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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Kui Zhu, et al.,

10 Plaintiffs,

11 v.

12 Taronis Technologies Incorporated, et al.,

13 Defendants.
14

No. CV-19-04529-PHX-GMS

ORDER

15
16 Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval of a
17 Class Action Settlement. (Doc. 67.) For the reasons set forth below, the Motion is
18 approved.

19 **BACKGROUND**

20 This matter concerns an alleged fraudulent scheme to artificially inflate the market
21 price of Taronis common stock by deceiving the investing public about the existence of a
22 material contract between Taronis and the City of San Diego. Taronis is an energy company
23 that offers technology solutions to create, process, and produce hydrogen-based fuel.

24 On January 28, 2019 Taronis disclosed in an SEC filing and related press release
25 ("Press Release") that the City of San Diego (the "City") elected to use Taronis's
26 MagneGas2 as its fuel of choice. (Doc. 36 at 8.) Plaintiffs allege that the market price of
27 Taronis common stock promptly increased over 25% after news of the San Diego contract
28 was published.

1 However, the day after the Press Release was published, the City’s Senior Public
2 Information Officer requested that the Press Release be immediately removed. The City
3 Officer explained, “while the product has been tested the City of San Diego does not have
4 any procurement contract or any agreement with [Taronis] to purchase any of its products.”
5 (Doc. 36 at 15.) Plaintiffs also cite internal emails from the City stating that “[t]he [Taronis]
6 news release . . . is incorrect. The City of San Diego does NOT have a contract with this
7 company. . . . This is appalling that they’d get this so wrong.” (Doc. 36 at 14.) Pursuant to
8 the City’s request, the Press Release was later removed from Taronis’s website, but no
9 corrective disclosure was filed with the SEC.

10 Plaintiffs allege that the Company’s disclosure about the contract with the City of
11 San Diego was entirely false. (Doc. 36 at 2-3.) Plaintiffs claim that Defendants knew the
12 Press Release was false but released it to artificially inflate the common stock price.
13 Plaintiffs allege that Defendants waited until February 12, 2019 to clarify the Press Release
14 in an attempt to obtain compliance with NASDAQ’s minimum \$1.00 bid price for the
15 required ten consecutive business days.

16 Plaintiffs’ federal securities action is brought on behalf of all persons or entities who
17 purchased or otherwise acquired Taronis common stock between January 28, 2019 and
18 February 12, 2019 (“Plaintiffs”) when the stock prices were allegedly artificially inflated.
19 Plaintiff defines the proposed class members as:

20 all persons and entities who purchased or otherwise acquired Taronis
21 Technologies, Inc. (“Taronis”) common stock between January 28, 2019, and
22 February 12, 2019, both dates inclusive (the “Class Period”), and were
23 damaged thereby. Excluded from the Class by definition are: Defendants,
24 current and former officers and directors of Taronis, members of their
25 Immediate Families and their legal representatives, heirs, successors or
26 assigns, and any entity in which Defendants have or had a controlling
27 interest. Also excluded from the Class are those Persons who are found by
28 the Court to have timely and validly requested exclusion from the Class.

(Doc. 67-1 at 5.) The parties have now reached an agreement and have moved for preliminary approval of their proposed class action settlement.

ANALYSIS

Where “the parties reach a settlement agreement prior to class certification, courts

1 must peruse the proposed compromise to ratify both the propriety of the certification and
2 the fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003); *see*
3 *Manual for Complex Litigation* (4th Ed. 2004) § 21.632.

4 **I. Preliminary Class Certification**

5 A class may not be certified unless it meets each of the four requirements of Rule
6 23(a), typically referred to as numerosity, commonality, typicality, and adequacy of
7 representation. Fed. R. Civ. P. 23(a). The party seeking certification bears the burden of
8 demonstrating that it has met all of these requirements, and “the trial court must conduct a
9 ‘rigorous analysis’ to determine whether” it has met that burden. *Zinser v. Accufix Research*
10 *Inst.*, 253 F.3d 1180, 1186 (9th Cir. 2001) (quoting *Valentino v. Carter-Wallace, Inc.*, 97
11 F.3d 1227, 1233 (9th Cir. 1996)). Additionally, a movant for class certification must
12 demonstrate at least one of the requirements of Rule 23(b). Fed. R. Civ. P. 23(b). Plaintiff
13 seeks certification pursuant to Rule 23(b)(3), which permits certification where “questions
14 of law or fact common to class members predominate over any questions affecting only
15 individual members” and “a class action is superior to other available methods for fairly
16 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

17 When a court is evaluating the certification question in the context of a proposed
18 settlement class, questions regarding the manageability of the case for trial purposes are
19 not considered. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 620
20 (1997). However, the Ninth Circuit has long held courts must be particularly careful when
21 approving classes for settlement purposes. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019
22 (9th Cir. 1998) (“[W]e must pay ‘undiluted, even heightened, attention’ to class
23 certification requirements in a settlement context.”).

24 **a. Rule 23(a)**

25 **i. Numerosity**

26 Under Rule 23(a)(1), a plaintiff must demonstrate that the proposed “class is so
27 numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Here, the
28 parties assert that the “members of the Settlement Class number in the thousands.”

1 Although numerosity is not tied to a strict numeric threshold, “[a] proposed class generally
2 satisfies the numerosity requirement if the class has 40 or more members.” *Horton v. USAA*
3 *Cas. Ins. Co.*, 266 F.R.D. 360, 365 (D. Ariz. 2009); see *Californians for Disability Rights,*
4 *Inc. v. Cal. Dep’t of Transp.*, 249 F.R.D. 334, 346 (N.D. Cal. 2008) (citing *Consol. Rail*
5 *Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995)); William B. Rubenstein,
6 Newberg on Class Actions § 3:12 (5th ed. 2014). The Court therefore finds that numerosity
7 is satisfied because joinder of all class members would be impracticable.

8 **ii. Commonality**

9 To establish commonality, a plaintiff is required to show that “there are questions
10 of law or fact common to the class.” Fed. R. Civ. P. Rule 23(a)(2). Commonality thus
11 “requires the plaintiff to demonstrate that the class members ‘have suffered the same
12 injury.’” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011) (quoting *Gen. Tel.*
13 *Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). “This does not mean merely that they
14 have all suffered a violation of the same provision of law.” *Id.* at 350. Rather, the claim
15 must be based on a common contention capable of classwide resolution. *Id.* Common
16 questions must therefore be accompanied by common answers sufficient to drive the
17 resolution of the litigation. *Id.*

18 Here, the class presents a common question: whether Defendant’s statements to the
19 public misrepresented material facts about the Company and ultimately led to a decline in
20 the value of the Company’s common stock. Therefore, there are questions of law or fact
21 common to the class.

22 **iii. Typicality**

23 “Typicality refers to the nature of the claim or defense of the class representative,
24 and not to the specific facts from which it arose or the relief sought.” *Hanon v.*
25 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The test of typicality “is whether
26 other members have the same or similar injury, whether the action is based on conduct
27 which is not unique to the named plaintiffs, and whether other class members have been
28 injured by the same course of conduct.” *Id.* (internal quotations omitted). “Typicality ‘does

1 not mean that the claims of the class representative[s] must be identical or substantially
2 identical to those of the absent class members.” *Staton v. Boeing Co.*, 327 F.3d 938, 957
3 (9th Cir. 2003) (quoting Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*,
4 § 24.25 at 24–105 (3d ed.1992)).

5 Here, the alleged facts underlying Plaintiff’s claims, and the legal theories
6 supporting them, are typical of the putative class members’ claims. Plaintiff purchased
7 Taronis securities during the settlement class period, when Defendants’ alleged
8 misrepresentations had not been disclosed to the market. Plaintiff’s claim, like the putative
9 class members’, asserts that the alleged misrepresentations inflated the price of Taronis’
10 common stock and, that upon disclosure, the value of the purchased stock declined. The
11 typicality requirement is therefore satisfied.

12 **iv. Adequacy of Representation**

13 The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest
14 between named parties and the class they seek to represent.” *Windsor*, 521 U.S. at 625.
15 “[A] class representative must be part of the class and possess the same interest and suffer
16 the same injury as the class members.” *E. Tex. Motor Freight Sys. Inc. v. Rodriguez*, 431
17 U.S. 395, 403 (1977) (internal quotations omitted).

18 The Court finds that Plaintiff’s interest in this litigation is coextensive with that of
19 the unnamed class members, and he is capable of vigorously prosecuting this action
20 through their qualified counsel. *See Chesner v. Stewart Title Guar. Co.*, 2008 WL 553773,
21 *10 (N.D. Ohio Jan. 23, 2008). Plaintiff has prosecuted the action and obtained a proposed
22 class settlement; he is represented by counsel with experience in securities class action
23 litigation. (Doc 15-4.) As a result, all four requirements of Rule 23(a) are satisfied.

24 **b. Rule 23(b)**

25 For a Rule 23(b)(3) class action to be certified, a court must find “that the questions
26 of law or fact common to class members predominate over any questions affecting only
27 individual members, and that a class action is superior to other available methods for fairly
28 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Moreover, where a

1 class is to be certified for settlement purposes, the Court “need not inquire whether the
2 case, if tried, would present intractable management problems, for the proposal is that there
3 be no trial.” *Amchem Prods.*, 521 U.S. at 620 (internal citations omitted).

4 **i. Predomination**

5 “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are
6 sufficiently cohesive to warrant adjudication by representation.” *Id.* at 623. Courts thus
7 must ask “whether the common, aggregation-enabling, issues in the case are more
8 prevalent or important than the non-common, aggregation-defeating, individual issues.”
9 *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (internal quotations
10 omitted). “When one or more of the central issues in the action are common to the class
11 and can be said to predominate, the action may be considered proper under Rule 23(b)(3)
12 even though other important matters will have to be tried separately.” *Id.* (internal
13 quotations omitted).

14 The common question which predominates in this matter is whether Defendants’
15 statements to the public misrepresented material facts about the Company and ultimately
16 led to a decline in the value of the Company’s common stock. Each class member would
17 have to prove the same essential facts about Defendants’ representations and their affect
18 on their stock’s value. The common issues between the claims therefore justify class
19 resolution.

20 **ii. Superiority**

21 Class resolution is superior to other methods of resolution if it “would achieve
22 economies of time, effort, and expense, and promote . . . uniformity of decision as to
23 persons similarly situated, without sacrificing procedural fairness or bringing about other
24 undesirable results.” *Amchem Prods.*, 521 U.S. at 615. Rule 23(b)(3) lists four
25 nonexhaustive factors courts consider when addressing superiority:

- 26 (A) the class members’ interests in individually controlling the prosecution
27 or defense of separate actions; (B) the extent and nature of any litigation
28 concerning the controversy already begun by or against class members;
(C) the desirability or undesirability of concentrating the litigation of the

1 claims in the particular forum; and (D) the likely difficulties in managing a
2 class action.

3 Fed. R. Civ. P. 23(b)(3). Also relevant is the consideration that “[t]he policy at the very
4 core of the class action mechanism is to overcome the problem that small recoveries do not
5 provide the incentive for any individual to bring a solo action prosecuting his or her rights.”
6 *Amchem Prods.*, 521 U.S. at 615 (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344
7 (1997)).

8 Plaintiff proposes a class of thousands of members. Common to every claim is the
9 question of whether Defendants’ statements to the public misrepresented material facts
10 about the Company and ultimately led to a decline in the value of the Company’s common
11 stock. Resolution of these claims in a single action is more efficient than individual actions
12 and serves the interest of judicial economy. Moreover, as the recoveries in question are
13 relatively small, approximately \$0.43 per share, it is unlikely that many plaintiffs will
14 pursue legal action independently. These facts thus demonstrate that class resolution is a
15 superior method of litigation.

16 **II. Proposed Settlement**

17 When considering whether to grant preliminary approval of a settlement agreement,
18 a court must evaluate the fairness, reasonableness, and adequacy of the proposed
19 settlement. Fed. R. Civ. P. 23(e)(2); *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th
20 Cir. 2008). The Court should consider whether the proposed settlement “appears to be the
21 product of serious, informed, non-collusive negotiations, has no obvious-deficiency, does
22 not improperly grant preferential treatment to class representatives or segments of the class
23 and falls within the range of possible approval.” *Horton v. USAA Cas. Ins. Co.*, 266 F.R.D.
24 360, 363 (D. Ariz. 2009); *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102
25 (S.D.N.Y. 1997).

26 The settlement appears to be product of serious, informed, non-collusive
27 negotiations, with no obvious deficiency or preferential treatment. Both sides are
28 represented by experienced counsel qualified to assess the strengths and weaknesses of

1 their clients' positions and negotiate accordingly. The parties have litigated this case since
2 April 2019. Their briefing demonstrates that the parties have thoroughly considered the
3 strengths and weaknesses of the asserted claims. They discuss, for example, that several
4 elements of the claims are disputed, and that defendants had retained experts to support
5 those arguments. (Doc. 67 at 16.) The parties have also attested that their negotiations were
6 at arms-length and were facilitated by a mediator. *Id.* at 13. Therefore, the proposed
7 settlement agreement appears to be the product of serious, informed, non-collusive
8 negotiations.

9 Moreover, the Settlement Agreement contains no obvious deficiencies that would
10 prevent preliminary approval. Under the proposed agreement, Defendant would pay a \$1.7
11 million cash settlement. *Id.* at 14. The agreement specifies that the claims administrator
12 will divide the settlement as specified by the Proposed Plan of Allocation, which lays out
13 a recognized loss formula. The formula uses the lesser of the difference in inflation or value
14 per share to calculate loss. (Doc. 67-3 at 4.) The parties estimate that the ultimate recovery
15 per share of common stock will be approximately \$0.43 per share, 17% of the settlement
16 class' estimated maximum damages. (Doc. 67 at 9, 24.) This relief is adequate, especially
17 in light of the significant uncertainties the parties would face if their case went to trial. *Id.*
18 at 16.

19 CONCLUSION

20 For the reasons set forth above, preliminary approval of the proposed class
21 settlement is granted.

22 **IT IS THEREFORE ORDERED** that the Unopposed Motion for Preliminary
23 Approval of Class Action Settlement (Doc. 67) is **GRANTED**.

24 **IT IS FURTHER ORDERED:**

25 **WHEREAS**, a class action is pending in this Court entitled *Zhu v. Taronis*
26 *Technologies, Inc., et al.*, Case No. CV-19-0429-PHX-GMS (the "Action");

27 **WHEREAS**, (a) Lead Plaintiff Kui Zhu ("Lead Plaintiff"), on behalf of himself and
28 the Class, and (b) defendants Robert L. Dingess, Scott Mahoney, Ermanno P. Santilli,

1 Kevin Pollack, and William W. Staunton (collectively, the “Defendants” and, together with
2 Lead Plaintiff, the “Parties”) have determined to settle all claims asserted against
3 Defendants in this Action with prejudice on the terms and conditions set forth in the
4 Stipulation and Agreement of Settlement dated September 24, 2020 (the “Stipulation”),
5 subject to the approval of this Court (the “Settlement”);

6 **WHEREAS**, lead Plaintiff has made a motion, pursuant to Rule 23(e)(1) of the
7 Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement in
8 accordance with the Stipulation and allowing Notice to Class Members as more fully
9 described herein;

10 **WHEREAS**, the Court has read and considered: (a) Lead Plaintiff’s motion for
11 preliminary approval of the Settlement and authorization to send Notice of the Settlement
12 to the Class, and the papers filed and arguments made in connection therewith; and (b) the
13 Stipulation and the exhibits attached thereto; and

14 **WHEREAS**, unless otherwise defined in this Judgment, the capitalized terms
15 herein shall have the same meaning as they have in the Stipulation;

16 **IT IS HEREBY ORDERED:**

17 1. Proposed Class Certification for Settlement Purposes – The Parties have proposed
18 the certification of the following Class pursuant to Rules 23(a) and (b)(3) of the Federal
19 Rules of Civil Procedure and solely for purposes of effectuating the proposed Settlement:
20 all persons and entities who purchased or otherwise acquired Taronis Technologies, Inc.
21 (“Taronis”) common stock between January 28, 2019, and February 12, 2019, both dates
22 inclusive (the “Class Period”), and were damaged thereby. Excluded from the Class by
23 definition are: Defendants, current and former officers and directors of Taronis, members
24 of their Immediate Families and their legal representatives, heirs, successors or assigns,
25 and any entity in which Defendants have or had a controlling interest. Also excluded from
26 the Class are those Persons who are found by the Court to have timely and validly requested
27 exclusion from the Class.

28 2. Class Findings – The Court finds, pursuant to Rule 23(e)(1)(B)(ii) of the Federal

1 Rules of Civil Procedure, that it will likely be able to certify the Class for purposes of the
2 proposed Settlement. Specifically, the Court finds that each element required for
3 certification of the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has
4 been met or will likely be met: (a) the members of the Class are so numerous that their
5 joinder in the Action would be impracticable; (b) there are questions of law and fact
6 common to the Class which predominate over any individual questions; (c) the claims of
7 Lead Plaintiff in the Action are typical of the claims of the Class; (d) Lead Plaintiff and
8 Lead Counsel have and will fairly and adequately represent and protect the interests of the
9 Class; and (e) a class action is superior to other available methods for the fair and efficient
10 adjudication of the Action.

11 3. The Court also finds, pursuant to Rule 23(e)(1)(B)(ii) of the Federal Rules of
12 Civil Procedure, that it will likely be able to certify Lead Plaintiff as class representative
13 for the Class and appoint Lead Counsel as class counsel for the Class pursuant to Rule
14 23(g) of the Federal Rules of Civil Procedure.

15 4. Preliminary Approval of the Settlement – The Court hereby preliminarily
16 approves the Settlement, as embodied in the Stipulation, and finds, pursuant to Rule
17 23(e)(1)(B)(i) of the Federal Rules of Civil Procedure, that it will likely be able to finally
18 approve the Settlement under Rule 23(e)(2) as being fair, reasonable, and adequate to the
19 Class, subject to further consideration at the Settlement Fairness Hearing to be conducted
20 as described below.

21 5. Settlement Fairness Hearing – The Court will hold a telephonic settlement hearing
22 (the “Settlement Fairness Hearing”) on **March 5th, 2021 at 10:30 a.m.**, for the following
23 purposes: (a) to determine whether the proposed Settlement on the terms and conditions
24 provided for in the Stipulation is fair, reasonable, and adequate to the Class, and should be
25 finally approved by the Court; (b) to determine whether, for purposes of the proposed
26 Settlement only, the Action should be certified as a class action on behalf of the Class,
27 Lead Plaintiff should be certified as class representative for the Class, and Lead Counsel
28 should be appointed as class counsel for the Class; (c) to determine whether a Judgment

1 substantially in the form attached as Exhibit B to the Stipulation (Doc. 67-7) should be
2 entered dismissing the Action with prejudice against Defendants; (d) to determine whether
3 the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable
4 and should be approved; (e) to determine whether the motion by Lead Counsel for an award
5 of attorneys' fees and reimbursement of Litigation Expenses should be approved; and (f) to
6 consider any other matters that may properly be brought before the Court in connection
7 with the Settlement. Notice of the Settlement and the Settlement Fairness Hearing shall be
8 given to Class Members as set forth in paragraph 7 of this Order. **In preparation for the**
9 **Telephonic Settlement Fairness Hearing, Defendants' counsel shall arrange a call-in**
10 **number and disseminate the number to all parties, including the Court, no later than**
11 **March 2, 2021.**

12 6. The Court may adjourn the Settlement Fairness Hearing without further notice to
13 the Class and may approve the proposed Settlement with such modifications as the Parties
14 may agree to, if appropriate, without further notice to the Class.

15 7. Retention of Claims Administrator and Manner of Giving Notice – Lead Counsel
16 is hereby authorized to retain Strategic Claims Services (the “Claims Administrator”) to
17 supervise and administer the notice procedure in connection with the proposed Settlement
18 as well as the processing of Claims as more fully set forth below. Notice of the Settlement
19 and the Settlement Fairness Hearing shall be given by Lead Counsel as follows:

20 (a) within ten (10) business days of the date of entry of this Order, Defendants
21 shall provide or cause to be provided to the Claims Administrator in electronic
22 format (at no cost to the Settlement Fund, Lead Counsel, or the Claims
23 Administrator) a list (consisting of names, mailing addresses, and email addresses)
24 of the holders or purchasers of Taronis common stock during the Class Period to the
25 extent reasonably available to Taronis;

26 (b) not later than twenty (20) business days after the date of entry of this
27 Order (the “Notice Date”), the Claims Administrator shall cause copies of the
28 Postcard Notice, substantially in the form of Doc. 67-6, to be mailed by first-class

1 mail or emailed to potential Class Members at the addresses set forth in the records
2 provided by Defendants or in the records which Defendants caused to be provided,
3 or who otherwise may be identified through further reasonable effort;

4 (c) contemporaneously with the mailing of the Postcard Notice, the Claims
5 Administrator shall cause copies of the Notices (Doc. 67-3; 67-6) and Summary
6 Notice (Doc. 67-5) to be posted on a website to be developed for the Settlement,
7 from which copies of the Notice and Claim Form can be downloaded;

8 (d) not later than ten (10) business days after the Notice Date, the Claims
9 Administrator shall cause the Summary Notice, substantially in the form of Doc.
10 67-5, to be published once in Investor's Business Daily and to be transmitted once
11 over the Globe Newswire; and

12 (e) not later than seven (7) calendar days prior to the Settlement Fairness
13 Hearing, Lead Counsel shall serve on Defendants' Counsel and file with the Court
14 proof, by affidavit or declaration, of such mailing and publication.

15 8. Approval of Form and Content of Notice – The Court (a) approves, as to form
16 and content, the Notices, the Claim Form, and the Summary Notice, Docs. 67-3; 67-6;
17 67-4; and 67-5 respectively, and (b) finds that the mailing of the Postcard Notice and
18 distribution of the Notice and Claim Form and the publication of the Summary Notice in
19 the manner and form set forth in paragraph 7 of this Order (i) is the best notice practicable
20 under the circumstances; (ii) constitutes notice that is reasonably calculated, under the
21 circumstances, to apprise Class Members of the pendency of the Action, of the effect of
22 the proposed Settlement (including the Releases to be provided thereunder), of Lead
23 Counsel's motion for an award of attorneys' fees and reimbursement of Litigation
24 Expenses, of their right to object to the Settlement, the Plan of Allocation, and/or Lead
25 Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses, of their
26 right to exclude themselves from the Class, and of their right to appear at the Settlement
27 Fairness Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and
28 entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the

1 requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States
2 Constitution (including the Due Process Clause), the Private Securities Litigation Reform
3 Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law and rules. The
4 date and time of the Settlement Fairness Hearing shall be included in the Notice and
5 Summary Notice before they are mailed and published, respectively.

6 9. Nominee Procedures – Brokers and other nominees who purchased or otherwise
7 acquired Taronis common stock during the Class Period for the benefit of another person
8 or entity shall: (a) within seven (7) calendar days of receipt of the Notice, request from the
9 Claims Administrator sufficient copies of the Postcard Notice to forward to all such
10 beneficial owners by and within seven (7) calendar days of receipt of the Postcard Notices
11 forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt
12 of the Notice, send a list of the names, mailing addresses, and, if available, email addresses,
13 of all such beneficial owners to the Claims Administrator in which event the Claims
14 Administrator shall promptly mail or email the Postcard Notice to such beneficial owners.
15 The Claims Administrator shall, if requested, reimburse nominees or custodians out of the
16 Settlement Fund solely for their reasonable out-of-pocket expenses, incurred in providing
17 Postcard Notice to beneficial owners, which expenses would not have been incurred except
18 for the providing names, addresses, and email addresses up to \$0.05 per name, address, and
19 email addresses; mailing of Postcard Notice up to \$0.05 per mailing, plus postage at the
20 rate used by the Claims Administrator; or emailing of notice up to \$0.05 per email, and
21 subject to further order of this Court with respect to any dispute concerning such
22 reimbursement.

23 10. Participation in the Settlement – Class Members who wish to participate in the
24 Settlement and to be eligible to receive a distribution from the Net Settlement Fund must
25 complete and submit a Claim Form in accordance with the instructions contained therein.
26 Unless the Court orders otherwise, all Claim Forms must be postmarked, or submitted
27 online, no later than seven (7) calendar days prior to the Settlement Fairness Hearing.
28 Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing

1 late Claims provided such acceptance does not delay the distribution of the Net Settlement
2 Fund to the Class. By submitting a Claim, a person or entity shall be deemed to have
3 submitted to the jurisdiction of the Court with respect to his, her, or its Claim and the
4 subject matter of the Settlement.

5 11. Each Claim Form submitted must satisfy the following conditions: (a) it must
6 be properly completed, signed, and submitted in a timely manner in accordance with the
7 provisions of the preceding paragraph; (b) it must be accompanied by adequate supporting
8 documentation for the transactions and holdings reported therein, in the form of broker
9 confirmation slips, broker account statements, an authorized statement from the broker
10 containing the transactional and holding information found in a broker confirmation slip or
11 account statement, or such other documentation as is deemed adequate by Lead Counsel or
12 the Claims Administrator; (c) if the person executing the Claim Form is acting in a
13 representative capacity, a certification of his, her, or its current authority to act on behalf
14 of the Class Member must be included in the Claim Form to the satisfaction of Lead
15 Counsel or the Claims Administrator; and (d) the Claim Form must be complete and
16 contain no material deletions or modifications of any of the printed matter contained therein
17 and must be signed under penalty of perjury.

18 12. Any Class Member that does not timely and validly submit a Claim Form or
19 whose Claim is not otherwise approved by the Court: (a) shall be deemed to have waived
20 his, her, or its right to share in the Net Settlement Fund; (b) shall be forever barred from
21 participating in any distributions therefrom; (c) shall be bound by the provisions of the
22 Stipulation and the Settlement and all proceedings, determinations, orders, and judgments
23 in the Action relating thereto, including, without limitation, the Judgment and the Releases
24 provided for therein, whether favorable or unfavorable to the Class; and (d) will be barred
25 from commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims
26 against each and all of the Defendants' Releasees, as more fully described in the Stipulation
27 and Notice. Notwithstanding the foregoing, late Claim Forms may be accepted for
28 processing as set forth in paragraph 10 above.

1 13. Exclusion From the Class – Any member of the Class who wishes to exclude
2 himself, herself, or itself from the Class must request exclusion in writing within the time
3 and in the manner set forth in the Notice, which shall provide that: (a) any such request for
4 exclusion from the Class must be mailed or delivered such that it is received no later than
5 twenty-one (21) calendar days prior to the Settlement Fairness Hearing, to: Strategic
6 Claims Services, 225 State Road, Media, PA 19063 , and (b) each request for exclusion
7 must (i) state the name, address, and telephone number of the person or entity requesting
8 exclusion, and in the case of entities, the name and telephone number of the appropriate
9 contact person; (ii) state that such person or entity “requests exclusion from the Class in
10 *Zhu v. Taronis Technologies, Inc., et al.*, Case No. CV-19-04529-PHX-GMS (D. Ariz.)”;
11 (iii) state the number of shares of Taronis common stock that the person or entity requesting
12 exclusion (A) owned as of the opening of trading on January 28, 2019 and
13 (B) purchased/acquired and/or sold during the Class Period, as well as the dates, number
14 of shares, and prices of each such purchase/acquisition and sale; and (iv) be signed by the
15 person or entity requesting exclusion or an authorized representative. A request for
16 exclusion shall not be effective unless it provides all the required information and is
17 received within the time stated above, or is otherwise accepted by the Court.

18 14. Any person or entity who or which timely and validly requests exclusion in
19 compliance with the terms stated in this Order and is excluded from the Class shall not be
20 a Class Member, shall not be bound by the terms of the Settlement or any orders or
21 judgments in the Action, and shall not receive any payment out of the Net Settlement Fund.

22 15. Any Class Member who or which does not timely and validly request exclusion
23 from the Class in the manner stated in this Order: (a) shall be deemed to have waived his,
24 her, or its right to be excluded from the Class; (b) shall be forever barred from requesting
25 exclusion from the Class in this or any other proceeding; (c) shall be bound by the
26 provisions of the Stipulation and Settlement and all proceedings, determinations, orders,
27 and judgments in the Action, including, but not limited to, the Judgment and the Releases
28 provided for therein, whether favorable or unfavorable to the Class; and (d) will be barred

1 from commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims
2 against any of the Defendants' Releasees, as more fully described in the Stipulation and
3 Notice.

4 16. Appearance and Objections at Settlement Fairness Hearing – Any Class Member
5 who or which does not request exclusion from the Class may enter an appearance in the
6 Action, at his, her, or its own expense, individually or through counsel of his, her, or its
7 own choice, by filing with the Clerk of Court and delivering a notice of appearance to both
8 Lead Counsel and Defendants' Counsel, at the addresses set forth in paragraph 17 below,
9 such that it is received no later than twenty-one (21) calendar days prior to the Settlement
10 Fairness Hearing, or as the Court may otherwise direct. Any Class Member who does not
11 enter an appearance will be represented by Lead Counsel.

12 17. Any Class Member who or which does not request exclusion from the Class may
13 file a written objection to the proposed Settlement, the proposed Plan of Allocation, and/or
14 Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation
15 Expenses and appear and show cause, if he, she, or it has any cause, why the proposed
16 Settlement, the proposed Plan of Allocation, and/or Lead Counsel's motion for attorneys'
17 fees and reimbursement of Litigation Expenses should not be approved; provided,
18 however, that no Class Member shall be heard or entitled to contest the approval of the
19 terms and conditions of the proposed Settlement, the proposed Plan of Allocation, and/or
20 the motion for attorneys' fees and reimbursement of Litigation Expenses unless that person
21 or entity has filed a written objection with the Court and served copies of such objection
22 on Lead Counsel and Defendants' Counsel at the addresses set forth below such that they
23 are received no later than twenty-one (21) calendar days prior to the Settlement Fairness
24 Hearing.

25 Lead Counsel: Wolf Haldenstein Adler Freeman & Herz LLP
26 Attn: Matthew M. Guiney
27 270 Madison Avenue
28 New York, New York 10016
Telephone: (212) 545-4600
Email: guiney@whafh.com

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2 Defendants' Counsel: King & Spalding LLP Attn: Lisa R. Bugni
3 101 Second Street, Suite 1000
4 San Francisco, CA 94105
5 Telephone: (415) 318-1234
6 Email: lbugni@KSLAW.com

7 18. Any objections, filings, and other submissions by the Class Member: (a) must
8 state the name, address, and telephone number of the person or entity objecting and must
9 be signed by the objector; (b) must state with specificity the grounds for the Class
10 Member's objection, including any legal and evidentiary support the Class Member wishes
11 to bring to the Court's attention and whether the objection applies only to the objector, to
12 a specific subset of the Class, or to the entire Class; and (c) must include documents
13 sufficient to prove membership in the Class, including the number of shares of Taronis
14 common stock that the objecting Class Member (A) owned as of the opening of trading on
15 January 28, 2019 and (B) purchased/acquired and/or sold during the Class Period, as well
16 as the dates, number of shares, and prices of each such purchase/acquisition and sale. The
17 objecting Class Member shall provide documentation establishing membership in the Class
18 through copies of brokerage confirmation slips or monthly brokerage account statements,
19 or an authorized statement from the objector's broker containing the transactional and
20 holding information found in a broker confirmation slip or account statement. Objectors
21 who enter an appearance and desire to present evidence at the Settlement Fairness Hearing
22 in support of their objection must include in their written objection or notice of appearance
23 the identity of any witnesses they may call to testify and any exhibits they intend to
24 introduce into evidence at the hearing.

25 19. Any Class Member who or which does not make his, her, or its objection in the
26 manner provided herein may be deemed to have waived his, her, or its right to object to
27 any aspect of the proposed Settlement, the proposed Plan of Allocation, and Lead
28 Counsel's motion for an award of attorneys' fees and reimbursement of Litigation
Expenses and shall be forever barred and foreclosed from objecting to the fairness,

1 reasonably, or adequacy of the Settlement, the Plan of Allocation, or the requested
2 attorneys' fees and Litigation Expenses, or from otherwise being heard concerning the
3 Settlement, the Plan of Allocation, or the requested attorneys' fees and Litigation Expenses
4 in this or any other proceeding.

5 20. Stay and Temporary Injunction – Until otherwise ordered by the Court, the Court
6 stays all proceedings in the Action other than proceedings necessary to carry out or enforce
7 the terms and conditions of the Stipulation. Pending final determination of whether the
8 Settlement should be approved, the Court bars and enjoins Lead Plaintiff, and all other
9 members of the Class, from commencing or prosecuting any and all of the Released
10 Plaintiffs' Claims against each and all of the Defendants' Releasees.

11 21. Settlement Administration Fees and Expenses – All reasonable costs incurred in
12 identifying Class Members and notifying them of the Settlement as well as in administering
13 the Settlement shall be paid as set forth in the Stipulation without further order of the Court.

14 22. Settlement Fund – The contents of the Settlement Fund held by Signature Bank
15 (which the Court approves as the Escrow Agent) shall be deemed and considered to be in
16 custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until
17 such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of
18 the Court.

19 23. Taxes – Lead Counsel is authorized and directed to prepare any tax returns and
20 any other tax reporting form for or in respect to the Settlement Fund, to pay from the
21 Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise
22 perform all obligations with respect to Taxes and any reporting or filings in respect thereof
23 without further order of the Court in a manner consistent with the provisions of the
24 Stipulation.

25 24. Termination of Settlement – If the Settlement is terminated as provided in the
26 Stipulation, the Settlement is not approved, or the Effective Date of the Settlement
27 otherwise fails to occur, this Order shall be vacated, rendered null and void, and be of no
28 further force and effect, except as otherwise provided by the Stipulation, and this Order

1 shall be without prejudice to the rights of Lead Plaintiff, the other Class Members, and
2 Defendants, and the Parties shall revert to their respective positions in the Action as of the
3 date immediately prior to the execution of the Stipulation, as provided in the Stipulation.

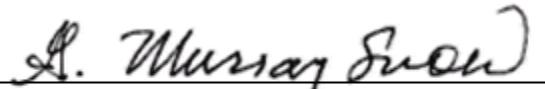
4 25. Use of this Order – Neither this Order, the Term Sheet, the Stipulation (whether
5 or not consummated), including the exhibits thereto and the Plan of Allocation contained
6 therein (or any other plan of allocation that may be approved by the Court), the negotiations
7 leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in
8 connection with the Stipulation, and/or approval of the Settlement (including any
9 arguments proffered in connection therewith): (a) shall be offered against any of the
10 Defendants’ Releasees as evidence of, or construed as, or deemed to be evidence of any
11 presumption, concession, or admission by any of the Defendants’ Releasees with respect
12 to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that was or
13 could have been asserted or the deficiency of any defense that has been or could have been
14 asserted in this Action or in any other litigation, or of any liability, negligence, fault, or
15 other wrongdoing of any kind of any of the Defendants’ Releasees or in any way referred
16 to for any other reason as against any of the Defendants’ Releasees, in any arbitration
17 proceeding or other civil, criminal, or administrative action or proceeding, other than such
18 proceedings as may be necessary to effectuate the provisions of the Stipulation; (b) shall
19 be offered against any of the Plaintiffs’ Releasees, as evidence of, or construed as, or
20 deemed to be evidence of any presumption, concession, or admission by any of the
21 Plaintiffs’ Releasees that any of their claims are without merit, that any of the Defendants’
22 Releasees had meritorious defenses, or that damages recoverable under the Complaint
23 would not have exceeded the Settlement Amount or with respect to any liability,
24 negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason
25 as against any of the Plaintiffs’ Releasees, in any arbitration proceeding or other civil,
26 criminal, or administrative action or proceeding, other than such proceedings as may be
27 necessary to effectuate the provisions of the Stipulation; or (c) shall be construed against
28 any of the Releasees as an admission, concession, or presumption that the consideration to

1 be given hereunder represents the amount which could be or would have been recovered
2 after trial; provided, however, that if the Stipulation is approved by the Court, the Parties
3 and the Releasees and their respective counsel may refer to it to effectuate the protections
4 from liability granted thereunder or otherwise to enforce the terms of the Settlement.

5 26. Supporting Papers – Lead Counsel shall file and serve the opening papers in
6 support of the proposed Settlement, the proposed Plan of Allocation, and Lead Counsel’s
7 motion for an award of attorneys’ fees and reimbursement of Litigation Expenses no later
8 than thirty-five (35) calendar days prior to the Settlement Fairness Hearing; and reply
9 papers, if any, shall be filed and served no later than seven (7) calendar days prior to the
10 Settlement Fairness Hearing.

11 27. Jurisdiction – The Court retains jurisdiction to consider all further applications
12 arising out of or connected with the proposed Settlement.

13 Dated this 23rd day of November, 2020.

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16 G. Murray Snow
17 Chief United States District Judge
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