

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. 4:15-cv-00163-DCB
CLASS ACTION
IN RE AUDIOEYE, INC. SECURITIES LITIGATION

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

A Federal Court Authorized This Notice. This Is Not A Solicitation From A Lawyer.

TO: ALL PERSONS WHO PURCHASED OR ACQUIRED ANY COMMON STOCK OF AUDIOEYE, INC. (“AUDIOEYE”) DURING THE PERIOD FROM MAY 14, 2014 THROUGH APRIL 1, 2015, INCLUSIVE (THE “CLASS PERIOD”), YOU COULD RECEIVE A PAYMENT FROM A CLASS ACTION SETTLEMENT. CERTAIN PERSONS ARE EXCLUDED FROM THE DEFINITION OF THE CLASS AS SET FORTH BELOW.¹

- PLEASE READ THIS NOTICE CAREFULLY.
- IF YOU WISH TO COMMENT IN FAVOR OF THE SETTLEMENT OR OBJECT TO THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS IN THIS NOTICE.
- YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS LAWSUIT.
- TO RECEIVE MONEY FROM THIS SETTLEMENT, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE (“CLAIM FORM”) **POSTMARKED ON OR BEFORE APRIL 24, 2017.**
- IF YOU DO NOT WISH TO PARTICIPATE IN THE SETTLEMENT, YOU MAY REQUEST TO BE EXCLUDED FROM THE SETTLEMENT BY SENDING A WRITTEN REQUEST FOR EXCLUSION THAT MUST BE **RECEIVED ON OR BEFORE APRIL 7, 2017.**
- IF YOU RECEIVED THIS NOTICE ON BEHALF OF A SETTLEMENT CLASS MEMBER WHO IS DECEASED, YOU SHOULD PROVIDE THE NOTICE TO THE AUTHORIZED LEGAL REPRESENTATIVE OF THAT SETTLEMENT CLASS MEMBER.

YOU ARE HEREBY NOTIFIED AS FOLLOWS:²

A proposed Settlement has been reached by the Parties in the constituent actions that make up the consolidated class action pending in the United States District Court for the District of Arizona (the “District Court”), which was brought on behalf of the Settlement Class. The District Court has preliminarily approved the Settlement, the terms of which are set forth in the Stipulation, which is available at www.audioeyesecuritieslitigation.com and has preliminarily certified the Settlement Class for purposes of Settlement only. You have received this Notice because the Parties’ records indicate that you may be a member of the Settlement Class. This Notice is designed to inform you of your rights, how you can submit a Claim Form, and how you can comment in favor of the Settlement or object to the Settlement. If the Settlement is finally approved by the District Court, the Settlement will be binding upon you, unless you exclude yourself, even if you do not submit a Claim Form to obtain money from the Net Settlement Fund and even if you object to the Settlement.

A hearing by the District Court on notice to the Settlement Class, to consider approval of the Settlement, the Plan of Allocation, and the Fee and Expense Application (the “Settlement Hearing”) will be held before the Honorable David C. Bury, United

¹ All capitalized terms that are not defined in this Notice have the meaning ascribed to them in the Stipulation of Settlement (the “Stipulation”) dated December 13, 2016, which is available on the website established for the Settlement at www.audioeyesecuritieslitigation.com.

² A copy of this Notice may be found at www.audioeyesecuritieslitigation.com.

States District Court Judge, at 1:30 P.M. on May 8, 2017, at the Evo A. DeConcini U.S. Courthouse, 405 West Congress Street, Suite 6170, Tucson, AZ 85701.

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES BY ANY OF THE PARTIES. IT IS BASED ON CONTENTIONS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THE LAWSUIT AND OF THE FINAL SETTLEMENT HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY, OR MAY NOT, WISH TO TAKE IN RELATION TO THE LAWSUIT.

I. BACKGROUND OF THE LAWSUIT

On or about April 14, 2015, a class action complaint styled *Lee Nykaza, individually and on behalf of all others similarly situated v. AudioEye Incorporated et al.*, case number 2:15-cv-00673-DCB (the “Nykaza Action”), alleging violations of federal securities laws against the Defendants was filed in the United States District Court for the District of Arizona (the “Court”).

On or about April 20, 2015, a class action complaint styled *Ralph Saczawa, individually and on behalf of all others similarly situated v. AudioEye Incorporated et al.*, case number 4:15-cv-00163-DCB (the “Saczawa Action”), alleging violations of federal securities laws against the Defendants also was filed in the Court.

On July 1, 2015, the Honorable Judge David C. Bury consolidated the *Nykaza* Action and the *Saczawa* Action under the Master File and caption *In re AudioEye, Inc. Sec. Litig.*, No. CV-15-00163-TUC-DCB.

On August 3, 2015, the Court appointed Globis Capital Partners, L.P. and Globis Overseas Fund Ltd. as Lead Plaintiffs, and their attorneys Kirby McInerney LLP as counsel for the Lead Plaintiffs (“Lead Plaintiffs’ Counsel”).

On November 30, 2015, the Lead Plaintiffs filed the operative Consolidated Amended Complaint alleging against all Defendants: (Count 1) violations of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”); and (Count 2) violations of Section 20(a) of the Exchange Act.

On February 5, 2016, Defendants filed Motions to Dismiss the Consolidated Amended Complaint and Lead Plaintiffs filed their opposition on March 18, 2016.

On July 20, 2016, counsel for the Lead Plaintiffs, counsel for the Defendants, and counsel for the Defendants’ liability insurer participated in a full-day mediation conference before mediator Robert Meyer. At and following the mediations, the participants engaged in extensive arm’s-length negotiations with each other, such negotiations bearing fruit as set forth in the Stipulation, and negotiated a settlement that they believe is in the best interests of their respective clients. The Settlement allows both sides to avoid the risks and cost of uncertain litigation and the uncertainty of a trial and appeals, and permits Class Members to be compensated without further delay. Lead Plaintiffs and their counsel believe the settlement is best for all Class Members.

On July 25, 2016 the Parties accepted the mediator’s proposal concerning the Settlement amount, which was thereafter memorialized in the Stipulation.

Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by any of the Defendants. The District Court has not ruled on the merits of whether the Defendants violated the securities laws, or any other laws or rules.

Lead Plaintiffs and Defendants, and their counsel, have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation. The Parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

The Settlement creates a Gross Settlement Fund in the amount of \$1,525,000 in cash, plus interest that accrues on the fund prior to distribution. Your recovery from the Gross Settlement Fund will depend on a number of variables, including the

number of AudioEye securities that you purchased during the Class Period, and the timing of your purchases and sales. Lead Plaintiffs estimate that if all eligible Claimants submit a valid Claim Form, the average distribution per damaged AudioEye common stock will be approximately \$0.06 before deduction of Court-approved fees and expenses. Settlement Class Members should note, however, that this is only an estimate based on the overall number of potentially affected AudioEye securities. Settlement Class Members may recover more or less than the amount estimated herein.

Lead Plaintiffs and Defendants do not agree on the average amount of damages per AudioEye share that would be recoverable if Lead Plaintiffs were to have prevailed in the Action. Specifically, the Parties disagree concerning the extent to which any of Defendants' alleged false or misleading statements artificially inflated the price of AudioEye securities during the class period.

Lead Plaintiffs' Counsel, who have been prosecuting this Action on a wholly-contingent basis since its inception, have not received any payment of attorneys' fees for their representation of the Settlement Class and they have advanced the funds to pay expenses necessarily incurred to prosecute the Action. Lead Plaintiffs' Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in the amount up to one third of the Settlement Fund. In addition, Lead Plaintiffs' Counsel will apply for reimbursement of litigation expenses (exclusive of administration costs) paid or incurred in connection with the prosecution and resolution of the claims against the Defendants, in an amount not to exceed \$75,000. 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. If the Settlement is approved, and Lead Plaintiffs' Counsel's fee and expense application is granted in its entirety, the average cost per AudioEye share of these fees and expenses will be approximately \$0.02, assuming that all eligible shares submit valid claims for recovery in the Settlement.

Lead Plaintiffs and the Settlement Class are being represented by Kirby McInerney LLP. Any questions regarding the Action or the Settlement should be directed to Ira Press, Esq. and Mark Strauss Esq. at Kirby McInerney LLP, 825 Third Avenue, 16th Floor, New York, NY 10022, Toll-Free: 1-888-529-4787.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
Submit A Claim Form Postmarked No Later Than April 24, 2017.	This is the only way to be eligible to get a payment in connection with the Settlement.
Exclude Yourself From The Settlement Class By Submitting A Written Request That Is Received No Later Than April 7, 2017.	If you exclude yourself from the Settlement Class, you will not be eligible to get any payment from the Net Settlement Fund. This is the only option that allows you to be part of any other lawsuit against any of the Settling Defendants or the other Released Parties concerning the Settled Claims (defined below).
Object To The Settlement Or The Request For Fees and Expenses By Submitting A Written Objection That Is Received No Later Than April 17, 2017.	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the Fee and Expense Application, you may write to the District Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the Fee and Expense Application unless you are a Settlement Class Member and do not exclude yourself.
Go To The Settlement Hearing On May 8, 2017, At 1:30 P.M., And File A Notice Of Intention To Appear That Is Received No Later Than April 17, 2017.	Filing a written objection and notice of intention to appear allows you to speak in court about the fairness of the Settlement, the Plan of Allocation, and/or the Attorneys' Fees and Expenses application. If you submit a written objection, you may (but do not have to) attend the hearing and speak to the District Court about your objection.

Do Nothing	If you are a member of the Settlement Class and you do not submit a Claim Form by April 24, 2017 , you will not be eligible to receive any payment from the Net 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 District Court pertaining to the class actions in the Action.
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II. FREQUENTLY ASKED QUESTIONS CONCERNING THE SETTLEMENT

A. Why Did I Get This Notice?

This Notice is being sent to you because you, someone in your family, or an investment account for which you serve as a custodian may have purchased or otherwise acquired AudioEye securities during the Class Period. The District Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. If the District Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Claims Administrator selected by Lead Plaintiffs' Counsel and approved by the Court will make payments pursuant to the Settlement and the court-approved Plan of Allocation after any objections and appeals are resolved. This Notice is also to inform you of a hearing to be held by the District Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the Attorneys' Fees and Expenses application.

In a class action lawsuit, the court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, the court must resolve all issues on behalf of the class members, except for any Persons who choose to exclude themselves from the class. The District Court has preliminarily certified this Action to proceed as a class action for settlement purposes only and preliminarily certified Lead Plaintiffs as the representatives for the Settlement Class.

This Notice does not express any opinion by the District Court concerning the merits of any claim in the Action. The District Court has to decide whether to approve the Settlement. If the Court approves the Settlement and the Plan of Allocation, payments to Authorized Claimants will be made after any appeals are resolved, and after the completion of all claims processing. Please be patient.

B. What Does The Settlement Provide?

In exchange for the release of the Settled Claims against each of the Defendants and the Released Parties, as well as dismissal of the litigation as against the Defendants, the Defendants have agreed to pay, or cause AudioEye to pay, the sum of one million, five hundred and twenty-five thousand United States dollars (\$1,525,000), plus interest earned thereon for the benefit of the Settlement Class. The Settlement Fund less all Taxes, Notice and Administration Costs, and Attorneys' Fees and Expenses Award paid out of the Settlement Fund in accordance with applicable orders of the District Court (the "Net Settlement Fund") will be divided among all eligible Settlement Class Members who send in a valid Claim Form. The Claim Form is described in more detail below in Section F below.

C. Am I Included In The Settlement?

You are included in the Settlement if you purchased or acquired AudioEye common stock during the Class Period and were damaged thereby. Excluded from the Class are the Defendants, the officers and directors of AudioEye during the Class Period, members of their immediate families and their legal representatives, heirs, successors, or assigns, any entity in which Defendants have or had a controlling interest, and any persons who separately file an action against one or more of Defendants, based in whole or in part on any claim arising out of or relating to any of the alleged acts, omissions, misrepresentations, facts, events, matters, transactions, or occurrences referred to in the Action or otherwise alleged, asserted, or contended in the Action.

Also excluded from the Settlement Class are any Persons who exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice (see pages 7-8 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 ARE A SETTLEMENT CLASS MEMBER AND 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 AS SET FORTH THEREIN POSTMARKED NO LATER THAN APRIL 24, 2017.

D. What Might Happen If There Were No Settlement?

If there were no Settlement and Lead Plaintiffs failed to establish any essential legal or factual element of its claims against the Defendants, neither it nor the Settlement Class would recover anything from the Settling Defendants.

E. What Is The Legal Effect Of The Settlement On My Rights?

If you are a member of the Settlement Class, the Settlement will affect you. If the District Court grants final approval of the Settlement, the Action will be dismissed with prejudice and all Settlement Class Members will fully release and discharge the Defendants from all claims (as detailed below) for relief arising out of or based on Lead Plaintiffs' allegations. When a Person "releases" claims, that means that Person cannot sue the defendants for any of the claims covered by the release. If you are a Settlement Class Member and you submit a valid and timely Claim Form, you will receive a payment based upon the distribution formula described below.

F. What Will I Receive From The Settlement?

At this time, it is not possible to make any determination as to how much a Settlement Class Member may receive from the Settlement. Pursuant to the Settlement, Defendants have agreed to pay \$1,525,000 in cash. The settlement amount will be deposited into an interest-bearing escrow account. If the Settlement is approved by the District Court, the Net Settlement Fund will be distributed to Settlement Class Members as set forth in the proposed Plan of Allocation, or such other plan as the District Court may approve.

After approval of the Settlement by the District Court and upon satisfaction of the other conditions to the Settlement, the Net Settlement Fund will be distributed to Authorized Claimants in accordance with the Plan of Allocation approved by the District Court. Under the proposed Plan of Allocation, your share of the Net Settlement Fund will depend on: (1) the dates you acquired or sold your AudioEye securities; (2) the number of AudioEye securities acquired or sold and the price paid or received; (3) the expense of administering the claims process; (4) any attorneys' fees and expenses awarded by the Court; (5) interest income received and taxes paid by the Settlement Fund; (6) the number of eligible AudioEye securities acquired by other Settlement Class Members who submit timely and valid Claim Forms; and (7) the Recognized Losses of all other Authorized Claimants computed in accordance with the Plan of Allocation set out on pages 6-7 below.

You can calculate your Recognized Loss in accordance with the formula set forth below in the proposed Plan of Allocation. In the event the aggregate Recognized Losses of all timely and validly submitted Claim Forms exceed the Net Settlement Fund, your share of the Net Settlement Fund will be proportionally less than your calculated Recognized Loss. It is unlikely that you will get a payment for all of your Recognized Loss. After all Settlement Class Members have sent in their Claim Forms, the payment you get will be that proportion of the Net Settlement Fund equal to your Recognized Loss divided by the total Recognized Losses of all Settlement Class Members who submit timely and valid Claim Forms (the "Pro Rata Share"). See the Plan of Allocation on pages 6-7 for more information on your Recognized Loss.

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

Neither Defendants nor any other Person that paid any portion of the Settlement Amount is entitled to get back any portion of the Net Settlement Fund once the District Court's Final Approval Order and Judgment approving the Settlement becomes final. Defendants will not have any liability, obligation, or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund or the Plan of Allocation.

Approval of the Settlement is independent from approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation will not affect the Settlement, if approved.

Each Person wishing to participate in the distribution must timely submit a valid Claim Form establishing membership in the Settlement Class, and including all required documentation, **postmarked on or before April 24, 2017**, to the address set forth in the Claim Form that accompanies this Notice.

Unless the District Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form **postmarked on or before April 24, 2017**, 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 and Settlement that is approved, including the terms of any judgment entered and releases given.

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

Each Claimant shall be deemed to have submitted to the jurisdiction of the District Court with respect to his, her, or its Claim Form. Upon request of the Claims Administrator, each Person that submits a Claim Form shall subject his, her, or its Claim to investigation as to his, her, or its status as a Claimant and the allowable amount of his, her, or its Claim.

Persons that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class will not be eligible to receive a distribution from the Net Settlement Fund and should not submit a Claim Form.

Proposed Plan Of Allocation

The Net Settlement Fund will be distributed to Settlement Class Members who submit valid, timely Claim Forms. If you have a net loss on all transactions in AudioEye securities during the Class Period, you will be paid the percentage of the Net Settlement Fund that your Recognized Loss bears to the total of the Recognized Losses of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants. The calculation of Claims below is not an estimate of the amount you will receive. It is a formula for allocating the Net Settlement Fund among all Authorized Claimants.

Each Authorized Claimant's Recognized Loss will be calculated as follows:

For all AudioEye shares acquired during the Class Period and sold prior to April 1, 2015, the Recognized Loss shall be \$0.

For all AudioEye shares acquired during the Class Period that were not sold prior to April 1, 2015, the Recognized Loss shall be the difference between (a) the lesser of the purchase or acquisition price and \$0.41 per share, and (b) the greater of the sale price or \$0.30 per share.

To the extent an Authorized Claimant had an aggregate gain from his, her or its transactions in AudioEye common stock during the Class Period, the value of his, her or its total Recognized Loss will be zero. To the extent that an Authorized Claimant suffered an overall loss on his, her or its transactions in AudioEye common stock during the Class Period, but the loss was less than the Recognized Loss calculated above, then the Recognized Loss shall be limited to the amount of the actual loss. Purchases that were made in order to cover short sales are ineligible and will not be included in the Recognized Loss calculation; however, any aggregate gains with respect to short sales shall be offset against Recognized Loss on other transactions. All purchases/acquisitions and sales of AudioEye shares in the Class Period shall be matched on a Last-In-First-Out ("LIFO") basis; sales during the Class Period and the 90 days thereafter will be matched first against the most recent AudioEye shares purchased during that period that have not already been matched to sales, and then against prior purchases/acquisitions in backward chronological order, until the beginning of the Class Period.

The date of purchase or sale is the "contract" or "trade" date as distinguished from the "settlement" or "payment" date. However, for AudioEye securities that were put to investors pursuant to put options sold by those investors, the purchase of AudioEye securities shall be deemed to have occurred on the date that the put option was sold, rather than the date on which the AudioEye securities were subsequently put to the investor pursuant to that option. The proceeds of any put option sales shall be offset against any losses from AudioEye securities that were purchased as a result of the exercise of the put option. Additionally, AudioEye securities acquired during the Class Period through the exercise of a call option shall be treated as a

purchase on the date of exercise for the exercise price plus the cost of the call option, and any Claim arising from such transaction shall be computed as provided for other purchases of AudioEye securities as set forth herein.

The receipt or grant by gift, devise or inheritance of AudioEye securities during the Class Period shall not be deemed to be a purchase of AudioEye securities for the calculation of an Authorized Claimant's Recognized Loss if the Person from which the AudioEye securities were received did not themselves acquire the securities during the Class Period, nor shall it be deemed an assignment of any claim relating to the purchase of such AudioEye securities unless specifically provided in the instrument or gift or assignment.

An Authorized Claimant will be eligible to receive a distribution from the Net Settlement Fund only if the Authorized Claimant had a net loss, after all profits from transactions in AudioEye securities during the Class Period are subtracted from all losses from transactions in AudioEye securities during the Class Period.

If an Authorized Claimant's distribution amount calculates to less than \$10.00, no distribution will be made to that Authorized Claimant.

Distributions will be made to Authorized Claimants after all Claims have been processed and after the District Court has finally approved the Settlement. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Settlement Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall, if economically feasible, be re-distributed, after payment of any Taxes and unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution, to Authorized Claimants who have cashed their checks and who would receive at least \$10.00 from such re-distribution. Lead Plaintiffs' Counsel shall, if economically feasible, continue to reallocate any further balance remaining in the Net Settlement Fund after the redistribution is completed among Authorized Claimants in the same manner and time frame as provided for above. In the event that Lead Plaintiffs' Counsel determines that further redistribution of any balance remaining (following the initial distribution and redistribution) is no longer economically feasible, thereafter Lead Plaintiffs' Counsel shall donate the remaining funds, if any, to a non-sectarian, not-for-profit 501(c)(3) organization to be designated by Lead Counsel and approved by the Court.

Payment pursuant to the Plan of Allocation, or such other plan as may be approved by the District Court, shall be conclusive against all Authorized Claimants. No Person shall have any claim against Lead Plaintiffs, Lead Counsel, Defendants, and their respective counsel or any of the other Released Parties, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation approved by the District Court, or further orders of the District Court. Lead Plaintiffs, Defendants, and their respective counsel, and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the settlement funds, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

The Plan of Allocation set forth herein is the plan that is being proposed by Lead Plaintiffs and Lead Plaintiffs' Counsel to the District Court for approval. The District Court may approve this Plan of Allocation as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. Any orders regarding a modification of the Plan of Allocation will be posted on the settlement website, www.audioeyesecuritieslitigation.com.

G. Can I Decide To Opt Out Of This Settlement?

Yes. If you do not wish to be included in the Settlement Class and you do not wish to participate in the Settlement, you may request to be excluded. To do so, you must submit a written request for exclusion that must be signed by you or your authorized representative and **received on or before April 7, 2017**. You must set forth: (a) the name, address, and telephone number of the Person requesting exclusion; (b) the amount of AudioEye common stock purchased, acquired and/or sold during the Class Period; (c) prices paid or received for such AudioEye common stock; (d) the date of each purchase, acquisition or sale transaction; and (e) a statement that the Person wishes to be excluded from the Settlement Class.

The exclusion request should be addressed as follows:

In re AudioEye, Inc. Securities Litigation EXCLUSION REQUEST
c/o JND Class Action Administration
P.O. Box 6847
Broomfield, CO 80021

NO REQUEST FOR EXCLUSION WILL BE CONSIDERED VALID UNLESS ALL OF THE INFORMATION DESCRIBED ABOVE IS INCLUDED IN ANY SUCH REQUEST AND RECEIVED WITHIN THE TIME STATED ABOVE, OR IS OTHERWISE ACCEPTED BY THE COURT.

If you timely and validly request exclusion from the Settlement Class, (a) you will be excluded from the Settlement Class, (b) you will not share in the proceeds of the Settlement described herein, (c) you will not be bound by any judgment entered in the case, and (d) you will not be precluded, by reason of your decision to request exclusion from the Settlement Class, from otherwise prosecuting an individual claim, if timely, against the Defendants based on the matters complained of in the litigation. Defendants may withdraw from and terminate the Settlement if Settlement Class Members who purchased the requisite number of AudioEye securities exclude themselves from the Settlement Class.

H. What If A Settlement Class Member Is Deceased?

The authorized legal representative(s) of a Settlement Class Member may receive a recovery on behalf of the Settlement Class Member.

I. What If I Bought AudioEye Securities On Someone Else's Behalf?

If you purchased or otherwise acquired AudioEye securities during the Class Period for the beneficial interest of a Settlement Class Member, you must either (a) forward the Postcard Notice to the beneficial owners of the AudioEye common stock within ten (10) calendar days from the receipt of the Postcard Notice, and provide written confirmation to the Claims Administrator of such, or (2) provide the names and addresses of such persons or entities to *In re AudioEye, Inc. Securities Litigation*, c/o JND Class Action Administration, P.O. Box 6847, Broomfield, CO 80021. If you choose the second option, the Claims Administrator will send the Postcard Notice 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 out-of-pocket expenses for which reimbursement is sought.

Copies of this Notice and the Claim Form can be obtained from the website maintained by the Claims Administrator, www.audioeyesecuritieslitigation.com, by calling the Claims Administrator toll-free at 1-844-357-6871, or from Lead Counsel's website, www.kmlp.com.

J. How And What Do I Do To Make Sure The Claims Administrator Has My Correct Address?

If your address changes from the address to which the Postcard Notice was directed, you must notify the Claims Administrator of your new address as soon as possible. Failure to keep the Claims Administrator informed of your address may result in the loss of any monetary award you might be eligible to receive. Please send your new contact information to the Claims Administrator at the address listed below and include your old address, new address, and telephone number, date of birth, and Social Security number. These last two items are required so that the Claims Administrator can verify that the address change is from an actual Settlement Class Member.

In re AudioEye, Inc. Securities Litigation ADDRESS CHANGE
c/o JND Class Action Administration
P.O. Box 6847
Broomfield, CO 80021

K. What Are Lead Plaintiffs' Counsels' Fees And Costs?

At the Settlement Hearing, Lead Plaintiffs' Counsel will request that the District Court award attorneys' fees of up to one third of the Settlement Fund, plus expenses (exclusive of administration costs) not to exceed \$75,000, which were incurred in connection with the

litigation of the Action, plus interest at the same rate as earned on the Settlement Amount. Whatever amount is approved by the Court as legal fees and expenses will be paid from the Gross Settlement Fund.

To date, Lead Plaintiffs' Counsel have not received any payment for their services in conducting this action, nor has counsel been reimbursed for their substantial expenses. The fees requested by Lead Plaintiffs' Counsel will compensate Lead Plaintiffs' Counsel for their efforts in achieving the Gross Settlement Fund for the benefit of the Settlement Class, and for their risk in undertaking this representation on a wholly-contingent basis. If the amount requested is approved by the Court, the average cost per damaged AudioEye share will be \$0.02.

L. How Will the Notice Costs and Expenses Be Paid?

Lead Plaintiffs' Counsel are authorized by the Stipulation to pay the Claims Administrator's fees and expenses incurred in connection with giving notice, administering the Settlement, and distributing the Net Settlement Fund to Settlement Class Members.

III. LEAD PLAINTIFFS AND LEAD PLAINTIFFS' COUNSEL SUPPORT THE SETTLEMENT

Lead Plaintiffs and Lead Plaintiffs' Counsel believe that the claims asserted against the Defendants have merit. Lead Plaintiffs and their Counsel recognize, however, the expense and length of continued proceedings necessary to pursue its claims against these Defendants through trial and appeals, as well as the difficulties in establishing liability and damages at trial. The immediate cash benefits under the Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved after a heavily contested appeals process, contested motions, a contested trial and likely further appeals, a process that could be expected to last several years into the future.

In light of the value of the Settlement and the immediacy of a cash recovery to the Settlement Class, Lead Plaintiffs and Lead Plaintiffs' Counsel believe that the proposed Settlement is fair, reasonable, and adequate. Indeed, Lead Plaintiffs and Lead Plaintiffs' Counsel believe that the Settlement achieved is an excellent result and in the best interests of the Settlement Class. The Settlement, which provides an immediate \$1,525,000 in cash (less the various deductions described in this Notice), individually and collectively provides substantial benefits now as compared to the risk that a similar, smaller, or no recoveries would be achieved after a trial and appeals, possibly years in the future.

IV. WHAT OPPORTUNITY WILL I HAVE TO GIVE MY OPINION ABOUT THE SETTLEMENT?

A. How Can I Object To The Settlement, Plan of Allocation and Fee and Expense Application?

Any Settlement Class Member who does not request exclusion may object to the Settlement, the proposed Plan of Allocation, and/or the Attorneys' Fees and Expenses application. 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 District of Arizona at the address set forth below on or before **April 17, 2017**. Your written objection should include all reasons for the objection, including any legal and evidentiary support you wish to bring to the Court's attention. The objection must also include your name, address, telephone number, and the number of AudioEye common stock you purchased and sold during the Class Period, including proof of your purchases and sales of AudioEye common stock. You must also serve the papers on designated representative Lead Plaintiffs' Counsel and Defendants' counsel at the addresses set forth below for their respective counsel so that the papers are **received on or before April 17, 2017**.

To be considered, your objection must be filed with the Office of the Clerk's Office no later than **April 17, 2017** to:

<u>Clerk's Office</u>	<u>Defendants' Counsel</u>	<u>Lead Counsel</u>
Clerk of the Court United States District Court District of Arizona Evo A. DeConcini United States Courthouse 405 West Congress Street, Suite 1500 Tucson, AZ 85701 Re: <i>In re AudioEye, Inc. Securities Litigation</i> Case No. 4:15-cv-00163-DCB	Perrie M. Weiner, Esq. Robert D. Weber, Esq. DLA Piper LLP (US) 2000 Avenue of the Stars Suite 400 North Tower Los Angeles, CA 90067 <i>Counsel for Defendants AudioEye, Inc. and Nathaniel Bradley</i> Mendy Piekarski, Esq. Sichenzia Ross Ference Kesner LLP 61 Broadway, 32nd Floor New York, NY 10006 <i>Counsel for Defendant Edward O'Donnell</i>	Ira M. Press, Esq. Mark Strauss, Esq. Kirby McInerney LLP 825 Third Avenue, 16th Floor New York, NY 10022 <i>Counsel for Lead Plaintiffs and the Class</i>

You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

If you file an objection to the Settlement, Plan of Allocation, and/or the Attorneys' Fees and Expenses application, you also have a right to appear at the Settlement Hearing either in person or through counsel hired by you at your own expense. You are not required, however, to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or the Attorneys' Fees and Expenses application, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on the Claims Administrator at the address set forth above. 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.

Unless the District 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 the Attorneys' Fees and Expenses application. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

B. What Rights Am I Giving Up By Remaining In The Class?

If you remain in the Settlement Class, you will be bound by any orders issued by the District Court. For example, if the District Court approves the Settlement, the District Court will enter the Order and Final Judgment. The Order and Final Judgment will dismiss with prejudice the claims against the Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the other members of the Settlement Class on behalf of themselves, their respective heirs, executors, administrators, successors, and assigns shall be deemed by operation of law to have fully granted and completely discharged, dismissed with prejudice, settled and released, and agreed to be barred by a permanent injunction from the assertion of, Settled Claims against any of the Released Parties and their attorneys.

"Settled Claims" means any and all claims, debts, demands, liabilities, rights, and causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liabilities whatsoever), whether based on federal, state, local, statutory or common law, or any other law, rule, or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (as defined below): (i) that have been

asserted in the Litigation by the Lead Plaintiffs and/or Settlement Class Members or any of them against any of the Released Parties, including, without limitation, all statements made by any of the Defendants that Plaintiffs allege in the Litigation were false or misleading, or any of the alleged acts, omissions, representations, facts, events, matters, transactions, or occurrences asserted in, relating to in any way, or arising out of the Litigation, or otherwise alleged, asserted, or contended in the Litigation; or (ii) that relate to the purchase of AudioEye securities, including, without limitation, claims for fraud, negligent misrepresentation, or claims based upon or related in any way to the purchase, acquisition, or sale of AudioEye securities during the Class Period by the Lead Plaintiffs or any Settlement Class Member, on behalf of themselves, their heirs, executors, administrators, successors, and assigns against the Released Parties or any of them. Settled Claims also include any and all claims arising out of or relating to in any way the Settlement or resolution of the Litigation against the Released Parties (including Unknown Claims that arise out of, relate to, or are in connection with the Settlement or resolution of the Litigation against the Released Parties), except claims to enforce any of the terms of the Stipulation.

“Released Parties” means the Defendants and any of their current, former, or future parents, subsidiaries, affiliates, partners, joint venturers, officers, directors, principals, shareholders, members, agents (acting in their capacity as agents), employees, attorneys, trustees, insurers (including Argonaut Insurance Company and its respective businesses, affiliates, subsidiaries, parents and affiliated corporations, divisions, predecessors, shareholders, partners, joint venturers, principals, insurers, reinsurers, successors and assigns, and their respective past, present and future employees, officers, directors, attorneys, accountants, auditors, agents and representatives), reinsurers, advisors, accountants, associates, and/or any other individual or entity in which any Defendant has or had a controlling interest or which is or was related to or affiliated with any Defendant, and the current, former, and future legal representatives, heirs, successors-in-interest, or assigns of any Defendant.

“Unknown Claims” means (a) any Settled Claim that the Lead Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties, which if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement, including, but not limited to, the decision not to object to the Settlement, provided such claim arises out of or relates to the purchase or sale of AudioEye securities, and (b) any Defendants’ Claims that any Defendant does not know or expect to exist in his, her, or its favor, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants’ Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Settling Parties shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived and by operation of the Order and Final Judgment shall have 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 that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides: “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.”

V. SETTLEMENT HEARING

The District Court will hold a Settlement Hearing at 1:30 P.M. on May 8, 2017 at the United States District Court for the District of Arizona, Evo A. DeConcini United States Courthouse, 405 West Congress Street, Suite 6170, Tucson, AZ 85701, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The District Court will also be asked to approve the proposed Plan of Allocation and the Attorneys’ Fees and Expenses Award. The District Court may adjourn or continue the Settlement Hearing without further notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Lead Plaintiffs’ Counsel.

Settlement Class Members do not need to attend the Settlement Hearing. The District Court will consider any submission made in accordance with the provisions in this Notice even if the Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing. You are not obligated to attend the Settlement Hearing.

VI. GETTING MORE INFORMATION

This Notice is a summary and does not describe all of the details of the Stipulation. For precise terms and conditions of the Settlement, you may review the Stipulation filed with the District Court, as well as the other pleadings and records of this litigation, which may be inspected during business hours, at the office of the Clerk of the Court, United States District Court for the District of Arizona, Evo A. DeConcini United States Courthouse, 405 West Congress Street, Suite 1500, Tucson, AZ 85701, at www.audioeyesecuritieslitigation.com, or from Lead Plaintiffs’ Counsel’s website, www.kmlp.com. Settlement Class Members without access to the internet may be able to review this document online at locations such as a public library.

If you have any questions about the settlement of the Action, you may contact Lead Plaintiffs' Counsel:

Ira M. Press, Esq.
Mark Strauss, Esq.
KIRBY McINERNEY LLP
825 Third Avenue, 16th Floor
New York, NY 10022
Toll-Free: 1-888-529-4787

You may also call or write to the Claims Administrator at *In re AudioEye, Inc. Securities Litigation*, c/o JND Class Action Administration, P.O. Box 6847, Broomfield, CO 80021, or call toll-free 1-844-357-6871, stating that you are requesting assistance regarding the AudioEye litigation.

DO NOT TELEPHONE OR WRITE THE DISTRICT COURT OR THE OFFICE OF THE CLERK OF THE COURT REGARDING THIS NOTICE.

DATED: February 8, 2017

BY ORDER OF THE COURT UNITED STATES DISTRICT
COURT DISTRICT OF ARIZONA