

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IN RE MERIT MEDICAL SYSTEMS, INC.
SECURITIES LITIGATION

No. 8:19-cv-02326-DOC-ADS

**NOTICE OF (I) PENDENCY OF CLASS ACTION AND
PROPOSED SETTLEMENT; (II) SETTLEMENT HEARING; AND
(III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

NOTICE OF PENDENCY OF CLASS ACTION: Please be advised that your rights may be affected by the above-captioned securities class action (“Action”) pending in the United States District Court for the Central District of California (“Court”), if you purchased the common stock of Merit Medical Systems, Inc. (“Merit” or the “Company”) during the period from February 26, 2019 through October 30, 2019, inclusive (the “Class Period”).¹

NOTICE OF SETTLEMENT: Please also be advised that the Court-appointed Lead Plaintiffs City of Atlanta Police Officers’ Pension Fund, City of Atlanta Firefighters’ Pension Fund, and Employees’ Retirement System of the City of Baton Rouge and Parish of East Baton Rouge (“Lead Plaintiffs”), on behalf of themselves and the Settlement Class (as defined in ¶ 25 below), have reached a proposed settlement of the Action with Defendants (defined below) for **\$18,250,000.00** in cash that, if approved, will resolve all claims in the Action (“Settlement”).

PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.

If you have questions about this Notice, the Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, the Clerk’s Office, Defendants, or Defendants’ Counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 70 below).

1. **Description of the Action and the Settlement Class:** This Notice relates to the proposed Settlement of claims in a pending putative securities class action brought by investors against Merit and certain of its executives. The Defendants are Merit; Fred P. Lampropoulos, the founder and Chief Executive Officer of Merit; and Raul Parra, the Chief Financial Officer of Merit. Lead Plaintiffs allege that Defendants violated the federal securities laws by making false and misleading statements and omissions about Merit’s business, including misstatements concerning the integration of two recently acquired companies, Cianna Medical, Inc. (“Cianna”) and Vascular Insights, LLC (“Vascular Insights”). A more detailed description of the Action is set forth in ¶¶ 11-24 below. The Settlement, if approved by the Court, will settle the claims of the Settlement Class, as defined in ¶ 25 below.

2. **Statement of the Settlement Class’s Recovery:** Subject to Court approval, Lead Plaintiffs, on behalf of themselves and the Settlement Class, have agreed to settle the Action in exchange for a settlement payment of \$18,250,000 in cash (“Settlement Amount”) to be deposited into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (“Settlement Fund”) less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys’ fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Settlement Class. The proposed plan of allocation (“Plan of Allocation”) is attached hereto as Appendix A.

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated December 21, 2021 (“Stipulation”), which is available at www.MeritMedicalSecuritiesLitigation.com.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiffs' damages expert's estimate of the number of shares of Merit common stock purchased during the Class Period that may have been affected by the alleged conduct at issue in the Action, and assuming that all Settlement Class Members elect to participate in the Settlement, the estimated average recovery per eligible share of Merit common stock (before the deduction of any Court-approved fees, expenses, and costs as described herein) is approximately \$0.81 per share. **Settlement Class Members should note, however, that the foregoing average recovery per eligible share is only an estimate.** Settlement Class Members may recover more or less than this estimated amount depending on, among other factors: (i) when and the price at which they purchased shares of Merit common stock; (ii) whether they sold their shares of Merit common stock and, if so, when and at what price; and (iii) the total number and value of valid Claims submitted to participate in the Settlement. Distributions to Settlement Class Members will be made based on the Plan of Allocation attached hereto as Appendix A or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Share:** The Parties do not agree on the amount of damages per share of Merit common stock that would be recoverable if Lead Plaintiffs were to prevail in the Action. Among other things, Defendants do not agree that they violated the federal securities laws or that, even if liability could be established, any damages were suffered by any members of the Settlement Class as a result of their conduct.

5. **Attorneys' Fees and Expenses Sought:** Lead Counsel have not received any payment of attorneys' fees for their representation of the Settlement Class in the Action and have advanced the funds to pay expenses incurred to prosecute this Action with the expectation that if they were successful in recovering money for the Settlement Class, they would receive fees and be paid for their expenses from the Settlement Fund, as is customary in this type of litigation. Prior to the final Settlement Hearing, Lead Counsel, Saxena White P.A. and Bernstein Litowitz Berger & Grossmann LLP, will apply to the Court for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund. In addition, Lead Counsel will apply for Litigation Expenses incurred by Lead Counsel in connection with the institution, prosecution, and resolution of the Action, in an amount not to exceed \$250,000, which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. The estimated average cost per eligible share of Merit common stock, if the Court approves Lead Counsel's attorneys' fees and Litigation Expenses application, is approximately \$0.26 per share. **Please note that this amount is only an estimate.**

6. **Identification of Attorneys' Representatives:** Lead Plaintiffs and the Settlement Class are represented by David R. Kaplan of Saxena White P.A., 12750 High Bluff Drive, Suite 475, San Diego, CA 92130, 1-858-997-0860, dkaplan@saxenawhite.com and Jonathan D. Uslaner of Bernstein Litowitz Berger & Grossmann LLP, 2121 Avenue of the Stars, Los Angeles, CA 90067, 1-800-380-8496, settlements@blbglaw.com.

7. **Reasons for the Settlement:** Lead Plaintiffs' principal reason for entering into the Settlement is the immediate cash benefit for the Settlement Class without the risk or the delays and costs inherent in further litigation. Moreover, the cash benefit provided under the Settlement must be considered against the risk that a smaller recovery – or no recovery at all – might be achieved after a motion for summary judgment, a trial of the Action, and the likely appeals that would follow a trial. This process could be expected to last several years. Defendants are entering into this Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation. Defendants expressly deny that Lead Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever, or any infirmity in the defenses that Defendants have, or could have asserted.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:

**SUBMIT A CLAIM FORM
POSTMARKED (IF MAILED), OR
ONLINE, NO LATER THAN
MAY 25, 2022.**

This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (defined in ¶ 34 below) that you have against Defendants and the other Defendants' Releasees (defined in ¶ 35 below), so it is in your interest to submit a Claim Form.

<p>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN MARCH 23, 2022.</p>	<p>If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that may allow you to ever be part of any other lawsuit against Defendants or Defendants’ Releasees concerning the Released Plaintiffs’ Claims.</p>
<p>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN MARCH 23, 2022.</p>	<p>If you do not like the proposed Settlement, the proposed Plan of Allocation, and/or the requested attorneys’ fees and Litigation Expenses, you may object by writing to the Court and explaining why you do not like them. You cannot object unless you are a member of the Settlement Class and do not exclude yourself from the Settlement Class.</p>
<p>ATTEND A HEARING ON APRIL 13, 2022 AT 8:30 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS <i>RECEIVED</i> NO LATER THAN MARCH 23, 2022.</p>	<p>Filing a written objection and notice of intention to appear by March 23, 2022 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and Litigation Expenses. If you submit a written objection, you may (but you do not have to) participate in the hearing and, at the discretion of the Court, speak to the Court about your objection.</p>
<p>DO NOTHING.</p>	<p>If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.</p>

These rights and options – and the deadlines to exercise them – are further explained in this Notice. Please Note: The date and time of the Settlement Hearing – currently scheduled for April 13, 2022 at 8:30 a.m. Pacific Time – is subject to change without further notice to the Settlement Class. It is also within the Court’s discretion to hold the hearing in person or telephonically. If you plan to attend the hearing, you should check the Settlement website, www.MeritMedicalSecuritiesLitigation.com, or with Lead Counsel as set forth above to confirm that no change to the date and/or time of the hearing has been made.

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WHY DID I GET THIS NOTICE?

8. The Court authorized that this Notice be sent to you because you or someone in your family or an investment account for which you serve as custodian may have purchased shares of Merit common stock during the Class Period. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have the right to understand how this class action lawsuit may generally affect your legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Claims Administrator selected by Lead Plaintiffs and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you (if you are a Settlement Class Member) might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses ("Settlement Hearing"). See ¶¶ 60-61 below for details about the Settlement Hearing, including the date and location of the hearing.

10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time.

WHAT IS THIS CASE ABOUT?

11. Merit is a company that manufactures and sells medical products used for medical procedures to hospitals and physicians. At all relevant times, Merit common stock traded on NASDAQ under the ticker symbol MMSI.

12. On December 3, 2019, a class action complaint was filed in the United States District Court for the Central District of California (the "Court"), styled *Bucks County Employees Retirement Fund v. Merit Medical Systems, Inc., et al.*, Case No. 8:19-cv-02326, alleging violations of the federal securities laws on behalf of persons who purchased Merit common stock between February 26, 2019 and October 30, 2019, inclusive.

13. On February 3, 2020, City of Atlanta Police Officers' Pension Fund and City of Atlanta Firefighters' Pension Fund (the "Atlanta Funds"), and Employees' Retirement System of the City of Baton Rouge and Parish of East Baton Rouge ("Baton Rouge") filed a joint motion for appointment as lead plaintiffs on behalf of purchasers of Merit common stock from February 26, 2019 through October 30, 2019, inclusive.

14. On February 24, 2020, the Court ordered that the master docket be recaptioned as *In re Merit Medical Systems, Inc. Securities Litigation*, Master File No. 8:19-cv-02326-DOC-ADS (the "Action") and that any subsequently filed, removed, or transferred actions related to the claims asserted in the Action be consolidated for all purposes; appointed the Atlanta Funds and Baton Rouge as Lead Plaintiffs; and approved Lead Plaintiffs' selection of Saxena White P.A. and Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel.

15. On March 23, 2020, Defendants served and filed a motion to transfer the case to the District of Utah. On April 13, 2020, Lead Plaintiffs opposed that motion and on April 27, 2020, Defendants filed and served their reply in support of their motion to transfer. On May 11, 2020, the Court denied Defendants' motion to transfer venue to the District of Utah.

16. On June 30, 2020, Lead Plaintiffs served and filed their Consolidated Class Action Complaint for Violations of the Federal Securities Laws (the "Complaint") asserting claims against Defendants Merit, Lampropoulos, and Parra under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against Lampropoulos and Parra under Section 20(a) of the Exchange Act. Among other things, the Complaint alleged that Defendants made materially false and misleading statements about two of Merit's acquisitions, Cianna Medical and Vascular Insights, including that Merit had successfully integrated Cianna Medical and had maintained its sales force and that Vascular Insights' ClariVein products were driving Merit's growth. The Complaint further alleged that the price of Merit common stock was artificially inflated as a result of Defendants' allegedly false and misleading statements and declined when the truth was allegedly revealed.

17. On August 14, 2020, Defendants served and filed a motion to dismiss the Complaint. On September 28, 2020, Lead Plaintiffs served and filed their memorandum of law in opposition to that motion and, on October 22, 2020, Defendants served and filed their reply papers.

18. On March 16, 2021, the Honorable Autumn D. Spaeth issued a report and recommendation denying Defendants' motions to dismiss the Complaint in large part (the "Report").

19. On March 30, 2021, Defendants served and filed objections to Judge Spaeth's Report. On April 13, 2021, Lead Plaintiffs served and filed their response to Defendants' objections. On May 4, 2021, the Court entered an order adopting Judge Spaeth's Report in full.

20. On May 24, 2021, Defendants served and filed their Answer and Affirmative Defenses to the Complaint.

21. Discovery in this Action commenced in May 2021. Lead Plaintiffs prepared and served initial disclosures, document requests, and interrogatories on Defendants. Additionally, Lead Plaintiffs prepared and served document subpoenas on five non-parties. Lead Plaintiffs exchanged numerous letters and held numerous meet and confers with Defendants and third parties concerning discovery issues. Defendants and non-parties produced over a half-million pages of documents to Lead Plaintiffs.

22. The Parties agreed to engage in private mediation and retained Michelle Yoshida to act as mediator in the Action. Pursuant to a schedule set by Ms. Yoshida, the Parties exchanged mediation statements on September 24, 2021, and participated in a full-day, in-person mediation session in Newport Beach, California on October 5, 2021. The October 5, 2021 mediation session ended without resolution. Following extensive, additional negotiations overseen by the mediator, Ms. Yoshida made a mediator's recommendation, on a double-blind basis, that the Parties settle the Action for \$18,250,000.00, which the Parties accepted on November 16, 2021.

23. On December 21, 2021, the Parties entered into the Stipulation, which sets forth the full terms and conditions of the Settlement. The Stipulation can be viewed at www.MeritMedicalSecuritiesLitigation.com.

24. On January 3, 2022, the Court preliminarily approved the Settlement, authorized notice of the Settlement to potential Settlement Class Members and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?
WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

25. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded from the Settlement Class. The Settlement Class certified by the Court solely for purposes of effectuating the Settlement consists of:

all persons who purchased Merit common stock from February 26, 2019 through October 30, 2019, inclusive (the "Class Period"), and who were damaged thereby.

Excluded from the Settlement Class are: Defendants, the Officers and directors of Merit at all relevant times, and all such excluded persons' Immediate Family Members, legal representatives, heirs, agents, affiliates, predecessors, successors, and assigns, and any entity in which any excluded person has or had a controlling interest. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court. See "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself," on page 9 below.

Please note: Receipt of this Notice does not mean that you are a Settlement Class Member or that you will be entitled to receive proceeds from the Settlement.

If you wish to be eligible to participate in the distribution of proceeds from the Settlement, you are required to submit the Claim Form that is being distributed with this Notice and the required supporting documentation postmarked (if mailed), or online, no later than May 25, 2022.

WHAT ARE LEAD PLAINTIFFS' REASONS FOR THE SETTLEMENT?

26. Lead Plaintiffs and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the significant expense and length of the continued proceedings that would be necessary to pursue their

claims against Defendants through the completion of discovery, certification of the class, summary judgment, trial, and appeals, as well as the substantial risks they would face in establishing liability and damages.

27. Defendants have argued, and would continue to argue, that they did not violate the federal securities laws. More specifically, Defendants have argued, and would continue to argue, that (1) they did not make any misleading statements or omissions; (2) that any alleged misstatements were immaterial; (3) Defendants did not act with “scienter,” or fraudulent intent; and (4) Lead Plaintiffs could not prove damages or loss causation with respect to any alleged misleading statements or omissions. Overcoming these arguments would have presented significant challenges to Lead Plaintiffs. First, Lead Plaintiffs faced significant risks in proving that Defendants’ statements concerning the post-acquisition integration and performance of Cianna and Vascular Insights were false when made and that Defendants acted with scienter. Lead Plaintiffs also faced significant risks with respect to materiality. Defendants would argue that any misstatements concerning Cianna and Vascular Insights were immaterial as a matter of law because they had a very small impact on Merit’s financial results. Finally, establishing loss causation and damages would have been particularly difficult here because on the two alleged corrective disclosure dates (July 25, 2019 and October 30, 2019) Merit also released a considerable amount of other information about Merit’s business that was unrelated to the alleged fraud, and thus proving what portion (if any) of the subsequent price declines resulted from the revelation of alleged misstatements (rather than confounding, non-fraud information) would have been difficult and subject to considerable dispute at trial.

28. In light of these risks, the amount of the Settlement, and the immediacy of recovery to the Settlement Class, Lead Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. Lead Plaintiffs and Lead Counsel believe that the Settlement provides a favorable result for the Settlement Class, namely \$18,250,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no, recovery after full discovery, a class certification motion, summary judgment, trial, and appeals, possibly years in the future.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

29. If there were no Settlement, and Lead Plaintiffs failed to establish any essential legal or factual element of their claims against Defendants, neither Lead Plaintiffs nor the other members of the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in establishing any of their defenses either at summary judgment, at trial, or on appeal, the Settlement Class could recover less than the amount provided in the Settlement, or nothing at all.

HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED BY THE ACTION AND THE SETTLEMENT?

30. As a Settlement Class Member, you are represented by Lead Plaintiffs and Lead Counsel, unless you enter an appearance through counsel of your own choice and at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” on page 10 below.

31. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you must exclude yourself from the Settlement Class by following the instructions in the section entitled, “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?,” on page 9 below.

32. If you are a Settlement Class Member and you wish to object to the Settlement, the Plan of Allocation, and/or Lead Counsel’s application for attorneys’ fees and Litigation Expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” on page 10 below.

33. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (“Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, or assigns, in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs’ Claim (as defined in ¶ 34 below) against Defendants and the other Defendants’ Releasees (as defined in ¶ 35 below), and

shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

34. "Released Plaintiffs' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, that Lead Plaintiffs or any other member of the Settlement Class: (i) asserted in the Complaint, or (ii) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and relate to the purchase of Merit common stock during the Class Period. Released Plaintiffs' Claims do not include: (i) claims asserted in any ERISA or derivative action based on similar allegations, including *Maute v. Lampropoulos, et al.*, Case No. 2:21-cv-00346-DBP (D. Utah); (ii) claims relating to the enforcement of the Settlement; or (iii) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court.

35. "Defendants' Releasees" means Defendants and their current and former parents, affiliates, subsidiaries, officers, directors, agents, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, and attorneys, in their capacities as such, and each of their successors, predecessors, assigns, and assignees.

36. "Unknown Claims" means any Released Plaintiffs' Claims which any Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiffs and Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

37. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim (as defined in ¶ 38 below) against Lead Plaintiffs and the other Plaintiffs' Releasees (as defined in ¶ 39 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees. This release shall not apply to any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

38. "Released Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against Defendants. Released Defendants' Claims do not include: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

39. "Plaintiffs' Releasees" means Lead Plaintiffs, all other plaintiffs in the Action, and all other Settlement Class Members, and their current and former parents, affiliates, subsidiaries, officers, directors, agents, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, and attorneys, in their capacities as such, and each of their successors, predecessors, assigns, and assignees.

HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

40. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation *postmarked (if mailed), or submitted online at www.MeritMedicalSecuritiesLitigation.com, no later than May 25, 2022*. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator, www.MeritMedicalSecuritiesLitigation.com, or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at 1-877-242-2522, or by emailing the Claims Administrator at info@MeritMedicalSecuritiesLitigation.com. **Please retain all records of your ownership of and transactions in Merit common stock, as they may be needed to document your Claim.** If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

HOW MUCH WILL MY PAYMENT BE?

41. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

42. Pursuant to the Settlement, Defendants and/or their insurers shall pay or cause to be paid \$18,250,000 in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys’ fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

43. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, has expired.

44. Neither Defendants, the Defendants’ Releasees, nor any other person or entity who or which paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court’s order or Judgment approving the Settlement becomes Final. Defendants and the other Defendants’ Releasees shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the Plan of Allocation.

45. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

46. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form postmarked (if mailed), or online, on or before May 25, 2022 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the Releases given. This means that each Settlement Class Member releases the Released Plaintiffs’ Claims (as defined in ¶ 34 above) against the Defendants’ Releasees (as defined in ¶ 35 above) and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Defendants’ Releasees with respect to the Released Plaintiffs’ Claims whether or not such Settlement Class Member submits a Claim Form.

47. Participants in and beneficiaries of any employee retirement and/or benefit plan covered by ERISA (“ERISA Plan”) should NOT include any information relating to shares of Merit common stock purchased through the ERISA Plan in any Claim Form they submit in this Action. They should include ONLY those eligible shares of Merit common stock purchased during the Class Period outside of an ERISA Plan. Claims based on any ERISA Plan’s purchases of Merit common stock during the Class Period may be made by the plan’s trustees.

48. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member.

49. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim Form.

50. Only Settlement Class Members, i.e., persons and entities who purchased Merit common stock during the Class Period, will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities who are excluded

from the Settlement Class by definition or who exclude themselves from the Settlement Class pursuant to an exclusion request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. The only security that is included in the Settlement is Merit common stock.

51. **Appendix A to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Claimants, as proposed by Lead Plaintiffs. At the Settlement Hearing, Lead Counsel will request the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Settlement Class.**

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?
HOW WILL THE LAWYERS BE PAID?**

52. Lead Counsel have not received any payment for their services in pursuing claims against Defendants on behalf of the Settlement Class; nor have Lead Counsel been paid for their litigation expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund. At the same time, Lead Counsel also intend to apply for payment from the Settlement Fund of Lead Counsel's Litigation Expenses and may apply for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Class, in a total amount not to exceed \$250,000. The Court will determine the amount of any award of attorneys' fees or Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?
HOW DO I EXCLUDE MYSELF?**

53. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit related to the Settlement, whether favorable or unfavorable, unless such person or entity mails or delivers a written request for exclusion addressed to: *Merit Medical Securities Litigation*, EXCLUSIONS, c/o A.B. Data, Ltd., P.O. Box 173001, Milwaukee, WI 53217. The request for exclusion must be **received no later than March 23, 2022**. You will not be able to exclude yourself from the Settlement Class after that date.

54. Each request for exclusion must: (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity "requests exclusion from the Settlement Class in *In re Merit Medical Systems, Inc. Securities Litigation*, Master File No. No. 8:19-cv-02326-DOC-ADS (C.D. Cal.)"; (iii) state the number of shares of Merit common stock that the person or entity requesting exclusion (A) owned as of the opening of trading on February 26, 2019 and (B) purchased/acquired and/or sold during the Class Period (from February 26, 2019 through October 30, 2019, inclusive), as well as the date, number of shares, and price of each such purchase/acquisition and sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative.

55. A request for exclusion shall not be valid and effective unless it provides all the information called for in ¶ 54 and is received within the time stated above, or is otherwise accepted by the Court.

56. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Defendants' Releasees. Excluding yourself from the Settlement Class is the only option that allows you to be part of any other current or future lawsuit against Defendants or any of the other Defendants' Releasees concerning the Released Plaintiffs' Claims. If you exclude yourself from the Settlement Class, Defendants and the other Defendants' Releasees will have the right to assert any and all defenses they may have to any claims that you may seek to assert.

57. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment out of the Net Settlement Fund.

58. Defendants have the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by Lead Plaintiffs and Defendants.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?

59. **Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.**

60. **Please Note:** The date and time of the Settlement Hearing may change without further written notice to the Settlement Class. In addition, the COVID-19 pandemic is a fluid situation that creates the possibility that the Court may decide to conduct the Settlement Hearing by video or telephonic conference, or otherwise allow Settlement Class Members to appear at the hearing by phone, without further written notice to the Settlement Class. **In order to determine whether the date and time of the Settlement Hearing have changed, or whether Settlement Class Members must or may participate by phone or video, it is important that you monitor the Court's docket and the Settlement website, www.MeritMedicalSecuritiesLitigation.com, before making any plans to attend the Settlement Hearing. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted to the Settlement website, www.MeritMedicalSecuritiesLitigation.com. If the Court requires or allows Settlement Class Members to participate in the Settlement Hearing by telephone or video conference, the information for accessing the telephone or video conference will be posted to the Settlement website, www.MeritMedicalSecuritiesLitigation.com.**

61. The Settlement Hearing will be held on **April 13, 2022 at 8:30 a.m.**, Pacific Time before the Honorable David O. Carter at the United States District Court for the Central District of California, Courtroom 9D, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701-4516, for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be finally approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered dismissing the Action with prejudice against Defendants; (c) to determine whether the Settlement Class should be certified for purposes of the Settlement; (d) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (e) to determine whether the motion by Lead Counsel for attorneys' fees and Litigation Expenses should be approved; and (f) to consider any other matters that may properly be brought before the Court in connection with the Settlement. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Settlement Class.

62. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Central District of California at the address set forth below as well as serve copies on Lead Counsel and Defendants' Counsel at the addresses set forth below ***on or before March 23, 2022***.

Clerk's Office

Clerk of the Court
United States District Court for the
Central District of California,
Southern Division
411 West 4th Street, Room 1053
Santa Ana, CA 92701-4516

Lead Counsel

Saxena White P.A.
David R. Kaplan, Esq.
12750 High Bluff Drive, Suite 475
San Diego, CA 92130

Bernstein Litowitz Berger &
Grossmann LLP
Jonathan D. Uslander, Esq.
2121 Avenue of the Stars
Los Angeles, CA 90067

Defendants' Counsel

King & Spalding LLP
Paul R. Bessette, Esq.
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
New York, NY 10018

You must also **email** the objection and any supporting papers on or before March 23, 2022 to dkaplan@saxenawhite.com, settlements@blbglaw.com and pbessette@kslaw.com.

63. Any objections, filings, and other submissions by the objecting Settlement Class Member: (a) must identify the case name and docket number, *In re Merit Medical Systems, Inc. Securities Litigation*, No. 8:19-cv-02326-DOC-ADS (C.D. Cal.); (b) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (c) must state with specificity the grounds for the Settlement Class Member's objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; and (d) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of Merit common stock that the objecting Settlement Class Member (A) held as of the opening of trading on February 26, 2019 and (B) purchased/acquired and/or sold during the Class Period (from February 26, 2019 through October 30, 2019, inclusive), as well as the date, number of shares, and price of each such purchase/acquisition and sale. The objecting Settlement Class Member shall provide documentation establishing membership in the Settlement Class through copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from the objector's broker containing the transactional and holding information found in a broker confirmation slip or account statement.

64. You may not object to the Settlement, Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

65. You may submit an objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless (i) you first submit a written objection in accordance with the procedures described above and (ii) you first submit your notice of appearance in accordance with the procedures described below; unless the Court orders otherwise.

66. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses, and if you timely submit a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 62 above so that it is **received on or before March 23, 2022**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

67. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 62 above so that the notice is **received on or before March 23, 2022**.

68. Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

**WHAT IF I BOUGHT SHARES OF MERIT COMMON STOCK
ON SOMEONE ELSE'S BEHALF?**

69. If you purchased or otherwise acquired Merit common stock during the period from February 26, 2019 through October 30, 2019, inclusive, for the beneficial interest of a person or entity other than yourself, you must either (i) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form ("Notice Packet") to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of this Notice, provide a list of the names, mailing addresses, and, if available, email addresses, of all such beneficial owners to *Merit Medical Securities Litigation*, c/o A.B. Data, Ltd., Attn: Fulfillment Dept., P.O. Box 173117, Milwaukee, WI 53217. If you choose the second option, the Claims Administrator will send a copy of the Notice Packet to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form

may be obtained from the Settlement website, www.MeritMedicalSecuritiesLitigation.com, by calling the Claims Administrator toll-free at 1-877-242-2522, or by emailing the Claims Administrator at info@MeritMedicalSecuritiesLitigation.com.

**CAN I SEE THE COURT FILE?
WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

70. This Notice contains only a summary of the terms of the Settlement. For the terms and conditions of the Settlement, please see the Stipulation available at www.MeritMedicalSecuritiesLitigation.com. Copies of any related orders entered by the Court and certain other filings in this Action will also be posted on this website. More detailed information about the matters involved in this Action can be obtained by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cacd.uscourts.gov>, or by visiting, during regular office hours, the Office of the Clerk, United States District Court for the Central District of California, Southern Division, 411 West 4th Street, Room 1053, Santa Ana, CA 92701-4516.

All inquiries concerning this Notice and the Claim Form should be directed to:

Merit Medical Securities Litigation
c/o A.B. Data, Ltd.
P.O. Box 173117
Milwaukee, WI 53217
1-877-242-2522
info@MeritMedicalSecuritiesLitigation.com
www.MeritMedicalSecuritiesLitigation.com

and/or

David R. Kaplan, Esq.
Saxena White P.A.
12750 High Bluff Drive, Suite 475
San Diego, CA 92130
1-858-997-0860
dkaplan@saxenawhite.com

or

Jonathan D. Uslander, Esq.
Bernstein Litowitz Berger &
Grossmann LLP
2121 Avenue of the Stars
Los Angeles, CA 90067
1-800-380-8496
settlements@blbglaw.com

**PLEASE DO NOT CALL OR WRITE THE COURT, THE CLERK'S OFFICE, DEFENDANTS, OR
DEFENDANTS' COUNSEL REGARDING THIS NOTICE.**

Dated: January 25, 2022

By Order of the Court
United States District Court
for the Central District of California

APPENDIX A

Proposed Plan of Allocation of Net Settlement Fund Among Authorized Claimants

1. The Plan of Allocation (the “Plan”) set forth herein is the plan that is being proposed to the Court for approval by Lead Plaintiffs after consultation with their damages expert. The Court may approve the Plan with or without modification, or approve another plan of allocation, without further notice to the Settlement Class. Any Orders regarding a modification to the Plan will be posted on the website www.MeritMedicalSecuritiesLitigation.com. No Defendant, nor any of Defendants’ Releasees, shall have any involvement with or liability, obligation or responsibility whatsoever for the application of the Plan of Allocation.

2. The objective of the Plan is to equitably distribute the Net Settlement Fund among those Settlement Class Members who suffered economic losses as a result of the alleged violations of the federal securities laws set forth in the Complaint. The calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are these calculations intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan are only a method to weigh the claims of Claimants against one another for the purposes of making a *pro rata* allocation of the Net Settlement Fund.

3. In developing the Plan of Allocation, Lead Plaintiffs’ damages expert calculated the estimated amount of alleged artificial inflation in the per-share closing price of Merit common stock which allegedly was proximately caused by Defendants’ alleged false and misleading statements and material omissions. In calculating this estimated alleged artificial inflation, Lead Plaintiffs’ damages expert considered the price changes in Merit common stock on July 26, 2019 and October 31, 2019, following the alleged corrective disclosures, adjusting for price changes on each day that were attributable to market or industry forces or that would likely have been attributed to non-fraud-related confounding information released on the same day.

4. For losses to be compensable damages under the applicable laws (Sections 10(b) and 20(a) of the Exchange Act), the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of Merit common stock. In this case, Lead Plaintiffs allege that Defendants made false statements and omitted material facts during the period from February 26, 2019 through October 30, 2019, inclusive, which had the effect of artificially inflating the price of Merit common stock. Lead Plaintiffs further allege that corrective information was released to the market after the close of trading on July 25, 2019, which removed artificial inflation from the price of Merit common stock on July 26, 2019, and after the close of trading on October 30, 2019, which removed artificial inflation from the price of Merit common stock on October 31, 2019.

5. Recognized Loss Amounts under the Plan are based primarily on the difference in the amount of alleged artificial inflation in the price of Merit common stock at the time of purchase and the time of sale. Accordingly, in order to have a Recognized Loss Amount, a Settlement Class Member who purchased Merit common stock from February 26, 2019 through July 25, 2019, inclusive, must have held his, her, or its shares until at least the close of trading on July 25, 2019, and a Settlement Class Member who purchased Merit common stock from July 26, 2019 through October 30, 2019, inclusive, must have held his, her, or its shares until at least the close of trading on October 30, 2019.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

6. A “**Recognized Loss Amount**” will be calculated as set forth below for each share of Merit common stock purchased from February 26, 2019 through October 30, 2019, inclusive, that is listed on the Claim Form and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formula below, the Recognized Loss Amount for that transaction will be zero.

7. For each share of Merit common stock purchased from February 26, 2019 through July 25, 2019, inclusive, and:

- (a) sold before the close of trading on July 25, 2019, the **Recognized Loss Amount** is \$0;
- (b) sold from July 26, 2019 through the close of trading on October 30, 2019, the **Recognized Loss Amount** is *the lesser of*: (i) \$0.34 or (ii) the purchase price *minus* the sale price;

- (c) sold from October 31, 2019 through the close of trading on January 28, 2020, the **Recognized Loss Amount** is *the least of*: (i) \$2.57; (ii) the purchase price *minus* the sale price; or (iii) the purchase price *minus* the average closing price between October 31, 2019 and the date of sale as stated in Table A;
- (d) held as of the close of trading on January 28, 2020, the **Recognized Loss Amount** is *the lesser of*: (i) \$2.57; or (ii) the purchase price *minus* \$30.40.²

8. For each share of Merit common stock purchased from July 26, 2019 through October 30, 2019, inclusive, and:

- (a) sold before the close of trading on October 30, 2019, the **Recognized Loss Amount** is \$0;
- (b) sold from October 31, 2019 through the close of trading on January 28, 2020, the **Recognized Loss Amount** is *the least of*: (i) \$2.23; (ii) the purchase price *minus* the sale price; or (iii) the purchase price *minus* the average closing price between October 31, 2019 and the date of sale as stated in Table A;
- (c) held as of the close of trading on January 28, 2020, the **Recognized Loss Amount** is *the lesser of*: (i) \$2.23; or (ii) the purchase price *minus* \$30.40.³

ADDITIONAL PROVISIONS

9. The Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined in ¶ 18 below) is \$10.00 or greater.

10. **Calculation of Claimant’s “Recognized Claim”:** A Claimant’s “Recognized Claim” will be the sum of his, her, or its Recognized Loss Amounts as calculated above with respect to all purchases of Merit common stock during the Class Period.

11. **FIFO Matching:** If a Settlement Class Member has more than one purchase/acquisition or sale of Merit common stock during the Class Period, all purchases/acquisitions and sales shall be matched on a First In, First Out (“FIFO”) basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

12. **“Purchase/Sale” Prices:** For the purposes of calculations under this Plan of Allocation, “purchase price” means the actual price paid, excluding all fees, taxes, and commissions, and “sale price” means the actual amount received, not deducting any fees, taxes, and commissions. If a claimant acquired Merit common stock during the Class Period as a result of a merger or through the conversion of another security, that acquisition shall be treated as an eligible purchase, but the “purchase” price applied to that acquisition shall be the closing market price of Merit common stock on the date the shares are received.

13. **“Purchase/Sale” Dates:** Purchases and sales of Merit common stock will be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. However, the receipt or grant by gift, inheritance, or operation of law of Merit common stock during the Class Period shall not be deemed an eligible purchase or sale for the calculation of a Claimant’s Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the stock unless (i) the donor or decedent purchased the Merit common stock during the Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to those shares.

² Pursuant to Section 21D(e)(1) of the Exchange Act, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.” Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Merit common stock during the “90-day look-back period,” from October 31, 2019 through January 28, 2020. The mean (average) closing price for Merit common stock during this 90-day look-back period was \$30.40.

³See fn. 2 above.

14. **Short Sales:** The date of covering a “short sale” is deemed to be the date of purchase of the Merit common stock. The date of a “short sale” is deemed to be the date of sale of the Merit common stock. In accordance with the Plan, however, the Recognized Loss Amount on “short sales” is zero.

15. **Shares Purchased/Sold Through the Exercise of Options:** Option contracts to purchase or sell Merit common stock are not securities eligible to participate in the Settlement. With respect to Merit common stock purchased or sold through the exercise of an option, the purchase/sale date of the Merit common stock is the exercise date of the option, and the purchase/sale price is the exercise price of the option.

16. **Market Gains and Losses:** The Claims Administrator will determine if the Claimant had a “Market Gain” or a “Market Loss” with respect to his, her, or its overall transactions in Merit common stock during the Class Period. For purposes of making this calculation, the Claims Administrator shall determine the difference between (i) the Claimant’s Total Purchase Amount⁴ and (ii) the sum of the Claimant’s Total Sales Proceeds⁵ and the Claimant’s Holding Value.⁶ If the Claimant’s Total Purchase Amount minus the sum of the Claimant’s Total Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant’s Market Loss; if the number is a negative number or zero, that number will be the Claimant’s Market Gain.

17. If a Claimant had a Market Gain with respect to his, her, or its overall transactions in Merit common stock during the Class Period, the value of the Claimant’s Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlement. If a Claimant suffered an overall Market Loss with respect to his, her, or its overall transactions in Merit common stock during the Class Period but that Market Loss was less than the Claimant’s Recognized Claim, then the Claimant’s Recognized Claim will be limited to the amount of the Market Loss.

18. **Determination of Distribution Amount:** The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a “Distribution Amount” will be calculated for each Authorized Claimant, which will be the Authorized Claimant’s Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

19. If any Authorized Claimant’s Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

20. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator, no less than seven (7) months after the initial distribution, will conduct a further distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such distribution. Additional distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determine that additional distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such additional distributions, would be cost-effective. At such time as it is determined that further re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court.

21. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, will be conclusive against all Claimants. No person or entity shall have any claim against Lead Plaintiffs, Lead Counsel, the Claims Administrator, or any other agent designated by Lead Counsel, or Defendants’ Releasees and/or their

⁴ The “Total Purchase Amount” is the total amount the Claimant paid (excluding all fees, taxes and commissions) for all shares of Merit common stock purchased during the Class Period.

⁵ The Claims Administrator shall match any sales of Merit common stock during the Class Period first against the Claimant’s opening position in Merit common stock (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (not deducting any fees, taxes and commissions) for sales of the remaining shares of Merit common stock sold during the Class Period is the “Total Sales Proceeds.”

⁶ The Claims Administrator shall ascribe a “Holding Value” of \$20.66 to each share of Merit common stock purchased during the Class Period that was still held as of the close of trading on October 30, 2019. The Holding Value is based on the closing price of Merit common stock on October 31, 2019.

respective counsel, arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation, or any order of the Court.

TABLE A

**90-Day Look-Back Table for Merit Common Stock
(Average Closing Price: October 31, 2019 – January 28, 2020)**

Sale Date	Average Closing Price from October 31, 2019 through Sale Date	Sale Date	Average Closing Price from October 31, 2019 through Sale Date
10/31/2019	20.66	12/13/2019	27.23
11/1/2019	22.41	12/16/2019	27.32
11/4/2019	23.42	12/17/2019	27.42
11/5/2019	24.06	12/18/2019	27.53
11/6/2019	24.68	12/19/2019	27.65
11/7/2019	24.88	12/20/2019	27.76
11/8/2019	25.14	12/23/2019	27.88
11/11/2019	25.21	12/24/2019	27.98
11/12/2019	25.26	12/26/2019	28.07
11/13/2019	25.33	12/27/2019	28.15
11/14/2019	25.41	12/30/2019	28.21
11/15/2019	25.50	12/31/2019	28.28
11/18/2019	25.59	1/2/2020	28.36
11/19/2019	25.68	1/3/2020	28.45
11/20/2019	25.77	1/6/2020	28.56
11/21/2019	25.85	1/7/2020	28.66
11/22/2019	25.94	1/8/2020	28.76
11/25/2019	26.07	1/9/2020	28.87
11/26/2019	26.18	1/10/2020	28.99
11/27/2019	26.28	1/13/2020	29.10
11/29/2019	26.36	1/14/2020	29.29
12/2/2019	26.43	1/15/2020	29.44
12/3/2019	26.50	1/16/2020	29.58
12/4/2019	26.58	1/17/2020	29.72
12/5/2019	26.66	1/21/2020	29.84
12/6/2019	26.75	1/22/2020	29.95
12/9/2019	26.86	1/23/2020	30.07
12/10/2019	26.94	1/24/2020	30.18
12/11/2019	27.05	1/27/2020	30.28
12/12/2019	27.15	1/28/2020	30.40