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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CHRISTOPHER STANLEY, Individually
and On Behalf of All Others Similarly
Situating,

Plaintiff,

vs.

ELECTRO SCIENTIFIC INDUSTRIES,
INC., RICHARD H. WILLS, MICHAEL D.
BURGER, FREDERICK A. BALL, LYNNE
J. CAMP, LAURENCE E. CRAMER, and
RAYMOND A. LINK,

Defendants.

No. 18cv55437

**DECLARATION OF BRIAN D.
LONG IN SUPPORT OF
UNOPPOSED MOTION TO
DISMISS**

I, Brian D. Long, declare as follows:

1. I am a member of the law firm of RIGRODSKY & LONG, P.A., a member in good standing of the Bar of the State of Delaware and the Bar of the State of Pennsylvania, and represent plaintiff Christopher Stanley ("Plaintiff") in the above-captioned action (the "Action").
2. I respectfully submit this Affidavit in support of the Unopposed Motion to Dismiss filed on this date, which requests dismissal of the Action with prejudice as to the Plaintiff's individual claims, and without prejudice as to the claims of the putative class.
3. On December 5, 2018, Plaintiff commenced the Action in this Court by filing a Class Action Complaint (the "Complaint") against defendants Richard H. Wills, Michael D. Burger, Frederick A. Ball, Lynne J. Camp, Laurence E. Cramer, and Raymond A. Link (collectively, the "Board" or the "Individual Defendants"), and Electro Scientific Industries, Inc. ("ESI") (together with the Individual Defendants, "Defendants," and collectively with

1 the Plaintiff, the “Parties”). The Complaint alleged, among other things, that the Individual
2 Defendants breached their fiduciary duties to ESI’s stockholders in connection with the
3 acquisition of ESI by MKS Instruments, Inc. (“MKS”) (the “Transaction”) and ESI, MSK
4 and EAS Equipment, Inc. (“Merger Sub”) aided and abetted the alleged breaches of fiduciary
5 duty.

6 4. Five related class action complaints were also filed against Defendants: *Mager*
7 *v. Electro Scientific Industries, Inc., et al.*, No. 18-cv-2132 (D. Or.); *Kent v. Electro Scientific*
8 *Industries, Inc., et al.*, No. 118CV55436 (Or. Cir. Ct. Multnomah Cnty.); *Colmenares v.*
9 *Electro Scientific Industries, Inc., et al.*, No. 118CV56856 (Or. Cir. Ct. Multnomah Cnty.);
10 *Klein v. Electro Scientific Industries, Inc., et al.*, No. 18-cv-02099 (D. Or.); and *Morris v.*
11 *Electro Scientific Industries, Inc., et al.*, No. 18-cv-02064 (D. Or.) (collectively, the “Related
12 Actions,” and together with the Action, the “Actions”).

13 5. On January 2, 2019, ESI caused a Form DEFA14A to be filed with the
14 Securities and Exchange Commission (“SEC”) with additional disclosures that amended and
15 supplemented ESI’s Definitive Proxy Statement on Schedule 14A (the “Supplemental
16 Disclosures”), which addressed Plaintiff’s disclosure claims, and provided a substantial
17 benefit to ESI stockholders.

18 6. On January 10, 2019, ESI’s stockholders voted to approve the Transaction,
19 and the Transaction closed on February 1, 2019.

20 7. Based on the Supplemental Disclosures and proceedings to date, Plaintiff has
21 determined that the claims asserted in this Action have been mooted and to warrant
22 dismissal, and as such, Plaintiff requests that the Court approve his dismissal of the Action
23 with prejudice as to his individual claims and without prejudice as to the claims of the
24 putative class pursuant to ORCP 32 D (“Proposed Dismissal”).

25 8. Plaintiff is not receiving any consideration at all in exchange for the dismissal
26 of this matter.

1 9. Plaintiffs in the Related Actions have similarly asserted their claims have been
2 mooted. Following the issuance of the Supplemental Disclosures, the Parties entered into
3 arms' length negotiations concerning plaintiffs' counsel's claim for fees and expenses in
4 connection with the claimed substantial benefit provided to ESI stockholders. As a result of
5 those negotiations, Defendants have agreed to pay a combined \$237,500 for all plaintiffs'
6 counsel in the Actions to resolve their claim for fees and expenses, of which plaintiffs'
7 counsel in each of the Actions will receive \$47,500 from Defendants.

8 10. On March 11, 2019, plaintiffs in the *Mager, Klein* and *Morris* Actions each
9 filed Notices of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i); plaintiffs in
10 the *Kent* and *Colmenares* Actions have filed motions to dismiss substantially similar to the
11 instant motion.

12 11. As no class has been certified in the Action, I hereby submit Plaintiff's pre-
13 certification Proposed Dismissal is appropriate.

14 12. In this regard, the December 5, 2018 filing of the Action appears to have
15 garnered little media attention, making it unlikely that absent class members knew of and
16 relied on the Action to their detriment.

17 13. In addition, absent class members will not be time barred from bringing suit
18 against Defendants, as the two-year statute of limitations applicable to breach of fiduciary
19 duty cases, triggered here by the announcement of the Transaction on October 20, 2018, has
20 barely begun to run.

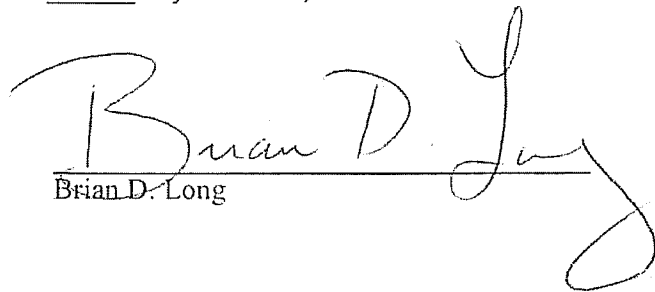
21 14. Further, there has been no concession of class interests made by the class
22 representative or counsel of any sort, and certainly none made in furtherance of Plaintiff or
23 my firm's interest to the detriment of absent class members, in particular because Plaintiff (i)
24 prosecuted the Action during the time-sensitive injunctive phase of the litigation prior to the
25 stockholder vote on the Transaction, (ii) secured valuable benefits for absent class members
26 by causing the issuance of the Supplemental Disclosures, benefits which do not require that

1 absent class members sacrifice any rights or release any claims, and (iii) is seeking to dismiss
2 only his individual claims with prejudice while seeking to dismiss claims on behalf of the
3 putative class of ESI stockholders *without* prejudice.

4 15. In light of the brief pendency of the Action, lack of attendant publicity
5 garnered by commencement of the Action, and the release of only the named Plaintiff's
6 individual claims, absent class members of ESI stockholders have not likely relied to their
7 detriment on the existence of the Action and have nearly a full statute of limitations period in
8 which to pursue their own cases if they believe viable claims still exist, and thus I hereby
9 submit Plaintiff does not believe the issuance of notice to absent class members concerning
10 the voluntary dismissal of the Action is required. If the Court finds Plaintiff's dismissal of
11 the Action requires notice to absent class members, Plaintiff is prepared to issue a press
12 release (or whatever form of publication notice that the Court deems acceptable) announcing
13 notice of Plaintiff's dismissal of the Action.

14 I declare under penalty of perjury under the laws of the State of Delaware that the
15 foregoing is true and correct. Executed this 18TH day of March, 2019.

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Brian D. Long