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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION)**

IN RE CYTRX CORPORATION)
SECURITIES LITIGATION) CASE NO.: 2:14-CV-01956-GHK (PJWx)
) **CLASS ACTION**
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)
) **STIPULATION OF SETTLEMENT**
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1 This Stipulation of Settlement dated December 8, 2015 (the “Stipulation”), is
2 made and entered into by and among the following parties to the above-captioned
3 litigation (the “Litigation”): (i) Deepak Gupta (“Lead Plaintiff”) (on behalf of himself
4 and each of the Class Members, as defined herein), by and through his counsel of record
5 in the Litigation; and (ii) defendants Steven A. Kriegsman, John Y. Caloz, David J. Haen,
6 Louis J. Ignarro, Joseph Rubinfeld, Shirley Selter as representative of the Estate of Marvin
7 S. Selter, Richard L. Wennekamp (collectively, the “CytRx Individual Defendants”),
8 CytRx Corporation, Thomas Michael Meyer, Jefferies LLC, Oppenheimer & Co. Inc.,
9 Aegis Capital Corp., and H.C. Wainwright & Co., LLC (collectively, “Defendants”),
10 by and through their respective counsel of record in the Litigation. The Stipulation is
11 intended by the Settling Parties (as defined herein) to fully, finally, and forever resolve,
12 discharge, and settle the Settled Claims (as defined herein), upon and subject to the
13 terms and conditions hereof and subject to the approval of the United States District
14 Court for the Central District of California (the “Court”).

15 All terms with initial capitalization shall have the meanings ascribed to them
16 herein.

17 **I. THE LITIGATION**

18 On March 14, 2014, Bangzheng Chen filed the complaint in the above-captioned
19 action (the “*Chen* Action”), a putative class action arising under the Securities Exchange
20 Act of 1934 (the “Exchange Act”), including the Private Securities Litigation Reform
21 Act of 1995 (the “Reform Act”), 15 U.S.C. § 78u-4, against CytRx Corporation and
22 Steven A. Kriegsman. On June 13, 2014, this Court consolidated the *Chen* Action with
23 *Perri v. CytRx Corporation, et al.*, No. 2:14-cv-2052-DDP-(JCGx) (“*Perri*”) and *Kim v.*
24 *CytRx Corporation, et al.*, No. 2:14-cv-2689-DDP-(JCGx) (“*Kim*”), dismissed the *Perri*
25 and *Kim* actions, and appointed Deepak Gupta as Lead Plaintiff.

26 On October 1, 2014, Lead Plaintiff filed the Consolidated Complaint for
27 Violation of Federal Securities Laws (the “Complaint”). The Complaint alleges claims
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1 against Defendants for violation of sections 10(b) and 20(a) of the Exchange Act, and
2 Securities and Exchange Commission Rule 10b-5 promulgated thereunder (“Rule 10b-
3 5”), and sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (“Securities Act”).
4 As to the Underwriters, the Complaint only alleges claims under sections 11 and
5 12(a)(2) of the Securities Act. On July 13, 2015, the Court issued an order granting in
6 part and denying in part Defendants’ motions to dismiss the Complaint and granting
7 leave to Lead Plaintiff to file an amended complaint. On August 7, 2015, Lead Plaintiff
8 filed the First Amended Consolidated Complaint (“FAC”). Like the Complaint, the
9 FAC alleges claims against Defendants for violation of sections 10(b) and 20(a) of the
10 Exchange Act, and Rule 10b-5, and sections 11, 12(a)(2) and 15 of the Securities Act.
11 Again, as to the Underwriters, the FAC only alleges claims under sections 11 and
12 12(a)(2) of the Securities Act. On September 8, 2015, all Defendants except Thomas
13 Michael Meyer moved to dismiss, in part, the FAC. Lead Plaintiff filed his opposition
14 thereto on October 5, 2015 and all Defendants except Thomas Michael Meyer
15 responded on October 9, 2015. On October 23, 2015, the Court vacated the hearing set
16 for October 26, 2015.

17 The Settling Parties held a mediation with the Honorable Dickran Tevrizian
18 (Ret.) (“Judge Tevrizian”) on April 23, 2015. No agreement was reached, but good-
19 faith, arms’-length negotiations continued and, with the continued assistance of Judge
20 Tevrizian, the parties reached an agreement-in-principle to resolve this matter on
21 November 4, 2015. In connection with the mediation process, Lead Plaintiff and Lead
22 Counsel have reviewed, with the assistance of a certified accountant, publicly available
23 financial information about the Company. Lead Plaintiff and Lead Counsel have also
24 analyzed the ability of the Company, in light of its liquidity position, to continue to
25 litigate the Action and pay any judgment or to fund any settlement in the Action, as well
26 as the Company’s ability to raise capital following any settlement.

1 Based upon their investigation, Lead Plaintiff and Lead Counsel have concluded
2 that the terms and conditions of this Stipulation are fair, reasonable and adequate to
3 Lead Plaintiff and the Class, and in their best interests, and have agreed to settle the
4 claims raised in the Litigation pursuant to the terms and provisions of this Stipulation,
5 after considering (i) the substantial benefits that Class Members will receive from
6 resolution of the Litigation against the Defendants, (ii) the attendant risks of continued
7 litigation, and (iii) the desirability of permitting the Settlement to be consummated as
8 provided by the terms of this Stipulation.

9 **II. THE DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

10 Defendants have denied and continue to deny each and all of the claims and
11 contentions alleged by Lead Plaintiff and the Class in the Litigation. Defendants
12 expressly have denied and continue to deny all charges of wrongdoing or liability
13 against them arising out of any of the conduct, statements, acts, or omissions alleged,
14 or that could have been alleged, in the Litigation, or any other actions. Defendants
15 further contend that, for any purpose other than settlement, the Litigation is not
16 appropriate for any form of class treatment.

17 Defendants also have denied and continue to deny, among other allegations, the
18 allegations that Lead Plaintiff or the Class have suffered any damage, that the price of
19 CytRx common stock was artificially inflated by reasons of alleged misrepresentations,
20 non-disclosures or otherwise, or that Lead Plaintiff or the Class were harmed by the
21 conduct alleged, or that could have been alleged, in the Litigation. Defendants believe
22 that the evidence supports their position that they acted properly at all times and that
23 the Litigation is without merit. In addition, Defendants maintain that they have
24 meritorious defenses to all claims alleged in the Litigation.

25 Nonetheless, Defendants have concluded that further conduct of the Litigation
26 would be protracted and expensive. Defendants have also considered the uncertainty
27 and risks inherent in any litigation, especially in complex cases like this Litigation.

1 Defendants have therefore determined that it is desirable and beneficial to them that the
2 Litigation be settled in the manner and upon the terms and conditions set forth in this
3 Stipulation.

4 **III. CLAIMS OF THE LEAD PLAINTIFF AND BENEFITS OF**
5 **SETTLEMENT**

6 Lead Plaintiff believes that the claims asserted in the Litigation have merit. Lead
7 Plaintiff and Lead Counsel, however, recognize and acknowledge the expense and
8 length of continued proceedings necessary to prosecute the Litigation against
9 Defendants through trial and appeals. Lead Plaintiff and Lead Counsel also have taken
10 into account the uncertain outcome and the risk of any litigation, especially in complex
11 actions such as this Litigation, as well as recent changes in the law and the difficulties
12 and delays inherent in such litigation. Lead Plaintiff and Lead Counsel also are mindful
13 of the inherent problems of proof under, and possible defenses to, the securities law
14 violations and any other claims asserted, or that could have been asserted, in the
15 Litigation. Lead Plaintiff and Lead Counsel believe that the Settlement set forth in this
16 Stipulation confers substantial benefits upon the Class. Based on their evaluation, Lead
17 Plaintiff and Lead Counsel have determined that the Settlement set forth in this
18 Stipulation is in the best interests of Lead Plaintiff and the Class.

19 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

20 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and
21 among Lead Plaintiff (for himself and the Class Members) and Defendants, by and
22 through their respective counsel of record, that, subject to the approval of the Court, the
23 Litigation and the Settled Claims shall be finally and fully compromised, settled, and
24 released, and the Litigation shall be dismissed with prejudice, as to all Settling Parties,
25 upon and subject to the terms and conditions of the Stipulation, as follows:
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1 1. Definitions

2 As used in the Stipulation the following terms have the meanings specified
3 below:

4 1.1 “Authorized Claimant” means any Class Member whose claim for
5 recovery has been allowed pursuant to the terms of this Stipulation and who submits a
6 valid and timely Proof of Claim and Release form, in accordance with any requirements
7 established by the Court, to the Claims Administrator which is approved for payment
8 from the Net Settlement Fund.

9 1.2 “Claims Administrator” means the firm of Gilardi & Co. LLC, located in
10 San Rafael, California, which shall administer the Settlement subject to approval and
11 appointment by the Court.

12 1.3 “Class” means all Persons who purchased or otherwise acquired the
13 common stock of CytRx during the Class Period. Excluded from the Class is anyone
14 named as a Defendant in this action; members of the immediate family of any such
15 Defendant; any entity in which any such Defendant has a controlling interest; the former
16 and current officers and directors of CytRx; or the legal affiliates, representatives,
17 controlling persons, predecessors-in-interest, heirs, assigns, or any other successors-in-
18 interest of any such excluded party. Also excluded from the Class are those persons
19 who timely and validly request exclusion from the Class pursuant to the Notice.

20 1.4 “Class Member,” “Class Members” or “Member of the Class” mean any
21 Person who falls within the definition of the Class as set forth in ¶ 1.3 above.

22 1.5 “Class Period” means the period commencing on November 20, 2013 and
23 ending March 13, 2014, inclusive.

24 1.6 “CytRx” or the “Company” mean CytRx Corporation.

25 1.7 “CytRx Individual Defendants” means Steven A. Kriegsman, John Y.
26 Caloz, David J. Haen, Louis J. Ignarro, Joseph Rubinfeld, Shirley Selter as
27 representative of the Estate of Marvin S. Selter, and Richard L. Wennekamp.

1 1.8 “Defendants” means CytRx, Steven A. Kriegsman, John Y. Caloz, David
2 J. Haen, Louis J. Ignarro, Joseph Rubinfeld, Shirley Selter as representative of the Estate
3 of Marvin S. Selter, Richard L. Wennekamp, Thomas Michael Meyer, Jefferies LLC,
4 Oppenheimer & Co. Inc., Aegis Capital Corp., and H.C. Wainwright & Co., LLC.

5 1.9 “Effective Date,” or the date upon which this Settlement becomes
6 “effective,” means the first date by which all of the events and conditions specified in
7 ¶ 7.1 of the Stipulation have been met and have occurred.

8 1.10 “Escrow Agent” means Kahn Swick & Foti, LLC, its agents, successors
9 and/or a federally chartered bank designated by Lead Counsel. The Escrow Agent shall
10 perform the duties as set forth in this Stipulation.

11 1.11 “Final” means when the last of the following with respect to the Order and
12 Final Judgment, substantially in the form of Exhibit B attached hereto, shall occur: (i)
13 expiration of the time for the filing of any motion to alter or amend the Order and Final
14 Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having
15 been filed; (ii) the time in which to appeal the Order and Final Judgment has passed
16 without any appeal having been filed; and (iii) if a motion to alter or amend is filed or
17 if an appeal is taken, immediately after the determination of that motion or appeal so
18 that it is no longer subject to any further judicial review or appeal whatsoever, whether
19 by reason of affirmance by a court of last resort, lapse of time, voluntary dismissal of
20 the appeal or otherwise in such a manner as to permit the consummation of the
21 settlement substantially in accordance with the terms and conditions of this Stipulation.
22 For purposes of this paragraph, an “appeal” shall include any petition for a writ of
23 certiorari or other writ that may be filed in connection with approval or disapproval of
24 this settlement, but shall not include any appeal that concerns only the issue of
25 attorneys’ fees and expenses, the Plan of Allocation of the Settlement Fund or the
26 procedures for determining Authorized Claimants’ recognized claims. Any proceeding
27 or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan
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1 of distribution, application for attorneys' fees, costs, or expenses, or determining
2 Authorized Claimants' recognized claims shall not in any way delay or preclude the
3 Order and Final Judgment from becoming Final.

4 1.12 "Gross Settlement Fund" means the Settlement Amount plus all interest
5 earned thereon.

6 1.13 "Lead Counsel" means Kahn Swick & Foti, LLC or its successor(s).

7 1.14 "Lead Plaintiff" means Deepak Gupta.

8 1.15 "Liaison Counsel" means Glancy Prongay & Murray, LLP or its
9 successor(s).

10 1.16 "Net Settlement Fund" means the Gross Settlement Fund, less: (i)
11 attorneys' fees and expenses; (ii) taxes and tax expenses; (iii) Notice and Administration
12 Expenses; and (iv) a reimbursement award to Lead Plaintiff, if any.

13 1.17 "Notice" means the Notice of Pendency and Proposed Settlement of Class
14 Action described in ¶ 3.1 hereof.

15 1.18 "Notice Order" means the order described in ¶ 3.1 hereof.

16 1.19 "Order and Final Judgment" means the judgment to be rendered by the
17 Court, substantially in the form attached hereto as Exhibit B.

18 1.20 "Person" means an individual, corporation, limited liability corporation,
19 professional corporation, limited liability partnership, partnership, limited partnership,
20 limited liability company, association, joint stock company, estate, legal representative,
21 trust, unincorporated association, government or any political subdivision or agency
22 thereof, and any business or legal entity and all of their respective spouses, heirs,
23 beneficiaries, executors, administrators, predecessors, successors, representatives, or
24 assignees.

25 1.21 "Plaintiffs" means all of the plaintiffs that have appeared in the Litigation.

26 1.22 "Plaintiffs' Counsel" means any counsel who have appeared for any of the
27 Plaintiffs in the Litigation.

1 1.23 “Plan of Allocation” means a plan or formula of allocation of the
2 Settlement Fund whereby the Settlement Fund shall be distributed to Authorized
3 Claimants after payment of expenses of notice and administration of the Settlement,
4 Taxes and Tax Expenses, and such attorneys’ fees, costs, expenses, and interest as may
5 be awarded by the Court. Any Plan of Allocation is not part of the Stipulation, and
6 neither Defendants nor their Related Parties shall have any responsibility or liability
7 with respect thereto.

8 1.24 “Related Parties” means, with respect to each Defendant, the immediate
9 family members, heirs, executors, administrators, successors, assigns, present and
10 former employees, officers, directors, general partners, limited partners, attorneys,
11 assigns, legal representatives, insurers, reinsurers, and agents of each of them, and any
12 person or entity which is or was related to or affiliated with any Defendant or in which
13 any Defendant has or had a controlling interest, and the present and former parents,
14 subsidiaries, divisions, affiliates, predecessors, successors, general partners, limited
15 partners, employees, officers, directors, attorneys, assigns, legal representatives,
16 insurers, reinsurers, and agents of each of them, in their capacity as such.

17 1.25 “Released Parties” means any and all of the Defendants and each and all
18 of their Related Parties.

19 1.26 “Released Parties’ Claims” means all claims, demands, losses, rights, and
20 causes of action of any nature whatsoever, that have been or could have been asserted
21 in the Litigation or any forum by the Released Parties or any of them or the successors
22 and assigns of any of them against the Lead Plaintiff, Class Members, or Plaintiffs’
23 Counsel, which arise out of or relate in any way to the institution, prosecution, assertion,
24 settlement, or resolution of the Litigation (except for claims to enforce the Settlement);
25 provided, however, that “Released Parties’ Claims” shall not include any rights or
26 claims of Defendants against their insurers, or their insurers’ subsidiaries, predecessors,
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1 successors, assigns, affiliates, or representatives, under or related to any policies of
2 insurance.

3 1.27 “Settled Claims” means any and all rights, debts, demands, claims
4 (including, without limitation, any Unknown Claims) or causes of action or liabilities
5 whatsoever (including, but not limited to, any claims for damages, interest, attorneys’
6 fees, expert or consulting fees, and any other costs, expenses or liability whatsoever),
7 whether based on federal, state, local, statutory, common law, foreign law,
8 administrative law or any other law, rule, or regulation, whether asserted or unasserted,
9 fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity,
10 matured or unmatured, whether class and/or individual in nature, including both known
11 claims and unknown claims, that relate to the purchase or acquisition of the securities
12 of CytRx during the Class Period and that (a) Lead Plaintiff or any member of the Class
13 or the representatives, heirs, successors-in-interest and assigns of any of them asserted,
14 or could have asserted in this Litigation against any of the Released Parties; or (b) could
15 have been asserted in this Litigation, or in any other action or forum by Lead Plaintiff
16 and/or the Class Members or any of them, or the representatives, heirs, successors-in-
17 interest and assigns of any of them, in each case against any of the Released Parties
18 which arise out of, are based upon, or are in any way related, directly or indirectly, to
19 the purchase or acquisition of CytRx publicly traded securities during the Class Period,
20 or to the facts, matters, allegations, transactions, events, disclosures, statements, acts or
21 occurrences, representations or alleged omissions involved, set forth, or referred to in
22 the Complaint or the FAC or that could have been alleged in the Complaint or the FAC.
23 Notwithstanding the foregoing, “Settled Claims” does not include claims asserted in
24 any derivative action or ERISA action based on similar allegations or any claims
25 relating to the enforcement of the Settlement.

26 1.28 “Settlement” means the settlement of the Litigation as set forth in this
27 Stipulation.

1 1.29 “Settlement Fund” means the total amount of Eight Million Five Hundred
2 Thousand Dollars (\$8,500,000.00), \$4,000,000.00 to be provided in cash and the
3 remainder to be paid in the form of Settlement Stock pursuant to ¶ 2.1 of this
4 Stipulation, plus any interest that may accrue thereon as provided for herein.

5 1.30 “Settlement Stock” means the shares of CytRx common stock that will be
6 issued and delivered in accordance with ¶ 2.1 below.

7 1.31 “Settling Parties” means, collectively, each of the Defendants and the Lead
8 Plaintiff on behalf of itself and each of the Class Members.

9 1.32 “Tax” or “Taxes” mean any and all taxes, fees, levies, duties, tariffs,
10 imposts, and other charges of any kind (together with any and all interest, penalties,
11 additions to tax and additional amounts imposed with respect thereto) imposed by any
12 governmental authority.

13 1.33 “Underwriters” means Jefferies LLC, Oppenheimer & Co. Inc., Aegis
14 Capital Corp., and H.C. Wainwright & Co., LLC.

15 1.34 “Unknown Claims” means any of the Settled Claims which Lead Plaintiff
16 and/or any Class Member does not know or suspect to exist in such party’s favor at the
17 time of the release of the Released Parties which, if known by such party, might have
18 affected such party’s settlement with and release of the Released Parties, or might have
19 affected such party’s decision not to object to this Settlement.

20 With respect to any and all Settled Claims, the Settling Parties stipulate and agree
21 that, upon the Effective Date, the Lead Plaintiff shall expressly waive and each of the
22 Class Members shall be deemed to have, and by operation of the Order and Final
23 Judgment shall have, expressly waived the provisions, rights, and benefits of California
24 Civil Code § 1542, which provides:

25 **A general release does not extend to claims which the creditor**
26 **does not know or suspect to exist in his or her favor at the time of**

1 **executing the release, which if known by him or her must have**
2 **materially affected his or her settlement with the debtor.**

3 The Lead Plaintiff shall expressly waive and each of the Class Members shall be
4 deemed to have, and by operation of the Order and Final Judgment shall have, expressly
5 waived any and all provisions, rights, and benefits conferred by any law of any state or
6 territory of the United States or any foreign country, or any principle of common law,
7 which is similar, comparable or equivalent in substance to California Civil Code § 1542.
8 The Lead Plaintiff and the Class Members may hereafter discover facts in addition to
9 or different from those which such party now knows or believes to be true with respect
10 to the subject matter of the Settled Claims, but the Lead Plaintiff and the Class Members
11 shall expressly settle and release and each Class Member, upon the Effective Date, shall
12 be deemed to have, and by operation of the Order and Final Judgment shall have, fully,
13 finally, and forever settled and released any and all Settled Claims, known or unknown,
14 suspected or unsuspected, contingent or non-contingent, whether or not concealed or
15 hidden, that now exist, or heretofore have existed, upon any theory of law or equity now
16 existing or coming into existence in the future, including, but not limited to, conduct
17 that is negligent, reckless, intentional, with or without malice, or a breach of any duty,
18 law or rule, without regard to the subsequent discovery or existence of such different or
19 additional facts. Lead Plaintiff acknowledges, and the Class Members shall be deemed
20 by operation of the Order and Final Judgment to have acknowledged, that the foregoing
21 waiver was separately bargained for and a key element of the settlement of which this
22 release is a part.

23 2. The Settlement

24 a. The Settlement Fund

25 2.1 On behalf of all Defendants, CytRx and/or its insurers shall pay or cause
26 to be paid to the Class, in settlement of the claims against all Defendants, the principal
27 amount of the Settlement Fund, as follows:

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1 (a) Within ten (10) business days of the entry of and order from the Court
2 preliminarily approving the Stipulation, CytRx and/or its insurers, on behalf of all
3 Defendants, shall deposit or cause to be deposited \$4,000,000 in cash into an escrow
4 account to be established by Lead Counsel (“Escrow Account”) in accordance with
5 instructions to be provided by the Escrow Agent. In the event that CytRx and/or its
6 insurers fail to timely make or cause to be made this payment, Lead Counsel may
7 terminate the settlement, but only if (i) Lead Counsel has notified Defendants’ counsel
8 in writing of Lead Counsel’s intention to terminate the settlement, and (ii) the entire
9 Settlement Amount is not transferred to the Escrow Agent within five (5) business days
10 after Lead Counsel has provided such written notice by email. The Escrow Agent shall
11 deposit the Settlement Amount in a segregated escrow account (the “Escrow Account”)
12 maintained by the Escrow Agent.

13 (b) The “Settlement Stock” shall consist of Four Million Five-Hundred
14 Thousand Dollars (\$4,500,000.00) worth of shares of CytRx common stock, calculated
15 as set forth below. The Settlement Stock shall be unrestricted and freely tradable,
16 except as otherwise provided in this Stipulation, and either registered or exempt from
17 registration under the Securities Act pursuant to section 3(a)(10) of the Securities Act,
18 15 U.S.C. § 77c(a)(10), in that the Settlement Stock will be issued to or for the benefit
19 of Class Members in exchange for their release of claims against the Defendants under
20 the terms of this Stipulation. The Settlement Stock will be identical in all respects to
21 CytRx’s currently outstanding shares of common stock. Pursuant to section 3(a)(10) of
22 the Securities Act, the Court’s judgment of the fairness of the Settlement may serve as
23 a substitute for the registration requirements of the Securities Act with regard to any
24 Settlement Stock. At the Settlement Hearing, the Court will be asked to find that, with
25 regard to the Settlement Stock being issued as part of the Settlement Fund, the terms
26 and conditions of, and the procedures for, the proposed issuance are fair to all those
27 who will receive securities in the proposed exchange. In the alternative, CytRx, in its
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1 sole discretion, shall have the right to file a registration statement with the Securities
2 and Exchange Commission covering the issuance of the Settlement Stock.

3 (c) The Settlement Stock may be sold or transferred by recipients thereof who
4 are not affiliates of CytRx (as that term is defined in Rule 144 of the Securities Act) or
5 recipients deemed to be underwriters under the Securities Act without registration under
6 section 5 of the Securities Act or compliance with Rule 144. To the extent applicable,
7 the number of shares constituting the Settlement Stock will be adjusted to account for
8 stock splits, reverse stock splits, and other similar actions taken by CytRx. If CytRx is
9 sold, acquired or merges prior to distribution of the Settlement Stock to the Class, the
10 shares will be treated for purposes of any corporate transaction as if they had been
11 issued, distributed and outstanding, and will receive the same proportionate treatment
12 as other shares of CytRx, and for the purposes of this Settlement such shares shall be
13 valued consistent with the terms in ¶ 2.1(b), for the twenty (20) consecutive trading
14 days ending on the trading day immediately preceding the announcement of any sale,
15 acquisition or merger.

16 (d) Price protection shall be provided for the Settlement Stock, as follows: The
17 “Initial Valuation Price” shall be based on the volume weighted average price (VWAP)
18 for the fifteen (15) consecutive trading days ending on the trading day immediately
19 preceding the date this Stipulation is executed, which is \$3.06 per share. Upon entry of
20 the Final Order and Judgment, the Initial Valuation Price shall be adjusted to the VWAP
21 for the fifteen (15) consecutive trading days ending on the trading day immediately
22 preceding the date the Court enters the Final Order and Judgment (the “Final Valuation
23 Price”), except that the valuation price to be employed in calculating the number of
24 shares comprising the Settlement Stock (the “Settlement Valuation Price”) shall be at
25 least \$2.50 per share but shall not exceed \$3.75 per share. In the event that the Final
26 Valuation Price is below \$2.50, then the number of shares comprising the Settlement
27 Stock shall be determined by using a Settlement Valuation Price of \$2.50; in the event
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1 that the Final Valuation Price exceeds \$3.75, then the number of shares comprising the
2 Settlement Stock shall be determined by using a Settlement Valuation Price of \$3.75.

3 (e) Within five (5) business days of the date the Court enters the Order and
4 Final Judgment, substantially in the form of Exhibit B, CytRx shall transfer the
5 Settlement Stock into the Escrow Account. The reasonable costs and expenses of the
6 transfer agent with respect to the issuance and delivery of the Settlement Stock to the
7 Escrow Agent shall be paid by CytRx.

8 (f) Upon receipt of the Settlement Stock, Lead Counsel shall hold the
9 Settlement Stock as fiduciaries for the benefit of the Class Members prior to distribution
10 of such Settlement Stock to the Class Members. Lead Counsel shall make four separate
11 distributions of CytRx common stock to Class Members in equal amounts and in equal
12 time intervals within sixty (60) trading days. At any time after the Effective Date, and
13 prior to the date of distribution of the Settlement Stock to the Class Members, Lead
14 Counsel shall have the option, in its sole discretion but consistent with its fiduciary
15 duties to the Class Members, of selling all or any portion of the Settlement Stock for
16 the benefit of the Class Members; provided that the proceeds of any such sale shall be
17 placed in the Settlement Fund; and provided further, that Lead Counsel may not sell
18 more than 2% of the Settlement Stock on any trading day.

19 (g) Neither the Plaintiffs, the Class Members, nor any of the Released Parties
20 shall have a claim against Plaintiffs' Counsel or the Lead Plaintiff, or any of their agents,
21 based on the disposition of the Settlement Stock or the distributions made in accordance
22 with the Stipulation, absent gross negligence or willful misconduct.

23 (h) No fractional shares of Settlement Stock shall be issued. The calculation
24 of the number of shares to be distributed will be rounded up or down to the nearest
25 whole share.

26 (i) Other than with respect to the obligations undertaken by CytRx in this
27 paragraph 2.1, Defendants shall have no liability with respect to, or responsibility for,
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1 the sale of the Settlement Stock, or with respect to the trading value of, or any losses
2 incurred by any party with respect to, any Settlement Stock.

3 b. The Escrow Agent

4 2.2 The Escrow Agent shall invest any funds in excess of \$200,000 deposited
5 into the Settlement Fund pursuant to ¶ 2.1 above in short-term United States Agency or
6 Treasury Securities (or a mutual fund invested solely in such instruments) and shall
7 collect and reinvest all interest accrued thereon in the same instruments. Any funds
8 held in escrow in an amount of less than or equal to \$200,000 may be held in an interest
9 bearing bank account insured by the FDIC. All risks related to the investment of the
10 Settlement Fund in accordance with the investment guidelines set forth in this paragraph
11 shall be borne by the Settlement Fund. The Released Parties shall have no responsibility
12 for, interest in, or liability whatsoever with respect to investment decisions or the actions
13 of the Escrow Agent, or any transactions executed by the Escrow Agent.

14 2.3 The Escrow Agent shall not disburse the Settlement Fund except as
15 provided in the Stipulation, by an order of the Court, or with the prior written agreement
16 among Lead Counsel and counsel for Defendants.

17 2.4 Subject to further order and/or direction as may be made by the Court, or
18 as provided in the Stipulation, the Escrow Agent is authorized to execute such
19 transactions on behalf of the Class Members as are consistent with the terms of the
20 Stipulation.

21 2.5 All funds held by the Escrow Agent shall be deemed and considered to be
22 *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court,
23 until such time as such funds shall be distributed pursuant to the Stipulation and/or
24 further order(s) of the Court.

25 2.6 Within five (5) business days after payment of the cash portion of the
26 Settlement Fund to the Escrow Agent pursuant to ¶ 2.1 hereof, the Escrow Agent may
27 establish a “Notice and Administration Fund,” and may deposit up to \$250,000 from
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1 the Settlement Fund in it. The Notice and Administration Fund may be used by the
2 Escrow Agent without further consent of Defendants or order of the Court to pay costs
3 and expenses reasonably and actually incurred in connection with providing notice to
4 the Class, locating Class Members, soliciting claims, assisting with the submission of
5 claims, administering and distributing the Settlement Fund to Authorized Claimants,
6 processing Proof of Claim and Release forms, and paying escrow fees and costs, if any.
7 The Notice and Administration Fund may also be invested and earn interest as provided
8 for in ¶ 2.2 of this Stipulation.

9 2.7 Lead Counsel shall pay from the Settlement Fund, without further approval
10 from Defendants or the Court, the reasonable costs and expenses associated with
11 identifying members of the Class and effecting mail notice and publication notice to the
12 Class, and the administration of the Settlement, including, without limitation, the actual
13 costs of publication, printing and mailing the Notice, reimbursements to nominee
14 owners for forwarding notice to their beneficial owners, and the administrative expenses
15 incurred and fees charged by the Claims Administrator in connection with providing
16 notice and processing the submitted claims, provided that the foregoing costs and
17 expenses shall not exceed \$250,000. To the extent the foregoing costs and expenses do
18 exceed \$250,000, prior to the Effective Date, Lead Counsel shall apply to the Court for
19 an order allowing for reimbursement of the foregoing costs and expenses in excess of
20 \$250,000.

21 2.8 It shall be Lead Counsel’s responsibility to disseminate the Notice and
22 summary notice to the Class in accordance with this Stipulation and as ordered by the
23 Court. Class Members shall have no recourse as to the Released Parties with respect to
24 any claims they may have that arise from any failure of the notice process.

25 c. Taxes

26 2.9 (a) The Settling Parties and their counsel agree that the Settlement Fund
27 should be treated as being at all times a “qualified settlement fund” within the meaning
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1 of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such
2 elections as necessary or advisable to carry out the provisions of this ¶ 2.9, including
3 the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the
4 earliest permitted date. Such elections shall be made in compliance with the procedures
5 and requirements contained in such Treasury regulations promulgated under
6 section 1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It shall
7 be the responsibility of the Escrow Agent to timely and properly prepare and deliver the
8 necessary documentation for signature by all necessary parties, and thereafter to cause
9 the appropriate filing to occur.

10 (b) For the purpose of section 1.468B of the Code and the Treasury regulations
11 promulgated thereunder, the Escrow Agent shall be designated as the “administrator”
12 of the Settlement Fund. The Escrow Agent shall timely and properly file all
13 informational and other tax returns necessary or advisable with respect to the Settlement
14 Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)).
15 Such returns (as well as the election described in ¶ 2.9(a) hereof) shall be consistent
16 with this ¶ 2.9 and in all events shall reflect that all Taxes (including any estimated
17 taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid
18 out of the Settlement Fund as provided in ¶ 2.9(c) hereof.

19 (c) All: (a) Taxes (including any estimated Taxes, interest, or penalties)
20 arising with respect to the income earned by the Settlement Fund, including any Taxes
21 or tax detriments that may be imposed upon Defendants or their Related Parties with
22 respect to any income earned by the Settlement Fund for any period during which the
23 Settlement Fund does not qualify as a “qualified settlement fund” for federal or state
24 income tax purposes; and (b) expenses and costs incurred in connection with the
25 operation and implementation of this ¶ 2.9 (including, without limitation, expenses of
26 tax attorneys and/or accountants and mailing and distribution costs and expenses
27 relating to filing (or failing to file) the returns described in this ¶ 2.9) (“Tax Expenses”),
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1 shall be paid out of the Settlement Fund. In no event shall Defendants or their Related
2 Parties have any responsibility for or liability with respect to the Taxes or the Tax
3 Expenses. The Escrow Agent shall indemnify and hold each of the Defendants and
4 their Related Parties harmless for Taxes and Tax Expenses (including, without
5 limitation, Taxes payable by reason of any such indemnification). Further, Taxes and
6 Tax Expenses shall be treated as, and considered to be, a cost of administration of the
7 Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement
8 Fund without prior order from the Court, and the Escrow Agent shall be obligated
9 (notwithstanding anything herein to the contrary) to withhold from distribution to
10 Authorized Claimants any funds necessary to pay such amount, including the
11 establishment of adequate reserves for any Taxes and Tax Expenses (as well as any
12 amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2));
13 neither Defendants nor their Related Parties are responsible therefor nor shall they have
14 any liability with respect thereto. The Settling Parties hereto agree to cooperate with
15 the Escrow Agent, each other, and their tax attorneys and accountants to the extent
16 reasonably necessary to carry out the provisions of this ¶ 2.9.

17 (d) For the purpose of this ¶ 2.9, references to the Settlement Fund shall
18 include both the Settlement Fund and the Notice and Administration Fund and shall also
19 include any earnings thereon.

20 d. Termination of Settlement

21 2.10 In the event that the Stipulation is not approved, or is terminated, canceled,
22 or fails to become effective for any reason, including, without limitation, in the event
23 the Order and Final Judgment is reversed or vacated following any appeal taken
24 therefrom, or is successfully collaterally attacked, the Settlement Fund (including
25 accrued interest), less reasonable expenses actually incurred or due and owing from the
26 Settlement Fund for the notice and administration of the Settlement pursuant to ¶ 2.6
27 and ¶ 2.7 above, shall be refunded to CytRx plus accrued interest attributable to that
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1 amount by wire transfer in accordance with the instructions to be provided by counsel
2 for CytRx within five (5) business days of the availability of the monies from the
3 investments authorized herein or as otherwise agreed upon in writing by counsel for
4 CytRx.

5 3. Notice Order and Settlement Hearing

6 3.1 Promptly after execution of the Stipulation, the Settling Parties shall
7 submit the Stipulation together with its Exhibits to the Court and Lead Counsel shall
8 apply for entry of an order (the “Notice Order”), substantially in the form and content
9 of Exhibit A attached hereto, requesting, inter alia, the preliminary approval of the
10 Settlement set forth in the Stipulation, approval for the mailing of the Notice of
11 Pendency and Proposed Settlement of Class Action (the “Notice”), substantially in the
12 form of Exhibit A-1 attached hereto, and approval of the publication of a summary
13 notice, substantially in the form of Exhibit A-3 attached hereto. The Notice shall
14 include the general terms of the Settlement set forth in the Stipulation, the proposed
15 Plan of Allocation, the general terms of the Fee and Expense Application, and the date
16 of the Settlement Hearing.

17 3.2 The Settling Parties request that, after notice is given and not fewer than
18 90 days after the later of the dates on which the appropriate Federal official and the
19 appropriate State officials are served with notice, the Court hold a hearing (the
20 “Settlement Hearing”) and finally approve the Settlement of the Litigation as set forth
21 herein. At or after the Settlement Hearing, Lead Counsel also will request that the Court
22 approve the proposed Plan of Allocation and the Fee and Expense Application.

23 3.3 Except for the obligation of CytRx and/or its insurers to pay or cause
24 payment of the Settlement Fund into the escrow account as set forth herein, and to
25 cooperate in the production of information with respect to the identification of Class
26 Members from CytRx’s shareholder transfer records, as provided herein, Defendants
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1 shall have no liability, obligation or responsibility for the administration of the
2 Settlement or disbursement of the Net Settlement Fund.

3 4. Releases and Covenant Not to Sue

4 4.1 Upon the Effective Date, the Lead Plaintiff, each and all of the Class
5 Members, and Plaintiffs' Counsel shall be deemed to have, and by operation of the
6 Order and Final Judgment shall have, fully, finally, and forever released, relinquished,
7 and discharged all Settled Claims against any Released Parties, and shall forever be
8 enjoined from prosecuting the Settled Claims, regardless of whether such Class Member
9 executes and delivers a Proof of Claim and Release. By entering into this Stipulation
10 and Settlement, Plaintiffs represent and warrant that they have not assigned,
11 hypothecated, conveyed, transferred or otherwise granted or given any interest in the
12 Settled Claims, or any of them, to any other Person.

13 4.2 Upon the Effective Date, each of the Released Parties shall be deemed to
14 have, and by operation of the Order and Final Judgment shall have, fully, finally, and
15 forever released, relinquished, and discharged Lead Plaintiff, each and all of the Class
16 Members, and Plaintiffs' Counsel from all Released Parties' Claims, and shall forever
17 be enjoined from prosecuting such claims.

18 4.3 Lead Plaintiff, each and all of the Class Members, and Plaintiffs' Counsel
19 agree and covenant not to file or pursue any of the Settled Claims against any Released
20 Parties between the date of this Stipulation and the Effective Date. The Settling Parties
21 agree that, if the Settlement does not become Final, the period of time between the date
22 of this Stipulation and the Effective Date shall not be counted for purposes of any
23 defense based on passage of time.

24 4.4 The Proof of Claim and Release form to be executed by Class Members
25 shall release all Settled Claims against the Released Parties and shall be substantially in
26 the form contained in Exhibit A-2 attached hereto.

1 5. Administration and Calculation of Claims, Final Awards, and Supervision
2 and Distribution of Settlement Fund

3 5.1 The Claims Administrator, subject to such supervision and direction of the
4 Court and/or Lead Counsel as may be necessary or as circumstances may require, shall
5 administer and calculate the claims submitted by Class Members and shall oversee
6 distribution of the Net Settlement Fund to Authorized Claimants.

7 5.2 The Settlement Fund shall be applied as follows:

8 (a) to pay all the costs and expenses reasonably and actually incurred in
9 connection with providing notice, locating Class Members, soliciting Class claims,
10 assisting with the filing of claims, administering and distributing the Net Settlement
11 Fund to Authorized Claimants, processing Proof of Claim and Release forms, and
12 paying escrow fees and costs, if any;

13 (b) to pay the Taxes and Tax Expenses described in ¶ 2.9 above;

14 (c) to pay Plaintiffs' Counsel's attorneys' fees, expenses, and costs with
15 interest thereon (the "Fee and Expense Award") and Lead Plaintiff's time and expenses
16 pursuant to 15 U.S.C. § 78u-4(a)(4), if and to the extent allowed by the Court; and

17 (d) after the Effective Date, to distribute the balance of the Settlement Fund
18 (the "Net Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the
19 Plan of Allocation, or the Court.

20 5.3 Upon the Effective Date and thereafter, and in accordance with the terms
21 of the Stipulation, the Plan of Allocation, or such further approval and further order(s)
22 of the Court as may be necessary or as circumstances may require, the Net Settlement
23 Fund shall be distributed to Authorized Claimants, subject to and in accordance with
24 the following:

25 (a) Within ninety (90) days after the mailing of the Notice or such other time
26 as may be set by the Court, each Class Member claiming to be an Authorized Claimant
27 shall be required to submit a Proof of Claim and Release form, substantially in the form
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1 of Exhibit A-2 attached hereto, signed under penalty of perjury and supported by such
2 documents as are designated therein, including proof of the transactions claimed, and
3 such other documents or proof as the Claim Administrator, in its discretion, may deem
4 acceptable;

5 (b) All Proof of Claim and Release forms must be submitted by the date
6 specified in the Notice unless such period is extended by order of the Court. Any Class
7 Member who fails to submit a Proof of Claim and Release form by such date shall be
8 forever barred from receiving any payment pursuant to this Stipulation (unless, by order
9 of the Court, a later-submitted Proof of Claim and Release form by such Class Member
10 is approved), but shall in all other respects be bound by all of the terms of this
11 Stipulation and the Settlement, including the terms of the Order and Final Judgment to
12 be entered in the Litigation and the releases provided for herein, and will be barred from
13 bringing any action against the Released Parties concerning the Settled Claims. A Proof
14 of Claim and Release form shall be deemed to have been submitted when posted, if
15 received with a postmark indicated on the envelope and if mailed by first-class mail and
16 addressed in accordance with the instructions thereon. In all other cases, the Proof of
17 Claim and Release form shall be deemed to have been submitted when actually received
18 by the Claims Administrator. Notwithstanding the foregoing, Lead Counsel may, in its
19 discretion, accept for processing late submitted claims so long as the distribution of the
20 Net Settlement Fund to Authorized Claimants is not materially delayed;

21 (c) Each Proof of Claim and Release form shall be submitted to and reviewed
22 by the Claims Administrator, who shall determine in accordance with this Stipulation
23 and the approved Plan of Allocation the extent, if any, to which each claim shall be
24 allowed, subject to review by the Court pursuant to subparagraph (e) below;

25 (d) Proof of Claim and Release forms that do not meet the submission
26 requirements may be rejected. Prior to rejection of a Proof of Claim and Release form,
27 the Claims Administrator shall communicate with the claimant in order to remedy the
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1 curable deficiencies in the Proof of Claim and Release form submitted. The Claims
2 Administrator shall notify, in a timely fashion and in writing, all claimants whose Proof
3 of Claim and Release forms it proposes to reject in whole or in part, setting forth the
4 reasons therefor, and shall indicate in such notice that the claimant whose claim is to be
5 rejected has the right to a review by the Court if the claimant so desires and complies
6 with the requirements of subparagraph (e) below;

7 (e) If any claimant whose claim has been rejected in whole or in part desires
8 to contest such rejection, the claimant must, within twenty (20) days after the date of
9 mailing of the notice required in subparagraph (d) above, serve upon the Claims
10 Administrator a notice and statement of reasons indicating the claimant's grounds for
11 contesting the rejection, along with any supporting documentation, and requesting a
12 review thereof by the Court. If a dispute concerning a claim cannot be otherwise
13 resolved, Lead Counsel shall thereafter present the request for review to the Court, on
14 notice to Defendants' counsel; and

15 (f) The Net Settlement Fund shall be distributed to the Authorized Claimants
16 substantially in accordance with the Plan of Allocation described in the Notice and
17 approved by the Court.

18 5.4 Except for the obligation of CytRx and/or its insurers to pay or cause
19 payment of the Settlement Fund into the escrow account as set forth herein, and to
20 cooperate in the production of information with respect to the identification of Class
21 Members from CytRx's shareholder transfer records, as provided herein, Defendants
22 and their Related Parties shall have no responsibility for, interest in, or liability
23 whatsoever with respect to the investment or distribution of the Settlement Fund, the
24 Plan of Allocation, the determination, administration, or calculation of claims, the
25 payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection
26 therewith.

1 5.5 No Person shall have any claim against Lead Plaintiff, the Escrow Agent,
2 Plaintiffs' Counsel or any claims administrator, or Defendants or their counsel based on
3 distributions made substantially in accordance with the Stipulation and the Settlement
4 contained herein, the Plan of Allocation, or further order(s) of the Court.

5 5.6 If there is any balance remaining in the Net Settlement Fund after six (6)
6 months from the date of distribution of the Net Settlement Fund (whether by reason of
7 tax refunds, uncashed checks, or otherwise), then, after the Claims Administrator has
8 made reasonable and diligent efforts to have Class Members who are entitled to
9 participate in the distribution of the Net Settlement Fund cash their distributions, any
10 balance remaining shall be re-distributed among Authorized Claimants in an equitable
11 and economic manner and any remainder donated to an appropriate non-profit
12 organization selected by Lead Counsel, with the consent of CytRx, which consent shall
13 not be unreasonably withheld.

14 5.7 It is understood and agreed by the Settling Parties that any proposed Plan
15 of Allocation of the Net Settlement Fund including, but not limited to, any adjustments
16 to an Authorized Claimant's claim set forth therein, is not a necessary term of the
17 Stipulation and is to be considered by the Court separately from the Court's
18 consideration of the fairness, reasonableness, and adequacy of the Settlement set forth
19 in the Stipulation. Any order or proceeding relating to the Plan of Allocation shall not
20 operate to terminate or cancel the Stipulation or affect the validity or finality of the
21 Court's Order and Final Judgment approving the Stipulation and the Settlement set forth
22 therein, or any other orders entered pursuant to the Stipulation.

23 6. Plaintiffs' Counsel's Attorneys' Fees and Expenses

24 6.1 Lead Counsel may submit an application or applications (the "Fee and
25 Expense Application") for distributions to it from the Settlement Fund for: (a) an award
26 of attorneys' fees from the Settlement Fund; (b) payment of expenses and costs incurred
27 in connection with prosecuting the Litigation; (c) any interest on such attorneys' fees,
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1 costs, and expenses at the same rate and for the same periods as earned by the Settlement
2 Fund; and (d) reimbursement for the expenses of Lead Plaintiff, pursuant to 15 U.S.C.
3 § 78u-4(a)(4). Lead Counsel reserves the right to make additional applications for fees
4 and expenses incurred.

5 6.2 The attorneys' fees, expenses, and costs, including the fees of experts and
6 consultants, as awarded by the Court, shall be paid to Lead Counsel from the Settlement
7 Fund, as ordered, no later than ten (10) business days after the Court executes an order
8 awarding such fees and expenses. Lead Counsel shall thereafter allocate, subject to the
9 conditions below, the attorneys' fees amongst Plaintiffs' Counsel in a manner in which
10 it in good faith believes reflects the contributions of such counsel to the prosecution and
11 settlement of the Litigation. Attorneys' fees, expenses, and costs will be paid to
12 Plaintiffs' Counsel in cash and stock *pari passu* with the Class, *i.e.*, in the same
13 proportion as the Settlement Fund of cash and stock. In the event that the Effective
14 Date does not occur, or the Order and Final Judgment or the order making the Fee and
15 Expense Award is reversed or modified, or the Stipulation is canceled or terminated for
16 any other reason, and in the event that the Fee and Expense Award has been paid to any
17 extent, then Plaintiffs' Counsel, including their law firms, partners, and/or shareholders,
18 shall within five (5) business days from receiving notice from Defendants' counsel or
19 from a court of appropriate jurisdiction, refund to the Settlement Fund the fees,
20 expenses, and costs previously paid to them from the Settlement Fund plus interest
21 thereon at the same rate as earned on the Settlement Fund in an amount consistent with
22 such reversal or modification. Each such Plaintiffs' Counsel's law firm, as a condition
23 of receiving such fees and expenses, on behalf of itself and each partner and/or
24 shareholder of it, agrees that the law firm and its partners and/or shareholders are subject
25 to the jurisdiction of the Court for the purpose of enforcing the provisions of this
26 paragraph.

1 6.3 It is understood and agreed by the Settling Parties that any proposed Fee
2 and Expense Application is not a necessary term of the Stipulation and is to be
3 considered by the Court separately from the Court's consideration of the fairness,
4 reasonableness, and adequacy of the Settlement set forth in the Stipulation. Any order,
5 proceeding, or appeal from any order relating to the Fee and Expense Application shall
6 not operate to terminate or cancel the Stipulation or affect the validity or finality of the
7 Court's Order and Final Judgment approving the Stipulation and the Settlement set forth
8 therein, or any other orders entered pursuant to the Stipulation.

9 6.4 Defendants and their Related Parties shall have no responsibility for, and
10 no liability whatsoever with respect to, any payment to Plaintiffs' Counsel from the
11 Settlement Fund.

12 6.5 Defendants and their Related Parties shall have no responsibility for, and
13 no liability whatsoever with respect to, the allocation among Plaintiffs' Counsel, and/or
14 any other person who may assert some claim thereto, of any Fee and Expense Award
15 that the Court may make in the Litigation.

16 7. Conditions of Settlement, Effect of Disapproval, Cancellation or
17 Termination

18 7.1 The Effective Date of the Stipulation shall be conditioned on the
19 occurrence of all of the following events:

20 (a) CytRx and/or its insurers have made or caused the contributions to be made
21 to the Settlement Fund, as required by ¶ 2.1 above;

22 (b) the Court has entered the Notice Order, as required by ¶ 3.1 hereof;

23 (c) the Court has approved this Stipulation, following notice to the Class
24 Members and the Settlement Hearing, as prescribed by Rule 23 of the Federal Rules of
25 Civil Procedure;

26 (d) the Court has entered the Order and Final Judgment, or a judgment
27 substantially in the form of Exhibit B attached hereto;

- 1 (e) the Order and Final Judgment has become Final; and
- 2 (f) the Settlement shall not have been terminated by any of the parties hereto.

3 7.2 Upon the Effective Date, any and all remaining interest or right of
4 Defendants in or to the Settlement Fund, if any, shall be absolutely and forever
5 extinguished.

6 7.3 The Settling Parties shall have the right to terminate the Settlement and
7 this Stipulation by providing written notice of their election to do so (“Termination
8 Notice”) to all other parties hereto within thirty (30) days of: (a) the Court’s declining
9 to enter the Notice Order in any material respect; (b) the Court’s refusal to approve this
10 Stipulation or any material part of it; (c) the Court’s declining to enter the Order and
11 Final Judgment in any material respect; (d) the date upon which the Order and Final
12 Judgment is modified or reversed in any material respect by the Court of Appeals or the
13 Supreme Court; or (e) as otherwise set forth in the Settling Parties’ Supplemental
14 Agreement, as provided below.

15 7.4 The Settlement Hearing shall be held at a date and time convenient to the
16 Court, to determine whether the proposed Settlement of the Litigation on the terms and
17 conditions provided for in this Stipulation is fair, reasonable, and adequate as to the
18 Class and should be approved by the Court; whether an Order and Final Judgment as
19 provided in ¶ 1.9 should be entered herein; whether the proposed Plan of Allocation
20 should be approved; and to determine the amount of fees and expenses that should be
21 awarded to Plaintiffs’ Counsel. If, prior to the Settlement Hearing, persons who
22 otherwise would be Class Members have submitted timely requests for exclusion to the
23 Claims Administrator (“Requests for Exclusion”) from the Class in accordance with the
24 provisions of the Notice Order and the Notice given pursuant thereto, and if the
25 aggregate number of shares of CytRx common stock purchased or otherwise acquired
26 by such Class Members during the Class Period equals or exceeds the amount specified
27 in a separate supplemental agreement (“Supplemental Agreement”) between the
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1 Settling Parties, CytRx shall have the option to terminate the Stipulation in accordance
2 with the procedures set forth in the Supplemental Agreement. The Supplemental
3 Agreement and all of its terms are hereby incorporated into this Stipulation (and vice
4 versa); however, the Supplemental Agreement will not be filed with the Court unless
5 and until a dispute among the parties concerning its interpretation or application arises.
6 If required by the Court, the Supplemental Agreement and/or any of its terms may be
7 disclosed in camera to the Court for purposes of approval of the settlement, but such
8 disclosure shall be carried out to the fullest extent possible in accordance with the
9 practices of the Court so as to preserve the confidentiality of the Supplemental
10 Agreement, particularly the threshold aggregate number of shares. The Claims
11 Administrator shall send copies of all Requests for Exclusion received to counsel for
12 Defendants and to Lead Counsel within three (3) business days of receipt and in any
13 event no fewer than ten (10) business days before any Settlement Hearing.

14 7.5 Unless otherwise ordered by the Court, in the event the Stipulation is
15 terminated, or is canceled, or shall not become effective for any reason, within five (5)
16 business days after written notification of such event is sent by counsel for Defendants
17 or Lead Counsel to the Escrow Agent, subject to the terms of ¶ 2.9 hereof, the
18 Settlement Fund (including accrued interest), less any expenses and any costs which
19 have either been properly disbursed pursuant to ¶ 2.6 or ¶ 2.7 hereof or are determined
20 to be chargeable to the Settlement Fund for the notice and administration of the
21 Settlement pursuant to ¶ 2.7 herein, shall be refunded by the Escrow Agent to CytRx
22 plus accrued interest attributable to that amount by wire transfer pursuant to written
23 instructions from counsel for CytRx. At the request of counsel for Defendants, the
24 Escrow Agent or its designee shall apply for any tax refund owed to the Settlement
25 Fund and pay the proceeds, after deduction of any fees or expenses reasonably incurred
26 in connection with such application(s) for refund, to Defendants, pursuant to written
27 instructions from Defendants' counsel.

1 7.6 In the event that the Stipulation is not approved by the Court or the
2 Settlement set forth in the Stipulation is terminated or fails to become effective in
3 accordance with its terms, the Settling Parties shall be restored to their respective
4 positions in the Litigation immediately prior to the execution of this Stipulation. In
5 such event, the terms and provisions of the Stipulation, with the exception of ¶¶ 2.10,
6 7.3-7.7, 9, 9.1, 10.7, hereof, shall have no further force and effect with respect to the
7 Settling Parties and shall not be used in the Litigation or in any other proceeding for
8 any purpose, and any judgment or order entered by the Court in accordance with the
9 terms of the Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court
10 or modification or reversal on appeal of any order of the Court concerning the Plan of
11 Allocation or the amount of any attorneys' fees, costs, expenses, and interest awarded
12 by the Court to Lead Plaintiff or Plaintiffs' Counsel shall constitute grounds for
13 cancellation or termination of the Stipulation.

14 7.7 If the Effective Date does not occur, or if the Stipulation is terminated
15 pursuant to its terms, neither Lead Plaintiff nor Plaintiffs' Counsel shall have any
16 obligation to repay any amounts actually and properly disbursed from the Settlement
17 Fund for the notice and administration of the Settlement pursuant to ¶ 2.7 hereof. In
18 addition, any expenses already incurred and properly chargeable to the Settlement Fund
19 for the notice and administration of the Settlement pursuant to ¶ 2.7 hereof at the time
20 of such termination or cancellation, but which have not been paid, shall be paid by the
21 Escrow Agent in accordance with the terms of the Stipulation prior to the balance being
22 refunded in accordance with ¶ 7.5 hereof.

23 8. Class Certification

24 8.1 For purposes of this Stipulation and Settlement only, and subject to
25 approval of the Court in accordance with Rule 23(e) of the Federal Rules of Civil
26 Procedure, the Settling Parties stipulate to certification of the Class and the appointment
27 of Lead Plaintiff as class representative of the Class. Nothing in this Stipulation shall
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1 serve in any fashion, either directly or indirectly, as evidence or support for certification
2 of a class other than for settlement purposes. In the event that the Settlement upon the
3 terms and conditions set forth in this Stipulation is not approved by the Court, is
4 terminated, or the Effective Date (see ¶ 1.9 above) does not occur for any reason, the
5 certification of the Class automatically shall be revoked without requiring any
6 additional action by the Settling Parties or the Court, the provisions concerning
7 certification shall have no effect whatsoever, and the Settling Parties shall be restored
8 *nunc pro tunc* to their respective positions in the Litigation immediately preceding the
9 date of this Stipulation. In such event, Defendants reserve their right to object for any
10 and all reasons to the certification of any class or sub-class or to the appointment of any
11 plaintiff as a class representative, and this Stipulation shall not be used or considered in
12 any way in connection with class certification or class representation.

13 9. No Admission of Wrongdoing

14 9.1 This Stipulation, whether or not consummated, and any negotiations,
15 discussions, proceedings or agreements relating to the Stipulation, the Settlement, and
16 any matters arising in connection with settlement discussions or negotiations,
17 proceedings, or agreements, shall not be offered or received against or to the prejudice
18 of the Settling Parties for any purpose, and in particular, shall not be:

19 (a) offered or received against any Defendant, in the Litigation or any action,
20 as evidence of or construed as or deemed to be evidence of any presumption,
21 concession, or admission by any Defendant of the truth of any allegations by any of the
22 Plaintiffs or the validity of any claim that has been or could have been asserted in the
23 Litigation, or the deficiency of any defense that has been or could have been asserted in
24 the Litigation or in any litigation, including, but not limited to, the Settled Claims, or of
25 any liability, damages, negligence, fault, or wrongdoing of the Defendants;

26 (b) offered or received against, or to the prejudice of, any Defendant, in the
27 Litigation or any action, as evidence of a presumption, concession, admission of any
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1 fault, misrepresentation, or omission with respect to any statement or written document
2 approved or made by any Defendant, or against Lead Plaintiff or any Class Member as
3 evidence of any infirmity in the claims of Lead Plaintiff and the Class;

4 (c) offered or received against or to the prejudice of any Defendant, in the
5 Litigation or any action, as evidence of a presumption, concession, or admission of any
6 liability, negligence, fault, infirmity or wrongdoing, or in any way referred to for any
7 other reason as against any of the parties to this Stipulation, in any other civil, criminal,
8 or administrative action or proceeding, other than such proceedings as may be necessary
9 to effectuate the provisions of this Stipulation; provided, however, that if this
10 Stipulation is approved by the Court, the Released Parties may refer to it to effectuate
11 the release granted them hereunder; or

12 (d) construed as, or offered or received against or to the prejudice of
13 Defendants, Lead Plaintiff, or the Class, in the Litigation or any action, as an admission
14 or concession that the consideration to be given hereunder represents the amount which
15 could be or would have been recovered after trial.

16 10. Miscellaneous Provisions

17 10.1 The Settling Parties (a) acknowledge that it is their intent to consummate
18 this agreement; and (b) agree to cooperate to the extent reasonably necessary to
19 effectuate and implement all terms and conditions of the Stipulation and to exercise
20 their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

21 10.2 The Settling Parties reserve the right, upon the agreement of all of them
22 and subject to the Court's approval, to make any reasonable extensions of time or
23 modifications to the Exhibits attached hereto that might be necessary to carry out any
24 of the provisions of this Stipulation.

25 10.3 This Stipulation, the Exhibits attached hereto, and the Supplemental
26 Agreement constitute the entire agreement between the Settling Parties as to the subject
27 matter hereof and supersede any prior or contemporaneous written or oral agreements
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1 or understandings between the Settling Parties. No representations, warranties, or
2 inducements have been made to any party concerning the Stipulation, its Exhibits, or
3 the Supplemental Agreement other than the representations, warranties, and covenants
4 contained and memorialized in such documents.

5 10.4 Except as otherwise provided for herein, each party shall bear his, her or
6 its own costs.

7 10.5 The Settling Parties intend this Settlement to be a final and complete
8 resolution of all disputes between them with respect to the Litigation. The Settlement
9 compromises all claims that were contested, or could have been contested, and shall not
10 be deemed an admission by any Settling Party as to the merits of any claim or defense.
11 Pursuant to 15 U.S.C. § 78u-4(c)(1), the Order and Final Judgment will contain a
12 statement that, during the course of the Litigation, the Settling Parties and their
13 respective counsel at all times complied with the requirements of Federal Rule of Civil
14 Procedure 11. The Settling Parties agree that the amount paid to the Settlement Fund
15 and the other terms of the Settlement were negotiated in good faith, at arms'-length by
16 the Settling Parties, and reflect a settlement that was reached voluntarily after
17 consultation with competent legal counsel. The Settling Parties reserve their right to
18 rebut, in a manner that such party determines to be appropriate, any contention made in
19 any public forum that the Litigation was brought or defended in bad faith or without a
20 reasonable basis.

21 10.6 Any of the Released Parties may file the Stipulation and/or the Order and
22 Final Judgment in any action that may be brought against them in order to support a
23 defense, claim, or counterclaim based on principles of res judicata, collateral estoppel,
24 release, good faith settlement, judgment bar or reduction, or any other theory of claim
25 preclusion or issue preclusion or similar defense or counterclaim, or to effectuate the
26 liability protection granted them under any applicable insurance policies. The Settling
27 Parties may file this Stipulation and/or the Order and Final Judgment in any action that
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1 may be brought to enforce the terms of this Stipulation and/or the Order and Final
2 Judgment.

3 10.7 This Stipulation shall not be subject to collateral attack by any Class
4 Member or any recipient of the Notice after the Final Judgment is entered. Such
5 prohibited collateral attacks shall include claims made before the Settlement Hearing
6 that a Class Member failed to receive timely notice of the settlement or failed to submit
7 a timely dispute letter for any reason.

8 10.8 Except as otherwise provided for herein, all agreements made and orders
9 entered during the course of the Litigation relating to the confidentiality of information
10 shall survive this Stipulation.

11 10.9 All of the Exhibits to the Stipulation are material and integral parts hereof
12 and are fully incorporated herein by this reference.

13 10.10 The Stipulation may be amended or modified only by a written instrument
14 signed by or on behalf of all Settling Parties or their respective successors-in-interest.
15 Amendments and modifications may be made without additional notice to the Class
16 unless such notice is required by the Court.

17 10.11 Lead Counsel, on behalf of the Class, is expressly authorized by Lead
18 Plaintiff to take all appropriate action required or permitted to be taken by the Class
19 pursuant to the Stipulation to effectuate its terms and also is expressly authorized to
20 enter into any modifications or amendments to the Stipulation on behalf of the Class
21 which it deems appropriate.

22 10.12 Each counsel or other person executing the Stipulation or any of its
23 Exhibits on behalf of any party hereto hereby warrants that such person has the full
24 authority to do so.

25 10.13 The Stipulation may be executed in one or more counterparts. All executed
26 counterparts and each of them shall be deemed to be one and the same instrument. The
27 Stipulation may be executed by exchange of faxed or e-mailed (in pdf format) executed
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1 signature pages, and any signature thereby transmitted shall be deemed an original
2 signature for purposes of this Stipulation. A complete set of original executed
3 counterparts shall be filed with the Court.

4 10.14 The Stipulation shall be binding upon, and inure to the benefit of, the heirs,
5 executors, administrators, trustees, parents, successors and assigns of the Settling
6 Parties, including any corporation, trust, partnership or other entity into which any
7 Settling Party heretofore has merged or with which it has been consolidated or hereafter
8 may merge or consolidate.

9 10.15 The Court shall retain jurisdiction with respect to implementation and
10 enforcement of the terms of the Stipulation.

11 10.16 This Court shall be the sole and exclusive forum for any action brought by
12 the Settling Parties or Class Members for purposes of implementing and enforcing the
13 Settlement embodied in the Stipulation, and the Settling Parties and Class Members
14 have been deemed to have consented to the personal jurisdiction of this Court in
15 connection with any such action.

16 10.17 The waiver by one party of any breach of this Stipulation by any other
17 party shall not be deemed a waiver by any other party or a waiver of any other prior or
18 subsequent breach of this Stipulation.

19 10.18 The Stipulation and the Exhibits attached hereto and the Supplemental
20 Agreement shall be considered to have been negotiated, executed, and delivered, and to
21 be wholly performed, in the State of California, and the rights and obligations of the
22 parties to the Stipulation shall be construed and enforced in accordance with, and
23 governed by, the internal, substantive laws of the State of California without giving
24 effect to that State's choice-of-law principles, except to the extent that the law of the
25 United States requires that federal law governs.

26 10.19 The headings herein are used for the purpose of convenience only and are
27 not meant to have legal effect.

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1 10.20 This Stipulation shall not be construed more strictly against one party than
2 another merely by virtue of the fact that it, or any part of it, may have been prepared by
3 counsel for one of the Settling Parties, it being recognized that it is the result of arm's-
4 length negotiations between the Settling Parties and the Settling Parties have
5 contributed substantially and materially to the preparation of this Stipulation.

6 10.21 Pending approval of the Court of the Stipulation and its Exhibits, all
7 proceedings in this Litigation shall be stayed and all Members of the Class shall be
8 barred and enjoined from prosecuting any of the Settled Claims against any of the
9 Released Parties.

10 10.22 Whenever this Stipulation requires or contemplates that one of the Settling
11 Parties or their respective counsel or the Escrow Agent shall or may provide notice to
12 another, notice shall be provided via e-mail and prepaid overnight mail as follows:

13 (a) If to Plaintiffs or to Plaintiffs' Counsel, then to:

14 Lewis S. Kahn
15 KAHN SWICK & FOTI, LLC
16 206 Covington St.
17 Madisonville, LA 70447
18 Telephone: (505) 455-1400
19 Facsimile: (504) 455-1498
20 ramzi.abadou@ksfcounsel.com

21 (b) If to Defendants or counsel for Defendants, then to all of the following:

22 Thomas J. Nolan
23 Allen L. Lanstra
24 Skadden, Arps, Slate, Meagher & Flom LLP
25 300 South Grand Avenue, Suite 3400
26 Los Angeles, California 90071
27 thomas.nolan@skadden.com; allen.lanstra@skadden.com
28 Telephone: (213) 687-5250
 Facsimile: (213) 621-5250

 Clifford H. Pearson
 PEARSON, SIMON & WARSHAW LLP
 15165 Ventura Boulevard, Suite 400
 Sherman Oaks, CA 91403
 cpearson@pswlaw.com
 Telephone: (818) 788-8300

Attorney for Defendant Thomas Michael Meyer

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