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

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

Plaintiff,

vs.

ELECTRO SCIENTIFIC INDUSTRIES,
INC., R WILLS, M
BURGER, BALL, L
J. CAMP, CRAMER, and
R LINK,

Defendants.

No.

**UNOPPOSED MOTION TO
DISMISS**

ORCP 32 D

Plaintiff C Stanley (“Plaintiff” respectfully submits the following
Unopposed Motion to Dismiss the above-captioned action (the “Action”) with prejudice as to
his individual claims and without prejudice as to the claims of the putative class pursuant to
Oregon Rule of Civil Procedure (“ORCP”) 32 D.

Plaintiff has conferred with counsel for all defendants by email and telephone.
Defendants do not oppose this motion.

In support of this Motion, Plaintiff shows the Court as follows:

1. On December 5, 2018, Plaintiff commenced the Action in this Court by filing
a Class Action Complaint (the “Complaint”) against defendants R Wills, M
Burger, F Ball, L Camp, L Cramer, and R 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”).¹ 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 2. On January 2, 2019, ESI caused a Form DEFA14A to be filed with the
7 Securities and Exchange Commission (“SEC”) with additional disclosures that amended and
8 supplemented ESI’s Definitive Proxy Statement on Schedule 14A (the “Supplemental
9 Disclosures”), which addressed Plaintiff’s disclosure claims, and provided a substantial
10 benefit to ESI stockholders.

11 3. On January 10, 2019, ESI’s stockholders voted to approve the Transaction,
12 and the Transaction closed on February 1, 2019.

13 4. Based on the Supplemental Disclosures and proceedings to date, Plaintiff has
14 determined that the claims asserted in this Action have been mooted² and to warrant
15 dismissal, and as such, Plaintiff requests that the Court approve his dismissal of the Action
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18 ¹ Five related class action complaints were also filed against Defendants: *Mager v. Electro*
19 *Scientific Industries, Inc., et al.*, No. 18-cv-2132 (D. Or.); *Kent v. Electro Scientific*
20 *Industries, Inc., et al.*, No. 18CV55436 (Or. Cir. Ct. Multnomah Cnty.); *Colmenares v.*
21 *Electro Scientific Industries, Inc., et al.*, No. 18CV56856 (Or. Cir. Ct. Multnomah Cnty.);
22 *Klein v. Electro Scientific Industries, Inc., et al.*, No. 18-cv-02099 (D. Or.); and *Morris v.*
23 *Electro Scientific Industries, Inc., et al.*, No. 18-cv-02064 (D. Or.) (collectively, the “Related
24 Actions,” and together with the Action, the “Actions”). On March 11, 2019, Plaintiffs in the
25 *Mager*, *Klein* and *Morris* Actions each filed Notices of Voluntary Dismissal pursuant to Fed.
26 R. Civ. P. 41(a)(1)(A)(i). Plaintiffs in the *Kent* and *Colmenares* Actions have filed motions
to dismiss substantially similar to the instant motion.

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

1 with prejudice as to his individual claims and without prejudice as to the claims of the
2 putative class pursuant to ORCP 32 D (“Proposed Dismissal”).

3 5. As no class has been certified in the Action, Plaintiff submits his pre-
4 certification Proposed Dismissal is appropriate.

5 6. In this regard, the December 13, 2018 filing of the Action appears to have
6 garnered little media attention, making it unlikely that absent class members knew of and
7 relied on the Action to their detriment.

8 7. In addition, absent class members will not be time barred from bringing suit
9 against Defendants, as the two year statute of limitations applicable to breach of fiduciary
10 duty cases, triggered here by the announcement of the Transaction on October 20, 2018, has
11 barely begun to run and absent class members will have until at least October 20, 2020 to file
12 and prosecute their own case if they believe there is a basis to do so.

13 8. Further, there has been no concession of class interests made by the class
14 representative or counsel of any sort, and certainly none made in furtherance of Plaintiff or
15 his counsel’s interest to the detriment of absent class members, in particular because Plaintiff
16 (i) prosecuted the Action during the time-sensitive injunctive phase of the litigation prior to
17 the stockholder vote on the Transaction, (ii) secured valuable benefits for absent class
18 members by causing the issuance of the Supplemental Disclosures, benefits which do not
19 require that absent class members sacrifice any rights or release any claims and which leave
20 absent class members adequate time to file their own case and pursue their own post-close
21 damages claims if they believe such claims exist, and (iii) is seeking to dismiss only his
22 individual claims with prejudice while seeking to dismiss claims on behalf of the putative
23 class of ESI stockholders *without* prejudice.

24 9. In light of the brief pendency of the Action, lack of attendant publicity
25 garnered by commencement of the Action, and the release of only the named Plaintiff’s
26 individual claims, absent class members of ESI stockholders have not likely relied to their

1 detriment on the existence of the Action and have nearly a full statute of limitations period in
2 which to pursue their own cases, and thus Plaintiff does not believe the issuance of notice to
3 absent class members concerning the voluntary dismissal of the Action is required. If the
4 Court finds Plaintiff's dismissal of the Action requires notice to absent class members,
5 Plaintiff is prepared to issue a press release (or whatever form of publication notice that the
6 Court deems acceptable) announcing notice of Plaintiff's dismissal of the Action.

7 10. Plaintiff respectfully requests that the Court approve his dismissal of the
8 Action with prejudice as to his individual claims and without prejudice as to the claims of the
9 putative class, and enter an Order in the form of the proposed Order filed contemporaneously
10 with this Motion.

11 Respectfully submitted this 18th day of March, 2019.

12 MARKOWITZ HERBOLD, PC

13 */s/ Dallas DeLuca*

14 By: _____
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17 Attorneys for Plaintiff

18 TRIAL ATTORNEY: DALLAS DELUCA

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