

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE HEARTWARE INTERNATIONAL, INC.
SECURITIES LITIGATION

No. 1:16-cv-00520-RA

**DECLARATION OF RICHARD SIMMONS IN SUPPORT OF
LEAD PLAINTIFF'S MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

I, Richard Simmons, declare and state as follows:

1. I am the President of Analytics Consulting, LLC (“Analytics”), which has its corporate office located in Chanhassen, Minnesota. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. Analytics was retained by Lead Counsel to serve as the Claims Administrator in connection with the Settlement of the above-captioned action (the “Action”).¹ In its Order Preliminarily Approving Settlement and Authorizing Dissemination of Settlement Notice (ECF No. 74) (the “Preliminary Approval Order”), the Court approved the retention of Analytics as the Claims Administrator. As Claims Administrator, Analytics has, among other things: (i) mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Notice”) and the Proof of Claim and Release Form (the “Proof of Claim” or “Claim” and, collectively with the Notice, the “Notice Packet”) to potential Class Members, brokers, and other

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 13, 2018, previously filed with the Court (ECF No. 69-1) (the “Stipulation”).

nominees; (ii) created and continues to maintain a toll-free help line for inquiries during the course of the administration; (iii) created and continues to maintain a Settlement website and posted case-specific documents on it; (iv) caused the Summary Notice to be published; (v) provided, upon request, additional copies of the Notice Packet to potential Class Members, brokers, and other nominees; and (vi) received and processed Claims.

3. On April 12, 2019, the Court granted final approval of the Settlement and entered the final Judgment Approving Class Action Settlement (ECF No. 87). Also, pursuant to the Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 86), the Court approved the proposed plan of allocation for the proceeds of the Settlement set forth in the Notice (the “Plan of Allocation.”). Analytics has completed processing all Claims received through March 9, 2020, in accordance with the terms of the Stipulation and the Court-approved Plan of Allocation set forth in the Notice, and hereby submits its administrative determinations accepting and rejecting the Claims in preparation for a distribution of the Net Settlement Fund to Authorized Claimants. Analytics also presents this declaration in support of Lead Plaintiff’s Motion for Approval of Distribution Plan.

DISSEMINATION OF NOTICE

4. As more fully described in the Declaration of Michelle Kopperud Regarding (A) Mailing of Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date (ECF No. 79-1) (the “Mailing Decl.”) and the Supplemental Declaration of Michelle Kopperud Regarding (A) Mailing of Notice and Claim Form and (B) Report on Requests for Exclusion Received (ECF No. 81) (the “Suppl. Mailing Decl.”), as of April 3, 2019, Analytics had mailed 19,659 Notice Packets to potential Class Members and their nominees. Suppl. Mailing Decl. ¶ 2.

5. Analytics established and continues to maintain a website (www.HeartWareSecuritiesLitigation.com) and a toll-free telephone helpline (1-866-710-9044) to assist potential Class Members. The Settlement website (which provides access to important documents relevant to the Settlement, including the full Notice Packet) and the telephone helpline enable Class Members to obtain information about the Settlement.

6. In accordance with Paragraph 4(d) of the Preliminary Approval Order, on January 22, 2019, Analytics caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over the *PR Newswire*. Mailing Decl. ¶ 8.

PROCEDURES FOLLOWED IN PROCESSING CLAIMS

7. Under the terms of the Preliminary Approval Order and as set forth in the Notice, each Class Member who wished to be eligible to receive a distribution from the Net Settlement Fund was required to complete and submit to Analytics a properly executed Claim postmarked no later than May 14, 2019, together with adequate supporting documentation for the transactions and holdings reported in the Claim. Through March 9, 2020, Analytics received and has fully processed 6,511 Claims (the “Presented Claims”).

8. In preparation for receiving and processing Claims, Analytics: (i) conferred with Lead Counsel to define the project guidelines for processing Claims; (ii) created a unique database to store Claim details, images of Claims, and supporting documentation; (iii) trained staff in the specifics of the project so that Claims would be properly processed; (iv) formulated a system so that telephone and email inquiries would be properly responded to; (v) developed various computer programs and screens for entry of Class Members’ identifying information and their transactional information; and (vi) developed a proprietary “calculation module” that would calculate Recognized Claims pursuant to the Court-approved Plan of Allocation of the Net Settlement Fund stated in the Notice.

9. Class Members seeking to share in the Net Settlement Fund were directed in the Notice to submit their Claims to a post office box address specifically designated for the Settlement. Notice Packets returned by the United States Postal Service as undeliverable were reviewed for updated addresses and, where available, updated addresses were entered into the database and Notice Packets were mailed to the updated addresses. Any correspondence received at the post office box was reviewed and, when necessary, appropriate responses were provided to the senders.

PROCESSING CLAIMS

A. Paper Claims

10. Of the 6,511 Claims, 472 are paper Claims. Once received, the Claims were opened and prepared for scanning. This process included unfolding documents, removing staples, copying nonconforming-sized documents, and sorting documents. Once prepared, paper Claims were scanned into a database together with all submitted documentation. Subsequently, each Claim was assigned a unique Claim number. Once scanned, the information from each Claim, including the Claimant's name, address, account number/information from the supporting documentation, and the Claimant's purchases/acquisitions, sales, and holdings listed on the Claim, was entered into a database developed by Analytics to process Claims submitted for the Settlement. Once entered into the database, each Claim was reviewed to verify that all required information had been provided. The documentation provided by the Claimant in support of the Claim was reviewed for authenticity and compared to the information provided in the Claim to verify the Claimant's identity and the purchase/acquisition transactions, sale transactions, and holdings listed on the Claim.

11. To process the transactions detailed in the Claims, Analytics utilized programmatic rules and internal codes ("classifications") to identify and classify deficiency or ineligibility

conditions existing within those Claims. Appropriate classifications were assigned to the Claims as they were processed, and the use of programmatic rules ensured that they were assigned consistently. For example, where a Claim was submitted by a Claimant who did not have any eligible transactions in HeartWare common stock during the Class Period (*e.g.*, the Claimant purchased HeartWare common stock only before or after the Class Period), that Claim would be coded with a classification that denoted ineligibility. Similar defect classifications were used to denote other ineligible conditions, such as duplicate Claims. These classifications would indicate to Analytics that the Claimant was not eligible to receive any payment from the Net Settlement Fund with respect to that Claim unless the deficiency was cured in its entirety. Examples of conditions of ineligibility are as follows:

DEF	Inadequate or Missing Documentation for Entire Claim
DUP	Duplicate Claim
NONCLASS	No Eligible Purchase during the Class Period
SIGN	No Signature
NORECLOSS	No Recognized Claim

12. Because a Claim may be deficient only in part, but otherwise acceptable, Analytics utilized classifications that were applied only to specific transactions within a Claim. For example, if a Claimant submitted a Claim with supporting documentation for all but one purchase transaction, that one transaction would receive a defect classification. The classification indicated that although the transaction was deficient, the Claim was otherwise eligible for payment if other transactions in the Claim calculated to a Recognized Claim according to the Court-approved Plan of Allocation. Thus, even if the deficiency was never cured, the Claim could still be partially accepted. Examples of transaction-specific classifications are as follows:

PARTIALDEF	Missing or Inadequate Documentation for Specific Transaction
REC	Transfer In/Free Receipt
DEL	Transfer Out/Free Delivery

B. Electronic Claims

13. Of the 6,511 Claims, 6,039 were filed electronically (“Electronic Claims”). Electronic Claims are typically submitted by institutional investors (“Electronic Claim Filers” or “E-Claim Filers”) who may have hundreds or thousands of transactions during the Class Period. Rather than provide reams of paper requiring data entry, the E-Claim Filers submitting Electronic Claims either mail a computer disc or electronically submit a file to Analytics so that Analytics can upload all transactions to its proprietary database developed for the Settlement.

14. Analytics’ Electronic Claim Filing Team (“ECF Team”) coordinates and supervises the receipt and handling of all Electronic Claims. In this case, the ECF Team reviewed and analyzed each electronic file to ensure that it was formatted in accordance with Analytics’ required format and to identify any potential data issues or inconsistencies within the file. If any issues or inconsistencies arose, Analytics notified the filer. If the electronic file was deemed to be in an acceptable format, it was then loaded to Analytics’ database.

15. Once each electronic file was loaded, the Electronic Claims were classified to denote any deficient or ineligible conditions that existed within them. These classifications are similar to those applied to paper Claims. The ECF Team performed programmatic reviews on Electronic Claims to identify deficient and ineligible conditions (such as, but not limited to, price out-of-range issues, out-of-balance conditions, transactions outside the Class Period, etc.). The output was thoroughly verified and confirmed as accurate.

16. The review process also included flagging any Electronic Claims that were not accompanied by a signed Proof of Claim, which serves as a “Master Proof of Claim Form” for all

Claims referenced on the electronic file submitted. This process was reviewed by Analytics' ECF Team and, when appropriate, Analytics contacted the E-Claim Filers whose submissions were missing information. This ensured that only fully completed Claims, submitted by properly authorized representatives of the Claimants, were considered eligible for payment from the Net Settlement Fund.

17. Finally, at the end of the process, Analytics performed various targeted reviews of Electronic Claims. Specifically, Analytics used criteria such as the calculated Recognized Claims and other identified criteria to classify and reach out to a number of E-Claim Filers and request that various sample purchases, sales, and holdings selected by Analytics be documented by providing confirmation slips or other transaction-specific supporting documentation. These targeted reviews help to ensure that electronic data supplied by Claimants does not contain inaccurate information.

EXCLUDED PERSONS

18. Analytics also reviewed all Claims to ensure that they were not submitted by, or on behalf of, "Excluded Persons," to the extent that the identities of such persons or entities were known to Analytics through the list of Defendants and other excluded persons and entities set forth in the Stipulation and the Notice and from the Claimants' certifications on the Proofs of Claim. Analytics also confirmed that none of the Claims were submitted by the one individual who requested exclusion from the Class.

THE DEFICIENCY PROCESS

A. Paper Claims

19. Approximately 44% of the paper Claims, i.e., 206 of the 472 paper Claims, were initially incomplete or had one or more defects or conditions of ineligibility, such as the Claim not being signed, not being properly documented, or indicating no eligible transactions in HeartWare

common stock during the Class Period. The “Deficiency Process,” which primarily involved mailing letters to Claimants and responding to communications from Claimants by email and/or telephone, was intended to assist Claimants in properly completing their otherwise deficient submissions so that they could be eligible to participate in the Settlement.

20. If paper Claims were determined to be defective, a Notice of Partial Rejection of Claim or a Notice of Rejection of Claim (“Deficiency Notices”) was sent to Claimants describing the defect(s) in these Claims and what, if anything, was necessary to cure the defect(s) in these Claims. The Deficiency Notices advised Claimants that submission of appropriate information and/or documentary evidence to complete the Claim had to be sent within twenty (20) days from the date of the Deficiency Notice, or the Claim would be recommended for rejection to the extent that the deficiency or condition of ineligibility was not cured. The Deficiency Notices also advised Claimants that if they wished to contest these administrative determinations, they were required to submit written statements to Analytics requesting Court review of their Claims and setting forth the basis for such requests. Analytics sent a total of 206 Deficiency Notices to Claimants who filed paper Claims that Analytics determined to be defective. Attached hereto as Exhibit A are examples of Deficiency Notices.

21. Claimants’ responses to Deficiency Notices were scanned into Analytics’ database and associated with the corresponding Claims. The responses were then carefully reviewed and evaluated by Analytics’ team of processors. If a Claimant’s response corrected the defect(s), Analytics manually updated the database to reflect the changes in the status of the Claim. If a Claimant did not respond to a Deficiency Notice, the Claim was re-reviewed by Analytics to determine, to the extent possible, the portion of the Claim that could be granted given the uncured deficiencies. No attempts to resolve a deficiency were denied due to the Claimant missing the 20-

day deadline. All Claimants with deficient Claims were given through the date of this declaration to resolve deficiencies (which for some Claims is over 250 days).

B. Electronic Claims

22. For Electronic Claims, Analytics used the following process to contact 110 E-Claim Filers who submitted deficient or ineligible Electronic Claims. These E-Claim Filers were sent an email (“Deficient Claims Email”) to the email address included with the Proof of Claim. The Deficient Claims Email contained a link to a secure email portal that provided access to electronic versions of Deficiency Notices that contained detailed information about the Deficient Claim(s) and indicated which Claim(s) within a filing were deficient and/or rejected.

23. As with the paper claims, the Deficiency Notices contained the following information:

- (a) Notified the filer that any Claim(s) with deficiencies not corrected within twenty (20) days from the date of the Deficient Claims Email may be rejected;
- (b) Advised of the filer’s right to contest the rejection of the Claim(s) and request this Court’s review of Analytics’ administrative determination within twenty (20) days from the date of the Deficient Claims Email; and
- (c) Provided instructions on how to submit corrections.

24. Analytics monitored the secure email system to verify that each of these E-Claim Filers received the Deficient Claims Email and accessed the correspondence regarding their deficient Claims. In instances where an E-Claim Filer did not access the correspondence regarding deficient Claims, Analytics contacted the E-Claim Filer by phone and email to remind the filer of

the correspondence and response deadlines. Where necessary, Analytics made alternative arrangements for the delivery of the correspondence.

25. The E-Claim Filers' responses were reviewed by Analytics' ECF Team, scanned and/or loaded into Analytics' database, and associated with the corresponding Electronic Claims. If a response corrected the defect(s) or affected an Electronic Claim's status, Analytics manually and/or programmatically updated the database to reflect such change in the status of the Electronic Claim. If a Claimant did not respond to a Deficiency Notice, the Claim was re-reviewed by Analytics to determine, to the extent possible, the portion of the Claim that could be granted given the uncured deficiencies. As with paper Claims, no attempts to resolve a deficiency were denied due to the Claimant missing the 20-day deadline. All Claimants with deficient Claims were given through the date of this declaration to resolve deficiencies (which for some Claims is over 250 days).

QUALITY ASSURANCE

26. An integral part of the claims administration process is the Quality Assurance review. Throughout the administration process, Analytics' Quality Assurance team worked to verify that Claims were processed properly by ensuring that information was entered correctly into the database, deficiency and/or rejection classifications were assigned accurately, and deficiency and/or rejection notification letters were sent appropriately. After all Claims were processed, deficiency and/or rejection letters were mailed, and Claimants' responses to the deficiency and/or rejection letters were reviewed and processed, the supervisors and managers in Analytics' Quality Assurance team performed additional Quality Assurance reviews. These final Quality Assurance reviews further ensured the correctness and completeness of all Claims processed prior to

preparing this declaration and all Analytics' final documents in support of distribution of the Net Settlement Fund. As part of the Quality Assurance reviews, Analytics:

- (a) Verified that all Proofs of Claim had signatures of authorized individuals;
- (b) Verified that true duplicate Claims were identified, verified, and rejected;
- (c) Verified that the last four digits of TINs were provided;
- (d) Verified that persons and entities excluded from the Class did not file Claims or their Claims were rejected upon review;
- (e) Performed a final Quality Assurance audit of Claims and all supporting documentation to ensure completeness of Claims;
- (f) Determined that all Claimants requiring deficiency and/or rejection letters were sent such letters;
- (g) Performed an audit of deficient Claims;
- (h) Performed additional review of Claims with high Recognized Claim amounts;
- (i) Audited Claims that were designated invalid;
- (j) Audited Claims with a Recognized Claim amount equal to zero;
- (k) Performed other auditing based on Claims completion requirements and the approved calculation specifications based on the Court-approved Plan of Allocation; and
- (l) Re-tested the accuracy of the Recognized Claim amount calculation program.

27. As part of its due diligence in processing Claims, Analytics conducts a search of all Claims filed in the Settlement for potentially fraudulent Claims ("Questionable Claims").

Analytics maintains a dedicated fraud database that includes input from various government entities, including the FTC and SEC. This fraud database contains names, addresses, and aliases of individuals or entities that have been investigated for questionable claim filing, as well as names and contact information compiled from previous settlements administered by Analytics in which fraudulent claims were received. Analytics updates this fraud database on a regular basis. The Claims in this matter were searched for individuals identified in the fraud database. Analytics performs searches based on names, aliases, addresses, and city/zip codes. Analytics' claim processors are trained to identify potentially inauthentic documentation when processing claims, including claims submitted by Claimants not previously captured in the fraud database. Processors are instructed to classify any questionable Claims and escalate them to management for review. Analytics' claims processors are provided with access to third-party data, such as Thomson CLEAR², to perform enhanced due diligence to validate the identity of Claimants submitting potentially Questionable Claims. Eighteen (18) Questionable Claims were identified for this Settlement, subjecting them to an internal audit for further investigation and determination as to their eligibility, and all eighteen (18) Questionable Claims are recommended for rejection, as discussed below.

28. As noted above, Claimants (included those submitting Questionable Claims) were advised that they had the right to contest Analytics' administrative determination of deficiencies or ineligibility within twenty (20) days from the date of notification and that they could either: (a)

² Thomson CLEAR provides access to billions of records consolidated from thousands of data sets that include Equifax, Experian, TransUnion, real property records, utility and warranty records, professional licenses, corporate filings, and court filings. CLEAR is relied upon by the private sector, law enforcement, and governmental agencies to assist in identifying healthcare and insurance fraud, conduct skip traces, and to conduct anti-money laundering investigations. See <https://legal.thomsonreuters.com/en/products/clear-investigation-software>, last accessed on November 26, 2019.

accept the determination of deficiency; (b) cure the deficiency by providing additional documentation to support the Claim as well as documentation to establish the identity of the Claimant; or (c) request that the dispute be submitted to the Court for review. More specifically, Claimants were advised in the Deficiency Notice that, if they disputed Analytics' determination, they had to (a) state the reasons for contesting the rejection of the Claim and provide any and all documentation supporting their argument(s); (b) specifically state that they "request that the Court review the rejection of this Claim"; and, (c) if the dispute concerning the Claim could not otherwise be resolved, Lead Counsel would thereafter present the request for review to the Court for a final determination.

DISPUTED CLAIMS

29. There were eighteen (18) Claimants with Questionable Claims, sixteen (16) of which did not respond to the Deficiency Notice and are deemed to have been resolved. There are two (2) Claimants who submitted Questionable Claims who provided supplemental information that did not resolve questions regarding their Claims. Exhibit B attached hereto (the "Disputed Claims Chart") contains copies of these two (2) Disputed Claims, supporting documentation submitted by the two (2) Claimants, and other documents related to each Disputed Claim.³ There are no other requests for Court review by any other Claimants.

30. While not required, but out of an abundance of caution and to ensure that there was no ambiguity regarding the status of a Claim, Analytics sent a Notice of Rejection of Claim that

³ For privacy reasons, the documents included in Exhibit B have been redacted to remove personal information such as street addresses, email addresses, telephone numbers, account numbers, Taxpayer ID, Social Security, or Social Insurance Numbers, and all financial and transaction information not related to the Claimants' transactions in HeartWare common stock, unless the financial or transaction information serves as a basis for the dispute or as a basis for the Claim's rejection.

re-stated the rejection of the Claim to the two (2) Disputed Claimants who provided supplemental information. These Claimants were advised a second time that, if they disputed Analytics' determination, they had to (a) state the reasons for contesting the rejection of the Claim and provide any and all documentation supporting their argument(s); (b) specifically state that they "request that the Court review the rejection of this Claim"; and, (c) if the dispute concerning the Claim could not otherwise be resolved, Lead Counsel would thereafter present the request for review to the Court for a final determination.

31. These two Claimants responded to the Notice of Rejection of Claim and requested that the Court review the rejection of the Claims. To resolve the disputes without necessitating the Court's intervention, Analytics re-contacted by certified mail and email the Claimants requesting Court review and fully re-explained the basis for Analytics' determination, offered to answer all their questions regarding the determination, and provided an opportunity for the Claimants to withdraw the requests for review. Analytics confirmed that both the certified mail and emails were delivered. Neither Claimant has responded to the final letter, no requests for Court review have been cured, and no requests for Court review have been retracted.

32. Analytics recommends both Disputed Claim 1012831 and Disputed Claim 1012435 for rejection as Questionable Claims due to (a) the inability to validate the documentation supporting each Claim; and (b) the inability to validate the identity of each Claimant.

33. Claim 1012831, if accepted, has a Recognized Claim of \$2,764,450.00 (with an estimated distribution of approximately \$306,000). In reviewing Claim 1012831, Analytics noted the following indicators of potential fraud:

- (a) Claim 1012831 is: 1) the second largest paper claim submitted by an individual; 2) 180% larger than the next largest valid paper Claim submitted

by an individual; and 3) 34-times the Recognized Claim of the average valid claim submitted.⁴ All of these are indicators of an outlier claim and are potential indicators of fraud.

- (b) Claim 1012831 was filed using a commercial mail center as an address as opposed to a business or residence, a potential indicator of fraud.
- (c) The documentation submitted to support Claim 1012831 is from a defunct broker that was expelled from FINRA, a potential indicator of fraud in that it prevents validation of the Claim directly with the broker. Additionally, the broker's name on the Claimant's account statements is spelled in two different ways: "Legends Securities, Inc." and "Legend Securities, Inc.".
- (d) The provided account statements list Legends Securities, Inc.'s website both as www.legendsecuritiesinc.com and www.legendsscuritiesinc.com. However, Legend Securities, Inc., operated under neither of those domain names.
- (e) The account statement submitted to support Claim 1012831 contains a misspelling ("Confrimtion" [*sic*] rather than "Confirmation"), an indicator that the documentation was not produced by a brokerage house; and
- (f) The documentation submitted to support Claim 1012831 contains an incorrect CUSIP and transaction price, a strong indicator that the documentation was manipulated.

⁴ Statistically, the Recognized Claim for Claim 1012831 would be 2.3 standard deviations away from the average, indicating an outlier.

34. In addition to reviewing Claim 1012831 as submitted, Analytics cross-referenced Claim 1012831 against known market data and other Claims. Analytics determined that the purchases of HeartWare common stock presented on Claim 1012831 represent between 10% and 14% of the daily trading volume on those days for HeartWare common stock, which is a not plausible trading volume for a single individual investor to conduct. Of all the trades presented by all of the Claimants in this matter, the trades presented on Claim 1012831 were the largest on each day. Additionally, all trades occurred at only either the published market close or high price for the day. These factors, when combined, are not consistent with naturally occurring trading.

35. In addition to reviewing Claim 1012831 as submitted, Analytics conducted further due diligence that failed to validate the identity of the Claimant. None of the addresses identified in the Claim and supporting documentation can be linked to the Claimant using Thomson CLEAR. On March 12, 2020, this Disputed Claimant's claim and supporting documentation were provided to the federal authorities for further review as being potentially fraudulent.

36. Claim 1012435, if accepted, has a Recognized Claim of \$6,058,900.00 (with an estimated distribution of approximately \$673,000). In reviewing Claim 1012435, Analytics noted the following indicators of potential fraud:

- (a) Claim 1012435 is: 1) the largest paper claim submitted by an individual; 2) 518% larger than the next largest valid paper Claim submitted by an individual; and 3) 34-times the Recognized Claim of the average valid claim submitted.⁵ All of these are indicators of an outlier claim and are potential indicators of fraud.

⁵ Statistically, the Recognized Claim for Claim 1012435 would be 5.1 standard deviations away from the average, indicating an extreme outlier.

- (b) Claim 1012435 was filed using a commercial mail center as an address as opposed to a business or residence, a potential indicator of fraud.
- (c) The documentation submitted to support Claim 1012435 is from a defunct broker that was expelled from FINRA, a potential indicator of fraud in that it prevents validation of the Claim directly with the broker. Additionally, the broker's name on the Claimant's account statements is spelled in two different ways: "Legends Securities, Inc." and "Legend Securities, Inc.".
- (d) The provided account statements list Legends Securities, Inc.'s website both as www.legendsecuritiesinc.com and www.legendsscuritiesinc.com. However, Legend Securities, Inc., operated under neither of those domain names.
- (e) The account statement submitted to support Claim 1012435 contains a misspelling ("Confirmation" [*sic*] rather than "Confirmation"), an indicator that the documentation was not produced by a brokerage house.⁶

37. In addition to reviewing Claim 1012435 as submitted, Analytics cross-referenced Claim 1012435 against known market data and other Claims. Analytics determined that the purchases of HeartWare common stock presented on Claim 1012435 represent between 10% and 24% of the daily trading volume on those days for HeartWare common stock which is a not plausible trading volume for a single individual investor to conduct. Of all the trades presented by all of the Claimants in this matter, the trades presented on Claim 1012435 were the largest on each

⁶ The documentation supporting Claim 1012831 is also from the same brokerage house, contains the same misspelling, and contains identifiable errors in price and CUSIP. These two Claims were both submitted from commercial mail centers that are located within a 45-mile drive from each other.

day. Additionally, all trades occurred at only either the published market high or low price for the day. These factors, when combined, are not consistent with naturally occurring trading.

38. In addition to reviewing Claim 1012435 as submitted, Analytics conducted further due diligence that failed to validate the identity of the Claimant:

- (a) None of the addresses identified in the Claim and supporting documentation can be linked to the Claimant using Thomson CLEAR;
- (b) The individual submitting Claim 1012435 could not be identified in Thomson CLEAR under any variation of their first name at any place in the United States; and
- (c) The individual submitting Claim 1012435 could not be identified in Google under any variation of their first name at any place in the United States.

Further, Analytics researched the address contained on the current photo identification provided by the Claimant and contacted the homeowner at that address. Analytics confirmed that: a) the homeowner is a current member of the California bar; b) has owned that property for at least the last ten years; and c) has no knowledge of the Claimant. This is an indicator that the photo identification provided to Analytics is not valid. Taking Claim 1012435 and its supporting documentation as presented, the individual submitting Claim 1012435 was twenty-five years old at the time investments occurred, had a \$90 million margin account with a now-defunct brokerage house, and has no paper trail with respect to residence, credit, or utilities in any commercial database. This Disputed Claimant's claim and supporting documentation were provided to the federal authorities for further review as being potentially fraudulent.

LATE BUT OTHERWISE ELIGIBLE CLAIMS

39. Of the Presented Claims, 247 were received or postmarked after the May 14, 2019, Claim submission deadline established by the Court. Analytics processed all late Claims received through March 9, 2020, and 40 have been found to be otherwise eligible in whole or in part (the “Late But Otherwise Eligible Claims”). Analytics has not rejected any Claim received through March 9, 2020, solely based on its late submission and Analytics believes no delay has resulted from the provisional acceptance of these Late But Otherwise Eligible Claims. To the extent they are eligible but for the fact that they were late, they are recommended for payment.

40. However, there must be a final cut-off date after which no more Claims will be accepted so that there may be a proportional allocation of the Net Settlement Fund and the distribution may be accomplished. Acceptance of additional Claims or adjustments to previously received Claims that are received during the finalization of the administration and the preparation of this application would necessarily require a delay in the distribution. Accordingly, Analytics also respectfully requests this Court order that no Claim received or adjusted after March 9, 2020, be eligible for payment for any reason whatsoever subject only to the provision of ¶ 47(f) of the proposed distribution plan discussed below. If the Court adopts the proposed distribution plan, then, after Lead Counsel has determined that further distributions are not cost-effective and before any contribution of the residual funds to charity, if sufficient funds remain to warrant the processing of Claims received after March 9, 2020, these Claims will be processed and, if any would have been eligible if timely received, these Claimants may be paid the distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent permitted by the amount of remaining funds. See ¶ 47(f) below. With respect to previously filed Claims that are cured or adjusted after March 9, 2020, such Claims will be reevaluated upon receipt of the adjustment and, to the extent that they

are found eligible for a distribution or additional distribution, they will be treated in the same manner as Claims received after March 9, 2020. However, should an adjustment be received that results in a lower Recognized Claim amount, that adjustment will be made and the Recognized Claim amount will be reduced accordingly prior to a distribution to that Claimant.

RECOMMENDATIONS FOR APPROVAL AND REJECTION

41. As noted above, the number of Claims on this motion is 6,511.

Timely Submitted and Valid Claims

42. A total of 6,264 Claims were received or postmarked on or before the Court-approved Claim submission deadline of May 14, 2019, of which 4,324 were determined by Analytics to be eligible and are recommended for approval (“Timely Eligible Claims”). The total Recognized Claim amount for these Claims is \$351,590,800.37.

Late But Otherwise Eligible Claims

43. A total of 247 Claims were received or postmarked after the Court-approved Claim submission deadline of May 14, 2019, but received through March 9, 2020. Of those, 40 were determined by Analytics to be otherwise eligible and are recommended for approval. The total Recognized Claim amount for these Claims is \$16,408,969.71.

Rejected Claims

44. After the responses to Deficiency Notices were processed, a total of 2,147 Claims (including the Disputed Claims discussed above) remain recommended for rejection by the Court (“Rejected Claims”) for the following reasons:

- (a) 1,145 Claims had no purchase(s) of HeartWare common stock during the Class Period;
- (b) 889 Claims did not result in a Recognized Claim;
- (c) 18 Claims were identified as questionable and subsequently rejected;

- (d) 14 Claims were duplicates; and
- (e) 81 Claims had uncured conditions of ineligibility.

Lists of All Presented Claims

45. Attached hereto as Exhibits C through E are listings of all the Presented Claims:
- (a) Exhibit C lists the Timely Eligible Claims and shows each Claimant's Recognized Claim.
 - (b) Exhibit D lists the Late But Otherwise Eligible Claims and shows each Claimant's Recognized Claim.
 - (c) Exhibit E lists the Rejected Claims and the reasons for rejection.

FEES AND DISBURSEMENTS

46. Analytics agreed to be the Claims Administrator in exchange for payment of its fees and out-of-pocket expenses. Lead Counsel received reports on and invoices for the work Analytics performed with respect to the provision of notice and administration of the Settlement. Attached hereto as Exhibit F is Analytics' invoice for its work performed on behalf of the Class as well as an estimate for the work that will be performed and the costs that will be incurred in connection with the initial distribution of the Net Settlement Fund.⁷ As set forth in this invoice, Analytics' fees and expenses for its work performed through March 12, 2020, are \$106,735.32 and estimated to be performed on behalf of the Class in connection with the initial distribution are \$5,534.00. To date, Analytics has not received any payment for its fees and expenses. Accordingly, there is a total of \$112,269.32 payable to Analytics.

⁷ Should the estimate of administrative fees and expenses payable to Analytics to conduct the initial distribution exceed the actual cost to conduct the distribution, the excess will be available for subsequent distribution to Authorized Claimants.

DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND

47. Should the Court concur with Analytics' determinations concerning the provisionally accepted and rejected Claims, including the Late But Otherwise Eligible Claims, Analytics recommends the following distribution plan (the "Distribution Plan"):

(a) Analytics will conduct an initial distribution of the Net Settlement Fund, after deducting all payments approved by the Court, and after payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, while maintaining a 5% reserve from the Net Settlement Fund to address any tax liability and claims administration-related contingencies that may arise (the "Initial Distribution"), as follows:

(1) Analytics will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. In accordance with the Court-approved Plan of Allocation, Analytics will calculate each Authorized Claimant's *pro rata* share of the Net Settlement Fund based on the amount of the Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants.

(2) Analytics will, pursuant to the terms of the Plan of Allocation, eliminate from the Initial Distribution any Authorized Claimant whose *pro rata* share calculates to less than \$10.00. These Claimants will not receive any payment from the Settlement, and Analytics will send notifications advising them of that fact.

(3) After eliminating Claimants who would have received less than \$10.00, Analytics will recalculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more pursuant to the

calculations described in subparagraph (a)(1) above. This *pro rata* share is the Authorized Claimant's "Distribution Amount."

(4) Authorized Claimants whose Distribution Amount calculates to less than \$100.00 pursuant to subparagraph (a)(3) above will be paid their full Distribution Amount in the Initial Distribution ("Claims Paid in Full"). These Authorized Claimants will get no additional funds in subsequent distributions.

(5) After deducting payments to the Claims Paid in Full, 95% of the remaining balance of the Net Settlement Fund will be distributed to Authorized Claimants whose Distribution Amount calculates to \$100.00 or more pursuant to subparagraph (a)(3) above, on a *pro rata* basis based on their Distribution Amounts. The remaining 5% of the Net Settlement Fund will be held in reserve (the "Reserve") to address any tax liability and claims administration-related contingencies that may arise. To the extent the Reserve is not depleted, the remainder will be distributed in the "Second Distribution" described in subparagraph (d) below.

(b) In order to encourage Authorized Claimants to deposit their payments promptly, all distribution checks will bear a notation: "CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE]."⁸

⁸ For Authorized Claimants whose checks are returned as undeliverable, Analytics will endeavor to locate new addresses by running the undeliverable addresses through address-lookup services. Where a new address is located, Analytics will update the database accordingly and reissue a distribution check to the Authorized Claimant at the new address. In the event a check is lost, damaged, or an Authorized Claimant otherwise requires a new check, Analytics will issue replacements. Distribution reissues will be undertaken only upon written instructions from the Authorized Claimant, provided that the Authorized Claimant returns the previous check where

(c) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions set forth in footnote 8 will irrevocably forfeit all recovery from the Settlement. The funds allocated to all such stale-dated checks will be available to be redistributed to other Authorized Claimants as discussed below. Similarly, Authorized Claimants who do not cash their check from a second or subsequent distribution (should such distributions occur) within the time allotted or on the conditions set forth in footnote 8 will irrevocably forfeit any further recovery from the Net Settlement Fund.

(d) Consistent with the Court-approved Plan of Allocation, after Analytics has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, which efforts shall consist of the follow-up efforts described in footnote 8, but not earlier than seven (7) months after the Initial Distribution, Analytics will conduct a second distribution of the Net Settlement Fund (the “Second Distribution”). Any amount remaining after the Initial Distribution (including from the Reserve and the funds for all void stale-dated checks), after deducting Analytics’ fees and expenses incurred in administering the Settlement for which it has not yet been paid (including Analytics’ estimated costs of the Second Distribution), and after deducting the payment of any taxes or estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will

appropriate. For all checks, Analytics will void the initial payment prior to reissuing a payment. In order not to delay further distributions to Authorized Claimants who have timely cashed their checks, Analytics’ outreach program, described in the preceding sentences, shall end 30 days after the initial void date. Authorized Claimants will be informed that, if they do not cash their distribution checks within 90 days of the mail date, or they do not cash check reissues within 30 days of the mailing of such reissued check, their check will lapse, their entitlement to recovery will be irrevocably forfeited, and the funds will be reallocated to other Authorized Claimants. Reissue requests for lost or damaged checks will be granted after the void date on the checks as long as the request for the reissue is received no later than 45 days prior to the next planned distribution. Requests for reissued checks in connection with any subsequent distributions (should such distributions occur) will be handled in the same manner.

be distributed to all Authorized Claimants in the Initial Distribution who cashed their first distribution check and who would receive at least \$10.00 from such distribution based on their *pro rata* share of the remaining funds. Additional distributions, after deduction of costs and expenses as described above and subject to the same conditions, shall occur thereafter in six-month intervals until Lead Counsel, in consultation with Analytics, determines that further distribution is not cost-effective.

(e) At such time as Lead Counsel, in consultation with Analytics, determines that further distribution of the funds remaining in the Net Settlement Fund is no longer cost-effective, if sufficient funds remain to warrant the processing of Claims received after March 9, 2020, such Claims will be processed and any such Claims that are otherwise valid, as well as any earlier received Claims for which an adjustment was received after March 9, 2020, and resulted in an increased Recognized Claim, may be paid in accordance with subparagraph (f) below. If any funds remain in the Net Settlement Fund after payment of such late or late-adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any taxes or estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court.

(f) No new Claims submitted after March 9, 2020, may be accepted, and no further adjustments to Claims received on or before March 9, 2020, that would result in an increased Recognized Claim amount, may be made for any reason after March 9, 2020, subject to the following exception. If Claims are received or modified after March 9, 2020,

that would have been eligible for payment or additional payment under the Plan of Allocation if timely received, then, at the time that Lead Counsel, in consultation with Analytics, determines that further redistribution is not cost-effective as provided in subparagraph (e) above, and after payment of any unpaid fees or expenses incurred by Analytics in connection with administering the Net Settlement Fund and after deducting the payment of any taxes or estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, such late Claimants, at the discretion of Lead Counsel, may be paid the distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity (to the extent possible) with other Authorized Claimants who have cashed all their prior distribution checks.

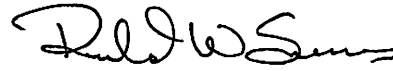
(g) Unless otherwise ordered by the Court, Analytics may destroy the paper copies of the Claims and all supporting documentation one year after the Second Distribution, and Analytics may destroy electronic copies of the same one year after all funds have been distributed.

CONCLUSION

48. For the reasons set forth above, Analytics respectfully requests that the Court enter an Order (a) approving its administrative determinations accepting and rejecting the Claims submitted herein; (b) approving the proposed Distribution Plan; and (c) approving the payment from the Settlement Fund to Analytics of Analytics' fees and expenses in the total amount of \$112,269.32, as reflected on the invoice attached hereto as Exhibit F.

49. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3rd day of April 2020.

A handwritten signature in black ink, appearing to read "Richard W. Simmons", is written above a horizontal line.

Richard W. Simmons