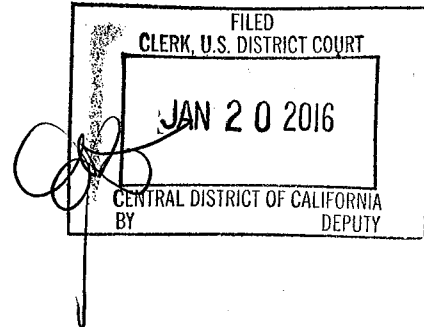


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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

IN RE CYTRX CORPORATION
SECURITIES LITIGATION

)
)
) **Docket No.: 2:14-CV-01956-GHK (PJWx)**
) CLASS ACTION
)
) **ORDER GRANTING MOTION FOR**
) **PRELIMINARY APPROVAL OF**
) **SETTLEMENT**
)
) DEPT: Courtroom 650
) JUDGE: Hon. Chief Judge George H. King
)
)
)
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1 WHEREAS, a consolidated class action is pending before this Court captioned
2 *In re CytRx Corporation Securities Litigation*, Case No. CV-14-1956 GHK (PjWx)
3 (the “Action”);

4 WHEREAS, on December 8, 2015, Lead Plaintiff Deepak Gupta (“Lead
5 Plaintiff”) and Defendants CytRx Corporation, Steven A. Kriegsman, John Y. Caloz,
6 David J. Haen, Louis J. Ignarro, Joseph Rubinfeld, Shirley Selter as representative for
7 Marvin S. Selter, Richard L. Wennekamp, Thomas Michael Meyer, Jefferies LLC,
8 Oppenheimer & Co. Inc., Aegis Capital Corp., and H.C. Wainwright & Co., LLC
9 (collectively, the “Defendants”) (together, the “Parties”), by and through their
10 respective counsel, entered into a Stipulation of Settlement (the “Stipulation”). The
11 Stipulation is subject to review under Rule 23 of the Federal Rules of Civil Procedure
12 (“Rule 23”). Together with the exhibits attached thereto, the Stipulation sets forth the
13 terms and conditions for the proposed settlement of the claims alleged in the
14 Consolidated Class Action Complaint for Violation of Federal Securities Laws filed
15 with the Court on October 1, 2014; and

16 WHEREAS, the Court is familiar with and has reviewed the record in the
17 Action and has reviewed the Stipulation, together with the exhibits attached thereto
18 and incorporated by reference therein, and finds good cause for entering the following
19 Order;

20 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

21 1. This order hereby incorporates by reference the definitions in the
22 Stipulation and all terms used herein shall have the same meanings as set forth in the
23 Stipulation (the “Preliminary Approval Order”).

24 2. The Court preliminarily certifies, solely for purposes of effectuating the
25 Settlement, pursuant to Rule 23, a class consisting of all persons and entities who
26 purchased or otherwise acquired the publicly-traded securities of CytRx between
27 November 20, 2013 and March 13, 2014 inclusive (the “Class”). Excluded from the
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1 Class are Defendants, the directors and officers of CytRx and their families and
2 affiliates. Also excluded from the Class are all persons and entities who exclude
3 themselves from the Class by timely requesting exclusion in accordance with the
4 requirements set forth in the Notice of Pendency and Proposed Settlement of Class
5 Action, Motion for Attorneys' Fees and Litigation Expenses and Settlement Fairness
6 Hearing (the "Notice").

7 3. Pursuant to Rule 23 and for purposes of settlement only, the Court
8 preliminarily certifies Lead Plaintiff Deepak Gupta as Class Representative for the
9 Class and appoints Lead Counsel Kahn Swick & Foti, LLC as Class Counsel for the
10 Class. Lead Counsel is authorized to act on behalf of the Class with respect to all acts
11 required by, or which may be undertaken pursuant to, the Stipulation or such other
12 acts that are reasonably necessary to consummate the proposed Settlement set forth in
13 the Stipulation.

14 4. With respect to the Class, the Court preliminarily finds, solely for
15 purposes of effectuating the Settlement, that the prerequisites for a class action under
16 Rules 23(a) and (b)(3) have been satisfied. The members of the Class are so
17 numerous that joinder of all Class Members in the class action is impracticable and
18 there are questions of law and fact common to the Class which predominate over any
19 individual questions. The claims of Lead Plaintiff are typical of the claims of the Class
20 and Lead Plaintiff and his counsel have fairly and adequately represented and
21 protected the interests of all of the Class Members. A class action is also superior to
22 other available methods for the fair and efficient adjudication of the controversy,
23 considering: (a) the interests of the members of the Class in individually controlling
24 the prosecution of the separate actions; (b) the extent and nature of any litigation
25 concerning the controversy already commenced by members of the Class; (c) the
26 desirability or undesirability of concentrating the litigation of these claims in this
27 particular forum; and (d) the difficulties likely to be encountered in the management
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1 of the class action.

2 5. The Court preliminarily concludes that the following are within the realm
3 of being fair, reasonable, and adequate: (i) the Settlement of the Action as set forth in
4 the Stipulation, and (ii) the proposed Plan of Allocation described in the Notice,
5 subject to the right of any Class Member to challenge the fairness, reasonableness, and
6 adequacy of the Settlement, the Stipulation or the proposed Plan of Allocation, and to
7 show cause, if any exists, why a final judgment dismissing the Action based on the
8 Stipulation should not be ordered herein after due and adequate notice to the Class has
9 been given in conformity with this Order.

10 6. Lead Counsel is hereby authorized to retain Gilardi & Co, LLC
11 (“Gilardi”) as the Claims Administrator in connection with the Settlement to supervise
12 and administer the notice and claims procedures as well as the processing of claims as
13 more fully set forth below:

14 i. No later than twenty (20) calendar days after entry of this
15 Preliminary Approval Order, the Claims Administrator shall cause a copy of the
16 Notice and Proof of Claim and Release form (“Claim Form”), substantially in the
17 forms attached hereto as Exhibits A(1) and A(2), respectively, to be mailed by first
18 class mail, postage prepaid, to all members of the Class who may be identified
19 through reasonable effort, including through the cooperation of CytRx and/or its
20 transfer agents to provide security holder lists as set forth in the Stipulation (the
21 “Notice Date”);

22 ii. A summary notice (the “Summary Notice”), substantially in the
23 form attached hereto as Exhibit A(3), shall be published once in the national edition of
24 *Investor’s Business Daily* and over the *PR Newswire* no later than ten (10) calendar
25 days after the Notice Date; and

26 iii. The Notice, the Summary Notice and the Claim Form shall also be
27 placed on the Claims Administrator’s website, on or before the Notice Date.
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1 7. Not later than ten (10) days after the submission of the Stipulation to the
2 Court, Defendants shall have served CAFA Notice on the State and Federal officials
3 as required by 28 U.S.C. section 1715(b). Not later than thirty-five (35) calendar days
4 before the Settlement Fairness Hearing, Defendants shall file with the Court an
5 affidavit or declaration showing timely compliance with this CAFA Notice directive.

6 8. The Court hereby approves the form of Notice and Summary Notice
7 (together, the “Notices”) and the Claim Form, and finds that the procedures
8 established for publication, mailing and distribution of such Notices substantially in
9 the manner and form set forth in ¶6 of this Preliminary Approval Order meet the
10 requirements of Rule 23, the Exchange Act and Securities Act, as amended by the
11 Private Securities Litigation Reform Act of 1995, the Constitution of the United
12 States, and constitute the best notice practicable under the circumstances.

13 9. The Claims Administrator shall use reasonable efforts to give notice to
14 brokers and other nominees who purchased or otherwise acquired the publicly traded
15 common stock of CytRx for the benefit of another Person during the Class Period.
16 Those brokers and other nominees are directed to either: (i) send the Notice and Claim
17 Form to all such beneficial owners, postmarked within ten (10) calendar days of
18 receipt of the Notice; or (ii) send a list of the names and addresses of such beneficial
19 owners to the Claims Administrator within ten (10) calendar days after receipt of the
20 Notice, in which event the Claims Administrator shall mail the Notice and Claim
21 Form to such beneficial owners within ten (10) calendar days after receipt thereof.

22 10. Upon full compliance with this Preliminary Approval Order, including
23 the timely mailing of the Notice and Claim Form to beneficial owners, such nominees
24 may seek reimbursement of their reasonable expenses actually incurred in complying
25 with this Preliminary Approval Order by providing the Claims Administrator with
26 proper documentation supporting the expenses for which reimbursement is sought and
27 reflecting compliance with these instructions, including timely mailing of the Notice
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1 and Claim Form. Such properly documented expenses incurred by nominees in
2 compliance with the terms of this Preliminary Approval Order shall be paid from the
3 Settlement Fund in accordance with the provisions of the Stipulation, subject to
4 further order of this Court with respect to any dispute concerning such compensation.

5 11. Pursuant to Fed. R. Civ. P. 23(e), a hearing (the “Settlement Fairness
6 Hearing”) shall be held on May 9, 2016, at 9:30 a.m., in the United States District
7 Court for the Central District of California, the Honorable George H. King presiding,
8 for the following purposes:

9 a. to determine whether the proposed Settlement of the Action on the
10 terms and conditions provided for in the Stipulation is fair, reasonable,
11 adequate, and in the best interests of the Class and should be finally approved
12 by the Court;

13 b. to determine whether the Plan of Allocation for the proceeds of the
14 Settlement should be approved by the Court as fair and reasonable;

15 c. to determine whether the Order and Final Judgment, substantially
16 in the form attached as Exhibit B to the Stipulation, should be entered, *inter*
17 *alia*, dismissing the Action against the Defendants with prejudice and
18 extinguishing and releasing all Settled Claims (as defined in the Stipulation);

19 d. to consider Lead Counsel’s application for an award of attorneys’
20 fees and reimbursement of Litigation Expenses;

21 e. to consider Lead Plaintiff’s application for reimbursement of costs
22 and expenses (including lost wages) in connection with his representation of the
23 Class; and

24 f. to rule on such other matters as the Court may deem appropriate,
25 including considering any objections by Class Members to claims
26 administration fees and costs and deciding upon the reasonableness of such
27 costs.
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1 12. The Court’s consideration and determination as to subparts 11(b) (Plan of
2 Allocation), 11(d) (attorneys’ fees and expenses), 11(e) (Lead Plaintiff’s application
3 for reimbursement of costs and expenses), and 11(f) (other appropriate matters) will
4 be separate from the Court’s consideration and determination of the fairness,
5 reasonableness, and adequacy of the Settlement. Any order approving or modifying
6 the Plan of Allocation set forth in the Notice, Lead Counsel’s request for attorneys’
7 fees and reimbursement of Litigation Expenses, settlement administration fees and
8 costs, and/or Lead Plaintiff’s request for reimbursement of costs and expenses
9 (including lost wages) in connection with his representation of the Class shall not
10 disturb or affect the finality of the Judgment, the Stipulation, or the Settlement.

11 13. The Court reserves the right to adjourn the Settlement Fairness Hearing
12 or any adjournment thereof, including the consideration of the application for
13 attorneys’ fees and reimbursement of Litigation Expenses or with such modification
14 as may be consented to by the Parties to the Stipulation and without further notice to
15 the Class.

16 14. Any member of the Class who wishes to object to the Settlement must, at
17 least twenty-one (21) calendar days prior to the Settlement Fairness Hearing, file with
18 the Court and serve on counsel (listed below) a written statement of objection to the
19 Settlement, the Plan of Allocation, Lead Counsel’s request for attorneys’ fees and
20 reimbursement of Litigation Expenses, settlement administration fees and costs,
21 and/or Lead Plaintiff’s request for reimbursement of costs and expenses (including
22 lost wages) in connection with his representation of the Class.

23 15. Any member of the Class who timely objects to the Settlement, the Plan
24 of Allocation, Lead Counsel’s request for attorneys’ fees and reimbursement of
25 Litigation Expenses, settlement administration fees and costs, and/or Lead Plaintiff’s
26 request for reimbursement of costs and expenses (including lost wages) in connection
27 with his representation of the Class, or who otherwise wishes to be heard, may appear
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1 in person or by his, her, or its attorney, at his, her, or its own expense, at the
2 Settlement Fairness Hearing and present evidence or argument that may be proper or
3 relevant. They may do so provided that no Person other than the Parties and their
4 counsel shall be heard, and no papers, briefs, pleadings, or other documents submitted
5 by any Person shall be considered by the Court, unless within twenty-one (21)
6 calendar days prior to the Settlement Fairness Hearing, such Person files with the
7 Court and serves upon counsel listed below:

8 (1) a statement of such Person's objections to any matters before the Court
9 concerning the Settlement;

10 (2) the grounds therefore or the reasons that such Person desires to appear and
11 be heard, as well as all documents or writings such Person desires the Court to
12 consider;

13 (3) whether that Person intends to present any witnesses; and

14 (4) proof of the Person's membership in the Class, which proof shall include the
15 Person's purchases/acquisitions of CytRx securities during the Class Period and any
16 sales thereof, including the dates, the number of shares and price(s) paid and received
17 for each such purchase, acquisition and sale. Such filings shall be served upon the
18 Court and the following counsel:

19 ***Lead Counsel for Lead Plaintiff***
20 ***and the Proposed Class:***

21 Kahn Swick & Foti, LLC
22 Lewis S. Kahn
23 206 Covington St.
24 Madisonville, LA 70447
25 Telephone: (504) 455-1400
26 Facsimile: (504) 455-1498

27 ***Counsel for the Individual CytRx Defendants:***

28 Allen L. Lanstra
Skadden, Arps, Slate, Meagher & Flom, LLP
300 South Grand Avenue, Ste. 3400

1 Los Angeles, CA 90071
2 Telephone: (213) 687-5000
3 Facsimile: (213) 687-5600

4 ***Counsel for Defendant CytRx Corporation:***

5 Clifford H. Pearson
6 Pearson, Simon & Warshaw, LLP
7 15165 Ventura Boulevard, Ste. 400
8 Sherman Oaks, CA 91403
9 Telephone: (818) 788-8300
10 Facsimile: (818) 788-8104

11 ***Counsel for Defendants Jefferies LLC, Oppenheimer & Co. Inc.,
12 Aegis Capital Corp. and H.C. Wainwright & Co., LLC:***

13 Charlene S. Shimada
14 Morgan, Lewis & Bockius LLP
15 One Market Square, Spear Street Tower
16 San Francisco, CA 94105
17 Telephone: (415) 442-1000
18 Facsimile: (415) 442-1001

19 ***Counsel for Thomas Michael Meyer:***

20 Steven M. Goldsobel
21 Law Offices of Steven Goldsobel
22 A Professional Corporation
23 1900 Avenue of the Stars, Suite 1800
24 Los Angeles, CA 90067

25 16. Any Person falling within the definition of the Class may upon request
26 be excluded from the Class. Any such Person must submit to the Claims
27 Administrator a request for exclusion (“Request for Exclusion”) at least twenty-one
28 (21) calendar days prior to the date of the Settlement Fairness Hearing. A Request for
Exclusion must state: (1) the name, address, and telephone number of the Person
requesting exclusion; (2) the Person’s purchases/acquisitions of CytRx securities
during the Class Period and any sales thereof, including the dates, the number of
shares and price(s) paid and received for each such purchase, acquisition and sale; and
(3) that the Person wishes to be excluded from the Class. All Persons who submit

1 valid and timely Requests for Exclusion in the manner set forth in this paragraph and
2 the Notice shall have no rights under the Stipulation, shall not share in the distribution
3 of the Net Settlement Fund, and shall not be bound by the Stipulation or any final
4 judgment. Requests for Exclusion may not be submitted by e-mail, unless otherwise
5 ordered by the Court.

6 17. Any Class Member who wishes to be eligible to participate in the Net
7 Settlement Fund must timely submit a valid Claim Form to the Claims Administrator,
8 at the Post Office Box indicated in the Notice, postmarked no later than one hundred
9 and twenty (120) calendar days following the Notice Date. Such deadline may be
10 extended further by Court order. A Claim Form shall be deemed to have been
11 submitted when postmarked, if mailed by first class, or registered or certified mail,
12 postage prepaid, addressed in accordance with the instructions given in the Claim
13 Form. All other Claim Forms shall be deemed to have been submitted at the time they
14 are actually received by the Claims Administrator. To be valid, a Claim Form must: (i)
15 be completed in a manner that permits the Claims Administrator to determine the
16 eligibility of the claim as set forth in the Claim Form; (ii) include the release by the
17 claimant of all Released Parties as set forth in the Stipulation; and (iii) be signed with
18 an affirmation that the information is true and correct. As part of the Claim Form,
19 each Class Member shall submit to the jurisdiction of the Court with respect to the
20 claim submitted, and shall (subject to the effectuation of the Settlement reflected in
21 the Stipulation) agree and enter into the release as provided in the Stipulation. All
22 Class Members who do not submit a valid and timely Claim Form shall be barred
23 forever from receiving any payments from the Net Settlement Fund, but will, in all
24 other respects, be subject to and bound by the provisions of the Stipulation and the
25 Order and Final Judgment, if entered, whether favorable or unfavorable and whether
26 or not they submit a Claim Form, unless such Persons request exclusion from the
27 Class in a timely and proper manner, as provided herein.

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1 18. If this Settlement, including any amendment made in accordance with the
2 Stipulation, is not approved by the Court or shall not become effective for any reason
3 whatsoever, the Settlement (including any modification thereof) made with the
4 consent of the Parties as provided for in the Stipulation, and any actions taken or to be
5 taken in connection therewith (including this Order and any judgment entered herein),
6 shall be terminated and shall become void and of no further force and effect except as
7 set forth in the Stipulation.

8 19. All proceedings in the Action, other than such proceedings as may be
9 necessary to carry out the terms and conditions of the Settlement, are hereby stayed
10 and suspended until further order of this Court. Pending final determination whether
11 the Settlement should be approved, Lead Plaintiff and all members of the Class are
12 barred and enjoined from commencing, prosecuting, continuing, or asserting any
13 action with regards to any of the Settled Claims against the Released Parties as
14 defined in the Stipulation.

15 20. The contents of the Settlement Fund held by the Escrow Agent shall be
16 deemed and considered to be in *custodia legis* of the Court, and shall remain subject to
17 the jurisdiction of the Court, until such time as the contents of those funds shall be
18 distributed pursuant to the Stipulation and/or further order(s) of the Court.

19 21. Lead Counsel, or an agent thereof, is authorized and directed to prepare
20 any tax returns and any other tax reporting for or in respect of the Settlement Fund and
21 to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund,
22 and to otherwise perform all obligations with respect to Taxes and any reporting or
23 filings in respect thereof as contemplated by the Stipulation, without further order of
24 the Court. The Court authorizes payment out of the Settlement Fund of notice and
25 administration expenses in accordance with the Stipulation. However, the Court will
26 review for reasonableness any amount claimed by the settlement administrator.

27 22. The Stipulation and all negotiations, statements, and proceedings in
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1 connection therewith shall not, in any event, be construed or deemed to be evidence of
2 an admission or concession on the part of Lead Plaintiff, any Defendant, any member
3 of the Class, or any other Person, of any liability or wrongdoing of any nature by
4 them, or any of them, and shall not be offered or received in evidence in any action or
5 proceeding (except an action to enforce the Stipulation and Settlement contemplated
6 thereby), or be used in any way as an admission, concession, or evidence of any
7 liability or wrongdoing of any nature, and shall not be construed as, or deemed to be
8 evidence of, an admission or concession that Lead Plaintiff, any member of the Class,
9 or any other Person, has or has not suffered any damage.

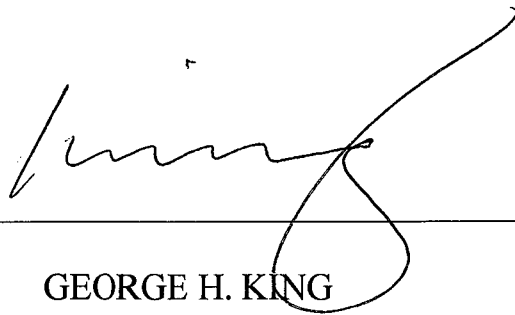
10 23. All motions and papers in support of the Settlement, the Plan of
11 Allocation, Lead Counsel's request for an award of attorneys' fees and reimbursement
12 of Litigation Expenses, settlement administration fees and costs, and/or Lead
13 Plaintiff's request for reimbursement of costs and expenses (including lost wages) in
14 connection with his representation of the Class, shall be filed and served no later than
15 forty-two (42) calendar days before the date scheduled for the Settlement Fairness
16 Hearing, and all reply briefs in support of said motions shall be filed and served no
17 later than seven (7) calendar days prior to the Settlement Fairness Hearing.

18 24. The Court further retains jurisdiction over this Action to consider all
19 further matters arising out of or connected with the Settlement reflected in the
20 Stipulation, including enforcement of the releases provided for in the Stipulation.

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22 **IT IS SO ORDERED.**

23 DATED:

24 1/20/16
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GEORGE H. KING
CHIEF UNITED STATES DISTRICT JUDGE