. In the event that the Effective Date does not occur, or the Final Judgment is reversed or modified in any way that affects the award of attorneys’ fees and expenses, or the Stipulation is terminated for any other reason, then Lead Counsel shall be jointly and severally obligated to refund to the Escrow Account, within ten (10) Business Days from receiving notice from Defendants’ counsel or from a court of appropriate jurisdiction, either the full amount of the fees and expenses or an amount consistent with any modification of the Final Judgment with respect to the Fee and Expense Award, including accrued interest at the same rate as is earned by the Settlement Fund. Lead Counsel agree that they and their law firm and their or their law firm’s partners are subject to jurisdiction of the Court for the purpose of enforcing the provisions of this Paragraph and shall be jointly and severally liable for repayment of all attorneys’ fees and expenses awarded by the Court. Any Award to Plaintiffs shall not be paid from the Settlement Fund until after the Effective Date.

**8.3.** The procedure for and allowance or disallowance by the Court of the Fee and Expense Application are not a condition of the Settlement set forth in this Stipulation and the Fee and Expense Application is to be considered by the Court separately from the Court’s consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to the Fee and Expense Application, or any objection to, motion regarding, or

appeal from any order or proceeding relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Final Judgment or the releases contained herein or therein or any other orders entered pursuant to this Stipulation.

**8.4.** Any award of attorneys' fees and interest and/or expenses to Lead Counsel or Award to Plaintiffs shall be paid solely from the Settlement Fund and shall reduce the settlement consideration paid to the Settlement Class accordingly. Defendants and Defendants' Related Parties (including, for the avoidance of doubt, Defendants' Insurer(s) and counsel) shall have no responsibility for payment of Lead Counsel's attorneys' fees and interest, expenses or Award to Plaintiffs beyond the obligation of Aterian to cause the funding of the Settlement Amount as set forth in ¶ 2.1 of this Stipulation. Other than as specifically set forth in ¶ 2.1 of this Stipulation, Defendants and Defendants' Related Parties (including, for the avoidance of doubt, Defendants' Insurer(s) and counsel) shall have no responsibility for, and no liability whatsoever with respect to, any payments to Lead Counsel, Plaintiffs, the Settlement Class, and/or any other Person who receives payment from the Settlement Fund.

## **9. Class Certification**

In both the Preliminary Approval Order and the Final Judgment, pursuant to Fed. R. Civ. P. 23, the Court will first preliminarily certify and then finally certify the Settlement Class only for purposes of this Settlement. In the event that the Final Judgment does not become Final or the Settlement fails to become effective for any reason, all Settling Parties reserve all their rights on all issues, including class certification. For purposes of this Settlement only, in connection with the Final Judgment, Defendants shall consent to (i) the appointment of Plaintiffs as the class representatives, and (ii) the appointment of Lead Counsel as class counsel.

**10. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

**10.1.** Plaintiffs, on behalf of the Settlement Class, and Defendants shall each have the right to terminate the Settlement and Stipulation by providing written notice of their or its election to do so (“Termination Notice”) to all other Parties within seven (7) Business Days of:

- (i) entry of a Court order declining to enter the Preliminary Approval Order in any material respect;
- (ii) entry of a Court order refusing to approve this Stipulation in any material respect;
- (iii) entry of a Court order declining to enter the Final Judgment in any material respect;
- (iv) entry of a Court order refusing to dismiss the Action with prejudice;
- (v) entry of a Court order by which the Final Judgment is modified or reversed in any material respect; and/or
- (vi) failure on the part of any Party to abide, in any material respect, with the terms of this Stipulation.

In the absence of any of the events enumerated in the preceding sentence, ¶ 10.2 of this Stipulation, or ¶ 10.6 of this Stipulation, no Settling Party shall have the right to terminate the Settlement or the Stipulation for any reason.

**10.2.** If Aterian does not pay the Settlement Amount into the Escrow Account in accordance with ¶ 2.1 of this Stipulation (subject to a 10-day notice-and-cure period), then Plaintiffs, on behalf of the Settlement Class, and not Defendants (other than in accordance with ¶ 10.1 of this Stipulation or ¶ 10.6 of this Stipulation), shall have the right to: (a) terminate the Settlement and Stipulation by providing written notice to Defendants and the Court at any time

prior to the payment of the Settlement Amount into the Escrow Account and to return to their litigation position as of March 10, 2022; or (b) enforce the terms of the Settlement and Stipulation and seek a judgment effecting the terms herein.

**10.3.** If Aterian and/or its subsidiaries file for protection from creditors under Chapters 7 or 11 of the United States Bankruptcy Code, or if or another party files an involuntary petition with respect to Aterian or its subsidiaries that is not dismissed or stayed within sixty (60) days, at any time up to ninety (90) days after the date, in accordance with ¶ 2.1 of this Stipulation, on which Aterian is required to pay the Settlement Amount into the Escrow Account:

- (a) Any unpaid portion of the Settlement Amount will accelerate and become due immediately as a liquidated sum.
- (b) To the fullest extent allowed under law, all payments, having been made in the ordinary course and pursuant to the Court's orders, shall not be subject to claw-back under 11 U.S.C. §547.

**10.4.** The Effective Date of this Stipulation ("Effective Date") shall not occur unless and until each of the following events occurs, and it shall be the date upon which the last in time of the following events occurs:

- (a) Defendants have not exercised their option to terminate the Settlement pursuant to ¶ 10.6 of this Stipulation;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Settlement Amount has been paid into the Escrow Account;
- (d) The Court has approved the Settlement, finally certified the Settlement Class, and following notice to the Settlement Class and the Settlement Hearing, and has entered the Final Judgment;

(e) The Final Judgment has become Final as defined in ¶ 1.13 of this Stipulation; and

(f) The Action has been dismissed with prejudice.

**10.5.** Upon the occurrence of the Effective Date, any and all interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation.

**10.6.** If, prior to Final Judgment, Persons who otherwise would be Settlement Class Members have filed with the Court valid and timely requests for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto (each such Person, an “Opt-Out”), and such Persons in the aggregate purchased or otherwise acquired Aterian securities in an amount greater than the amount specified in a separate Supplemental Agreement between the Settling Parties (“Supplemental Agreement”), then Defendants shall have, each in his, her or its sole and absolute discretion, the option to terminate this Stipulation and the Settlement in accordance with the requirements and procedures set forth in the Supplemental Agreement. The Supplemental Agreement shall not be filed publicly with the Court unless and until a dispute among the Settling Parties concerning its interpretation or application arises, in which case such disclosure shall be carried out, to the fullest extent possible, in accordance with the practices of the Court so as to maintain the confidentiality of the Opt-Out threshold.

**10.7.** In the event that the Stipulation shall be terminated, or be canceled, or shall not become effective for any other reason, the Settling Parties shall be restored to their respective positions in the Action immediately prior to March 10, 2022, and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered,

and, in that event, all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice.

**10.8.** In the event that the Stipulation shall be terminated, or be canceled, or the Settlement is not approved by the Court or is otherwise terminated or fails to become effective for any other reason, the terms and provisions of the Stipulation, except as otherwise provided herein, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

**10.9.** In the event that the Stipulation shall be terminated, or be canceled, or the Settlement is not approved by the Court or is otherwise terminated or fails to become effective for any other reason, within fifteen (15) Business Days (except as otherwise provided in the Supplemental Agreement) after the occurrence of such event, the Settlement Fund (less Taxes already paid and any Administrative Costs which have either been disbursed or are determined to be chargeable) shall be refunded by the Escrow Agent to Aterian, with accrued interest attributable to that amount, by check or wire transfer pursuant to written instructions from Aterian. At the request of Aterian, the Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to Aterian pursuant to written direction from Aterian.

**10.10.** No order of the Court (or modification or reversal on appeal of any order of the Court) concerning the Plan of Allocation, the Award to Plaintiffs, or the Fee and Expense Application shall constitute grounds for cancellation or termination of the Stipulation.

**11. No Admission of Liability or Wrongdoing**

The Settling Parties covenant and agree that neither this Stipulation, nor the fact nor any terms of the Settlement, nor any communication relating thereto, nor the Supplemental Agreement, is evidence, or an admission, presumption or concession by any Settling Party or their counsel, any Settlement Class Member, or any of the Released Parties, of any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or that have been or could have been asserted in the Action, or in any other actions or proceedings, or as to the validity or merit of any of the claims or defenses alleged or that have been or could have been asserted in any such action or proceeding, including, without limitation, the Released Claims. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by any Settling Party, Settlement Class Member, or any of the Released Parties, or any damages or injury to any Settling Party, Settlement Class Member, or any Released Parties. Neither this Stipulation, nor the Supplemental Agreement, nor any of the terms and provisions of this Stipulation or the Supplemental Agreement, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statement in connection therewith, (a) shall (i) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any Released Party, or of any infirmity of any defense, or of any damages to Plaintiffs or any other Settlement Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact or any purported liability, fault, or wrongdoing of the Released Parties or any injury or damages to any person or entity, or

(b) shall otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Stipulation, the Supplemental Agreement, and/or the Final Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to enforce the Settlement, Supplemental Agreement or Final Judgment, or as otherwise required by law.

**12. Miscellaneous Provisions**

**12.1.** Stay of Proceedings. The Settling Parties have agreed and the Court has ordered that pending final approval of the Settlement further proceedings in the Action are stayed during the pendency of the Settlement process. If, during the pendency of the Settlement documentation process, the stay should be lifted, the Parties shall promptly seek a renewal of the stay pending proceedings in connection with pursuing Court approval of this Settlement.

**12.2.** Except in the event of the provision of a Termination Notice pursuant to and in accordance with ¶¶ 10.1, 10.2, 10.6 and/or 10.7 of this Stipulation or termination in accordance with the Settling Parties' Supplemental Agreement, the Settling Parties shall take all actions necessary to consummate this agreement; and agree to cooperate with each other to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation.

**12.3.** The Settling Parties and their counsel represent that they will not encourage or otherwise influence (or seek to influence) any Settlement Class Members to request exclusion from, or object to, the Settlement.

**12.4.** Each of the attorneys executing this Stipulation, any of its exhibits, or any related settlement documents on behalf of any Settling Party hereto hereby warrants and represents that he or she has been duly empowered and authorized to do so by the Settling Party he or she represents.

**12.5.** Plaintiffs and Lead Counsel represent and warrant that Plaintiffs are Settlement Class Members and that none of Plaintiffs' claims or causes of action against one or more Defendants in the Action, or referred to in this Stipulation, or that could have been alleged against one or more Defendants in the Action, have been assigned, encumbered or in any manner transferred in whole or in part.

**12.6.** This Stipulation, together with the Supplemental Agreement, constitutes the entire agreement between the Settling Parties related to the Settlement and supersedes any prior agreements, including the MOU. No representations, warranties, promises, inducements, or other statements have been made to or relied upon by any Settling Party concerning this Stipulation, other than the representations, warranties and covenants expressly set forth herein and in the Supplemental Agreement. Plaintiffs, on behalf of themselves and the Settlement Class, acknowledge and agree that any and all other representations and warranties of any kind or nature, express or implied, are specifically disclaimed and were not relied upon in connection with this Stipulation. In entering this Stipulation, the Settling Parties relied solely upon their own knowledge and investigation. Except as otherwise provided herein, and subject to any rights to indemnification or advancement of costs and legal fees among Defendants, each Settling Party shall bear its own costs.

**12.7.** This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Settling Parties or their counsel or their respective successors in interest.

**12.8.** This Stipulation shall be binding upon, and shall inure to the benefit of, the Settling Parties and their respective agents, successors, executors, heirs, and assigns.

**12.9.** The Released Parties who do not appear on the signature lines below, are acknowledged and agreed to be third party beneficiaries of this Stipulation and Settlement.

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

**12.11.** This Stipulation may be executed in any number of counterparts by any of the signatories hereto and the transmission of an original signature page electronically (including by facsimile or portable document format) shall constitute valid execution of the Stipulation as if all signatories hereto had executed the same document. Copies of this Stipulation executed in counterpart shall constitute one agreement.

**12.12.** This Stipulation, the Settlement, the Supplemental Agreement and any and all disputes arising out of or relating in any way to this Stipulation, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.

**12.13.** The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation.

**12.14.** The Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties, and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

**12.15.** Plaintiffs, Lead Counsel, and the attorneys, staff, experts, and consultants assisting them in this Action agree that they will (a) not intentionally assist or cooperate

with any person or entity in the pursuit of legal action related to the subject matter of the Action against Defendants or Defendants' Related Parties, (b) not intentionally assist or cooperate with any person or entity seeking to publicly disparage or economically harm Defendants and Defendants' Related Parties with respect only to any matter relating to the subject matter of this Action, and (c) not discuss publicly any matter related to this Action or the Settlement with anyone, except as specifically permitted under this Stipulation..

**12.16.** All agreements by, between or among the Settling Parties, their counsel and their other advisors as to the confidentiality of information exchanged between or among them shall remain in full force and effect shall survive the execution and any termination of this Stipulation and the final consummation of the Settlement, if finally consummated, without regard to any of the conditions of the Settlement.

**12.17.** The Settling Parties agree that the Action was resolved in good faith following arm's-length bargaining, in full compliance with applicable requirements of good faith litigation under the Securities Act of 1933 and Rule 11 of the Federal Rules of Civil Procedure.

**12.18.** Any failure by any of the Settling Parties to insist upon the strict performance by any other Settling Party of any of the provisions of the Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Settling Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by the other Settling Parties to this Stipulation.

**12.19.** The waiver, express or implied, by any Settling Party of any breach or default by any other Settling Party in the performance of such Settling Party of its obligations under the Stipulation shall not be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

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

**12.21.** Pursuant to the Class Action Fairness Act, no later than ten (10) days after this Stipulation is filed with the Court, Defendants shall, at their expense, serve proper notice of the proposed Settlement upon the required officials.

**IN WITNESS WHEREOF,** the Settling Parties have executed this Stipulation by their undersigned counsel effective as of the date set forth below.

DATED: April 22, 2022

By:/s/ Jacob A. Goldberg  
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EXHIBIT A

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

JOSEPH P. NOLFF, ANDREW TATE and  
BRUCE PALENSKE, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ATERIAN, INC., YANIV SARIG,  
FABRICE HAMAIDE, and ARTURO  
RODRIGUEZ,

Defendants.

**CASE No.: 1:21-cv-04323-VM**

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

## EXHIBIT A

WHEREAS, Lead Plaintiff Joseph Nolff and named plaintiff Bruce Palenske (“Plaintiffs”), on behalf of themselves and the Settlement Class, and Defendants Aterian, Inc. (“Aterian”), Yaniv Sarig, Fabrice Hamaide, and Arturo Rodriguez (“Defendants” and with Plaintiffs, collectively, the “Settling Parties”) have entered into the Stipulation and Agreement of Settlement, dated April 22, 2022 (the “Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure, and which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the securities class action pending before the Court titled, *Nolff, et al., v. Aterian, Inc., et al.*, 21-cv-004323-VM (S.D.N.Y.), (the “Action”); and the Court having read and considered the Stipulation and the exhibits thereto and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and the Settling Parties having consented to the entry of this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2022, that:

1. Capitalized terms used herein have the meanings defined in the Stipulation.
2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Action is hereby preliminarily certified as a class action on behalf of all persons who purchased or otherwise acquired Aterian securities between August 24, 2020, and May 3, 2021, both days inclusive, excluding: (i) the officers and directors of Aterian and its affiliates and subsidiaries; (ii) members of the officers’ and directors’ immediate families and their legal representatives, heirs, successors or assigns; (iii) any entity in which Defendants have or had a controlling interest; and (iv) Opt-Outs.
3. This Court finds, preliminarily and for purposes of the Settlement of the Action only, that the Settlement Class satisfies the prerequisites for a class action under Rules 23(a) and

## EXHIBIT A

(b)(3) of the Federal Rules of Civil Procedure in that: (a) the number of Settlement Class Members is so numerous that joinder of all members of the Settlement Class is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) Plaintiffs' claims are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs fairly and adequately represent the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of the Settlement of the Action only, Plaintiffs are certified as class representatives on behalf of the Settlement Class ("Class Representatives") and Lead Counsel, previously selected by Plaintiffs and appointed by the Court, is hereby appointed as Class Counsel for the Settlement Class ("Class Counsel").

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

6. The Court hereby preliminarily approves the Settlement, subject to further consideration at a hearing ("Settlement Hearing") pursuant to Federal Rules of Civil Procedure 23(e). The Court will convene the Settlement Hearing on \_\_\_\_\_ 2022 at \_\_:\_\_ .m. at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007-1312, Courtroom 15B, for the following purposes:

EXHIBIT A

- (a) to determine whether finally to certify the Settlement Class as satisfying the applicable prerequisites for class action treatment of the Action under Federal Rules of Civil Procedure 23(a) and (b);
- (b) to determine finally whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- (c) to determine finally whether the Judgment, substantially in the form of Exhibit B to the Stipulation, should be entered, dismissing the Action on the merits and with prejudice, and to determine whether the release by the Releasing Parties of the Released Claims against the Released Parties, as set forth in the Stipulation, should be ordered, along with a permanent injunction barring efforts to prosecute or attempt to prosecute any Released Claims extinguished by the release against any of the Released Parties, as also set forth in the Stipulation;
- (d) to determine finally whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;
- (e) to consider the applications of Class Counsel for awards of attorneys' fees with interest and expenses to Class Counsel and award to the Class Representatives;
- (f) to consider objections to the Settlement, if any, that any Settlement Class Members timely files provided that they give proper notice that they intend to appear at the Settlement Hearing; and
- (g) to rule upon such other matters as the Court may deem appropriate.

7. The Court reserves the right to alter the time, date, or location of the Settlement Hearing and to approve the Settlement without modification, or with such modifications as may

## EXHIBIT A

be agreed to by the Settling Parties, and with or without further notice of any kind. The Court may decide to hold the Settlement Hearing telephonically or by other virtual means without further notice. The Court further reserves the right to enter its Judgment, approving the Settlement and dismissing the Action, on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

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

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

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

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 \$150,000 (One Hundred Twenty-Five Thousand Dollars) from the Settlement Fund prior to the Effective Date to pay Administrative Costs, including the costs of notice.

12. Aterian will make reasonable, good faith efforts to provide and/or facilitate the provision by its transfer agent to Lead Counsel names and addresses of potential Settlement Class

## EXHIBIT A

Members and nominees or custodians, that exist in Aterian's transfer records ("Settlement Class Information"). If in the transfer agent's possession, the Settlement Class Information should include email addresses of record owners of Aterian securities in the Settlement Class. The Settling Parties acknowledge that any information provided to Lead Counsel pursuant to this paragraph shall be treated as confidential and will be used by Lead Counsel and the Claims Administrator solely to disseminate notice, apprise Settlement Class Members of the Settlement, and/or implement the Settlement.

13. Within sixteen (16) Business Days of the entry of this Order, Class Counsel, through the Claims Administrator, shall either (a) email links to the webpage hosting the Long Notice and Proof of Claim to Settlement Class Members for whom the Claims Administrator is able to obtain email addresses, substantially in the form annexed to the Stipulation as Exhibit A-1 and Exhibit A-2 or (b) cause the Postcard Notice, substantially in the form annexed to the Stipulation as Exhibit A-4, if no electronic mail address can be obtained, mailed, by first class mail, postage prepaid, to Settlement Class Members who can be identified with reasonable effort by Class Counsel, through the Claims Administrator

14. Class Counsel, through the Claims Administrator, shall make all reasonable efforts to give notice to nominees or custodians who held Aterian securities during the Settlement Class Period as record owners but not as beneficial owners. Such nominees or custodians shall, within ten (10) calendar days of receipt of the notice, either: (i) request copies of the Postcard Notice sufficient to send the Postcard Notice to all beneficial owners for whom they are nominee or custodian, and within ten (10) calendar days after receipt thereof send copies to such beneficial owners; (ii) request and email links to the webpage hosting the Long Notice and Proof of Claim to each beneficial owner for whom they are nominee or custodian within ten (10) calendar days after

## EXHIBIT A

receipt thereof; or (iii) provide the Claims Administrator with lists of the names, last known addresses and email addresses (to the extent known) of such beneficial owners, in which event the Claims Administrator shall promptly deliver the Postcard Notice to such beneficial owners. If the Claims Administrator receives an email address, it will send an email with a link to the webpage hosting the Long Notice and Proof of Claim. Nominees or custodians who elect to email 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 custodian requesting same for the purpose of distribution to beneficial owners. The Claims Administrator shall, if requested, reimburse nominees or custodians out of the Settlement Fund solely for their reasonable out-of-pocket expenses, incurred in providing notice to beneficial owners, which expenses would not have been incurred except for the providing names and addresses, of up to \$0.05 per name, address, and email address provided to the Claims Administrator; up to \$0.05 per unit for each Postcard Notice actually mailed, plus postage at the presort rate used by the Claims Administrator; or up to \$0.05 per email notice sent, and subject to further order of this Court with respect to any dispute concerning such reimbursement.

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

16. Class Counsel, through the Claims Administrator, shall cause the Stipulation and its exhibits, this Order, and a copy of the Long Notice and Proof of Claim and Release Form to be posted on the Claims Administrator's website within sixteen (16) calendar days after entry of this Order.

## EXHIBIT A

17. Class Counsel, through the Claims Administrator, shall cause the Summary Notice to be published electronically once on *GlobeNewswire* within ten (10) calendar days after the Postcard Notice mailing or Summary Notice emailing. Class Counsel shall, at least seven (7) calendar days before the Settlement Hearing, serve upon counsel for Defendants and file with the Court proof of publication of the Summary Notice.

18. The forms and methods set forth herein of notifying the Settlement Class Members of the Settlement and its terms and conditions satisfy the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled thereto. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

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

(a) A properly completed and executed Proof of Claim must be submitted to the Claims Administrator: (a) electronically through the Claims Administrator's website, [www.strategicclaims.net/Aterian/](http://www.strategicclaims.net/Aterian/) by 11:59 p.m. EST on \_\_\_\_\_, 2022; or (b) at the Post Office Box indicated in the Notice, postmarked no later than \_\_\_\_\_, 2022 (thirty (30) calendar days prior to the Settlement Hearing). The Court may extend the deadline for filing claims.

## EXHIBIT A

(b) Each Proof of Claim shall be deemed to have been submitted when: (a) the claim receives a confirmation notice from Strategic Claims Services for electronic submissions; or (b) legibly postmarked (if properly addressed and mailed by first class mail), provided such Proof of Claim is actually received before the filing of a motion for an Order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received by the Claims Administrator at the address designated in the Notice.

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

(d) Once the Claims Administrator has considered a timely submitted Proof of Claim, it shall determine whether such claim is valid, deficient, or rejected. For each claim determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter or rejection letter as appropriate, describing the basis on which the claim

## EXHIBIT A

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

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

20. Settlement Class Members who do not submit valid and timely Proof of Claim will be subject to and bound by the provisions of the Stipulation and the Judgment, if entered, unless they request exclusion from the Settlement Class in a timely and proper manner.

21. Settlement Class Members shall be bound by all determinations and judgments in the Action whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such request for exclusion from the Settlement shall mail it, in written form, by first class mail, postage prepaid, or otherwise deliver it, so that it is received no later than \_\_\_\_\_, 2022 (twenty-one (21) calendar days prior to the Settlement Hearing) (the

## EXHIBIT A

“Exclusion Deadline”), to the address listed in the Long Notice. In order to be valid, such request for exclusion must (A) indicate the name, address, phone number and e-mail contact information (if any) of the Person seeking exclusion, and state that the sender specifically “requests to be excluded from the Settlement of *Nolff, et al., v. Aterian, Inc., et al.*, 21-cv-004323-VM (S.D.N.Y.),” and (B) state the date, number of shares and dollar amount of each Aterian securities purchase or acquisition during the Settlement Class Period and any sale transactions, as well as the number of shares of Aterian securities held by the Person as of the opening and closing of the Settlement Class Period. In order to be valid, such request for exclusion must be submitted with documentary proof: (i) of each purchase or acquisition and, if applicable, sale transaction of Aterian securities during the Settlement Class Period; and (ii) demonstrating the Person’s status as a beneficial owner of the Aterian securities. Any such request for exclusion must be signed and submitted by the beneficial owner under penalty of perjury. The request for exclusion shall not be effective unless it provides the required information, is legible, and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Class Counsel may contact any Person filing a request for exclusion, or their attorney if one is designated, to discuss the request for exclusion.

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

## EXHIBIT A

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

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

25. The Court will consider comments and/or objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, provided, however, that no Settlement Class Member or other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Plan of Allocation, or the Fee and Expense Application, or any other order relating thereto, unless that Person has served copies of any objections, papers and briefs on each of the following counsel to be received at least twenty-one (21) calendar days prior to the Settlement Hearing Date:

CLASS COUNSEL

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

COUNSEL FOR ATERIAN,  
INC., YANIV SARIG AND  
ARTURO RODRIGUEZ

CLARICK GUERON  
REISBAUM LLP  
Aaron H. Crowell  
220 Fifth Avenue  
14th Floor  
New York, NY 10001

COUNSEL FOR  
FABRICE HAMAIDE

STEIN ADLER DABAH  
ZELKOWITZ LLP  
Jonathan L. Adler  
1633 Broadway  
Ste 46th Fl.  
New York, NY 10019

and that Person has (at least twenty-one (21) calendar days prior to the Settlement Hearing date) filed said objections, papers and briefs, and proof of service upon counsel identified above, with the Clerk of the Court, U.S. District Court, Southern District of New York, 500 Pearl Street, New York, NY 10007. To be valid, any such objection must contain the Settlement Class Member's:

## EXHIBIT A

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

26. Any Settlement Class Member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Judgment to be entered approving the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, unless otherwise ordered by the Court; shall be bound by all the terms and provisions of the

## EXHIBIT A

Stipulation and by all proceedings, orders and judgments in the Action; and shall also be foreclosed from appealing from any judgment or order entered in this Action.

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

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

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

30. Pending final approval of the Settlement, all Releasing Parties shall be enjoined from commencing, prosecuting, or attempting to prosecute any Released Claims against any Released Party in any court or tribunal or proceeding. Unless and until the Stipulation is cancelled and terminated pursuant to the Stipulation, all proceedings in the 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.

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

## EXHIBIT A

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

33. In the event the Settlement is not consummated in accordance with the terms of the Stipulation, then the Stipulation and this Order (including any amendment(s) thereof, and except as expressly provided in the Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Settling Parties or the Released Parties, and each Party shall be restored to his, her or its respective litigation positions as they existed prior to March 9, 2022, pursuant to the terms of the Stipulation.

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

EXHIBIT A

Dated: \_\_\_\_\_, 2022

HON. VICTOR MARRERO  
UNITED STATES DISTRICT JUDGE

EXHIBIT A-1

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

JOSEPH P. NOLFF, ANDREW TATE and  
BRUCE PALENSKE, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ATERIAN, INC., YANIV SARIG,  
FABRICE HAMAIDE, and ARTURO  
RODRIGUEZ,

Defendants.

**CASE No.: 1:21-cv-04323-VM**

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

If you purchased or otherwise acquired Aterian, Inc. (“Aterian” or the “Company”) securities during the period between August 24, 2020, and May 3, 2021, both dates inclusive (“Settlement Class Period”) and suffered compensable damages thereby, you could get a payment from a class action settlement (the “Settlement”) and your rights may otherwise be affected by the Settlement.

*A federal court has authorized this Notice. This is not attorney advertising.*

- If approved by the Court, the Settlement will provide one million three hundred thousand dollars (\$1,300,000) (the “Settlement Fund”), plus interest as it accrues, minus attorneys’ fees, costs, administrative expenses, and Award to Plaintiffs, net of any taxes on interest, to pay claims of investors who purchased Aterian securities during the Settlement Class Period.
- Plaintiffs calculates that the Settlement represents an estimated average recovery of \$0.36 per damaged share of Aterian securities, per Plaintiffs’ estimate of damaged shares. This is not an estimate of the actual recovery per share you should expect. Your actual recovery will depend on the Recognized Losses of all Settlement Class Members, the date(s) you purchased and sold Aterian securities, your purchase and sale prices, and the total number of claims filed.
- Attorneys for Plaintiffs (“Lead Counsel”) will ask the Court to award them fees of up to one-third of the Settlement Amount (\$433,333.33) plus interest, reimbursement of

## EXHIBIT A-1

litigation expenses of no more than \$40,000, and Award to Plaintiffs not to exceed \$13,000. If approved by the Court, these amounts (which Plaintiffs calculates as totaling an average of \$0.13 per estimated damaged share of Aterian securities) will be paid from the Settlement Fund.

- The average approximate recovery, after deduction of attorneys' fees and interest and expenses approved by the Court, is \$0.23 per damaged share of Aterian securities. This estimate is based on the assumptions set forth in the preceding paragraphs. This is not an estimate of the actual recovery per share you should expect. Your actual recovery if you are a Settlement Class Member, if any, will depend on the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold Aterian securities, the purchase and sale prices, and the total number of claims filed.
- The Settlement resolves the Action concerning whether Defendants Aterian, Yaniv Sarig, Fabrice Hamaide, and Arturo Rodriguez (collectively "Defendants") violated federal securities laws by allegedly making misrepresentations and/or omissions of material fact in various public statements about Aterian's proprietary artificial intelligence platform, AIMEE. Defendants have denied and continue to deny each, any and all allegations of wrongdoing, fault, liability, or damage whatsoever Plaintiffs asserted. Defendants have also denied, among other things, the allegations that Plaintiffs or the Settlement Class have suffered damages or that Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Action. Defendants continue to believe the claims asserted against them in the Action are without merit.
- Your legal rights will be affected whether you act or do not act. If you do not act, you may permanently forfeit your right to recover on this claim. Therefore, you should read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Submit a Claim Form if You are a Settlement Class Member</b>	Fill out the attached Proof of Claim and Release Form and submit it no later than _____. <b>This is the only way to get a payment.</b>

## EXHIBIT A-1

<b>Exclude Yourself from the Class</b>	Submit a request for exclusion no later than _____. This is the only way you can ever be part of any other lawsuit against the Defendants or the other Released Parties about the legal claims in this case. <b>If you exclude yourself, you will receive no payment and cannot object or speak at the hearing.</b>
<b>Object</b>	Write to the Court no later than _____ about why you do not like the Settlement. You can still submit a claim form. If the Court approves the Settlement, you will be bound by it.
<b>Go to the Hearing</b>	Ask to speak in Court about the fairness of the Settlement at the hearing on _____. You can still submit a claim form. If the Court approves the Settlement, you will be bound by it.
<b>Do Nothing</b>	<b>Get no payment AND give up your right to bring your own individual action.</b>

**INQUIRIES**

**Please do not contact the Court, the Clerk's Office, Defendants, or Defendants' counsel regarding this Notice.** All inquiries concerning this Notice, the Proof of Claim and Release Form, or the Settlement should be directed to:

Aterian, Inc. Securities Litigation c/o Strategic Claims Services P.O. Box 230 600 N. Jackson St., Ste. 205 Media, Pennsylvania 19063 Tel.: (866) 274-4004 Fax: (610) 565-7985 info@strategicclaims.net	<b>or</b>	Jacob A. Goldberg 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
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**DEFINITIONS**

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement, dated April 22, 2022 ("Stipulation").

**COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT**

**EXHIBIT A-1****1. Why did I get this Notice?**

You or someone in your family may have purchased or acquired Aterian securities between August 24, 2020, and May 3, 2021, both dates inclusive.

**2. What is this lawsuit about?**

The case is known as *Nolff, et al., v. Aterian, Inc., et al.*, 21-cv-004323-VM (S.D.N.Y.) (the “Action”). The Court in charge of the case is the United States District Court for the Southern District of New York.

The Action involves allegations that Defendants violated certain federal securities laws by misrepresenting and/or omitting material facts regarding Aterian’s proprietary, robust artificial intelligence platform, AIMEE. The complaint alleges that the misstatements or omissions artificially inflated the price of Aterian securities, and that the Company’s stock price dropped in response to certain subsequent disclosures, causing damage to Plaintiffs and Settlement Class Members. Defendants have denied and continue to deny each, any and all allegations of wrongdoing, fault, liability, or damage whatsoever asserted in the Action. The Settlement shall in no event be construed as, or deemed to be evidence of, liability, fault, wrongdoing, injury, or damages, or of any wrongful conduct, acts or omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damages to the Plaintiffs or any other Settlement Class Member.

**3. Why is this case a class action?**

In a class action, one or more persons and/or entities, called plaintiffs, sue(s) 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 timely and properly exclude themselves from the class.

**4. Why is there a Settlement?**

The Settling Parties do not agree regarding the merits of Plaintiffs’ allegations and Defendants’ defenses with respect to liability or the damages per share, if any, that would be recoverable if Plaintiffs were to prevail at trial on each claim. The issues on which the Settling Parties disagree include, without limitation: (1) whether the challenged statements were materially false or misleading or otherwise actionable under federal securities law; (2) whether Defendants acted with scienter, which means intent to deceive, manipulate, or defraud, including an extreme departure from the standards of ordinary care, presenting a danger of misleading buyers that is either known to the defendant or is so obvious that the actor must have been aware of it; (3) whether the alleged disclosures were corrective disclosures; (4) the causes of the loss in the value of the securities; and (5) the amount of alleged damages, if any, that could be recovered at trial.

This matter has not gone to trial, and the Court has not decided in favor of either Plaintiffs or Defendants. Instead, the Settling Parties have agreed to settle the case. Plaintiffs and Lead Counsel believe the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class Members because of the risks associated with continued

**EXHIBIT A-1**

litigation and the nature of the defenses raised by Defendants. Among the reasons that Plaintiffs and Lead Counsel believe the Settlement is fair is the fact that there is uncertainty about whether they will be able to prove that any challenged statement was false or misleading, that Defendants acted with scienter, that the alleged misstatements and omissions actually caused the Settlement Class any damages, and the amount of damages, if any.

Even if Plaintiffs were to win at trial, and also prevail on any on appeal, Plaintiffs might not be able to collect some, or all, of any judgment the Court awards. Moreover, while litigation of this type is usually expensive, it appears that, even if Plaintiffs' allegations were found to be true, the total amount of damages to which Settlement Class Members would be entitled could be less than the Settlement.

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

The Settlement Class consists of all persons who purchased or acquired Aterian securities between August 24, 2020, and May 3, 2021, both dates inclusive, and suffered compensable damages thereby.

**6. Are there exceptions to being included in the Settlement Class?**

Yes. Excluded from the Settlement Class are: (i) the officers and directors of Aterian and its affiliates and subsidiaries; (ii) members of the officers' and directors' immediate families and their legal representatives, heirs, successors or assigns; (iii) any entity in which Defendants have or had a controlling interest; and (iv) persons who file a valid and timely request for exclusion. You may choose to be excluded from the Settlement Class by filing a valid and timely request for exclusion as described below in the response to question 11.

**7. I am still not sure whether I am included in the Settlement Class.**

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

**8. What does the Settlement provide?****a. What is the Settlement Fund?**

The proposed Settlement provides that Defendants have caused one million three hundred thousand dollars (\$1,300,000) (the "Settlement Fund") to be paid into the Escrow Account for the benefit of the Settlement Class. The Settlement is subject to Court approval. Also, subject to the Court's approval, a portion of the Settlement Fund will be used to pay attorneys' fees with interest and reasonable litigation expenses to Lead Counsel, and any Award to Plaintiffs. A portion of the Settlement Fund also will be used to pay taxes due on interest earned by the Settlement Fund, if necessary, and the costs of the claims administration, including the costs of printing and mailing this Notice and the costs of

**EXHIBIT A-1**

publishing notice. After the foregoing deductions from the Settlement Fund have been made, the amount remaining (the “Net Settlement Fund”) will be distributed to Settlement Class Members who submit timely, valid claims, according to the Plan of Allocation to be approved by the Court.

**b. What can you expect to receive under the proposed Settlement if you are a Settlement Class Member?**

If you are a Settlement Class Member, your share of the Net Settlement Fund will or may depend on: (i) the number of claims filed by all Settlement Class Members; (ii) the dates you purchased and sold Aterian securities; (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 Counsel for attorneys’ fees, costs, and expenses and the amount awarded to the Plaintiffs.

The Claims Administrator will determine each Settlement Class Member’s *pro rata* share of the Net Settlement Fund based upon each Settlement Class Member’s valid “Recognized Loss.” The Recognized Loss formula is not intended to be an estimate of the amount that a Settlement Class Member might have been able to recover after a trial; it also is not an estimate of the amount that will be paid to Settlement Class Members 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 Settlement Class Members who submit a Proof of Claim and Release Form and whose claims for recovery are allowed by the Claims Administrator pursuant to the terms of the Stipulation or by order of the Court under the below Plan of Allocation (“Authorized Claimants”), which reflects Plaintiffs’ contention that because of the alleged misrepresentations made by Defendants, the price of Aterian securities was artificially inflated during the Settlement Class Period and that certain subsequent disclosures caused changes in the inflated price of Aterian securities. 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 Class Members. Any orders regarding a modification of the Plan of Allocation will be posted to the Claims Administrator’s website, [www.strategicclaims.net/Aterian/](http://www.strategicclaims.net/Aterian/)

The Claims Administrator shall determine each Authorized Claimant’s *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant’s Recognized Loss.

**Please Note:** The Recognized Loss formula, set forth below, is not intended to be an

## EXHIBIT A-1

estimate of the amount of what a Settlement Class Member might have been able to recover after a trial, nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's Recognized Loss and subject to the provisions in the preceding paragraph. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total Recognized Loss of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Loss bears to the total Recognized Losses of all Authorized Claimants and subject to the provisions in the preceding paragraph (*i.e.*, "pro rata share"). 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:**

**Recognized Loss for the Company's Common Stock Purchased During the Class Period will be calculated as follows:**

- (A) For shares purchased during the Class Period and sold during the Class Period, the Recognized Loss per share will be zero (\$0.00) since the inflation upon purchase is the same as the inflation upon sale.
- (B) For shares purchased during the Class Period and retained or sold after the close of trading on July 30, 2021, the Recognized Loss per share will be the *lesser* of:

## EXHIBIT A-1

- (1) \$2.60 per share; (2) the purchase price per share minus \$14.60, the average closing price for the 90 days after the alleged corrective disclosure.<sup>1</sup>
- (C) For shares purchased during the Class Period and sold during the period May 4, 2021, through July 30, 2021, inclusive, the Recognized Loss will be the *lesser* of: (1) \$2.60 per share; or (2) 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.

If you purchased shares during the Class Period for less than \$14.60 per share and held through July 30, 2021, then your Recognized Loss is \$0. If, however, you purchased during the Class Period some shares for less than \$14.60 and some shares for more than \$14.60 and held through July 30, 2021, you will have Recognized Loss for the latter, but not for the former, even if you achieved an overall net gain from your Class Period purchases.

For purposes of calculating your Recognized Loss, the date of purchase 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 the Company shares shall not be deemed a purchase, acquisition or sale of shares for the calculation of an Authorized Claimant’s Recognized Loss. The covering purchase of a short sale is not an eligible purchase.

For purposes of calculating your Recognized Loss, all purchases and sales shall be matched on a First In First Out (“FIFO”) basis in chronological order. Therefore, on the Proof of Claim enclosed with this Notice, you must provide all your purchases and sales of the Company shares during the period from August 24, 2020 through and including July 30, 2021.

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 Plaintiffs, Lead Counsel or the Settlement Administrator or other agent designated by Lead Counsel based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant’s Claim Form. All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted in connection with the Settlement, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Cash Settlement Amount shall be released and discharged from any and all claims arising out of

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<sup>1</sup> Pursuant 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 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.” \$14.60 per share was the mean (average) daily closing trading price of the Company’s common stock during the 90-day period beginning on May 4, 2021, through and including July 30, 2021.

## EXHIBIT A-1

such involvement, and all Settlement Class Members, whether or not they are to receive payment from the Net Cash Settlement Amount, 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.

<u>Table A</u>					
		<u>Average</u>			<u>Average</u>
<u>Date</u>	<u>Closing Price</u>	<u>Closing Price</u>	<u>Date</u>	<u>Closing Price</u>	<u>Closing Price</u>
5/4/2021	\$17.62	\$17.62	6/17/2021	\$15.47	\$16.33
5/5/2021	\$15.72	\$16.67	6/18/2021	\$15.07	\$16.29
5/6/2021	\$16.07	\$16.47	6/21/2021	\$15.67	\$16.27
5/7/2021	\$15.28	\$16.17	6/22/2021	\$16.01	\$16.27
5/10/2021	\$13.76	\$15.69	6/23/2021	\$16.17	\$16.26
5/11/2021	\$14.28	\$15.46	6/24/2021	\$15.23	\$16.23
5/12/2021	\$13.77	\$15.21	6/25/2021	\$16.30	\$16.24
5/13/2021	\$12.44	\$14.87	6/28/2021	\$15.60	\$16.22
5/14/2021	\$12.85	\$14.64	6/29/2021	\$14.97	\$16.19
5/17/2021	\$13.69	\$14.55	6/30/2021	\$14.63	\$16.15
5/18/2021	\$16.20	\$14.70	7/1/2021	\$14.99	\$16.12
5/19/2021	\$15.53	\$14.77	7/2/2021	\$13.74	\$16.07
5/20/2021	\$17.12	\$14.95	7/6/2021	\$14.78	\$16.04
5/21/2021	\$17.04	\$15.10	7/7/2021	\$13.46	\$15.98
5/24/2021	\$16.40	\$15.18	7/8/2021	\$13.07	\$15.92
5/25/2021	\$17.39	\$15.32	7/9/2021	\$13.60	\$15.87
5/26/2021	\$18.23	\$15.49	7/12/2021	\$12.91	\$15.81
5/27/2021	\$18.95	\$15.69	7/13/2021	\$12.64	\$15.74
5/28/2021	\$17.95	\$15.80	7/14/2021	\$12.09	\$15.67
6/1/2021	\$18.10	\$15.92	7/15/2021	\$11.60	\$15.59
6/2/2021	\$18.13	\$16.02	7/16/2021	\$10.54	\$15.49
6/3/2021	\$16.71	\$16.06	7/19/2021	\$10.32	\$15.39
6/4/2021	\$17.47	\$16.12	7/20/2021	\$10.77	\$15.31
6/7/2021	\$19.77	\$16.27	7/21/2021	\$10.92	\$15.23
6/8/2021	\$19.82	\$16.41	7/22/2021	\$10.38	\$15.14
6/9/2021	\$18.70	\$16.50	7/23/2021	\$9.71	\$15.05
6/10/2021	\$15.70	\$16.47	7/26/2021	\$9.81	\$14.96
6/11/2021	\$15.81	\$16.45	7/27/2021	\$9.47	\$14.86
6/14/2021	\$15.76	\$16.42	7/28/2021	\$9.75	\$14.78
6/15/2021	\$15.30	\$16.39	7/29/2021	\$9.23	\$14.69
6/16/2021	\$15.47	\$16.36	7/30/2021	\$9.03	\$14.60

## 9. How can I get a payment if I am a Settlement Class Member?

To qualify for a payment if you are a Settlement Class Member, you must send in a form titled “Proof of Claim and Release Form.” This Proof of Claim and Release Form is attached to this Notice. You may also obtain a Proof of Claim and Release Form at

## EXHIBIT A-1

www.strategicclaims.net/Aterian/. Read the instructions carefully, fill out the form, and sign it in the location indicated. The Proof of Claim and Release Form may be completed in two ways: (1) by completing and submitting it electronically at www.strategicclaims.net/Aterian/ by 11:59 p.m. EST on \_\_\_\_\_, 2022; or (2) by mailing the claim form together with all documentation requested in the form, postmarked no later than \_\_\_\_\_, 2022, to:

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

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

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

Unless you exclude yourself from the Settlement Class by the \_\_\_\_\_ 2022 deadline, you will remain a member of the Settlement Class and will be bound by the release of claims against Defendants and other Released Parties if the Settlement is approved. That means you and all other Settlement Class Members and each of their respective parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates will release (agreeing never to sue, continue to sue, or be part of any other lawsuit) as against 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 Aterian securities during the Settlement Class Period. It also means that all of the Court's orders will apply to you and legally bind you. That means you will accept your allocated share, if any, of the Net Settlement Fund as sole compensation for any losses you suffered in the purchase, acquisition, sale, or ownership of Aterian securities during the Settlement Class Period. The specific terms of the release are included in the Stipulation.

**11. How do I exclude myself from the Settlement if I am a Settlement Class Member?**

If you are a Settlement Class Member, but you do not want to receive a payment from the Settlement, and you want to keep any right you may have to sue or continue to sue Defendants or other Released Parties on your own about the claims made in the Action, then you must take steps to exclude yourself from the Settlement. To exclude yourself from the Settlement, you must mail a letter that (A) clearly indicates your name, address, phone number and e-mail contact information (if any) and states that you "request to be excluded from the Settlement Class in *Nolff, et al., v. Aterian, Inc., et al.*, 21-cv-004323-VM (S.D.N.Y.)" and (B) states the date, number of shares and dollar amount of each Aterian securities purchase or acquisition during the Settlement Class Period, any sale transactions, and the number of shares of Aterian securities held by you as of the opening and closing

## EXHIBIT A-1

of the Settlement Class Period. In order to be valid, such request for exclusion must be submitted with documentary proof: (i) of each purchase and, if applicable, sale transaction of Aterian securities during the Settlement Class Period; and (ii) demonstrating your status as a beneficial owner of the Aterian securities. To request exclusion from the Settlement Class, you must sign your request, as the beneficial owner, under penalty of perjury, and mail your exclusion request, to be **received no later than \_\_\_\_\_, 2022**, to the Claims Administrator at the following address:

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

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

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

**12. If I am a Settlement Class Member and I do not exclude myself, can I sue Defendants or the other Released Parties for the same thing later?**

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

**13. If I am a Settlement Class Member, do I have a lawyer in this case?**

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

**14. How will the lawyers be paid?**

Lead Counsel have expended considerable time litigating this Action on a contingent fee basis and have paid for the expenses of the case themselves. They have not been paid attorneys' fees or reimbursed for their expenses in advance of this Settlement. Lead Counsel have done so with the expectation that, if they are successful in recovering money for the Settlement Class, they will receive attorneys' fees and be reimbursed for their litigation expenses from the Settlement Fund, as is customary in this type of litigation. 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 Settlement Hearing to make an award of attorneys' fees in an amount not to

## EXHIBIT A-1

exceed one-third plus interest on the Settlement Amount (\$433,333.33), reimbursement of litigation expenses of no more than \$40,000 and Award to Plaintiffs not to exceed \$13,000. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

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

You can tell the Court you do not agree with the Settlement, any part of the Settlement, and/or Lead Counsel's motion for attorneys' fees and expenses and application for an Award to Plaintiffs, and that you think the Court should not approve the Settlement, by mailing a letter stating that you object to the Settlement in the matter of *Nolff, et al., v. Aterian, Inc., et al.*, 21-cv-004323-VM (S.D.N.Y.). Be sure to include: (1) your name, address, and telephone number; (2) a list of all purchases or acquisitions and sales of Aterian 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 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 Settlement Hearing is not necessary. Objectors wishing to be heard orally at the Settlement Hearing are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and after instruction pertinent to the submission of a written objection) that they intend to appear at the Settlement Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Settlement Hearing. Be sure to serve copies of any objections, papers, and briefs to **each** of the addresses listed below, to be **received no later than \_\_\_\_\_, 2022:**

Clerk of the Court  
 United States Southern District Court  
 District of New York  
 500 Pearl Street  
 New York, NY 10007

CLASS COUNSEL

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

COUNSEL FOR ATERIAN, INC.,  
 YANIV SARIG AND  
ARTURO RODRIGUEZ

COUNSEL FOR FABRICE HAMAIDE

STEIN ADLER DABAH  
 ZELKOWITZ LLP  
 Jonathan L. Adler  
 1633 Broadway, Ste 46th Fl.  
 New York, NY 10019

CLARICK GUERON REISBAUM LLP  
 Aaron H. Crowell  
 220 Fifth Avenue, 14th Floor  
 New York, NY 10001

**EXHIBIT A-1****16. What is the difference between objecting and requesting exclusion?**

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

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

The Court will hold a Settlement Hearing on \_\_\_\_\_, 2022, at \_\_\_\_\_.m., at the United States District Court, Southern District of New York, 500 Pearl Street, Courtroom 15B, New York, NY 10007. The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means. In the event the Court decides to hold the Settlement Hearing telephonically or by other virtual means, Lead Counsel will cause the Claims Administrator to update its website, on the page dedicated to this Settlement, to note the telephonic or other virtual means for the Settlement Hearing.

At this hearing, the Court will consider whether to approve the Settlement as fair, reasonable, and adequate. 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 pay Lead Counsel for attorneys' fees and expenses and how much to award Plaintiffs.

**18. Do I have to come to the hearing?**

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

**19. What happens if I do nothing at all?**

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

**SPECIAL NOTICE TO BROKERS AND OTHER NOMINEES**

If, between August 24, 2020 and May 3, 2021, both dates inclusive, you purchased, otherwise acquired, or sold Aterian securities 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 THE CLAIMS ADMINISTRATOR'S NOTICE, you either: (a) provide to the Claims Administrator the name, last known address, and email address, if an email address is available, of each person or organization for whom or which you purchased such Aterian securities during

EXHIBIT A-1

such time period; (b) request a link to the Long Notice and Proof of Claim and Release form and email the link to the Long Notice and Proof of Claim and Release Form to each beneficial owner for whom you are nominee or custodian within ten (10) days after receipt thereof; or (c) request additional copies of the Long Notice, which will be provided to you free of charge, and within ten (10) days mail the Long Notice directly to the beneficial owners of the Aterian securities. If you choose to follow alternative procedures (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 Long Notice mailed, \$0.05 per link to the Notice and Proof of Claim and Release Form 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 10 above.

DATED:

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

EXHIBIT A-2

PROOF OF CLAIM AND RELEASE FORM

Deadline for Submission: \_\_\_\_\_

IF YOU PURCHASED OR OTHERWISE ATERIAN, INC. ("ATERIAN") SECURITIES BETWEEN AUGUST 24, 2020, AND MAY 3, 2021, BOTH DATES INCLUSIVE (THE "SETTLEMENT CLASS PERIOD") AND SUFFERED COMPENSABLE DAMAGES THEREBY, YOU ARE A "SETTLEMENT CLASS MEMBER" AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS. (EXCLUDED FROM THE SETTLEMENT CLASS ARE: (I) THE OFFICERS AND DIRECTORS OF ATERIAN AND ITS AFFILIATES AND SUBSIDIARIES; (II) MEMBERS OF THE OFFICERS' AND DIRECTORS' IMMEDIATE FAMILIES AND THEIR LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS OR ASSIGNS; (III) ANY ENTITY IN WHICH DEFENDANTS HAVE OR HAD A CONTROLLING INTEREST; AND (IV) PERSONS WHO FILE VALID AND TIMELY REQUESTS FOR EXCLUSION IN ACCORDANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER.)

IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT THIS PROOF OF CLAIM AND RELEASE FORM ("CLAIM FORM") IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS. YOU CAN COMPLETE AND SUBMIT THE ELECTRONIC VERSION OF THIS CLAIM FORM BY 11:59 P.M. EST ON \_\_\_\_\_, 2022 AT [WWW.STRATEGICCLAIMS.NET/ATERIAN/](http://WWW.STRATEGICCLAIMS.NET/ATERIAN/).

IF YOU DO NOT COMPLETE AND SUBMIT AN ELECTRONIC VERSION OF THIS CLAIM FORM, YOU MUST COMPLETE AND SIGN THIS CLAIM FORM AND MAIL IT BY FIRST CLASS MAIL, POSTMARKED NO LATER THAN \_\_\_\_\_, 2022 TO STRATEGIC CLAIMS SERVICES, THE CLAIMS ADMINISTRATOR, AT THE FOLLOWING ADDRESS:

Aterian, 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  
[info@strategicclaims.net](mailto:info@strategicclaims.net)

YOUR FAILURE TO SUBMIT YOUR CLAIM BY \_\_\_\_\_, 2022 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 CLAIM FORM, YOU WILL NOT SHARE IN THE SETTLEMENT BUT YOU NEVERTHELESS WILL BE BOUND BY THE COURT'S ORDER AND FINAL JUDGMENT UNLESS YOU EXCLUDE YOURSELF. SUBMISSION OF A CLAIM FORM DOES NOT ASSURE THAT YOU WILL SHARE IN THE PROCEEDS OF THE SETTLEMENT.

## EXHIBIT A-2

## CLAIMANT'S STATEMENT

1. I (we) purchased or otherwise acquired Aterian, Inc. ("Aterian") securities during the Settlement Class Period. (Do not submit this Proof of Claim and Release Form if you did not purchase or otherwise acquire Aterian securities during the Settlement Class Period.)
2. By submitting this Proof of Claim and Release Form, I (we) state that I (we) believe in good faith that I am (we are) a Settlement Class Member(s) as defined above and in the Notice of Pendency and Proposed Settlement of Securities 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 Claim Form ("Claim Form"). I (we) understand and agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Settlement Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Claim Form.
4. I (we) have set forth where requested below all relevant information with respect to each purchase or acquisition of Aterian securities during the Settlement Class Period, and each sale, if any, of such securities. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.
5. I (we) have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase and sale of Aterian securities 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. **YOUR FAILURE TO SUBMIT COPIES OF OFFICIAL DOCUMENTS EVIDENCING YOUR PURCHASES AND/OR SALES OF ATERIAN, INC. SECURITIES WILL CAUSE THE SETTLEMENT ADMINISTRATOR TO REJECT YOUR CLAIM.**
6. I (we) understand that the information contained in this Claim Form is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your Recognized Loss. In some cases, the Claims Administrator may condition acceptance of the claim based upon the production of additional information, including, where applicable, information concerning transactions in any derivatives securities such as options.)
7. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise and discharge by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Claim Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) of each of the "Released Parties" of all "Released Claims," as

## EXHIBIT A-2

those terms are defined in the Stipulation and Agreement of Settlement, dated April 22, 2022 ("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 Claim Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) to permanently refrain from prosecuting or attempting to prosecute any 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 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.
13. NOTICE REGARDING INSTITUTIONAL FILERS: Representatives with authority to file on behalf of (a) accounts of multiple Settlement Class Members and/or (b) institutional accounts with large numbers of transactions ("Representative Filers") must submit information regarding their transactions in an electronic spreadsheet format. If you are a Representative Filer, you must contact the Claims Administrator at [efile@strategicclaims.net](mailto:efile@strategicclaims.net) or visit their website at [www.strategicclaims.net](http://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 Claim Form, as well as proof of authority to file (see Item 2 of the Claimant's Statement), along with the electronic spreadsheet format. No claims submitted in electronic spreadsheet format will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgment of receipt and acceptance of electronically submitted data.
14. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Claim Form hosted at [www.strategicclaims.net/Aterian/](http://www.strategicclaims.net/Aterian/). 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 Claim Form has been submitted. If you are unsure if you should submit your claim as a Representative Filer, please contact the Claims Administrator at [info@strategicclaims.net](mailto: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 Claim Form.

## EXHIBIT A-2

**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 ATERIAN, INC. ("ATERIAN") SECURITIES****Beginning Holdings:**

- A. State the total number of shares of Aterian securities held at the close of trading on August 23, 2020 (*must be documented*). If none, write "zero" or "0."
- 

**Purchases/Acquisitions:**

- B. Separately list each and every purchase or acquisition of Aterian securities between August 24, 2020 and August 1, 2021, 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)

## EXHIBIT A-2

**Sales:**

C. Separately list each and every sale of Aterian securities between August 24, 2020 and August 1, 2021, 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 Aterian securities held at the close of trading on August 1, 2021 (*must be documented*).

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

**III. SUBSTITUTE FORM W-9**

Request for Taxpayer Identification Number:

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

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

**IV. CERTIFICATION**

I (We) submit this Proof of Claim and Release Form under the terms of the Stipulation described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of New York with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the release and covenant not to sue set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in this Action. I (We) have not submitted any other claim covering the same purchases or sales of Aterian securities 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

EXHIBIT A-2

withholding as a result of a failure to report all interest or dividends; or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

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

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

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

---

(Signature)

---

(Signature)

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

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

Date: \_\_\_\_\_

EXHIBIT A-2

THIS PROOF OF CLAIM AND RELEASE FORM MUST BE SUBMITTED NO LATER THAN \_\_\_\_\_, 2022 AND MUST BE MAILED TO:

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

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by \_\_\_\_\_, 2022 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 Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

The Claims Administrator will acknowledge receipt of your Claim Form by mail or email within 45 days of receipt. Your claim is not deemed filed until you receive such an acknowledgement. If you do not receive an acknowledgement within 45 days, please contact the Claims Administrator by telephone toll-free at 866-274-4004 or by email at [info@strategicclaims.net](mailto:info@strategicclaims.net).

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

**REMINDER CHECKLIST**

- Please be sure to sign this Claim Form on page 7. If this Claim Form is submitted on behalf of joint claimants, then each claimant must sign.
- Please remember to attach supporting documents. Do NOT send any stock certificates. Keep copies of everything you submit.
- Do NOT use highlighter on the Claim Form 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 deliver payment to you.

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

JOSEPH P. NOLFF, ANDREW TATE and  
BRUCE PALENSKE, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ATERIAN, INC., YANIV SARIG,  
FABRICE HAMAIDE, and ARTURO  
RODRIGUEZ,

Defendants.

**CASE No.: 1:21-cv-04323-VM**

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

**TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED  
ATERIAN, INC. (“ATERIAN”) SECURITIES BETWEEN AUGUST 24, 2020 AND  
MAY 3, 2021, BOTH DATES INCLUSIVE**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Southern District of New York, that a hearing will be held on \_\_\_\_\_, 2022, at \_\_\_:\_\_.m. before the Honorable Victor Marrero, United States District Judge of the Southern District of New York, 500 Pearl Street, Courtroom 15B, New York, New York 10007 for the purpose of determining: (1) whether the proposed Settlement of the claims in the above-captioned Action for consideration including the sum of \$1,300,000 should be approved by the Court as fair, reasonable, and adequate; (2) whether the proposed plan to distribute the Settlement proceeds is fair, reasonable, and adequate; (3) whether the application of Lead Counsel for attorneys’ fees of up to one-third of the Settlement Amount (\$433,333.33) plus a proportionate share of interest accrued on the Settlement Amount, Lead Counsel’s reimbursement of litigation expenses incurred of not

## EXHIBIT A-3

more than \$40,000, and Award to Plaintiffs of not more than \$13,000, should be approved; and (4) whether the Action should be dismissed with prejudice as set forth in the Stipulation and Agreement of Settlement, dated April 22, 2022 (the “Stipulation”). The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means.

If you purchased or otherwise acquired Aterian securities between August 24, 2020, and May 3, 2021, both dates inclusive (“Settlement Class Period”) and suffered compensable damages thereby, your rights may be affected by this Settlement, including the release and extinguishment of claims you may possess relating to your ownership interest in Aterian securities. You may obtain copies of the detailed Notice of Pendency and Proposed Settlement of Securities Class Action (“Notice”) and the Proof of Claim and Release Form by writing to or calling the Claims Administrator: Aterian, 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. You can also download copies of the Notice and submit your Proof of Claim and Release Form online at [www.strategicclaims.net/Aterian/](http://www.strategicclaims.net/Aterian/). If you are a member of the Settlement Class, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release Form electronically or postmarked no later than \_\_\_\_\_, 2022 to the Claims Administrator, establishing that you are entitled to recovery. Unless you submit a written exclusion request, you will be bound by any judgment rendered in the Action whether or not you make a claim.

If you are a Settlement Class Member and desire to be excluded from the Settlement Class, you must submit to the Claims Administrator a request for exclusion so that it is received no later than \_\_\_\_\_, 2022, in the manner and form explained in the detailed Notice. All members

EXHIBIT A-3

of the Settlement Class who do not timely request exclusion from the Settlement Class will be bound by any judgment entered in the Action pursuant to the Stipulation.

Any objection by a Settlement Class Member to the Settlement, Plan of Allocation, Lead Counsel's requests for an award to Lead Counsel of attorneys' fees and reimbursement of expenses and Award to Plaintiffs must be in the manner and form explained in the detailed Notice and received no later than \_\_\_\_\_, 2022, by each of the following:

Clerk of the Court  
United States Southern District Court  
District of New York  
500 Pearl Street  
New York, NY 10007

CLASS COUNSEL

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

COUNSEL FOR ATERIAN, INC.,  
YANIV SARIG AND  
ARTURO RODRIGUEZ

COUNSEL FOR FABRICE HAMAIDE

STEIN ADLER DABAH  
ZELKOWITZ LLP  
Jonathan L. Adler  
1633 Broadway, Ste 46th Fl.  
New York, NY 10019

CLARICK GUERON REISBAUM LLP  
Aaron H. Crowell  
220 Fifth Avenue, 14th Floor  
New York, NY 10001

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

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

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANTS,  
OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_, 2022

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

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

*Important Notice about a Securities  
Class Action Settlement*

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

*Please read it carefully.*

U.S. Mail  
Priority Mail

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

Case No. 21-cv-004323-VM (S.D.N.Y.)

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

[NAME 1]

[NAME 2]

[NAME 3]

[ADDRESS 1]

[ADDRESS 2]

PRESORTED  
FIRST-CLASS  
MAIL U.S.  
POSTAGE PAID

THIS CARD PROVIDES ONLY LIMITED INFORMATION ABOUT THE SETTLEMENT.

PLEASE VISIT [WWW.STRATEGICCLAIMS.NET](http://WWW.STRATEGICCLAIMS.NET) OR CALL 1-866-274-4004 FOR MORE INFORMATION.

The U.S. District Court for the Southern District of New York (the "Court") has preliminarily approved a proposed Settlement of claims against Aterian, Inc. ("Aterian"), Yaniv Sarig, Fabrice Hamaide, and Arturo Rodriguez (collectively, "Defendants"). The proposed Settlement would resolve a class action lawsuit alleging that, in violation of the federal securities laws, Defendants misled investors, causing damages to Settlement Class Members. Defendants deny any wrongdoing.

You have received this notice because you may be a Settlement Class Member if you purchased or acquired Aterian securities between August 24, 2020, and May 3, 2021, inclusive. The Settlement provides that, in exchange for the dismissal and release of claims against Defendants, a fund consisting of \$1,300,000, less attorneys' fees and expenses, will be divided among Settlement Class Members who timely submit a valid Proof of Claim and Release Form ("Claim Forms"). For a full description of the Settlement and your rights and to submit a Claim Form, please view the Stipulation of Settlement and obtain a copy of the Notice of Pendency and Proposed Settlement of Securities Class Action ("Notice") and Claim Form by visiting the website: [www.strategicclaims.net/Aterian](http://www.strategicclaims.net/Aterian). You may request copies of the Notice and Claim Form by: (1) mail: Aterian, Inc. Securities Litigation, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson St, Ste. 205, Media, PA 19063; (2) toll-free phone: (866) 274-4004; (3) fax: (610) 565-7985; or (4) email: info@strategicclaims.net.

To qualify for payment, you must submit a Claim Form, which can be found on the website [www.strategicclaims.net](http://www.strategicclaims.net). CLAIM FORMS ARE DUE BY \_\_\_\_\_, 2022 TO THE CLAIMS ADMINISTRATOR AT ATERIAN, INC. SECURITIES LITIGATION, C/O STRATEGIC CLAIMS SERVICES, P.O. BOX 230, 600 N. JACKSON ST, STE. 205, MEDIA, PA 19063 OR SUBMITTED ELECTRONICALLY AT [WWW.STRATEGICCLAIMS.NET/ATERIAN](http://WWW.STRATEGICCLAIMS.NET/ATERIAN). If you do not want to be legally bound by the Settlement, you must exclude yourself by \_\_\_\_\_, 2022. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement, you may object to it by \_\_\_\_\_, 2022. The Notice explains how to exclude yourself or to object.

The Court will hold a hearing in this case on \_\_\_\_\_, 2022 at \_\_\_\_\_:\_\_\_\_\_.m. at the 500 Pearl Street, Courtroom 15B, New York, NY 10007, to consider whether to approve the Settlement, the Plan of Allocation, and a request by Lead Counsel for up to one-third of the Settlement Fund for their attorneys' fees, plus up to \$40,000 in expenses, and Award to Plaintiffs of no more than \$13,000 in total for litigating the cases and negotiating the Settlement. You may, but do not have to, attend the hearing and ask to be heard by the Court. The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means. For more information, call toll-free 1-866-274-4004, or visit the website [www.strategicclaims.net](http://www.strategicclaims.net).

EXHIBIT B

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

JOSEPH P. NOLFF, ANDREW TATE and  
BRUCE PALENSKE, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ATERIAN, INC., YANIV SARIG,  
FABRICE HAMAIDE, and ARTURO  
RODRIGUEZ,

Defendants.

**CASE No.: 1:21-cv-04323-VM**

**[PROPOSED] FINAL JUDGMENT APPROVING CLASS ACTION SETTLEMENT**

## EXHIBIT B

On this \_\_\_\_ day of \_\_\_\_\_, 2022, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated April 22, 2022 (the “Stipulation”) are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against the Defendants (as defined in the Stipulation), including the release of the Released Claims against the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Action with prejudice; (3) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members; (4) whether and in what amount to award Class Counsel as fees and reimbursement of expenses; and (5) whether and in what amount to grant an Award to Plaintiffs; and

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

It appearing in the record that the Postcard Notice substantially in the form approved by the Court in the Court’s Order Granting Motion for Preliminary Approval of Class Action Settlement, dated \_\_\_\_\_, 2022, (“Preliminary Approval Order”) was mailed to all reasonably identifiable Settlement Class Members and the Long Notice was posted to the website of the Claims Administrator, both in accordance with the Preliminary Approval Order and the specifications of the Court;

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

It appearing in the record that the Notice substantially in the form approved by the Court in the Preliminary Approval Order was posted to the website of the Claims Administration, in accordance with the Preliminary Approval Order and the specifications of the Court:

EXHIBIT B

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

1. This Final Judgment incorporates by reference the definitions in the 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, Plaintiffs, all Settlement Class Members, and Defendants.
3. The Court finds that, for settlement purposes only, the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that:
  - (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable;
  - (b) there are questions of law and fact common to the Settlement Class;
  - (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent;
  - (d) Plaintiffs and Class Counsel fairly and adequately represent the interests of the Settlement Class;
  - (e) questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and
  - (f) a class action is superior to other available methods for the fair and efficient adjudication of this Action, considering:
    - i. the interests of the Settlement Class Members in individually controlling the prosecution of the separate actions;

EXHIBIT B

- ii. the extent and nature of any litigation concerning the controversy already commenced by Settlement Class Members;
- iii. the desirability or undesirability of concentrating the litigation of these claims in this particular forum; and
- iv. the difficulties likely to be encountered in the management of the class action.

The Settlement Class is being certified for settlement purposes only.

4. The Court hereby finally certifies this action as a class action for purposes of the Settlement, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all persons who purchased or otherwise acquired Aterian securities between August 24, 2020, and May 3, 2021, both days inclusive (“Settlement Class Period”), and were damaged thereby. Excluded from the Settlement Class are: (i) the officers and directors of Aterian and its affiliates and subsidiaries; (ii) members of the officers’ and directors’ immediate families and their legal representatives, heirs, successors or assigns; (iii) any entity in which Defendants have or had a controlling interest; and (iv) Opt-Outs.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for the purposes of this Settlement only, Plaintiffs are certified as the class representatives on behalf of the Settlement Class (“Class Representatives”) and Class Counsel previously selected by Plaintiffs and appointed by the Court are hereby appointed as Class Counsel for the Settlement Class (“Class Counsel”).

6. In accordance with the Court’s Preliminary Approval Order, the Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private

## EXHIBIT B

Securities Litigation Reform Act of 1995; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons and entities entitled to such notice. No Settlement Class Member is relieved from the terms and conditions of the Settlement, including the releases provided for in the Stipulation, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is hereby determined that all Settlement Class Members are bound by this Final Judgment except those persons listed on Exhibit A to this Final Judgment.

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

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

9. The Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation

## EXHIBIT B

by submitting a Proof of Claim and Release Form, any disbursement from the Settlement Fund, shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties. The Releasing Parties shall be deemed to have, and by operation of this Final Judgment shall have, covenanted not to sue the Released Parties with respect to any and all Released Claims in any forum and in any capacity. The Releasing Parties shall be and hereby are permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, in any capacity, against any of the Released Parties. Nothing contained herein shall, however, bar the Releasing Parties from bringing any action or claim to enforce the terms of the Stipulation or this Final Judgment.

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

## EXHIBIT B

11. Class Counsel is awarded attorneys' fees in the amount of \$ \_\_\_\_\_, and expenses in the amount of \$ \_\_\_\_\_, such amounts to be paid out of the Settlement Fund within ten (10) calendar days following entry of this Final Judgment. In the event that this Judgment does not become Final, and any portion of the Fee and Expense Award has already been paid from the Settlement Fund, Class Counsel and all other plaintiffs' counsel to whom Class Counsel has distributed payments shall within ten (10) Business Days of entry of the order or notice rejecting the Settlement and/or Judgment, terminating the Settlement, or precluding the Effective Date from occurring, refund to Defendants the Settlement Fund the Fee and Expense Award paid to Class Counsel and, if applicable, distributed to other counsel.

12. Plaintiffs are awarded in total \$ \_\_\_\_\_ or \$ \_\_\_\_\_ each, as an award for reasonable costs and expenses directly relating to the representation of the Settlement Class as provided in 15 U.S.C. § 78u-4(a)(4), such amounts to be paid from the Settlement Fund upon the Effective Date of the Settlement.

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

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

15. Neither this Final Judgment, the Stipulation (nor the Settlement contained therein), nor any of its terms and provisions, nor any of the negotiations, documents or proceedings connected with them:

## EXHIBIT B

- (a) is or may be deemed to be, or may be used as an admission, concession, or evidence of, the validity or invalidity of any Released Claims, the truth or falsity of any fact alleged by the Class Representatives, the sufficiency or deficiency of any defense that has been or could have been asserted in the Action, or of any deception, wrongdoing, liability, negligence or fault of Defendants, the Released Parties, or each or any of them, or that any Class Representative or Settlement Class Member was harmed or damaged by any conduct by Defendants;
- (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or misrepresentation or omission with respect to any statement or written document attributed to, approved or made by Defendants or Released Parties in 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 Settling Parties, Defendants or the Released Parties, or each or any of them, as an admission, concession or evidence of the validity or invalidity of the Released Claims, the infirmity or strength of any claim raised in the Action, the truth or falsity of any fact alleged by the Plaintiffs or the Settlement Class, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;
- (d) is or may be deemed to be or shall be construed as or received in evidence as an admission or concession against Defendants, or the Released Parties, or each or any of them, that any of Class Representatives' or Settlement Class Members' claims are with or without merit, that a litigation class should or should not be certified, that damages recoverable in the Action would have been greater or less than the Settlement Fund or that

## EXHIBIT B

the consideration to be given pursuant to the Stipulation represents an amount equal to, less than or greater than the amount which could have or would have been recovered after trial.

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

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

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

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

EXHIBIT B

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

21. The finality of this Final Judgment shall not be affected, in any manner, by rulings that the Court may make on Class Counsels' application for an award of attorneys' fees and expenses or an award to the Class Representatives.

22. In the event the Settlement is not consummated in accordance with the terms of the Stipulation, then the Stipulation and this Final Judgment (including any amendment(s) thereof, and except as expressly provided in the Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Settling Parties or the Released Parties, and each Settling Party shall be restored to his, her or its respective litigation positions as they existed on March 9, 2022.

Dated: \_\_\_\_\_, 2022

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HON. VICTOR MARRERO  
UNITED STATES DISTRICT JUDGE