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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 OAKLAND DIVISION

16 LOGAN HESSEFORT, Individually and on )  
Behalf of All Others Similarly Situated, )  
17 Plaintiff, )  
18 vs. )  
19 SUPER MICRO COMPUTER, INC., et al., )  
20 Defendants. )  
21

Lead Case No. 4:18-cv-00838-JST  
)  
) CLASS ACTION  
) ~~PROPOSED~~ ORDER PRELIMINARILY  
) APPROVING SETTLEMENT AND  
) PROVIDING FOR NOTICE  
) \*AS MODIFIED\*  
)  
) Re: ECF No. 152

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1 WHEREAS, an action is pending before this Court entitled *Hessefort v. Super Micro*  
2 *Computer, Inc., et al.*, Case No. 4:18-cv-00838-JST (the “Litigation”);

3 WHEREAS, the parties having made application, pursuant to Federal Rule of Civil  
4 Procedure 23(e), for an order preliminarily approving the settlement of this Litigation, in  
5 accordance with a Stipulation of Settlement dated April 8, 2022 (the “Stipulation”), which,  
6 together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed  
7 settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and  
8 conditions set forth therein; and the Court having read and considered the Stipulation and the  
9 Exhibits annexed thereto; and

10 WHEREAS, unless otherwise defined, all terms used herein have the same meanings as  
11 set forth in the Stipulation.

12 NOW, THEREFORE, IT IS HEREBY ORDERED:

13 1. After a preliminary review, the Settlement appears to be fair, reasonable, and  
14 adequate. The Settlement: (a) resulted from arm’s-length negotiations overseen by an  
15 experienced mediator; (b) eliminates the risks to the Parties of continued litigation; (c) does not  
16 provide undue preferential treatment to Lead Plaintiff or to segments of the Class; (d) does not  
17 provide excessive compensation to counsel for the Class; and (e) appears to fall within the range  
18 of possible approval and is therefore sufficiently fair, reasonable, and adequate to warrant  
19 providing notice of the Settlement to the Class. Accordingly, the Court does hereby  
20 preliminarily approve the Stipulation and the Settlement set forth therein, subject to further  
21 consideration at the Settlement Hearing described below.

22 2. A hearing (the “Settlement Hearing”) shall be held before this Court on March 2,  
23 2023, at 2:00 p.m., via Zoom at the link available at [https://cand.uscourts.gov/judges/tigar-jon-s-](https://cand.uscourts.gov/judges/tigar-jon-s-jst/)  
24 [jst/](https://cand.uscourts.gov/judges/tigar-jon-s-jst/), for the following purposes:

25 a. to determine whether the Settlement is fair, reasonable, and adequate, and  
26 should be approved by the Court;

27 b. to finally determine whether Judgment as provided under the Stipulation  
28 should be entered, dismissing the Fourth Amended Complaint on the

1 merits and with prejudice, and to determine whether the release by the  
2 Class of the Released Defendant Parties as set forth in the Stipulation,  
3 should be ordered, along with a permanent injunction barring efforts to  
4 bring any Released Claims or Released Defendants' Claims extinguished  
5 by the Settlement;

6 c. to finally determine whether the proposed Plan of Allocation for the  
7 distribution of the Net Settlement Fund is fair and reasonable and should  
8 be approved by the Court;

9 d. to consider the application of Lead Counsel for an award of attorney's fees  
10 and expenses, and any application for an award to Lead Plaintiff;

11 e. to consider Class Members' objections to the Settlement, Plan of  
12 Allocation or application for fees and expenses; and

13 f. to rule upon such other matters as the Court may deem appropriate.

14 3. The Court may adjourn the Settlement Hearing without further notice to the  
15 members of the Class, and reserves the right to approve the Settlement with such modifications  
16 as may be agreed upon or consented to by the Parties and without further notice to the Class  
17 where to do so would not impair Class Members' rights in a manner inconsistent with Rule 23  
18 and due process of law. The Court further reserves the right to enter its Judgment approving the  
19 Settlement and dismissing the Fourth Amended Complaint, on the merits and with prejudice,  
20 regardless of whether it has approved the Plan of Allocation or awarded attorney's fees and  
21 expenses or made awards to the Lead Plaintiff.

22 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby  
23 certifies, for the sole purpose of effectuating the Settlement, a Class defined as follows:

24 All Persons that purchased or acquired Super Micro common stock  
25 between August 5, 2016 and January 30, 2018, inclusive ("Class  
26 Period"). Excluded from the Class are: (i) Defendants; (ii) members  
27 of the immediate families of the Individual Defendants; (iii) Super  
28 Micro's subsidiaries; (iv) the officers and directors of Super Micro  
during the Class Period; (v) any entity in which any Defendant has  
a controlling interest; and (vi) the legal representatives, heirs,  
successors and assigns of any such excluded person or entity. Also

1 excluded from the Class will be any Person who timely and validly  
2 seeks exclusion from the Class.

3 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of  
4 settlement only, New York Hotel Trades Council & Hotel Association of New York City, Inc.  
5 Pension Fund (the “Fund”) is appointed as representative of the Class, and Lead Counsel  
6 Robbins Geller Rudman & Dowd LLP is appointed as Class Counsel for the Class.

7 6. With respect to the Class, this Court finds, for purposes of effectuating the  
8 Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the  
9 Federal Rules of Civil Procedure have been satisfied in that: (a) the members of the Class are so  
10 numerous that joinder of all Class Members in the Litigation is impracticable; (b) there are  
11 questions of law and fact common to the Class; (c) the claims of the Fund are typical of the  
12 claims of the Class; (d) the Fund and its counsel have fairly and adequately represented and  
13 protected the interests of all Class Members; (e) the questions of law and fact common to the  
14 Class predominate over any questions affecting only individual members of the Class; and (f) a  
15 class action is superior to other available methods for the fair and efficient adjudication of the  
16 controversy, considering: (i) the interests of the members of the Class in individually controlling  
17 the prosecution of the separate actions; (ii) the extent and nature of any litigation concerning the  
18 controversy already commenced by members of the Class; (iii) the desirability or undesirability  
19 of concentrating the litigation of these claims in this particular forum; and (iv) the difficulties  
20 likely to be encountered in the management of the Litigation.

21 7. The Court approves, as to form and content, the Notice of Pendency and Proposed  
22 Settlement of Class Action (the “Notice”), the Proof of Claim Form (the “Proof of Claim”), and  
23 the Summary Notice, annexed hereto as Exhibits A-1, A- 2, and A-3, respectively, and finds that  
24 the mailing and distribution of the Notice and publishing of the Summary Notice, substantially in  
25 the manner and form set forth in paragraphs 10 and 11 of this Order, meet the requirements of  
26 Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the  
27 circumstances and shall constitute due and sufficient notice to all Persons entitled thereto except  
28 as set forth below:

- 1 (a) The information required for Settlement Class members to request exclusion or to  
2 object should be modified consistent with this order, at paragraphs 17 and 19  
3 below. *See, e.g., Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST, 2018 WL  
4 4207245, at \*11-12 (N.D. Cal. Sept. 4, 2018).
- 5 (b) In the notices, the Settlement Class Members should be directed to mail  
6 comments or objections to the "Clerk of Court" and not to the "Class Action  
7 Clerk." ECF No. 155 at 29.
- 8 (c) The notices should indicate that the final approval hearing will be conducted via  
9 Zoom, with the link available at <https://cand.uscourts.gov/judges/tigar-jon-s-jst/>.
- 10 (d) In paragraph 72 of the Notice, the Court's hours should be modified from 9:00  
11 a.m. to 4:00 p.m. to 9:00 a.m. to 1:00 p.m. ECF No. 155 at 31.

12 8. The firm of Gilardi & Co. LLC ("Claims Administrator") is hereby appointed to  
13 supervise and administer the notice procedure as well as the processing of claims as more fully  
14 set forth below.

15 9. Super Micro shall provide, or cause to be provided, to Lead Counsel or the Claims  
16 Administrator, at no cost to Lead Plaintiff, the Settlement Fund, Lead Counsel or the Claims  
17 Administrator, within ten (10) calendar days after the Court enters this Order, documentation or  
18 data in the possession of Super Micro or its present or former stock transfer agents sufficient to  
19 identify to the extent available the record holders of Super Micro common stock during the  
20 period from August 5, 2016 through January 30, 2018, inclusive, and their last known addresses  
21 or other similar information. The Parties shall determine an appropriate electronic format for  
22 provision of this information.

23 10. Lead Counsel, through the Claims Administrator, shall commence mailing the  
24 Notice and Proof of Claim, substantially in the forms annexed hereto, within twenty (20)  
25 calendar days after the Court signs this Order (the "Notice Date"), by first-class mail to all Class  
26 Members who can be identified with reasonable effort, and to be posted on the Settlement  
27 website at [www.SuperMicroSecuritiesSettlement.com](http://www.SuperMicroSecuritiesSettlement.com).

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1           11. Not later than seven (7) calendar days after the Notice Date, the Claims  
2 Administrator shall cause the Summary Notice to be published once in the national edition of  
3 *The Wall Street Journal* and once over a national newswire service.

4           12. At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel  
5 shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of  
6 such mailing and publishing.

7           13. Nominees who purchased or acquired Super Micro common stock for the  
8 beneficial ownership of Class Members during the Class Period shall (a) within seven (7)  
9 calendar days of receipt of the Notice and the Proof of Claim ("Notice Packet"), request from the  
10 Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial  
11 owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all  
12 such beneficial owners; or (b) within seven (7) calendar days of receipt of the Notice Packet,  
13 send a list of the names and addresses of all such beneficial owners to the Claims Administrator  
14 in which event the Claims Administrator shall promptly mail the Notice Packet to such beneficial  
15 owners. Lead Counsel shall, if requested, reimburse banks, brokerage houses or other nominees  
16 solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial  
17 owners who are Class Members out of the Settlement Fund, which expenses would not have  
18 been incurred except for the sending of such notice, subject to further order of this Court with  
19 respect to any dispute concerning such compensation.

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

- 23           a. A properly completed and executed Proof of Claim must be submitted to  
24 the Claims Administrator, at the post office box or electronic mailbox  
25 indicated in the Notice and Proof of Claim, postmarked no later than  
26 ninety (90) calendar days from the Notice Date. Such deadline may be  
27 further extended by Order of the Court. Each Proof of Claim shall be  
28 deemed to have been submitted when legibly postmarked (if properly

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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 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 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 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 twenty (20) calendar days) to cure such deficiency if it shall appear that such deficiency may be cured.

1           d.       For the filing of and all determinations concerning their Proof of Claim,  
2                       each Class Member shall submit to the jurisdiction of the Court.

3           15.     Any Class Member who does not timely submit a valid and timely Proof of Claim  
4 within the time provided for, shall be barred from sharing in the distribution of the proceeds of  
5 the Settlement Fund, but will in all other respects be subject to and bound by the provisions of  
6 the Stipulation and the Judgment, if entered. Notwithstanding the foregoing, Lead Counsel shall  
7 have the discretion (but not an obligation) to accept late-submitted claims for processing by the  
8 Claims Administrator so long as distribution of the Settlement Fund to Authorized Claimants is  
9 not materially delayed thereby, but will bear no liability for failing to accept such late claims.

10          16.     Any member of the Class may enter an appearance in the Litigation, at their own  
11 expense, individually or through counsel of their own choice. If they do not enter an appearance,  
12 they will be represented by Lead Counsel.

13          17.     All Class Members shall be bound by all determinations and judgments in this  
14 Litigation, whether favorable or unfavorable, unless such persons request to be excluded, or “opt  
15 out,” from the Class. A Class Member wishing to be excluded from the Class must submit to the  
16 Claims Administrator a request for exclusion (“Request for Exclusion”), by first-class mail, or  
17 otherwise hand-deliver it, such that it is received no later than twenty-one (21) calendar days  
18 prior to the Settlement Hearing, or February 9, 2023, to the address listed in the Notice. In order  
19 to be valid, such request for exclusion must be signed by the Settlement Class Member and  
20 legibly state: (1) the Settlement Class Member’s full name; and (2) a statement that the  
21 Settlement Class member requests to be excluded from the settlement class in *Hessefort v. Super*  
22 *Micro Computer, Inc., et al.*, No. 4:18-cv-00838-JST. Information regarding Settlement Class  
23 Members’ transactions involving Super Micro stocks, or Settlement Class Members’ telephone  
24 numbers and addresses, is not required. All Persons who submit valid and timely Requests for  
25 Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation,  
26 shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the  
27 Stipulation or any Final Judgment. Unless otherwise ordered by the Court, any Class Member  
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1 who does not submit a valid and timely written Request for Exclusion as provided by this  
2 paragraph shall be bound by the Stipulation.

3 18. The Claims Administrator or Lead Counsel shall cause to be provided to  
4 Defendants' Counsel copies of all Requests for Exclusion as expeditiously as possible, but in no  
5 event later than five (5) business days of receipt thereof and in any event at least fourteen (14)  
6 calendar days before the Settlement Hearing.

7 19. The Court will consider comments or objections to the Settlement, the Plan of  
8 Allocation, or Lead Counsel's request for an award of attorney's fees and expenses, including an  
9 award to the Lead Plaintiff as provided for by 15 U.S.C. §78u-4(a)(4), only if such comments or  
10 objections and any supporting papers are submitted to the Court either by mailing them to Clerk  
11 of Court, United States District Court for the Northern District of California, Oakland Division,  
12 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United  
13 States District Court for the Northern District of California. Such comments or objections must  
14 be filed or postmarked at least twenty-one (21) calendar days prior to the Settlement Hearing, or  
15 February 9, 2023. Attendance at the Settlement Hearing is not necessary but any Person wishing  
16 to be heard orally in opposition to the Settlement, the Plan of Allocation, or the application for  
17 attorney's fees and expenses or awards to the Lead Plaintiff is required to indicate in their written  
18 objection whether they intend to appear at the Settlement Hearing. To be valid, any such  
19 objection must contain the Settlement Class member's full name, the basis for their belief that  
20 they are a member of the settlement class, the basis of their objection, and their signature.  
21 Settlement Class Members should also be advised that they may file an objection or appear at the  
22 Settlement Hearing either on their own or through an attorney, and if they appear through an  
23 attorney, they are responsible for paying that attorney. Class Members do not need to appear at  
24 the Settlement Hearing or take any other action to indicate their approval.

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

1           21. All opening briefs and supporting documents in support of the Settlement, the  
2 Plan of Allocation, and any application by Lead Counsel for attorney's fees and expenses and  
3 awards to the Lead Plaintiff shall be filed and served no later than thirty-five (35) calendar days  
4 before the Settlement Hearing, or January 26, 2023. Replies to any objections shall be filed and  
5 served at least seven (7) calendar days prior to the Settlement Hearing, or February 23, 2023.

6           22. The motion for final approval shall address the final approval guidelines in the  
7 Northern District of California's Procedural Guidance for Class Action Settlement, available at  
8 <https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>, in the order  
9 the guidelines are presented on the website. As reflected in the Guidance, the Court will require  
10 a post-distribution accounting within 21 days after the distribution of settlement funds. The  
11 Court will typically withhold between 10% and 25% of the attorney's fees granted at final  
12 approval until after the post-distribution accounting has been filed. The final approval motion  
13 should specify what percentage class counsel believes it is appropriate to withhold and why.

14           23. The Released Defendant Parties shall have no responsibility for the Plan of  
15 Allocation or any application for attorney's fees or expenses submitted by Lead Counsel, and  
16 such matters will be considered separately from the fairness, reasonableness, and adequacy of the  
17 Settlement. Any order or proceeding relating to the Plan of Allocation or any application for  
18 attorney's fees or expenses, or any appeal from any order relating thereto or reversal or  
19 modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay  
20 the finality of the Judgment approving the Stipulation and the settlement of the Litigation.

21           24. At or after the Settlement Hearing, the Court shall determine whether the Plan of  
22 Allocation proposed by Lead Counsel, and any application for attorney's fees or payment of  
23 expenses shall be approved.

24           25. All reasonable expenses incurred in identifying and notifying Class Members, as  
25 well as administering the Settlement Fund, shall be paid as set forth in the Stipulation.

26           26. Neither the Stipulation, nor any of its terms or provisions, nor any of the  
27 negotiations or proceedings connected with it, shall be construed as an admission or concession  
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1 by the Defendants of the truth of any of the allegations in the Litigation, or of any liability, fault,  
2 or wrongdoing of any kind.

3 27. If the Stipulation and the Settlement set forth therein is not approved or  
4 consummated for any reason whatsoever, the Stipulation and Settlement and all proceedings had  
5 in connection therewith shall be without prejudice to the rights of the Settling Parties *status quo*  
6 *ante*.

7 28. Pending final determination of whether the proposed Settlement should be  
8 approved, neither the Lead Plaintiff, nor any Class Member, directly or indirectly,  
9 representatively, or in any other capacity, shall commence or prosecute against any of the  
10 Released Defendant Parties, any action or proceeding in any court or tribunal asserting any of the  
11 Released Claims.

12 29. The Court's orders entered during this Litigation relating to the confidentiality of  
13 information shall survive this Settlement.

14 IT IS SO ORDERED.

15 DATED: November 8, 2022

  
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THE HONORABLE JON S. TIGAR  
UNITED STATES DISTRICT JUDGE

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