

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE CALAMOS ASSET  
MANAGEMENT, INC.  
STOCKHOLDER LITIGATION

Cons. C.A. No. 2017-0058-JTL

IN RE APPRAISAL OF CALAMOS  
ASSET MANAGEMENT, INC.

Cons. C.A. No. 2017-0139-JTL

**ORDER AND FINAL JUDGMENT**

On this the 25th day of April, 2019, a hearing having been held before this Court to determine whether the terms and conditions of the Settlement, as reflected in the Stipulation and Agreement of Compromise and Settlement (the “Stipulation”), including Exhibits A-E thereto, which are incorporated herein by reference,<sup>1</sup> are fair, reasonable and adequate for the settlement of all Settled Claims; whether and in what amount to grant an award of attorneys’ fees and expenses; and whether an Order and Final Judgment should be entered in the above-captioned actions; and the Court having considered all matters submitted to it at the hearing and otherwise;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

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<sup>1</sup> Capitalized terms not defined in this Order and Final Judgment have the meaning set forth in the Stipulation (certain of which are repeated here for ease of reference only).

1. The Court has jurisdiction over the subject matter of the above-captioned actions, and all matters relating to the Settlement, as well as personal jurisdiction over the Parties and the Class Members.

2. The mailing of the Notice of Pendency of Class Action, Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear (the “Notice”) pursuant to and in the manner prescribed in the Scheduling Order entered on January 16, 2019 (the “Scheduling Order”), which was mailed by first-class mail on February 5, 2019, combined with the publication of the Summary Notice of Pendency and Proposed Settlement of Class Action (the “Summary Notice”) pursuant to and in the manner prescribed in the Scheduling Order, which was published on January 30, 2019, is hereby determined to be the best notice reasonably practicable under the circumstances, to constitute due and sufficient notice to all persons entitled to receive notice of the Settlement, and to have met the requirements of Court of Chancery Rule 23, due process, and applicable law. It is further determined that all Class Members, as well as their transferees, heirs, executors, successors, and assigns, are bound by this Order and Final Judgment.

3. The Court hereby finds, pursuant to Court of Chancery Rules 23(a), 23(b)(1) and (b)(2), as follows:

(a) That (i) the Class, as defined below, is so numerous that joinder of all members is impracticable, (ii) there are questions of law and fact common to

the Class, (iii) the claims of Lead Plaintiffs are typical of the claims of the Class, (iv) Lead Plaintiffs and Class Plaintiffs' Counsel have fairly and adequately protected and represented the interests of the Class, (v) the prosecution of separate actions by individual Class Members would create a risk of inconsistent adjudications which would establish incompatible standards of conduct for Defendants, (vi) as a practical matter, the disposition of the Consolidated Stockholder Action would influence the disposition of any pending or future identical cases brought by other Class Members, and (vii) Defendants have allegedly acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole;

(b) That the requirements of Court of Chancery Rules 23(a), 23(b)(1) and (b)(2) have been satisfied;

(c) That the requirements of the Court of Chancery Rules and due process have been satisfied in connection with the Notice and the Summary Notice; and

(d) For purposes of settlement only, the Court finally certifies a non-opt out Class consisting of any and all record holders and beneficial holders of Company Class A common stock (excluding Calamos Investments LLC, Defendants, the directors and officers of the Company at any time during the Class

Period, and the immediate families and affiliates of the foregoing, with the exception of Company officers Robert Behan, Christian Helmetag, Chris Jackson, David Mangefrida and Bill Takahashi, who shall be included in the Class) during the Class Period, including any and all Purported Appraisal Stockholders, as well as any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors and successors and assigns.

4. The Court finds that Lead Plaintiffs held Class A common stock of the Company at the time of the conduct complained of in the Consolidated Stockholder Action, otherwise have standing to prosecute the Consolidated Stockholder Action, and are adequate representatives of the Class.

5. For purposes of settlement only, the Court finally appoints Lead Plaintiffs as representatives of the Class, finally appoints Co-Lead Counsel as co-lead counsel for the Class, and finally appoints Additional Counsel as additional counsel for the Class.

6. The Settlement is found to be fair, reasonable and adequate, and in the best interests of the Class Members, and is hereby approved in all respects pursuant to Court of Chancery Rule 23.

7. The Settling Parties are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Order and Final Judgment.

8. The releases contained in the Stipulation, together with the definitions contained in the Stipulation (certain of which are repeated herein) are expressly incorporated herein in all respects and shall be effective as of the Effective Date.

9. "Released Defendants' Claims" means any and all claims arising out of or relating to Lead Plaintiffs', the Class Members', and Class Plaintiffs' Counsel's, filing, prosecution and settlement of the Consolidated Stockholder Action; provided, however, that the Released Defendants' Claims shall not include any claims to enforce the terms of the Settlement or the Stipulation.

10. "Released Persons" means (i) each and every one of the Defendants; (ii) each and every one of Defendant Releasees; and (iii) each and every one of the Defendant Releasees' past and/or present family members, heirs, principals, trustees, executors, administrators, predecessors, successors, assigns, members, parents, subsidiaries, employees, officers, managers, directors, partners, limited partners, agents, investment bankers, attorneys, representatives, estates, divisions, financial advisors, estate managers, assigns, and the Insurers, including, for the avoidance of doubt and without limitation, any and all Company directors, officers, and

employees at any time during the Class Period (including, for the avoidance of doubt and without limitation, Thomas F. Eggers, Keith M. Schappert, and William N. Shiebler).

11. "Settled Claims" means (i) any and all claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, interests, debts, expenses, charges, statutory appraisal rights (except as provided below), interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature and description whatsoever; (ii) whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, perfected or not perfected, choate or inchoate, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, ripened or unripened, including any Unknown Claims; (iii) whether at law or equity, whether based on or arising under state, local, foreign, federal, statutory, regulatory, common or other law or rule and upon any legal theory (including but not limited to any claims arising under the federal securities laws, including any claims arising under the Securities Exchange Act of 1934, as amended, or any claims that could be asserted derivatively on behalf of the Company), no matter how asserted, (iv) that previously existed, currently exist, or that exist as of the date of the Stipulation; (v) that were or could have been asserted by the Releasing Persons against any or all of the Released

Persons, in any federal or state court, or in any other court, tribunal, arbitration, proceeding, administrative agency or other forum in the United States or elsewhere that arise out of or relate to its/her/his ownership of Company stock, its/her/his status as Company stockholders, or its/her/his Company stock holdings during the Class Period; and (vi) that are based upon, arise out of, relate in any way to, concern or involve, in whole or in part, any of the following: (a) the Merger Agreement, (b) the Tender Offer, (c) the Merger, (d) the Transaction, (e) any actions, deliberations, negotiations, conduct or financial advisory services in connection with any of the foregoing, including the process of deliberation or negotiation, by each and all of Defendants, the Purchaser Group, and the Company and any and all of their respective officers, directors, employees, representatives, agents, or advisors, (f) the consideration received by the Class in connection with the Tender Offer, the Merger, the Transaction, and/or the Merger Agreement, (g) the Schedule TO, the 14D-9, as well as any other disclosures, public filings, periodic reports, press releases, amendments, information statements, solicitation materials, notifications or other statements issued, made available, propounded, disseminated, published or filed relating to or discussing, in whole or in part, the Tender Offer, the Merger, the Transaction, or the Merger Agreement, (h) any fiduciary obligations of any of the Released Persons in connection with the Tender Offer, the Merger, the Transaction, or the Merger Agreement, including the negotiation and consideration of any of the

foregoing or any disclosures related thereto, (i) any actual or potential conflicts of interest by any Released Persons or any of their advisors in connection with the Tender Offer, the Merger, the Transaction, or the Merger Agreement, and/or (j) any other facts, matters, occurrences, conduct, allegations, representations, omissions, transactions, actions, things or causes whatsoever, or any series thereof, that were alleged, asserted, claimed, or raised, in whole or in part, in the Coordinated Actions; provided, however, that the Settled Claims shall not include (x) any claims to enforce the Settlement or the Stipulation, (y) any claims to enforce this Order and Final Judgment, or (z) any claims for appraisal pursuant to Section 262 of the DGCL by any Purported Appraisal Stockholder who elected not to participate in the Settlement by timely returning a Non-Participation Form to the Company.

12. “Unknown Claims” means any Settled Claims that the Releasing Persons do not know or suspect to exist at the time of the release and that, if known, might have affected the decision to enter into the release. The Releasing Persons shall be deemed to waive any and all provisions, rights and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, that governs or limits a person’s release of Unknown Claims. The Releasing Persons shall be deemed to relinquish, to the full extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code which provides:



A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Releasing Persons also shall be deemed to waive 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 California Civil Code § 1542. Lead Plaintiffs, for themselves and on behalf of the Class, acknowledge that members of the Class and/or other Company stockholders may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, as Lead Plaintiffs and on behalf of the Class, to fully, finally and forever settle and release any and all claims released hereby known or unknown, suspected or unsuspected, that now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts.

13. The Consolidated Stockholder Action is hereby dismissed with prejudice as to Class Plaintiffs and all other Class Members. The parties are to bear their own costs, except as otherwise provided in this Order and Final Judgment, the Scheduling Order, and the Stipulation.

14. Each and every Participating Purported Appraisal Stockholder (which are listed on the Appendix hereto) is hereby dismissed with prejudice from the Consolidated Appraisal Action, and this dismissal is effective under 8 *Del. C.* § 262(k).

15. All Purported Appraisal Stockholders who timely mailed the Company a complete and valid Non-Participation Form are deemed (i) not to be participating in the Settlement, (ii) to have forfeited any claim to receive any proceeds out of the Settlement Fund, (iii) to have retained any appraisal claims they may have pursuant to Section 262 of the DGCL as their sole and exclusive remedy with respect to the Merger, and (iv) to be bound by the terms and provisions of the Stipulation and this Order and Final Judgment, including without limitation, the releases contained therein and herein.

16. Upon the Effective Date, the Releasing Persons, on behalf of themselves and anyone acting on their behalf, including their respective heirs, executors, administrators, estates, predecessors in interest, predecessors, successors in interest, successors, and assigns in their capacities as such, shall fully, finally and forever release, settle and discharge the Released Persons from and with respect to the Settled Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Settled Claims against the Released Persons.

17. Upon the Effective Date, Defendant Releasees, on behalf of themselves and anyone acting on their behalf, including their respective heirs, executors, administrators, estates, predecessors in interest, predecessors, successors in interest, successors, and assigns in their capacities as such, shall fully, finally and forever release, settle and discharge Lead Plaintiffs, the Class Members, and Class Plaintiffs' Counsel from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of Lead Plaintiffs, the Class Members, and Class Plaintiffs' Counsel.

18. Class Plaintiffs' Counsel are hereby awarded attorneys' fees and expenses in the sum of \$4,922,738.17, which sum the Court finds to be fair and reasonable. Such sum shall be paid pursuant to the provisions of the Stipulation and shall be paid solely out of the Settlement Fund. Neither Class Plaintiffs, nor Class Plaintiffs' Counsel, shall make, or assist any other counsel in making, any application for an award of fees or expenses in any other jurisdiction. For the avoidance of doubt, the Calamos Parties shall have no responsibility for, and no liability with respect to, plaintiffs' attorneys' fees or expenses beyond payment of the Settlement Amount.

19. If the Settlement is terminated pursuant to the terms of the Stipulation or the Effective Date otherwise fails to occur, then this Order and Final Judgment

and any related orders entered by the Court shall be treated as vacated, *nunc pro tunc*; the Settlement Amount deposited into the Account shall be refunded (less any Administrative Costs that have reasonably been incurred) by the Escrow Agent to the Company within ten (10) business days after such cancellation or termination; the Stipulation shall be null and void and of no force and effect (except for those provisions contained in paragraphs 18, 26-30, 37, 38, and 50 of the Stipulation); Lead Plaintiffs and Defendants shall be deemed to have reverted to their respective litigation status immediately prior to September 25, 2018; Lead Plaintiffs and Defendants shall negotiate a new trial schedule in good faith (to be coordinated with the Consolidated Appraisal Action to the extent practicable); Lead Plaintiffs and Defendants shall proceed as if the Stipulation had not been executed and the related orders had not been entered; and all of their respective claims and defenses as to any issue in the Consolidated Stockholder Action shall be preserved without prejudice.

20. The binding effect of this Order and Final Judgment and the obligations of Class Plaintiffs, the Class Members and the Calamos Parties under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of Class Plaintiffs' Counsel's (or any other counsel's) application for an award of attorneys' fees and expenses.

21. All Class Members (including, for the avoidance of doubt and without limitation, all Purported Appraisal Stockholders whether or not they are participating in the Settlement) shall be and are deemed bound by the Stipulation and this Order and Final Judgment. This Order and Final Judgment, including the release of all Settled Claims against all Released Persons, shall have res judicata, collateral estoppel and all other preclusive effect in all pending and future lawsuits, arbitrations or other proceedings maintained by, or on behalf of, Class Plaintiffs or any Class Members, as well as their respective heirs, executors, administrators, estates, predecessors in interest, predecessors, successors in interest, successors, and assigns and anyone claiming through or on behalf of any of them.

22. Neither the Settlement, the Stipulation, nor this Order and Final Judgment shall constitute any evidence, or an admission or concession by Class Plaintiffs or Defendants or their counsel, or any Class Member, or any Released Person, of any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or asserted in the Consolidated Stockholder Action, or any other actions or proceedings, or as to the validity or merit of any of the claims or defenses alleged or asserted in any such action or proceeding. Neither the Stipulation nor this Order and Final Judgment, nor the facts or any terms of the Settlement is to be considered a finding or evidence of the validity or invalidity of any claims or defenses in the Consolidated Stockholder Action, any wrongdoing by Class Plaintiffs, Defendants,

any Class Member or any Released Person, or any damages or injury to Class Plaintiffs, Defendants, any Class Member or any Released Person. Neither this Order and Final Judgment, nor any of the terms and provisions of the Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, (a) shall (i) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any Defendant or any Released Person, or of any infirmity of any defense, or of any damage to Class Plaintiffs or any other Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any Defendant or any Released Person concerning any fact or any purported liability, fault, or wrongdoing of Defendants or any Released Persons or any injury or damages to any person or entity, or (b) shall otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever, except for any proceeding by Class Plaintiffs or Class Plaintiffs' Counsel seeking an award of attorneys' fees and expenses from Purported Appraisal Stockholders and only for that purpose; provided, however, that the Stipulation and this Order and Final Judgment may be

introduced in any proceeding subject to Rule 408 of the Delaware Uniform Rules of Evidence, and any and all other state and federal law corollaries thereto, whether in the Court or otherwise, as may be necessary to argue and establish that the Stipulation and Judgment has res judicata, collateral estoppel or other issue or claim preclusion effect or to otherwise consummate or enforce the Stipulation, the Settlement and this Order and Final Judgment or to secure any insurance rights or proceeds of any Defendants or any Released Persons or as otherwise required by law. The fact of entering into the Stipulation, and any discussions, negotiations and proceedings related thereto, the Settlement itself, and this Order and Final Judgment shall not be construed as, offered into evidence as, or deemed to be evidence of, the fair value of the Company's Class A common stock under 8 *Del. C.* § 262 as of the date of the Merger.

23. The Court's Order for Coordination, granted on September 15, 2017, Trans. ID 61123951, is hereby vacated, except that paragraphs 5 and 6 shall remain in full force and effect.

24. Without further order of this Court, the Parties may agree in writing to (i) amendments, modifications, and expansions of the Stipulation and/or any of the exhibits attached thereto to effectuate the Settlement that are not materially inconsistent with this Order and Final Judgment and that do not materially limit the rights of Class Members under the Stipulation and (ii) reasonable extensions of

time to carry out any of the provisions of the Stipulation or this Order and Final Judgment.

25. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement.

Dated: April 25, 2019

  
Kathleen St. J. McCormick  
Vice Chancellor Kathleen St. Jude McCormick