

The Honorable Richard A. Jones

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Chris Hunichen, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

Atonomi LLC, a Delaware LLC, CENTRI
Technology, Inc., a Delaware Corporation,
Vaughan Emery, David Fragale, Rob
Strickland, Kyle Strickland, Don DeLoach,
Wayne Wischart, Woody Benson, Michael
Mackey, James Salter, and Luis Paris,

Defendants.

No. 2:19-cv-00615-RAJ

ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR
NOTICE

Atonomi LLC, a Delaware LLC,

Counterclaimant,

v.

Chris Hunichen,

Counter-Defendant.

Atonomi LLC, a Delaware LLC,

Third Party Plaintiff,

v.

David Patrick Peters, Sean Getzwiller, David
Cutler, Chance Kornuth, and Dennis Samuel
Blieden,

Counter-Defendants.

1 The Class Representative’s Motion for Preliminary Approval of Class Action Settlement (the
2 “Motion”) was considered on February 15, 2024. In connection with the Motion, the Court considered
3 the *Stipulation of Class Action Settlement and Release* (the “AGREEMENT”, attached as Exhibit A to
4 the Declaration of Joel Ard), the submissions of counsel, and all other papers filed in this action. This
5 Order incorporates by reference the definitions in the AGREEMENT. The matter having been submitted,
6 and good cause appearing

7 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

8 1. The provisions of the AGREEMENT are hereby preliminarily approved. The COURT
9 finds that the SETTLEMENT appears to be fair, adequate, and reasonable to the CLASS MEMBERS,
10 free of collusion or indicia of unfairness, and within the range of possible judicial approval. The COURT
11 also finds that the SETTLEMENT resulted from arm’s length negotiations and is sufficient to warrant
12 the dissemination of NOTICE to the CLASS MEMBERS.

13 2. The COURT approves, as to form and content, the proposed class NOTICE, attached as
14 Exhibit 4 to the AGREEMENT (the SUMMARY NOTICE) and Exhibit E to the Ard Declaration in
15 Support of Preliminary Approval (the LONG FORM NOTICE), and directs that class NOTICE be given
16 in the form and manner consistent with the AGREEMENT and this PRELIMINARY APPROVAL
17 ORDER:

- 18 a. the ADMINISTRATOR shall send one copy of the SUMMARY NOTICE and at
19 least one reminder *via* electronic mail to all email addresses of the CLASS
20 MEMBERS for whom “Know Your Customer” information is available, and
21 provide one skiptraced first class mailed SUMMARY NOTICE to the physical
22 address of those CLASS MEMBERS whose email addresses bounce back as
23 undeliverable;
- 24 b. The ADMINISTRATOR shall establish and run a website (the “SETTLEMENT
25 WEBSITE”) which includes relevant documents from the ACTION, a copy of the
26 LONG FORM NOTICE, a copy of the PROOF OF CLAIM, an electronic version
27 of the PROOF OF CLAIM, contact information for the ADMINSTRATOR, and

1 other relevant information;

2 c. the ADMINISTRATOR shall cause to be published over a reputable business
3 newswire a press release announcing the SUMMARY NOTICE and providing a
4 link to the SETTLEMENT WEBSITE.

5 3. The COURT finds that the class NOTICE is the best means practicable of providing notice
6 under the circumstances and when completed shall constitute due and sufficient notice of the ACTION,
7 the SETTLEMENT, and the FINAL APPROVAL HEARING to all persons affected by and/or
8 authorized to participate in the SETTLEMENT in full compliance with Federal Rules of Civil Procedure
9 23(c) and (e) and the requirements of the United States Constitution (including the Due Process Clause),
10 and all other applicable laws and rules.

11 4. All reasonable costs incurred in identifying SETTLEMENT CLASS MEMBERS and
12 notifying them of the SETTLEMENT, as well as in administering the SETTLEMENT and providing
13 appropriate notice under 28 U.S.C. § 1715, shall be paid as set forth in the SETTLEMENT without
14 further order of the COURT.

15 5. The contents of the SETTLEMENT FUND held by The Huntington National Bank (which
16 the COURT approves as the ESCROW AGENT), shall be deemed and considered to be *in custodia legis*
17 of the COURT, and shall remain subject to the jurisdiction of the COURT, until such time as they shall
18 be distributed pursuant to the AGREEMENT and/or further order(s) of the COURT.

19 6. The ESCROW AGENT is authorized and directed to prepare any tax returns and any other
20 tax reporting form for or in respect to the SETTLEMENT FUND, and to otherwise perform all
21 obligations with respect to taxes and any reporting or filings or payment in respect thereof without
22 further order of the COURT in a manner consistent with the provisions of the SETTLEMENT.

23 7. The COURT appoints and designates JND Legal Administration, as the SETTLEMENT
24 ADMINISTRATOR.

25 8. The COURT hereby directs the SETTLEMENT ADMINISTRATOR to provide the
26 approved class NOTICE to the CLASS MEMBERS in accordance with the schedule below and using
27 the procedures set forth in the AGREEMENT.

- 1 9. The SETTLEMENT ADMINISTRATOR shall be responsible for
- 2 (A) Emailing and distributing the SUMMARY NOTICE approved by the COURT;
- 3 (B) Performing physical home address and email address updates, skiptraces and verifications
- 4 prior to distribution of the SUMMARY NOTICE, and any secondary or supplemental
- 5 SUMMARY NOTICE;
- 6 (C) Creating and maintaining a toll-free number that CLASS MEMBERS can contact to
- 7 request a copy of the AGREEMENT, a PROOF OF CLAIM form, and/or to obtain any
- 8 other information concerning the SETTLEMENT or AGREEMENT;
- 9 (D) Creating and maintaining a SETTLEMENT WEBSITE, to which the ADMINISTRATOR
- 10 shall post copies of the operative complaint in the ACTION, this AGREEMENT, the
- 11 LONG FORM NOTICE, the PRELIMINARY APPROVAL motion, the PRELIMINARY
- 12 APPROVAL ORDER, CLASS COUNSEL’s motion for a FEE AND EXPENSE AWARD
- 13 and/or SERVICE AWARD, an electronic PROOF OF CLAIM submission process, a
- 14 downloadable PROOF OF CLAIM, and when available, the FINAL APPROVAL motion
- 15 and the FINAL APPROVAL ORDER and JUDGMENT. The SETTLEMENT WEBSITE
- 16 will prominently contain instructions on how CLASS MEMBERS can submit a PROOF
- 17 OF CLAIM, as well as instructions on how to request exclusion or file an objection, and
- 18 the date and time of the FINAL APPROVAL HEARING;
- 19 (E) Consulting with DEFENDANTS’ COUNSEL and CLASS COUNSEL concerning any
- 20 relevant issues, including (without limitation) distribution of NOTICE and processing of
- 21 PROOF OF CLAIMS;
- 22 (F) Processing and recording timely and proper requests for exclusion;
- 23 (G) Processing and recording PROOF OF CLAIMS, and the calculation of CLAIMS;
- 24 (H) Serving notice of this SETTLEMENT to appropriate state and federal officials pursuant to
- 25 28 U.S.C. § 1715. The ADMINISTRATOR is responsible for drafting and preparing the
- 26 notice in conformity with 28 U.S.C. § 1715, and for identifying the appropriate state and
- 27 federal officials to be notified;

1 (I) Providing any information and declarations requested by the PARTIES to assist with
2 FINAL APPROVAL; and

3 (J) Such other tasks as the PARTIES mutually agree or the COURT orders the
4 ADMINISTRATOR to perform.

5 10. CLASS MEMBERS who wish to participate in the SETTLEMENT and to be eligible to
6 receive a distribution from the NET SETTLEMENT FUND must complete and submit a PROOF OF
7 CLAIM in accordance with the instructions contained therein. CLASS COUNSEL shall have the
8 discretion (but not an obligation) to accept late-submitted claims for processing by the
9 ADMINISTRATOR so long as the distribution of the NET SETTLEMENT FUND to SETTLEMENT
10 CLASS MEMBERS is not materially delayed thereby. By submitting a PROOF OF CLAIM, a person
11 or entity shall be deemed to have submitted to the jurisdiction of the COURT with respect to his, her or
12 its CLAIM and the subject matter of the SETTLEMENT.

13 11. Any CLASS MEMBER may choose to object to the SETTLEMENT by serving on
14 CLASS COUNSEL an objection, which must: (a) state the name, address, and telephone number of the
15 person or entity objecting and must be signed by the objector; (b) must contain a statement of the
16 objection or objections; and (c) must include documents sufficient to prove membership as a
17 SETTLEMENT CLASS MEMBER.

18 12. Any CLASS MEMBER may choose to be excluded from the SETTLEMENT as provided
19 in the AGREEMENT and CLASS NOTICE.

20 13. Any CLASS MEMBER who timely and properly requests to be excluded from the
21 SETTLEMENT will not be bound by the AGREEMENT or have any right to object, appeal, or comment
22 thereon. Any CLASS MEMBER who wishes to be excluded from the SETTLEMENT must submit a
23 timely written request for exclusion, which must state (i) the name, address, email address, and telephone
24 number of the person or entity requesting exclusion, and in the case of entities, the name and telephone
25 number of the appropriate contact person; (ii) state that such person or entity requests exclusion from
26 the Settlement Class in *Hunichen v. Atonomi, LLC et al.*; and (iii) be signed by the person or entity
27 requesting exclusion or an authorized representative. Group opt-outs, including “mass” or “class” opt

1 outs, are prohibited.

2 14. The COURT orders the following schedule:

- 3 a. No later than ten (10) days after the date of this PRELIMINARY APPROVAL
4 ORDER, the ADMINISTRATOR shall serve the notices required to be served
5 pursuant to 28 U.S.C. § 1715.
- 6 b. No later than twenty (20) days after the date of this PRELIMINARY APPROVAL
7 ORDER, the ADMINISTRATOR shall update the SETTLEMENT WEBSITE.
- 8 c. No later than twenty (20) days after the date of this PRELIMINARY APPROVAL
9 ORDER, the SETTLEMENT ADMINISTRATOR shall commence the initial
10 NOTICE to CLASS MEMBERS.
- 11 d. No later than twenty-one (21) days after the date of this PRELIMINARY
12 APPROVAL ORDER, CLASS COUNSEL shall file any request for a FEE AND
13 EXPENSE AWARD and any SERVICE AWARD;
- 14 e. No later than thirty (30) days after the date of this PRELIMINARY APPROVAL
15 ORDER, the SETTLEMENT ADMINISTRATOR shall post any motions for a
16 FEE AND EXPENSE AWARD and/or SERVICE AWARD to the
17 SETTLEMENT WEBSITE.
- 18 f. All objections must be submitted to CLASS COUNSEL on or before ninety (90)
19 days after the date of this PRELIMINARY APPROVAL ORDER.
- 20 g. All requests for exclusion must be submitted to CLASS COUNSEL on or before
21 ninety (90) days after the date of this PRELIMINARY APPROVAL ORDER.
- 22 h. All PROOF OF CLAIMS must be submitted on the SETTLEMENT WEBSITE,
23 emailed, faxed, or mailed to the ADMINISTRATOR postmarked on or before
24 ninety (90) days after the date of this PRELIMINARY APPROVAL ORDER.
- 25 i. No later than ninety five (95) days after the date of this PRELIMINARY
26 APPROVAL ORDER, the ADMINISTRATOR shall provide a list of
27 SETTLEMENT CLASS MEMBERS who submitted valid exclusion requests to

1 CLASS COUNSEL and SETTLING DEFENDANTS' COUNSEL, which CLASS
2 COUNSEL shall file with the COURT. The ADMINISTRATOR shall also
3 provide CLASS COUNSEL with a Declaration of Compliance with this
4 PRELIMINARY APPROVAL ORDER to be filed with the COURT in connection
5 with the FINAL APPROVAL MOTION.

6 j. No later than one hundred ten (110) days after the date of this PRELIMINARY
7 APPROVAL ORDER, CLASS COUNSEL shall file the CLASS
8 REPRESENTATIVE's motion for FINAL APPROVAL of the SETTLEMENT.

9 15. The COURT will hold a FINAL APPROVAL HEARING on **June 28, 2024 at 9:00 a.m.**,
10 in Courtroom 13106 at the United States District Court for the Western District of Washington, 700
11 Stewart Street, Seattle, WA 98101, for the following purposes: (a) to determine whether the proposed
12 SETTLEMENT on the terms and conditions provided for in the AGREEMENT is fair, reasonable and
13 adequate to the CLASS MEMBERS, and should be approved; (b) to determine whether a FINAL
14 APPROVAL ORDER substantially in the form attached as Exhibit 1 to the SETTLEMENT and Exhibit
15 B to the motion for preliminary approval should be entered dismissing the ACTION with prejudice
16 against the DEFENDANTS; (c) to determine whether the proposed PLAN OF ALLOCATION for the
17 proceeds of the SETTLEMENT is fair and reasonable and should be approved; (d) to consider the
18 adequacy of NOTICE; (e) to consider any objections to the SETTLEMENT; (f) to determine the amount
19 of any FEE AND EXPENSE AWARD and SERVICE AWARD requested by CLASS COUNSEL; and
20 (g) to consider any other matters that may properly be brought before the COURT in connection with the
21 SETTLEMENT.

22 16. Any objecting CLASS MEMBER may appear, in person or by counsel, at the FINAL
23 APPROVAL HEARING to show cause why the SETTLEMENT and the AGREEMENT should not be
24 approved as fair, adequate, and reasonable, or to object to any request for a FEE AND EXPENSE
25 AWARD or INCENTIVE AWARD. To appear in person or by counsel, the objecting CLASS MEMBER
26 must file with the COURT and serve upon all counsel designated in the NOTICE, a Notice of Intention
27 to Appear on or before one hundred and fifty (120) days from the date of this PRELIMINARY

1 APPROVAL ORDER; provided, however, that no CLASS MEMBER shall be heard, unless that person
2 or entity has submitted said objections, papers, briefs, and proposed witnesses to the COURT and served
3 copies of such objection on CLASS COUNSEL and DEFENDANTS' COUNSEL at the addresses set
4 forth below:

5 **Lead Counsel**

Settling Defendants' Counsel

6 AFN Law PLLC
7 Attn: Angus Ni
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9 Seattle, WA 98104

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21 The Restis Law Firm, P.C.
22 Attn: William Restis
23 402 West Broadway, Suite 1520
24 San Diego, CA 92101

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1 Any CLASS MEMBER who does not enter an appearance will be represented by CLASS COUNSEL.

2 17. The SETTLING PARTIES, CLASS COUNSEL, DEFENDANTS' COUNSEL and the
3 ADMINISTRATOR are otherwise directed to carry out their obligations under the AGREEMENT.

4 18. The COURT reserves the right to adjourn the date of the FINAL APPROVAL HEARING
5 without further notice to CLASS MEMBERS.

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7 IT IS SO ORDERED.

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9 DATED this 15th day of February, 2024.

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11 

12 The Honorable Richard A. Jones
13 United States District Judge

14
15 Presented by:

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17 Ard Law Group PLLC

18
19 By:

20 

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