

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

In Re CytRx Corporation Securities Litigation

Case No.: 2:16-CV-05519-SJO-SK

NICHOLAS CRIHFIELD, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

Honorable S. James Otero

v.

CYTRX CORPORATION, STEVEN A. KRIEGSMAN,  
and JOHN Y. CALOZ,

Defendants.

**NOTICE OF (I) PENDENCY OF CLASS ACTION, CERTIFICATION OF SETTLEMENT CLASS, AND PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES; AND (IV) PLAN OF ALLOCATION**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned securities class action lawsuit (the “Action”) pending in the United States District Court for the Central District of California (the “Court”), if, during the period between September 12, 2014 and July 11, 2016, inclusive (the “Settlement Class Period”), you purchased or otherwise acquired the common stock of CytRx Corporation (“CytRx Common Stock”) or exchange-traded call options on CytRx Common Stock (“CytRx Call Options”), or sold exchange-traded put options on CytRx Common Stock (“CytRx Put Options”), and were damaged thereby (the “Settlement Class”).<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiff, Gregory Callender (“Lead Plaintiff”), on behalf of himself and the Settlement Class (as defined in ¶ 26 below), has reached a proposed settlement of the Action for \$5,750,000 in cash that, if approved, will resolve all claims in the Action (the “Settlement”).

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected regardless whether or not you act.**

**If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact CytRx Corporation, any other Defendants in the Action, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 94 below).**

1. **Description of the Action and the Settlement Class:** This Notice relates to the proposed Settlement of claims in a pending securities class action lawsuit brought by investors alleging, among other things, that defendants CytRx Corporation (“CytRx”), Steven A. Kriegsman (“Kriegsman”), and John Y. Caloz (“Caloz”) (collectively, “Defendants”)<sup>2</sup> violated the federal securities laws by making false and misleading statements regarding CytRx. A more detailed description of the Action is set forth in paragraphs 13-25 below. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class, as defined in paragraph 35 below.

2. **Statement of the Settlement Class’s Recovery:** Subject to Court approval, Lead Plaintiff, on behalf of himself and the Settlement Class, has agreed to settle the Action in exchange for a settlement payment of \$5,750,000 in cash (the “Settlement Amount”) to be deposited into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (the “Settlement Fund”) less (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court, and (d) any attorneys’ fees awarded by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Settlement Class. The proposed plan of allocation (the “Plan of Allocation”) is set forth on pages 8-12 below. The proposed Plan of Allocation may be modified by the Court without further notice.

3. **Estimate of Average Amount of Recovery Per Share or Option:** Lead Plaintiff’s damages expert estimates that approximately 45.1 million shares of CytRx Common Stock and 57,600 CytRx Call Options<sup>3</sup> purchased or acquired during the

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated May 4, 2018 (the “Stipulation”), which is available at [www.CytrxSecuritiesSettlement.com](http://www.CytrxSecuritiesSettlement.com).

<sup>2</sup> Defendants Kriegsman and Caloz are collectively referred to herein as the “Individual Defendants.”

<sup>3</sup> All options-related amounts in this paragraph represent 100 shares of the underlying security.

Settlement Class, and 20,700 CytRx Put Options sold during the Settlement Class Period, may have been affected by the alleged conduct at issue in the Action. If all eligible Settlement Class Members elect to participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses and costs as described herein) would be approximately \$0.127 per affected share of CytRx Common Stock, \$0.074 per affected CytRx Call Option, and \$0.072 per affected CytRx Put Option. Settlement Class Members should note, however, that these are only estimates based on the overall number of potentially affected shares and options. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and at what prices they purchased/acquired shares of CytRx Common Stock and/or CytRx Call Options and/or sold CytRx Put Options, and the total number of valid Claim Forms submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth herein (see pages 8-12 below) or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Share or Option:** Lead Plaintiff and Defendants (collectively, the “Parties”) do not agree on the amount of recoverable damages or on the average amount of damages per share or option that would be recoverable if Lead Plaintiff was to prevail in the Action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Settlement Class as a result of their conduct.

5. **Attorneys’ Fees and Expenses Sought:** Plaintiffs’ Counsel, which have been prosecuting the Action on a wholly contingent basis since its inception in 2016, have not received any payment of attorneys’ fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel, Glancy Prongay & Murray LLP, will apply to the Court for an award of attorneys’ fees for all Plaintiffs’ Counsel in an amount not to exceed 33.33% of the Settlement Fund. In addition, Lead Counsel will apply for reimbursement of litigation expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against the Defendants, in an amount not to exceed \$150,000, and will apply for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to his representation of the Settlement Class in an amount not to exceed \$20,000. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. Estimates of the average cost per eligible security, if the Court approves Lead Counsel’s fee and expense application, is \$0.046 per share of CytRx Common Stock, \$0.024 per CytRx Call Option, and \$0.024 per CytRx Put Option.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN NOVEMBER 16, 2018.</b>	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court, and you will give up any Released Plaintiffs’ Claims (defined in ¶ 35 below) that you have against Defendants and each and all of the Released Defendants (defined in ¶ 36 below) so, if you remain in the Settlement Class, it is in your interest to submit a Claim Form.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN AUGUST 27, 2018.</b>	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that <i>potentially</i> allows you to ever bring or maintain your own lawsuit against the Defendants, or be part of any other lawsuit, concerning the Released Plaintiffs’ Claims.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN AUGUST 27, 2018.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys’ fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
<b>GO TO A HEARING ON SEPTEMBER 17, 2018 AT 10:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN AUGUST 27, 2018.</b>	Filing a written objection and notice of intention to appear by August 27, 2018 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
<b>DO NOTHING.</b>	If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

6. **Identification of Attorneys' Representatives:** Lead Plaintiff and the Settlement Class are represented by Kara Wolke, Esq. of Glancy Prongay & Murray LLP, 1925 Century Park East, Suite 2100, Los Angeles, CA 90067, 888-773-9224, [info@glancylaw.com](mailto:info@glancylaw.com).

7. **Reasons for the Settlement:** Lead Plaintiff's principal reason for entering into the Settlement is the substantial immediate cash benefit for the Settlement Class without the risk or the delays inherent in further litigation. Moreover, the substantial cash benefit provided under the Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved after contested motions, a trial of the Action and the likely appeals that would follow a trial. This process could be expected to last several years. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation.

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#### WHY DID I GET THE POSTCARD NOTICE?

8. The Court directed that the Postcard Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired CytRx Common Stock or call options on CytRx Common Stock ("CytRx Call Options"), or sold put options on CytRx Common Stock ("CytRx Put Options") during the Settlement Class Period. The Court also directed that this Notice be posted online at [www.CytRxSecuritiesSettlement.com](http://www.CytRxSecuritiesSettlement.com) and mailed to you upon request to the Claims Administrator. The Court has directed us to disseminate these notices because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights. If the Court approves the Settlement, and the Plan of Allocation (or some other plan of allocation), the claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. In a class action lawsuit, the Court authorizes one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. In this Action, the Court has appointed Gregory Callender to serve as "Lead Plaintiff" under a federal law governing lawsuits such as this one, and has appointed the law firm Glancy Prongay & Murray LLP as Lead Counsel in the Action. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, the Court must resolve all issues on behalf of the class members, except for any persons who choose to exclude themselves from the class. For more information on excluding yourself from the Class, please read "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?," on page 12 below.

10. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Hearing").

11. The Settlement Hearing will be held on September 17, 2018 at 10:00 a.m. before the Honorable S. James Otero, at the United States District Court for the Central District of California, United States Courthouse, 350 W. 1st Street, 6th Floor, Courtroom 6D, Los Angeles, California 90012, to determine:

- a) whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;

b) whether the Released Plaintiffs' Claims against the Defendants and each and all of the Released Defendants should be dismissed with prejudice as set forth in the Stipulation; and

c) whether Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses should be approved by the Court.

If the Settlement is approved, it will resolve all claims in the Action by Settlement Class Members against Defendants and will bring the Action to an end.

12. This Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

## WHAT IS THIS CASE ABOUT?

13. On July 25, 2016, a putative class action was filed in the United States District Court for the Central District of California (the "Court") alleging violations of federal securities laws between November 18, 2014 and July 11, 2016, inclusive.<sup>4</sup> The Court has appointed the law firm of Glancy Prongay & Murray LLP as Lead Counsel. Gregory Callender is the Court-appointed Lead Plaintiff.

14. On January 13, 2017, Lead Plaintiff filed and served his First Amended Class Action Complaint asserting putative class action claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act; and on January 25, 2017, Lead Plaintiff filed and served his corrected First Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws (the "FAC"). Among other things, the FAC alleged that Defendants made materially false and misleading statements and/or failed to disclose that CytRx's pivotal global Phase 3 clinical trial of aldoxorubicin (the "Phase 3 Trial") did not conform to the Special Protocol Assessment ("SPA") governing the trial, and that as a result, the study's results were at significant risk of not being statistically significant. The FAC further alleged that when the market learned of Defendants' alleged misrepresentations and omissions, the price of CytRx Common Stock fell, causing damage to purchasers of CytRx Common Stock during the Class Period.

15. On March 14, 2017, Defendants filed and served a motion to dismiss the FAC in which they argued, among other things, that the FAC failed to identify any misrepresentations or omissions of material facts or to adequately plead with particularity any facts giving rise to a strong inference of an intent to engage in wrongdoing. On April 28, 2017, Lead Plaintiff filed an opposition to the motion to dismiss, and on May 30, 2017, Defendants filed their reply in further support of the motion to dismiss. The Court granted Defendants' motion to dismiss on June 14, 2017, allowing Lead Plaintiff leave to amend.

16. On June 29, 2017, Lead Plaintiff filed and served his Second Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws (the "SAC"), which, like the FAC, asserted claims against all Defendants under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. The SAC alleged claims substantially similar to those alleged in the FAC, but added information addressing the reasons the Court dismissed the FAC, including, among other things, an expert declaration and references to a U.S. Food and Drug Administration ("FDA") document entitled "Special Protocol Assessment Guidance for Industry" (May 2002).

17. On July 14, 2017, Defendants filed and served their motion to dismiss the SAC, in which they continued to argue that Lead Plaintiff failed to identify any material misrepresentations or omissions of material fact or adequately plead with particularity any facts giving rise to a strong inference of an intent to engage in wrongdoing. On July 24, 2017, Lead Plaintiff filed and served his papers in opposition to the motion to dismiss, and on July 31, 2017, Defendants filed and served their reply papers. On August 14, 2017, the Court entered its Order that granted in part, and denied in part, Defendants' motion. On August 25, 2017, Defendants filed and served an answer to the SAC.

18. With the automatic discovery stay imposed by the Private Securities Litigation Reform Act of 1995 ("PSLRA") having been lifted following the Court's order denying, in part, the motion to dismiss the SAC, the Parties exchanged Initial Disclosures on September 22, 2017. Thereafter, the Parties negotiated a stipulated protective order and electronically-stored information ("ESI") protocol and commenced fact discovery, including by serving requests for the production of documents and interrogatories.

19. On November 17, 2017, Lead Plaintiff filed and served his motion for class certification. At the time the Parties reached an agreement to settle the Action, the motion for class certification was therefore pending, and Defendants had not yet had the opportunity to oppose the motion.

20. During the course of this Action, the Parties engaged the services of experienced third-party mediator, Michelle Yoshida, Esq. The Parties engaged in a full-day mediation session with Michelle Yoshida on January 30, 2018, which started at 9:00 a.m. and lasted until approximately 11:00 p.m. However, the session ended without an agreement being reached. Over the course of the next two days, the Parties continued to explore the possibility of a settlement, and on or about February 1, 2018, the Parties entered into an agreement in principle to settle the Action that was memorialized in a term sheet (the "Term Sheet").

21. The Term Sheet set forth, among other things, the Parties' agreement to settle and release all claims asserted against

<sup>4</sup> The Class Period was later amended to September 12, 2014 to July 11, 2016, inclusive.

Defendants in the Action in return for a payment of \$5.75 million (\$5,750,000) in cash, to be paid by or on behalf of Defendants.

22. While Lead Plaintiff had conducted an intensive investigation into the claims asserted based on publicly available information, and was actively engaged in seeking document discovery from Defendants, he had not yet had sufficient access to Defendants' non-public documents. Therefore, a condition of the agreement in principle to settle the Action was Defendants' agreement to provide documents that would allow Lead Plaintiff and Lead Counsel to confirm the propriety of the decision to settle on the agreed-to terms. A review of these materials has confirmed Lead Plaintiff's and Lead Counsel's belief that the Settlement is fair, reasonable and adequate.

23. Based on the investigation and mediation of the case and Lead Plaintiff's direct oversight of the prosecution of this matter and with the advice of his counsel, Lead Plaintiff has agreed to settle and release the claims raised in the Action pursuant to the terms and provisions of the Stipulation, after considering, among other things: (a) the substantial financial benefit that Lead Plaintiff and the other members of the Settlement Class will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

24. Defendants entered into the Stipulation solely to eliminate the uncertainty, burden and expense of further protracted litigation. Defendants deny that they have committed or intended to commit any wrongdoing or violations of law as alleged in any complaint in the Action, and maintain that their conduct was at all times proper and in compliance with applicable provisions of law; and Defendants further deny that they made any material misstatements or omissions, that they acted with the requisite state of mind, that any plaintiff has suffered any damages, or that any plaintiff was harmed by any conduct alleged in this action or that could have been alleged therein. Accordingly, the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants or Defendants' Releasees with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted. Similarly, the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit.

25. On June 20, 2018, the Court preliminarily approved the Settlement, authorized the Postcard Notice to be mailed to potential Settlement Class Members, this Notice to be posted online and mailed to potential Settlement Class Members upon request, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

#### **HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT? WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

26. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

all persons or entities who purchased or otherwise acquired CytRx Common Stock or exchange-traded CytRx Call Options, or sold exchange-traded CytRx Put Options, during the period September 12, 2014 to July 11, 2016, inclusive (the "Settlement Class Period") and were damaged thereby.

Excluded from the Settlement Class are CytRx, Steven A. Kriegsman, and John Y. Caloz, the Officers and directors of CytRx at all relevant times, members of their Immediate Families and their legal representatives, heirs, successors, or assigns and any entity in which the Defendants have or had a controlling interest. Also excluded from the Settlement Class are any persons or entities who or which exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. See "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself," on page 12 below.

**PLEASE NOTE: RECEIPT OF THE POSTCARD NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.**

**If you are a Settlement Class Member and you wish to be eligible to participate in the distribution of proceeds from the Settlement, you are required to submit the Proof of Claim and Release Form that is available online at [www.CytRxSecuritiesSettlement.com](http://www.CytRxSecuritiesSettlement.com) or which can be mailed to you upon request to the Claims Administrator and the required supporting documentation as set forth therein, postmarked no later than November 16, 2018.**

#### **WHAT ARE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENT?**

27. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the remaining Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. The Court's decision on the motion to dismiss the SAC left only one actionable alleged category of false and misleading statements – that Defendants misrepresented the Phase 3 Trial's compliance with the SPA governing the study. Moreover, as to the remaining category of false and misleading statements, Lead Plaintiff and Lead Counsel recognized that Defendants had numerous avenues of attack that could preclude a recovery as to that statement, including, among other things, that Defendants were blinded to the study's progress, and thus, did *not* act with the requisite scienter. Even if the hurdles to establishing liability were overcome, the amount of damages that could be attributed to the allegedly false statements would be hotly contested, in particular, because Defendants allegedly disclosed the SPA's requirements at the start of the Settlement Class Period. Lead Plaintiff would have to prevail at several stages – class certification,

motions for summary judgment, trial, and if he prevailed on those, on the appeals that were likely to follow. Thus, there were very significant risks attendant to the continued prosecution of the Action.

28. In light of these risks, the amount of the Settlement and the immediacy of recovery to the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, namely \$5,750,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no recovery, after summary judgment, trial and appeals, possibly years in the future.

29. Defendants deny the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by Defendants.

### WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

30. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of his claims against Defendants, neither Lead Plaintiff nor the other members of the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, either at summary judgment, at trial or on appeal, the Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all.

### HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED BY THE ACTION AND THE SETTLEMENT?

31. As a Settlement Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” on page 13 below.

32. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?,” on page 12 below.

33. If you are a Settlement Class Member and you wish to object to the Settlement, the Plan of Allocation, or Lead Counsel’s application for attorneys’ fees and reimbursement of Litigation Expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” on page 13 below.

34. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any judgments or orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged, to the fullest extent of the law, each and every Released Plaintiffs’ Claim (as defined in ¶ 35 below) against each and all of the Released Defendants (as defined in ¶ 36 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Released Defendants.

35. “Released Plaintiffs’ Claim(s)” means all claims, suits, actions, appeals, causes of action, damages (including, without limitation, compensatory, punitive, exemplary, rescissory, direct, consequential, or special damages, and restitution and disgorgement), demands, rights, debts, penalties, costs, expenses, fees, injunctive relief, attorneys’ fees, expert or consulting fees, prejudgment interest, indemnities, duties, liabilities, losses, or obligations of every nature and description whatsoever, whether known claims or Unknown Claims, whether or not concealed or hidden, fixed or contingent, direct or indirect, anticipated or unanticipated, whether legal, contractual, rescissory, statutory, or equitable in nature, whether arising under federal, state, common, or foreign law, that are based upon, arise from, or relate to: (a) the subject matter of, or any facts alleged in, the SAC and any other complaints filed in this Action; or (b) any facts that could have been alleged in the SAC or any other complaints filed in this Action and relate to the purchase or acquisition of CytRx Common Stock or CytRx Call Options, or sale of CytRx Put Options during the Settlement Class Period. Notwithstanding the foregoing, “Released Plaintiffs’ Claim(s)” does not include (i) any claims relating to the enforcement of the Settlement; (ii) claims asserted in the shareholder derivative action filed in the Delaware Court of Chancery, entitled *Zyontz v. Kriegsman et al.*, Case No. 2017-0738-JRS; and (iii) any claims of any person or entity who or which submits a timely and valid request for exclusion that is accepted by the Court.

36. “Released Defendant(s)” means any and all of the Defendants and each and all of the Defendants’ Releasees (as defined in ¶ 37 below).

37. “Defendants’ Releasee(s)” means, with respect to each Defendant, their Immediate Family members, heirs, executors, administrators, successors, and assigns, their present and former employees, officers, directors, parents, general partners, limited partners, attorneys, legal representatives, insurers, reinsurers, and agents of each of them, and any person or entity which is or was

affiliated with any Defendant or in which any Defendant has or had a controlling interest, and the present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, general partners, limited partners, employees, officers, directors, attorneys, assigns, legal representatives, insurers, reinsurers, and agents of each of them, in their capacity as such.

38. “Unknown Claims” means any of the Released Plaintiffs’ Claims which Lead Plaintiff and/or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any of the Released Defendants’ Claims which any Released Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its settlement with and release of the Releasees, or might have affected his, her, or its decision(s) with respect to this Settlement or decision not to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the other Settlement Class Members and each of the Defendants’ Releasees shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived the provisions, rights, and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Lead Plaintiff and Defendants shall expressly waive and each of the other Settlement Class Members and each of the Defendants’ Releasees shall be deemed to have, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any foreign country, or any principle of common law or foreign law, which is similar, comparable or equivalent in substance to California Civil Code § 1542. Lead Plaintiff, any other Settlement Class Member, Defendants and each of the Defendants’ Releasees may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the Released Claims, but the Parties stipulated and agreed that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the Defendants shall expressly waive and release, and each Settlement Class Member and Defendants’ Releasees, shall be deemed to have, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have, fully, finally, and forever expressly waived and released any and all Released Claims, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff and each of the Defendants acknowledge, and the Settlement Class Members and the Defendants’ Releasees shall be deemed by operation of law and the Judgment or the Alternate Judgment, if applicable, to have acknowledged, that the foregoing waiver and release was separately bargained for and a key element of the Settlement of which this waiver and release are a part.

39. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants’ Claim (as defined in ¶ 40 below) against Lead Plaintiff and the other Plaintiffs’ Releasees (as defined in ¶ 41 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants’ Claims against any of the Plaintiffs’ Releasees.

40. “Released Defendants’ Claim(s)” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or Settlement of the claims against Defendants, except for claims relating to the enforcement of the Stipulation. Released Defendants’ Claims also do not include any claims relating to the enforcement of the Settlement or any claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

41. “Plaintiffs’ Releasees” means Lead Plaintiff, his respective attorneys, and all other Settlement Class Members.

#### **HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?**

42. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than November 16, 2018**. A Claim Form is available on the website maintained by the Claims Administrator for the Settlement, [www.CytRxSecuritiesSettlement.com](http://www.CytRxSecuritiesSettlement.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 800-547-4406. Please retain all records of your ownership of and transactions in CytRx Common Stock, CytRx Call Options, and CytRx Put Options as they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

#### **HOW MUCH WILL MY PAYMENT BE?**

43. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

44. Pursuant to the Settlement, Defendants have agreed to pay or caused to be paid \$5.75 million (\$5,750,000) in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less (a) all federal, state and/or local Taxes on any income earned by the Settlement Fund and the reasonable costs

incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members; and (c) any attorneys' fees and Litigation Expenses awarded by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

45. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

46. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. Defendants, their respective counsel, and each and all of Released Defendants, shall not have any liability, obligation or responsibility whatsoever for the investment of the Settlement Fund, the administration of the Settlement, the disbursement of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim.

47. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

48. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form postmarked on or before November 16, 2018 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiffs' Claims (as defined in ¶ 35 above) against the Defendants and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs' Claims against any of the Defendants whether or not such Settlement Class Member submits a Claim Form.

49. Participants in and beneficiaries of a plan covered by ERISA ("ERISA Plan") should NOT include any information relating to their transactions in CytRx Common Stock, CytRx Call Options, and/or CytRx Put Options held through the ERISA Plan in any Claim Form that they may submit in this Action. They should include ONLY those shares or options that they purchased, acquired, or sold outside of the ERISA Plan. Claims based on any ERISA Plan's purchases or acquisitions of CytRx Common Stock or CytRx Call Options, and/or sales of CytRx Put Options during the Settlement Class Period may be made by the plan's trustees. To the extent any of the Defendants or any of the other persons or entities excluded from the Settlement Class are participants in the ERISA Plan, such persons or entities shall not receive, either directly or indirectly, any portion of the recovery that may be obtained from the Settlement by the ERISA Plan.

50. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member.

51. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim Form.

52. Only Settlement Class Members, *i.e.*, persons and entities who purchased or otherwise acquired CytRx Common Stock or CytRx Call Options, or sold CytRx Put Options, during the Settlement Class Period and were damaged as a result of such purchases, acquisitions, and/or sales will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. The only securities that are included in the Settlement are the eligible shares of CytRx Common Stock, CytRx Call Options, and CytRx Put Options.

### **PROPOSED PLAN OF ALLOCATION**

53. The objective of the Plan of Allocation is to equitably distribute the Settlement proceeds to those Settlement Class Members who suffered net economic losses as a proximate result of the alleged wrongdoing in the Action. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

54. In developing the Plan of Allocation, Lead Plaintiff consulted with his damages expert, who reviewed publicly available information regarding CytRx and performed statistical analyses of the price movements of CytRx Common Stock ("Common Stock") and of CytRx Put Options and CytRx Call Options (collectively "Options"; CytRx Common Stock and Options are collectively referred to as "CytRx Securities") and the price performance of relevant market and peer indices during the Settlement Class Period. The damages expert isolated the losses in CytRx Securities that allegedly resulted from the alleged violations of the federal securities laws in the Action, eliminating losses attributable to market factors, industry factors, or Company-specific factors unrelated to the alleged violations of law. The Plan of Allocation, however, is not a formal damage analysis.

55. In order to have recoverable damages, the corrective disclosure of the allegedly misrepresented information must be the cause of the decline in the price or value of the CytRx Securities. In this Action, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the period between September 12, 2014 and July 11, 2016, inclusive, which had the effect of artificially inflating the prices of CytRx Securities. Lead Plaintiff further alleges that corrective disclosures removed artificial inflation from the price of CytRx Securities on July 11, 2016. Lead Plaintiff's damages expert has determined that the alleged corrective information released to the market after the close of trading on July 11, 2016, had a statistically significant impact on the market prices



of CytRx Securities. Thus, in order for a Settlement Class Member to have a “Recognized Loss Amount” under the Plan of Allocation, with respect to Common Stock and Call Options, the stock or call options must have been purchased or acquired during the Settlement Class Period and held through July 11, 2016, and, with respect to Put Options, those options must have been sold (written) during the Settlement Class Period and not closed through July 11, 2016.

56. The Recognized Loss Amounts under the Plan of Allocation are based primarily on the difference in the amount of alleged artificial inflation (or deflation in the case of Put Options) of the respective prices of the CytRx Securities at the time of purchase or acquisition and at the time of sale. Accordingly, in order to have a Recognized Loss Amount under the Plan of Allocation, a Settlement Class Member who purchased or acquired CytRx Securities (or wrote Put Options) from September 12, 2014, through and including July 11, 2016, must have held those CytRx Securities through the alleged corrective disclosure on July 11, 2016.

### **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

57. For purposes of determining whether a Claimant has a Recognized Claim, purchases, acquisitions, and sales of like securities will first be matched on a First In/First Out basis as set forth in paragraph 63 below.

58. With respect to shares of CytRx Common Stock and Call and Put Options, a “Recognized Loss Amount” or a “Recognized Gain Amount” will be calculated as set forth below for each purchase or acquisition of CytRx Common Stock and Call Option contracts and each writing of CytRx Put Option contracts from September 12, 2014, through and including July 11, 2016, that is listed in the Claim Form and for which adequate documentation is provided.

59. **Common Stock Calculations:** For each share of CytRx Common Stock purchased or acquired from September 12, 2014, through and including the close of trading July 11, 2016:

- A. For shares sold between September 12, 2014 and July 11, 2016, the Recognized Loss Amount shall be zero.
- B. For shares sold between July 12, 2016 and October 7, 2016, the Recognized Loss Amount shall be the lesser of:
  1. \$1.52 per share; or
  2. the difference between the purchase price per share and the sales price per share; or
  3. the difference between the purchase price per share and the average closing price between July 12, 2016 and the date of sale, as found in Table A below.<sup>5</sup>
- C. For shares held at the end of trading on October 7, 2016, the Recognized Loss Amount shall be that number of shares multiplied by the lesser of:
  1. \$1.52 per share; or
  2. the difference between the purchase price per share and \$0.60.<sup>6</sup>

60. **Call and Put Option Calculations:** Exchange-traded options are traded in units called “contracts” which entitle the holder to buy (in the case of a call) or sell (in the case of a put) 100 shares of the underlying security, which in this case is CytRx Common Stock.

61. Each option contract specifies a strike price and an expiration date. Contracts with the same strike price, expiration date and option class symbol are referred to as a “series” and each series represents a different security that trades in the market and has its own market price (and thus artificial inflation or deflation). Under the Plan of Allocation, the dollar amount of artificial inflation per option for each series of CytRx Call Options and the dollar amount of artificial deflation per option for each series of CytRx Put Options has been calculated by Lead Plaintiff’s damages expert.

- A. The following CytRx Call Options are included in the Settlement:
  1. CytRx Call Options with expiration dates on or after July 12, 2016 purchased between September 12, 2014 and July 11, 2016, which were: (a) exercised at any time; (b) sold on or after July 12, 2016; or (c) held at expiration.
- B. Recognized Loss Amount of CytRx Call Options:

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<sup>5</sup> Pursuant to Section 21(D)(e)(2) of the Private Securities Litigation Reform Act of 1995, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff’s damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.”

<sup>6</sup> Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated.” The mean (average) closing price of CytRx Common Stock during the 90-day period beginning on July 12, 2016 and ending on October 7, 2016 was \$0.60 per share.

1. Shares of CytRx Common Stock acquired via the exercise of a CytRx Call Option shall be treated as a purchase on the date of exercise for the exercise price plus the cost per share of the CytRx Call Option, and any Recognized Loss arising from such transaction shall be computed as provided for purchases of CytRx Common Stock as set forth herein;
  2. For each CytRx Call Option purchased or otherwise acquired and subsequently sold, the difference between: (a) the amount paid per CytRx Call Option, and (b) the sale price received per CytRx Call Option. If the CytRx Call Option expired worthless while still owned by the Authorized Claimant, the sales price shall be deemed to be zero (\$0.00);
  3. No Recognized Claim shall be calculated based upon purchase or acquisition of any CytRx Call Option that had been previously sold or written.
- C. The following CytRx Put Options are included in the Settlement:
1. CytRx Put Options with expiration dates on or after July 12, 2016 sold or written between September 12, 2014 and July 11, 2016 that were: (a) exercised at any time; or (b) repurchased on or after July 12, 2016.
- D. Recognized Loss Amount of CytRx Put Options:
1. Shares of CytRx Common Stock acquired through the “put” of CytRx Common Stock via exercise of a CytRx Put Option shall be treated as if the sale of the CytRx Put Option were a purchase of CytRx Common Stock on the date of the sale or writing of the CytRx Put Option, for the exercise price of the CytRx Put Option less the proceeds per share received from the sale of the CytRx Put Option, and any Recognized Loss Amount arising from such transaction shall be computed as provided for purchases of CytRx Common Stock as set forth herein;
  2. For each CytRx Put Option sold/written and subsequently repurchased, the difference between: (a) the purchase price paid per CytRx Put Option, and (b) the amount received per CytRx Put Option. For CytRx Put Options sold or written that expired worthless and unexercised, the Authorized Claimant’s Recognized Claim shall be zero (\$0.00);

No Recognized Claim shall be calculated based upon the sale or writing of any CytRx Put Option that had been previously purchased or acquired.

62. **Maximum Recovery for Options:** The Settlement proceeds available for CytRx Call Options purchased during the Settlement Class Period and CytRx Put Options sold (written) during the Settlement Class Period shall be limited to an amount equal to ten percent (10%) of the Net Settlement Fund.

#### **ADDITIONAL PROVISIONS**

63. **FIFO Matching:** If a Settlement Class Member made more than one purchase/acquisition or sale of any CytRx Security during the Settlement Class Period, all purchases/acquisitions and sales of the like security shall be matched on a First In, First Out (“FIFO”) basis. With respect to CytRx Common Stock and Call Options, Settlement Class Period sales will be matched first against any holdings at the beginning of the Settlement Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Settlement Class Period. For CytRx Put Options, Settlement Class Period purchases will be matched first to close out positions open at the beginning of the Settlement Class Period, and then against Put Options sold (written) during the Settlement Class Period in chronological order.

64. **“Purchase/Sale” Dates:** Purchases or acquisitions and sales of CytRx Securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance or operation of law of CytRx Securities during the Settlement Class Period shall not be deemed a purchase, acquisition or sale of these CytRx Securities for the calculation of a Claimant’s Recognized Loss or Gain Amounts, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such CytRx Securities unless: (i) the donor or decedent purchased or otherwise acquired such CytRx Securities during the Settlement Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such CytRx Securities.

65. **Short Sales:** With respect to CytRx Common Stock, the date of covering a “short sale” is deemed to be the date of purchase or acquisition of the Common Stock. The date of a “short sale” is deemed to be the date of sale of the CytRx Common Stock. In accordance with the Plan of Allocation, however, the Recognized Loss and Gain Amounts on “short sales” is zero.

66. In the event that a Claimant has an opening short position in CytRx Common Stock, the earliest purchases or acquisitions during the Settlement Class Period shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

67. If a Settlement Class Member has “written” Call Options, thereby having a short position in the Call Options, the date of covering such a written position is deemed to be the date of purchase or acquisition of the Call Option. The date on which the Call Option was written is deemed to be the date of sale of the Call Option. In accordance with the Plan of Allocation, however, the Recognized Loss and Gain Amounts on “written” Call Options is zero. In the event that a Claimant has an opening written position in

Call Options, the earliest purchases or acquisitions of like Call Options during the Settlement Class Period shall be matched against such opening written position, and not be entitled to a recovery, until that written position is fully covered.

68. If a Settlement Class Member has purchased or acquired Put Options, thereby having a long position in the Put Options, the date of purchase/acquisition is deemed to be the date of purchase/acquisition of the Put Option. The date on which the Put Option was sold, exercised, or expired is deemed to be the date of sale of the Put Option. In accordance with the Plan of Allocation, however, the Recognized Loss and Gain Amounts on purchased/acquired Put Options is zero. In the event that a Claimant has an opening long position in Put Options, the earliest sales or dispositions of like Put Options during the Settlement Class Period shall be matched against such opening position, and not be entitled to a recovery, until that long position is fully covered.

69. **Common Stock Acquired Through the Exercise of Options:** With respect to CytRx Common Stock purchased through the exercise of a CytRx Call Option, the purchase date of the Common Stock is the exercise date of the option and the purchase price is the exercise price of the option, plus the cost per share of the CytRx Call Option. With respect to CytRx Common Stock purchased through the exercise of a CytRx Put Option, the purchase date of the Common Stock is the sales date of the option and the purchase price is the exercise price of the option, less the proceeds per share received from the sale of the CytRx Put Option.

70. **Netting Gains and Losses:** Gains and losses in CytRx Securities trades will be netted for purposes of calculating whether a Claimant had an overall gain or loss on his, her or its transactions. The netting will occur both with respect to the Claimant's calculated Recognized Gain and Loss Amounts as set forth in ¶¶ 57-61 above, as well as with respect to the Claimant's gains or losses based on his, her or its market transactions.

a) **Netting of Calculated Gains and Loss Amounts:** The Claimant's Recognized Loss Amounts for Common Stock and Options will be totaled (the "Total Loss Amount") and the Claimant's Recognized Gain Amounts for Common Stock and Options will be totaled (the "Total Gain Amount"). If the Claimant's Total Loss Amount *minus* the Claimant's Total Gain Amount is a positive number, that will be the Claimant's Net Recognized Loss Amount; if the number is a negative number or zero, that will be the Claimant's Net Recognized Gain Amount.

b) **Netting of Market Gains and Losses:** With respect to all CytRx Common Stock and Call Options purchased or acquired or Put Options sold during the Settlement Class Period, the Claims Administrator will also determine if the Claimant had a Market Gain or a Market Loss with respect to his, her or its overall transactions during the Settlement Class Period in those shares and options. For purposes of making this calculation, with respect to CytRx Common Stock, the Claims Administrator shall determine the difference between (i) the Claimant's Total Purchase Amount<sup>7</sup> and (ii) the sum of the Claimant's Sales Proceeds<sup>8</sup> and the Claimant's Holding Value.<sup>9</sup> For CytRx Common Stock, if the Claimant's Total Purchase Amount *minus* the sum of the Claimant's Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain. With respect to CytRx Call Option that were purchased and subsequently sold or expired worthless, the Claims Administrator shall determine the difference between (i) the Claimant's Total Purchase Amount and (ii) the sum of the Claimant's Sales Proceeds. For CytRx Call Options, if the Claimant's Total Purchase Amount *minus* the sum of the Claimant's Sales Proceeds is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain. With respect to CytRx Put Options that were sold and subsequently repurchased or expired worthless, the Claims Administrator shall determine the difference between (i) the sum of the Claimant's Total Purchase Amount<sup>10</sup> and (ii) the Claimant's Sale Proceeds.<sup>11</sup> For CytRx Put Options, if the sum of the Claimant's Total Purchase Amount minus the Claimant's Sales Proceeds is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain.

71. **Calculation of Claimant's Recognized Claim:** If a Claimant has a Net Recognized Gain Amount *or* a Market Gain, the Claimant's "Recognized Claim" will be zero. Such Claimants shall in any event be bound by the Settlement. If the Claimant has a Net Recognized Loss Amount *and* a Market Loss, the Claimant's "Recognized Claim" will be the lesser of those two amounts.

72. **Determination of Distribution Amount:** If the sum total of Recognized Claims of all Authorized Claimants who are entitled

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<sup>7</sup> For CytRx Common Stock and Call Options, the "Total Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes and commissions) for all such CytRx securities purchased or acquired during the Settlement Class Period.

<sup>8</sup> For CytRx Common Stock and Call Options, the Claims Administrator shall match any sales of such CytRx Securities during the Settlement Class Period first against the Claimant's opening position in the like CytRx Securities (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received for sales of the remaining like CytRx Securities sold during the Settlement Class Period is the "Sales Proceeds."

<sup>9</sup> The Claims Administrator shall ascribe a "Holding Value" of \$0.60 to each share of CytRx Common Stock purchased or acquired during the Settlement Class Period that was still held as of the close of trading on October 7, 2016.

<sup>10</sup> For CytRx Put Options, the Claims Administrator shall match any purchases during the Settlement Class Period to close out positions in Put Options first against the Claimant's opening position in Put Options (the total amount paid with respect to those purchases will not be considered for purposes of calculating market gains or losses). The total amount paid for the remaining purchases during the Settlement Class Period to close out positions in Put Options is the "Total Purchase Amount."

<sup>11</sup> For CytRx Put Options, the total amount received for Put Options sold (written) during the Settlement Class Period is the "Sales Proceeds."

to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

73. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed *pro rata* to all Authorized Claimants entitled to receive payment.

74. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation (*i.e.*, the Recognized Claim will be deemed to be zero) and no distribution will be made to that Authorized Claimant. Any prorated amounts of less than \$10.00 will be included in the pool distributed to those whose prorated payments are \$10.00 or greater. Such Authorized Claimants shall in any event be bound by the Settlement.

75. After the initial distribution of the Net Settlement Fund, the Claims Administrator shall make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund nine (9) months after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator shall conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Counsel and approved by the Court.

76. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Plaintiff's Counsel, Lead Plaintiff's damages expert, Defendants, Defendants' Counsel, or any of the other Releasees, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiff, Defendants and their respective counsel, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

77. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Lead Plaintiff after consultation with his damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the settlement website, [www.CytRxSecuritiesSettlement.com](http://www.CytRxSecuritiesSettlement.com).

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?**

78. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Settlement Class, nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 33.33% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for reimbursement of litigation expenses in an amount not to exceed \$150,000, and will apply for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to his representation of the Settlement Class in an amount not to exceed \$20,000. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS? HOW DO I EXCLUDE MYSELF?**

79. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to *In re CytRx Corporation Securities Litigation - Exclusions*, c/o A.B. Data, Ltd., P.O. Box 173011, Milwaukee, WI 53217. The exclusion request must be **received** no later than August 27, 2018. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must (a) state the name, address and telephone number of the person or entity requesting exclusion, and in the case of entities the name and telephone number of the appropriate contact person; (b) state that such person or entity "requests exclusion from the Settlement Class in *In re CytRx Corporation Securities Litigation*, Case No. 2:16-CV-05519-SJO-SK"; (c) state the number of shares of CytRx Common Stock, CytRx Call Options, and/or CytRx Put Options that the person or entity requesting exclusion purchased, acquired, and sold during the Settlement Class Period, as well as the dates and prices of each such

purchase/acquisition and sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

80. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Defendants. If you have a pending lawsuit, arbitration, or other proceeding against any of the Released Defendants, speak to your lawyer in that action immediately.

81. Should you elect to exclude yourself from the Settlement Class, you should understand that Defendants will have the right to assert any and all defenses they may have to any claims that you may seek to assert, including without limitation the defense that any such claims are untimely under applicable statutes of limitations and statutes of repose. Although Defendants have decided to settle the Action in its entirety in order to eliminate the burden and expense of continued litigation, Defendants will retain and are not waiving in any way the right to assert that any subsequent claims asserted by any individual Settlement Class Members who exclude themselves from this Settlement are time-barred, are otherwise subject to dismissal, or otherwise lack merit. You should discuss these issues with a lawyer.

82. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment out of the Net Settlement Fund.

83. Defendants have the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by Lead Plaintiff and Defendants.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

84. **Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.**

85. The Settlement Hearing will be held on September 17, 2018 at 10:00 a.m., before the Honorable S. James Otero at the United States District Court for the Central District of California, United States Courthouse, 350 W. 1st Street, 6th Floor, Courtroom 6D, Los Angeles, California 90012. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Settlement Class.

86. Any Settlement Class Member who or which does not request exclusion from the Settlement Class may object to the Settlement, the proposed Plan of Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Central District of California at the address set forth below on or before August 27, 2018. You must also serve the papers on Lead Counsel and on Defendants' Counsel at the addresses set forth below so that the papers are *received on or before August 27, 2018*.

**Clerk's Office**

**United States District Court for  
the Central District of California**  
Clerk of the Court  
United States Courthouse  
350 W. 1st Street  
Los Angeles, CA 90012

**Lead Counsel**

**Glancy Prongay & Murray, LLP**  
Kara Wolke, Esq.  
1925 Century Park East  
Suite 2100  
Los Angeles, CA 90067

**Defendants' Counsel**

**Pearson, Simon & Warshaw, LLP**  
Michael Pearson, Esq.  
15165 Ventura Blvd.  
Suite 400  
Sherman Oaks, CA 91403

87. Any objection to the Settlement (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of CytRx Common Stock shares, CytRx Call Options, and/or CytRx Put Options that the person or entity objecting purchased, acquired, and sold during the Settlement Class Period, as well as the dates and prices of each such purchase, acquisition, and sale. You may not object to the Settlement, the Plan of Allocation or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

88. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

89. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation or Lead

Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you timely file and serve a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth above so that it is **received on or before August 27, 2018**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

90. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 86 above so that the notice is **received on or August 27, 2018**.

91. The Settlement Hearing may be adjourned by the Court without further written notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

92. **Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

#### WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

93. If you purchased or otherwise acquired CytRx Common Stock or CytRx Call Options or sold CytRx Put Options between September 12, 2014 and July 11, 2016, inclusive, for the beneficial interest of persons or organizations other than yourself, you must either (a) within seven (7) calendar days of receipt of the Postcard Notice, request from the Claims Administrator sufficient copies of the Postcard Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Postcard Notices forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of the Postcard Notice, provide a list of the names and addresses of all such beneficial owners to *In re CytRx Corporation Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 173011, Milwaukee, WI 53217. If you choose the second option, the Claims Administrator will send a copy of the Postcard Notice to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may be obtained from the website maintained by the Claims Administrator, [www.CytRxSecuritiesSettlement.com](http://www.CytRxSecuritiesSettlement.com), or by calling the Claims Administrator toll-free at 800-547-4406.

#### CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

94. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Central District of California, United States Courthouse, 350 W. 1st Street, Los Angeles, CA 90012. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, [www.CytRxSecuritiesSettlement.com](http://www.CytRxSecuritiesSettlement.com).

All inquiries concerning this Notice and the Claim Form should be directed to the Claims Administrator or Lead Counsel at:

*In re CytRx Corporation Securities Litigation*  
c/o A.B. Data, Ltd.  
P.O. Box 173011  
Milwaukee, WI 53217  
800-547-4406  
[www.CytRxSecuritiesSettlement.com](http://www.CytRxSecuritiesSettlement.com)

and/or

Kara Wolke, Esq.  
GLANCY PRONGAY & MURRAY LLP  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
888-773-9224  
[info@glancylaw.com](mailto:info@glancylaw.com)

**DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS OR THEIR COUNSEL REGARDING THIS NOTICE.**

Dated: June 20, 2018

By Order of the Court  
United States District Court  
Central District of California

**TABLE A**

<u>Date of Sale</u>	Average Closing Price Between 07/12/2016 and <u>Date of Sale</u>	<u>Date of Sale</u>	Average Closing Price Between 07/12/2016 and <u>Date of Sale</u>
7/15/2016	\$0.88	8/30/2016	\$0.62
7/18/2016	\$0.82	8/31/2016	\$0.62
7/19/2016	\$0.78	9/1/2016	\$0.62
7/20/2016	\$0.76	9/2/2016	\$0.62
7/21/2016	\$0.74	9/6/2016	\$0.62
7/22/2016	\$0.72	9/7/2016	\$0.62
7/25/2016	\$0.71	9/8/2016	\$0.62
7/26/2016	\$0.70	9/9/2016	\$0.61
7/27/2016	\$0.69	9/12/2016	\$0.61
7/28/2016	\$0.68	9/13/2016	\$0.61
7/29/2016	\$0.68	9/14/2016	\$0.61
8/1/2016	\$0.68	9/15/2016	\$0.61
8/2/2016	\$0.67	9/16/2016	\$0.61
8/3/2016	\$0.67	9/19/2016	\$0.61
8/4/2016	\$0.66	9/20/2016	\$0.61
8/5/2016	\$0.66	9/21/2016	\$0.61
8/8/2016	\$0.66	9/22/2016	\$0.61
8/9/2016	\$0.65	9/23/2016	\$0.61
8/10/2016	\$0.65	9/26/2016	\$0.61
8/11/2016	\$0.65	9/27/2016	\$0.61
8/12/2016	\$0.64	9/28/2016	\$0.61
8/15/2016	\$0.64	9/29/2016	\$0.60
8/16/2016	\$0.64	9/30/2016	\$0.60
8/17/2016	\$0.64	10/3/2016	\$0.60
8/18/2016	\$0.63	10/4/2016	\$0.60
8/19/2016	\$0.63	10/5/2016	\$0.60
8/22/2016	\$0.63	10/6/2016	\$0.60
8/23/2016	\$0.63	10/7/2016	\$0.60
8/24/2016	\$0.63		