

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

IN RE AUDIOEYE, INC. SECURITIES
LITIGATION

CV-15-00163-TUC-DCB

**ORDER PRELIMINARILY
APPROVING SETTLEMENT
AND PROVIDING FOR
NOTICE**

Hearing Date: January 23, 2017
Time: 1:30 p.m.

WHEREAS, (i) Lead Plaintiffs Globis Capital Partners, L.P. and Globis Overseas Fund Ltd (“Lead Plaintiffs”), on behalf of themselves and the putative Class, and (ii) Defendants AudioEye, Inc. (“AudioEye”), Nathaniel Bradley and Edward O’Donnell (collectively, “Defendants”), by and through their respective counsel, have entered into a Stipulation of Settlement, dated December 13, 2016 (the “Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed settlement of the claims alleged in this Litigation; and

WHEREAS, the Court having read and considered the Stipulation, the “Postcard Notice of Proposed Settlement” (“Postcard Notice”), the proposed “Notice of Pendency and Proposed Settlement of Class Action” (“Long Form Notice”), the proposed “Summary Notice of Pendency and Proposed Class Action Settlement” (“Summary Notice”), the proposed Plan of Allocation of the Net Settlement Fund among Settlement Class Members, the proposed form of the Proof of Claim and Release (“Proof of Claim”), the proposed form of Order and Final Judgment, and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 23rd day of January, 2017, that:

1. Capitalized terms used herein have the meanings defined in the Stipulation.
2. The Court preliminarily approves the Settlement of the Litigation as set forth in the Stipulation, subject to the right of any Settlement Class Member to challenge the fairness, reasonableness, and adequacy of the Settlement and to show cause, if any exists, why a final judgment dismissing the Litigation based on the Stipulation should not be entered, and subject to further consideration of such matters by the Court at the hearing on final approval of the Stipulation described below.
3. The Court provisionally certifies for purposes of effectuating the proposed Settlement set forth in the Stipulation a Settlement Class comprised of all Persons who purchased or otherwise acquired any common stock of AudioEye during the period from May 14, 2014 through and including April 1, 2015, and who were allegedly damaged thereby. Excluded from the Settlement Class are Defendants, the officers and directors of AudioEye during the Class Period, members of their immediate families and their legal representatives, heirs,

successors, or assigns, any entity in which Defendants have or had a controlling interest, and any persons who separately file an action against one or more of Defendants, based in whole or in part on any claim arising out of or relating to any of the alleged acts, omissions, misrepresentations, facts, events, matters, transactions, or occurrences referred to in the Litigation or otherwise alleged, asserted, or contended in the Litigation. Also excluded from the Settlement Class are those persons who file valid and timely requests for exclusion in accordance with the Court's Order of Preliminary Approval of Settlement concerning the Stipulation. This conditional certification of the Settlement Class shall be binding only with respect to the Settlement of the Litigation and shall be withdrawn if the Effective Date does not occur for any reason and/or the Settlement is not consummated according to its terms. By entering into the Stipulation and assenting to entry of this order and the proposed Order and Final Judgment, the Defendants have not waived any rights with respect to any arguments they might make in opposition to a motion for class certification in the event that the Effective Date does not occur and/or the Settlement is not consummated according to its terms.

4. A hearing (the "Final Settlement Hearing") pursuant to Federal Rule of Civil Procedure 23(e) shall be held before the Court on **May 8, 2017 at 1:30 p.m.** for the following purposes:

- a. to consider whether the Litigation satisfies the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b) for the purpose of effectuating the Settlement;
- b. to finally determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- c. to finally determine whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the

Litigation on the merits and with prejudice, and to determine whether the release by the Settlement Class of the Released Parties as set forth in the Stipulation, should be ordered, along with a permanent injunction barring efforts to bring any claims extinguished by the release;

- d. to finally determine whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;
 - e. to consider the application of Lead Plaintiffs' Counsel for an award of Attorneys' Fees and Expenses and an Award to Lead Plaintiffs;
 - f. to consider any Settlement Class Members' objections to the Settlement, whether submitted previously in writing or presented orally at the Final Settlement Hearing by Settlement Class Members (or by counsel on their behalf); and
 - g. to rule upon such other matters as the Court may deem appropriate.
5. The Court reserves the right to adjourn the Final Settlement Hearing to a later date and to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter its Order and Final Judgment approving the Settlement and dismissing the Complaint, on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or awarded any Attorneys' Fees and Expenses or Award to Lead Plaintiffs.
6. The Court reserves the right to approve the Settlement with such modifications as may be agreed upon or consented to by the Settling Parties and without further notice to the Settlement Class where to do so would not impair Settlement Class Members' rights in a manner inconsistent with Rule 23 and due process of law.

7. The Court approves the form, substance and requirements of (a) the Postcard Notice, (b) the Long Form Notice, (c) the Summary Notice and (d) the Proof of Claim, which were submitted as exhibits to this Proposed Order.

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

9. Any Settlement Class Member may enter an appearance in the Litigation at his, her or its own expense, individually or through counsel of his, her or its own choice. Settlement Class Members who do not enter appearances shall be represented by Lead Plaintiffs' Counsel. Any Settlement Class Member who anticipates the need and wishes to appeal any aspect of the Stipulation or Settlement should formally move to intervene as a party under Rule 24 of the Federal Rules of Civil Procedure.

10. JND Legal Administration is approved as the Claims Administrator for the Settlement.

11. Lead Plaintiffs' Counsel, through the Claims Administrator, shall cause the Postcard Notice, substantially in the form annexed hereto, to be mailed, by United States mail, postage prepaid, no later than fourteen (14) calendar days following receipt of the transfer records report from Defendants to all Settlement Class Members who can be identified with reasonable effort by the Claims Administrator. No later than five (5) business days after receipt of a request for a copy of the Long Form Notice, the Claims Administrator or Lead Plaintiffs' Counsel shall cause a copy of the Long Form Notice, substantially in the form annexed hereto as Exhibit A-2, to be mailed by first-class mail, postage prepaid, or emailed to any putative Class Members that makes such a request.

Contemporaneously with the mailing of the Postcard Notice, the Claims Administrator and Lead Plaintiffs' Counsel shall cause copies of the Long Form Notice and Proof of Claim, substantially in the forms annexed hereto as Exhibit A-2 and A-4, respectively, to be posted in downloadable form on a website specific to the Settlement, www.audioeyesecuritieslitigation.com, and at www.kmlp.com.

12. Lead Plaintiffs' Counsel are authorized to establish a Notice and Administration Account (as defined in the Stipulation) of \$100,000 (One Hundred Thousand Dollars), to be used for reasonable out-of-pocket costs in connection with providing notice of the Settlement to the Settlement Class and for other reasonable out-of-pocket administrative expenses without further order of the Court. After the Effective Date, additional amounts may be transferred from the Settlement Fund to the Notice and Administration Account and any notice and administration costs in excess of \$100,000 shall be paid from the Notice and Administration Account, subject to approval of Lead Plaintiffs' Counsel, without further order of the Court.

13. AudioEye and any and all issuers, securities firms or transfer agents holding transfer records which indicate the legal owners of AudioEye common stock and/or securities currently or during the Class Period are hereby ordered to produce such transfer records in a usable electronic format to Lead Plaintiffs' Counsel or the Claims Administrator, without any charge to the Gross Settlement Fund, Lead Plaintiffs' Counsel or the Claims Administrator, within fourteen (14) calendar days of receipt of a copy of this Order.

14. Lead Plaintiffs' Counsel, through the Claims Administrator, shall also make all reasonable efforts to give notice to nominee owners such as brokerage firms and other persons or entities who purchased AudioEye common stock and/or securities during the Class Period. Within ten (10) calendar days after receiving the Notice, such nominee purchasers are directed to forward the Postcard Notice to

their beneficial owners or to provide the Claims Administrator with lists of the names and addresses of the beneficial owners, and in the latter case, the Claims Administrator is ordered to send the Postcard Notice promptly to such beneficial owners. Additional copies of the Postcard Notice shall be made available to any record holder requesting same for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Gross Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of sending the Postcard Notice to beneficial owners.

15. Lead Plaintiffs' Counsel shall, at or before the Final Settlement Hearing, serve upon Defendants' Counsel, and file with the Court, proof of mailing of the Notice and Proof of Claim, both to Settlement Class Members and to nominees.

16. Lead Plaintiffs' Counsel, through the Claims Administrator, shall cause the Summary Notice to be published electronically once on the *GlobeNewswire* and in print once in the *Investor's Business Daily* within thirty-five (35) calendar days after the entry of this Order. Lead Plaintiffs' Counsel shall, at or before the Final Settlement Hearing, serve upon Defendants' Counsel and file with the Court proof of publication of the Summary Notice.

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

contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

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

- a. A properly completed and executed Proof of Claim must be submitted to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than ninety (90) calendar days from the date of this Order. Such deadline may be further extended by Order of the Court. Each Proof of Claim shall be deemed to have been submitted when legibly postmarked (if properly addressed and mailed by first-class mail). Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received by the Claims Administrator at the address designated in the Notice.
- b. The Proof of Claim submitted by each Settlement Class Member must satisfy the following conditions: (i) it must be properly filled out, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator or Lead Plaintiffs' Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his current authority to act on behalf of the Settlement

Class Member must be provided with the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

- c. Once the Claims Administrator has considered a timely-submitted Proof of Claim, it shall determine whether such claim is valid, deficient or rejected. For each claim determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter or rejection letter as appropriate, describing the basis on which the claim was so determined. Persons who timely submit a Proof of Claim that is deficient or otherwise rejected shall be afforded a reasonable time (at least seven (7) calendar days) to cure such deficiency if it shall appear that such deficiency may be cured.
- d. For the filing of and all determinations concerning their Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the Court.

19. All Settlement Class Members who do not submit valid and timely Proofs of Claim will be forever barred from receiving any payments from the Net Settlement Fund, but will in all other respects be subject to and bound by the provisions of the Stipulation and the Order and Final Judgment, if entered. Notwithstanding the foregoing, Lead Plaintiffs' Counsel may, in their discretion, accept late-submitted claims for process by the Claims Administrator so long as distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby.

20. Settlement Class Members shall be bound by all determinations and judgments in the Litigation, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as

hereinafter provided. A Settlement Class Member wishing to make such request shall mail it, in written form, by first class mail, postage prepaid, or otherwise deliver it, so that it is received no later than thirty (30) calendar days prior to the Final Settlement Hearing to the addresses listed in the Notice. Such request for exclusion shall clearly indicate the name, address, phone number and e-mail contact information (if any) of the person seeking exclusion, state that the sender specifically requests to be excluded from the Settlement Class, and must be signed by such person. Such persons requesting exclusion are also required to specify all their purchases and sales of AudioEye common stock and/or securities during the Class Period, including the date, number of shares and price of the shares purchased or sold and include account documentation substantiating such purchases and sales. The request for exclusion shall not be effective unless it provides the required information, is legible, and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Lead Plaintiffs' Counsel may contact any person or entity filing a request for exclusion, or their attorney if one is designated, to discuss the exclusion. Requests for exclusion must be filed no later than thirty (30) calendar days prior to the Final Approval Hearing.

21. Settlement Class Members requesting exclusion from the Settlement Class shall not be entitled to receive any payment out of the Net Settlement Fund. The Court will consider comments and/or objections to the Settlement, the Plan of Allocation, or the application for Attorneys' Fees and Expenses and any payment to Lead Plaintiff, only if such comments or objections and any supporting papers are served to be received at least twenty-one (21) calendar days prior to the Final Settlement Hearing, upon each of the following:

LEAD PLAINTIFFS' COUNSEL:

Ira M. Press, Esq.

Mark Strauss, Esq.
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COUNSEL FOR DEFENDANTS AUDIOEYE AND NATHANIEL BRADLEY:

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COUNSEL FOR DEFENDANT EDWARD O'DONNELL:

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Sichenzia Ross Ference Kesner LLP
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and the objector has (by that same date) filed said objections, papers and briefs, showing due proof of service upon counsel identified above, with the Clerk of the Court, U.S. District Court, District of Arizona, Evo A. DeConcini U.S. Courthouse 405 West Congress Street, Suite 1500 Tucson, AZ 85701-5010. Attendance at the Final Settlement Hearing is not necessary but persons wishing to be heard orally in opposition to the Settlement, the Plan of Allocation, and/or the application for Attorneys' Fees and Expenses or Award to Lead Plaintiffs are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and after instruction pertinent to the submission of a written objection) that they intend to appear at the Final Settlement Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into

evidence at the Final Settlement Hearing. Settlement Class Members do not need to appear at the Final Settlement Hearing or take any other action to indicate their approval. Any Settlement Class Member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Order and Final Judgment to be entered approving the Settlement, the Plan of Allocation, and/or the application for an award of Attorneys' Fees and Expenses and a payment to Lead Plaintiffs.

22. The Court reserves the right to adjourn the Final Settlement Hearing or any adjournment thereof without any further notice other than entry of an Order on the Court's docket, and to approve the Settlement without further notice to the Settlement Class.

23. All papers in support of the Settlement, the Plan of Allocation and any application for Attorneys' Fees or Expenses or a payment to Lead Plaintiffs shall be filed and served thirty-five (35) calendar days before the Final Settlement Hearing.

24. Any submissions filed in response to any objections or in further support of the Settlement, the Plan of Allocation and any application for Attorneys' Fees or Expenses or a payment to Lead Plaintiffs shall be filed no later than seven (7) calendar days prior to the Final Settlement Hearing.

25. Pending final determination of whether the Settlement should be approved, all Settlement Class Members, and each of them, and anyone acting or purporting to act for any of them, shall be enjoined from prosecuting, attempting to prosecute, or assisting others in the prosecution of, any Settled Claims. In addition, the Litigation is stayed.

26. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an

admission or concession by Lead Plaintiffs regarding the merits of the claims made in the Litigation. Neither the Stipulation nor any of the terms and provisions of the Settlement set forth therein, nor any statements made, acts performed or documents executed in the negotiation of, pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or truth of any of the allegations in the Litigation or the validity of any of the Released Claims, or of any fault, wrongdoing or liability of any of the Settling Defendants and their Related Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Settling Defendants and their Related Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

27. In the event the Settlement is not consummated pursuant to its terms, the Stipulation, except as otherwise provided therein, including any amendment(s) thereto, and this Order, shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or referred to in any action or proceedings by any person or entity, and each party shall be restored to his, her or its respective position as it existed before the execution of the Stipulation, pursuant to the terms of the Stipulation, except that any notice and administration costs paid or incurred at the time of termination, and less any taxes paid or payable on the Gross Settlement Fund (including any costs and expenses of tax attorneys and accountants) at the time of termination need not be refunded to Settling Defendants or their insurer funding the Settlement.

28. The Court retains exclusive and specific jurisdiction over the action to consider all further matters arising out of, or relating to, the Settlement, including by way of illustration and not limitation, any dispute concerning any Proof of Claim filed by any Settlement Class Member and any future requests by

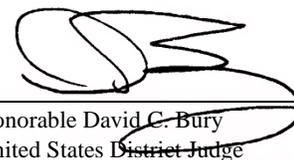
one or more of the Settling Parties that the Final Order and Judgment, the Release and/or the permanent injunction set forth in the Stipulation be enforced.

29. All funds held by the Escrow Agent shall be deemed and considered to be in *custodial legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

30. Neither the Defendants, Released Parties, nor Defendants' counsel shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or expenses submitted by Lead Plaintiffs' Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

31. All Taxes, Tax Expenses, and Notice and Administration Expenses shall be paid from the Settlement Fund without further order of the Court in a manner consistent with the provisions of the Stipulation. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Lead Plaintiffs nor any of their counsel shall have any obligation to repay any amounts incurred and/or properly disbursed pursuant to the Stipulation.

Dated this 23rd day of January, 2017.



Honorable David C. Bury
United States District Judge