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ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego
10/30/2018 at 08:48:43 PM
Clerk of the Superior Court
By Jessica Pascual, Deputy Clerk

FILED
Clerk of the Superior Court
DEC 14 2018
By: G. Mendoza, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

RALPH A. HUNTZINGER and ERIC
BUSH, on Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

v.

SUUNTO OY and AQUA LUNG
AMERICA, INC.,

Defendants.

Case No. 37-2018-00027159-CU-BT-CTL

CLASS ACTION

~~PROPOSED~~ **FINAL ORDER AND
JUDGMENT**

Dept: C-66
Judge: Hon. Kenneth J. Medel

Date Filed: June 1, 2018

1 This matter came on for hearing on December 14, 2018. The Court has considered the
2 Settlement Agreement, the submissions of the Parties, the record in the Action, the evidence
3 presented, and the arguments presented by counsel. Good cause appearing,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

5 1. The Court, for purposes of this Final Order and Judgment (“Judgment”) adopts
6 and incorporates the terms and conditions set forth in the Settlement Agreement filed with this
7 Court on July 25, 2018. Throughout this Judgment, the capitalized words are given the same
8 meaning ascribed in the Settlement Agreement.

9 2. The Parties to the Settlement Agreement are Plaintiffs Eric Bush and Ralph A.
10 Huntzinger and Defendants Suunto Oy (“Suunto”) and Aqua Lung America, Inc. (“Aqua
11 Lung”) (together, “Defendants”) and Air Liquide S.A., Aqua Lung’s former parent company.
12 This Court has jurisdiction over the subject matter of this litigation and over all Parties to the
13 Action and Class members who did not timely exclude themselves from the Class.

14 3. The Court finds that certification of the Class for settlement purposes as
15 conditionally ordered in the Preliminary Approval Order is appropriate. The Class for
16 settlement purposes means all individuals who purchased new one or more of the following
17 Suunto Dive Computers in the United States (including the fifty states, the District of
18 Columbia, Puerto Rico and all other United States territories and/or possessions) that was
19 manufactured from January 1, 2006 through August 10, 2018: Suunto Cobra, Suunto Cobra 2,
20 Suunto Cobra 3, Suunto Cobra 3 Black, Suunto Vyper, Suunto Vyper Novo, Suunto Vyper 2,
21 Suunto Vyper Air, Suunto HelO2, Suunto Gekko, Suunto Vytec, Suunto Vytec DS, Suunto
22 Zoop, Suunto Zoop Novo, Suunto Mosquito, Suunto D4, Suunto D6, Suunto D9, Suunto D4i,
23 Suunto D6i, Suunto D4i Novo, Suunto D6i Novo, Suunto D9tx, and Suunto DX. Excluded
24 from the Class are: (a) the Defendants and their respective officers, directors and employees;
25 (b) Plaintiffs’ Counsel; (c) the judge(s) presiding over the Action and Related Action and
26 immediate court staff assigned to the Action and Related Action; (d) individuals who
27 purchased used Dive Computers as to those used purchases; (e) retailers or others who
28 purchased Suunto’s Dive Computers for resale; and (f) individuals who timely and properly

1 excluded themselves from the Class. All Class Members who did not exclude themselves from
2 the Class are bound by this Judgment and the terms of the Settlement Agreement.

3 4. The Court finds that the Class Notice and the Notice Program implemented
4 pursuant to the Settlement Agreement and Preliminary Approval Order constituted the best
5 notice practicable under the circumstances to all persons within the definition of the Class and
6 fully complied with the due process requirement under all applicable statutes and laws and
7 with the California Rules of Court.

8 5. The Court hereby adopts and approves the Settlement Agreement, and finds
9 that it is in all respects fair, reasonable, adequate, just and in compliance with all applicable
10 requirements of the California Code of Civil Procedure ("C.C.P.") and the California Civil
11 Code ("Cal. Civ. Code"), the United States Constitution (including the Due Process Clause),
12 and all other applicable law, and in the best interests of the Parties and the Class. The
13 objections submitted by the Class Members identified above have been considered and are
14 overruled. Accordingly, the Court directs the Parties and their counsel to implement and
15 consummate this settlement in accordance with the terms and conditions of the Settlement
16 Agreement.

17 6. Class Representatives and each Class Member, for themselves, their
18 beneficiaries, executors, conservators, personal representatives, wards, heirs, predecessors,
19 successors, and affiliates shall be deemed to have, and by operation of the Judgment shall
20 have, fully, finally and forever released, relinquished and discharged all Released Claims
21 against the Released Parties in accordance with the Settlement Agreement. Class
22 Representatives shall be deemed to, as of the Effective Date, finally, fully, and forever
23 expressly waive and relinquish with respect to the Released Claims, any and all provisions,
24 rights, and benefits of Cal. Civ. Code § 1542, and any and all similar provisions, rights, and
25 benefits conferred by any law of any state or territory of the United States or principle of
26 common law that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which
27 provides:
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A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Class Representatives and Class Members are also deemed to acknowledge and understand that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in the Settlement Agreement. Nevertheless, Class Representatives and Class Members fully, finally, and forever release the Released Claims against the Released Parties that exist, hereafter may exist, or might have existed, in accordance with the Settlement Agreement.

7. Class Counsel have applied for an award of attorneys' fees in the amount of \$5,000,000 (Five Million dollars) and out-of-pocket litigation expenses that have not already been reimbursed in the amount of \$280,000 (Two Hundred Eighty Thousand dollars) to be paid by Suunto in addition to the relief provided for in the Settlement Agreement. The Court finds that these Attorneys' Fees, Costs and Expenses are reasonable and were reasonably incurred in the course of the litigation. Plaintiffs' Counsel are entitled to payment of these fees, costs and expenses in the manner set forth in the Settlement Agreement. Class Counsel have also applied for the payment of an incentive award for Plaintiffs and Class Representatives Eric Bush and Ralph A. Huntzinger in the amount of \$5,000 each. The Court finds these incentive awards reasonable and directs that they be paid as set forth in the Settlement Agreement.

8. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over the administration, consummation, enforcement, and interpretation of the Settlement Agreement, this Judgment, and for any other necessary purpose, pursuant to C.C.P. § 664.6 or otherwise.

9. The Settlement Agreement and this Judgment are not admissions of liability or fault by Defendants or the Released Parties, or a finding of the validity of any claims in the Action or Related Action of any wrongdoing or violation of law by Defendants or Released Parties. Neither this Judgment, nor any of its terms or provisions, nor any of the negotiations

1 or proceedings connected with it, shall be offered as evidence or received in evidence in any
2 pending or future civil, criminal, or administrative action or proceeding to establish any
3 liability of, or admission by Defendants, the Released Parties, or any of them.
4 Notwithstanding the foregoing, nothing in this Judgment shall be interpreted to prohibit the
5 use of this Judgment in a proceeding to consummate or enforce the Settlement Agreement or
6 Judgment, or to defend against the assertion of the Released Claims in any other proceeding,
7 or as otherwise required by law.

8 10. The Clerk of the Court is hereby ordered to enter this Judgment forthwith. Final
9 Judgment is hereby entered on this 14 day of December, 2018.

10 **IT IS SO ORDERED.**

11 Dated: 12.14.18

12 By: 

HON. KENNETH J. MEDEL
JUDGE OF THE SUPERIOR COURT