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12 Co-Lead Counsel for Plaintiffs

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

17	In re FINISAR CORP. DERIVATIVE)	Master File No. C-06-07660-RMW-HRL
	LITIGATION)	
18	_____)	[CORRECTED] ORDER PRELIMINARILY
19	This Document Relates To:)	APPROVING DERIVATIVE SETTLEMENT
)	AND PROVIDING FOR NOTICE
20	ALL ACTIONS.)	
21	_____)	

1 WHEREAS, Plaintiffs having moved, pursuant to Federal Rule of Civil Procedure 23.1, for
2 an order (i) preliminarily approving the proposed derivative settlement of the Federal Action (the
3 “Settlement”), in accordance with a Stipulation of Settlement, dated June 24, 2013 (the
4 “Stipulation”), which, together with the Exhibits annexed thereto, set forth the terms and conditions
5 for a proposed Settlement and dismissal of the Federal Action with prejudice, upon the terms and
6 conditions set forth therein; and (ii) approving for distribution of the Notice of Proposed Derivative
7 Settlement (the “Notice”); and

8 WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth
9 in the Stipulation (in addition to those capitalized terms defined herein); and

10 WHEREAS, this Court, having considered the Stipulation and the Exhibits annexed thereto
11 and having heard the arguments of the Settling Parties at the preliminary approval hearing:

12 NOW THEREFORE, IT IS HEREBY ORDERED:

13 1. This Court does hereby preliminarily approve, subject to further consideration at the
14 Settlement Hearing described below, the Stipulation and the Settlement set forth therein, including
15 the terms and conditions for settlement and dismissal with prejudice of the Federal Action.

16 2. A hearing (the “Settlement Hearing”) shall be held before this Court on October 18,
17 2013, at 9:00 a.m., 2112 Robert F. Peckham Federal Building and United States Courthouse, 280
18 South First Street, San Jose, California, to determine whether the Settlement of the Federal Action
19 on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to Finisar
20 Corporation (“Finisar”) and its stockholders and should be approved by the Court; whether a
21 Judgment as provided in ¶1.11 of the Stipulation should be entered herein; and whether to award
22 attorneys’ fees and expenses to Plaintiffs’ Counsel.

23 3. The Court approves, as to form and content, the Notice of Proposed Derivative
24 Settlement annexed as Exhibit A-1 (the “Long-Form Notice”) hereto and the Short Form Notice of
25 Proposed Derivative Settlement annexed as Exhibit A-2 (the “Summary Notice”), and finds that the
26 publication of the Long-Form Notice, Summary Notice and Stipulation substantially in the manner
27 and form set forth in this Order, meets the requirements of Federal Rule of Civil Procedure 23.1 and
28

1 due process, and is the best notice practicable under the circumstances and shall constitute due and
2 sufficient notice to all Persons entitled thereto.

3 4. Not later than five (5) business days following entry of this Order, Finisar shall: (a)
4 cause a copy of the Summary Notice, substantially in the form annexed as Exhibit A-2 hereto, to be
5 published one time in the national edition of *Investor's Business Daily*, (b) cause a copy of the Long-
6 Form Notice, substantially in the form annexed as Exhibit A-1 hereto, and the Stipulation to be filed
7 with the U.S. Securities and Exchange Commission ("SEC") on an SEC Form 8-K or other
8 appropriate filing, and (c) publish the Stipulation and Long-Form Notice on an Internet page created
9 by Finisar that will be accessible via Finisar's website, the address of which shall be contained in the
10 Long-Form Notice and Summary Notice.

11 5. Not later than twenty-one (21) days after Finisar has complied with ¶4, Finisar's
12 counsel shall serve on Plaintiffs' Counsel and file with the Court proof, by affidavit or declaration,
13 of such publication.

14 6. All Finisar stockholders shall be bound by all orders, determinations and judgments
15 in the Federal Action concerning the Settlement, whether favorable or unfavorable to Finisar's
16 stockholders.

17 7. Pending the Effective Date, all proceedings and discovery in the Federal Action shall
18 be stayed except as otherwise provided for in the Stipulation, and no party to the Federal Action or
19 any Finisar stockholders shall file or prosecute any action or proceeding in any court or tribunal
20 relating to the Settlement or asserting any of the Released Claims against the Released Persons.

21 8. All papers in support of the Settlement and the separately negotiated attorneys' fees
22 and expenses shall be filed with the Court and served at least thirty-five (35) calendar days before
23 the Settlement Hearing and any reply briefs shall be filed with the Court at least seven (7) calendar
24 days before the Settlement Hearing.

25 9. Any current Finisar stockholder may appear and show cause, if he, she or it has any
26 reason why the terms of the Settlement of the Federal Action should not be approved as fair,
27 reasonable and adequate, or why the District Court Approval Order and Judgment should not be
28 entered thereon, provided, however, unless otherwise ordered by the Court, no current Finisar

1 stockholder shall be heard or entitled to contest the approval of all or any of the terms and conditions
2 of the Settlement, or, if approved, the District Court Approval Order and the Judgment to be entered
3 thereon approving the same, unless that Person has, at least twenty-one (21) calendar days before the
4 Settlement Hearing, filed with the Clerk of the Court and served on the following counsel (delivered
5 by hand or sent by first class mail) appropriate proof of stock ownership, along with written
6 objections, including the basis therefore, and copies of any papers and briefs in support thereof:

7 ***Counsel for Federal Plaintiffs***

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11 ***Counsel for Nominal Party Finisar and Defendants David Fries, Harold
Hughes and Gregory Olsen***

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15 ***Counsel for Defendants Stephen K. Workman, David Buse, John Drury,
Mark Farley, Jan Lipson, Joseph Young, Fariba Danesh and Dallas W.
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17 Sarah A. Good
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20 22nd Floor
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21 ***Counsel for Defendants Michael C. Child, Roger C. Ferguson, Frank H.
Levinson, Robert N. Stephens and Dominique Trempont***

22 Lloyd Winawer
23 GOODWIN PROCTER LLP
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24 Menlo Park, CA 94025

25 ***Counsel for Defendant Jerry S. Rawls***

26 Jared L. Kopel
LAW OFFICES OF JARED L. KOPEL
27 303 Almaden Blvd., Suite 520
San Jose, CA 95110

1 The written objections and copies of any papers and briefs in support thereof to be filed in Court
2 shall be delivered by hand or sent by first class mail to:

3 Clerk of the Court
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 2112 Robert F. Peckham Federal Building
and United States Courthouse
280 South First Street
San Jose, CA 95113

7 Any current Finisar stockholder who does not make an objection in the manner provided herein shall
8 be deemed to have waived such objection and shall forever be foreclosed from making any objection
9 to the fairness, reasonableness or adequacy of the Settlement as incorporated in the Stipulation and
10 to the award of attorneys' fees and expenses to Plaintiffs' Counsel, unless otherwise ordered by the
11 Court, but shall otherwise be bound by the District Court Approval Order and the Judgment to be
12 entered and the releases to be given.

13 10. Neither the Stipulation nor the Settlement, including the Exhibits attached thereto, nor
14 any act performed or document executed pursuant to or in furtherance of the Stipulation or the
15 Settlement: (a) is or may be deemed to be or may be offered, attempted to be offered or used in any
16 way as a concession, admission, or evidence of the validity of any Released Claims or any fault,
17 wrongdoing or liability of the Released Persons or Finisar; or (b) is or may be deemed to be or may
18 be used as a presumption, admission, or evidence of any liability, fault or omission of any of the
19 Released Persons or Finisar in any civil, criminal or administrative or other proceeding in any court,
20 administrative agency, tribunal or other forum. Neither the Stipulation nor the Settlement, nor any
21 act performed or document executed pursuant to or in furtherance of the Stipulation or the
22 Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the
23 Settlement, and except that the Released Persons may file or use the Stipulation, the District Court
24 Approval Order and/or the Judgment in any action that may be brought against them in order to
25 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith
26 and credit, release, standing, judgment bar or reduction or any other theory of claim preclusion or
27 issue preclusion or similar defense or counterclaim.

28

1 11. The Court reserves the right to adjourn the date of the Settlement Hearing or modify
2 any other dates set forth herein without further notice to Finisar stockholders, and retains jurisdiction
3 to consider all further applications arising out of or connected with the Settlement. The Court may
4 approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if
5 appropriate, without further notice to Finisar stockholders.

6 IT IS SO ORDERED.

7 DATED: 8/15/2013


THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE

8
9 Submitted by,

10 ROBBINS GELLER RUDMAN
11 & DOWD LLP
12 SHAWN A. WILLIAMS
13 CHRISTOPHER M. WOOD

14 s/Shawn A. Williams
15 SHAWN A. WILLIAMS

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