

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CALVIN McCUTCHAN,

Plaintiff,

vs.

CORIAN OPERATIONS, INC.,
INFINERA CORPORATION, CORIAN
401(k) PLAN, and DOES 1-20,

Defendants.

Case No. 1:20-cv-00561 (CPK)

**JOINT DECLARATION OF HUGH D. BERKSON AND ALAN L. ROSCA
IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR FINAL APPROVAL OF
SETTLEMENT, MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF
CLASS REPRESENTATIVE AND CLASS COUNSEL, AND MOTION FOR AWARD OF
ATTORNEY’S FEES AND EXPENSES, SETTLEMENT ADMINISTRATION COSTS,
AND CASE CONTRIBUTION AWARD**

Hugh D. Berkson and Alan L. Rosca respectfully submit this Joint Declaration in Support of Plaintiff’s above motions and other related relief. Pursuant to 28 U.S.C. § 746, we declare as follows under penalty of perjury:

1. Hugh D. Berkson is a principal in the law firm of McCarthy, Lebit, Crystal & Liffman Co., LPA. (“McCarthy Lebit”), one of the two firms serving as Counsel for Calvin McCutchan (“Plaintiff”) and is one of the attorneys personally involved in this Action and responsible for its prosecution. Mr. Berkson has personal knowledge of the facts set forth below (except as to those exclusively within the knowledge of the other declarant herein) and, if called as a witness, could and would testify competently thereto.

2. Alan L. Rosca is founding partner of Rosca Scarlato LLC (“Rosca Scarlato”), one of the two firms serving as Counsel for Plaintiff in this Action. Mr. Rosca is also one of the

attorneys personally involved in the Action and is responsible for its prosecution. Mr. Rosca has personal knowledge of the facts set forth below (except as to those exclusively within the knowledge of the other declarant herein) and, if called as a witness, could and would testify competently thereto.

Background

3. This case arises out of the provision of notice to Coriant Operations Inc.'s ("Coriant") employees who participated in the company's defined contribution retirement plan (the "Coriant 401K Plan" or "Plan") concerning the termination of a particular investment option, the Gibraltar Guaranteed Fund ("GGF"), and the import of the participants' failure to move out of the fund of their own accord.

4. Prudential Retirement Insurance and Annuity Company ("PRIAC" or "Prudential") entered into a contract memorializing the Plan's investment in the GGF.

5. Per PRIAC's contract regarding the Plan's investment in the GGF, Coriant had an obligation to provide Prudential with "reasonable advance notice of any change or amendment to the Plan," and allowed Prudential to terminate the Plan's participation in GGF should Coriant announce its intention to terminate or cancel the Plan. Such a termination provided for a payment to plan participants of GGF's then-current market value, rather than book value. GGF's market value could, and did, vary from its book value.

6. On or about August 15, 2018, Prudential was informed of Coriant's intent to terminate the Plan. Then, on September 17, 2018, Prudential notified Coriant that the Plan would no longer be able to participate in GGF. On September 30, 2018, Coriant's Board terminated the Plan. Infinera's purchase was completed on October 1, 2018.

7. On October 10, 2018, Coriant sent an email to Plan participants whose email was known, and a letter via US Mail, notifying participants of the impending end of GGF as an investment option within the Plan, and the fact that a failure to voluntarily move monies out of GGF by October 15 would cost those participants the difference between the fund's market and book values, which was estimated to be a 4% difference.

8. On October 15, 2018, Coriant sent the email again, notifying plan participants that the failure to move out of GGF that day would result in the receipt of market value rather than book value.

9. Plaintiff alleged that Coriant's notice was deficient in its timing by not allowing sufficient time for Plan participants to review, digest, and react to the notice, and in its delivery methodology insofar as Coriant did not use methods to ensure receipt of the messages.

10. Prudential transferred the remaining GGF holdings to a successor Vanguard fund on October 16, 2018. Nine hundred sixty-seven Plan accounts had their GGF holdings transferred to the Vanguard fund, receiving GGF's market value rather than book value in the process.

11. Plaintiff, who never received notice of the GGF termination, looked at his online account statement later that week and found a drop of \$33,000 in his GGF holding and he started investigating what had happened.

12. The total difference between GGF's market and book values at the close of business on October 15, 2018, was \$2,403,156.36 for the Plan participants still holding GGF at the close of business on that day.

13. Plaintiff's subsequent efforts to remedy the situation with the Plan and Coriant were unsuccessful.

Litigation

14. Plaintiff filed the instant Action on January 24, 2020 (ECF 1). The initial Complaint named both Coriant and Infinera Corporation, as successor in interest to Coriant. The Complaint contained two claims for relief: the first alleging a breach of fiduciary duty against all defendants for the failure to provide adequate notice of the Plan termination, citing 29 CFR §4041.23(a)(1), 29 USC §§1104(a)(1), 1105, 1109, and 1132(a)(1)(B) (ECF 1, ¶¶ 68 – 76); and the second alleging a breach of fiduciary duty against all defendants for the failure to provide adequate notice of GGF’s termination (ECF 1, ¶¶ 77 – 83).

15. Coriant and Infinera filed a motion to dismiss for failure to state a claim on May 21, 2020 (ECF 23).

16. In response to the motion to dismiss, Plaintiff filed his First Amended Complaint (“FAC”) on June 10, 2020 (ECF 28). The FAC included two claims for relief: the first was a claim against the Plan for the recovery of benefits pursuant to 29 U.S.C.S. §1132(a)(1)(B) (ECF 28, ¶¶ 70 – 77); and the second was a claim for breach of fiduciary duty against all Defendants aside from the Plan, pursuant to 29 U.S.C.S. § 1132(a)(2), and 29 U.S.C.S. §1109(a) (ECF 28, ¶¶ 78 – 87).

17. Defendant Coriant, along with the Plan and Infinera responded to the FAC with a renewed motion to dismiss filed on July 23, 2020 (ECF 33).

18. The renewed motion to dismiss was fully briefed with Plaintiff’s opposition filed on September 21, 2020 (ECF 35), and the reply filed on October 5, 2020 (ECF 36).

19. The Court issued its ruling on January 11, 2021, granting the renewed motion to dismiss in part, and denying it in part. (ECF 37). Infinera was dismissed as a party, the jury demand was stricken, and the claim for benefits due under the Plan was dismissed. The breach of fiduciary duty against Coriant remained.

Discovery and Investigation

20. Once the Court issued its ruling on the renewed motion to dismiss, Plaintiff started discovery efforts. Plaintiff served both interrogatories and requests for production upon Defendant, after which counsel negotiated search parameters and terms to be used in responding to the discovery requests.

21. Coriant produced responses to the discovery requests, which responses allowed Plaintiff to identify how many people were affected by the GGF termination and how much money was at issue. The discovery responses also allowed Plaintiff to gain an understanding of the timing of key events, including negotiations concerning Infinera's purchase of Coriant, and Coriant's communications with Prudential regarding the Plan and GGF. The discovery responses therefore allowed Plaintiff to confirm the quality of his ERISA claims levied against Coriant.

Settlement Negotiations

22. Once Plaintiff concluded that the written discovery responses were sufficient to allow a proper valuation of the dispute, the parties began to discuss the concept of whether resolution would be possible short of additional discovery, motion practice, and trial.

23. Following months of conversations, the parties agreed to submit to mediation, using Robert A. Meyer, Esq., of JAMS's Century City, California office. Mr. Meyer, a well-recognized and highly-qualified mediator, made himself available to the parties on July 6, 2021. Counsel traveled to the JAMS Century City office to participate in a full-day mediation with Mr. Meyer. Mr. McCutchan and Coriant's insurer participated via Zoom. Coriant participated in person. Plaintiff himself played an active role through the course of the negotiations.

24. Negotiations took the entirety of the day, and the parties agreed to a settlement payment of \$1 million at the end of the day, at approximately 5 PM.

25. Over the next three (3) months, the parties continued to negotiate the terms of the settlement. During these negotiations, Class Counsel continued to investigate the facts, circumstances, and legal issues, including: (a) inspecting, reviewing, and analyzing documents produced by or publicly available relating to Defendant and the Plan; (b) further researching the applicable law; and (c) further researching and analyzing governmental and other publicly available sources concerning Defendant and the Plan.

26. After months of ongoing negotiations over numerous non-monetary terms, the parties reached an agreement, effective November 2, 2022, memorialized in the Settlement Agreement and Release (“Settlement Agreement”). The Settlement Agreement now before the Court is a comprehensive agreement based on the initial term sheet and months of further negotiation.

The Settlement Agreement

27. The Settlement is the result of extensive, thorough, adversarial arm’s-length negotiations, and provides significant benefits to the Settlement Class, while removing the risks, costs, and delays associated with further litigation. The Settlement represents an excellent result for the Class, representing over 41% of the \$2,403,156 difference between book value of the GGF and market value of the Class Members’ investments (arguably, the maximum provable damages). Class Counsel and the Plaintiff have concluded that the Settlement is fair, reasonable, and adequate, and should be presented to the Court for approval.

28. The Settlement Agreement provides for a total payment of \$1,000,000, which will be distributed to the participants in and beneficiaries of the Plan who invested in the GGF during the relevant period. Class Counsel is asking the Court to award a fee amount not to exceed 33% of the Settlement Amount, and for the following costs and expenses: (1) Class Counsel’s litigation

expenses, which include the costs associated with the Independent Fiduciary, Class Notice, and the Settlement Administrator; and (2) a Case Contribution Award to the Plaintiff in the amount of \$5,000 in light of his substantial contributions to the litigation, as described below.

Class Counsel and Representative's Contributions

29. Before bringing this action, Class Counsel, along with the assistance of the Plaintiff, conducted an in-depth investigation, which included review and analysis of: (i) publicly available information concerning the Plan and the GGF; (ii) governing Plan documents; (iii) annual Plan financial reports; (iv) the agreement establishing the Plan's investment in the Contract and amendments and riders thereto; and (v) communications to Plan participants concerning the GGF.

30. Class Counsel conducted an extensive investigation of the Defendant and Infinera and of the alleged losses suffered by the Plan as a result of the alleged breaches of fiduciary duty, and concluded that the maximum provable damages were just over \$2.4 million. The Settlement recovers over 41% of that amount. The parties also engaged in pre-mediation discovery, in which Defendant produced documents necessary for Class Counsel to assess the benefits of settling the case when balanced against the merits and the risks of further litigation. As part of this pre-mediation discovery, Class Counsel reviewed many publicly available documents and documents produced by Defendant, including documents and materials governing the Plan, documents describing the process by which the Investment was terminated, and Defendant's and Infinera's Securities and Exchange and insurance regulatory filings.

31. Throughout the course of the litigation and during the parties' negotiations, the Plaintiff advised and participated in the litigation investigation and strategy, collected and produced documents, reviewed and approved the Complaint and other major filings, maintained

contact with Class Counsel, participated in the mediation and stayed abreast of settlement negotiations thereafter, and reviewed and approved the Settlement Agreement

Plaintiff's Motion For Preliminary Approval

32. On November 3, 2022, Plaintiff filed an unopposed Motion for Preliminary Approval of Settlement, Leave to Amend First Amended Complaint, and Related Relief (ECF 63). He also filed on that day an unopposed Motion to Certify the Class for Purposes of Settlement. (ECF 64). Accompanying the pleadings was a joint declaration in support by the undersigned Hugh Berkson and Alan Rosca, co-counsel in the matter (ECF 65). Per the parties' agreement, Plaintiff submitted a Second Amended Complaint for the Court's consideration (ECF 65-2).

33. The Court held a telephonic hearing on the settlement motions on November 8, 2022 and issued a minute entry granting preliminary approval and setting a final approval hearing (ECF 66).

34. Thereafter, the Court issued two full Orders on November 18, 2022, granting Preliminary Approval of the Settlement and Leave to File the Second Amended Complaint (ECF 67) and Preliminary Certification of the Class for Purposes of Settlement (ECF 68).

Class Notice

35. The Notice sent to Class Members (Exhibit 2 to the Vieira Dec, which is attached hereto as Exhibit F) describes the Settlement in clear and plain terms; the considerations that caused Plaintiff and Class Counsel to conclude that the Settlement is fair and adequate; the maximum attorneys' fees and expenses and Case Contribution Award for the Plaintiff that may be sought; the procedure for objecting to the Settlement; the proposed Plan of Allocation; and the date, time and place of the Final Approval Hearing. The Class Notice also provides contact information for Class Counsel: (1) a toll-free number which potential Class members may call to

ask questions or learn about the Settlement, (2) an email address for inquiries, and (3) a website address to receive further information.

36. Pursuant to the terms of the Settlement, Defendant's Counsel produced a current list of all Class members' last known addresses. The list contained the names and addresses for 967 Class members. Said list was provided to the Settlement Administrator, Strategic Claims Services on December 7, 2022. *See*, Declaration of Cornelia Vieira concerning: (a) Mailing of the Notice to Class Members; (b) Mailing of the CAFA Notice; and, (c) Report on Objections ("Vieira Dec."), attached as Exhibit F, ¶ 4.

37. Strategic Claims Services mailed the Notice to all persons on the list via first class mail by the deadline set by the Court in the Preliminary Approval Order. *Vieira Dec.*, ¶ 5.

38. The Notice informed the Class of the terms of the settlement, and Plaintiff's intent to petition the Court for an award of attorneys' fees not to exceed 33 1/3% of the Settlement Fund, for reimbursement of costs and expenses of the litigation, and for a Service Award for the named Plaintiff in the amount of \$5,000, and for reimbursement of his out-of-pocket expenses. *See* Notice attached to *Vieira Dec.*

39. To date, neither Strategic Claims Services nor Class Counsel has received any objections to the Settlement. *Vieira Dec.* ¶ 7.

Class Counsel's Experience

40. Class Counsel have extensive experience in employee benefits and class action litigation, as described below.¹

¹ Class Counsel submitted firm resumes further describing their background and experience as part of the Joint Declaration in support of Preliminary Approval.

41. Rosca Scarlato is well-versed in ERISA litigation, its attorneys are leading class actions litigators, and they possess expertise in the type of claims brought in this action. Through their prior firms, including most recently Goldman Scarlato & Penny, P.C., Rosca Scarlato founding partners Alan Rosca and Paul Scarlato have represented the interests of victims of securities fraud, violations of ERISA, corporate misconduct, anticompetitive conduct, deceptive consumer practices, and unscrupulous financial advisors. For example, Rosca Scarlato litigated class action cases involving breach of fiduciary duties that resulted in significant losses to investors, including the *Aleem v. Pearce & Durick* and *Yao-Yi Liu et al. v. Wilmington Trust Company* class cases.² Attorneys at the firm are involved in all aspects of investment litigation, from arbitration to state court actions and federal multidistrict litigation. *See also* <https://investorlawyers.org/representative-cases/>.

42. McCarthy, Lebit, Crystal & Liffman Co., L.P.A.'s practice includes the representation of businesses and individuals who have suffered losses in investments or retirement plans due to negligence, breach of fiduciary duty, and fraud. Hugh Berkson has extensive experience litigating claims related to 401(k) and other tax-deferred investments or plans. He has also litigated specific ERISA claims previously.

Motion For Fees, Expenses, and Incentive Award

43. As contemplated in the settlement negotiations and the Motion for Preliminary Approval (ECF 63), Plaintiff is filing under separate cover a motion for an Award of Attorney's Fees and Expenses, Settlement Administration Costs, and Case Contribution Award for Plaintiff.

²*Aleem v. Pearce & Durick*, Case No. 1:15-cv-85 (D.N.D); and *Yao-Yi Liu et al. v. Wilmington Trust Company* 6:14-CV-06631 EAW (W.D.N.Y.).

44. Said motion is supported by the individual declarations from undersigned counsel, local counsel, and Plaintiff Calvin McCutchan.

Exhibits

45. Attached hereto as Exhibit A is a true and correct copy of the Settlement Agreement.

46. Attached hereto as Exhibit B is a true and correct copy of the Declaration of Hugh Berkson of McCarthy, Lebit, Crystal & Liffman Co., LPA.

47. Attached hereto as Exhibit C is a true and correct copy of the Declaration of Alan Rosca of Rosca Scarlato LLC.

48. Attached hereto as Exhibit D is a true and correct copy of the Declaration of John Burke of John Sheridan Burke Law LLC.

49. Attached hereto as Exhibit E is a true and correct copy of the Declaration of Plaintiff Calvin McCutchan the proposed Class Representative.

50. Attached hereto as Exhibit F is a true and correct copy of the Declaration of Cornelia Vieira of Strategic Claims Services, which includes as attachments (1) the CAFA Notice, (2) the Class Notice, and (3) the Strategic Claims Services Brochure.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 9th day of January 2023 in Cleveland, Ohio.

**MCCARTHY, LEBIT, CRYSTAL
& LIFFMAN CO., L.P.A.**

/s/ Hugh D. Berkson

Hugh D. Berkson (*admitted pro hac vice*)

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Telephone (216) 696-1422

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ROSCA SCARLATO LLC

/s/ Alan L. Rosca

Alan L. Rosca (*admitted pro hac vice*)

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Beachwood, OH 44122

Telephone: (216) 946-7070

Email: arosca@rscounsel.law

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January 2023, a copy of the foregoing was filed electronically with the Court. Notice of this filing will be sent to all parties registered for electronic service by operation of the Court's electronic filing system. The parties may access the filing through the Court's system.

Respectfully submitted,

/s/ Hugh D. Berkson
Hugh D. Berkson (OH 0063997)

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CALVIN McCUTCHAN,

Plaintiff,

vs.

CORIAN T OPERATIONS, INC.,
INFINERA CORPORATION, CORIAN T
401(k) PLAN, and DOES 1-20,

Defendants.

Case No. 1:20-cv-00561 (CPK)

SETTLEMENT AGREEMENT AND RELEASE

This Agreement is entered into on November 2, 2022, by and between Plaintiff, on behalf of himself, the Class, and the Plan, on the one hand, and Defendant, on the other hand, in consideration of the promises, covenants, and agreements herein described, and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

The capitalized terms used in the preceding sentence and in this Agreement are defined in Part I, below.

I. DEFINITIONS

1.1. “Action” shall mean the lawsuit titled *Calvin McCutchan v. Coriant Operations, Inc., et al.* (Northern District of Illinois Case No. 1:20-cv-00561-CPK).

1.2. “Administration Costs” shall mean: (a) all costs and expenses associated with the production and dissemination of the Notice; (b) all costs incurred by the Settlement Administrator in administering and effectuating this Settlement, including, but not limited to, the costs of obtaining contact and account information for Class Members and distributing the Settlement Amount, which

costs are necessitated by performance and implementation of this Agreement and any court orders relating thereto; and (c) all fees charged by the Settlement Administrator.

1.3. “Agreement” shall mean this Settlement Agreement and Release.

1.4. “Attorney’s Fees and Expenses” shall mean any and all attorney’s fees, costs, and expenses of Class Counsel for their past, present, and future work, efforts, and expenditures in connection with the Action and Settlement.

1.5. “Case Contribution Award” shall have the meaning ascribed to it in Section 7.1.

1.6. “Class” shall mean the class certified by the Court pursuant to Sections 2.1 and 2.2, consisting of all participants in the Plan, or their beneficiaries, who experienced a loss due to liquidation at market value of their GGF investments.

1.7. “Class Counsel” shall mean: Hugh D. Berkson of McCarthy, Lebit, Crystal & Liffman Co., L.P.A. and Alan L. Rosca of Rosca Scarlato LLC.

1.8. “Class Member” in the singular shall mean an individual member of the Class and “Class Members” in the plural shall mean all members of the Class.

1.9. “Complaint” shall mean the operative complaint in the Action at the relevant time, including, without limitation, the Second Amended Complaint when it has been filed with the Court.

1.10. “Court” shall mean the Honorable Charles P. Kocoras of the United States District Court for the Northern District of Illinois.

1.11. “Defendant” shall mean Infinera Optical Networks, Inc. (formerly known as Coriant Operations, Inc.).

1.12. “Defendant’s Counsel” shall mean R. Bradford Huss, Clarissa A. Kang, and Dylan D. Rudolph of Trucker Huss, APC.

1.13. “Defendant Released Parties” shall mean Defendant, Infinera, and Prudential, and each of their predecessors, successors, shareholders, current and former parents, subsidiaries, affiliates, divisions, related companies, assigns, current and former officers, directors, employees, trustees, fiduciaries, committees (including, but not limited to, the Plan’s Investment Committee and Administrative Committee, with the exception of the Independent Fiduciary), investment consultants, recordkeepers (including the Recordkeeper), investment managers, administrators, actuaries, agents, insurers, representatives, vendors, attorneys, descendants, dependents, beneficiaries, marital community, heirs, executors, representatives, and administrators of the entities and individuals identified in this Section 1.13.

1.14. “Effective Date” shall mean: (a) the date upon which the applicable period to appeal the Final Approval Order and Judgment has expired, if no appeal is taken during such period; or (b) if, during the appeals period, an appeal is taken from such Final Approval Order and Judgment, the date upon which all appeals, including further petitions for review, rehearing, or certiorari, and any proceedings resulting therefrom, have been finally disposed of, or the date upon which the applicable period to initiate all such further petitions or proceedings has expired. The Parties shall agree in writing when the Effective Date has occurred, and any dispute shall be resolved by the Court. It is expressly agreed by the Parties and their counsel that no Party intends this Section 1.14 or any other part of this Agreement to establish or acknowledge that anyone is entitled to or has the right to appeal from the Final Approval Order and Judgment.

1.15. “Escrow Account” shall mean an account at an established Financial Institution agreed upon by the Parties that is established for the deposit of the Settlement Amount and amounts relating to it, including, but not limited to, any interest earned on investment of the Settlement Amount.

1.16. “Escrow Agent” shall mean the entity approved by the Parties to act as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Agreement.

1.17. “Fee and Expense Application” shall mean the petition to be filed by Class Counsel seeking approval of an award of Attorney’s Fees and Expenses.

1.18. “Final Approval Hearing” shall mean the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Agreement should receive final approval by the Court. The Parties will request that the Final Approval Hearing be scheduled for a date no earlier than ninety (90) calendar days after the entry of the Preliminary Approval Order.

1.19. “Final Approval Order and Judgment” shall mean a final order and judgment entered by the Court after the Final Approval Hearing granting its approval of the Settlement.

1.20. “Financial Institution” shall mean Huntington Bank, the institution at which the Escrow Account is established.

1.21. “FAC” shall mean Plaintiff’s First Amended Complaint, which is docket entry 28 in the Action.

1.22. “GGF” shall mean the Gibraltar Guaranteed Fund offered by PRIAC and included as one of the Plan’s investment options during the relevant period.

1.23. “Independent Fiduciary” shall mean the independent fiduciary that Defendant selects to review the Settlement independently on behalf of the Plan (subject to the consent of Plaintiff, which consent shall not be unreasonably withheld).

1.24. “Independent Fiduciary Fees and Costs” shall mean all fees, costs, and expenses of the Independent Fiduciary. The Independent Fiduciary Fees and Costs shall be paid from the

Settlement Fund after such funds are deposited with the Escrow Agent and upon receipt of an invoice from the Independent Fiduciary.

1.25. “Infinera” shall mean Infinera Corporation.

1.26. “Net Settlement Fund” shall mean the Settlement Fund minus all Settlement Administration Costs, Independent Fiduciary Fees and Costs, Attorney’s Fees and Expenses, Case Contribution Award, Taxes and Tax-Related Costs, and any other deductions and payments from the Settlement Fund under the terms of this Agreement or as the Court may allow.

1.27. “Notice” shall mean the notice to be provided directly to Class Members pursuant to Section 2.5 and made available on the Settlement Website and the website of Class Counsel.

1.28. “Parties” in the plural shall mean Plaintiff and Defendant and “Party” in the singular shall mean one of the Parties.

1.29. “PB&T” shall mean Prudential Bank & Trust, FSB.

1.30. “Plaintiff” shall mean Plaintiff Calvin McCutchan, individually and on behalf of the Class and the Plan.

1.31. “Plan” shall mean the Coriant 401(k) Plan.

1.32. “Plan of Allocation” shall mean the framework for allocating the Settlement Fund that is approved by the Court.

1.33. “Preliminary Approval Order” shall mean an order entered by the Court preliminarily approving the Settlement, pursuant to Section 2.2.

1.34. “PRIAC” shall mean Prudential Retirement Insurance and Annuity Company.

1.35. “Prudential” shall mean Prudential Financial, Inc. and each of its affiliates, including but not limited to PRIAC and PB&T.

1.36. “Recordkeeper” shall mean Prudential, with respect to the Plan, and/or Fidelity Management Trust Company, with respect to the Infinera 401(k) Plan.

1.37. “Released Claims” shall be any and all actual or potential claims (including any Unknown Claims), actions, causes of action, demands, obligations, losses, or liabilities (including claims for attorney’s fees, expenses, or costs), for monetary, injunctive, and any other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment arising out of or in any way related to: (a) the conduct alleged in or that could have been alleged in the Complaint by any Class Member, whether or not the conduct was actually included as claims for relief in the Complaint; (b) PRIAC’s termination of the Plan’s participation in the GGF; (c) the liquidation of the Plan’s investment in the GGF by PRIAC; and (d) the approval by the Independent Fiduciary of the Settlement. The Released Claims shall not include claims to enforce the covenants or obligations set forth in this Agreement. With respect to the Released Claims, it is the intention of the Plaintiff and all other Class Members and the Plan to expressly waive to the fullest extent of the law: (a) the provisions, rights, and benefits of **Section 1542 of the California Civil Code, which provides that “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”**; and (b) the provisions, rights, and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

1.38. “Settlement” shall mean the compromise and resolution embodied in this Agreement.

1.39. “Settlement Administrator” shall mean Strategic Claims Services.

1.40. “Settlement Amount” shall mean one million dollars (\$1,000,000.00) that Defendant will pay or cause to be paid to the Settlement Fund, which shall represent Defendant’s entire monetary obligations with regard to the Settlement.

1.41. “Settlement Fund” shall have the meaning set forth in Section 3.1(b).

1.42. “Settlement Website” shall have the meaning set forth in Section 2.6.

1.43. “Taxes” shall have the meaning set forth in Section 3.1(i).

1.44. “Tax-Related Costs” shall have the meaning ascribed to it in Section 3.1(i).

1.45. “Unknown Claims” shall mean any Released Claims that Plaintiff or any Class Members do not know or suspect to exist at the time of the release of the Defendant Released Parties, including claims which, if known by them, might have affected their settlement with Defendant and release of the Defendant Released Parties, or might have affected their decision not to object to this Settlement. Plaintiff or any Class Member may later discover facts 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 Plaintiff and all Class Members, upon the date of the Court’s entry of the Final Approval Order and Judgment, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiff and all Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged that the foregoing waiver was bargained for and is a key element of the Settlement of which their release and waiver of Unknown Claims is a part.

II. SETTLEMENT APPROVAL

2.1. *Motion for Leave to Amend FAC.* No later than November 3, 2022, Plaintiff shall move the Court for leave to file a Second Amended Complaint and amend his Class claims such that

the putative Class will be a non-opt out Class and will consist of: All participants in the Plan who experienced a loss due to liquidation at market value of their GGF investments, any beneficiary of a deceased person who was such a participant in the Plan, and any alternate payee in the case of a person who was such a participant in the Plan and whose account in the Plan was subject to a qualified domestic relations order (“QDRO”). Excluded from the Class are Defendant’s current officers and directors, and all individuals who were members of the Plan’s Investment Committee or Administrative Committee at any time from July 23, 2018, through October 15, 2018. Defendant will not object to Plaintiff’s motion for leave to amend under the terms of this Section 2.1.

2.2. *Motions for Preliminary Approval and for Class Certification for Settlement Purposes Only.* No later than November 3, 2022, Plaintiff shall move the Court for preliminary approval of the Settlement and for certification of the Class for settlement purposes only. Defendant will not oppose Plaintiff’s motions for preliminary approval of the Settlement and for class certification for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a), and 23(b)(1) or (b)(2) but reserves the right to make submissions related to the motions. If the Court does not issue the Final Approval Order and Judgment, then no Class shall be deemed to have been certified by or as a result of this Agreement, Defendant shall not be deemed to have admitted the propriety of certification of the Class under any provisions of Federal Rule of Civil Procedure 23, and the Action shall for all purposes revert to its status as of the day immediately prior to November 2, 2022.

2.3. *Rights of Exclusion.* Class Members shall not be permitted to exclude themselves from the Class.

2.4. *Right to Object.* Class Members shall be permitted to object to the Settlement. Requirements for filing an objection shall be set forth in the Preliminary Approval Order and in the Notice.

2.5. Class Notice. Within thirty (30) calendar days of the entry of the Preliminary Approval Order or as may be modified by the Court, the Settlement Administrator shall send the Notice by electronic mail (if available) and first-class mail to the Class Members. The Notice shall be sent to the last known electronic mail address and last known mailing address of the Class Members that are reasonably obtainable from Infinera, and/or the Recordkeeper. The Settlement Administrator shall update mailing addresses through the National Change of Address database before mailing (with all returned mail skip-traced and promptly re-mailed).

2.6. Settlement Website. Within thirty (30) calendar days of the entry of the Preliminary Approval Order and no later than the first date that the e-mailing or the mailing of the Notice occurs, or as may be extended by the Court on application of the Parties, the Settlement Administrator shall establish a case landing page on its website containing the Notice and this Agreement and its exhibits (the “Settlement Website”). The Notice will identify the web address of the Settlement Website.

2.7. Approval of Settlement by the Independent Fiduciary.

a) The Independent Fiduciary shall review the Settlement and provide any requested authorizations, including the authorization required by Employee Retirement Income Security Act of 1974, as amended (“ERISA”) Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632 (Dec. 31, 2003), as amended by 75 Fed. Reg. 33830 (June 15, 2010). The Parties shall comply with reasonable requests for information made by the Independent Fiduciary.

b) At least thirty (30) calendar days prior to the Final Approval Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement and given a release in its capacity as fiduciary of the Plan for and on behalf of the Plan, on the terms set forth in Section 5.1, in accordance with Prohibited Transaction Class Exemption 2003-39. Should the Independent Fiduciary fail to approve and authorize the Settlement or

fail to give a release on behalf of the Plan, the Agreement shall be terminable, pursuant to Section 8.2.

2.8. Class Action Fairness Act Notice. The Settlement Administrator, on behalf of Defendant and at Defendant's cost, shall comply with the notice requirements of 28 U.S.C. § 1715, and pursuant to the Preliminary Approval Order, shall file a notice with the Court confirming compliance at least thirty (30) calendar days prior to the Final Approval Hearing.

2.9. Motion for Final Approval. Plaintiff shall move the Court for final approval of the Settlement no later than the deadline set by the Court in the Preliminary Approval Order, or as may be extended by the Court. On or after the date set by the Court for the Final Approval Hearing pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court shall determine, among other things: (a) whether to enter the Final Approval Order and Judgment finally approving the Settlement; and (b) what, if any, Case Contribution Awards and Attorney's Fees and Expenses should be awarded to Plaintiff and Class Counsel, respectively, pursuant to Sections 7.1 and 7.2 of this Agreement.

III. PAYMENTS TO THE CLASS

3.1. The Settlement Amount.

a) In consideration of all of the promises and agreements set forth in this Agreement, Defendant will pay, or cause to be paid, the Settlement Amount specified in Section 1.40. None of the other Defendant Released Parties shall have any obligation to contribute financially to this Settlement. It is understood and agreed by the Parties that, by paying the Settlement Amount, Defendant does not agree with or in any way admit and shall not be deemed to agree with or in any way admit, any of Plaintiff's or Class Counsel's theories regarding Defendant's alleged liability in the Action, including that any of Defendant's prior or existing actions or practices are in violation of any federal or state laws, statutes, or regulations.

b) Defendant shall pay, or cause to be paid, the Settlement Amount as set forth in section 1.40 in two segments, and the total funding, in the aggregate, together with any interest and investment earnings thereon, shall constitute the “Settlement Fund.” First, Defendant shall pay, or cause to be paid, Fifty Thousand dollars (\$50,000.00) of the Settlement Amount, with that amount to be deposited by wire transfer into the Escrow Account within fifteen (15) calendar days of the entry of the Preliminary Approval Order to fund any Administration Costs and Independent Fiduciary Fees and Costs that arise before the Court’s entry of the Final Approval Order and Judgment. Second, Defendant shall pay, or cause to be paid, the remaining portion of the Settlement Amount, to be deposited by wire transfer into the Escrow Account within fifteen (15) calendar days following the Court’s entry of the Final Approval Order and Judgment, subject to the provisions of Section 8.4.

c) The Settlement Fund shall be used solely for the purposes set forth in Section 3.1(j).

d) Subject to Court approval and oversight, the Escrow Account will be controlled by the Settlement Administrator. Neither Defendant, Defendant’s Counsel, the Defendant Released Parties, Plaintiff, nor Class Counsel shall have any liability whatsoever for the acts or omissions of the Settlement Administrator. The Settlement Administrator shall not disburse the Settlement Amount or any portion of the Settlement Fund except as provided for in this Agreement, by an order of the Court, or with prior written agreement of Class Counsel and Defendant’s Counsel.

e) The Settlement Administrator is authorized to execute transactions on behalf of Class Members that are consistent with the terms of this Agreement and with orders of the Court.

f) All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with this Agreement.

g) The Settlement Administrator may, to the extent practicable and prudent, invest the Settlement Fund in discrete and identifiable 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 Settlement Administrator shall maintain records identifying in detail each instrument in which the Settlement Fund or any portion thereof has been invested and identifying the precise location (including any safe deposit box number) and form of holding of each such instrument. Neither the Settlement Fund nor any portion thereof shall be commingled with any other monies in any instruments. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Section 3.1(g) shall be maintained by the Settlement Administrator, and not commingled with any other monies, in the Escrow Account. The Settlement Administrator and Class Members shall bear all risks related to investment of the Settlement Fund.

h) The Settlement Fund is intended to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Settlement Fund Escrow Account and paying from the Settlement Fund any Taxes owed with respect to the Settlement Fund. Defendant agrees to provide the Settlement Administrator with the statement described in U.S. Treasury Regulation §1.468B-3(e). Neither Defendant,

Defendant's Counsel, the Defendant Released Parties, Plaintiff, nor Class Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account.

i) All taxes on the income of the Settlement Fund ("Taxes") and expenses and costs incurred in connection with the taxation of the Settlement Fund (including expenses of tax attorneys and accountants) ("Tax-Related Costs") shall be timely paid by the Settlement Administrator out of the Escrow Account.

j) The Settlement Fund will be used to pay the following amounts associated with the Settlement:

- (1) Compensation to Class Members determined in accordance with Section 3.2;
- (2) Any Case Contribution Award approved by the Court;
- (3) All Attorney's Fees and Expenses approved by the Court;
- (4) Independent Fiduciary Fees and Costs;
- (5) Administration Costs; and
- (6) Taxes and Tax-Related Costs.

3.2. *Distribution to Class Members.*

a) The Net Settlement Fund will be distributed to Class Members in accordance with the Plan of Allocation.

b) Notwithstanding anything else in this Agreement, any revisions to the Plan of Allocation that would increase the Settlement Amount or require Defendant, Infinera, or their affiliates to incur additional expenses or costs not required under this Agreement or to provide data not reasonably available shall be deemed a material alteration of this Agreement and shall entitle Defendant, at its election, to terminate the Agreement.

c) Class Members who receive a check from the Settlement Administrator under the Plan of Allocation must cash their checks within ninety (90) calendar days of issuance. If they do not do so, the checks will be void, and the Settlement Administrator shall be instructed to return any such funds to the Settlement Fund pursuant to Section 3.4. This limitation shall be printed on the face of each check. Notwithstanding these requirements, the Settlement Administrator shall have the authority to reissue checks to Class Members where it determines there is good cause to do so, provided that doing so will not compromise the Settlement Administrator's ability to implement the Plan of Allocation. The voidance of checks shall have no effect on the Class Members' release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

3.3. *Responsibility for Taxes on Distribution.* Each Class Member who receives a payment under this Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendant, Defendant's Counsel, the Defendant Released Parties, Class Counsel, and the Settlement Administrator harmless from: (a) any tax liability, including without limitation penalties and interest, related in any way to payments or credits under the Agreement, and (b) the costs (including, without limitation, fees, costs and expenses of attorneys, tax advisors, and experts) of any proceedings (including, without limitation, any investigation, response, and/or suit), related to such tax liability.

3.4. *Treatment of Undistributed Funds and Uncashed Checks.* If any of the Net Settlement Fund remains by reason of uncashed checks, or otherwise, after the Settlement Administrator has made reasonable and diligent efforts to have Class Members 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 ninety (90) calendar days after the initial

distribution of such funds shall be used: (i) first, to pay any amounts mistakenly omitted from the initial distribution to Class Members; (ii) second, to pay any additional Notice and Administrative Expenses incurred in administering the Settlement; and (iii) finally, to make a second distribution to Class Members 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, unless the costs of such second distribution exceeds the amount to be distributed. If three (3) 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 Settlement Administrator has made reasonable and diligent efforts to have Class Members 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 Class Counsel and approved by the Court.

3.5. Administration Costs. The Administration Costs shall be paid from the Settlement Fund. The Settlement Administrator will reserve from the Settlement Fund the estimated Administration Costs. Within thirty (30) days after disbursement of the entire Settlement Fund as provided by this Agreement and the Plan of Allocation, the Settlement Administrator shall provide Plaintiff's counsel with a final report of the settlement administration and a detailed accounting of any Administration Costs.

3.6. Entire Monetary Obligation. Notwithstanding anything else in this Agreement, in no event shall Defendant be required to pay any amounts under this Agreement or otherwise, other than the Settlement Amount, as specified in Section 1.40. Aside from Defendant's obligation to pay or cause to be paid the Settlement Amount, as specified in Section 1.40, none of the Defendant Released Parties shall be required to pay any amounts under this Agreement or otherwise related to the Settlement or Action.

IV. SETTLEMENT ADMINISTRATION

4.1. Defendant shall use reasonable efforts to cause Infinera and the Recordkeeper to provide to the Settlement Administrator, within twenty (20) calendar days of the entry of the Preliminary Approval Order, the participant data reasonably sufficient to effectuate the Notice, implement the Plan of Allocation, and distribute the Settlement Fund. Said data shall be delivered in a format reasonably useable by the Settlement Administrator. Defendant shall not otherwise be obligated to assist with effecting Notice, implementation of the Plan of Allocation, or distribution of the Settlement Fund.

4.2. The Settlement Administrator shall administer the Settlement subject to the supervision of Class Counsel and the Court as circumstances may require.

4.3. Defendant, Defendant's Counsel, and the Defendant Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to:

- a)** Any act, omission, or determination of the Settlement Administrator, Class Counsel, or designees or agents of Class Counsel or the Settlement Administrator;
- b)** The management, investment, or distribution of the Settlement Fund; or
- c)** The determination, administration, calculation, or payment of any claims asserted against the Settlement Fund.

4.4. The Settlement Administrator shall provide to Class Counsel upon request, a full accounting of all expenditures made in connection with the Settlement, including Administration Costs (as noted in Section 3.5), and any distributions from the Settlement Fund.

4.5. The Settlement Administrator shall provide such information as may be reasonably requested by Plaintiff, Defendant, Defendant's Counsel, or Class Counsel relating to administration of this Agreement.

V. RELEASES, COVENANTS, AND JUDICIAL FINDINGS

5.1. *Release of Defendant Released Parties.* Subject to Part VIII of this Agreement, upon and through the date of the Court's entry of the Final Approval Order and Judgment, Plaintiff and each Class Member (on behalf of themselves and their current and former beneficiaries, heirs, descendants, dependents, marital community, administrators, executors, representatives, predecessors, successors, and assigns), and the Plan (by and through the Independent Fiduciary pursuant to Section 2.7(b)) absolutely and unconditionally release and forever discharge the Defendant Released Parties from all Released Claims.

5.2. *Covenant Not to Sue.* Upon and through the date of the Court's entry of the Final Approval Order and Judgment, Plaintiff, Class Members, and Class Counsel (on behalf of themselves and any successors-in-interest) shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of the Defendant Released Parties from any and all Released Claims.

Plaintiff and Class Members further agree that, outside of the Action, none of them will institute, maintain, prosecute, sue, or assert in any claim, action, or proceeding, whether individually, in a representative capacity, or on behalf of the Plan, against the Defendant Released Parties based on conduct subsequent to, or any liability or damages claimed to arise or occur after, the date of the Court's entry of the Preliminary Approval Order, that were asserted or could have been asserted in the Complaint arising out of the facts and circumstances giving rise to this Action, the settlement thereof, and/or the administration of said settlement.

Should Plaintiff or Class Members breach the terms of this Section 5.2, the Defendant Released Parties may recover from the breaching persons any reasonable attorney's fees and costs that any of them may incur to enforce the provisions of this Section 5.2.

5.3. Defendant's Releases of Others. Upon and through the date of the Court's entry of the Final Approval Order and Judgment, Defendant (on behalf of itself and any successors-in-interest) shall be deemed to have, and by operation of the Final Approval Order and Judgment, shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of the Plaintiff, Class Members, and Class Counsel from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorney's fees and costs, whether under local, state, or federal law, whether by statute, contract, common law or equity, whether brought in an individual, representative or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, relating to the Action.

5.4. Taxation of Settlement Fund. Plaintiff and Class Members acknowledge that the Defendant Released Parties have no responsibility for any taxes due on funds deposited in or distributed from the Settlement Fund, or on any funds that Plaintiff, Class Members, or Class Counsel receive from the Settlement Fund, including through any Case Contribution Awards or Attorney's Fees and Expenses award, as applicable.

5.5. Use of Settlement Administrator Information. Class Counsel, Defendant's Counsel, and Defendant shall have access to information held by the Settlement Administrator given that such information is necessary to administer this Settlement.

5.6. Use of Information. Class Counsel and their agents, as well as the Settlement Administrator, shall use any confidential information provided by Defendant, Infinera, Prudential, or the Recordkeeper pursuant to this Agreement solely for the purpose of providing the Notice and administering this Settlement and for no other purpose. Such confidential information shall be marked "Confidential" and treated as such.

VI. REPRESENTATIONS AND WARRANTIES

6.1. *Parties' Representations and Warranties.* The Parties, and each of them, represent and warrant as follows, and each Party acknowledges that each other Party is relying on these representations and warranties in entering into this Agreement:

a) The Parties have diligently investigated the claims in this Action; that they are voluntarily and knowingly entering into this Agreement as a result of arm's-length negotiations among their counsel; that in executing this Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently-selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and that, except as provided in this Agreement, they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party. Each Party assumes the risk of mistake as to facts or law;

b) The Parties have carefully read the contents of this Agreement and this Agreement is signed freely by each signatory executing the Agreement on behalf of the applicable Party. The Parties, and each of them, further represent and warrant to each other that they have made such investigation of the facts pertaining to this Settlement, this Agreement, and all of the matters pertaining thereto, as they deem necessary;

c) Plaintiff has not assigned or otherwise transferred any interest in any Released Claim against any Defendant Released Parties, and that he shall not assign or otherwise transfer any interest in any Released Claims; and

d) Plaintiff, on behalf of himself and the Class, will have no surviving claims or causes of action against any of the Defendant Released Parties for any of the Released Claims, from and after the Effective Date.

6.2. *Signatories' Representations and Warranties.* Each counsel or other person executing this Agreement on behalf of any Party represents and warrants that such person has the authority to do so.

VII. MONETARY PAYMENTS

7.1. *Case Contribution Award.*

a) Plaintiff Calvin McCutchan may seek a Case Contribution Award subject to Court approval ("Case Contribution Award"). Any Case Contribution Award approved by the Court shall be paid within thirty (30) calendar days of the Effective Date. The Case Contribution Award shall be paid by the Settlement Administrator solely out of the Settlement Fund and shall be deducted (to the extent approved by the Court) from the Settlement Fund on or after the Effective Date and prior to the distribution of the Settlement Fund to the Class Members. Plaintiff shall also be entitled to distribution under this Settlement pursuant to Section 3.2 as a Class Member.

b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of any application for the Case Contribution Award shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the Case Contribution Award, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

c) Other than the Settlement Amount, Defendant shall have no obligations whatsoever with respect to any Case Contribution Award to Plaintiff, which shall be payable solely out of the Settlement Fund.

7.2. *Attorney's Fees and Expenses.*

a) Class Counsel intends to submit a Fee and Expense Application seeking an award of attorney's fees, plus reasonable litigation expenses, at the appropriate time. Any amount awarded by the Court in response to such Fee and Expense Application shall be paid by the Settlement Administrator solely out of the Settlement Fund and shall be deducted (to the extent approved by the Court) from the Settlement Fund and paid to Class Counsel within thirty (30) calendar days of the Effective Date.

b) Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of the Fee and Expense Application to be paid out of the Settlement Fund shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the award of Attorney's Fees and Expenses, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

c) Other than the Settlement Amount, Defendant shall have no obligations whatsoever with respect to any Attorney's Fees and Expenses incurred by Class Counsel, which shall be payable solely out of the Settlement Fund.

VIII. CONTINGENCIES, EFFECT OF DISAPPROVAL, OR TERMINATION OF SETTLEMENT

8.1. This Agreement and the Settlement shall terminate and be cancelled if, within twenty (20) calendar days after any of the following events, one of the Parties provides all other Parties with written notification of an election to terminate the Settlement, provided that the Parties shall

first negotiate in good faith to attempt to cure any deficiency identified by the Court:

a) The Court declines to grant Plaintiff leave to amend the FAC as described under Section 2.1; or

b) The Court declines to provide preliminary approval of this Agreement, certify the Class as described under Section 2.2, or enter the Preliminary Approval Order in the form mutually agreed upon by counsel for Plaintiff and Defendant and submitted to the Court by counsel for Plaintiff, or the Preliminary Approval Order is vacated, reversed, or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date; or

c) The Court declines to provide final approval of this Agreement, or declines to enter, or materially modifies the contents of the Final Approval Order and Judgment Order in the form mutually agreed upon by counsel for Plaintiff and Defendant and submitted to the Court by counsel for Plaintiff; or

d) The Court's Final Approval Order and Judgment is vacated, reversed, or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date; or

e) The Effective Date does not get triggered for some other reason by December 31, 2024.

8.2. For purposes of this Agreement, no order of the Court, or modification or reversal on appeal of any order of the Court, solely concerning the administration of the Settlement or the persons performing such administrative functions, or the amount or award of any Attorney's Fees and Expenses or Case Contribution Award shall constitute grounds for cancellation or termination of the Agreement, provided that such order, modification, or reversal does not increase Defendant's

total financial obligation under this Settlement or impose injunctive relief against any Defendant Released Parties.

This Agreement and the Settlement shall terminate and be cancelled at the sole election of Defendant or Infinera if the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to approve the release on behalf of the Plan of the Released Claims. Alternatively, Defendant or Infinera has the option to waive this condition. Unless otherwise agreed by the Parties, either option is to be exercised in writing within the earlier of (a) ten (10) business days after the Parties' receipt of the Independent Fiduciary's written determination under Section 2.7, or (b) three (3) business days prior to the date set for the Final Approval Hearing.

8.3. This Agreement and the Settlement shall terminate and be cancelled if: (a) any federal or state authorities object to, or request material modifications to, the Agreement; and (b) within twenty (20) business days after the deadline set in the Preliminary Approval Order for such objections or requests, or within twenty (20) business days of receiving any such objection or request, if later, Defendant or Infinera provide written notice of their election to terminate the Settlement provided that the Parties shall first negotiate in good faith to attempt to cure any deficiency identified by such objection or request.

8.4. If, for any reason, this Agreement is terminated or fails to become effective, then:

a) The Parties shall be deemed to have reverted to their respective status in the Action as of November 2, 2022. The Action shall then resume proceedings in the Court, and, except as otherwise expressly provided in this Agreement, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.

b) Class Counsel and Defendant's Counsel shall within ten (10) business days after the date of termination of the Agreement jointly notify the Financial Institution in writing to return to Defendant, or its designee or designees, the full amount contained in the

Settlement Fund, with all interest and income earned thereon, after deduction of any amounts earlier disbursed and/or incurred by the Settlement Fund as of the termination, and direct the Financial Institution to effect such return within fourteen (14) calendar days after such notification. Prior to the return of amounts contemplated by this Section 8.4(b), the Financial Institution shall fully and finally fulfill and set aside for any and all tax obligations of the Settlement Fund as set forth in Section 3.1(i). Defendant shall have no past, present, or future liability whatsoever for any such tax obligations.

c) Part VIII of this Agreement, and its provisions, shall survive any termination of this Agreement and the Settlement, as will Sections 3.3, 4.3, 5.4, and 5.6.

IX. NO ADMISSION OF WRONGDOING

9.1. *No Admission of Wrongdoing.* The Parties understand and agree that this Agreement embodies a compromise settlement of disputed claims, and that nothing in this Agreement, including the furnishing of consideration for this Agreement, shall be deemed to constitute any finding or admission of any wrongdoing or liability by any of the Defendant Released Parties, or give rise to any inference of wrongdoing or liability in the Action or any other proceeding. This Agreement and the consideration provided hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. Defendant Released Parties specifically deny any such liability or wrongdoing, and Defendant states that it is entering into the Agreement solely to eliminate the burden and expense of protracted litigation. Further, Plaintiff has concluded that the terms of this Agreement are fair, reasonable, and adequate to the Plan, himself, and the Class given, among other things, the inherent risks, difficulties, and delays in complex ERISA lawsuits, like the Action. Neither the fact of this Settlement nor the terms of this Agreement shall be used, offered, or received in evidence in any

action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement, whether affirmatively or defensively.

X. MISCELLANEOUS

10.1. Waiver. The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

10.2. Dispute Resolution. If a dispute arises regarding compliance with any of the provisions of this Agreement, it shall first be mediated in non-binding mediation by a mediator mutually agreeable to the Parties. The cost of any mediation shall be split equally between Plaintiff, on the one hand, and Defendant, on the other hand. If mediation is unsuccessful, then any remaining disputes regarding compliance with this Agreement shall be heard only by this Court.

10.3. Entire Agreement. This Agreement is the entire agreement among the Parties, and it supersedes any prior agreements, written or oral, between the Parties. This Agreement cannot be altered, modified, or amended except through a writing executed by either (a) Plaintiff and Defendant, or (b) Class Counsel and Defendant's Counsel.

10.4. Construction of Agreement. This Agreement shall be construed to effectuate the intent of the Parties to resolve all disputes encompassed by the Agreement. The Parties have participated in the drafting of this Agreement, and any ambiguity shall not be resolved by virtue of a presumption in favor of any Party. The Agreement was reached at arm's length by the Parties represented by counsel. Neither of the Parties shall be considered to be the drafter of this Agreement or any provision hereof for the purposes of any statute, case law, or rule of interpretation or construction.

10.5. Principles of Interpretation. The following principles of interpretation apply to this Agreement:

- a) The headings of this Agreement are for reference only and do not affect in any way the meaning or interpretation of this Agreement.
- b) Definitions apply to the singular and plural forms of each term defined.
- c) Definitions apply to the masculine, feminine, and neutral genders of each term defined.
- d) References to a person are also to the person's permitted successors and assignees.
- e) Whenever the words "include," "includes," or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

10.6. Executed in Counterparts. This Agreement may be executed in counterparts, each of which shall be considered the same as if a single document had been executed. The Agreement shall be deemed executed by all Parties when such counterparts have been signed by each of the Parties' counsel and delivered to the other Parties. Counterpart copies of signature pages, whether delivered in original, by electronic mail in .pdf format, by DocuSign, or by facsimile, taken together, shall all be treated as originals and binding signatures.

10.7. Notices. Unless otherwise provided herein, any notice, request, instruction, application for Court approval, or application for Court order sought in connection with the Agreement, shall be in writing and delivered personally or sent by certified mail or overnight delivery service, postage prepaid, with copies by facsimile or e-mail to the attention of Class Counsel or Defendant's Counsel, as applicable (as well as to any other recipients that a court may specify). Parties may change the person(s) to whom such notices should be directed by giving

notice pursuant to this Section 10.7. As of the date hereof, the respective representatives are as follows:

For Defendant:

R. Bradford Huss
Clarissa A. Kang
TRUCKER HUSS, APC
135 Main Street, 9th Floor
San Francisco, CA 94105
Telephone: (415) 788-3111
Email: bhuss@truckerhuss.com
ckang@truckerhuss.com

For Plaintiff:

Hugh D. Berkson
McCARTHY, LEBIT, CRYSTAL
& LIFFMAN CO., L.P.A.
1111 Superior Avenue East, Suite 2700
Cleveland, OH 44114
Telephone: (216) 696-1422
Email: hdb@mccarthylebit.com

Alan L. Rosca
ROSCA SCARLATO LLC
23250 Chagrin Blvd., Suite 100
Beachwood, OH 44122
Telephone: 216-946-7070
Email: arosca@rscounsel.law

10.8. *Extensions of Time.* The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

10.9. *Governing Law.* Except to the extent covered by ERISA, this Agreement shall be governed by and construed in accordance with the laws of Illinois without giving effect to any conflict of law provisions that would cause the application of the laws of any jurisdiction other than Illinois.

10.10. *Fees and Expenses.* Except as otherwise expressly set forth herein, each Party shall pay all fees, costs, and expenses incurred in connection with the Action, including fees, costs, and expenses incident to his or its negotiation, preparation, or compliance with this Agreement, and

including any fees, expenses, and disbursements of its counsel, accountants, and other advisors. Nothing in this Agreement shall require Defendant to pay any monies other than as expressly provided herein.

10.11. Communication With Plan Participants. Nothing in this Agreement or Settlement shall prevent or inhibit the Defendant Released Parties' ability to communicate with Plan participants or Class Members.

10.12. Retention of Jurisdiction. The Parties shall request that the Court retain jurisdiction of this matter after the Effective Date and enter such orders as necessary or appropriate to effectuate the terms of the Agreement.

IN WITNESS WHEREOF, the Parties, Class Counsel, and Defendant's Counsel named below have signed this Agreement on the dates shown below and, by signing below, the Parties, Class Counsel, and Defendant's Counsel attest that this Agreement is executed voluntarily and of their own free will:

DATED: November 2, 2022

Calvin McCutchan

Calvin McCutchan

DATED: November _____, 2022

Infinera Optical Networks, Inc. (formerly known as Coriant Operations, Inc.)

By: _____

Title: _____

including any fees, expenses, and disbursements of its counsel, accountants, and other advisors. Nothing in this Agreement shall require Defendant to pay any monies other than as expressly provided herein.

10.11. Communication With Plan Participants. Nothing in this Agreement or Settlement shall prevent or inhibit the Defendant Released Parties' ability to communicate with Plan participants or Class Members.

10.12. Retention of Jurisdiction. The Parties shall request that the Court retain jurisdiction of this matter after the Effective Date and enter such orders as necessary or appropriate to effectuate the terms of the Agreement.

IN WITNESS WHEREOF, the Parties, Class Counsel, and Defendant's Counsel named below have signed this Agreement on the dates shown below and, by signing below, the Parties, Class Counsel, and Defendant's Counsel attest that this Agreement is executed voluntarily and of their own free will:

DATED: November ____, 2022

Calvin McCutchan

DATED: November 2, 2022

DocuSigned by:
David Teichmann
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Infinera Optical Networks, Inc. (formerly known as Coriant Operations, Inc.)

David L. Teichmann
Secretary

APPROVED AS TO FORM:

DATED: November 2, 2022



R. Bradford Huss
bhuss@truckerhuss.com
Clarissa A. Kang
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Dylan D. Rudolph
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TRUCKER ♦ HUSS
A Professional Corporation
135 Main Street, 9th Floor
San Francisco, CA 94105

Attorneys for Coriant Operations, Inc. (now known as Infinera Optical Networks, Inc.)

DATED: November _____, 2022

Hugh D. Berkson
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McCARTHY, LEBIT, CRYSTAL
& LIFFMAN CO., L.P.A.
1111 Superior Avenue East, Suite 2700
Cleveland, OH 44114
Attorneys for Plaintiff Calvin McCutchan

DATED: November _____, 2022

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Attorneys for Plaintiff Calvin McCutchan

APPROVED AS TO FORM:

DATED: November ____, 2022

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TRUCKER ♦ HUSS
A Professional Corporation
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San Francisco, CA 94105

Attorneys for Coriant Operations, Inc. (now known as Infinera Optical Networks, Inc.)

DATED: November ____, 2022

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Attorneys for Plaintiff Calvin McCutchan

DATED: November 2, 2022



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APPROVED AS TO FORM:

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DATED: November 2, 2022



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Attorneys for Plaintiff Calvin McCutchan

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CALVIN McCUTCHAN,

Plaintiff,

vs.

CORIAN OPERATIONS, INC.,
INFINERA CORPORATION, CORIAN
401(k) PLAN, and DOES 1-20,

Defendants.

Case No. 1:20-cv-00561 (CPK)

**DECLARATION OF HUGH D. BERKSON IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD**

1. I, Hugh D. Berkson, declare as follows:
2. I am a Principal of the law firm of McCarthy, Lebit, Crystal & Liffman Co., LPA. I submit this Declaration in support of Plaintiff's motion for attorneys' fees and expenses in connection with the services rendered, and costs and expenses incurred, for the above-captioned action (the "Action"). I make this declaration based on my personal knowledge of the matters set forth herein and can competently testify thereto.
3. I, along with my co-counsel Alan Rosca, served as Court-appointed Class Counsel in this matter and played a meaningful role advancing the litigation, handling all aspects of this Action from inception through settlement on behalf of the firms' client and class representative, Calvin McCutchan.
4. The chart below sets forth a summary of the McCarthy Lebit total hours and lodestar, computed at current rates, for the period from inception of the case through December 13, 2022. The total number of hours spent by McCarthy

Lebit's personnel is 290.40, with a current lodestar of \$98,677.50. The summary below was prepared from contemporaneous, daily time records regularly prepared and kept by the firm. In connection with its representation of Plaintiff in the action, McCarthy Lebit personnel did the following: investigated and researched potential causes of action; drafted the Complaint and amendments thereto; opposed Defendants' motion to dismiss; propounded discovery requests upon Defendants and reviewed the responses thereto; drafted the mediation statement and participated in the mediation; and, drafted pleadings seeking preliminary and, later, final approval of the parties' settlement. The hourly rates for McCarthy Lebit's attorneys and professional staff reflected below were the usual and customary hourly rates charged by the firm in similar complex litigation matters.

McCarthy Lebit Crystal & Liffman Co., LPA

Timekeeper	Professional Status	Hours	Rate	Total Lodestar
Hugh D. Berkson	P	212.60	\$400	\$85,040.00
Jay H. Salamon	P	17.40	\$375	\$ 6,525.00
Robert T. Glickman	P	1.10	\$500	\$ 550.00
Terry E. Graham III	C	12.70	\$100	\$ 1,270.00
Katherine McLaughlin	C	21.30	\$100	\$ 2,130.00
Laurie Wilde	PL	25.30	\$125	\$ 3,162.50
GRAND TOTAL:		290.40		\$98,677.50

Professional Status Legend

P Principal
C Law Clerk
PL Paralegal

5. The table above does not include time spent on the Plaintiff's motion for attorneys' fees and costs, or on further claims administration, which time McCarthy Lebit has not and will not seek reimbursement.
6. McCarthy Lebit has expended a total of \$6,152.52 in unreimbursed costs and expenses in connection with the prosecution of the Action from inception through and including December 13, 2022, as set forth in the chart below. The costs and exenses are reflected on McCarthy Lebit's books and records. They were incurred on behalf of Plaintiff by my firm and have not been reimbursed.

McCarthy, Lebit, Crystal & Liffman Co., LPA

Costs and Expenses	Amount
PACER docket and image search	\$ 8.00
JAMS mediation deposit	\$3,987.50
Travel expenses for mediation	\$2,157.02
Grand Total:	\$6,152.52

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of January, 2023, in Cleveland, Ohio.



Hugh D. Berkson

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CALVIN McCUTCHAN,

Plaintiff,

vs.

CORIAN OPERATIONS, INC.,
INFINERA CORPORATION, CORIAN
401(k) PLAN, and DOES 1-20,

Defendants.

Case No. 1:20-cv-00561 (CPK)

**DECLARATION OF ALAN ROSCA IN SUPPORT OF PLAINTIFF’S MOTION FOR
ATTORNEYS’ FEES AND EXPENSES, AND CASE CONTRIBUTION AWARD**

1. I, Alan Rosca, declare as follows:

2. I am a Principal of the law firm of Rosca Scarlato LLC (“Rosca Scarlato”)¹. I submit this Declaration in support of Plaintiff’s motion for attorneys’ fees and expenses in connection with the services rendered, and costs and expenses incurred, as well as an incentive award for Plaintiff, in the above-captioned action (the “Action”). I make this declaration based on my personal knowledge of the matters set forth herein and can competently testify thereto.

3. I, along with my co-counsel Hugh Berkson, have served as lead counsel and Court-appointed Class Counsel in this matter and played a key role driving the litigation, handling all aspects of this Action from inception through settlement on behalf of the firm’s client and lead plaintiff, Calvin McCutchan.

¹ Through the end of December 2021, attorneys Alan Rosca and Paul Scarlato, and their staff, Violet Bunici and Christine Lamar, were affiliated with the Goldman Scarlato & Penny PC (“GSP”) law firm. Their pre-January 2022 lodestar is included in this declaration, in addition to their lodestar for post-December 2021 period. GSP is not submitting any separate fee application so that there is no duplicative counting of any lodestar.

4. The chart below sets forth a summary of the Rosca Scarlato attorneys and staff total hours and lodestar, computed at current rates, for the period from inception of the case through January 6, 2023. The total number of hours spent by Rosca Scarlato's personnel is 507.48, with a current lodestar of \$376,599.60. The summary below was prepared from contemporaneous, daily time records regularly prepared and kept by the firm.

5. In connection with their representation of Plaintiff in the action, the Rosca Scarlato attorneys and staff did the following: debriefed the client, sought and obtained records from the client, and conducted extensive follow-up investigation at the outset of the case, including the review of i) publicly available information concerning the Plan and the GGF; (ii) governing Plan documents; (iii) annual Plan financial reports; and (iv) communications to Plan participants; conducted background searches and legal research; investigated and researched potential causes of action as they proceeded to outline legal pleadings; helped formulate the legal strategy and draft the Complaint and Amended Complaint, and conducted further legal research in connection with drafting the pleadings; worked on the opposition to Defendants' motion to dismiss; helped prepare discovery requests to Defendants and reviewed the responses thereto; participated in calls with opposing counsel regarding various legal issues concerning the Action; participated in various Court proceedings via teleconference; kept the lead plaintiff apprised of the various Court proceedings and the status of this Action; helped formulate the settlement negotiation strategy and draft the mediation statement; participated in the mediation and settlement negotiations; conducted further legal research regarding issues that came up during the settlement negotiations; helped negotiate the settlement agreement; and, drafted legal documents seeking preliminary and, later, final approval of the parties' settlement.

6. The hourly rates for Rosca Scarlato's attorneys and professional staff reflected below are the firm's usual and customary hourly rates.

Timekeeper	Professional Status	Hours	Rate	Total Lodestar
Alan Rosca	A	206.20	\$800	\$164,960.00
Paul Scarlato	A	121.20	\$825	\$99,990.00
Kathryn Weidner	A	180.08	\$620	\$111,649.60
GRAND TOTAL:		507.48		\$376,599.60

7. The table above does not include time spent on the Plaintiff's motion for attorneys' fees and costs and service award, or on further claims administration, for which time Rosca Scarlato has not and will not seek reimbursement.

8. The Rosca Scarlato attorneys have expended a total of \$7,235.99 in unreimbursed costs and expenses in connection with the prosecution of the Action from inception through and including January 6, 2023, as set forth in the chart below. The costs and expenses are reflected on their books and records, were incurred on behalf of Plaintiff and the class, and have not been reimbursed.

Costs and Expenses	Amount
Court Filing Fee	\$150.00
Mediator Fee- JAMS	\$4,314.84
Travel and Meals for Mediation	\$2,618.30
Postage/Delivery	\$120.00
Transcript	\$32.85
GRAND TOTAL:	\$7,235.99

9. The Rosca Scarlato attorneys' compensation for the services rendered on behalf of

the class is wholly contingent, and our work on this matter precluded legal work on other matters. Any fees and reimbursement of expenses will be limited to such amounts as are approved by this Court.

10. A true and correct copy of the Rosca Scarlato attorneys' resume demonstrating our experience prosecuting class action cases on behalf of plaintiffs who lost money as a result of was included in the papers submitted for Preliminary Approval. Examples of other cases the firm has litigated can be viewed online at <https://investorlawyers.org/>.

11. Plaintiff, a retiree with no prior litigation exposure, has diligently served as lead plaintiff and has made significant contributions to the litigation to the benefit of the Class. In particular, Plaintiff spent a significant amount of time working with Class Counsel at the outset of this matter to help identify key information and evidence to evaluate and support the claims in this case, and extensively discussed with counsel the salient facts needed to develop the legal theories in this case. Thereafter, Plaintiff reviewed the court filings and other important case documents, discussed the case and status of various proceedings with Counsel, and participated remotely in the settlement mediation. Based on the considerable time and effort the Plaintiff devoted to this litigation, and his willingness to step forward to represent other victimized class members, I believe that a service award to my client of \$5,000 is fair and reasonable, and respectfully request that such an award be approved.

12. Plaintiff contemporaneously submitted a sworn statement that summarizes his contributions to the pursuit of the claims in this Action, as a class representative. In brief, Mr. McCutchan spent 104 hours helping develop the case, discussing factual and legal theories with attorneys, reviewing the operative complaint, various other court filings, and other case materials, producing necessary documents for this case, and preparing for and participating in the settlement

mediation. Mr. McCutchan was consulted in connection with the negotiation and execution of the Settlement with Defendants, and unreservedly supports its approval by the Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of January, 2023, in Cleveland, Ohio.



Alan Rosca

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

CALVIN McCUTCHAN

Plaintiff,

vs.

CORIAN OPERATIONS, INC.,
INFINERA CORPORATION, CORIAN
401(k) PLAN, and DOES 1-20,

Defendants.

CASE NO.: 1:20-CV-00561 (CPK)

Judge Hon. Charles P. Kocoras

**DECLARATION OF JOHN S. BURKE IN SUPPORT OF PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES, COSTS, AND INCENTIVE AWARD**

1. I, John S. Burke, declares as follows:
2. I am the managing attorney at the law firm of John Sheridan Burke Law LLC, ("JSB Law") and am local counsel in this Action. I submit this Declaration in Support of Plaintiff's motion for attorney's fees and expenses in connection with the services rendered, and costs and expenses incurred, in the above captioned action (the "Action"). I make this declaration based on my personal knowledge of the matters set forth herein and could competently testify thereto.
3. The chart below sets forth a summary of JSB Laws' total hours and lodestar, computed at current rates, for the period from inception of the case through November 18, 2022. The total number of hours spent by JSB Law during this time was 58.30, corresponding current lodestar \$17,580.00. This summary was prepared from contemporaneous, daily time records regularly prepared and maintained by the firm. In

connection with representing Plaintiff in the Action, my firm did the following: paid filing fees for filing of complaint and for appearance pro hoc vice fees of out of state attorney, acted as local counsel, prepared various documents, conducted telephone conferences with opposing counsel concerning acceptance of waiver of service, prepared document for waiver of service, conducted negotiations with opposing counsel regarding extensions of time, reviewed docket and docket entries and kept counsel informed of changes to docket, provided opinions concerning local rules to counsel, reviewed and finalized various pleadings and documents for filing with the court, reviewed and edited pleadings and documents, participated in various conference calls with counsel and with opposing counsel, attended court hearings and telephonic status hearings, advised counsel on Court General Orders concerning coronavirus, prepared and submitted agreed orders concerning various matters, reviewed and edited responses to dispositive motions, reviewed and submitted initial disclosures, reviewed various discovery documents, reviewed Rule 26 disclosures by Plaintiff and Defendant, participated in discovery matters between Plaintiff and Defendant, filed pleadings and other documents, amongst other matters related to this lawsuit.

4. The hourly rates for the attorney and the professional staff in the firm reflected below are the usual and customary hourly rates charged by JSB Law in similar complex litigations matters.

JOHN SHERIDAN BURKE LAW

Timekeeper	Professional Status	Hours	Rate	Total Lodestar
John S. Burke	P	47.00	\$350.00	\$16,450.00
Anne Burke	PL	11.30	\$100.00	\$1,130.00

Grand Total		58.30		\$17,580.00
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Timekeeper Legend

P Partner/Shareholder
 PL Paralegal

5. The 58.30 total hour figure does not include time spent on the Plaintiff's motion for attorney's fees and costs, or on further claims administration, time for which JSB Law have not and will not seek reimbursement.
6. JSB Law has/will expend a total of \$550.00 in unreimbursed costs and expenses in connection with prosecution of the Action from inception of the case through and including as set forth in the chart below. These costs and expenses are reflected on the books and records of JSB Law. They were incurred on behalf of Plaintiff by my firm and have not been reimbursed.

JOHN SHERIDAN BURKE LAW LLC

Costs and Expenses	Amount
Court Fees – Filing fee for Complaint	\$400.00
Court Filing Fee – Appearance Pro Hac Vice – Attorney Rosca	\$150.00
Grand Total	\$550.00

I declare under penalty of perjury that the forgoing is true and correct . Executed the 5th day of January 2023 at Geneva, Illinois.



 John S. Burke

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CALVIN McCUTCHAN,

Plaintiff,

vs.

CORIAN T OPERATIONS, INC.,
INFINERA CORPORATION, CORIAN T
401(k) PLAN, and DOES 1-20,

Defendants.

Case No. 1:20-cv-00561 (CPK)

DECLARATION OF CALVIN McCUTCHAN

I, Calvin McCutchan, hereby declare as follows:

1. I am the Plaintiff in the above-captioned action (the "Action"). I submit this Declaration in support of the Motions for (I) Final Approval of Settlement, (II) Class Certification and Appointment of Class Representative and Class Counsel, and (III) an Award of Attorney's Fees and Expenses, Settlement Administration Costs, and Case Contribution Award.¹

2. I am now retired and live in North Carolina. At all times relevant I was an employee of Coriant and a participant in Coriant's 401(k) plan.

3. In 2018, I suffered losses in my 401(k) plan (the "Plan") due to the Plan termination triggered by the merger between Coriant and Infinera Corporation. I believed that the losses were the result of Coriant's failure to timely notify me of important upcoming changes to the Plan, so

¹ Capitalized terms not defined here are defined in the Stipulation of Settlement (ECF 65, Exhibit A).

that I could take action in advance of the Plan termination and avoid such losses. I also believed that other Coriant 401(k) plan members were in the same situation as I was and also suffered losses as a result of Coriant's conduct.

4. In fall of 2018, I sought to understand my legal situation and learn more about potential options to recover my losses, including obtaining legal representation.

5. In late 2018, I was introduced to my primary attorney in this case, Alan Rosca, and communicated with him repeatedly regarding my 401(k) plan losses.

6. I provided records related to my 401(k) plan and relevant communications with Coriant to Mr. Rosca to assist him, and his colleagues, in the evaluation my potential legal options. Among other sources, I searched my email, computer, and physical files to identify all relevant communications with Coriant and others regarding my 401(k) plan. I also searched for all my 401(k) plan records. I sent the relevant records I was able to locate to Mr. Rosca and had multiple communications and calls with him over a period of several months discussing the issues that concerned me, my background information, potential legal claims, and my relationship with Coriant.

7. In response to Mr. Rosca's requests, I provided additional documents, and communicated with him via email regarding such records and their significance to the case.

8. Following our numerous communications between late 2018 and early 2019 and discussions about a potential case, I hired Mr. Rosca and his colleagues to represent me and a class of similarly situated Corian 401(k) plan participants and seek compensation for our 401(k) plan losses.

9. I spent a significant amount of time during that time frame searching my records, reviewing documents related to my 401(k) plan, sending to my lawyers such records, and discussing their significance with my lawyers, chiefly Mr. Rosca.

10. Thereafter, I continued to spend significant amounts of time to review case documents including the complaint filed in this case and other court records prepared by my lawyers. I also kept in touch with them and communicated on a regular basis about the progress of this case and new developments, and provide information that he and his colleagues needed.

11. I also participated in the mediation held last year in Los Angeles, via videoconferencing systems. Prior to the mediation, I repeatedly communicated and spoke with my lawyers about the status of the case, its outlook, and various mediation-related topics. During the mediation, I spoke with my lawyers about the progress of the negotiations and shared my views about the case and negotiations with them.

12. Throughout this entire matter, I conveyed my opinions to my lawyers about the important steps in the case, and I approved of their efforts to try and resolve the case. Based on my understanding of the merits of this case and the strength of our claims, I also approved of the settlement they reached.

13. I believe that the proposed settlement is fair, reasonable, and adequate, and should be approved. My support for the proposed settlement is based upon, among other things, my understanding of the allegations, defenses, and likelihood of success at trial based on the evidence collected in this case as explained to me by my lawyers.

14. I also support my attorneys' fee and expense reimbursement request. My attorneys worked diligently in this action since 2018, for several years and without pay, and spent significant amounts of their own money, in order to achieve this Settlement which confers financial benefits

to the class members which they would not have received, absent this action and settlement. They regularly discussed the progress of the litigation with me and kept me informed through every stage of the litigation, beginning with the initial investigation through the settlement negotiations. In my opinion, my attorneys deserve the fee and expense reimbursement award they are seeking.

15. My attorneys are seeking an award of \$5,000 for the time and effort I spent helping to investigate the claims alleged in this Action, and supervising and assisting my attorneys in this litigation, including (1) helping my lawyers collect evidence to evaluate the claims and develop the case, (2) communicating extensively with my counsel relating to their investigation, strategy and actions in the litigation, including the investigation, initiation, progress, status, and direction of the litigation and settlement negotiations; (3) reviewing documents filed with the Court by both parties and other information provided by my attorneys in conjunction with this action; (4) searching for and retrieving documents and information in response to the request for documents by my counsel; and (6) participating in a remote mediation and discussing the merits of a settlement with my counsel. From my initial interactions with my attorney Mr. Rosca and his colleagues in 2018 through today, I have spent more than 104 hours performing my duties as a class representative to help vindicate the rights of the Coriant 401(k) plan members who are proposed class members in this matter.

16. I have not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a Plaintiff in this action except any service award that the Court may grant in recognition of the time and effort I spent in the prosecution of this action and my contribution to achieving the benefits to be conferred on the class of Coriant 401(k) plan members.

17. I do not have any claim or interest that is adverse to the class members in this case.

18. I declare under the penalty of perjury that the foregoing is true and correct.

Executed on 6th day of January, 2023.

A handwritten signature in cursive script, appearing to read "Calvin McCutchen", written over a horizontal line.

Calvin McCutchen
Plaintiff and Class Representative

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EXHIBIT F

CALVIN McCUTCHAN,

Plaintiff,

vs.

CORIAN OPERATIONS, INC.,
INFINERA CORPORATION, CORIAN
401(k) PLAN, and DOES 1-20,

Defendants.

Case No. 1:20-cv-00561 (CPK)

**DECLARATION OF CORNELIA VIEIRA CONCERNING: (A) MAILING OF THE
NOTICE TO CLASS MEMBERS; (B) MAILING OF THE CAFA NOTICE; AND (C)
REPORT ON OBJECTIONS**

I, Cornelia Vieira, declare as follows:

1. I am a Project Manager of Strategic Claims Services (“SCS”), a nationally recognized class action administration firm. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein. I have over five years of experience specializing in the administration of class action cases. SCS was established in April 1999 and has administered over five hundred (500) class action cases since its inception.

2. Pursuant to the Order Preliminarily Approving the Settlement, Approving Notice to the Class, Permitting Filing of a Second Amended Complaint, and Scheduling Final Approval Hearing, dated November 18, 2022 (the “Preliminary Approval Order”), SCS was approved to serve as Settlement Administrator¹ in connection with the Settlement of the above-captioned action. I submit this declaration in order to provide the Court and the Parties information

¹ All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Settlement Agreement and Release dated November 2, 2022 (the “Settlement Agreement”).

regarding the mailing of the Notice to Class Members, the mailing of CAFA notice, as well as updates concerning other aspects of the Settlement administration process.

CAFA NOTICE

3. On November 14, 2022, SCS mailed a Notice of Proposed Class Action Settlement pursuant to Section 1715 of the Class Action Fairness Act, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715 (“CAFA”), to the 36 state Attorneys General where Class Members resided, the United States Attorney General, and the Securities and Exchange Commission Chairman, by certified return receipt through the United States Postal Service. The mailing consisted of: (i) a letter regarding the Settlement approved by Defendant’s Counsel describing the mailing (the “CAFA Letter”), and (ii) a CD-ROM containing copies of the documents referenced in the CAFA Letter. Attached as **Exhibit 1** is a copy of the CAFA Letter that SCS mailed.

MAILING AND EMAILING OF NOTICE TO CLASS MEMBERS

4. SCS received the class data from Defendant’s Counsel on December 7, 2022 containing addresses for 967 Class Members, and email addresses for 5 of those Class Members. On December 9, 2022, SCS received additional class data from Defense Counsel containing market value adjustment amounts to be used as basis for potential distribution calculations. Additional beneficiary contact information for deceased Class Members was also provided and updated in SCS’ records.

5. Pursuant to the Preliminary Approval Order, on December 16, 2022, SCS printed and mailed the Notice of Proposed Class Action Settlement of ERISA Litigation, Final Approval Hearing Concerning Settlement, Motion for Attorney’s Fees and Expenses, and Case Contribution Award (the “Notice”) via first-class mail to 967 Class Members. The class data

was run through the United States Postal Service national change of address service to obtain new address information prior to the mailing. A copy of the Notice is attached as **Exhibit 2**. In addition, on December 16, 2022, SCS emailed the Notice to those 5 Class Members whose email addresses had been provided. For the Court's reference, the Strategic Claims Services Brochure is attached as **Exhibit 3**.

SETTLEMENT WEBSITE

6. On December 12, 2022, SCS established a settlement webpage on its website at www.strategicclaims.net/coriant401k. The webpage is accessible 24 hours a day, 7 days a week. The webpage contains the current status; the case deadlines; and the important documents such as the Notice, the Order Preliminary Approving Class, the Preliminary Approval Order, the Motion for Preliminary Approval Order, the Settlement Agreement, and the Court's January 11, 2021 Opinion. While the Notice contains contact information for Class Counsel, the settlement website also contains SCS' toll-free telephone number 866-274-4004 and email address info@strategicclaims.net for Class Member inquiries. SCS has promptly responded to and will continue to address any phone calls, and emailed or written inquiry from Class Members.

REPORT ON OBJECTIONS

7. The Notice and the settlement website informed Class Members that written objections to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the application for payment of Attorney's Fees and Expenses, or to the application for a Case Contribution Award for the Class Representative must be filed with the Clerk of the Court, and mailed or faxed to Class Counsel and Defendant's Counsel by no later than February 5, 2023. As of the date of this declaration, SCS has not received any objections, and SCS has not been notified that an objection was filed.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 9th day of January 2023, in Media, Pennsylvania.



Cornelia Vieira

EXHIBIT 1



Phone 866.274.4004
610.565.9202
Fax 610.565.7985
strategicclaims.net

November 14, 2022

VIA CERTIFIED MAIL

The Honorable Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

RE: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

Dear Sir or Madam:

Strategic Claims Services has been retained in the proposed class action lawsuit entitled *Calvin McCutchan v. Coriant Operations, Inc., et al.* to provide notices required under the Class Action Fairness Act. The Action is pending before the Honorable Charles P. Kocoras in the United States District Court, Northern District of Illinois.

In compliance with Section 1715 of the Class Action Fairness Act, 28 U.S.C. §§ 1332(d), 1453, and 1711–1715 (CAFA), this letter is to advise you that a Motion for entry of an order for Preliminary Approval was filed. The Court has approved the motion and set a hearing date of February 23, 2023.

The Defendants deny any and all wrongdoing, deny any liability to Lead Plaintiff or the proposed settlement class, and deny that Lead Plaintiff and the proposed class members have suffered any damages attributable to the Defendants' actions. In compliance with Section 1715(b), the following documents referenced below are included on the CD that is enclosed with this letter:

1. **28 U.S.C. § 1715(b)(1) – Complaint and Related Materials:** A copy of the original Complaints filed in the actions as well as the various amended complaints are provided on the enclosed CD ROM.
2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** As of the date of this letter, the Court has set a date of February 23, 2023 at 9:40 a.m. for the Final Approval hearing.
3. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** A copy of the *Notice* is enclosed on the CD ROM entitled "*Ex. A-2 – Long Form Notice*".
4. **28 U.S.C. § 1715(b)(4) – Proposed Class Action Settlement:** A copy of the parties' *Settlement Agreement and Release* with Exhibits is provided on the enclosed CD ROM.
5. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement:** As of the date of this letter, no other settlement or agreement has been entered into by the parties to this action.
6. **28 U.S.C. § 1715(b)(6) – Final Judgment:** As of the date of this letter, no Final Judgment has been issued by the Court.
7. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimated Proportionate Share:** Pursuant to 28 U.S.C. § 1715(b)(7), CAFA also requires a defendant, "if feasible," to provide the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement." On the enclosed CD is a list of the names of Class Members who reside in your state and a table providing a reasonable estimate of the number of Class Members residing in each state. The specific settlement allocation to each Class Member will be determined by the Settlement Administrator pursuant to the Plan of Allocation to be approved by the Court. We do not yet know which Class Members will receive

settlement proceeds or how much each Class Member will receive, and it is not feasible to determine the estimated proportionate share of the entire settlement of the claims of the Class Members who reside in each state. Upon final approval of the settlement by the court, settlement proceeds will be distributed among the Class Members according to the Plan of Allocation as set forth in the Settlement Agreement.

If for any reason, you believe the enclosed information does not fully comply with Section 1715, please contact the Counsel for Defendants identified below, to address any concerns or questions that you may have.

Counsel for Defendant
TRUCKER HUSS, APC
R. Bradford Huss
Clarissa A. Kang
135 Main Street, 9th Floor
San Francisco, CA 94105

Sincerely,

Strategic Claims Services

By: Matthew Shillady
Title: Director of Operations

Enclosure – CD ROM

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CALVIN McCUTCHAN,
Plaintiff,

vs.

CORIAN T OPERATIONS, INC., INFINERA
CORPORATION, CORIAN T 401(k) PLAN, and
DOES 1-20,
Defendants.

Case No. 1:20-cv-00561 (CPK)

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT OF ERISA LITIGATION, FINAL
APPROVAL HEARING CONCERNING SETTLEMENT, MOTION FOR ATTORNEY’S FEES
AND EXPENSES, AND CASE CONTRIBUTION AWARD**

This notice (“Notice”) advises you of a proposed settlement (the “Settlement”) of a class action litigation brought by Plaintiff and proposed class representative Calvin McCutchan (“Class Representative”) on behalf of himself, the Coriant 401(k) Plan (the “Plan”), and as the representative of the Settlement Class against Defendant Infinera Optical Networks, Inc. (formerly known as Coriant Operations, Inc.) (“Defendant”). As described in more detail below, this Settlement is made in compromise of claims made by Plaintiff, for himself and on behalf of all others similarly situated, against Defendant in the litigation (the “Action”).

You are receiving this Notice because you may be:

A former participant in the Plan who had funds in his or her Plan account invested in the Gibraltar Guaranteed Fund (the “GGF”) around October 15, 2018, any beneficiary of a deceased person who was such a participant, or any alternate payee in the case of a person who was such a participant in the Plan and whose account in the Plan was subject to a qualified domestic relations order (“QDRO”). Excluded from the Class are Defendant’s current officers and directors, and all individuals who were members of the Plan’s Investment Committee or Administrative Committee at any time from July 23, 2018, through October 15, 2018.

PLEASE READ THIS NOTICE CAREFULLY.

A FEDERAL COURT AUTHORIZED THIS NOTICE.

THIS IS NOT A SOLICITATION. YOU HAVE NOT BEEN SUED.

The United States District Court for the Northern District of Illinois (the “Court”) has preliminarily approved this Settlement, and has scheduled a Final Approval Hearing to evaluate the fairness and adequacy of the Settlement. At the hearing, the Court will consider Plaintiff’s requests for approval of the Settlement, for class certification, for approval of a Plan of Allocation of the Settlement Amount, for an award of Attorney’s Fees and Expenses, and for a Case Contribution Award to the Class Representative. The hearing has been scheduled for February 23, 2023, at 9:40 a.m. (CST) via telephone call with the United States District Court for the Northern District of Illinois, Dirksen U.S. Courthouse, 219 S. Dearborn Street, Chicago, IL 60604.

**Questions? Visit www.strategicclaims.net/coriant401k
Or Call Toll Free 866-998-0530 Or Email: office@rscounsel.law.**

DO NOT CALL THE COURT

They cannot answer questions.

The terms of the Settlement are contained in the Settlement Agreement and Release (the “Settlement Agreement”), a copy of which is available at www.strategicclaims.net/coriant401k or by contacting the lawyers for the Class (“Class Counsel”) identified below. Capitalized terms used in this Notice and not defined herein have the meanings assigned to them in the Settlement Agreement. The Settlement will provide for check payments made out to the Plan participants and/or beneficiaries defined in the Settlement Class. The Settlement is summarized below.

Any questions regarding the Settlement should be directed to Class Counsel, Rosca Scarlato LLC and McCarthy, Lebit, Crystal & Liffman Co., LPA via e-mail at office@rscounsel.law or via phone at 866-998-0530. Please do not contact the Court, the Defendant or the lawyers for Defendant. They will not be able to answer your questions.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY.

IF YOU ARE A MEMBER OF THE CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS.

YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE.

IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING.

IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.

ACTIONS YOU MAY TAKE IN THE SETTLEMENT	
IF YOU REVIEWED THIS NOTICE BY MAIL, NO ACTION IS NECESSARY TO RECEIVE PAYMENT.	If the Settlement is approved by the Court and you are a member of the Class, you do not need to do anything to receive a payment. The portion, if any, of the Net Settlement Fund to be allocated to you will be calculated as part of the Settlement distribution. Any share of the Net Settlement Fund to which you are entitled will be sent to the address of record.
IF YOU BELIEVE YOU RECEIVED THIS NOTICE BY MISTAKE, PLEASE CONTACT US.	Contact Class Counsel and/or the Settlement Administrator to confirm whether you are a member of the Class or whether this notice was intended for a different recipient. Please email office@rscounsel.law .
IF YOUR ADDRESS IS INCORRECT, IF IT HAS CHANGED, OR IF YOU DID NOT RECEIVE NOTICE IN THE MAIL OR VIA EMAIL, PLEASE CONTACT US.	Contact Class Counsel and/or the Settlement Administrator to update your address of record. This will confirm that your share of the Settlement will be sent to your correct address. If we do not have your correct address, you may not receive your payment. Please email office@rscounsel.law .

**Questions? Visit www.strategicclaims.net/coriant401k
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**DO NOT CALL THE COURT
They cannot answer questions.**

<p>YOU CAN OBJECT NO LATER THAN FEBRUARY 5, 2023. WRITTEN OBJECTIONS MUST BE FILED WITH THE COURT BY THIS DATE.</p>	<p>If you wish to object to any part of the Settlement, you can write to the Court and explain why you do not like the Settlement.</p>
<p>YOU CAN PARTICIPATE IN THE HEARING ON FEBRUARY 23, 2023, at 9:40 a.m. CST BY FILING A NOTICE OF INTENTION TO APPEAR NO LATER THAN FEBRUARY 9, 2023.</p>	<p>If you have submitted a written objection, you can ask to speak in Court about the fairness of the Settlement. You may enter your appearance in Court through an attorney if you so desire.</p>

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Questions? Visit www.strategicclaims.net/coriant401k
 Or Call Toll Free 866-998-0530 Or Email: office@rscounsel.law

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This Action was filed in federal district court in Illinois. The Plaintiff and Defendant collectively are referred to herein as the “Parties.” As described in more detail below and in the Complaint, the Action concerns allegations that Defendant breached fiduciary duties it owed to participants in the Plan and engaged in prohibited transactions. Defendant contends that Plaintiff’s allegations lack merit and has denied all liability in this lawsuit. A copy of the Complaint and other documents relevant to this Settlement, including the Settlement Agreement, are available at www.strategicclaims.net/coriant401k.

SUMMARY OF SETTLEMENT

The Settlement Amount will be \$1,000,000.00. The Net Settlement Fund will consist of the Settlement Amount less certain amounts described in the Settlement Agreement, including expenses associated with Administration Costs, an Independent Fiduciary, Court-approved Attorney’s Fees and Expenses, and a Class Representative Case Contribution Award (“Case Contribution Award”), and other costs related to the administration of the Settlement and implementation of the Plan of Allocation. The Net Settlement Fund will be allocated among the Settlement Class in accordance with the Plan of Allocation to be approved by the Court. (See Question 8 below for details of the Plan of Allocation).

The Settlement Class consists of the following persons:

All participants in the Plan who experienced a loss due to liquidation at market value of their GGF investments, any beneficiary of a deceased person who was such a participant in the Plan, and any alternate payee in the case of a person who was such a participant in the Plan and whose account in the Plan was subject to a qualified domestic relations order (“QDRO”).

Excluded from the Class are the current officers and directors of Defendant Infinera Optical Networks, Inc. (formerly known as Coriant Operations, Inc.), and all individuals who were members of the Plan’s Investment Committee or Administrative Committee at any time from July 23, 2018, through October 15, 2018.

This Settlement represents, in the view of Class Counsel, the best possible monetary result that could be achieved for the Class in light of the significant risks Plaintiff faced in the Action. As with any litigation, the Parties would face an uncertain outcome if this Action were to continue against the Defendant. Continued litigation of this Action against the Defendant could result in a judgment or verdict greater or less than the recovery under the Settlement Agreement, or in no recovery at all.

Throughout this Action, the Plaintiff and the Defendant have disagreed on both liability and damages. The Defendant, among other things: (1) has denied, and continues to deny, the material allegations of the Complaint; (2) has denied, and continues to deny, any wrongdoing or liability whatsoever; (3) believes that it acted at all times reasonably and prudently and in accordance with applicable law with respect to the Plan, its participants and beneficiaries, and the Settlement Class; (4) would assert certain other defenses if this Settlement is not consummated; and (5) is entering into the Settlement solely to avoid the cost, disruption, and uncertainty of litigation.

The Class Representative and Class Counsel have conducted an extensive investigation into the facts, circumstances, and legal issues associated with the allegations made in the Action. Based on the risks of the litigation, the time necessary to achieve a complete resolution through litigation, the complexity of the claims set forth in the Complaint, and the benefits accruing to the Plan participants and beneficiaries under the

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Settlement, Class Counsel believe that the Settlement will provide a benefit to the Settlement Class. When this benefit is weighed against the risks and delay of continuing the prosecution of the Action, the Settlement represents a reasonable, fair, and adequate resolution of the claims of the Settlement Class.

Attorney's Fees and Expenses: Court-appointed Class Counsel will file a motion for an award of Attorney's Fees and Expenses, and for the costs of Notice and Settlement Administration, which will be considered by the Court at the Final Approval Hearing. Class Counsel will apply for a total fee award not to exceed 33% of the Settlement Amount. Costs incurred for the Notice, Settlement Administrator, Independent Fiduciary, and a Case Contribution Award of up to \$5,000 for the Class Representative are separate costs and fees. Any such award will be at the sole discretion of the Court. Any Court-awarded fees, expenses, and Case Contribution Award will be paid from the Settlement Fund.

Please visit www.strategicclaims.net/coriant401k if you have additional questions.

BASIC INFORMATION

1. Why did I get this Notice package?

Either you or someone in your family is or was a participant in the Plan who had a portion of your, his, or her Plan account(s) invested in the GGF on October 15, 2018, a beneficiary of a deceased person who was such a participant, or any alternate payee in the case of a person who was such a participant in the Plan and whose account in the Plan was subject to a QDRO. The Court has directed that this Notice be sent to you because, as a potential member of the Class, you have a right to know about the proposed Settlement with Defendant before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and all related objections and appeals are favorably resolved, the Class Members will be bound by the Settlement Agreement and the releases contained in it and the Settlement Fund will be allocated among the Settlement Class according to a Court-approved Plan of Allocation, as set forth in the Settlement Agreement.

This Notice explains the Action, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how you will receive your portion of the benefits. The purpose of this Notice is to inform you of a hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the proposed Settlement and to consider the application of Class Counsel for their Attorney's Fees and Expenses as well as an application for a Case Contribution Award to the Class Representative.

The Final Approval Hearing will be held on February 23, 2023, at 9:40 a.m. CST before the Honorable Charles P. Kocoras in the United States District Court for the Northern District of Illinois, Dirksen U.S. Courthouse, 219 S. Dearborn Street, Chicago, IL 60604, via telephone call to determine:

- (a) Whether the Settlement is fair, reasonable, and adequate and should be approved by the Court;
- (b) Whether final judgment approving the Settlement Agreement should be entered;
- (c) Whether the Class should be certified as a mandatory non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23;
- (d) Whether the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Notice to members

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of the Settlement Class;

- (e) Whether the requirements of the Class Action Fairness Act have been satisfied;
- (f) Whether to approve a Case Contribution Award to the Class Representative and if so, the amount; and
- (g) Whether to award Attorney's Fees and Expenses to Class Counsel who represent the members of the Settlement Class and if so, the amounts.

The issuance of this Notice is not an expression of the Court's opinion on the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, the Settlement provisions will become effective after all related appeals, if any, are favorably resolved. It is always uncertain whether such appeals can be favorably resolved, and resolving them can take time, perhaps more than a year. Please be patient.

2. Why is this case a class action?

In a class action, one or more plaintiffs sue on behalf of people who have similar claims. All of the individuals on whose behalf the Plaintiff is representing in this action are "Class Members," and they are also referred to in this Notice as members of the Settlement Class. The Court resolves the issues for all Class Members. The Honorable Charles P. Kocoras, United States District Judge, is presiding over this case.

3. What is the Action about? What has happened so far?

On January 24, 2020, Plaintiff Calvin McCutchan filed a class action Complaint in this Court against Defendant and former defendants Infinera Corporation and the Coriant 401(k) Plan alleging violations of ERISA, the federal law governing retirement plans. The complaint is on behalf of a proposed class of participants in and beneficiaries of the Plan, who had invested some or all of their Plan Accounts in the GGF. The GGF was invested in large part through a contract between the Plan and an investment manager, Prudential Retirement Insurance and Annuity Company ("PRIAC"), and Prudential Financial Inc (collectively "Prudential"). The Complaint alleges that Defendant did not provide proper notice of the decision to terminate the Plan and liquidate the GGF option, and that this was a violation of the fiduciary duties that the Defendant owed to the Plan's participants and harmed the Plaintiff and the Class Members. Due to the termination of the Plan, the GGF needed to be liquidated, but Plaintiff alleges that the Plan participants did not receive adequate notice and were forced to liquidate at market value, rather than book value, and lost money in the investment.

Defendant contends that Plaintiff's allegations are without merit and deny that they have any liability to the Plan or its participants or beneficiaries. If the litigation were to continue, Defendant would raise numerous defenses to liability and other arguments, including the following:

- Defendant had no fiduciary duty to issue the type of notice Plaintiff claims was required in this lawsuit;
- Defendant fully discharged its fiduciary duties in a manner wholly consistent with ERISA and the applicable body of case law interpreting ERISA;
- The alleged breach of fiduciary duty did not cause the losses alleged by the Plaintiff; and,
- The Action should not be certified as a class action.

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Class Counsel have conducted an extensive investigation of the Defendant's actions and of the alleged losses suffered by the Plan participants as a result of the claimed breaches of fiduciary duty alleged in the Action. Through that investigation and production of further information by Defendant in the Action, Class Counsel have obtained and reviewed many documents, including documents and materials governing the Plan, communications with Plan participants, internal Defendant documents regarding the Plan, Coriant's filings with government agencies, and other documents. Class Counsel have conducted a thorough review and analysis of these materials and confirmed that the Settlement, representing over 41% of the \$2,403,156 difference between book value of the GGF and market value of the Class Members' investments (arguably, the maximum provable damages), is fair, reasonable, and adequate and in the best interest of the Settlement Class.

Class Counsel successfully opposed motions to dismiss the entire Action for failure to state a claim upon which relief may be granted. A copy of the Court's January 11, 2021 opinion is available at www.strategicclaims.net/coriant401k. However, if the Action were to continue, Class Counsel would expect that Defendant would file a motion for summary judgment later in the case and there is no guarantee that Plaintiff will be successful in opposing that motion. Further, if the claims survive summary judgment, the case would face an uncertain result at trial, or subsequently on appeal to the Seventh Circuit Court of Appeals. The proposed Settlement, if approved, eliminates those litigation risks.

This Settlement is the product of intense, arm's-length negotiations between Class Counsel and Defendant's Counsel facilitated through an experienced mediator with substantial experience mediating actions of this type. Counsel conducted numerous meetings and conferences in which the terms of the Settlement were extensively debated and negotiated.

4. Why is there a Settlement?

Under the proposed Settlement, the Court will not decide the merits of the case in favor of either Plaintiff or the Defendant. By agreeing to a Settlement, both Plaintiff and the Defendant avoid the costs, risks, and delays of litigating the Action.

As with any litigation, the Plaintiff would face an uncertain outcome if this case proceeded, including the risk of not prevailing at trial. On the one hand, pursuing the case against the Defendant could result in a verdict offering relief greater than the Settlement. On the other hand, continuing the case against the Defendant could result in a verdict for less money than the Class Representative has obtained in the Settlement, or even in no recovery at all. Based on these risks and an evaluation of the particular risks presented by this case, the Class Representative and Class Counsel believe the Settlement is in the best interests of all Class members. Additional information concerning the Settlement and these factors is available in the motion for preliminary approval of the Settlement Agreement, which may be obtained at www.strategicclaims.net/coriant401k.

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

The Court has preliminarily certified this Action as a class action for settlement purposes only. The Settlement Class consists of the following persons: All participants in the Plan who experienced a loss due to liquidation at market value of their GGF investments, any beneficiary of a deceased person who was such a participant in the Plan, and any alternate payee in the case of a person who was such a participant in the Plan and whose account in the Plan was subject to a qualified domestic relations order ("QDRO").

Excluded from the Class are Defendant's current officers and directors, and all individuals who were members of the Plan's Investment Committee or Administrative Committee at any time from July 23, 2018,

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through October 15, 2018.

If you are a member of the Settlement Class, your share of the Net Settlement Fund, if any, will be determined by the Court-approved Plan of Allocation, described generally in Section 8 below.

6. What does the Settlement provide?

The Settlement Agreement provides for the total payment of \$1,000,000.00. The Net Settlement Fund, calculated by subtracting from the \$1,000,000 certain amounts as described in the Settlement Agreement, including expenses associated with Class Notice, an Independent Fiduciary, Court-approved Attorney's Fees and Expenses and Class Representative Case Contribution Award, taxes and other costs related to the administration of the Settlement Fund and implementation of the Plan of Allocation, will be allocated among and paid to members of the Settlement Class according to a Plan of Allocation to be approved by the Court. Disbursement of the Net Settlement Fund to Settlement Class members will occur only after the Settlement has become final—that is, after all appeals relating to the Settlement are favorably decided and all appeal periods have expired.

The above description of the operation of the Settlement is only a summary. The governing provisions are set forth in the Settlement Agreement, which may be obtained at www.strategicclaims.net/coriant401k.

7. How will the Settlement be distributed?

If you are a Class Member entitled to a share of the Net Settlement Fund, your share will be sent by check to your last known mailing address. You will have 90 days from the date the check is issued to cash your check before it becomes void. If you do not cash your check within 90 days, contact the Settlement Administrator, Strategic Claims Services, as soon as possible to see if they can re-issue your check.

If you are a former Plan participant or beneficiary and have not provided Defendant with your current address, please contact the Settlement Administrator and/or Class Counsel immediately to update your contact information by emailing office@rscounsel.law.

8. What will be my Share of the Settlement Fund?

Class Counsel will request that the Court approve a proposed Plan of Allocation at the Final Approval Hearing. **The terms of the proposed Plan of Allocation are set forth below:**

Calculation of Individual Class Member Allocations

The Net Settlement Fund shall be allocated by the Settlement Administrator among the Settlement Class Members in proportion to their Individual Net Losses. For each Settlement Class Member, his or her reduction in Plan account balance due to the liquidation of the GGF at market value ("Individual Net Loss") shall be determined by the Settlement Administrator according to the following calculation:

- i. Each Settlement Class Member's "final investment amount" in the GGF investment option as of October 15, 2018 shall be determined. Then, for each Class Member, the respective market value and book value of the final investment amount will be determined.
- ii. Each Class Member's respective liquidation "Net Loss" will be estimated by finding the difference between the book value and market value of their final investment amount in the GGF investment option.

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The Net Losses of the Settlement Class Members will be aggregated, and each Settlement Class Member's percentage of such total Net Losses will be calculated on a pro rata basis. Applying that percentage to the Net Settlement Fund, the Settlement Administrator will calculate each Settlement Class Member's pro rata share of the Net Settlement Amount on a preliminary basis.

The Settlement Administrator will perform all calculations to determine each Settlement Class Member's share amount of the Net Settlement Fund. Neither Plaintiff and Plaintiff's Counsel, nor Defendant and Defendant's Counsel, shall be responsible or liable for any errors or omissions in such calculations.

If any Settlement Class Member with a share of the Net Settlement Fund greater than zero is deceased, such Settlement Class Member's share of the Settlement shall be administered in accordance with the terms of the Plan as of the date of the termination of the Plan.

Class Counsel will direct the Settlement Administrator to provide to them within ten (10) days after the initial allocation of Net Settlement Fund a complete listing of the calculated allocations to each Settlement Class Member. Upon request by Plaintiff's Counsel or Defendant's counsel, the Settlement Administrator will provide information showing the basis for its calculation of the allocation amount for each Settlement Class Member.

The Settlement Administrator will reserve from the Settlement Fund the estimated Administration Costs. Within thirty (30) days after disbursement of the entire Settlement Fund as provided by the Settlement Agreement and this Plan of Allocation, the Settlement Administrator shall provide Plaintiff's counsel with a final report of the settlement administration and a detailed accounting of any Administration Costs.

You are not responsible for calculating the amount you may be entitled to receive under the Settlement. This calculation will be done as part of the implementation of the Settlement, and will be based on reasonably available data. Once calculated, the Settlement share amounts will be paid directly to each Class Member as specified under the Plan of Allocation. Each Class Member will be responsible for any taxes that may be owed on their Settlement share amount.

9. When would I receive my payment?

Payment is conditioned on several matters, including the Court's approval of the Settlement and that approval becoming final and no longer subject to any appeals. Upon satisfaction of various conditions, the Net Settlement Fund will be distributed to Settlement Class members after the Effective Date, which is date the applicable period to appeal the Final Approval Order and Judgment has expired, if no appeal is taken during such period. If there is an appeal of the Settlement approval, resolution of that appeal could take several years. The Settlement Agreement may be terminated on several grounds, including if the Court does not approve or otherwise modifies the terms of the Settlement. If the Settlement Agreement is terminated, the Settlement will also be terminated, and the Action will proceed as if the Settlement had not been reached.

10. Can I exclude myself from the Settlement?

You do not have the right to exclude yourself from the Settlement. For settlement purposes, the Action was certified as a class action under Federal Rule of Civil Procedure 23(b)(1) (non-opt- out class) because the Court determined the requirements of that rule were satisfied. As a result, it is not possible for any of the members of the Settlement Class to exclude themselves from the Settlement. As a member of the Settlement Class, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action against Defendant or are otherwise included in the release under

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DO NOT CALL THE COURT

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the Settlement. Although members of the Settlement Class cannot opt out of the Settlement, they can object to the Settlement and ask the Court not to approve it. *See* Answer to Question No. 14, below.

11. What rights am I giving up in the Settlement?

If the Settlement is approved, the Court will enter a judgment (referred hereinafter as “Judgment”). As described below, pursuant to the Settlement Agreement, the Class Members will release certain individuals (the “Defendant Released Parties”), from certain claims (“the Released Claims”).

The Defendant Released Parties include Defendant, Infinera, and Prudential, and each of their predecessors, successors, shareholders, current and former parents, subsidiaries, affiliates, divisions, related companies, assigns, current and former officers, directors, employees, trustees, fiduciaries, committees (including, but not limited to, the Plan’s Investment Committee and Administrative Committee, with the exception of the Independent Fiduciary), investment consultants, recordkeepers (including the Recordkeeper), investment managers, administrators, actuaries, agents, insurers, representatives, vendors, attorneys, descendants, dependents, beneficiaries, marital community, heirs, executors, representatives, and administrators of the Defendant Released Parties.

Subject to the Settlement Agreement, the Released Claims include any and all actual or potential claims (including any Unknown Claims), actions, causes of action, demands, obligations, losses, or liabilities (including claims for attorney’s fees, expenses, or costs), for monetary, injunctive, and any other relief against the Defendant Released Parties through the date the Court enters the Final Approval Order and Judgment arising out of or in any way related to:

- the conduct alleged in or that could have been alleged in the Complaint by any Class Member, whether or not the conduct was actually included as claims for relief in the Complaint;
- PRIAC’s termination of the Plan’s participation in the GGF;
- the liquidation of the Plan’s investment in the GGF by PRIAC; and
- the approval by the Independent Fiduciary of the Settlement.

With respect to the Released Claims, Class Members also waive to the fullest extent of the law: (a) the provisions, rights, and benefits of **Section 1542 of the California Civil Code, which provides that “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”**; and (b) any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

The Released Claims shall not include claims related to the enforcement of the Settlement Agreement, including, but not limited to, claims concerning the allocation and distribution of the Net Settlement Fund by the Settlement Administrator to the Class Members. The Released Claims shall not include any claims that cannot be waived by law.

Additionally, under the Settlement Agreement, the Defendant will release the Class Representative, Class Members, and Class Counsel from any claims relating to the Action.

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Or Call Toll Free 866-998-0530 Or Email: office@rscounsel.law.**

DO NOT CALL THE COURT

They cannot answer questions.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in the case?

The law firms of Rosca Scarlato LLC and McCarthy, Lebit, Crystal & Liffman Co., LPA represent the Class Representative and the Settlement Class (“Class Counsel”). You will *not* be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

Before the Final Approval Hearing, Class Counsel will submit a Fee and Expense Application to the Court for the time and money spent on the litigation. The application for Attorney’s Fees will not exceed 33% of the Settlement Amount. That amount does not include litigation expenses, such as the costs of the Settlement Administrator and Independent Fiduciary, and any Case Contribution Award for the Class Representative. Any award of fees and expenses will be paid from the Settlement Fund, prior to the allocation and payment to the Settlement Class. The written application for fees and expenses, together with the application for a Case Contribution Award will be filed by January 9, 2023, and the Court will consider this application at the Final Hearing. A copy of the fee application will be available at www.strategicclaims.net/coriant401k.

To date, Class Counsel have not received any payment for their services in prosecuting this Action on behalf of the Settlement Class, nor have Class Counsel been reimbursed for their out-of-pocket expenses. The attorneys’ fees requested would compensate Class Counsel for their efforts in achieving the Settlement for the benefit of the Class and for their risk in undertaking this representation on a contingency basis. The Court will determine the actual amount of the award.

The requested Case Contribution Award for the Class Representative is consideration for his substantial contributions to the Action, including collecting and producing documents, maintaining regular contact with Class Counsel, reviewing and approving the Complaint, staying abreast of settlement negotiations, and advising on the Settlement.

OBJECTING TO THE SETTLEMENT

14. How do I tell the Court if I don’t like the Settlement?

Any member of the Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the application for payment of Attorney’s Fees and Expenses, or to the application for a Case Contribution Award for the Class Representative, may file an Objection in writing. All written objections and supporting papers must: (1) specifically state the basis and reasons for the objection; (2) whether the Objection is being made only by the objector, by a subset of the Class, or by the entire Class, (3) show proof of the objector’s membership in the Class; (4) list the names and a summary of testimony of any witnesses that they intend to call in connection with the Objection; (5) clearly identify any documents and other evidence that are to be presented at the Final Approval Hearing in connection with the objection; (6) provide the name(s), address(es) and phone number(s) of any attorney(s) representing them; and (7) include their signature.

The addresses for filing objections with the Court and service on counsel are listed below. **Your written objection must be filed with the Court, and mailed or faxed to the counsel listed below by no later than February 5, 2023:**

**Questions? Visit www.strategicclaims.net/coriant401k
Or Call Toll Free 866-998-0530 Or Email: office@rscounsel.law.**

DO NOT CALL THE COURT

They cannot answer questions.

File with the Clerk of the Court:

Clerk of the Court
U.S.D.C. Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604
Re: Civil Action No. 1:20-cv-00561

And, by the same date, serve copies by mail or email to each of the following:

CLASS COUNSEL:	DEFENDANT'S COUNSEL:
<p>Hugh D. Berkson McCARTHY, LEBIT, CRYSTAL & LIFFMAN CO., L.P.A. 1111 Superior Avenue East, Suite 2700 Cleveland, OH 44114 Telephone: (216) 696-1422 Email: hdb@mccarthylebit.com</p> <p>Alan L. Rosca ROSCA SCARLATO LLC 23250 Chagrin Blvd., Suite 100 Beachwood, OH 44122 Telephone: (216) 946-7070 Email: arosca@rscounsel.law</p>	<p>R. Bradford Huss Clarissa A. Kang TRUCKER HUSS, APC 135 Main Street, 9th Floor San Francisco, CA 94105 Telephone: (415) 788-3111 Email: bhuss@truckerhuss.com ckang@truckerhuss.com</p>

UNLESS OTHERWISE ORDERED BY THE COURT, ANY MEMBER OF THE CLASS WHO DOES NOT OBJECT IN THE MANNER DESCRIBED IN THIS NOTICE MAY BE DEEMED TO HAVE WAIVED ANY OBJECTION AND MAY BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT AND THE APPLICATION FOR ATTORNEY'S FEES AND EXPENSES AND CASE CONTRIBUTION AWARD TO THE CLASS REPRESENTATIVE.

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing on February 23, 2023, at 9:40 a.m., CST, at the United States District Court for the Northern District of Illinois, Dirksen U.S. Courthouse, 219 S. Dearborn Street, Chicago, IL 60604, via telephone call.

At the hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. At or after the Final Approval Hearing, the Court will decide whether to approve the Settlement. The Court will also rule on the motions for Attorney's Fees and Expenses, and for a Case Contribution Award to the Class Representative. We do not know how long these decisions will take.

IF YOU DO NOT WISH TO OBJECT TO THE PROPOSED SETTLEMENT, OR THE

**Questions? Visit www.strategicclaims.net/coriant401k
Or Call Toll Free 866-998-0530 Or Email: office@rscounsel.law.**

DO NOT CALL THE COURT

They cannot answer questions.

APPLICATION FOR ATTORNEY’S FEES AND EXPENSES, OR CASE CONTRIBUTION AWARD TO THE CLASS REPRESENTATIVE, YOU NEED NOT ATTEND THE FINAL APPROVAL HEARING.

16. Do I have to come to the hearing?

No. At the hearing, Class Counsel will answer questions Judge Charles P. Kocoras may have. You are welcome to come 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 mailed your written objection on time, it will be considered by the Court when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You may also have your own lawyer attend the Final Approval Hearing at your expense, but such attendance is not mandatory.

17. May I speak at the hearing?

If you are a member of the Class and you have filed a timely objection, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter or other paper called a “Notice of Intention to Appear at Final Approval Hearing in *McCutchan v. Coriant Operations, Inc., et al.*, Case No. 1:20-cv-00561 (CPK).” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be served on Class Counsel, c/o Rosca Scarlato LLC and McCarthy, Lebit, Crystal & Liffman Co., LPA no later than February 9, 2023 and must be filed with the Clerk of the Court, no later than February 9, 2023 (at the address set forth under Question 14 above).

The Final Approval Hearing may be delayed by the Court without further notice to the Class. If you wish to attend the Final Approval Hearing, you should confirm the date and time with Class Counsel.

Dated: December 16, 2022

BY ORDER OF THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

**Questions? Visit www.strategicclaims.net/coriant401k
Or Call Toll Free 866-998-0530 Or Email: office@rscounsel.law.**

DO NOT CALL THE COURT

They cannot answer questions.

Coriant 401k Settlement Administrator
c/o Strategic Claims Services
600 North Jackson Street, Suite 205
Media, PA 19063

IMPORTANT LEGAL NOTICE – PLEASE FORWARD

Mail ID
Name
Address
City, State, Zip

EXHIBIT 3

CLAIMANT COMMUNICATION

Phone Calls

We tailor our Call Center to the needs of each settlement, we can provide an automated approach using the latest IVR technology or, if counsel prefers, we offer a more personal approach and have one of our highly trained staff answer the phone and help the Class member with any issue they may have. We also offer Call tracking for each case, detailing the claimants question, and reporting on the total number of calls received.

Email

If a client requests it, we can provide a dedicated email address for each settlement where Class members can correspond and receive prompt answers from one of our highly trained staff.

Website

On request, we can provide a dedicated website for a settlement where all pertinent data and forms can be easily accessed by class members. Using these websites class counsel can quickly and easily communicate the class with ongoing updates and status changes in the Settlement.

DISTRIBUTION

Checks

We have handled distributions of all sizes and values, ranging from a few hundred checks, to hundreds of thousands of checks worth millions of dollars. We monitor all our bank accounts on a daily basis using a Postive Pay system to ensure our clients that only checks we issued will be cashed

Taxation

SCS can handle all taxation needs for a settlement. From calculating and paying taxes on the interest earned in the Settlement Fund, to withholding Federal and State taxes on wage cases, our staff of Certified Public Accounts ensure that all filing requirements are met

KEY INDIVIDUALS

Paul Mulholland, CPA, CVA President

As the founder, Mr. Mulholland is the key liaison with counsel on all administrative cases. He holds a BS degree in Accounting from Wheeling Jesuit University and is a Certified Public Accountant and a Certified Valuation Analyst. He is a member of the AICPA and NACVA.

Matthew Shillady Operations Manager

Mr. Shillady overlooks all areas of operations and systems management. Matthew is an expert in database management and computer systems. Matthew Shillady is a graduate of Penn State University. He holds a BS degree in Information Sciences and Technology Integration with substantial experience in data integration and database systems. Mr. Shillady has been with Strategic Claims since June of 2003.

Josephine Bravata Quality Assurance Manager

Ms. Bravata is involved with all areas of claims administration. She supervises the claims processing, database management, notification, bank reconciliations, check distributions and preparation of reports. Ms. Bravata joined the Company in 2001 after graduating from Neumann College. She has a BS degree in Accounting and a Minor in Computer and Information Management.

"I want to express my appreciation for the excellent work that Strategic Claims Services has provided to-date in administering the Blue Cross settlement. You and your staff have been timely, responsive and have made the claims administration process efficient and effective. Thank you for all your hard work."

**Mike Karnuth, Esq.
Krislov & Associates, Ltd.**

STRATEGIC CLAIMS SERVICES

Strategic Claims Services
600 North Jackson Street
Suite 3
Media, PA 19063

PHONE
866.274.4004
610.891.9852

FAX
610.565.7985

EMAIL
pmulholland@strategicclaims.net

"Your able and conscientious handling of this matter is much appreciated."

**Honorable William C. Connor
United States District Judge
Southern District of New York
Administration of the Texaco ERISA
Litigation Settlement**

OUR MISSION

Strategic Claims Services strives to offer high quality claims administration and unmatched solutions to its clients while maintaining exceptional client relationships.

» *We supply customized reports and detailed reviews of the Administration process so clients can stay well informed and up-to-date on any aspect of the administration process.*

» *We provide unsurpassed customer relations through our fully trained claims administrators who answer each call personally and assist our clients with their knowledge and expertise.*

» *We tailor a solution to each class action to ensure compliance with all the court and settlement documents.*

» *We strive to be proactive to alert our clients of any shortfalls or hang-ups in the administration process*

OUR HISTORY

Strategic Claims Services (SCS) was established in 1999 to provide support in managing, planning, implementing and administering class action litigations. The highly skilled staff consists of Certified Public Accountants, Information Technology professionals, experienced managers, bookkeepers and support staff.

With over a decade of experience in hundreds of cases involving notification, claims processing and distribution. SCS develops a custom solution for each and every client to ensure the highest quality service at a competitive price. SCS is devoted to offering paramount quality control throughout all dimensions of the claims administration process.

As an innovator in claims administration services, SCS is a technology driven organization with a proven track record to handle cases of all sizes in a cost-effective and efficient manner. The firm also provides tailored proposals, data management, and consultation.

CLASS NOTIFICATION

Strategic Claims Services offers many different options for both notices and claim forms. Based on the Client's requirements, SCS can compare the notice documents to ensure compliance with the settlement documents and the Court's requirements. SCS can also design Claim Forms to ensure Class Members fully understand and comply with the requirements of each settlement.

We can also provide assistance with publishing Legal Notice through newspapers, press releases, and websites. Using our contacts in the publishing industry we can negotiate favorable rates in most major newspapers, allowing the class to benefit from reduced publication costs.

Our Services Include:
» *Direct Mailed Notice*

» *Email Campaigns*

» *Notice Design and Proofing*

» *Claim Form Design*

» *Custom Websites for each settlement*

» *Customize Class Data*

» *Updating Out-of-Date Class Data (National Change of Address, Skip-tracing methods)*

» *Providing compliance affidavits for publications and direct mailin*

"Strategic Claims Services (SCS) provides excellent customer service, and the best price in the business. SCS's attention to detail, high quality work, quick and accurate turn around are the hallmarks of its true professionalism. Ready access to SCS's president, Paul Mulholland, and his personal involvement assures me everything is done right. You can't beat SCS – they're simply the best in the industry."

*John F. Innelli
Innelli & Robertson*

DATA MANAGEMENT

One of the most important steps in class action administration is creating and maintaining accurate class lists. Based on the client's needs we develop a custom database to hold all the class member's pertinent data.

Our Information Technology Specialists can:
» *Convert most data formats for use in the class database*

» *Database Mangement and Design*

» *Website Design and Updates*

» *Design custom reports for clients based on class data*

» *Removal of duplicate records*

» *Class-wide loss calculations*

CLAIMS PROCESSING

Our staff is well trained in all aspects of claims processing, with a focus on quality control and customer service. Each claim is reviewed in detail to ensure compliance with all settlement requirements. Using our custom built software, we ensure each claim is calculated accurately and quickly. The scope of our work includes, but is not limited to the following:

» *Determining the validity of each claim filed*

» *Calculation of losses for each claim*

» *Communication with claimants to cure invalid claims*

» *Quality assurance for all high value claims*

» *Final reporting to Counsel and the Court*

» *Electronic Claim Processing*

During the administration process we are in constant communication with counsel concerning all matters. We provide regular status reports from the initial mailing through the final disposition of funds.