

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

IN RE CYTRX CORPORATION SECURITIES  
LITIGATION

) Exhibit A(1)  
) Docket No.: 2:14-CV-01956-GHK-PJW  
) CLASS ACTION  
)  
)

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION, MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES, AND SETTLEMENT FAIRNESS HEARING**

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

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by a class action lawsuit (the "Action") pending in the United States District Court for the Central District of California (the "Court") if you purchased or otherwise acquired the publicly-traded securities of CytRx Corporation ("CytRx" or the "Company") between November 20, 2013 and March 13, 2014, inclusive (the "Class Period").

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiff Deepak Gupta, on behalf of himself and the Class (as defined in ¶1 below), has reached a proposed settlement of the Action with defendants CytRx Corporation, Steven A. Kriegsman, John Y. Caloz, David J. Haen, Louis J. Ignarro, Joseph Rubinfeld, Shirley Selter as representative for Marvin S. Selter, Richard L. Wennekamp ("CytRx Defendants"), Jefferies LLC, Oppenheimer & Co. Inc., Aegis Capital Corp., H.C. Wainwright & Co., LLC (the "Underwriters"), and Thomas Michael Meyer (collectively, the "Defendants"), for a total of \$8.5 million in cash and stock (\$4 million in cash and \$4.5 million worth of shares of CytRx common stock) that will resolve all claims in the Action (the "Settlement").<sup>1</sup>

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

1. **Description of the Action and the Class:** This Notice relates to a proposed Settlement of claims in a pending class action lawsuit brought by investors alleging that the price of CytRx securities was artificially inflated during the Class Period as a result of alleged false and misleading statements and omissions by Defendants during the Class Period concerning, *inter alia*, the Company's undisclosed relationship with stock promotion firm, the DreamTeam Group. The proposed Settlement, if approved by the Court, will settle claims of all persons and entities who purchased or otherwise acquired the publicly-traded securities of CytRx between November 20, 2013 and March 13, 2014, inclusive (the "Class"), except for certain persons and entities who are excluded from the Class by definition (see ¶22 below) or who validly elect to exclude themselves from the Class (see ¶¶39-42 below).

2. **Statement of the Class' Recovery:** Subject to Court approval and, as described more fully below, Lead Plaintiff, on behalf of himself and the Class, has agreed to settle all Settled Claims (as defined in ¶31 below) against Defendants and the other Released Parties in exchange for a settlement payment of \$8.5 million in cash and stock (the "Settlement Amount") to be deposited into an escrow account (the Settlement Amount, plus any interest earned thereon, is referred to in this Notice as the "Settlement Fund"). The Net Settlement Fund (the Settlement Fund less Taxes, Notice and Administration Costs, and attorneys' fees and Litigation Expenses awarded by the Court) will be allocated among members of the Class in accordance with a plan of allocation that is approved by the Court. Estimated Administration costs are not anticipated to exceed \$250,000.

The proposed plan of allocation (the "Plan of Allocation") is attached hereto as Appendix A. The proposed Plan of Allocation may be modified by the Court without further notice.

3. **Statement of Average Amount of Recovery Per Security:** Lead Plaintiff's damages consultant estimates that approximately 38,817,656 million shares of CytRx securities purchased or otherwise acquired during the Class Period may have been affected by the conduct at issue in the Action. If all Class Members elect to participate in the Settlement, the estimated average recovery per damaged share of CytRx securities would be approximately \$0.22 before deduction of Court-awarded attorneys' fees and Litigation Expenses, as described below, and the costs of providing notice and administering the Settlement. Class Members should note, however,

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement dated December 8, 2015 (the "Stipulation"), which is available on the website [www.gilardi.com](http://www.gilardi.com).

that this is only an estimate based on the overall number of potentially damaged shares.<sup>2</sup> Some Class Members may recover more or less than the estimated amount per share. Class Member recoveries will depend on, among other things, the number of claims filed, the amount of CytRx securities purchased and/or acquired by the Class Member and the timing of such purchases and/or acquisitions, and the timing of the Class Member's sales, if any, of such CytRx securities.

4. **Statement of the Parties' Position on Damages:** Defendants deny all claims of wrongdoing, that they are liable to Lead Plaintiff and/or the Class or that Lead Plaintiff or other members of the Class suffered any injury. Moreover, the Parties do not agree on the amount of recoverable damages or on the average amount of damages per share of CytRx securities that would be recoverable if Lead Plaintiff was to prevail on each of his claims. The issues on which the Parties disagree include, but are not limited to: (1) whether the statements made or facts allegedly omitted were material, false or misleading; and (2) whether Defendants are otherwise liable under the securities laws for those statements or omissions.

5. **Statement of Attorneys' Fees and Expenses Sought:** Court-appointed Lead Counsel, Kahn Swick & Foti, LLC, has litigated this Action on a wholly contingent basis since its inception and has conducted this litigation and advanced the expenses of litigation with the expectation that if it was successful in recovering money for the Class, it would receive fees and be reimbursed for its expenses from the Settlement Fund, as is customary in this type of litigation. Lead Counsel will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 33% of the Settlement Amount, plus interest earned at the same rate as the Settlement Fund. Lead Counsel also will apply for the reimbursement of certain Litigation Expenses paid or incurred in connection with the prosecution and resolution of the Action in an amount not to exceed \$50,000, plus interest earned at the same rate as the Settlement Fund. In addition, Lead Plaintiff may seek reimbursement from the Settlement Fund in an amount not to exceed \$10,000 for reasonable costs and expenses (including lost wages) in connection with his representation of the Class in accordance with 15 U.S.C. § 78u-4(a)(4). Assuming that all of the investors who purchased or otherwise acquired CytRx securities during the Class Period and were damaged as a result of the alleged conduct participate in the Settlement, and if the Court approves Lead Counsel's application for attorneys' fees and Litigation Expenses, Lead Counsel estimates that the average cost will be approximately \$0.08 per damaged share of CytRx securities.

6. **Identification of Attorney Representative:** Lead Plaintiff and the Class are being represented by Kahn Swick & Foti, LLC, the Court-appointed Lead Counsel. Any questions regarding the Settlement should be directed to the following representatives of Lead Counsel:

Kahn Swick & Foti, LLC  
Lewis S. Kahn  
lewis.kahn@ksfcounsel.com  
206 Covington St.  
Madisonville, LA 70447  
Telephone: (504) 455-1400  
Facsimile: (504) 455-1498

7. **Reasons for the Settlement:** Lead Plaintiff's principal reason for entering into the Settlement is the substantial benefit payable to the Class now, without further risk or the delays inherent in further litigation. The significant cash and stock benefit under the Settlement must be considered against the significant risk that a smaller recovery – or, indeed, no recovery at all – might be achieved after contested motions, trial and likely appeals, a process that could last several years into the future. For Defendants, who deny all allegations of wrongdoing or liability whatsoever, the principal reason for entering into the Settlement is to eliminate the expense, risks, and uncertainty of further litigation.

#### YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT

<b>SUBMIT A CLAIM FORM BY JUNE 8, 2016.</b>	This is the only way to be eligible to receive a payment from the Settlement. If you are a Class Member and you remain in the Class, you will be bound by the Settlement as approved by the Court and you will give up any Settled Claims (as defined in ¶31 below) that you have against Defendants and the other Released Parties (defined in ¶32 below), so, if you remain in the Class, it is in your interest to submit a Claim Form.
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<sup>2</sup> All recoveries per share estimated are exclusive of the 2% of the Net Settlement Fund that has been allocated for potential claims based on losses resulting from options transactions. See the Plan of Allocation in Appendix A below.

<b>EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN APRIL 18, 2016.</b>	If you exclude yourself from the Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that <i>potentially</i> allows you to ever bring or maintain your own lawsuit against the Defendants or the other Released Parties, or to be part of another lawsuit, concerning the Settled Claims. See ¶¶40-41 below.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN APRIL 18, 2016.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, Lead Counsel’s request for attorneys’ fees and expenses, and/or Lead Plaintiff’s request for reimbursement of expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation or the fee and expense requests unless you are a Class Member and do not exclude yourself.
<b>GO TO THE HEARING ON MAY 9, 2016 AT 9:30 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN APRIL 18, 2016.</b>	Filing a written objection and notice of intention to appear by April 18, 2016 allows you to speak in Court about the fairness of the proposed Settlement, the Plan of Allocation, the requested Claims Administrator costs, Lead Counsel’s request for attorneys’ fees and expenses, and/or Lead Plaintiff’s request for reimbursement of expenses. If you submit a written objection, you may (but do not have to) attend the hearing and speak to the Court about your objection.
<b>DO NOTHING.</b>	If you are a member of the Class and you do not submit a Claim Form by June 8, 2016, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

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**WHY DID I GET THIS NOTICE?**

8. This Notice is being sent to you pursuant to an Order of the United States District Court for the Central District of California because you or someone in your family or an investment account for which you serve as custodian may have purchased or otherwise acquired CytRx securities during the Class Period. The Court has directed us to send you this Notice because, as a potential Class Member, you have a right to know about your options before the Court rules on the proposed Settlement of this case. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court approves the Settlement, the claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. In a class action lawsuit, the Court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. In this

Action, the Court has appointed Deepak Gupta to serve as “Lead Plaintiff” under a federal law governing lawsuits such as this one, and has appointed the law firm Kahn Swick & Foti, LLC as Lead Counsel in the Action. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, the Court must resolve all issues on behalf of the class members, except for any persons who choose to exclude themselves from the class. (For more information on excluding yourself from the Class, please read “What If I Do Not Want Participate In the Settlement? How Do I Exclude Myself?,” on page 8 below.)

10. The Court in charge of this case is the United States District Court for the Central District of California, and the case is known as *In re CytRx Corporation Securities Litigation*, Case No. CV-14-1956 GHK (PJW). The Judge presiding over this case is the Honorable George H. King, United States District Judge. The people who are suing are called plaintiffs, and those who are being sued are called defendants. In this case, the named plaintiff is referred to as the Lead Plaintiff and he is suing on behalf of himself and the Class, and the Defendants are CytRx Corporation, Steven A. Kriegsman, John Y. Caloz, David J. Haen, Louis J. Ignarro, Joseph Rubinfeld, Shirley Selter as representative for Marvin S. Selter, Richard L. Wennekamp, Thomas Michael Meyer, Jefferies LLC, Oppenheimer & Co. Inc., Aegis Capital Corp., and H.C. Wainwright & Co., LLC. If the Settlement is approved, it will resolve all claims in the Action by Class Members against Defendants and will bring the Action to an end.

11. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Class if you wish to do so. It also is being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement, the proposed Plan of Allocation, and the motion by Lead Counsel for an award of attorneys’ fees and reimbursement of Litigation Expenses (the “Settlement Fairness Hearing”).

12. The Settlement Fairness Hearing will be held on May 9, 2016 at 9:30 a.m., before the Honorable George H. King, at the United States District Court for the Central District of California, U.S. Courthouse, 255 East Temple Street, Los Angeles, California 90012, to determine:

- (a) whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;
- (b) whether the Settled Claims against the Defendants and the other Released Parties should be dismissed with prejudice as set forth in the Stipulation;
- (c) whether the proposed Plan of Allocation is fair and reasonable and should be approved by the Court;
- (d) whether Lead Counsel’s request for an award of attorneys’ fees and reimbursement of Litigation Expenses should be approved by the Court; and
- (e) whether Lead Plaintiff’s application for reimbursement of reasonable costs and expenses (including lost wages) in connection with representing the Class should be approved by the Court.

13. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments to Authorized Claimants will be made after any appeals are resolved, and after the completion of all claims processing. Please be patient.

#### **WHAT IS THIS CASE ABOUT?**

14. The case concerns claims brought by investors alleging that the price of CytRx securities were artificially inflated during the Class Period as a result of alleged false and misleading statements and omissions by the CytRx Defendants during the Class Period concerning, *inter alia*, the Company’s relationship with a stock promotion firm called DreamTeam.

15. Beginning on March 14, 2014, putative class action complaints were filed in the Court against CytRx and certain of the other Defendants. On June 13, 2014, the Court issued an order consolidating the related actions, appointing Deepak Gupta as Lead Plaintiff and approving his selection of Kahn Swick & Foti, LLC as Lead Counsel.

16. On October 1, 2014, Lead Plaintiff filed his Consolidated Class Action Complaint for Violation of Federal Securities Laws (“Consolidated Complaint”). Lead Plaintiff asserted claims against the Defendants

pursuant to §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder, and §§11, 15 and 12(b) of the Securities Act of 1933 (the “Securities Act”). As to the Underwriters, the Consolidated Complaint only alleged claims under §§11 and 12(a)(2) of the Securities Act. On December 5, 2014 Defendants moved to dismiss the Consolidated Complaint. On July 13, 2015 the Court granted in part and denied in part the Consolidated Complaint and granted Lead Plaintiff leave to amend.

17. On August 7, 2015 Lead Plaintiff filed his First Amended Complaint for Violation of Federal Securities Laws (“FAC”) seeking to remedy the deficiencies the Court identified in its July 13, 2015 Order. On September 8, 2015 Defendants moved to dismiss the FAC. The same day, Lead Plaintiff filed a motion for reconsideration regarding whether certain Defendants “made” statements under the federal securities laws.

19. The case was settled during the pendency of Defendant’s motions to dismiss the FAC. The Parties engaged in mediation efforts with the assistance of an experienced mediator, the Hon. Dickran M. Tevrizian (Ret.), including a formal mediation session and the submission of detailed mediation briefs. The Parties reached an agreement to settle the Action on December 8, 2015.

20. Lead Counsel has conducted an extensive investigation into the claims and the underlying events and transactions alleged in the Action. Lead Counsel has also researched the applicable law with respect to the claims of Lead Plaintiff and the Class against Defendants, as well as the potential defenses thereto. In addition, Lead Counsel has conducted informal discovery in connection with the proposed Settlement. Based upon the foregoing, Lead Counsel has concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiff and the Class, and in their best interests, and, accordingly, Lead Plaintiff has agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (i) the substantial benefits that Lead Plaintiff and the members of the Class will receive from resolution of the Action as against the Defendants, (ii) the attendant risks of litigation, and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation. Defendants have denied and continue to deny that they have committed any act or omission giving rise to any liability and/or violation of law. Nonetheless, Defendants are entering into this Settlement to eliminate the burden and expense of further litigation and the risk of not prevailing at trial and, therefore, have determined that it is desirable that the Action fully and finally be settled in the manner and upon the terms and conditions set forth in the Stipulation.

21. On January 20, 2016, the Court preliminarily approved the Settlement, authorized this Notice to be sent to potential Class Members, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval to the Settlement.

#### **HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?**

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

All persons and entities who purchased or otherwise acquired the publicly traded securities of CytRx between November 20, 2013 and March 13, 2014, inclusive.

Excluded from the Class are Defendants, the directors and officers of CytRx and their families and affiliates. The Class also does not include those persons and entities who timely request exclusion from the Class pursuant to this Notice (see “What If I Do Not Want To Participate In The Settlement? How Do I Exclude Myself?,” on page 8 below).

**PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU ARE A CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE PROOF OF CLAIM AND RELEASE FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN JUNE 8, 2016.**

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

23. The principle reason for Lead Plaintiff’s consent to the Settlement is that it provides an immediate and substantial benefit to the Class. The benefit of the present Settlement must be compared to the risk that no recovery might be achieved after contested motions, a contested trial and likely appeals, possibly years into the future.

24. The claims advanced by the Class in this Action involve numerous complex legal and factual issues, which would require discovery, including extensive expert discovery and testimony, adding considerably to the expense and duration of the litigation. If the Action were to proceed, Lead Plaintiff would have to overcome

significant defenses. Among other things, the Parties disagree about (i) whether Lead Plaintiff or the Class has suffered any damages, (ii) whether the price of CytRx securities was artificially inflated by reason of the alleged misrepresentations, omissions, or otherwise, and (iii) whether Lead Plaintiff or the Class was harmed by the conduct alleged in the Complaint. Even after an extensive investigation, questions remain regarding the extent of Defendants' liability and the extent to which a jury might find them liable, if at all. This Settlement enables the Class to recover without incurring any additional risk or costs.

25. Defendants have expressly denied and continue to deny all assertions of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action. Defendants also continue to believe that the claims asserted against them in the Action are without merit. Defendants have agreed to enter into the Settlement, as embodied in the Stipulation, solely to avoid the expense, distraction, time, and uncertainty associated with continuing the litigation.

26. In light of the risks associated with a trial of this Action, the amount of the Settlement and the immediacy of recovery to the Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit to the Class, namely \$8,500,000 in cash and stock (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no, recovery after summary judgment, trial and appeals, possibly years in the future.

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

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

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

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

29. Appendix A to this Notice explains the plan for allocation of the Net Settlement Fund among Authorized Claimants ("Plan of Allocation"), as proposed by Lead Plaintiff. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Class.

#### **WHAT RIGHTS AM I GIVING UP BY REMAINING IN THE CLASS?**

30. If you remain in the Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and all other Class Members, will fully and finally release, to the fullest extent that the law permits their release in this Action, as against Defendants and the other Released Parties (as defined in ¶32 below) all Settled Claims (as defined in ¶31 below).

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

32. "Released Parties" means any and all of the Defendants and each and all of their "Related Parties," which means, with respect to each Defendant, the immediate family members, heirs, executors, administrators, successors, assigns, present and former employees, officers, directors, general partners, limited partners, attorneys, assigns, legal representatives, insurers, reinsurers, and agents of each of them, and any person or entity which is or was related to or affiliated with any Defendant or in which any Defendant has or had a controlling interest, and the present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, general partners, limited partners, employees, officers, directors, attorneys, assigns, legal representatives, insurers, reinsurers, and agents of each of them, in their capacity as such..

33. "Unknown Claims" means any of the Settled Claims which Lead Plaintiff and/or any Class Member does not know or suspect to exist in such party's favor at the time of the release of the Released Parties which, if known by such party, might have affected such party's settlement with and release of the Released Parties, or might have affected such party's decision not to object to this Settlement. With respect to any and all Settled Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Lead Plaintiff shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code § 1542, which provides:

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

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

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

34. Lead Counsel has not received any payment for its services in pursuing claims against the Defendants on behalf of the Class, nor has Lead Counsel been reimbursed for its out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 33% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for reimbursement of Litigation Expenses not to exceed \$50,000, plus interest earned on this amount at the same rate as the Settlement Fund. In addition, Lead Plaintiff may seek reimbursement from the Settlement Fund in an amount not to exceed \$10,000 for reasonable costs and expenses (including lost wages) in connection with his representation of the Class in accordance with 15 U.S.C. § 78u-4(a)(4). The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Amount. Class Members are not personally liable for any such fees or expenses.

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

35. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than June 8, 2016**. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator, [www.CytRxSecuritiesLitigation.com](http://www.CytRxSecuritiesLitigation.com), or you may request that

a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-877-368-7060. If you request exclusion from the Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund. Please retain all records of your ownership of and transactions in CytRx securities, as they may be needed to document your Claim.

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

37. If you are a Class Member and do not wish to remain a Class Member, you may exclude yourself from the Class by following the instructions in the section entitled, "What If I Do Not Want To Participate in the Settlement? How Do I Exclude Myself?," below.

38. If you are a Class Member and you wish to object to the Settlement, the proposed Plan of Allocation, Lead Counsel's request for attorneys' fees and Litigation Expenses, and/or Lead Plaintiff's request for reimbursement of expenses, and if you do not exclude yourself from the Class, you may present your objections by following the instructions in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?," below.

#### **WHAT IF I DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT? HOW DO I EXCLUDE MYSELF?**

39. Each Class Member will be bound by all determinations and judgments in this lawsuit, including those concerning the Settlement, whether favorable or unfavorable, unless such person or entity mails or delivers a written request for exclusion from the Class, addressed to: *CytRx Corp. Securities Litigation*, c/o Gilardi & Co, LLC, 3301 Kerner Blvd., San Rafael, CA 94901. The request for exclusion must be **received no later than April 18, 2016**. You will not be able to exclude yourself from the Class after that date. Each request for exclusion must (a) state the name, address, and telephone number of the person or entity requesting exclusion; (b) state that such person or entity "requests exclusion from the Class in *CytRx Corp. Securities Litigation*, Case No. CV-14-1956 GHK (P JW); (c) state the number of shares of CytRx securities that the person or entity requesting exclusion purchased, acquired and/or sold during the Class Period, as well as the date(s) and price(s) of each such purchase, acquisition and sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

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

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

42. If you ask to be excluded from the Class, you will not be eligible to receive any payment out of the Net Settlement Fund or any other benefit provided for in the Stipulation.

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

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

44. The Settlement Fairness Hearing will be held on May 9, 2016 at 9:30 a.m. before the Honorable George H. King, at the United States District Court for the Central District of California, U.S. Courthouse, 255 East



Temple Street, Los Angeles, California 90012, Courtroom 650. The Court reserves the right to approve the Settlement, the Plan of Allocation and/or the motion for an award of attorneys' fees and reimbursement of Litigation Expenses at or after the Settlement Fairness Hearing without further notice to the members of the Class.

45. Any Class Member who does not request exclusion from the Class may object to the proposed Settlement, the proposed Plan of Allocation, Lead Counsel's request for attorneys' fees and expenses, Administration Costs, and/or Lead Plaintiff's request for reimbursement of expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Central District of California at the address set forth below **on or before April 18, 2016**. You must also serve the papers on Lead Counsel for the Class and Defendants' Counsel at the addresses set forth below so that the papers are **received on or before April 18, 2016**. The Court will consider timely objections by Class Members, including objections to Claims Administration costs.

**Clerk of the Court**

United States District Court  
Central District of California  
U.S. Courthouse  
255 East Temple Street  
Los Angeles, CA 90012

**Lead Counsel**

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

**Defendants' Counsel**

Counsel for the Individual CytRx Defendants:  
Allen L. Lanstra  
Skadden, Arps, Slate, Meagher &  
Flom, LLP  
300 South Grand Avenue, Ste. 3400  
Los Angeles, CA 90071  
Telephone: (213) 687-5000  
Facsimile: (213) 687-5600

Counsel for Defendants Jefferies LLC, Oppenheimer &  
Co. Inc., Aegis Capital Corp. and H.C.  
Wainwright & Co., LLC:  
Charlene S. Shimada  
Morgan, Lewis & Bockius LLP  
One Market, Spear Street Tower  
San Francisco, CA 94105  
Telephone: (415) 442-1000  
Facsimile: (415) 442-1001

Counsel for Defendant CytRx Corporation:  
Clifford H. Pearson  
Pearson, Simon & Warshaw, LLP  
15165 Ventura Boulevard, Ste. 400  
Sherman Oaks, CA 91403  
Telephone: (818) 788-8300  
Facsimile: (818) 788-8104

Counsel for Thomas Michael Meyer:  
Steven M. Goldsobel  
Law Offices of Steven Goldsobel  
A Professional Corporation  
1900 Avenue of the Stars, Suite 1800  
Los Angeles, CA 90067

46. Any objection to the Settlement (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention and/or whether the Class Member intends to present any witnesses; and (c) must include documents sufficient to prove the number of shares of CytRx securities that the objecting Class Member purchased, acquired and sold during the Class Period, as well as the date(s) and price(s) of each such purchase, acquisition and sale. You may not object to the Settlement, the Plan of Allocation, Lead Counsel's request for attorneys' fees and expenses, and/or Lead Plaintiff's request for reimbursement of expenses if you excluded yourself from the Class or if you are not a member of the Class.

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

48. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, Administration Costs, Lead Counsel's request for attorneys' fees and expenses, and/or Lead Plaintiff's request for reimbursement of expenses, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on representative Lead Counsel and Defendants' Counsel at the addresses set forth above so that it is **received on or before April 18, 2016**. Persons who intend to object and desire to present evidence at the Settlement Fairness Hearing must

include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Only class members who submit timely, written objections may voice their objections at the hearing.

49. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Fairness Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on representative Lead Counsel and Defendants' Counsel so that the notice is **received on or before April 18, 2016**.

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

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

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

52. If you purchased CytRx securities during the Class Period for the beneficial interest of a person or entity other than yourself, you must either (a) within ten (10) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within ten (10) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within ten (10) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to *CytRx Corp. Securities Litigation*, c/o Gilardi & Co, LLC, P.O. Box 40007, College Station, TX 77842-4007. If you choose the second option, the Claims Administrator will send a copy of the Notice and Claim Form to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and Claim Form may also be obtained from the website maintained by the Claims Administrator, [www.CytRxSecuritiesLitigation.com](http://www.CytRxSecuritiesLitigation.com), or by calling the Claims Administrator toll-free at 1-877-368-7060.

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

53. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Central District of California, U.S. Courthouse, 255 East Temple Street, Los Angeles, CA 90012. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, [www.CytRxSecuritiesLitigation.com](http://www.CytRxSecuritiesLitigation.com). All inquiries concerning this Notice or Claim Form should be directed to the Claims Administrator or Lead Counsel at:

##### **Claims Administrator**

*CytRx Corp. Securities Litigation*  
c/o Gilardi & Co, LLC  
P.O. Box 40007  
College Station, TX 77842-4007  
1-877-368-7060  
[www.CytRxSecuritiesLitigation.com](http://www.CytRxSecuritiesLitigation.com)

##### **Lead Counsel**

KAHN SWICK & FOTI, LLC  
Lewis S. Kahn  
[lewis.kahn@ksfcounsel.com](mailto:lewis.kahn@ksfcounsel.com)  
206 Covington St.  
Madisonville, LA 70447  
Telephone: (504) 455-1400  
Facsimile: (504) 455-1498

#### **DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF COURT REGARDING THIS NOTICE.**

Dated: January 20, 2016

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

## APPENDIX A

### PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants based on their respective alleged economic losses as a result of the alleged fraud, as opposed to losses caused by market- or industry-wide factors, or Company-specific factors unrelated to the alleged fraud. The calculations made pursuant to the Plan of Allocation are generally based upon the measure of damages set forth in Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission.

CytRx securities for which an Authorized Claimant may be entitled to receive a distribution from the Net Settlement Fund consist of the following (the “Eligible Securities”):

- i. CytRx common stock purchased or otherwise acquired during the Class Period (“CytRx Stock” or “Stock”);
- ii. Exchange-traded call options on CytRx Stock purchased or otherwise acquired during the Class Period (“Call Options”);
- iii. Exchange-traded put options on CytRx Stock sold (written) during the Class Period (“Put Options”).

A “Recognized Loss” will be calculated for each share of CytRx Stock and Call Option purchased or otherwise acquired during the Class Period, and for each Put Option sold during the Class Period. The calculation of Recognized Loss will depend upon several factors, including when each Eligible Security was purchased and/or sold during the Class Period, and for what amounts.

Each Authorized Claimant’s “Recognized Claim” shall be the total of his, her, or its Recognized Loss amounts for all Eligible Securities. The Recognized Claim is not intended to estimate the amount a Class member might have been able to recover after a trial; nor to estimate the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Claim is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its pro rata share of the Net Settlement Fund. The pro rata share shall be the Authorized Claimant’s Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. The amounts distributed by reason of Recognized Losses on Call Options and Put Options may not exceed 2% of the Net Settlement Fund except if the Net Settlement Fund is greater than the total Recognized Loss of all Stock-based claims of all Authorized Claimants.<sup>3</sup> The Court may approve the Plan of Allocation, or modify it, without additional notice to the Class. Any order modifying the Plan will be posted on the settlement website at: [www.CytRxSecuritiesLitigation.com](http://www.CytRxSecuritiesLitigation.com).

The Plan of Allocation was created with the assistance of a consulting damages expert, and reflects the assumption that the price of CytRx Stock was allegedly artificially inflated during the Class Period. The estimated alleged artificial inflation in the price of CytRx Stock during the Class Period is reflected in Table 1 below. The computation of the estimated alleged artificial inflation in the price of CytRx Stock during the Class Period is based on certain misrepresentations alleged by Lead Plaintiff and the price change in the Stock, net of market- and industry-wide factors, in reaction to the public announcements that allegedly corrected the misrepresentations alleged by Lead Plaintiff.

Federal securities laws allow investors to recover for losses caused by disclosures which correct Defendants’ previous misleading statements or omissions. Thus, in order to have been damaged by the alleged violations of the federal securities laws, shares of CytRx Stock and Call Options purchased or otherwise acquired during the Class Period must have been held during a period of time in which its price declined due to the disclosure of information which corrected an allegedly misleading statement or omission. Lead Plaintiff and Lead Plaintiff’s Counsel have determined that such price declines occurred on February 12, 2014 and March 13, 2014. Accordingly, if CytRx Stock or Call Options were divested (through sale, exercise or expiration) before February 12, 2014 (the earliest corrective disclosure date), the Recognized Loss for those shares or options is \$0.00, and any loss suffered is not compensable under the federal securities laws. Likewise, if CytRx Stock or Call Options were purchased or acquired on or after February 12, 2014 and subsequently divested before March 13, 2014, the Recognized Loss for those shares or options is \$0.00. With respect to Put Options, those options must have been sold (written) during the Class Period and not closed out (through repurchase, exercise or expiration) through at least one of the corrective disclosure dates in order to have been damaged by the alleged violations of the federal securities laws.

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<sup>3</sup> Call Options and Put Options account for less than 2% of the combined dollar volume of Eligible Securities traded during the Class Period. Accordingly, 98% of the Net Settlement Fund initially will be allocated to the payment of claims that are based on CytRx Stock, and 2% of the Net Settlement Fund will be allocated to the payment of claims based on Call Options and Put Options. In the unlikely event that the Net Settlement Fund allocated as such, is sufficient to pay 100% of either the CytRx Stock-based claims or the CytRx option-based claims, any excess amount will be paid to the remaining claims. If the Net Settlement Fund is greater than the total claims of all Authorized Claimants, the excess funds will be distributed on a pro rata basis across all claims.

Table 1 Artificial Inflation in CytRx Stock		
From	To	Per-Share Price Inflation
November 20, 2013	February 11, 2014	\$1.10
February 12, 2014	March 12, 2014	\$0.57
March 13, 2014	Thereafter	\$0.00

The “90-day look back” provision of the Private Securities Litigation Reform Act of 1995 (“PSLRA”) is incorporated into the calculation of the Recognized Loss for CytRx Stock. The limitations on the calculation of the Recognized Loss imposed by the PSLRA are applied such that losses on shares of CytRx Stock purchased/acquired during the Class Period and held as of the close of the 90-day period subsequent to the Class Period (the “90-day look back period”) cannot exceed the difference between the purchase price paid for CytRx Stock and the average price of CytRx Stock during the 90-day look back period. The Recognized Loss on CytRx Stock purchased/acquired during the Class Period and sold *during* the 90-day look back period cannot exceed the difference between the purchase price paid for CytRx Stock and the rolling average price of CytRx Stock during the portion of the 90-day look back period elapsed as of the date of sale.

CytRx Stock acquired in the Company’s secondary stock offering announced on January 30, 2014 and completed on February 5, 2014,<sup>4</sup> shall be treated as a purchase of CytRx Stock at a price of \$6.50 per share (the secondary offering price) with per-share price inflation of \$1.10. Any Recognized Loss arising from such transaction shall be computed as provided for other purchases of CytRx Stock in the Plan of Allocation.

#### **Calculation of Recognized Loss for CytRx Stock Purchases**

For each share of CytRx Stock purchased or acquired during the Class Period, the Recognized Loss per share shall be calculated as follows:<sup>5</sup>

- i. For each share of CytRx common stock purchased or acquired during the period November 20, 2013 through February 11, 2014, inclusive,
  - a. and subsequently sold prior to February 12, 2014, the Recognized Loss is \$0.
  - b. and subsequently sold during the period February 12, 2014 through March 12, 2014, inclusive, the Recognized Loss is \$0.53.
  - c. and subsequently sold during the period March 13, 2014 through June 10, 2014, inclusive, the Recognized Loss is the lesser of (i) \$1.10, and (ii) the purchase/acquisition price (excluding all fees, taxes and commissions) minus the “90-day look back value” on the date of sale/disposition provided in Table 2 below. If this calculation results in a negative number, then the Recognized Loss is \$0.
  - d. and still held as of the opening of trading on June 11, 2014, the Recognized Loss is the lesser of (i) \$1.10, and (ii) the purchase/acquisition price (excluding all fees, taxes and commissions) minus the average closing price of CytRx Stock during the 90-day period following the Class Period, which is \$3.59. If this calculation results in a negative number, then the Recognized Loss is \$0.
- ii. For each share of CytRx Stock purchased or acquired during the period February 12, 2014 through March 12, 2014, inclusive,
  - a. and subsequently sold prior to March 13, 2014, the Recognized Loss is \$0.
  - b. and subsequently sold during the period March 13, 2014 through June 10, 2014, inclusive, the Recognized Loss is the lesser of (i) \$0.57, and (ii) the purchase/acquisition price (excluding all fees, taxes and commissions) minus the “90-day look back value” on the date of sale/disposition provided in Table 2 below. If this calculation results in a negative number, then the Recognized Loss is \$0.
  - c. and still held as of the opening of trading on June 11, 2014, the Recognized Loss is the lesser of (i) \$0.57, and (ii) the purchase/acquisition price (excluding all fees, taxes and commissions) minus the average closing price of CytRx Stock during the 90-day period following the Class Period, which is \$3.59. If this calculation results in a negative number, then the Recognized Loss is \$0.
- iii. For each share of CytRx Stock purchased or acquired on March 13, 2014, the last day of the Class Period, the Recognized Loss is \$0.

<sup>4</sup> *Business Wire*, “CytRx Announces Proposed Public Offering of Common Stock,” January 30, 2014, 4:01PM ET. See also, CytRx SEC Form 424B2, filed January 31, 2014.

<sup>5</sup> Any transactions in CytRx Stock executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the previous regular trading session.

## **Calculation of Recognized Loss for CytRx Call Options and Put Options**

For each Call Option purchased or acquired during the Class Period, the Recognized Loss per option shall be calculated as follows:

- i. For each Call Option purchased or acquired during the period November 20, 2013 through February 11, 2014, inclusive,
  - a. that was subsequently sold, exercised or expired unexercised prior to February 12, 2014, the Recognized Loss is \$0.
  - b. that was subsequently sold or exercised on or after February 12, 2014, the Recognized Loss is equal to the purchase/acquisition price minus the price of the option on the date of sale/exercise.<sup>6</sup> If this calculation results in a negative number, then the Recognized Loss is \$0.
  - c. that expired unexercised while still owned on or after February 12, 2014, the Recognized Loss per option is equal to the purchase/acquisition price.
- ii. For each Call Option purchased or acquired during the period February 12, 2014 through March 12, 2014, inclusive,
  - a. that was subsequently sold, exercised or expired unexercised prior to March 13, 2014, the Recognized Loss is \$0.
  - b. that was subsequently sold or exercised on or after March 13, 2014, the Recognized Loss is equal to the purchase/acquisition price minus the price of the option on the date of sale/exercise. If this calculation results in a negative number, then the Recognized Loss is \$0.
  - c. that expired unexercised while still owned on or after March 13, 2014, the Recognized Loss is equal to the purchase/acquisition price.
- iii. For each Call Option purchased or acquired on May 13, 2014 the Recognized Loss is \$0.

No loss shall be recognized based on a sale or writing of any call option that was subsequently repurchased, exercised or expired.

For each Put Option sold (written) during the Class Period, the Recognized Loss per option shall be calculated as follows:

- i. For each Put Option sold during the period November 20, 2013 through February 11, 2014, inclusive:
  - a. that was subsequently repurchased or exercised (*i.e.*, put to the Authorized Claimant) prior to February 12, 2014, the Recognized Loss is \$0.
  - b. that was subsequently repurchased or exercised on or after February 12, 2014, the Recognized Loss per option is equal to the price of the option on the repurchase/exercise date<sup>7</sup> minus the sale price. If this calculation results in a negative number, then the Recognized Loss is \$0.
  - c. that expired unexercised, the Recognized Loss is \$0.00.
- ii. For each Put Option sold during the period February 12, 2014 through May 12, 2014, inclusive:
  - a. that was subsequently repurchased or exercised prior to May 13, 2014, the Recognized Loss is \$0.
  - b. that was subsequently repurchased or exercised on or after May 13, 2014, the Recognized Loss per option is equal to the price of the option on the repurchase/exercise date minus the sale price. If this calculation results in a negative number, then the Recognized Loss is \$0.
  - c. that expired unexercised, the Recognized Loss is \$0.00.
- iii. For Put Options sold on May 13, 2014, the Recognized Loss is \$0.00.

No loss shall be recognized based on a purchase of any put option that was subsequently sold, exercised or expired.

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<sup>6</sup> For Call Options that were sold, the price of the option on the date of sale shall be the sale price. For Call Options that were exercised, the price of the option on the date of exercise shall be the closing price of CytRx Stock on the date of exercise minus the strike (exercise) price of the option.

<sup>7</sup> For Put Options that were repurchased, the price of the option on the date of repurchase is the purchase price. For Put Options that were exercised, the price of the option on the date of exercise shall be the strike (exercise) price of the option minus the closing price of CytRx Stock on the date of exercise.

## ADDITIONAL PLAN OF ALLOCATION PROVISIONS

In the event a class member has more than one purchase or acquisition of an Eligible Security during the Class Period, all purchases and sales of that Eligible Security within the Class Period shall be matched on a First-In, First-Out (“FIFO”) basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period, and then against purchases in chronological order, beginning with the earliest purchase made during the Class Period.

A purchase or acquisition of an Eligible Security will be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. All purchase and sale prices shall exclude any fees and commissions. The receipt or grant by gift, devise, or operation of law of an Eligible Security during the Class Period will not be deemed a purchase or sale of such securities for the calculation of a claimant’s Recognized Loss, nor will it be deemed an assignment of any claim relating to the purchase of such securities unless specifically provided in the instrument of gift or assignment. The receipt of an Eligible Security during the Class Period in exchange for securities of any other corporation or entity shall not be deemed a purchase or sale of an Eligible Security.

The date of covering a “short sale” is deemed to be the date of purchase of shares. The date of a “short sale” is deemed to be the date of sale of shares. In accordance with the Plan of Allocation, however, the Recognized Loss on “short sales” is zero. In the event that a claimant has an opening short position in CytRx Stock, the earliest Class Period purchases shall be matched against such opening short position and not be entitled to a recovery until that short position is fully covered.

With respect to CytRx Stock purchased or sold through the exercise of an option, the purchase/sale date of the stock shall be the exercise date of the option and the purchase/sale price shall be the exercise price of the option. Any Recognized Loss arising from purchases of CytRx Stock acquired during the Class Period through the exercise of an option on CytRx Stock<sup>8</sup> shall be computed as provided for other purchases of CytRx Stock in the Plan of Allocation.

A class member may be eligible to receive a distribution from the Net Settlement Fund only if they had a net loss with respect to his, her, or its overall transactions in CytRx Eligible Securities during the Class Period. A class member’s net loss or gain is based on the difference between the total amount paid for all Eligible Securities acquired during the Class Period less the total proceeds received from sales of Eligible Securities and from exercised Call Options during the Class Period, or for CytRx Stock held as of the end of the Class Period, less the holding value of such CytRx Stock, which shall be \$3.59 (the average closing price of CytRx Stock during the 90 days following the Class Period). Where sales of Eligible Securities during the Class Period have been applied against holdings at the beginning of the Class Period, the proceeds of such sales will not be used in the calculation of such net loss. Gains and losses on CytRx Stock, Call Options and Put Options will be combined and thereafter netted against each other. If, during the Class Period, a class member had a net loss in his, her or its trading in the Eligible Securities, the class member’s Recognized Claim shall be limited to the class member’s net loss.

No distribution will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00. Payment according to the Plan of Allocation will be deemed conclusive against all Authorized Claimants.

Class members who do not submit acceptable Proofs of Claim will not share in the Settlement proceeds. The Settlement and the Final Judgment and Order of Dismissal with Prejudice dismissing this Action will nevertheless bind class members who do not submit a request for exclusion and/or submit an acceptable Proof of Claim.

Please contact the claims administrator or Lead Counsel if you disagree with any determinations made by the claims administrator regarding your Proof of Claim. If you are unsatisfied with the determinations, you may ask the Court, which retains jurisdiction over all class members and the claims-administration process, to decide the issue by submitting a written request.

Defendants, their respective counsel, and all other Released Parties will have no responsibility or liability whatsoever for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim. Lead Plaintiff and Lead Counsel, likewise, will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If any funds remain in the Net Settlement Fund by reason of uncashed distribution checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have class members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund after at least six (6) months after the initial distribution of such funds will be used in the following fashion: (a) first, to pay any amounts mistakenly omitted from the initial disbursement; (b) second, to pay any additional settlement administration fees, costs, and expenses, including those of Lead Counsel as may be approved by the Court; and (c) finally, to make a second distribution to claimants who cashed their checks from the initial distribution and who

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<sup>8</sup> Including (1) purchases of CytRx Stock as the result of the exercise of a call option, and (2) purchases of CytRx Stock by the seller of a put option as a result of the buyer of such put option exercising that put option.

would receive at least \$10.00, after payment of the estimated costs, expenses, or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. These redistributions shall be repeated, if economically feasible, until the balance remaining in the Net Settlement Fund is *de minimis* and such remaining balance will then be distributed to a non-sectarian, not-for-profit organization identified by Lead Counsel.

**Table 2**  
**PSLRA Loss Limitation for 90-day Lookback Period**

Sale / Disposition Date	Rolling Average Price during 90-day Lookback Period as of the Date of Sale/Disposition
3/13/2014	\$4.17
3/14/2014	\$4.16
3/17/2014	\$4.13
3/18/2014	\$4.12
3/19/2014	\$4.11
3/20/2014	\$4.08
3/21/2014	\$4.05
3/24/2014	\$4.04
3/25/2014	\$4.00
3/26/2014	\$3.93
3/27/2014	\$3.87
3/28/2014	\$3.83
3/31/2014	\$3.80
4/1/2014	\$3.79
4/2/2014	\$3.79
4/3/2014	\$3.80
4/4/2014	\$3.79
4/7/2014	\$3.77
4/8/2014	\$3.74
4/9/2014	\$3.73
4/10/2014	\$3.70
4/11/2014	\$3.68
4/14/2014	\$3.65
4/15/2014	\$3.62
4/16/2014	\$3.59
4/17/2014	\$3.58
4/21/2014	\$3.56
4/22/2014	\$3.55
4/23/2014	\$3.53
4/24/2014	\$3.52
4/25/2014	\$3.51
4/28/2014	\$3.49
4/29/2014	\$3.48
4/30/2014	\$3.47
5/1/2014	\$3.47
5/2/2014	\$3.46
5/5/2014	\$3.46
5/6/2014	\$3.45
5/7/2014	\$3.45

5/8/2014	\$3.44
5/9/2014	\$3.43
5/12/2014	\$3.43
5/13/2014	\$3.43
5/14/2014	\$3.43
5/15/2014	\$3.43
5/16/2014	\$3.43
5/19/2014	\$3.43
5/20/2014	\$3.43
5/21/2014	\$3.43
5/22/2014	\$3.44
5/23/2014	\$3.44
5/27/2014	\$3.45
5/28/2014	\$3.47
5/29/2014	\$3.47
5/30/2014	\$3.49
6/2/2014	\$3.50
6/3/2014	\$3.51
6/4/2014	\$3.52
6/5/2014	\$3.54
6/6/2014	\$3.55
6/9/2014	\$3.57
6/10/2014	\$3.59