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10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

12 In re VAXART, INC. SECURITIES LITIGATION

Case No. 3:20-cv-05949-VC

13 CLASS ACTION
14

15 *This Document Relates to:*
16 *ALL ACTIONS*
17

18 **CLASS REPRESENTATIVES' CASE MANAGEMENT STATEMENT**
19 **FOR JANUARY 31, 2025 CASE MANAGEMENT CONFERENCE**
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1 Class Representatives Wei Huang, Langdon Elliott, and Ani Hovhannisyan (“Class
2 Representatives”), through their counsel at Hagens Berman Sobol Shapiro LLP and Scott+Scott
3 Attorneys at Law LLP (“Class Counsel”), respectfully submit this Case Management Statement in
4 advance of this Friday’s Case Management Conference to address the Court’s questions about the
5 Post-Distribution Accounting. *See* ECF Nos. 451, 456-57.

6 In its January 23, 2025 Order, the Court questioned whether more money is set to be distributed
7 from the Settlement Fund than it contained. The answer is no. The incongruence stems from the fact
8 that the “remaining ten percent of attorneys’ fees,” ECF No. 456, that have not been paid to Class
9 Counsel (just over \$320,000, including interest) were inadvertently included in the moneys distributed
10 to eligible Class Members, rather than held back pending the Court’s approval to release the funds to
11 Class Counsel. Simply put, eligible Class Members received higher *pro rata* shares because the “pool”
12 of money from which they were paid inadvertently included Class Counsel attorneys’ fees.

13 The balance that remains from the settlement funds as of January 28, 2025, consists of (i)
14 \$175,386.33 in uncashed checks, (ii) a \$50,000.00 reserve to pay the Settlement Fund’s final tax
15 payment in April 2025, and (iii) \$4,506.47 in refunded Notice and Administration Expenses. As Class
16 Members will continue to cash checks through March 31, 2025 (the latest stale date of all outstanding
17 distribution checks), the Claims Administrator (A.B. Data) estimates that an additional \$15,370.72 in
18 outstanding re-issued checks will be cashed, reducing the total amount of uncashed checks to an
19 estimated \$160,015.61.

20 Since the remaining 10% of attorneys’ fees plus interest total just over \$320,000, there will not
21 be enough funds left to pay the full amount of the attorneys’ fees. Class Counsel propose filing on
22 May 1, 2025, a final Post-Distribution Accounting and proposed order authorizing Class Counsel to
23 pay the remainder of Class Counsel’s fee award from the balance of the settlement funds.

24 Finally, Class Counsel and A.B. Data identified reporting errors in the Post-Distribution
25 Accounting filed on January 10, 2025. These errors in no way negatively impact payments owed to
26 the Class. To update the record, a revised Post-Distribution Accounting is included below.
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1 **I. PAYMENTS FROM ESCROW ACCOUNT**

2 Settling Defendants paid \$12,015,148.29¹ into the Escrow Account following the Court's
 3 October 3, 2022 Order Granting Preliminary Approval to the Settlement (ECF No. 242) ("Preliminary
 4 Approval Order"). The funds generated \$536,370.04 in interest net of taxes between the Settlement's
 5 funding and the transfer of the funds from the Escrow Account to the Distribution Account on August
 6 16, 2024. Since then, an additional tax payment of \$66,000.00 was made on August 23, 2024, and in
 7 April 2025, there will be an estimated \$50,000 final tax payment due. Accordingly, the total Settlement
 8 Fund, including interest net of taxes, is estimated at \$12,435,518.33, as reflected in the revised Post-
 9 Distribution Accounting.

10 While the funds were in Escrow, Class Counsel instructed the Escrow Agent to pay the
 11 following Court-authorized disbursements from the Escrow Account:

- 12 • \$300,000.00 to A.B. Data for Notice and Administration Expenses (Preliminary
 13 Approval Order, ¶ 20; Stip., ¶ 4.2);
- 14 • \$2,816,158.74 to Class Counsel for attorneys' fees (\$2,703,375.00), litigation expenses
 15 (\$99,468.65), and interest (\$13,315.09) (Order Approving Fee and Expense
 16 Application, ECF No. 274 ("Fee and Expense Order"), ¶ 3); and
- 17 • \$9,900.00 in total to Class Representatives as Service Awards (*Id.*, ¶ 6).

18 Following the Court's June 27, 2024 Order Approving Settlement Distribution (ECF No. 373)
 19 ("Distribution Order"), Class Counsel instructed the Escrow Agent to transfer the balance of the
 20 Settlement Fund to a Distribution Account established by A.B. Data for purposes of sending payments
 21 to Authorized Claimants. The balance transferred from Escrow to the Distribution Account on August
 22 16, 2024, was \$9,425,459.59. After the transfer, the Escrow Account held a \$0 balance and was closed.

Escrow Account	
Settlement Amount	12,015,000.00
Overage Paid By Settling Defendants	148.29
Interest Net of Taxes Through 8/16/24	536,370.04
Notice and Administration Expenses	(300,000.00)
Distributed Attorneys' Fees, Litigation Expenses, and Interest	(2,816,158.74)

27 ¹ The Settlement Amount was \$12,015,000.00 (Stip., ¶ 1.48); however, Settling Defendants over
 28 funded by \$148.29.

Escrow Account	
Service Awards	(9,900.00)
Amount Transferred to Distribution Account on 8/16/24	(9,425,459.59)
Ending Account Balance	0.00

As shown above, the amount distributed to Class Counsel to date from the Escrow Account as attorneys' fees, litigation expenses, and interest totaled \$2,816,158.74 ("Distributed Fees"). This was not the full amount of attorneys' fees awarded. The Court awarded total attorneys' fees of 25% of the Settlement Fund (\$3,003,750.00) plus interest; however, 10% of the attorneys' fees were ordered to be held back and become payable only with the Court's authorization. *See* Fee and Expense Order, ¶¶ 2, 5. Class Counsel has not taken payment of the remaining attorneys' fee award (\$300,375.00) plus interest (calculated as \$19,656.04 as of the closing date of the Escrow Account) (totaling \$320,031.04) ("Remaining Fees").

II. PAYMENTS FROM DISTRIBUTION ACCOUNT

After receiving \$9,425,459.59 in the Distribution Account, A.B. Data withdrew \$185,589.99 as payment for estimated fees and expenses it would incur in connection with the distribution of payments to Authorized Claimants; however, pursuant to the Distribution Order, A.B. Data was authorized to take only \$184,251.08, subject to an obligation to promptly reimburse the fund if actual costs are lower than estimates (ECF No. 373, ¶ 6). A.B. Data has refunded to the Distribution Account the \$1,338.91 taken in error, as well as \$3,167.56, due to actual costs for the distribution being less than estimated costs.

The Claims Administrator was not aware that the \$9,425,459.59 in funds transferred to the Distribution Account on August 16, 2024, included the \$320,031.04 in Remaining Fees. If this mistake had not been made, Authorized Claimants' payments would have been marginally smaller, as the Net Settlement Fund ("NSF") would have calculated to \$8,803,838.56 instead of \$9,123,869.60.

On September 12, 2024, the distribution to Authorized Claimants was conducted. A.B. Data disseminated \$9,123,869.60 in payments to 4,193 Authorized Claimants whose Claims were approved for payment in the Distribution Order. These checks had a stale date of November 11, 2024.

Following the passing of the November 11 stale date, and pursuant to A.B. Data's Distribution Plan (ECF No. 368-1, ¶ 41(a)(iv) & n.4), in an effort to have as many Authorized Claimants as possible

1 cash their checks, A.B. Data performed follow up with those Authorized Claimants whose checks were
 2 initially uncashed as of the stale date (the “Outreach Program”). Specifically, for Authorized
 3 Claimants whose checks were returned as undeliverable, A.B. Data endeavored to locate new addresses
 4 by running the undeliverable addresses through the U.S.P.S. National Change of Address database,
 5 and, where appropriate, internet search techniques and by calling the Authorized Claimants. When a
 6 new address was located, A.B. Data reissued a new distribution check to the Authorized Claimant at
 7 the new address. For Authorized Claimants whose checks were simply not cashed, A.B. Data used a
 8 mix of automated calls, personalized telephone calls, and emails to urge such Authorized Claimants to
 9 cash their distribution checks. In the event that an Authorized Claimant lost or damaged his, her, or
 10 its check, A.B. Data also issued replacement checks upon request.

11 A.B. Data has completed its Outreach Program. The total value of the outstanding uncashed
 12 checks as of January 28, 2025, is \$175,386.33. Additionally, A.B. Data has re-issued another
 13 \$15,370.72 in checks that have not yet been cashed with the latest stale date of March 31, 2025. If all
 14 these re-issued checks are cashed, the total uncashed checks will be \$160,015.61.

15 Accordingly, the balance in the Distribution Account is estimated to be \$164,522.08 after the
 16 final tax payment is made in April 2025 (*i.e.*, total uncashed checks plus reimbursed Notice and Claims
 17 Administration Expenses). Given the inadvertent distribution of the Remaining Fees, Class Counsel
 18 propose that the Remaining Fees of \$320,031.04 should be satisfied, in part, from the balance
 19 remaining in the Distribution Account after the March 31, 2025 stale date passes and after the
 20 Settlement Fund’s final tax payment is made in April 2025.²

Distribution Account	
Beginning Balance	9,425,459.59
Notice and Administration Expenses	(184,251.08)
Add'l Amount Withdrawn by AB Data In Error	(1,338.91)
Taxes Paid 8/23/24	(66,000.00)
Reserve Created for Final Tax Payment (4/2025)	(50,000.00)
Amount Distributed to Class Members on 9/12/24	(9,123,869.60)
Amount of Uncashed Checks as of 1/28/25	175,386.33
Notice and Administration Expenses Refunded	4,506.47
Value of Re-Issued Uncashed Checks (3/31/25 Stale Date)	(15,370.72)
Estimated Balance to Satisfy Remaining Fees	164,522.08

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 28 ² A \$50,000 reserve was created to pay the final tax payment; however, the final tax owed has not yet been finalized and may be less than the reserve funds.

1 **III. REPORTING ERRORS AND UPDATES TO THE JANUARY 10, 2025 POST-**
2 **DISTRIBUTION ACCOUNTING**

3 In an effort to provide up-to-date information responsive to the Court's inquiries, Class Counsel
4 and A.B. Data undertook to update the Post-Distribution Accounting submitted on January 10, 2025
5 (ECF No. 451), and in the process, discovered several reporting errors. These updates and corrections
6 are explained below and reflected in the revised Post-Distribution Accounting (*see* § IV, below).

- 7 1. The Post-Distribution Accounting initially reported in field 1 that total settlement funds
8 were \$12,551,370.04. This value inadvertently omitted the \$66,000.00 tax payment made
9 from the Distribution Account on August 23, 2024, and the \$50,000.00 reserve for the
10 Settlement Fund's final tax payment. In addition, it did not account for the \$148.29
11 overpayment by Settling Defendants (*see* n.1, above). Accordingly, the revised Post-
12 Distribution Accounting reports this figure as \$12,435,518.29.
- 13 2. The Post-Distribution Accounting initially reported in field 13 that the minimum recovery
14 per claimant was \$10.00, which was the *de minimis* amount established in the Plan of
15 Distribution as the least amount a claimant could receive from the Settlement. The revised
16 Post-Distribution Accounting reports this figure accurately as \$10.11, the actual minimum
17 recovery received by a claimant.
- 18 3. The Post-Distribution Accounting initially reported in field 16 that there were 282 uncashed
19 checks. Since then, 33 additional checks have been cashed. Accordingly, the revised Post-
20 Distribution Accounting reports that there are 249 uncashed checks as of January 28, 2025.
- 21 4. The Post-Distribution Accounting initially reported in field 17 that the total value of checks
22 not cashed was \$341,157.36. This amount inadvertently included the \$50,000 reserve for
23 the Settlement Fund's final tax payment as part of the total balance of uncashed checks,
24 which should have been reported as \$291,157.36. In addition, since then, 33 additional
25 checks have been cashed, lowering the total value of checks not cashed as of January 28,
26 2025, to \$175,386.33.
- 27 5. Field 18, amount of settlement funds claimed by class members, has been updated to reflect
28 the changes to fields 17 and 19.

6. The Post-Distribution Accounting initially reported in field 19 that the amount of settlement funds distributed to class members was \$9,166,146.35. This amount inadvertently included the \$50,000.00 reserve for the Settlement Fund’s final tax payment and inadvertently omitted one check of \$7,723.25 which was cashed. Accordingly, the revised Post-Distribution accounting reports that the amount of settlement funds distributed to Class Members was \$9,123,869.60.
7. The Post-Distribution Accounting initially reported in field 21 that administrative costs were \$484,251.08. As discussed above, A.B. Data inadvertently overpaid itself and has refunded the \$1,338.91 taken in error. Additionally, A.B. Data has further refunded the Distribution Account \$3,167.56, due to actual costs for the distribution being less than estimated costs. Accordingly, the revised Post-Distribution Accounting reports \$481,083.52 in administrative costs.
8. Field 22, on attorneys’ fees, was updated to distinguish between the Distributed Fees, Remaining Fees, and total fees awarded.
9. Field 25, on attorneys’ fees as a percentage of the settlement fund, was updated to distinguish between the Distributed Fees and total fees awarded. The percentage based on total fees awarded changed slightly due to the changes in the total settlement fund (described in paragraph 1, above).
10. Field 27 on lodestar multiplier was updated to distinguish between Distributed Fees and total fees awarded.

IV. REVISED POST-DISTRIBUTION ACCOUNTING

Finally, Class Counsel and A.B. Data have revised the Post-Distribution Accounting, set forth below, to reflect the information updated above.

Case Number	3:20-cv-05949-VC
Case Name	<i>In re Vaxart, Inc. Securities Litigation</i>
Attorney Name	Reed R. Kathrein
Nature of Action	850 Securities/Commodities/Exchange
Attorney Email	Reed R. Kathrein

Party Represented	Plaintiffs Wei Huang, Langdon Elliott, and Ani Hovhannisyan
This is:	<input checked="" type="radio"/> An interim post-distribution accounting. Not all settlement funds have been distributed. <input type="radio"/> A final post-distribution accounting. All settlement funds have been distributed.

1. Total settlement fund	\$12,551,370.04 <u>\$12,435,518.33</u>
2. Number of class members	195,683
3. Number of class members to whom notice was sent and not returned as undeliverable	195,069
4. Number of claim forms submitted	8,904
5. Percentage of claim forms submitted [=Q4/Q3]	4.6%
6. Number of opt-outs	2
7. Percentage of opt-outs [=Q6/Q3]	0.001%
8. Number of objections	1
9. Percentage of objections [=Q8/Q3]	< 0.001%
10. Average recovery per claimant	\$2,175.98
11. Median recovery per claimant	\$144.75
12. Maximum recovery per claimant	\$1,380,230.67
13. Minimum recovery per claimant	\$10.00 <u>\$10.11</u>
14. Methods of notice to class members, and percentage of success by method if known. Leave percentage blank if not known. <ul style="list-style-type: none"> • ___% Mail • ___% Advertisement • ___% Email • ___% Website 	
15. Methods of payment to class members, and percentage of success by method if known. Leave percentage blank if not known. <ul style="list-style-type: none"> • 64.6% Wire • 35.4% Paper Check 	
16. Number of checks not cashed	282 <u>249</u>

17. Total value of checks not cashed (<u>does not include value of re-issued, uncashed checks with stale dates through 3/31/25</u>)	\$341,157.36 <u>\$175,386.33</u>						
18. Amount of settlement funds claimed by class members	\$8,824,988.99 <u>\$8,948,483.27</u>						
19. Amount of settlement funds distributed to class members	\$9,166,146.35 <u>\$9,123,869.60</u>						
20. Amounts distributed to each cy pres recipient	<table border="1"> <thead> <tr> <th></th> <th>Name</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>N/A</td> <td>\$0</td> </tr> </tbody> </table>		Name	Amount	1.	N/A	\$0
	Name	Amount					
1.	N/A	\$0					
21. Administrative costs	\$484,251.08 <u>\$481,083.52</u>						
22. Attorneys' fees (<u>Total Award</u>)	\$3,036,721.13						
<u>Distributed Fees</u>	<u>\$2,816,158.74</u>						
<u>Remaining Fees</u>	<u>\$320,031.04</u>						
23. Attorneys' costs excluding expert costs	\$77,692.88						
24. Expert costs	\$21,775.77						
25. Attorneys' fees in terms of percentage of the settlement fund	<u>24.2%</u>						
<u>Based on Total Award</u>	<u>24.4%</u>						
<u>Based on Distributed Fees Only</u>	<u>22.6%</u>						
26. Plaintiffs' counsel's final lodestar total	\$3,729,556.50						
27. Lodestar multiplier							
<u>Based on Total Award</u>	0.81						
<u>Based on Distributed Fees Only</u>	<u>0.76</u>						
28. Describe any potential fraud issues encountered, the likely causes, and how they were addressed. N/A							
29. Number of class members availing themselves of nonmonetary relief	N/A						
30. Aggregate value redeemed	N/A						
31. Where injunctive and or other non-monetary relief has been obtained, discuss the benefit conferred on the class. N/A							
32. Other notes and issues required to be addressed by judge's standing order.							
• When payments were made to class members: September 12, 2024							
• Number of members who were sent payments: 4,193							

1
2 **V. CONCLUSION**

3 Given the inadvertent distribution of the Remaining Fees, Class Counsel propose that the
4 Remaining Fees of \$320,031.04 should be satisfied, in part, from the balance remaining in the
5 Distribution Account after the March 31, 2025 stale date passes and after the Settlement Fund's final
6 tax payment is made in April 2025. Class Counsel propose filing on May 1, 2025, a final Post-
7 Distribution Accounting and proposed order authorizing Class Counsel to pay the remainder of Class
8 Counsel's fee award from the balance of the Distribution Account.

9 Class Counsel is prepared to discuss these issues (and any other issues the Court sees fit to
10 raise) at the January 31, 2025 Status Conference. This Case Management Statement will be posted to
11 the Settlement Website, www.vaxartsecuritieslitigation.com, immediately after its filing with the
12 Court.

13 DATED: January 30, 2025

Respectfully submitted,

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/s/ Reed R. Kathrein

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