

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DR. MAGDY FOUAD, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ISILON SYSTEMS, INC., et al.,

Defendants.

No. C07-1764 MJP

**ORDER FOR NOTICE AND
HEARING**

WHEREAS, a consolidated class action is pending before this Court entitled: *Dr. Magdy Fouad, individually and on behalf of all others similarly situated v. Isilon Systems, Inc., et al.*, Civil Action No. 07-1764-MJP (the “Action”); and

WHEREAS, the Court has received the Stipulation of Settlement dated October 23, 2009 (the “Stipulation”), that has been entered into by Lead Plaintiff Dr. Magdy Fouad (“Lead Plaintiff”), plaintiff The Southwest Carpenters Pension Trust (together with Lead Plaintiff, the “Plaintiffs”) and defendants Isilon Systems, Inc. (“Isilon” or the “Company”), Barry J. Fidelman, Elliott H. Jurgensen, Jr., Gregory L. McAdoo, Matthew S. McIlwain, Sujal M. Patel, James G. Richardson, William D. Ruckelshaus, Stuart W. Fuhlendorf, Steven S. Goldman, Morgan Stanley & Co., Incorporated, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Needham &

1 Company, LLC and RBC Capital Markets Corp. (together, the “Defendants”) (Defendants and
2 Plaintiffs are the “Parties”); and

3 WHEREAS, the Parties to the Action, having applied for an order determining certain
4 matters in connection with the proposed settlement of the Action (the “Settlement”), in
5 accordance with the Stipulation entered into by the Parties, and for the ultimate final approval of
6 the Settlement and dismissal of the Action as against the Defendants upon the terms and
7 conditions set forth in the Stipulation;
8

9 NOW, upon consent of the Parties, after review and consideration of the Stipulation filed
10 with the Court and the exhibits annexed thereto, and after due deliberation, IT IS HEREBY
11 ORDERED that:

12 1. The Court, for purposes of this Order for Notice and Hearing, adopts all defined
13 terms as set forth in the Stipulation.
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15 2. Lead Counsel is authorized to act on behalf of the Class with respect to all acts
16 required by, or which may be given pursuant to, the Stipulation or such other acts that are
17 reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

18 3. Lead Counsel is hereby authorized to retain the firm of Rust Consulting, Inc. as
19 Claims Administrator to supervise and administer the notice and claims procedures.
20

21 4. The Court preliminarily certifies the Class as defined in the Stipulation of
22 Settlement and otherwise approves the Settlement of the Action as set forth in the Stipulation and
23 the proposed Plan of Allocation described in the Notice, subject to the right of any Class
24 Member to challenge the fairness, reasonableness, and adequacy of the Settlement, the proposed
25 Plan of Allocation, or the fairness and adequacy of their representation by Lead Counsel and all
26 Plaintiffs’ Counsel, and to show cause, if any exists, why a final judgment dismissing the Action

1 based on the Stipulation should not be ordered herein after due and adequate notice to the Class
2 has been given in conformity with this Order.

3 5. A hearing (the “Settlement Fairness Hearing”) shall be held on **March 5, 2010, at**
4 **9 a.m.**, in the United States District Court for the Western District of Washington in Courtroom
5 #14206, 700 Stewart Street, Seattle, Washington, 98101, the Honorable Marsha J. Pechman
6 presiding, to:

- 7
- 8 a. determine whether the Settlement should be approved by the Court as fair,
9 reasonable, adequate, and in the best interests of the Class;
 - 10 b. determine whether judgment should be entered pursuant to the Stipulation,
11 *inter alia*, dismissing the Action with prejudice and extinguishing and
12 releasing all Settled Claims and Settled Defendants’ Claims (as defined
13 therein);
 - 14 c. whether the Plan of Allocation should be approved;
 - 15 d. rule on Lead Counsel’s application for an award of attorneys’ fees and the
16 reimbursement of expenses; and
 - 17 e. rule on such other matters as the Court may deem appropriate.
- 18

19 6. The Court reserves the right to adjourn the Settlement Fairness Hearing, including
20 the consideration of the application for attorneys’ fees and reimbursement of expenses, without
21 further notice to Class Members. The Court may, for good cause, extend any of the deadlines set
22 forth in this Order without further notice to Class Members.

23 7. The Court reserves the right to approve the Settlement at or after the Settlement
24 Fairness Hearing with such modification as may be consented to by the Parties to the Stipulation
25 and without further notice to the Class.
26

1 8. The Claims Administrator shall make reasonable efforts to identify all persons
2 and entities who are members of the Class, including beneficial owners whose shares of Isilon
3 common stock are held by banks, brokerage firms, or other nominees. Isilon shall provide to
4 Lead Plaintiff within (5) business days of the execution of this Order the information from
5 Isilon's transfer records required by the Claims Administrator to send copies of the Notice to the
6 persons and entities who can be identified through reasonable efforts from the stock transfer
7 records of Isilon.
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9 9. Within thirty (30) calendar days after the entry of this Order, the Claims
10 Administrator shall cause a copy of the Notice to be mailed by United States mail, postage pre-
11 paid, to all members of the Class, at their last known address appearing in the stock transfer
12 records maintained by or on behalf of Isilon, and to identifiable nominees for Class Members.
13 The thirtieth (30th) day after the entry of this Order shall be termed the "Notice Date."
14

15 10. Pursuant to the Notice, each nominee shall either: send the Notice and Proof of
16 Claim to Class Members for which they act as nominee by first class mail within ten (10)
17 calendar days after the nominee receives the Notice; or send a list of the names and addresses of
18 such beneficial owners to the Claims Administrator within ten (10) calendar days after the
19 nominee receives the Notice and, in the event of the latter, the Claims Administrator shall send
20 by first class mail the Notice and Proof of Claim to all Class Members named on the list received
21 from the nominee. The Claims Administrator shall, if requested, reimburse banks, brokerage
22 houses, or other nominees for their reasonable out-of-pocket expenses incurred in providing
23 notice to beneficial owners who are Class Members, which expenses would not have been
24 incurred except for the sending of such notice, subject to further order of this Court with respect
25 to any dispute concerning such compensation. Lead Counsel shall file with the Court and serve
26

1 upon Defendants' Counsel no later than twenty-one (21) calendar days prior to the Settlement
2 Fairness Hearing an affidavit or declaration describing the efforts taken to comply with this
3 Order and stating that the mailings have been completed in accordance with the terms of this
4 Order.

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6 11. Within ten (10) calendar days of the Notice Date, Lead Counsel shall publish a
7 Summary Notice, substantially in the form of Exhibit A(3) to the Stipulation, once in the
8 *Investor's Business Daily*, and shall post the full Notice and any other appropriate documents on
9 a website concerning the Settlement. Lead Counsel shall file with the Court and serve upon
10 Defendants' Counsel no later than twenty-one (21) calendar days prior to the Settlement Fairness
11 Hearing an affidavit or declaration stating that the Summary Notice has been published in
12 accordance with the terms of this Order.

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14 12. The form and method of notice specified herein is the best notice practicable and
15 shall constitute due and sufficient notice to all persons and entities entitled to receive such notice
16 and fully satisfies the requirements of due process and of Fed. R. Civ. P. 23.

17 13. Any member of the Class who objects to the Settlement, the representation of the
18 Class by Lead Counsel, and/or the application for attorneys' fees and reimbursement of
19 expenses, or who otherwise wishes to be heard, may appear in person or by his, her, or its
20 attorney at the Settlement Fairness Hearing and present evidence or argument that may be proper
21 or relevant; provided, however, that no person other than the Parties and their counsel shall be
22 heard, and no papers, briefs, pleadings, or other documents submitted by any person or entity
23 shall be considered by the Court unless at least fourteen (14) calendar days before the Settlement
24 Fairness Hearing such person or entity files with the Court and delivers to counsel listed below:
25
26 (a) a written notice of intention to appear; (b) a statement of such person's or entity's

1 objection(s) to any matters before the Court; (c) the grounds therefor or the reasons that such
2 person or entity desires to appear and be heard, as well as all documents or writings such person
3 or entity desires the Court to consider; and (d) documents evidencing that such person is a Class
4 Member. Such filings shall be served upon the Court and the following counsel so that they are
5 received at least 14 days before the Settlement Fairness Hearing:
6

7 **Lead Counsel for Lead Plaintiff and the Class:**

8 Steven J. Toll, Esq.
9 Lisa M. Mezzetti, Esq.
10 Matthew K. Handley, Esq.
11 COHEN MILSTEIN SELLERS & TOLL PLLC
12 1100 New York Avenue, N.W.
13 West Tower, Suite 500
14 Washington, D.C. 20005

15 **One of Counsel for Defendants:**

16 Barry M. Kaplan, WSBA #8661
17 WILSON SONSINI GOODRICH & ROSATI
18 Professional Corporation
19 701 Fifth Avenue, Suite 5100
20 Seattle, WA 98104-7036

21 14. Any person or entity falling within the definition of the Class may, upon request,
22 be excluded from the Settlement. Any such person or entity must submit to the Claims
23 Administrator a request for exclusion (“Request for Exclusion”). A Request for Exclusion must
24 be received by the Claims Administrator at least fourteen (14) calendar days before the
25 Settlement Fairness Hearing and state: (i) the name, address, and telephone number of the
26 person or entity requesting exclusion; (ii) the person’s or entity’s purchases, acquisitions and
sales of Isilon common stock made during the Class Period, including the dates, the number of
shares of common stock, and price paid or received per share for each such purchase, acquisition
or sale; and (iii) that the person or entity wishes to be excluded from the Class. All persons and

1 entities who submit valid and timely Requests for Exclusion in the manner set forth in this
2 paragraph shall have no rights under the Stipulation and shall not share in the distribution of the
3 Settlement.

4 15. Any Class Member who wishes to participate in the Settlement Fund must submit
5 a valid Proof of Claim to the Claims Administrator, at the Post Office Box indicated in the
6 Notice, postmarked not later than one hundred and fifty (150) calendar days following the Notice
7 Date. Such deadline may be further extended by Court order. Proofs of Claim shall be deemed
8 to have been submitted when postmarked, if mailed by first class, or registered or certified mail,
9 postage prepaid, addressed in accordance with the instructions given in the Proof of Claim. All
10 other Proofs of Claim shall be deemed to have been submitted at the time they are actually
11 received by the Claims Administrator. To be valid, a Proof of Claim must: (i) be completed in a
12 manner that permits the Claims Administrator to determine the eligibility of the claim as set forth
13 in the Proof of Claim; (ii) include the release by the claimant of all Released Parties as set forth
14 in the Stipulation; and (iii) be signed with an affirmation (notarization not required) that the
15 information is true and correct. All Class Members who do not submit valid and timely Proofs
16 of Claim shall be forever barred from receiving any payments from the Settlement Fund, but will
17 in all other respects be subject to and bound by the provisions of the Stipulation and the Order
18 and Final Judgment, if entered.

19 16. If this Settlement is not approved by the Court or does not become effective for
20 any reason whatsoever, the Settlement (including any modification thereof) made with the
21 consent of the Parties as provided for in the Stipulation and any actions taken or to be taken in
22 connection therewith (including this Order and any judgment entered herein), shall be terminated
23 and shall become void and of no further force and effect except for the Lead Plaintiff's
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1 obligations to pay for any expense incurred in connection with the notice and administration
2 provided for by this Order.

3 17. All proceedings in the Action, other than such proceedings as may be necessary to
4 carry out the terms and conditions of the Settlement, are hereby stayed and suspended until
5 further order of this Court. Pending final determination whether the Settlement should be
6 approved, Plaintiffs and all members of the Class are barred and enjoined from commencing or
7 prosecuting any action asserting any claims that are or relate in any way to the Released Claims
8 as defined in the Stipulation.
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10 18. Neither the Stipulation nor any provisions contained in the Stipulation, nor any
11 negotiations, statements, or proceedings in connection therewith, nor any action undertaken
12 pursuant thereto shall be construed as, or deemed to be evidence of, an admission or concession
13 on the part of the Plaintiffs, the Defendants, any member of the Class, or any other person or
14 entity, of any liability or wrongdoing by them, or any of them, or as to the strength or weakness
15 of any claim or defense, and shall not be offered or received in evidence in any action or
16 proceeding (except an action to enforce the Stipulation and Settlement contemplated hereby), or
17 be used in any way as an admission, concession, or evidence of any liability or wrongdoing of
18 any nature, and shall not be construed as, or deemed to be evidence of, an admission or
19 concession that Plaintiffs, any member of the Class, any present or former stockholder of Isilon,
20 or any other person or entity, has or has not suffered any damage.
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22 19. Any submission to the Court in support of approval of the Settlement or the Plan
23 of Allocation, or in support of Lead Counsel's application for an award of attorneys' fees and
24 reimbursement of expenses, shall be filed no later than twenty-one (21) calendar days before the
25 date scheduled for the Settlement Fairness Hearing.
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1 20. Any response to any timely filed objection to the Settlement, Plan of Allocation or
2 application for an award of attorneys' fees and reimbursement of expenses, shall be filed no later
3 than seven (7) calendar days before the date scheduled for the Settlement Fairness Hearing.

4 21. The Court authorizes payment out of the Settlement Fund of the expenses
5 described in ¶ 9 of the Stipulation.

6 22. The passage of title and ownership of the Settlement Fund to the Escrow Agent in
7 accordance with the terms of the Stipulation is approved. No person or entity that is not a Class
8 Member or counsel for the Lead Plaintiff shall have any right to any portion of, or interest in the
9 distribution of, the Settlement Fund unless otherwise ordered by the Court or otherwise provided
10 in the Stipulation.
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12 SIGNED this 2nd day of November, 2009.

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16 Marsha J. Pechman
17 United States District Judge
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