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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

AUG 03 2023

BY Victoria Sanchez  
VICTORIA SANCHEZ, DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN BERNARDINO

11 STACY DORCAS, individually, and on behalf  
12 of all others similarly situated,

13 Plaintiff,

14 v.

15 ATERIAN, INC.,

16 Defendant.

Case No CIVSB2222117

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
SETTLEMENT**

Date:

Time:

Dept.: S26

Judge: Hon. David S. Cohn

Action Filed: December 9, 2022

1 WHEREAS, Plaintiff, Stacy Dorcas (“Plaintiff”), and Defendant, Aterian, Inc.,  
2 (“Defendant”), (collectively, the “Parties”) have reached a proposed settlement and compromise  
3 of the disputes between them (the “Settlement”); in the above captioned action (“Action”);

4 WHEREAS, the Parties have applied to the Court for preliminary approval of the proposed  
5 Settlement, the terms and conditions of which are set forth in the Settlement;

6 AND NOW, the Court, having read and considered the Settlement and accompanying  
7 documents and the Motion For Preliminary Settlement Approval and supporting papers, and the  
8 Parties to the Settlement having consented to the entry of this Order, and all capitalized terms used  
9 herein having the meaning defined in the Settlement,

10 IT IS HEREBY ORDERED AS FOLLOWS:

11 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the  
12 Settlement.

13 2. Subject to further consideration by the Court at the time of the Final Approval  
14 Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the  
15 Settlement Class, as falling within the range of possible final approval, and as meriting submission  
16 to the Settlement Class for its consideration.

17 3. Based upon the submissions of the Parties, and for purposes of this Settlement only,  
18 the Court conditionally makes the following findings:

- 19 a. The members of the Settlement Class are so numerous as to make joinder  
20 impracticable.
- 21 b. There are questions of law and fact common to the Settlement Class, and such  
22 questions predominate over any questions affecting only individual Settlement  
23 Class Members for purposes of the Settlement.
- 24 c. Plaintiff’s claims and the defenses thereto are typical of the claims of the  
25 Settlement Class Members and the defenses thereto for purposes of the  
26 Settlement.
- 27 d. Plaintiff and her counsel have fairly and adequately protected, and will continue  
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to fairly and adequately protect, the interests of the Settlement Class Members with respect to the Settlement.

e. The proposed Settlement is superior to all other available methods for fairly and efficiently resolving this Action.

f. Accordingly, for settlement purposes only, the Court certifies a Settlement Class comprised of:

all Persons who purchased any of the Covered Products in the United States, its territories, or at any United States military facility or exchange during the Class Period. Excluded from the Settlement Class shall be the assigned Judge to the Action, counsel to the Parties, Mediator Louis M. Meisinger, and their employees, legal representatives, heirs, successors, assigns, or any members of their immediate family; any government entity; Defendant, any entity in which Defendant has a controlling interest, any of Defendant's subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, predecessors in interest, heirs, successors, or assigns, or any members of their immediate family; and any Persons who timely opt-out of the Settlement Class.

4. This matter is preliminarily certified as a class action for settlement purposes only, pursuant to Cal. Code Civ. Pro. § 382, Cal Civ. Code § 1781 and Rule 3.769(c) and (d) of the California Rules of Court. If the Court does not finally approve the Settlement, Defendant retains the right to assert that this Action may not be certified as a class action for liability purposes, and no Party shall rely on this preliminary approval as support for the certification of a class in this or any other action.

5. The Court hereby appoints Plaintiff Stacy Dorcas as Class Representative.

6. The Court hereby appoints Lisa T. Omoto of Faruqi & Faruqi, LLP as Class Counsel.

7. The Court hereby appoints A.B. Data, Ltd. as Settlement Administrator.

8. The Settlement shall be used for settlement purposes only. The fact of, or any provision contained in, the Settlement or any action taken pursuant to it shall not constitute an admission of the validity of any claim or any factual allegation that was or could have been made by Plaintiff and members of the Settlement Class in the present action or of any wrongdoing or liability of any kind on the part of Defendant. The Settlement shall not be offered or be admissible

1 in evidence by or against Defendant (or any of the Released Parties as defined in the Settlement) or  
2 cited or referred to in any other action or proceeding, except (a) in any action or proceeding  
3 brought by or against the Parties to enforce or otherwise implement the terms of the Settlement, or  
4 (b) in any action involving Plaintiff, or members of Settlement Class, in which the allegations are  
5 based on the same factual bases and allegations set forth in this case, to support a defense of res  
6 judicata, collateral estoppel, release, waiver or other theory of claim preclusion, issue preclusion,  
7 or similar defense.

8 9. A final hearing (the "Final Approval Hearing") shall be held before this Court on  
9 2/16/24 at 9:00 .m., to determine whether (a) this Action meets each of the prerequisites  
10 for class certification set forth in Cal. Code Civ. Pro. § 382 and Cal Civ. Code § 1781, and may  
11 properly be maintained as a class action on behalf of the Settlement Class; (b) the Settlement  
12 should receive final approval as fair, reasonable, adequate, and is in the best interests of the  
13 Settlement Class in light of any objections presented by Settlement Class Members and the Parties'  
14 responses to any such objections; (c) orders granting final approval of the Settlement, entering  
15 final judgment and dismissing the Complaint, as provided in the Settlement, should be entered; and  
16 (d) the application of Class Counsel for the payment of attorneys' fees, and costs and expenses,  
17 and an incentive award for Plaintiff is reasonable and should be approved. The Final Approval  
18 Hearing may be postponed, adjourned or continued by further order of this Court, and the Parties  
19 will publish the new hearing date on the Settlement website.

20 10. Any person included within the Settlement Class who wishes to be excluded from  
21 membership in the Settlement Class must do so in writing by mailing a written request for  
22 exclusion to the Settlement Administrator no later than 1/30, 2023<sup>4</sup>. The request must  
23 include: (i) the Settlement Class Member's name; (ii) the Settlement Class Member's address; (iii)  
24 a statement that indicates that the Settlement Class Member wishes to be excluded from Dorcas v.  
25 Aterian, Inc., Case No. CIVSB2222117; and (iv) be signed by the Settlement Class Member.

26 11. Any Settlement Class Member who has not timely filed a written request for  
27 exclusion from the Settlement Class may object to the fairness, reasonableness or adequacy of the  
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1 proposed Settlement. Each Settlement Class Member who wishes to object to any term of the  
2 Settlement must do so in writing by mailing a written Objection Statement to the Settlement  
3 Administrator. Any such objection must be postmarked, no later than 7/30, 2023<sup>4</sup>. In  
4 the event that the postmark is illegible, the Objection Statement shall be deemed untimely unless it  
5 is received by the Settlement Administrator after five (5) calendar days of the Objection/Exclusion  
6 Deadline. Any Objection Statement must contain a caption or title that identifies it as “Objection to  
7 Class Settlement in Dorcas v. Aterian, Inc., Case No. CIVSB2222117” and shall also contain: (i)  
8 information sufficient to identify and contact the objecting Settlement Class Members, including  
9 name, address, telephone number, and, if available, email address, and if represented by counsel,  
10 the foregoing information for his/her counsel; (ii) whether the Settlement Class Member, or his or  
11 her counsel, intends to appear at the Final Approval Hearing; (iii) a clear and concise statement of  
12 the Settlement Class Member’s objection, including all bases and legal grounds for the objection  
13 and copies of paper, briefs, or other documents upon which the objection is based; (iv) documents  
14 sufficient to establish the person’s standing as a Settlement Class Member, i.e., verification under  
15 penalty of perjury as to the person’s purchase of Covered Products during the Class Period, or a  
16 proof of purchase; and (v) the Settlement Class Member’s signature.

17           a. Any objection that fails to satisfy the requirements stated herein, or that is not  
18 properly and timely submitted, will be deemed ineffective, and will be deemed by  
19 the Parties to have been waived, and the Parties reserve their right to argue that  
20 the Settlement Class Member asserting such objection is not entitled to have his  
21 or her objection heard or otherwise considered by the Court.

22           12. The Court approves, as to form and content, the Claim Form, Email Notice, Long  
23 Form Notice and Publication Notice Form attached to the Settlement Agreement as Exhibits A, B,  
24 D, and F.

25           13. The Court finds that the Parties’ plan for providing notice (the “Notice Plan”) will  
26 provide the best notice practicable to the Settlement Class under the circumstances and constitute  
27 valid, due, and sufficient notice to all Settlement Class Members, fully complying with Cal. Code  
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1 of Civ. Pro. § 382, Cal. Civ. Code § 1781, the Constitution of the State of California, the  
2 Constitution of the United States, and other applicable law. All costs incurred in connection with  
3 the preparation and dissemination of any notices to the Settlement Class shall be borne by  
4 Defendant.

5 14. The Court further finds that the Notice Plan adequately informs members of the  
6 Settlement Class of their right to object to the Settlement or to exclude themselves from the  
7 Settlement Class so as not to be bound by the terms of the Settlement.

8 15. Not later than \_\_\_ calendar days after the entry of this Order, Defendant shall cause  
9 notice to be disseminated as follows:

- 10 i. dissemination of the Publication Notice in *San Bernardino Sun*; and
- 11 ii. establishment and publishing of a Settlement website by the Claims  
12 Administrator (www.MuellerSettlement.com)

13 16. The Claims Administrator shall post the Settlement on the Settlement website. The  
14 Settlement website shall include the approved class definition set forth in Paragraph 3 above and  
15 the Claim Form, Email Notice, Long Form Notice and Publication Notice attached to the  
16 Settlement Agreement as Exhibits A, B, D, and F.

17 17. Defendant shall transmit to the Settlement Administrator the Settlement Amount no  
18 later than seven (7) calendar days after the entry of this Order.

19 18. The Parties shall file and serve papers in support of final approval of the Settlement  
20 by per CCP, 2023.

21 19. Class Counsel shall file any application for an award of attorneys' fees, costs and  
22 litigation expenses, and an incentive award for Plaintiff by per CCP, 2023.

23 20. Class Counsel shall file a single memorandum of law that addresses: (i) arguments  
24 in support of final approval of the Settlement; and (ii) Class Counsel's application for an award of  
25 attorneys' fees, costs and litigation expenses, and incentive award for Plaintiff's efforts and  
26 expenses. Such memorandum of law shall not exceed 50 pages in length.

21. The Parties shall file and serve reply papers in further support of final approval of the Settlement; and/or Class Counsel's application for an award of attorneys' fees, costs and litigation expenses, and reimbursement awards for Plaintiffs' expenses by no later than per CCP, 2024.

22. The Final Approval Hearing shall be held at 9:00 .m. on 2/29, 2024 in Department S26.

23. The following chart lists the important dates in chronological order:

Event	Proposed Date
Preliminary Approval Order	, 2023
Publication of notice in <i>San Bernardino Sun</i> ; Send Direct Email Notice; and establishment of Settlement website (including Long Form Notice).	Within 20 days after entry of Preliminary Approval Order , 2023
Claims/Objection/Opt-out Deadline	180 after entry of Preliminary Approval Order <u>1/30</u> , 2023 <sup>24</sup>
Class Counsel's briefs in support of Final Approval, Award of Attorneys' Fees & Costs Due	No later than <del>30 days</del> prior Claims/Objection/Opt-out Deadline <u>per CCP</u> , 2023
Responses to Any Objections Due	No later than <del>14 days</del> prior to the Final Approval Hearing <u>per CCP</u> , 2024
Final Approval Hearing	No earlier than 30 days after the Claims/Objection/Opt-out Deadline <u>2/29/24 9:00 a.m.</u> , 2024

24. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class Members.

25. Pending further orders by this Court, all proceedings in this Action— other than proceedings pursuant to this Order — shall be stayed and all members of the Settlement Class who

1 do not request exclusion from the Settlement Class in the manner required by this Order shall be  
2 enjoined from commencing or prosecuting any action, suit, proceeding, claim, or cause of action  
3 (except those based on or relating to personal injury or wrongful death), in any jurisdiction or court  
4 against Defendant relating to or arising out of the subject matter of this action.

5 26. If the proposed Settlement is finally approved, the Court shall enter a separate order  
6 finally approving the Settlement, entering judgment and dismissing the Complaint. Such order and  
7 judgment shall be fully binding with respect to all members of the Settlement Class.

8 27. In the event that the proposed Settlement is not approved by the Court, or in the  
9 event that the Settlement becomes null and void pursuant to its terms, this Order and all orders  
10 entered in connection therewith shall become null and void, shall be of no further force and effect,  
11 and shall not be used or referred to for any purposes whatsoever in this civil action or in any other  
12 case or controversy; in such event the Settlement and all negotiations and proceedings directly  
13 related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties,  
14 who shall be restored to their respective positions as of the date and time immediately preceding  
15 the execution of the Settlement.

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17 **IT IS SO ORDERED.**

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19 Dated: 8/3, 2023

  
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The Hon. David S. Cohn