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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ERVIN DERR, and PETER  
SHOEMAKER, Individually and on  
Behalf of All Others Similarly  
Situated,

Plaintiffs,

v.

RA MEDICAL SYSTEMS, INC.,  
DEAN IRWIN, ANDREW  
JACKSON, MELISSA BURSTEIN,  
MARTIN BURSTEIN, RICHARD  
HEYMANN, MAURICE  
BUCHBINDER, MARTIN  
COLOMBATTO, RICHARD MEJIA,  
JR., MARK E. SAAD, and WILLIAM  
ENQUIST, JR.,

Defendants.

Case No. 3:19-cv-01079

**AMENDED ORDER:**

- 1) GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [Dkt. 73];**
- 2) DENYING MOTION TO DISMISS WITHOUT PREJUDICE [Dkt. 60]; and**
- 3) DENYING MOTION FOR CONSIDERATION OF DOCUMENTS WITHOUT PREJUDICE [Dkt. 61]**

Lead Plaintiffs Ervin Derr and Peter Shoemaker brought this action against Defendant Ra Medical Systems, Inc. (“Ra Medical”), Andrew Jackson, Richard Heymann, Maurice Buchbinder, Martin Colombatto, Mark Saad, William Enquist, Jr., Dean Irwin, Melissa Burstein, and Martin Burstein (collectively, the “Individual Defendants,” and together with Ra Medical, “Defendants”) on behalf of a putative class of investors in Ra Medical. The

1 parties have reached a mutually satisfactory Stipulation and Agreement of  
2 Settlement (the “Stipulation”), and Lead Plaintiffs now apply for an order  
3 preliminarily approving the settlement effected by that Stipulation (the  
4 “Settlement”) and permitting Lead Plaintiffs’ counsel to send notice to  
5 members of the putative class.<sup>1</sup>

6 The Court may preliminarily approve the settlement and direct the  
7 parties to send notice to the class only if the parties show that the Court “will  
8 likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify  
9 the class for purposes of judgment on the proposal.” Fed. R. Civ. P.  
10 23(e)(1)(B). Based on (a) Lead Plaintiffs’ motion for preliminary approval of  
11 the Settlement, and the papers filed and arguments made in connection with  
12 that motion, and (b) the Stipulation and its attached exhibits, the motion for  
13 preliminary approval is **GRANTED**. As described in greater detail below, the  
14 Court sets the hearing on final approval of the settlement for **June 13, 2022**  
15 **at 11:30 a.m.**

16 The Court **ORDERS**:

17 1. **Class Certification for Settlement Purposes** – Pursuant to  
18 Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court finds  
19 that it will likely be able to certify the proposed Settlement Class solely for  
20 purposes of effectuating the proposed Settlement. That Settlement Class  
21 would consist of all persons and entities that purchased or otherwise  
22 acquired Ra Medical common stock: (a) pursuant and/or traceable to Ra  
23 Medical’s IPO; and/or (b) between September 27, 2018 and November 27,  
24 2019, inclusive. Excluded from that Settlement Class would be: (a) persons  
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26 <sup>1</sup> Unless otherwise defined in this Order, all capitalized words shall have the same  
27 meanings as they have in the Stipulation.

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1 and entities who or which suffered no compensable losses; and (b)(i)  
2 Defendants and the Underwriters; (ii) any person who served as a partner,  
3 control person, executive officer, and/or director of Ra Medical or the  
4 Underwriters during the Settlement Class Period, and their Immediate  
5 Family Members; (iii) present and former parents, subsidiaries, assigns,  
6 successors, affiliates, and predecessors of Ra Medical and the  
7 Underwriters; (iv) any entity in which the Defendants or Underwriters have or  
8 had a controlling interest; (v) any trust of which any Individual Defendant is  
9 the settler or which is for the benefit of any Individual Defendant and/or their  
10 Immediate Family Members; (vi) Defendants' liability insurance carriers; and  
11 (vii) the legal representatives, heirs, successors, and assigns of any person  
12 or entity excluded under provisions (i) through (vi) hereof. Also excluded  
13 from the Settlement Class are any persons and entities who or which submit  
14 a request for exclusion from the Settlement Class that is accepted by the  
15 Court. For the avoidance of doubt, (a) any Investment Vehicle shall not be  
16 excluded from the Settlement Class; and (b) "affiliates" are persons or  
17 entities that directly, or indirectly through one or more intermediaries,  
18 control, are controlled by or are under common control with one of the  
19 Defendants.

20       2. **Class Findings** – Solely for purposes of the proposed  
21 Settlement of this Action, the Court finds that each element required for  
22 certification of the Settlement Class pursuant to Rule 23 of the Federal  
23 Rules of Civil Procedure will likely be met: (a) the members of the  
24 Settlement Class are likely so numerous that their joinder in the Action  
25 would be impracticable; (b) there are likely questions of law and fact  
26 common to the Settlement Class which predominate over any individual  
27 questions; (c) the claims of Lead Plaintiffs in the Action are likely typical of  
28 the claims of the Settlement Class; (d) Lead Plaintiffs and Lead Counsel

1 appear to have and likely will fairly and adequately represent and protect the  
2 interests of the Settlement Class; and (e) a class action is likely superior to  
3 other available methods for the fair and efficient adjudication of the Action.

4       3. The Court preliminarily finds that, pursuant to Rule 23 of the  
5 Federal Rules of Civil Procedure and for the purposes of the Settlement  
6 only, Lead Plaintiffs Ervin Derr and Peter Shoemaker are adequate class  
7 representatives and preliminarily certifies them as Class Representatives for  
8 the Settlement Class. The Court also appoints Lead Counsel Glancy  
9 Prongay & Murray LLP as Class Counsel for the Settlement Class, pursuant  
10 to Rule 23(g) of the Federal Rules of Civil Procedure.

11       4. **Preliminary Approval of the Settlement** – The Court will likely  
12 be able to approve the Settlement, as embodied in the Stipulation, as being  
13 fair, reasonable, and adequate to the Settlement Class, subject to further  
14 consideration at the Settlement Hearing to be conducted as described  
15 below. On that basis, the Court preliminarily approves the Settlement.

16       5. **Settlement Hearing** – The Court will hold a settlement hearing  
17 (the “Settlement Hearing”) on **June 13, 2022 at 11:30 a.m.** in Courtroom  
18 14A of the United States Courthouse, 333 West Broadway, San Diego, CA  
19 92101, for the following purposes: (a) to determine whether the proposed  
20 Settlement on the terms and conditions provided for in the Stipulation is fair,  
21 reasonable, and adequate to the Settlement Class, and should be approved  
22 by the Court; (b) to determine whether the Settlement Class can be finally  
23 approved; (c) to determine whether a Judgment substantially in the form  
24 attached as Exhibit B to the Stipulation should be entered dismissing the  
25 Action with prejudice against Defendants; (d) to determine whether the  
26 proposed Plan of Allocation for the proceeds of the Settlement is fair and  
27 reasonable and should be approved; (e) to determine whether the motion by  
28 Lead Counsel for an award of attorneys’ fees and reimbursement of

1 Litigation Expenses should be approved; and (f) to consider any other  
2 matters that may properly be brought before the Court in connection with the  
3 Settlement. Notice of the Settlement and the Settlement Hearing shall be  
4 given to Settlement Class Members as set forth in paragraph 7 of this Order.  
5 As set forth in the Notice, the Court reserves the right to hold the Settlement  
6 Hearing telephonically or via videoconference.

7         6. The Court may adjourn the Settlement Hearing without further  
8 notice to the Settlement Class, and may approve the proposed Settlement  
9 with such modifications as the Parties may agree to, if appropriate, without  
10 further notice to the Settlement Class.

11         7. **Retention of Claims Administrator and Manner of Giving**  
12 **Notice** – Lead Counsel is hereby authorized to retain Epiq Class Action &  
13 Claims Solutions, Inc. (the “Claims Administrator”) to supervise and  
14 administer the notice procedure in connection with the proposed Settlement  
15 as well as the processing of Claims as more fully set forth below. Notice of  
16 the Settlement and the Settlement Hearing shall be given by Lead Counsel  
17 as follows:

18                 (a) within five (5) business days of the date of entry of this  
19 Order, Ra Medical shall provide or cause to be provided to the Claims  
20 Administrator in electronic format (at no cost to the Settlement Fund, Lead  
21 Counsel, or the Claims Administrator) its lists (consisting of names and  
22 addresses) of shareholders of record of Ra Medical common stock during  
23 the Settlement Class Period;

24                 (b) not later than twenty (20) business days after the date of  
25 entry of this Order (the “Notice Date”), the Claims Administrator shall cause  
26 a copy of the Notice and the Claim Form, substantially in the forms attached  
27 hereto as Exhibits 1 and 2, respectively (the “Notice Packet”), to be mailed  
28 by first-class mail to potential Settlement Class Members at the addresses

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