

<b>Matter of Netshoes Sec. Litig. v XXX</b>
2020 NY Slip Op 32818(U)
August 28, 2020
Supreme Court, New York County
Docket Number: 157435/2018
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM**

*Justice*

-----X

**INDEX NO. 157435/2018**

IN RE NETSHOES SECURITIES LITIGATION

**MOTION DATE 08/26/2020**

Plaintiff,

**MOTION SEQ. NO. 005**

- v -

XXX,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 119, 120, 121, 122 were read on this motion to/for MISCELLANEOUS.

WHEREAS, on August 25, 2020, the Parties to the above-captioned action (the "Litigation") entered into a Stipulation of Settlement (the "Stipulation" or "Settlement"), which is subject to review by this Court and which, together with the exhibits thereto, sets forth the terms and conditions for the Settlement and dismissal of the claims alleged in the Litigation;<sup>1</sup> and the Court having read and considered the Stipulation and the accompanying documents; and the Parties to the Stipulation having consented to the entry of this Notice Order; and all capitalized terms used herein having the meanings defined in the Stipulation, unless otherwise defined;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 28 day of August 2020, that:

- 1. The Court preliminarily finds that:

<sup>1</sup> As used herein, the term "Parties" mean Lead Plaintiff 1199SEIU Health Care Employees Pension Fund ("Lead Plaintiff"), on behalf of itself and the Settlement Class, and Defendants Netshoes (Cayman) Limited ("Netshoes" or the "Company"), Márcio Kumruian, Leonardo Tavares Dib, Francisco Alvarez-Demalde, Nilesh Lakhani, Hagop Chabab, Wolfgang Schwerdtle, Nicolas Szekasy, Donald Puglisi, Goldman Sachs & Co., J.P. Morgan Securities LLC, Banco Bradesco BBI S.A., Allen & Company LLC, and Jefferies LLC (collectively, "Defendants").

(a) the Settlement resulted from informed, extensive arm's-length negotiations, including a mediation among Lead Plaintiff and Defendants under the direction of a very experienced mediator, Robert A. Meyer, Esq.; and

(b) the Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class.

2. For purposes of the Settlement only, and preliminarily, for purposes of this Order, the Litigation shall proceed as a class action, pursuant to CPLR §§901 and 902, on behalf of a Settlement Class consisting of all persons who purchased or otherwise acquired Netshoes common stock before May 15, 2018. For purposes of the releases set forth herein, "Settlement Class" and "Settlement Class Members" shall include any Person purporting to assert a claim on behalf of any Settlement Class Member, or any Person asserting a claim based on a purchase or acquisition of Netshoes common stock made by any Settlement Class Member. Excluded from the Settlement Class are: (a) Defendants; (b) members of the immediate families of each Individual Defendant; (c) the respective parents and subsidiaries of Netshoes and the Underwriter Defendants; (d) the officers and directors of Netshoes; (e) any entity in which any such excluded party has a direct or indirect majority ownership interest; and (f) the legal representatives, heirs, successors, or assigns of any such excluded party. Notwithstanding any aforementioned exclusions from the definition of "Settlement Class," Investment Vehicles shall not be excluded from the Settlement Class. Those persons (if any) who timely and validly request exclusion from the Settlement Class pursuant to the Notice to be sent shall also be excluded from the Settlement Class.

3. For purposes of the Settlement only, and preliminarily, for purposes of this Order, Lead Plaintiff is hereby certified as the Settlement Class Representative and Lead Counsel is appointed as Class Counsel.

4. A Settlement Fairness Hearing is hereby scheduled to be held via Skype Business or Microsoft Teams videoconference or other court authorized remote videoconference means before the Court at 60 Centre Street, Part 53, Courtroom 238, New York, New York 10007, on **November 23, 2020 at 10 a.m.**, for the following purposes:

(a) to determine whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;

(b) to determine whether the Judgment, as provided under the Stipulation, should be entered;

(c) to determine whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund should be approved by the Court as fair, reasonable, and adequate;

(d) to determine whether to grant final certification of a Settlement Class for purposes of the Settlement;

(e) to consider Plaintiff's Counsel's Fee and Expense Application;

(f) to consider Lead Plaintiff's request for an award for its efforts in prosecuting the Litigation on behalf of the Settlement Class;

(g) to consider any objections or opt-outs received by the Court; and

(h) to rule upon such other matters as the Court may deem appropriate.

5. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Settlement Class and may adjourn the Settlement Fairness Hearing without further notice to the Settlement Class. The Court reserves the right to enter the Judgment approving the Stipulation regardless of whether it has approved the Plan of Allocation, Plaintiff's Counsel's Fee and Expense Application, and Lead Plaintiff's request for an award for its representation of the Settlement Class.

6. The Court approves the form, substance, and requirements of the Notice of Proposed Settlement of Class Action (the “Notice”), the Proof of Claim and Release (the “Proof of Claim”), and the Summary Notice of Proposed Settlement of Class Action (the “Summary Notice”), annexed hereto as Exhibits A-1, A-2, and A-3, respectively.

7. The Court approves the appointment of A.B. Data, Ltd. as the Claims Administrator to supervise and administer the Notice procedure in connection with the proposed Settlement, as well as the processing of Proofs of Claim as more fully set forth below.

8. The Claims Administrator shall cause the Notice and Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first class mail, postage prepaid, within 21 calendar days of this Order, to all Settlement Class Members who can be identified with reasonable effort. Within ten calendar days of this Order, Netshoes, at its expense, shall provide the last known addresses of Netshoes record shareholders to the Claims Administrator for the purpose of identifying and giving notice to the Settlement Class. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers, such as brokerage firms and other Persons, who purchased or otherwise acquired Netshoes common stock during the Settlement Class Period as record owners, but not as beneficial owners. Such nominee purchasers are directed, within 14 business days of their receipt of the Notice, to either forward copies of the Notice and Proof of Claim to their beneficial owners or to provide the Claims Administrator with lists of the names and addresses of the beneficial owners, and the Claims Administrator is ordered to send the Notice and Proof of Claim promptly to such identified beneficial owners. Nominee purchasers who elect to send the Notice and Proof of Claim to their beneficial owners shall send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Notice shall be made available to any record holder requesting such for the purpose of distribution

to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of sending the Notice and Proof of Claim to beneficial owners.

9. The Claims Administrator shall cause the Summary Notice to be published once over a national newswire service, within 10 calendar days after the mailing of the Notice.

10. The Claims Administrator shall notify all Settlement Class Members of any changes of the Settlement Fairness Hearing by posting notice of the changes on [www.NetshoesSecuritiesLitigation.com](http://www.NetshoesSecuritiesLitigation.com).

11. Lead Counsel shall, at least seven calendar days before the Settlement Fairness Hearing, file with the Court and serve on the Parties proof of mailing of the Notice and Proof of Claim and proof of publication of the Summary Notice.

12. The form and content of the Notice and the Summary Notice, and the method set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of New York law, due process, and all other applicable laws and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto and are reasonably calculated under the circumstances to describe the terms and effect of the Settlement and to apprise the Settlement Class Members of their right to object to the proposed Settlement and to exclude themselves from the Settlement Class. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided pursuant thereto, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

12. In order to be entitled to participate in the Net Settlement Fund, in the event the Settlement is consummated in accordance with the terms set forth in the Stipulation, each

Settlement Class Member shall take the following actions and be subject to the following conditions:

(a) Within 90 calendar days after such time as set by the Court for the Claims Administrator to mail the Notice to the Settlement Class, each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim, substantially in the form contained in Exhibit A-2 attached hereto and as approved by the Court, signed under penalty of perjury and supported by such documents as specified in the Proof of Claim and as are reasonably available to the Authorized Claimant.

(b) Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim within such period, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments pursuant to the Stipulation and Settlement set forth therein, but will, in all other respects, be subject to and bound by the provisions of the Stipulation, the releases contained therein, and the Final Judgment. Notwithstanding the foregoing, Lead Counsel may, in its discretion, accept for processing late submitted claims, so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed. Lead Counsel may also, in its discretion, waive what Lead Counsel deems to be *de minimis* or formal or technical defects in any Proof of Claim submitted. In connection with processing the Proofs of Claim, no discovery shall be allowed on the merits of the Litigation or Settlement. No Person shall have any claim against Lead Plaintiff, Lead Counsel, or the Claims Administrator by reason of the decision to exercise such discretion whether to accept late-submitted or technically deficient claims.

(c) As part of the Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the Court, with respect to the claim submitted, and shall (subject to effectuation of the Settlement) release all Released Claims as provided in the Stipulation.

13. Settlement Class Members shall be bound by all determinations and judgments in the Litigation, whether favorable or unfavorable, unless they request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such request shall, no later than 60 calendar days after the date set for the initial mailing of the Notice to Settlement Class Members, mail a request for exclusion in written form by first class mail postmarked to the address designated in the Notice. Such request for exclusion shall clearly indicate the name, address, and telephone number of the Person seeking exclusion, that the sender requests to be excluded from the Settlement Class, and must be signed by such Person. Such Persons requesting exclusion are also directed to state the date(s), price(s), and number of shares of Netshoes common stock they purchased or acquired before May 15, 2018. The request for exclusion shall not be effective unless it is made in writing within the time stated above, and the exclusion is accepted by the Court. Settlement Class Members requesting exclusion from the Settlement Class shall not be entitled to receive any payment out of the Net Settlement Fund, as described in the Stipulation and Notice.

14. The Court will consider objections to the Settlement, Plan of Allocation, award to Lead Plaintiff, and/or award of attorneys' fees and expenses. Any Person wanting to object must do so in writing and may also appear at the Settlement Fairness Hearing. To the extent any Person wants to object in writing, such objections and any supporting papers, accompanied by proof of Settlement Class membership, shall be filed with the Supreme Court of the State of New York, County of New York: Commercial Division, 60 Centre Street, New York, NY 10007, and copies

of all such papers served no later than **November 17, 2020**, which is 60 calendar days after the date set for the initial mailing of the Notice to the Settlement Class, to each of the following: Jeffrey P. Jacobson, Scott+Scott, Attorneys at Law LLP, The Helmsley Building, 230 Park Avenue, 17th Fl., New York, NY 10169, on behalf of the Lead Plaintiff and Settlement Class, and Robert A. Fumerton, Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, NY 10001, on behalf of the Defendants. Persons who intend to object in writing to the Settlement, Plan of Allocation, Fee and Expense Application, and/or Lead Plaintiff's request for an award for representing the Settlement Class, and desire to present evidence at the Settlement Fairness Hearing, must include in their written objections copies of any exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. If an objector hires an attorney to represent them for the purposes of making an objection, the attorney must both effect service of a notice of appearance on counsel listed above and file it with the Court by no later than **November 17, 2020**. A Settlement Class Member who files a written objection does not have to appear at the Settlement Fairness Hearing for the Court to consider their objection. If the Settlement Class Member intends to appear at the Settlement Fairness Hearing, the Settlement Class Member shall identify any witnesses they may seek to call and exhibits they intend to offer at the Settlement Fairness Hearing in the papers served, as set forth above, no later than **November 17, 2020**. Any Member of the Settlement Class who does not make their objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Settlement set forth in the Stipulation, to the Plan of Allocation, and to Fee and Expense Award to Plaintiff's Counsel and Lead Plaintiff's request for payment, unless otherwise ordered by the Court.

15. Any Person that submits a request for exclusion may thereafter submit to the Claims Administrator and Plaintiff's Counsel a written and signed revocation of that request for exclusion, provided that it is received no later than five business days before the Settlement Fairness Hearing, in which event that Person will be included in the Settlement Class.

16. All papers in support of the Settlement, Plan of Allocation, and Fee and Expense Application by Plaintiff's Counsel and award to Lead Plaintiff shall be filed 14 calendar days prior to the deadline in ¶14 for objections to be filed. All reply papers shall be filed and served at least seven calendar days prior to the Settlement Fairness Hearing.

17. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

18. The Claims Administrator, Defendants' Counsel, and Plaintiff's Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

19. Pending final determination of whether the Settlement should be approved, Lead Plaintiff, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence, maintain, or prosecute, and are hereby barred and enjoined from instituting, continuing, commencing, maintaining, or prosecuting, any action in any court or tribunal that asserts Released Claims against any of the Released Parties. Unless and until the Stipulation is cancelled and terminated pursuant to its terms, all proceedings in the Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court. However, nothing in this paragraph or the Stipulation shall preclude: (a) the Parties from applying for an extension of Defendants' deadline to perfect any appeal of the Court's June 2, 2020 decision resolving

Defendants' motion to dismiss the second amended complaint (NYSCEF Doc. No. 113) (the "Decision"), should the deadline precede the Effective Date; or, to the extent the Parties are unable to obtain an extension of Defendants' deadline to perfect any appeal of the Decision until after the Effective Date, (b) Defendants from perfecting, and the Parties from briefing and arguing, any appeal of the Decision. Lead Plaintiff agrees to join any request by Defendants for an extension of Defendants' deadline to perfect an appeal of the Decision. Within five business days of the Effective Date, Defendants shall file a letter or motion voluntarily withdrawing or discontinuing any appeal of the Decision, as provided in the Practice Rules of the Appellate Division, 22 New York Code, Rules and Regulations, Part 1250. The letter or motion shall specify that each party shall bear its own costs, fees, and expenses in connection with the appeal.

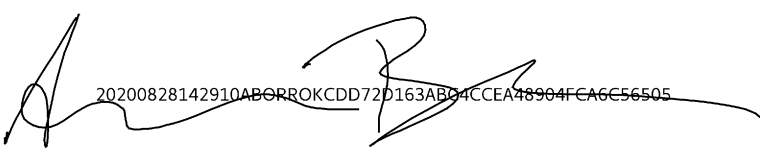
20. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation and herein. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Lead Plaintiff nor any of its counsel shall have any obligation to repay any amounts actually and properly disbursed from the Settlement Fund, except as provided for in the Stipulation.

21. If any specified condition to the Settlement set forth in the Stipulation is not satisfied and Lead Plaintiff or Defendants elect to terminate the Settlement, then, in any such event, the Stipulation, including any amendment(s) thereof, shall be null and void and of no further force or effect (except to the extent otherwise expressly provided in the Stipulation), without prejudice to any Party, and may not be introduced as evidence or referred to in the Litigation, or any action or proceeding by any Person for any purpose, and each Party shall be restored to his, her, or its respective position as it existed on June 19, 2020.

22. Neither the Stipulation nor the terms of the Settlement, nor any of the negotiations or proceedings connected with it, nor this Order, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Litigation or of any liability, fault, or wrongdoing of any kind.

23. The Court may adjourn or continue the Settlement Fairness Hearing without further written notice.

24. The Court retains exclusive jurisdiction over the Litigation to consider all further matters arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

  
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8/28/2020  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE