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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Amish Patel, Individually and on
behalf of all others similarly situated,
Plaintiff,

vs.

Axesstel, Inc., H. Clark Hickock, and
Patrick Gray,
Defendants.

Case No.: 3:14-CV-1037-CAB-BGS

**ORDER PRELIMINARILY
APPROVING SETTLEMENT
AND PROVIDING FOR NOTICE
OF PROPOSED SETTLEMENT**

[Doc. No. 32]

WHEREAS, a class action is pending before the Court entitled *Patel v. Axesstel, Inc. et al.*, Civil Action No. 3:14-cv-01037-CAB-BGS, United States District Court for the Southern District of California (the “Litigation”);

WHEREAS, the Court has received the Stipulation of Settlement dated as of June 8, 2015 (the “Stipulation”),¹ which has been entered into by Plaintiffs and Defendants, and the Court has reviewed the Stipulation and the Exhibits annexed thereto;

¹ For purposes of this Order, the Court adopts all defined terms as set forth in the Stipulation, and the terms used herein shall have the same meaning as in the Stipulation.

1 WHEREAS, the Parties having made an application, pursuant to Federal Rule
2 of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this
3 Litigation, in accordance with the Stipulation which sets forth the terms and
4 conditions for a proposed Settlement of the Litigation and for dismissal of the
5 Litigation with prejudice upon the terms and conditions set forth therein; and the
6 Court having read and considered the Stipulation;

7 NOW, THEREFORE, IT IS HEREBY ORDERED:

8 1. The Court does hereby preliminarily approve the Stipulation and the
9 Settlement set forth therein, subject to further consideration at the Settlement
10 Hearing described below.

11 2. The Court finds that: (a) the Stipulation resulted from arm's-length
12 negotiations; and (b) the Stipulation is sufficiently fair, reasonable and adequate as
13 to the Settlement Class Members to warrant providing notice of the Settlement to
14 Class Members and holding a Settlement Hearing.

15 3. The Court also finds that pursuant to the Stipulation, and for settlement
16 purposes only: (a) the Settlement Class is so numerous that joinder of all members
17 is impracticable; (b) there are substantial questions of law and fact common to the
18 Settlement Class which predominate over any questions affecting only individual
19 members; (c) Lead Plaintiff's claims are typical of the claims of the Settlement
20 Class; (d) Lead Plaintiff, Amish Patel, has fairly and adequately protected the

1 interests of the Settlement Class; and (e) Lead Plaintiff's counsel, Glancy Prongay
2 & Murray LLP, has fairly and adequately protected the interests of the Settlement
3 Class.

4 4. On or before **July 3, 2015**, counsel for either the Settlement Class or
5 Defendants shall file a sworn affidavit confirming that the requirements of 28 U.S.C.
6 §1715 have been satisfied, or in the alternative, a notice explaining why such
7 requirements do not apply to this settlement.

8 5. The Settlement Hearing shall be held before this Court on **October 15,**
9 **2015**, at **2:00 p.m.**, to determine whether the proposed Settlement of the Litigation
10 on the terms and conditions provided for in the Stipulation is fair, reasonable and
11 adequate to the Settlement Class and should be approved by the Court; whether to
12 certify a Settlement Class; whether a Judgment as provided in the Stipulation should
13 be entered herein; whether the proposed Plan of Allocation should be approved; to
14 determine whether to grant Plaintiffs' Lead Counsel request of fees and expenses;
15 and to determine whether the Court should grant Lead Plaintiff's reimbursement of
16 his reasonable costs and expenses (including lost wages) directly related to his
17 representation of the Class. The Court may adjourn the Settlement Hearing without
18 further notice to Members of the Settlement Class.

19 6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court
20 preliminarily certifies, solely for the purposes of effectuating this Settlement, a

1 Settlement Class consisting of all Persons other than Defendants who purchased or
2 otherwise acquired the common stock of Axesstel, Inc. (“Axesstel”) between
3 February 28, 2013, and October 17, 2013, inclusive (the “Settlement Class”), and
4 were purportedly damaged thereby. Excluded from the Settlement Class are
5 Defendants herein, the officers and directors of Defendants, members of their
6 immediate families, and the heirs, successors or assigns of any of the foregoing.
7 There has been no prior notice to Members of the Settlement Class of the
8 certification of the Settlement Class in this Litigation or prior opportunity for any
9 Person or entity to request to be excluded from the Settlement Class.

10 7. The Court approves, as to form and content, the Notice of Proposed
11 Settlement of Class Action, Motion for Attorneys’ Fees and Settlement Hearing (the
12 “Notice”),² the Proof of Claim and Release form (the “Proof of Claim”), and
13

14 ² The Court notes a possible typographical error on the Notice attached as Exhibit
15 A-1 to the Settlement Agreement. [Doc. No. 32-2 at 40-61.] Page two of the Notice
16 states that the “estimated average recovery per share of common stock will be
17 approximately \$0.356 per share before deduction of Court-approved fees and
18 expenses and costs of notice and claims administration.” [*Id.* at 41.] This amount
19 appears to be inconsistent with the representation on page 14 of the Memorandum
20 which states that the estimated recovery per “damaged share” before deduction of
fees and costs is \$0.308 per share. [*Id.* at 21.] Moreover, page four of the Notice
states that if the Court approves Plaintiff’s requested fees and costs, the average
recovery per share will be reduced by \$0.108, bringing it down to \$0.200 per share,
which would indicate a gross recovery of \$0.308, not \$0.356. If this is in fact a
typographical error, the parties are ordered to correct it before distributing the Notice
to potential class members.

1 Summary Notice (“Summary Notice”) annexed respectively as Exhibits A-1, A-2
2 and A-3 to the Stipulation, and finds that the mailing and distribution of the Notice
3 and publishing of the Summary Notice substantially in the manner and form set forth
4 in this Order meet the requirements of Federal Rule of Civil Procedure 23 and Due
5 Process, and is the best notice practicable under the circumstances and shall
6 constitute due and sufficient notice to all Persons entitled thereto.

7 8. Pending final determination by the Court as to whether the Settlement,
8 as set forth in the Stipulation, is fair, reasonable, and adequate, and should be finally
9 approved, and whether the Judgment dismissing the Litigation with prejudice should
10 be approved, no Class Member, either directly, representatively, or in any other
11 capacity, shall assert, commence, or prosecute against any of the Released Persons,
12 any of the Released Claims in this Litigation, or in any other proceeding or forum.
13 This injunction is necessary to protect and effectuate the Settlement, this Order, and
14 the Court’s flexibility and authority to effectuate the Settlement and to enter
15 judgment when appropriate, and is ordered in aid of the Court’s jurisdiction and to
16 protect its judgments.

17 9. The Court appoints Gilardi & Co. LLC (“Claims Administrator”) to
18 supervise and administer the notice procedure as well as the processing of claims as
19 more fully set forth below:
20

1 a. Not later than twenty (20) business days after the date of this
2 Order (the “Notice Date”), the Claims Administrator shall cause a copy of the
3 Notice and the Proof of Claim, substantially in the forms annexed as Exhibits
4 A-1 and A-2 to the Stipulation, to be mailed by first class mail to all Class
5 Members who can be identified with reasonable effort;

6 b. Not later than thirty (30) business days after the date of this
7 Order, the Claims Administrator shall cause the Summary Notice to be
8 published once in Investor’s Business Daily, and on a different day shall cause
9 the Summary Notice to be published once in Globe Newswire;

10 c. Not later than twenty (20) business days after the date of this
11 Order, the Claims Administrator shall cause the Stipulation and its Exhibits
12 and a copy of the Notice to be posted on the following website:
13 www.Axesstelsecuritieslitigation.com; and

14 d. Not later than seventy (70) days after the date of this Order,
15 Plaintiffs’ Lead Counsel shall cause to be served on Defendants’ Counsel and
16 filed with the Court proof, by affidavit or declaration, of such mailing,
17 publishing and posting.

18 10. Nominees who purchased or acquired Axesstel common stock between
19 February 28, 2013, and October 17, 2013, inclusive, shall send the Notice and the
20 Proof of Claim to all beneficial owners of such Axesstel common stock within

1 twenty (20) days after receipt thereof, or send a list of the names and addresses of
2 such beneficial owners to the Claims Administrator within twenty (20) days of
3 receipt thereof, in which event the Claims Administrator shall promptly mail the
4 Notice and the Proof of Claim to such beneficial owners. Plaintiffs' Lead Counsel
5 shall, if requested, reimburse banks, brokerage houses, or other nominees solely for
6 their reasonable out-of-pocket expenses incurred in providing the Notice to
7 beneficial owners who are Settlement Class Members out of the Settlement Fund,
8 which expenses would not have been incurred except for the sending of such Notice,
9 subject to further order of this Court with respect to any dispute concerning such
10 compensation.

11 11. Any Person falling within the definition of the Settlement Class may,
12 upon request, be excluded from the Settlement Class. Any such Person must submit
13 to the Claims Administrator a request for exclusion ("Request for Exclusion"),
14 postmarked no later than twenty-one (21) days prior to the Settlement Hearing. A
15 Request for Exclusion must state: (a) the name, address, and telephone number of
16 the Person requesting exclusion; (b) each of the Person's purchases and sales of
17 Axesstel common stock made during the Settlement Class Period, including the
18 dates of purchase or sale, the number of shares purchased and/or sold, and the price
19 paid or received per share for each such purchase or sale; and (c) that the Person
20 wishes to be excluded from the Settlement Class. All Persons who submit valid and

1 timely Requests for Exclusion in the manner set forth in this Paragraph shall have
2 no rights under the Settlement, shall not share in the distribution of the Net
3 Settlement Fund, and shall not be bound by the Settlement or the Judgment entered
4 in this Litigation.

5 12. All Members of the Settlement Class (other than those Persons or
6 entities who submit a timely and valid Request for Exclusion) shall be bound by all
7 determinations and judgments in the Litigation concerning the Settlement, whether
8 favorable or unfavorable to the Settlement Class.

9 13. Settlement Class Members (other than those Persons or entities who
10 shall timely and validly request exclusion from the Settlement Class) who wish to
11 collect in the Settlement shall complete and submit Proof of Claim forms in
12 accordance with the instructions contained therein. Unless the Court orders
13 otherwise, all Proof of Claim forms must be postmarked no later than one hundred
14 twenty (120) days from the Notice Date. Any Settlement Class Member who does
15 not timely submit a Proof of Claim form within the time provided for shall be barred
16 from sharing in the distribution of the proceeds of the Net Settlement Fund, unless
17 otherwise ordered by the Court.

18 14. Any Member of the Settlement Class may enter an appearance in the
19 Litigation, at his, her or its own expense, individually or through counsel of his, her
20

1 or its own choice. If they do not enter an appearance, Plaintiffs' Lead Counsel will
2 represent them.

3 15. Any Member of the Settlement Class (other than those Persons or
4 entities who submit a timely and valid Request for Exclusion) may appear and show
5 cause, if he, she or it has any reason, why the proposed Settlement of the Litigation
6 should or should not be approved as fair, reasonable and adequate, why a Judgment
7 should or should not be entered thereon, why the Plan of Allocation should or should
8 not be approved, why attorneys' fees and reimbursement of expenses should or
9 should not be awarded to Plaintiffs' Lead Counsel, or Lead Plaintiff should not
10 reimbursed his reasonable costs and expenses (including lost wages) directly related
11 to his representation of the Class; provided, however, that no Settlement Class
12 Member or any other Person shall be heard or entitled to contest the approval of the
13 terms and conditions of the proposed Settlement, or, if approved, the Judgment to be
14 entered thereon approving the same, or the order approving the Plan of Allocation,
15 or the attorneys' fees and expenses to be awarded to Plaintiffs' Lead Counsel, or
16 Lead Plaintiff's reimbursement of costs and expenses (including lost wages) directly
17 related to his representation of the Class, unless that Person has filed said objections,
18 papers and briefs with the Clerk of the United States District Court for the Southern
19 District of California, no later than twenty-one (21) days prior to the Settlement
20 Hearing and delivered copies of any such papers to counsel identified in the Notice,

1 such that they are received on or before such date. Any Member of the Settlement
2 Class who does not make his, her or its objection in the manner provided shall be
3 deemed to have waived such objection and shall forever be foreclosed from making
4 any such objection, unless otherwise ordered by the Court.

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

9 17. All papers in support of the Settlement, the Plan of Allocation, and the
10 Fee and Expense Application, shall be filed and served not later than thirty-five (35)
11 days prior to the Settlement Hearing. Any papers in further support of the
12 Settlement, the Plan of Allocation, and the Fee and Expense Application, shall be
13 filed and served no later than ten (10) days prior to the Settlement Hearing.

14 18. Neither Defendants nor any of the Released Persons shall have any
15 responsibility for or liability with respect to the Plan of Allocation, any application
16 for attorneys' fees or expenses submitted by Plaintiffs' Lead Counsel, or any
17 application for Lead Plaintiff's reimbursement of costs and expenses (including lost
18 wages) directly related to his representation of the Class, and such matters will be
19 considered separately from the fairness, reasonableness and adequacy of the
20 Settlement.

1 19. At or after the Settlement Hearing, the Court shall determine whether
2 the Plan of Allocation proposed by Lead Counsel and any application for attorneys'
3 fees or expenses by Lead Counsel or Lead Plaintiff shall be approved.

4 20. All reasonable expenses incurred in identifying and notifying
5 Settlement Class Members, as well as administering the Settlement Fund, and paying
6 taxes and tax expenses, shall be paid as set forth in the Stipulation. In the event the
7 Settlement is not approved by the Court, or otherwise fails to become effective,
8 neither the Plaintiffs nor Plaintiffs' Lead Counsel shall have any obligation to repay
9 any amounts actually and properly disbursed from the Settlement Fund pursuant to
10 this Paragraph.

11 21. Neither the Stipulation, nor any of its terms or provisions, nor any of
12 the negotiations or proceedings connected with it, shall be construed as an admission
13 or concession by the Defendants of the truth of any of the allegations in the
14 Litigation, or of any liability, fault, or wrongdoing of any kind and shall not be
15 construed as, or deemed to be evidence of, or an admission, or concession that
16 Plaintiffs or any Settlement Class Members have suffered any damages, harm, or
17 loss.

18 22. In the event that the Settlement does not become effective in accordance
19 with the terms of the Stipulation or the Effective Date does not occur, or in the event
20 that the Settlement Fund, or any portion thereof, is returned to the Defendants, then

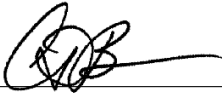
1 this Order shall be rendered null and void to the extent provided by and in accordance
2 with the Stipulation and shall be vacated and, in such event, all orders entered and
3 releases delivered in connection herewith shall be null and void to the extent
4 provided by and in accordance with the Stipulation.

5 23. Pending the Settlement Hearing, the Court stays all proceedings in the
6 Litigation, other than proceedings necessary to carry out or enforce the terms and
7 conditions of the Stipulation.

8 24. The Court reserves the right to adjourn the date of the Settlement
9 Hearing without further notice to the Members of the Settlement Class, and retains
10 jurisdiction to consider all further applications arising out of or connected with the
11 Settlement. The Court may approve the Settlement, with such modifications as may
12 be agreed to by the Parties, if appropriate, without further notice to the Settlement
13 Class.

14 It is **SO ORDERED**.

15 Dated: June 19, 2015

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17 _____
18 Hon. Cathy Ann Bencivengo
19 United States District Judge
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