



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

IN RE SABA SOFTWARE, INC. : CONSOLIDATED  
STOCKHOLDER LITIGATION : C.A. No. 10697-VCS

**ORDER AND FINAL JUDGMENT**

A hearing having been held before this Court on September 24, 2018 pursuant to this Court's Scheduling Order with Respect to Notice and Settlement Hearing, dated June 7, 2018 (the "Scheduling Order"), and upon a Stipulation and Agreement of Compromise and Settlement, dated May 31, 2018 (the "Stipulation"), outlining a Settlement of the above-captioned consolidated action (the "Consolidated Action"), which is incorporated herein by reference, the Parties having appeared by their attorneys of record, the Court having heard and considered the submissions and evidence presented in support of the proposed Settlement, the application for an award of attorneys' fees, expenses, and the application for an Incentive Award to Lead Plaintiff, the opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Scheduling Order, and the Court having determined that Notice was adequate and sufficient, and the entire matter of the proposed Settlement having been heard and considered by the Court,

**IT IS ORDERED, ADJUDGED AND DECREED**, this 24<sup>th</sup> day of September, 2018 that:

1. Unless otherwise defined herein, all capitalized terms shall have the same definitions as set forth in the Stipulation and the Scheduling Order.

2. The Court has jurisdiction over the subject matter of the Consolidated Action, and all matters relating to the Settlement of the Consolidated Action, as well as personal jurisdiction over all of the Parties, and it is further determined that Lead Plaintiff, Defendants, Saba Software, Inc. and the Settlement Class, as well as their transferees, heirs, executors, successors, and assigns, are bound by this Order and Final Judgment (the "Judgment").

3. The Notice has been given to persons and entities that owned shares of Saba common stock at the close of the Acquisition on March 30, 2015, and who were cashed out of their shares of Saba common stock in the Acquisition, pursuant to and in the manner directed by the Scheduling Order; proof of mailing of the Notice and Proof of Claim and posting of the Notice, Proof of Claim, and Stipulation was filed with the Court; and full opportunity to be heard has been offered to all Parties, Settlement Class Members, and persons in interest. The Court finds that the form and means of the Notice and Proof of Claim was the best notice practicable under the circumstances and was given in full compliance with the requirements of Court of Chancery Rule 23 ("Rule 23") and due process of law, and that all Settlement Class Members are bound by this Judgment.

4. Based on the record in the Consolidated Action, each of the provisions of Rule 23 has been satisfied, the Consolidated Action has been properly maintained

according to the provisions of Rule 23, and the hereby certifies, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), the Class as consisting of:

(a) All persons or entities who held shares of Saba Common Stock, either of record or beneficially, at the close of the Acquisition with Vector Capital on March 30, 2015, and who were cashed out of their shares of Saba stock in the Acquisition, including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, trustees, representatives, executors, administrators, estates, 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 but excluding Defendants, members of the immediate family of each individual defendant, current or former officers or directors of Saba or Vector Capital, Vector Capital and any affiliates of Vector Capital, any entity controlled by any of the defendants, and any successors in interest thereto; and the legal representatives, agents, affiliates, heirs, beneficiaries, successors in interest or assigns of any excluded party.

5. The Settlement as provided for in the Stipulation is found to be fair, reasonable and adequate to the Class, and it is hereby approved. The Parties are hereby authorized and directed to comply with and 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 Judgment in the Consolidated Action.

6. The Consolidated Action is hereby dismissed with prejudice as to all Defendants and as to Saba, and against Lead Plaintiff and the Settlement Class, in full and final discharge of any and all claims or obligations that were or could have been asserted in the Consolidated Action against any Defendant. As between Lead Plaintiff and Defendants, the Parties are to bear their own costs, except as otherwise

provided in Paragraphs 12 and 13 below or as otherwise provided in the Stipulation and the Scheduling Order.

7. All Settlement Class Members 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 Released Claims against all Released Parties, shall have *res judicata* and other preclusive effect in all pending and future lawsuits, arbitrations or other proceedings maintained by or on behalf of Lead Plaintiff and all other Settlement Class Members, as well as any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, 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.

8. Upon entry of this Judgment and occurrence of the Effective Date, plaintiffs and all Settlement Class Members, on behalf of themselves, and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, 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, agree to release and forever discharge, and by operation of this Order and Final Judgment shall release and forever discharge any and all manner of claims, demands, rights, liabilities,

losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, discoverable or undiscoverable, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or previously existed, including Unknown Claims (defined below), that plaintiffs or any or all other Settlement Class Members ever had, now have, or may have, whether direct, derivative, individual, class, representative, legal, equitable, or of any other type, or in any other capacity, against any of the Released Parties (defined below), whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule (including, but not limited to, any claims under federal or state securities laws, federal or state antitrust law, or under federal or state disclosure law, including all claims within the exclusive jurisdiction of the federal courts, or any claims that could be asserted derivatively on behalf of Saba) regardless of legal or equitable theory (including, without limitation, claims for negligence, gross negligence, recklessness, deliberate recklessness, intentional wrongdoing, fraud, breach of contract, or breach of the fiduciary duty of care and/or loyalty) that have been or could have been asserted in the Consolidated Action or in any court, tribunal, forum, or proceeding,

which, now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, in whole or in part, (i) the Acquisition, (ii) any deliberations or negotiations in connection with the Acquisition, (iii) the consideration received by Settlement Class Members or by any other Person in connection with the Acquisition, (iv) the Proxy or any other disclosures, public filings, periodic reports, press releases, proxy statements, or other statements issued, made available, or filed relating, directly or indirectly, to the Acquisition, (v) the fiduciary duties and obligations of the Released Parties in connection with the Acquisition, or (vi) any of the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in any complaint or amendment(s) thereto filed in the Consolidated Action (the "Released Claims") as against any or all of the following Persons, whether or not any or all of them were named, served with process or appeared in the Consolidated Action: (i) Defendants, (ii) any Person which is, was, or will be related to or affiliated with any or all of Defendants or in which any or all of Defendants has, had, or will have a controlling interest, or any estate or trust of which any Defendant is a settlor or which is for the benefit of him or her, (iii) Saba, (iv) Vector Capital, and (v) each and all of the foregoing's respective past or present family members, spouses, domestic partners, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, affiliates, agents, employees, employers, personnel, fiduciaries, general or limited partners or

partnerships, joint ventures, members, member firms, divisions, limited liability companies, corporations, parents, subsidiaries (foreign or domestic), divisions, shareholders, stockholders, principals, officers, managers, directors, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, analysts, consultants, investment bankers, investment banks, investment funds, underwriters, brokers, dealers, lenders, attorneys, legal representatives, accountants, auditors, insurers, co-insurers, reinsurers, retained professionals, and associates (the "Released Parties"); provided, however, that the Released Claims shall not include claims to enforce the Settlement or any claims or rights of any Defendant against its insurers or its insurers' successors or assignees.

9. Lead Plaintiff, and all members of the Settlement Class, are barred and enjoined from commencing or prosecuting, either directly, representatively or in any other capacity, any action asserting any claims that are, or relate in any way to, Released Claims against Released Parties. The Parties shall use their best efforts to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any Settlement Class Member in any other litigation against any of the Released Parties which challenges the Settlement, the Acquisition, or otherwise involves, directly or indirectly, a Released Claim.

10. Upon entry of this Judgment and occurrence of the Effective Date, Defendants agree to fully, completely, finally, and forever release, relinquish, and

discharge Lead Plaintiff, plaintiffs in the other actions consolidated in the Consolidated Action, Lead Counsel and counsel for the plaintiffs in the other actions consolidated in the Consolidated Action from all claims, including Unknown Claims (defined in the Stipulation), arising out of or relating to the institution, prosecution, settlement, or resolution of the Consolidated Action (provided, however, that this release, relinquishment, and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement or Settlement Agreement or any claims or rights of any Defendant against its insurers or its insurers' successors or assignees).

11. Neither the Stipulation, nor the fact or any terms of the Settlement, or any negotiations or proceedings in connection therewith, is evidence, or a presumption, admission, or concession by Saba, any Defendant or any Party in the Consolidated Action, any signatory to the Stipulation, or any Released Party, of any fault, liability, or wrongdoing whatsoever, or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Consolidated Action, or any other actions or proceedings. Neither this Judgment, the Stipulation, nor the fact or any terms of the Settlement, or any negotiations or proceedings in connection therewith is a finding or evidence of the validity or invalidity of (i) any claims or defenses in the Consolidated Action or any other actions or proceedings, or any wrongdoing by Saba, any of the Defendants, or any other Released Party or (ii) any damages or injury to any Class Member. Neither this Judgment, the Stipulation, nor



the fact or any terms of the Stipulation, or any negotiations or proceedings in connection therewith, nor any of the documents or statements referred to in the Stipulation, 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 of the Released Parties, or of any infirmity of any defense, or of any damage to any plaintiff or Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted in the Consolidated Action, or of any purported liability, fault, or wrongdoing of the Released Parties or of 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; provided, however, that (x) the Stipulation and/or this Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue that the Stipulation and/or this Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or this Judgment, and (y) plaintiffs and plaintiffs' counsel may refer to the final,

executed version only of the Stipulation in connection with the Fee Application and the Incentive Award.

12. Plaintiffs' counsel are awarded attorneys' fees in the amount of \$ 4,432,942.86, and \$ 226,335.37 for reimbursement of expenses ("Fee and Expense Award"), which the Court finds to be fair and reasonable. Any Fee and Expense Award shall be paid solely from the Settlement Amount in accordance with the terms of the Stipulation. No counsel representing any plaintiff in the Consolidated Action shall make any further or additional application for fees and expenses to the Court or any other court, nor shall counsel for any other Settlement Class Member make any further or additional application for fees and expenses pursuant to the Settlement. Lead Counsel shall allocate the attorneys' fees awarded among plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to achieving the benefits of the proposed Settlement.

13. Lead Plaintiff Gary Poltash is awarded an Incentive Award of \$ 1,000,000 (the "Incentive Award"), which the Court finds to be fair and reasonable. The Incentive Award shall be paid solely from the Settlement Amount in accordance with the terms of the Stipulation.

14. No proceedings or Court order with respect to Fee and Expense Award shall in any way disturb or affect this Judgment (including precluding the Judgment from being Final or otherwise being entitled to preclusive effect), and any such

proceedings or Court order shall be considered separate from this Judgment. Nothing herein dismisses or releases any claim by or against any party to the Stipulation arising out of a breach of the Stipulation or violation of this Judgment.

15. Without further order of this Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Stipulation.

16. If the Effective Date does not occur or if Defendants withdraw from the Settlement pursuant to Paragraph 19 of the Stipulation, this Judgment shall be rendered null and void and shall be vacated and, in such event, all orders entered in connection herewith (except for Paragraph 11 hereof and Paragraphs 19, 20, 26 of the Stipulation, which shall survive any such termination or vacatur) shall be null and void, and the Parties shall be returned, without prejudice in any way, to their respective litigation positions immediately prior to the execution of the Stipulation.

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



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Vice Chancellor Joseph R. Slights III