

1 SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
John T. Jasnoch (SBN 281605)
2 707 Broadway, Suite 1000
San Diego, California 92101
3 Telephone: (619) 233-4565
Facsimile: (619) 233-0508
4 Email: jjasnoch@scott-scott.com

5 *Counsel for the Class and Lead Plaintiff*

6 BOTTINI & BOTTINI, INC.
Francis A. Bottini, Jr.
7 Albert Y. Chang
Yury A. Kolesnikov
8 7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
9 Telephone: (858) 914-2001
Facsimile: (858) 914-2002
10 Email: fbottini@bottinilaw.com
achang@bottinilaw.com
11 ykolesnikov@bottinilaw.com

12 *Liaison Counsel for the Class*

13 [Additional Counsel on Signature Page.]

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SANTA CLARA

17 IN RE FIREEYE, INC. SECURITIES
LITIGATION

Lead Case No.: 1-14-cv-266866
(Consolidated with Case No. 1-14-cv-268110)

18
19 This Document Relates To:

20 ALL ACTIONS.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF LEAD
PLAINTIFF'S UNOPPOSED MOTION
FOR DISTRIBUTION OF CLASS
SETTLEMENT FUND**

21
22
23 Hearing Date: February 2, 2018
Hearing Time: 9:00 a.m.
Dep't: 19
24 Judge: Hon. Peter H. Kirwan

1 Lead Plaintiff and Court-appointed Class Representative DeKalb County Employees Retirement
2 Plan (“Lead Plaintiff”), respectfully submits this Memorandum of Law in Support of its Unopposed
3 Motion for Distribution of the Class Settlement Fund.¹

4 **I. INTRODUCTION**

5 This motion seeks an order: (i) approving the administrative determinations of the Court-
6 appointed claims administrator, Kurtzman Carson Consultants LLC (“KCC” or the “Claims
7 Administrator”), accepting or rejecting submitted claims; (ii) directing distribution of the Net Settlement
8 Fund (after deducting KCC’s remaining costs and fees) to Class Members whose Proofs of Claim have
9 been accepted; (iii) authorizing payment to KCC for its costs and fees for services performed (or yet to
10 be performed) in administering and distributing the Settlement Fund; (iv) barring further claims against
11 the Settlement Fund and releasing all persons involved in the administration of the Settlement from any
12 claims arising out of such involvement; (v) authorizing, if reasonably feasible and economically
13 practicable, the redistribution (as part of a second distribution) of any amounts remaining in the
14 Settlement Fund (due to, *e.g.*, uncashed checks) six months after the initial distribution to Legal Services
15 of Northern California, a §501(c)(3) non-profit corporation, in accordance with ¶6(e) of the Stipulation
16 and this Court’s Order After August 4 Hearing, entered August 7, 2017; and (vi) authorizing destruction
17 of paper copies of Proof of Claim forms one year after, and of electronic copies of claim records three
18 years after, the distribution of the Net Settlement Fund. Class Counsel has conferred with counsel for
19 the FireEye Defendants, who confirmed that they do not oppose entry of the requested Order.

20 **II. THE CLAIMS ADMINISTRATOR’S DETERMINATIONS SHOULD BE APPROVED**

21 Pursuant to the Stipulation, and as set forth in the Notice disseminated in connection with the
22 Settlement, all Class Members wishing to participate in the Net Settlement Fund were required to submit
23 valid and timely Proof of Claim forms. KCC received and reviewed 37,649 unique claims through

24
25 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings
26 ascribed to them in the Stipulation and Agreement of Settlement, dated February 6, 2017 (the
27 “Stipulation”), the Preliminary Approval Order, dated March 10, 2017, or the accompanying Declaration
28 of Justin R. Hughes Regarding (A) Mailing of the Notice and Proof of Claim Form (B) Administration
of Received Claims, and (C) Proposed Distribution of Settlement Fund, dated January 11, 2018 (the
“Hughes Distribution Declaration”).

1 December 31, 2017. *See* accompanying Hughes Distribution Declaration, ¶6. If a claim was deficient in
2 any regard, KCC notified the claimant of the deficiency and advised the claimant as to possible ways to
3 cure it (if cure was possible). *Id.*, ¶¶18-25. The claims administration process (other than distribution of
4 actual checks) is now complete, and KCC has determined that: (a) 2,491 claims should be accepted in
5 whole or in part; and (b) 35,158 claims should be rejected as ineligible, deficient, or as involving no
6 recognized loss under the Plan of Allocation. *Id.*, ¶34.

7 *Significantly, although all claimants were given the opportunity to challenge KCC's*
8 *determinations and were advised of their right to seek review by this Court of KCC's determinations,*
9 *KCC did not receive any requests for judicial review from claimants. Id.*, ¶21. Therefore, there are ***no***
10 outstanding claims-related requests for the Court to review. *Id.*

11 Moreover, no claim was rejected by KCC solely because it was received after the claim
12 submission deadline, and no delay has resulted from the acceptance of these late claims. Lead Plaintiff
13 and KCC believe that, when the equities are balanced, it would be unfair to prevent an otherwise valid
14 claim from participating in the Net Settlement Fund solely because it was submitted after the cut-off
15 date, but while claims were still being processed. Accordingly, it is respectfully requested that this
16 Court approve KCC's administrative determination not to reject the 120 otherwise valid claims that were
17 submitted after the July 8, 2017 proof of claim deadline solely because of lateness. *Id.*, ¶26.

18 There must, however, be a final cut-off date after which no more claims may be accepted so that
19 the proportional distribution of the Net Settlement Fund can be made. Acceptance of any claim received
20 after December 31, 2017 would require a delay in the distribution. Lead Plaintiff therefore requests that
21 this Court enter an Order (in the form accompanying this Unopposed Motion) directing that no claim
22 received after December 31, 2017 be accepted for any reason whatsoever, except as may be actually
23 approved in accord with subparagraph (d) of ¶38 of the accompanying Hughes Distribution Declaration
24 (setting forth the proposed Distribution Plan). *See In re Gypsum Antitrust Cases*, 565 F.2d 1123, 1127
25 (9th Cir. 1977) (“in the distribution of a large class action settlement fund, ‘a cutoff date is essential and
26 at some point the matter must be terminated’”) (citation omitted); *In re Orthopedic Bone Screw Prods.*
27 *Liab. Litig.*, 246 F.3d 315, 329 (3d Cir. 2001) (same).

1 For the reasons set forth above and in the Hughes Distribution Declaration, Lead Plaintiff
2 requests that the Court approve KCC's administrative determinations accepting and rejecting claims,
3 and approve the proposed Distribution Plan.²

4 **III. THE CLAIMS ADMINISTRATOR'S REQUESTED ADDITIONAL FEES AND**
5 **EXPENSES SHOULD BE APPROVED**

6 In addition to printing and mailing the Notice to over 30,000 potential Class members (*see*
7 Hughes Distribution Declaration, ¶4), KCC has now also processed the proofs of claim and prepared tax
8 returns for the Settlement Fund and (promptly after the Court's approval of its administrative
9 determinations) will soon be distributing settlement checks to Authorized Claimants. In its Order After
10 August 4 Hearing, the Court authorized an initial payment to KCC of \$92,132.90 in connection with its
11 time and expense in disseminating the Notice to putative Class members through June 30, 2017, which
12 sum was thereafter duly paid to KCC. Based on the additional work performed (and final distribution
13 work yet to be performed) by KCC, as described in the accompanying Hughes Distribution Declaration,
14 Lead Plaintiff requests that the Court authorize the disbursement of: (a) \$81,889.99 from the Settlement
15 Fund to KCC for payment for costs and expenses of its Claims administration and processing that KCC
16 has incurred from July 1, 2017 through December 31, 2017; and (b) a further \$22,614.00 for fees and
17 reasonably expected expenses yet to be incurred in connection with the printing and actual distribution
18 of settlement checks to Authorized Claimants, and for related services – for a total additional request by
19 KCC of \$104,503.99. *See* Hughes Distribution Declaration, ¶37 & n.5 thereto. A copy of KCC's
20 itemized invoice for additional services rendered (or to be rendered) and expenses incurred (or
21 reasonably estimated to be incurred) since July 1, 2017 is attached as Exhibit C to the Hughes
22 Distribution Declaration.

24
25 ² A list of the Proofs of Claim submitted and their ultimate disposition is contained in Exhibits B-
26 1, B-2, and B-3 to the Hughes Distribution Declaration. Exhibit B-1, titled "Timely Eligible Claims,"
27 and Exhibit B-2, titled "Late, but Otherwise Eligible, Claims," list all accepted Proofs of Claim and state
28 their total recognized claim amounts. Exhibit B-3, titled "Rejected Claims," lists all rejected Proofs of
Claim. For privacy reasons, these exhibits give only the claimant's claim number and outcome, without
giving names, addresses, taxpayer IDs, or Social Security numbers.

1 Lead Counsel has reviewed KCC's request for payment for KCC's as yet uncompensated
2 additional services and expenses, as set forth in Exhibit C to the Hughes Distribution Declaration, and
3 believes it is fair, reasonable, and appropriate and should be approved.

4 **IV. THE COURT SHOULD AUTHORIZE DISTRIBUTION OF THE SETTLEMENT**
5 **FUND TO APPROVED CLAIMANTS**

6 Lead Plaintiff also requests that the Court authorize distribution of the balance of the Settlement
7 Fund (after deducting the additional administrative fees and expenses as requested herein) to Class
8 Members whose claims have been accepted, in proportion to their recognized claims, as set forth in the
9 accompanying Hughes Distribution Declaration and at §I above.

10 Lead Plaintiff further respectfully requests that all persons involved in the review, verification,
11 calculation, tabulation, or any other aspect of the processing of the claims submitted herein or otherwise
12 involved in the administration of the Settlement Fund or the Net Settlement Fund and including Lead
13 Counsel and KCC (collectively, the "Released Persons") be released and discharged from any and all
14 claims arising out of such involvement, and that each Class Member be barred from making any further
15 claim against the Net Settlement Fund or the Released Persons beyond the amount allocated to him, her,
16 or it.

17 **V. THE COURT SHOULD AUTHORIZE THE REDISTRIBUTION AND/OR**
18 **DISPOSITION OF ANY UNCLAIMED OR UNCASHED PORTIONS OF THE**
19 **SETTLEMENT FUND, AS PROVIDED FOR IN THE STIPULATION**

20 Some payments to be distributed to Class Members may not be cashed promptly. To encourage
21 Class Members to promptly cash their distribution checks, and to avoid or reduce future expense relating
22 to unpaid distributions, Lead Counsel proposes that all distribution checks bear the notation "CASH
23 PROMPTLY; VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED 120 DAYS AFTER
24 ISSUE DATE."

25 Invariably, however, some settlement Class Members will still not cash their checks, leading to a
26 residual balance in the Settlement Fund. The Court-approved Stipulation provides that if any balance
27 remains in the Settlement Fund six months after the date of distribution of the Settlement Fund (whether
28 by reason of tax refunds, uncashed checks, or otherwise): (1) any such balance shall be reallocated
among Authorized Claimants in an equitable fashion, if logistically feasible and economically

1 justifiable; and (2) after any such reallocation (or within ten business days of any decision not to
2 undertake a reallocation), any remaining balance be distributed to Legal Services of Northern California,
3 a §501(c)(3) non-profit corporation, as provided in ¶6(e) of the Stipulation and the Court's Order After
4 August 4 Hearing. The accompanying [Proposed] Order Granting Lead Plaintiff's Unopposed Motion
5 for Distribution of Class Settlement Fund confirms the appropriateness of, and authorizes the
6 implementation of, this method for distributing any residual amount that may be left after the initial
7 distribution to Class Members.

8 **VI. THE COURT SHOULD APPROVE THE CLAIM ADMINISTRATOR'S
9 PROPOSED RECORDS RETENTION AND DESTRUCTION PLAN**

10 Finally, Lead Plaintiff requests that the Court order that KCC be allowed to destroy paper copies
11 and all supporting documentation of paper Proofs of Claim one year after distribution of the Net
12 Settlement Fund, and that it be allowed to destroy the electronic copies of Proofs of Claim and all
13 supporting documentation three years after such distribution.

14 **VII. CONCLUSION**

15 For the foregoing reasons, Lead Plaintiff respectfully requests that the Court grant its Unopposed
16 Motion and enter the [Proposed] Order submitted herewith.

17 DATED: January 11, 2018

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

/s/ John T. Jasnoch

John T. Jasnoch
707 Broadway, Suite 1000
San Diego, California 92101
Telephone: (619) 233-4565
Facsimile: (619) 233-0508
Email: jjasnoch@scott-scott.com

Beth A. Kaswan
William C. Fredericks
Sean Masson
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
The Helmsley Building
230 Park Avenue, 17th Floor
New York, New York 10169
Telephone: (212) 223-6444
Facsimile: (212) 223-6334
Email: bkaswan@scott-scott.com
wfredericks@scott-scott.com
smasson@scott-scott.com

Counsel for the Class and Lead Plaintiff

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Francis A. Bottini, Jr.
Albert Y. Chang
Yury A. Kolesnikov
BOTTINI & BOTTINI, INC.
7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
Telephone: (858) 914-2001
Facsimile: (858) 914-2002
Email: fbottini@bottinilaw.com
achang@bottinilaw.com
ykolesnikov@bottinilaw.com

Liaison Counsel for the Class