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FILED
Clerk of the Superior Court
AUG 10 2018
By: G. Mendoza, Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

RALPH A. HUNTZINGER and ERIC
BUSH, on Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

v.

SUUNTO OY and AQUA LUNG
AMERICA, INC.

Defendants.

Case No. 37-2018-00027159-CU-BT-CTL
CLASS ACTION

~~[PROPOSED]~~ PRELIMINARY APPROVAL
ORDER

Dept: C-66
Judge: Hon. Kenneth J. Medel

Date Filed: June 1, 2018

1 WHEREAS, the above-styled Action was filed on June 1, 2018;

2 WHEREAS, Plaintiffs Eric Bush and Ralph A. Huntzinger, on behalf of themselves
3 and others similarly situated, and Defendants Suunto Oy and Aqua Lung, America, Inc.
4 (together, "Defendants") have entered into a Settlement Agreement resolving the Action,
5 subject to Court approval;

6 WHEREAS, the Action was settled as a result of arm's-length negotiations,
7 investigation and discovery sufficient to permit counsel and the Court to act knowingly, and
8 counsel are experienced in similar litigation; and

9 WHEREAS, the Parties have made an application for an order preliminarily approving
10 the settlement of this Action, conditionally certifying the Class for settlement purposes, and
11 approving the form and method of notice upon the terms and conditions set forth in the
12 Settlement Agreement filed with this Court on July 25, 2018, together with all exhibits thereto,
13 and the Court having considered the Settlement Agreement, together with all exhibits thereto
14 and records in this case, and the arguments of counsel at a hearing held on August 10, 2018;

15 THEREFORE, for good cause appearing, it is hereby ordered as follows:

16 **I. THE CLASS IS CERTIFIED**

17 1. The Court hereby conditionally certifies the following Class for settlement
18 purposes only:

19 All individuals who purchased new one or more of the following Suunto Dive
20 Computers in the United States (including the fifty states, the District of
21 Columbia, Puerto Rico and all other United States territories and/or possessions)
22 that was manufactured from January 1, 2006 through the date of the Preliminary
23 Approval Order: Suunto Cobra, Suunto Cobra 2, Suunto Cobra 3, Suunto Cobra
24 3 Black, Suunto Vyper, Suunto Vyper Novo, Suunto Vyper 2, Suunto Vyper
25 Air, Suunto HelO2, Suunto Gekko, Suunto Vytec, Suunto Vytec DS, Suunto
26 Zoop, Suunto Zoop Novo, Suunto Mosquito, Suunto D4, Suunto D6, Suunto
27 D9, Suunto D4i, Suunto D6i, Suunto D4i Novo, Suunto D6i Novo, Suunto
28 D9tx, and Suunto DX. Excluded from the Class are: (a) the Defendants and their
respective officers, directors and employees; (b) Plaintiffs' Counsel; (c) the
judge(s) presiding over the Action and Related Action and immediate court staff
assigned to the Action and Related Action; (d) individuals who purchased used
Dive Computers as to those used purchases; (e) retailers or others who
purchased Suunto's Dive Computers for resale; and (f) individuals who timely
and properly exclude themselves from the Class as provided in this Order.

1 2. For settlement purposes only, with respect to the Class, the Court preliminary
2 finds the prerequisites for a class action pursuant to California Civil Code § 1781 and
3 California Code of Civil Procedure 382 have been met, in that: (a) the Class is so numerous
4 that joinder of all individual Class Members is impracticable; (b) there are questions of law
5 and fact common to the Class and those common questions of law and fact predominate over
6 any individual questions; (c) the claims of the Class Representatives are typical of the claims
7 of the Class; (d) the Class Representatives and Class Counsel will fairly and adequately
8 represent the interests of the Class; and (e) a class action is superior to other available methods
9 for the fair and efficient adjudication of the controversy.

10 3. The Court hereby appoints Plaintiffs Eric Bush and Ralph A. Huntzinger as
11 Class Representatives of the Class.

12 4. The Court hereby appoints Timothy G. Blood and Paula R. Brown of Blood
13 Hurst & O'Reardon, LLP and Douglas A. Hofmann and John A. Knox of Williams, Kastner &
14 Gibbs PLLC as Class Counsel to represent the Class. Any Class Member may enter an
15 appearance in the Action at his or her own expense, individually or through counsel. Notices
16 of Appearance must be filed with the Court and served on the Parties identified in the Class
17 Notice on or before November 14, 2018 (30 days before Fairness Hearing set below). All
18 Class Members who do not enter an appearance will be represented by Class Counsel.

19 **II. THE SETTLEMENT AGREEMENT IS PRELIMINARILY APPROVED, AND**
20 **THE FAIRNESS HEARING IS SET; PROVISIONS FOR EXCLUSION FROM**
21 **CLASS AND OBJECTIONS**

22 1. The Court hereby preliminarily approves the Settlement Agreement and the
23 terms and conditions of settlement set forth in the Settlement Agreement as fair, reasonable
24 and adequate. The terms of the Settlement Agreement are sufficiently within the range of
25 reasonableness to warrant notice to the Class and are subject to further consideration thereof at
the Fairness Hearing set below.

26 2. The Court will hold a Fairness Hearing on December 14, 2018 at 10:30 a.m., in
27 Department C-66 at the Superior Court for the County of San Diego, 330 West Broadway, San
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1 Diego, to consider: (a) whether certification of the Class for settlement purposes should be
2 confirmed; (b) whether the proposed settlement of the Action on the terms set forth in the
3 Settlement Agreement should be approved as fair, just, reasonable, adequate and in the best
4 interests of the Class; (c) the application by Class Counsel for an award of Attorneys' Fees,
5 Costs and Expenses as provided for under the Settlement Agreement; (d) the application for
6 Class Representative incentive awards as provided for under the Settlement Agreement;
7 (e) whether the Release of Released Claims as set forth in the Settlement Agreement should be
8 provided; (f) whether the Court should enter the [Proposed] Final Order and Judgment; and
9 (g) ruling upon such other matters as the Court may deem just and appropriate.

10 3. The Fairness Hearing may, from time to time and without further notice to the
11 Class Members (except those who have filed timely and valid objections), be continued or
12 adjourned by order of the Court.

13 4. The Parties may further modify the Settlement Agreement prior to the Fairness
14 Hearing so long as such modification does not materially change the terms of the settlement
15 provided thereunder. The Court may approve the Settlement Agreement with such
16 modifications as may be agreed to by the Parties, if appropriate, without further notice to the
17 Class Members.

18 5. Objections by any Class Member to: (a) the fairness, reasonableness, or
19 adequacy of the Settlement Agreement; (b) an award for the reimbursement of Attorneys'
20 Fees, Costs and Expenses; or (c) the requested incentive awards to the Class Representatives,
21 shall be heard, and any papers submitted in support of said objection shall be considered by the
22 Court at the Fairness Hearing only if, on or before November 14, 2018 (30 days before the
23 Fairness Hearing set above), such objector files with the Clerk of the Superior Court of the
24 County of San Diego and serves upon the Parties' counsel a written objection consistent with
25 the terms of the Class Notice. Any documents supporting the objection must also be attached
26 to the objection. If any testimony is proposed to be given in support of the objection, the
27 names of all persons who will testify at the Fairness Hearing must be set forth in the objection.
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1 In order to be considered for hearing, all objections must be actually received by the counsel
2 identified in the Class Notice on or before November 14, 2018 (30 days before the Fairness
3 Hearing set above). A Class Member need not appear at the Fairness Hearing in order for his
4 or her objection to be considered.

5 6. Any Class Member who wishes to opt out of the Class must mail a written
6 Request for Exclusion to the Settlement Administrator, postmarked or delivered no later than
7 November 14, 2018 (30 days before the Fairness Hearing set above). The written request must
8 state that the person is a Class Member and wants to be excluded from the Class, must be
9 signed by the Class Member, and otherwise comply with the requirements for exclusion as set
10 forth in the Class Notice. Any Class Member who does not submit a valid and timely Request
11 for Exclusion will be bound by the judgment and orders in this Action. If a potential Class
12 Member files a Request for Exclusion, he or she may not file an objection.

13 7. No later than forty-five (45) days before the Fairness Hearing, the Parties shall
14 file their opening papers in support of their motion for final approval of the settlement and any
15 application for an award of Attorneys' Fees, Costs and Expenses and incentive awards for the
16 Class Representatives. No later than five (5) court days before the Fairness Hearing, the Parties
17 shall file their reply papers as needed, including as needed to respond to any valid and timely
18 objections. The reply papers shall be served upon any objector who has complied with the
19 provisions of paragraph II.5 of this Order.

20 **III. THE COURT APPROVES THE FORM AND METHOD OF CLASS NOTICE**

21 1. Having considered the Direct Notice, Email Notice, Long Form Notice and
22 Publication Notice attached as Exhibits D, E, H and K to the Settlement Agreement, and the
23 Notice Plan attached as Exhibit I to the Settlement Agreement, the Court hereby approves the
24 contents of the Class Notice and the Notice Plan.

25 2. The Court hereby appoints JND Legal Administration as Settlement
26 Administrator. The Settlement Administrator shall disseminate Class Notice and supervise and
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1 carry out the Notice Plan, the Claim Process, the payment of funds pursuant to the
2 Reimbursement Fund Program, and other administrative functions.

3 3. Within fourteen (14) days of this Order, the Settlement Administrator is ordered
4 to disseminate the Class Notice pursuant to the Settlement Agreement and Notice Plan.

5 4. The Court finds that the notice to the Class Members regarding settlement of
6 this Action, including the content of the notices and method of dissemination to the Class
7 Members in accordance with the terms of Settlement Agreement, constitute the best notice
8 practicable under the circumstances and constitute valid, due and sufficient notice to all Class
9 Members, complying fully with the requirements of California Code of Civil Procedure § 382,
10 California Civil Code § 1781, California Rules of Court Rules 3.766 and 3.769(f), the
11 California and United States Constitutions, and any other applicable law.

12 5. The costs of disseminating the Class Notice and otherwise implementing the
13 Notice Plan pursuant to the Settlement Agreement shall be paid by Suunto.

14 6. No later than ten (10) days before the Fairness Hearing, the Settlement
15 Administrator shall file with the Court a list of those persons who have opted out or excluded
16 themselves from this settlement and the terms of this Settlement Agreement and the details
17 outlining the scope, method and results of the Notice Plan.

18 **IT IS SO ORDERED.**

19
20 Dated: 8.10.18

21 By: 

HON. KENNETH J. MEDEL
JUDGE OF THE SUPERIOR COURT