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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

In re ONYX PHARMACEUTICALS, INC. SHAREHOLDER LITIGATION	Lead Case No. CIV523789
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	Assigned for All Purposes to Hon. Marie S. Weiner
	NOTICE OF ENTRY OF ORDERS
	DATE ACTION FILED: 08/28/13 DEPT: 2

PLEASE TAKE NOTICE that the following documents were entered by the Honorable Marie S. Weiner on April 10, 2015:

1. Order Granting Class Certification (Attachment 1);

2. Stipulated Case Management Schedule and Order (Attachment 2); and

3. Case Management Order #8 (Attachment 3).

DATED: April 16, 2015

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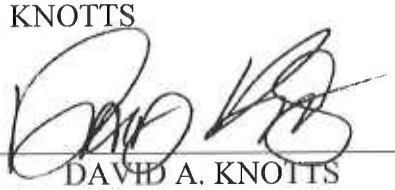

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ATTACHMENT 1

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FILED
SAN MATEO COUNTY
APR 10 2015
Clerk of the Superior Court
By
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

COMPLEX CIVIL LITIGATION

In re ONYX PHARMACEUTICALS INC. SHAREHOLDER LITIGATION
/

Master File No. CIV 523789
CLASS ACTION
Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

ORDER GRANTING CLASS CERTIFICATION

On January 30, 2015, hearing was held on Plaintiffs' Motion for Class Certification. The Court orally GRANTED the Motion for Class Certification, but indicated that it would consider whether the class definition would be modified.

On February 20, 2015, at the Case Management Conference, the Court orally ruled that the Class definition would be the broader definition as proposed by Plaintiffs. The Court also order counsel for the parties to meet and confer and submit a proposed Class Notice. The Court has received from counsel for the parties a stipulated Class Notice and stipulated proposed Class procedures and schedule

IT IS HEREBY ORDERED as follows.

1. Plaintiffs' Motion for Class Certification is GRANTED. The Certified Class is defined as: "All holders of Onyx Pharmaceuticals Inc common stock who

received consideration for their shares in the acquisition of Onyx Pharmaceuticals by Amgen Inc. at the price of $125.00 per share, first announced on August 25, 2013. Excluded from the Class are defendants and any persons, firm, trust, corporation or other entity related to or affiliated with any defendant."

2. Robbins Geller Rudman & Dowd LLP and Block & Leviton LLP are appointed as Plaintiffs' Class Co-Counsel.

3. Plaintiff Phillip Rosen is appointed as Class Representative.

4. The Court approves Gilardi & Company as the class notice Administrator.

5. The Court approves the form of Notice of Pendency of Class Action, stipulated in form by counsel for all parties, which is attached hereto as Exhibit A.

6. Defendants shall provide a Class List to the Administrator within 10 days of the date of this Order, if not previously provided. The Class Notice shall be sent by first class mail to all Class members within 15 days of the delivery of the Class List or the date of this Order, whichever is longer. The deadline for requesting exclusion from the Class is a written request for exclusion postmarked on or before 45 days from the date that the Class Notice is first mailed to the Class List.

7. The Administrator shall file and serve a Declaration reflecting the dates and procedures in compliance with this Order as well as identifying those persons opted-out of the certified Class.

THE COURT FINDS as follows:

Nature of the Class Claims

This is a consolidated class action arising out of a completed tender offer by Amgen Inc. for the common stock of Defendant Onyx Pharmaceuticals, Inc. ("Onyx") at a price of $125 per share. Plaintiffs Philip Rosen and Louisiana Municipal Police Employees' Retirement System, former stockholders of Onyx, allege that Onyx's Board of Directors, N. Anthony Coles, Corrine H. Nevinny, Thomas G. Wiggans, Paul Goddard, Antonio J. Grillo-Lopez, Wendell Wierenga, Magnus Lundberg, and William R. Ringo, breached their fiduciary duties of loyalty and good faith by: failing to take steps to maximize the sale price for Onyx stock and manipulating the sales process to tilt the process in favor of Amgen; failing to protect shareholders from the conflicts of interest at play with Onyx's Board; agreeing to unreasonable preclusive provisions in the merger agreement between Onyx and Amgen; and failing to disclose all material facts related to the merger in the Schedule 14D-9 Solicitation / Recommendation Statement

Standards for Class Certification

California courts have readily accepted and utilized the class action procedure to resolve multiparty controversies. See Richmond v. Dart Industries, Inc (1981) 29 Cal.3d 462, 469. Under Code of Civil Procedure Section 382, the California class action statute, there are two basic prerequisites to certification: (1) the existence of an ascertainable class, and (2) a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. Occidental Land, Inc. v. Superior Court (1976) 18 Cal 3d 355, 360; Daar v. Yellow Cab Company (1967) 67 Cal 2d 695, 704

Because Section 382 does not establish a procedural framework for class actions, the California Supreme Court has directed trial courts to utilize the procedures prescribed by the Consumers Legal Remedies Act (Civil Code §§1750, et seq.) in all class actions. Civil Service Employees Insurance Company v. Superior Court (1978) 22 Cal.3d 362, 376; Vasquez v. Superior Court (1971) 4 Cal.3d 800, 820. California trial courts have also been directed to look to Rule 23 of the Federal Rules of Civil Procedure and the cases thereunder for guidance. Id., at p. 821, La Sala v. American S&L Assn. (1971) 5 Cal.3d 864, 872; Howard Gunty Profit Sharing Plan v. Superior Court (2001) 88 Cal.App.4th 572, 580 fn. 8.

Civil Code Section 1781(b) provides:

> The court shall permit the suit to be maintained on behalf of all members of the representative class if all of the following conditions exist:
>
> (1) It is impracticable to bring all members of the class before the court.
>
> (2) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members.
>
> (3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class.
>
> (4) The representative plaintiff will fairly and adequately protect the interests of the class.

The merits of plaintiffs' class claims are irrelevant for purposes of class certification. See, Green v Obledo (1981) 29 Cal.3d 126, 146; Anthony v. General Motors Corp. (1973) 33 Cal.App 3d 699, 707. "The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.' [Citation.]" Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal 4th 319, 326.

It is clear under California law that the "ascertainable class" requirement does *not* require plaintiff to establish the existence and identity of the individual class members. Daar, 67 Cal.2d at p. 706; Reyes v. Board of Supervisors (1987) 196 Cal.App.3d 1263, 1274; Stephens v. Montgomery Ward (1987) 193 Cal.App.3d 411, 419. "Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." Reyes, at p. 1271.

The second requirement of Civil Code Section 1781(b) is that: "[t]he questions of law or fact common to the class [be] substantially similar and predominate over questions affecting the individual members." Section 1781(b) codified the common law requirement that plaintiff show a well-defined "community of interest" in the questions of law and fact involved. E.g., Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 136.

For purposes of satisfying the "community of interest" prerequisite under C.C.P. Section 382, the plaintiff need only demonstrate that "there are predominate questions of law or fact common to the class as a whole." Reyes v. Board of Supervisors (1987) 196 Cal.App.3d 1263, 1277. The existence of any individual issues does not preclude class certification. "[T]he necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate." Id., at p. 1278. Although common issues must predominate for certification of a class, it is *not* required that all of the issues be common.

For purposes of demonstrating "typicality", as set forth in Section 1781(b)(3), California law requires only that the named plaintiff in the class action and his/her claims are similarly situated to that of the other class members. See, Richmond, 29 Cal.3d at p. 475; Classen v. Weller (1983) 145 Cal.App.3d 27, 46. "Typical" does not mean "identical". Classen, at p. 46. A plaintiff's claim is typical if it arises from the same

event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.

To maintain a class action, a representative plaintiff must adequately protect the interests of the class. Civil Code §1781(b)(4). Adequacy of representation has two requirements: First, the named representative must be represented by counsel competent and experienced in the kind of litigation to be undertaken. Second, there must be no disabling conflicts of interest between the class representative and the class. McGhee v. Bank of America (1976) 60 Cal.App.3d 442, 450.

Although Rule 23(b)(3) of the Federal Rules of Civil Procedure requires "that a class action [be] superior to other available methods for the fair and efficient adjudication of the controversy", while C.C.P. §382 and Civil Code §1781(b) do not mention such a requirement, California courts sometimes impose upon plaintiffs seeking class certification a showing "that substantial benefits both to the litigants and to the court will result." City of San Jose v. Superior Court (1974) 12 Cal.3d 447, 460.

As the First Appellate District stated in Capitol People First v. State Dept. of Developmental Services (2007) 155 Cal.App.4th 676, 689:

> As well, in assessing the appropriateness of certification trial courts are charged with carefully weighing the respective benefits and burdens of class litigation to the end that maintenance of the class action will only be permitted where substantial benefits accrue to the litigants and the court. [Citation.] . . . Further, the substantial benefits analysis raises the question whether a class action is superior to individual lawsuits and other alternative procedures for resolving the controversy. [Citations.]

See also, Soderstedt v. CBIZ Southern California LLC (2011) 197 Cal.App.4th 133, 156-157. This was recently referenced by the California Supreme Court in Brinker restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021, that class certification includes consideration of whether "substantial benefits from certification that render proceeding as a class superior to the alternatives."

Numerosity and Ascertainability of Class Members

That numerosity and ascertainability exist here is not specifically disputed. There were over 73 million shares outstanding at the time of the subject tender offer and merger. The Class is readily identified by reference to corporate records of Onyx.

Commonality and Predominance of Claims

The Court finds that the various common issues of law and fact, as set forth above, predominate over any individual issues. The Plaintiffs' claims are subject to common proof, common arguments on interpretation and application of the statute, and common relief. It would be a superior procedural method of adjudicating the claims of the members of the Class by class action rather than individual lawsuit.

The California Supreme Court has explained that

> "[t]he "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." [Citations.] The answer hinges on "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." [Citation.] A court must examine the allegations of the complaint and supporting declarations [citation] and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible.

Brinker Restaurant Corp. v Superior Court (2012) 53 Cal.4th 1004, 1021-22. The necessity for class members to individually establish eligibility and damages does not

mean individual fact questions predominate, individual issues do not render class certification inappropriate so long as such issues may effectively be managed. Sav-on Drug Stores, Inc. v. Superior Court (2004) 34 Cal 4th 319, 334

A plaintiff may state a claim for breach of the duty of loyalty by alleging intentional, bad faith, or A plaintiff may state a claim for breach of the duty of loyalty by alleging intentional, bad faith, or self-interested conduct. McMillan v. Intercargo Corp. (Del. Ch. 2000) 768 A.2d 492, 495 ("[b]ecause [the corporation's] certificate of incorporation contained an exculpatory provision immunizing its directors from liability for due care violations, the plaintiffs may survive this motion only if the complaint contains well-pleaded allegations that the defendant directors breached their duty of loyalty by engaging in intentional, bad faith, *or* self-interested conduct that is not immunized by the exculpatory charter provision," emphasis added.) Accordingly, even if a director is disinterested, a claim for breach of the duty of loyalty will lie where the plaintiff has adequately pleaded the director's bad faith conduct. *See e g* , Crescent/Mach I Partners, L.P. v. Turner (Del. Ch. 2000) 846 A.2d 963, 981 (court denied motion to dismiss minority shareholders' breach of fiduciary duty claim; self-interest and dominance were inadequately pleaded but allegations showed breach of the duty of loyalty through directors' bad faith indifference to duty to protect the interest of the minority stockholders); In re Novell, Inc. Shareholder Litigation (Del. Ch., Jan. 3, 2013) 38 Del. J. Corp. L. 279 (court denied motion to dismiss breach of the duty of loyalty claim; although eight of nine board members were outside directors, plaintiffs have sufficiently alleged that board had acted in bad faith by unduly favoring one bidder during sales process).

Under Delaware law, directors act in bad faith when directors manipulate the sales process to benefit a bidder that it prefers but who is not offering shareholders the best value. *See* Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc. (Del. 1986) 506 A.2d 173, 182 (Del.1986) ("[W]hen the Revlon board entered into an auction-ending lock-up agreement with [one bidder] on the basis of impermissible considerations at the expense of the shareholders, the directors breached their primary duty of loyalty."); In re Topps Co. Shareholders Litigation (Del. Ch. 2007) 926 A.2d 58, 64(when directors bias the sales process against one bidder and toward another not in a reasoned effort to maximize advantage for the stockholders, they commit a breach of fiduciary duty); *see also* In re Novell, Inc. Shareholder Litigation (Del. Ch., Jan. 3, 2013) 38 Del. J. Corp. L. 279. Delaware law further provides that directors act in bad faith when they knowingly make material corporate decisions without adequate information, adopting a "we don't care about the risks" attitude. In re Walt Disney Co. Derivative Litigation (Del. Ch. 2003) 825 A.2d 275, 289.

Plaintiff Rosen has demonstrated that common questions predominate. Rosen has asserted a class claim for breach of fiduciary duty based on the Onyx Directors allegedly failing to take steps to maximize the sale price for Onyx stock, manipulating the sales process to tilt the process in favor of Amgen, failing to protect shareholders from the conflicts of interest at play with Onyx's Board, agreeing to unreasonable preclusive provisions in the merger agreement between Onyx and Amgen, and failing to disclose all material facts related to the merger in the 14D-9. The claim involves one set of actions by the Onyx Directors. Further, the Onyx Directors' owed the same fiduciary duties to all shareholders, therefore the Onyx Directors' actions created a uniform type of impact

upon the putative class. Accordingly, this action's core questions present common issues.

Notably, Defendants have not made any specific arguments on the issue of commonality and predominance of issues. The Onyx Directors summarily argue that "Plaintiffs fail to carry their burden of proving that each element of California Code of Civil Procedure §382 has been satisfied." (Opp. at 1:2-4.) However, their Opposition does not specifically address how Rosen's showing on commonality and predominance is inadequate.

Plaintiff Rosen has demonstrated that proceeding as a class action would be superior to other available methods for resolving the claims in this action. As is the case in most securities suits, multiple lawsuits would be inefficient and costly. *See* Lapin v. Goldman Sachs & Co. (S.D.N.Y. 2008) 254 F.R.D. 168, 187. There is no dispute that the case involves a large class. It is highly unlikely that all or even most of the absent class members would have sufficient resources or economic incentives to fund individual lawsuits. Lastly, it is clearly desirable to concentrate this litigation in this forum because it would eliminate the risk of inconsistent adjudications and promoting the fair and efficient use of the judicial system.

Typicality and Representativeness

The Court finds that Plaintiff Rosen has claims typical of those of the putative class members, and has demonstrated his willingness to represent the Class and diligently proceed with prosecution of these claims.

Defendants have not contested the adequacy of the proposed Class Counsel, and Plaintiffs have demonstrated that the Robbins Geller and the Block & Leviton law firms can adequately and professionally represent the interests of the Class.

The vast majority of the Opposition is focused upon challenging the adequacy and typicality of Mr. Rosen and his circumstances. The concerns raised by Defendants do not defeat the adequacy and typicality of Rosen and his claims for purposes of class certification

The moving party must establish a "[t]he claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class." Civ. Code, § 1781(b)(3). The California Supreme Court has explained:

> [E]vidence that a representative is subject to unique defenses is one factor to be considered in deciding the propriety of certification. [Citations.] The specific danger a unique defense presents is that the class "representative might devote time and effort to the defense at the expense of issues that are common and controlling for the class." [Citations.] . . [H]owever, a defendant's raising of unique defenses against a proposed class representative does not automatically render the proposed representative atypical. ... The risk posed by such defenses is the possibility they may distract the class representative from common issues; hence, the relevant inquiry is whether, and to what extent, the proffered defenses are "likely to become a major focus of the litigation." [Citations.]

Fireside Bank v. Superior Court (2007) 40 Cal.4th 1069, 1091.

The core issues presented by Rosen and the class' claims are whether the Onyx Directors breached their fiduciary duties by failing to maximize the sale price for Onyx stock, manipulating the sales process to tilt the process in favor of Amgen, failing to protect shareholders from the conflicts of interest at play with Onyx's Board, and agreeing to unreasonable preclusive provisions in the Merger Agreement between Onyx and Amgen. Thus, Rosen and the Class claims arise from the same course of events and Rosen's interests are aligned with the Class.

Defendants argue the Rosen is subject to unique defenses therefore his claim is not typical of the Class members. They argue the breach of fiduciary duty claim is based on the 14D-9's failure to disclose material information regarding the merger, and Rosen

admitted during deposition that he did not rely on the 14D-9 in deciding whether to tender. (*See* Jones Decl., Exh. A at 184:22-185:2 [Rosen made the decision not to tender before the 14D9 was issued]; *id* at 136:21-22, 123:19-124:13, 127:3-11, 211:3-13 [Rosen did not want Onyx to sell and he does not know if there is a price he would have wanted to sell at].) They argue that damages is an element of a breach of fiduciary duty claim, and Rosen indirectly benefitted from the merger due to his pension fund's sizeable investment in Amgen. (*Id* at Exh. N-P & A at 137:3-8, 139:7-16, 139:13-16, 139:23-140:4, 144:6-10 [demonstrating that during the time of the merger, Rosen was a beneficiary of the New York State Common Retirement Fund, which owned over 2 million shares of Amgen stock].)

Defendants' argument lacks merit. Although Rosen may be subject to the reliance defense with respect to the disclosure allegation, Defendants have not shown that the reliance defense is so factually intensive or legally complex that it poses a significant risk of diverting Rosen's attention from class issues.

> When seeking injunctive relief for a breach of the duty of disclosure in connection with a request for stockholder action, a plaintiff need only show a material misstatement or omission. The plaintiff need not address the 'elements of reliance, causation and actual quantifiable monetary damages.' [Citations.] When seeking post-closing damages for breach of the duty of disclosure, however, the plaintiffs must prove quantifiable damages that are 'logically and reasonably related to the harm or injury for which compensation is being awarded.' [Citation.].")

In re Orchard Enterprises, Inc. Stockholder Litigation (Del. Ch. 2014) 88 A.3d 1, 53. Here, the breach of fiduciary duty claim is based in part on disclosure allegations and seeks post-merger monetary damages. (*See* CAC ¶¶ 105-106 & prayer for relief.) However, the disclosure allegations are a small aspect of the overall breach of fiduciary duty claim. As discussed above, the core issues of the breach of fiduciary duty claim concern the alleged failure to maximize the sale price, manipulation of the sales process,

director conflicts, and preclusive provisions in the Merger Agreement, and, on these issues, Rosen's interests are perfectly aligned with the class.

Additionally, Rosen is not subject to a damages defense by virtue of his pension fund's investment in Amgen. Rosen's breach of fiduciary duty claim is based on his personal holdings of Onyx shares. Thus, if the Onyx Directors breached their fiduciary duties to the Onyx shareholders, Rosen sustained damages irrespective of any benefit his pension fund may have obtained as a result of the merger. *See also* Hynson v. Drummond Coal Co., Inc. (Del. Ch. 1991) 601 A.2d 570, 575 (in a breach of fiduciary action, relief whether it be by injunction, rescission or an award of money will be determined by reference to the effects of the fiduciary's wrong on the trust or on the corporation or all of its stockholders as a class, and the particularities of any holder would have no bearing on the appropriate remedy).

In regard to typicality, the preeminent treatise on class actions explains, as follows:

> Defendants in both derivative and shareholder class suits have often argued that the plaintiff's personal qualifications are important to the issue of representative capacity. While it is clear that the class representative must be committed and honest, defendants' arguments suggest that to qualify as a class representative a person must be sufficiently knowledgeable about securities law. This requirement would prevent most stockholders from being representative plaintiffs in securities suits, and, accordingly, courts have rejected it. In such complex cases, the focus should be on the qualifications of class counsel.

Newberg on Class Actions § 22:44 (4th ed.); *see also* In re Live Concert Antitrust Litigation (C.D. Cal. 2007) 247 F.R.D. 98, 121 (a plaintiff may adequately represent the class if he or she has a "basic understanding" of the claims).

Here, there appears to be no true dispute that the proposed co-lead class counsel, Block & Leviton LLP and Robbins Geller Rudman & Dowd LLP, will adequately

represent the class. Moreover, the proposed class representative, Rosen, has demonstrated that he will adequately represent the class.

First, the evidence shows that Rosen has sufficient familiarity with the contours of the case and is not merely a mouthpiece for counsel. Rosen testified that he has followed the performance of Onyx since 2000, when he invested in the company. He testified that media coverage on the merger reported that Amgen got a great deal, and that made him angry because he thought Onyx's best years were upcoming and the company should not be sold. (Knotts Reply Decl., Exh. A at 98:23-25, 123:19-124:13, 128:22-129:7.) He admitted that he did not think about challenging the merger until he saw an advertisement soliciting plaintiffs to bring a lawsuit against the Onyx Board. (Jones Decl., Exh. A at 144:11-22, 146:2-18, 146:25-147:5.) However, he explained that his decision to pursue this action was based on his belief that the Onyx shareholders were shortchanged. (Knotts Reply Decl., Exh. A at 158:5-16.) When asked to explain the basis for breach of fiduciary claim asserted in the CAC, Rosen at points refused to answer based on the attorney-client privilege. (*See e g.* Jones Decl., Exh. A at 37:2-9, 38:15-39:18, 41:6-25, 171:2-174:5, 182:20-183:1, 187:15-19.) But, at other points, he testified to his personal understanding of the class claim, and his responses demonstrate more than a basic understanding of the issues in this action. He testified that this action concerns the Onyx Directors not living up to their responsibilities in the sale of the company. He testified that he heard there were higher offers, and he believed Onyx could have received a better offer than the one presented by Amgen. He testified that he is alleging a flawed sales process, inadequate consideration for Onyx shares, the 14D-9's failure to disclose various things, and the Onyx Directors' breach of fiduciary duty of loyalty owed to the

company's shareholders. (Knotts Reply Decl., Exh. A at 36:13-25, 131;13-23, 135:21-136:12, 168:1-3, 170:5-16, 171:2-6, 188:2-13, 188:24-189:3.)

Defendants argue that Rosen's use of a memorandum prepared by counsel during his deposition demonstrates that he lacks an independent understanding of the allegations in this case. Their argument lacks merit. A copy of the memorandum at issue is attached as Exhibit D to Mr. Knott's Reply Declaration. The memorandum summarizes the allegations in the Consolidated Amended Complaint, the status of the litigation, and the obligations of a class representative. It is not inappropriate for counsel to provide these types of documents to clients to assist them in preparing for a deposition. Moreover, as discussed above, Rosen's deposition testimony establishes that he has independent knowledge of the facts of this case.

Second, the evidence shows that Rosen is willing and able to protect the interests of the class. His deposition testimony demonstrates that he has been an active participant in the lawsuit. (*See e g.* Knotts Reply Decl., Exh. A at 152:11-156:10, 164:4-165:3 [he has reviewed many documents in this case, and although he does not specifically recall reviewing the complaints before they were filed, he recalls that he reviewed the complaints at some point]; *id.* at 25:19-22, 62:8-24, 162:16-163:11, 166:6-12, 213:12-23 [he has participated in discovery, including reviewing discovery responses and documents produced to and by Plaintiffs]; *id* at 201:12-203:6 [he has maintained contact with counsel].) His declaration states his intent to pursue the interests of the class and to take his responsibilities as class representative seriously. (*Id* at Exh. B at ¶ 9.)[1] His deposition testimony further demonstrates that he understands the role of a class representative. (*Id.* at Exh. A at 49:5-14 [he understands the responsibilities of a class

[1] Rosen served but failed to file with his moving papers a declaration regarding his adequacy as a class representative. He filed a copy of the declaration with his reply papers.

representative include staying informed, maintaining contact with, asking questions of, and giving input to class counsel, and making sure class counsel are doing their job].)

The Onyx Directors argue Rosen is a career plaintiff who merely lends his name to shareholder lawsuits, but this argument is not supported by the evidence. The evidence does not show that Rosen purchased his Onyx shares in the hopes to pursue litigation against the company's directors. Rosen purchased his Onyx shares in 2000, more than a decade before the merger challenged by this action. (Knotts Reply Decl., Exh. B at ¶ 4.) Rosen did admit during deposition that he has responded on five occasions to solicitations from attorneys regarding investigation into companies that were being acquired. (Jones Decl., Exh. A at 145:2-23.) However, the evidence shows that Rosen is a plaintiff in only two shareholder actions, this action against Onyx and *Rosen v Stewart Enterprises, Inc.* ("*Stewart*"), which was filed a few months before this lawsuit. While Rosen's deposition testimony does indicate that he is not familiar with certain aspects of *Stewart* action (*see* Knotts Reply Decl., Exh. A at 73:23-76:4), the question before this Court is whether he is sufficiently familiar with the allegations *in this case* and has participated in the management of this lawsuit, and, as discussed above, Rosen has demonstrated more than a basic understanding of the claim in this action and his active participation in the prosecution of the claim in this lawsuit.

Third, although Rosen's failure to catch errors in one of his declarations indicates negligence on his part, the conduct is insufficient to show that he is not credible or cannot otherwise adequately serve as class representative. Rosen's first declaration filed in support of the motion for class certification incorrectly stated that he is not a named plaintiff, or otherwise sought to be a class representative, in other class actions, and he is not represented by proposed class counsel in any other litigation. (Knotts Reply Decl.,

Exh. B at ¶ 8.) As discussed above, Rosen is actually lead plaintiff in *Stewart*, an unrelated shareholder action challenging a merger in which Rosen is represented by the same counsel who represents him here. (Jones Decl., Exh. L.) Additionally, Rosen's first declaration misspelled his first name. Rosen has since submitted a Supplemental declaration identifying *Stewart* and Rosen's role in that case. (Knotts Reply Decl., Exh. C.) He explained during deposition that he did review the first declaration before he signed it, he had forgotten about *Stewart* at the time he signed his first declaration, and he informed counsel about the misspellings in the declaration. (*Id* at Exh. A at 55:24-56:10, 56.16-20.)

DATED: April 10, 2015

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

In re ONYX PHARMACEUTICALS, INC SHAREHOLDER LITIGATION	Lead Case No CIV523789
	CLASS ACTION
This Document Relates To:	Assigned for All Purposes to Hon Marie S Weiner
ALL ACTIONS	NOTICE OF PENDENCY OF CLASS ACTION (TO PLAINTIFF CLASS)

EXHIBIT A

TO: All holders of Onyx Pharmaceuticals, Inc. ("Onyx") common stock who received consideration for their shares in the acquisition of Onyx by Amgen Inc. ("Amgen") at the price of $125.00 per share, first announced on August 25, 2013. Excluded from the Class are defendants and any person, firm, trust, corporation or other entity related to or affiliated with any defendant (the "Class").

1. This Notice is given pursuant to an Order of the Superior Court of California, County of San Mateo (the "Court"), requiring that this Notice be sent to persons and entities who are included in the Class, as defined above, to advise them that this lawsuit has been certified as a class action and that they are potentially Class members. You received this Notice because you were identified as a potential Class member. If you fall within the definition of the Class set forth above, you are a Class member and ***you do not need to do anything at this time.*** If you are not a Class member or a person or entity that held shares of Onyx on behalf of a Class member, you may ignore this Notice.

2. This Notice is not an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by any party in this litigation. Moreover, it is not intended to suggest any likelihood that Plaintiffs or any other Class member will obtain any relief. If there is any monetary recovery in the form of damages, Class members may be entitled to share in the proceeds, less such costs, expenses, and attorneys' fees as the Court may allow.

3. A class action lawsuit is a lawsuit in which one or more persons sue on behalf of themselves and others who have similar claims, called Class members. The Court has certified that the Class members in this litigation are:

> All holders of Onyx common stock who received consideration for their shares in the acquisition of Onyx by Amgen at the price of $125.00 per share, first announced on August 25, 2013. Excluded from the Class are defendants and any person, firm, trust, corporation or other entity related to or affiliated with any defendant

4. Plaintiff Philip Rosen is the class representative. Defendants N. Anthony Coles, Paul Goddard, Antonio J. Grillo-Lopez, Magnus Lundberg, Corinne H. Nevinny, William R Ringo, Wendell Wierenga, and Thomas G. Wiggans (collectively, "Defendants"), are eight individuals who were directors of Onyx at the time of its acquisition by Amgen (the "Acquisition")

5. Plaintiffs' Consolidated Class Action Complaint For Breach of Fiduciary Duty alleges that Defendants breached their fiduciary duties of loyalty, good faith and full disclosure owed to the shareholders of Onyx in connection with the sale of Onyx to Amgen by failing to take steps to maximize the value of Onyx stock, failing to appropriately protect shareholders from the multiple conflicts of interest at play with Onyx's Board, agreeing to unreasonably preclusive deal protection provisions, and failing to fully disclose all material facts related to the Acquisition

6. Defendants have denied and continue to deny any wrongdoing in this case and believe that Plaintiff's claims are without merit. Specifically, Defendants contend that the members of Onyx's Board of Directors did not breach their fiduciary duties in selling Onyx to Amgen and that the Acquisition was fair to Plaintiff and the Class, because, among other things, the sale process was managed by an independent and un-conflicted Board which retained an independent financial advisor to review and opine upon the fairness of the transaction to the stockholders; the Board ran a ten-week process which included a market check; and the consideration – $125 per share – represented a 44% premium above the unaffected market price of the shares.

7. The Court has not yet ruled on the merits of Plaintiff's claims or Defendants' defenses. Following the Court's ruling on Defendants' demurrer, on January 30, 2015, after discovery, briefing and argument, the Court granted Plaintiff's Motion for Class Certification and determined that this action may be maintained as a class action. On February 20, 2015, the Court held a hearing and appointed Plaintiff as Class representative and Plaintiff's counsel, Robbins Geller Rudman & Dowd LLP and Block & Leviton LLP as counsel for the Class, and defined the Class as follows:

> All holders of Onyx common stock who received consideration for their shares in the acquisition of Onyx Pharmaceuticals by Amgen at the price of $125 00 per share, first announced on August 25, 2013. Excluded from the Class are defendants and any person, firm, trust, corporation or other entity related to or affiliated with any defendant.

8. No judgment has been entered or settlement reached at this time. If a settlement of the lawsuit is reached, it will be subject to approval by the Court. Class members will be sent additional notice of any such proposed settlement as may be approved by the Court, and members of the Class who have not previously excluded themselves will have an opportunity to object to the

terms of the proposed settlement, and may be required to submit a claim form to demonstrate their entitlement to any payment. Similarly, the Court may also direct further notice to the Class following any judgment that may be entered after the trial of this case, or for any other reason that the Court may determine.

9. You may review a copy of the Consolidated Class Action Complaint, the Court's Order on Defendants' demurrer, and other documents in the case by visiting the following website: www.onyxlitigation.com.

10. The Court has approved the following law firms to serve as counsel for the Class, finding that they will fairly and adequately protect the interests of the Class

ROBBINS GELLER RUDMAN & DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-1058
www.rgrdlaw.com

BLOCK & LEVITON LLP
155 Federal Street, Suite 1303
Boston, MA 02110
Telephone: (617) 398-5600
http://blockesq.com/

Although the Court has appointed attorneys to represent the Class as described above, you have the right to retain your own counsel at your own expense. However, you are not required to retain separate counsel. If you do not retain separate counsel and remain a member of the Class, your interest will be represented by Class counsel

11. All brokerage firms, banks, and/or other persons or entities who held Onyx shares during the Class Period as a nominee for a beneficial owner are requested to send this Notice to all such beneficial owners no later than ten (10) days after receipt of this Notice. Additional copies of this Notice with postage prepaid will be provided to such nominees upon written request sent to the address identified in Paragraph 4 below. In the alternative, all nominees are requested to send an unduplicated list of names and addresses of said beneficial owners to the address identified in Paragraph 4 below. The Claims Administrator will thereafter mail copies of this Notice directly to all such beneficial owners. Counsel for the Class will prepay the reasonable cost of preparing an unduplicated list of names and addresses of such beneficial owners or of forwarding this Notice to beneficial owners in those cases where a nominee elects to forward this Notice rather than provide a list of names and addresses to Plaintiffs' counsel.

NOW THEREFORE, TAKE NOTICE:

1. If you were a holder of Onyx common stock who received consideration for their shares in the Acquisition of Onyx by Amgen at the price of $125.00 per share who is neither a named defendant in this action nor any person, firm, trust, corporation or other entity related to or affiliated with any defendant, then you are a member of the Class unless you request exclusion there from as provided in Paragraph 3 below.

2. All members of the Class who do not request to be excluded will be bound by any judgment, whether or not favorable to the Class ***If you wish to remain a member of the Class, you need do nothing*** and your rights in this lawsuit will be represented by Co-Lead Counsel for Plaintiffs and the Class, Robbins Geller Rudman & Dowd LLP and Block & Leviton LLP. ***If you wish, you may enter an appearance through your own counsel at your own expense.***

3. You may request to be excluded from the Class by mailing a written request for exclusion to the Notice Administrator at the address below, postmarked on or before _____, 2015, setting forth your name and address. In order to be valid, any letter or other written direction to be excluded must (a) set forth the name, address and telephone number of the person or entity directing exclusion; (b) state that such person or entity requests to be excluded from the Class in this case; and (c) be signed by such person or duly authorized representative of such person or entity. Persons who request exclusion will not be entitled to share in the benefits of any judgment or settlement nor will they be bound by any settlement or judgment If you elect to be excluded from the Class, you may pursue, at your own expense, whatever legal rights you may have. ***You should only elect to be excluded from the Class if you do NOT wish to participate in this class action and do not wish to share in any potential recovery that the Class may obtain.***

4. All communications regarding this Notice must be made in writing, must refer to the name and number of this action, *In re Onyx Pharmaceuticals, Inc. Shareholder Litigation*, Lead Case No. CIV523789, and must be addressed to:

Onyx Pharmaceuticals, Inc. Shareholder Litigation
c/o Gilardi & Co LLC
P.O. Box 808061
Petaluma, CA 94975-8061

PLEASE DO NOT TELEPHONE THE CLERK OF THE COURT REGARDING THIS NOTICE

DATED April 10, 2015

THE HONORABLE MARIE S. WEINER
SAN MATEO SUPERIOR COURT

ABRIDGED SERVICE LIST
In re Onyx Pharmaceuticals, Class Actions
as of March 1, 2015

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ATTACHMENT 2

e

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Co-Lead Counsel for Plaintiffs

FILED
SAN MATEO COUNTY
APR 10 2015
Clerk of the Superior Court
By _____
DEPUTY CLERK

RECEIVED
MAR 12 2015
CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

File By Fax

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

In re ONYX PHARMACEUTICALS, INC. SHAREHOLDER LITIGATION	Lead Case No. CIV523789
	CLASS ACTION
This Document Relates To:	Assigned for All Purposes to Hon. Marie S Weiner
ALL ACTIONS.	STIPULATED CASE MANAGEMENT SCHEDULE AND ~~[PROPOSED]~~ ORDER
	DATE ACTION FILED: 08/28/13 DEPT.: 2

IT IS HEREBY STIPULATED AND AGREED by and among the parties, subject to the approval of the Court, as follows:

1 The following schedule shall govern proceedings in the above captioned action:

	Description	Date
A.	Parties will exchange information concerning expert witness lists as set forth in California Code of Civil Procedure ("CCP") §2034.260(b) and (c)	July 17, 2015
B	Completion of fact discovery, including depositions (the parties shall exercise best efforts to coordinate a mutually convenient deposition schedule)	July 31, 2015
C.	Parties exchange supplemental expert lists as set forth in CCP §2034 280(a) and (b)	August 6, 2015
D.	Parties exchange opening expert reports and supporting information (under Paragraph 6-7) below	August 6, 2015
E	Parties exchange rebuttal expert reports and supporting information (under Paragraph 8) below	September 4, 2015
F.	Parties will complete expert discovery, including expert depositions	October 9, 2015
G.	Final date to file motions for summary judgment (if any) and supporting opening briefs and declarations	October 22, 2015
H.	Final date to file opposing briefs and supporting declarations in opposition to any motions for summary judgment	December 21, 2015
I.	Final date to file reply briefs in support of any motions for summary judgment	January 18, 2016
J.	Hearing date on any motions for summary judgment	February 5, 2016 at 2:00 p.m.
K.	Final date to file pretrial briefs and motions *in limine* and submitting jury instructions	April 1, 2016
L.	Trial commences	April 28, 2016 at 9:00 a.m.

2. Deadlines A-I may be modified by the parties in writing without obtaining an order from the Court.

3 To the extent not covered by this Stipulation and Order, all other deadlines exist as established in the California Code of Civil Procedure, California Rules of Court, and/or any applicable local rules of the California Superior Court, San Mateo County and this Department.

EXPERT DISCOVERY PROVISIONS

4. The following paragraphs will govern discovery related to testifying experts in this matter. To the extent that this Stipulation imposes limitations on discovery that would otherwise be available pursuant to the CCP, the parties have agreed to such limitations Except as modified herein, however, the CCP applies to these matters. Neither the terms of this Stipulation nor the parties' agreement on them implies that any of the information exempted from discovery in this Stipulation would otherwise be discoverable. The parties agree that there will be no discovery regarding non-testifying experts or consultants retained by the parties.

5. Consistent with this Agreement, the parties will serve, on or before August 6, 2015.

(a) a statement of all opinion(s) to be expressed by the testifying expert at trial and the basis therefore (the "Expert Report");

(b) all documents on which the testifying expert relied in forming the opinion(s) reflected in the Expert Report, except that (i) documents previously produced by a party in this action may be referenced by Bates number; (ii) documents or pleadings previously exchanged in this action may be identified by document title and date filed; and (iii) transcripts of depositions taken in this action may be identified by name of deponent and date of deposition;

(c) a statement of: (i) all rates charged by the testifying expert for his work in this case; (ii) the amount of time the testifying expert has spent working on this case; and (iii) the total amount of compensation the testifying expert has received or expects to receive for his work in this case;

(d) a complete and current CV for each testifying expert, including a list of all publications authored by the expert witness within the preceding ten years; and

(e) a listing of any case or proceeding in which the testifying expert has testified as an expert at trial, hearing or deposition within the preceding ten years.

6. To the extent that any testifying expert relies on, or the expert report includes or is based on, exhibits, information or data processed or modeled by computer at the direction of a testifying expert, machine readable copies of those exhibits, information and data (including all input and output files) along with the appropriate computer programs, instructions, and field descriptions shall be produced with the expert's report. All electronic data and data compilations shall be produced in the same form or format in which it was used for the expert's calculations, in working order with all links to other spreadsheets and/or underlying data No party need produce computer software programs that are reasonably and readily commercially available (*e g*, Microsoft Word and Microsoft Excel) All electronic data, together with programs and instructions, shall be produced on or before August 6, 2015.

7 The parties will exchange rebuttal Expert Reports and produce all materials relied upon in rebuttal reports on or before September 4, 2015. The scope of a party's rebuttal Expert Reports shall be limited to rebutting positions taken in an opposing party's opening Expert Report, and no party may submit a rebuttal Expert Report on a topic not addressed by another party in its opening Expert Report.

8. The following categories of data, information, and documents need not be disclosed by any party, and are outside the scope of permissible discovery (including deposition questions):

(a) Any notes or other writings taken or prepared by or for a testifying expert witness in connection with this matter including, but not limited to, correspondence or memos to or from, and notes of conversations with, the expert's assistants and/or clerical or support staff, other expert witnesses, non-testifying expert consultants, or attorneys for the party offering the testimony of such expert witness unless the testifying expert relies on the aforementioned as the basis for the opinion(s) expressed by that expert during his or her deposition or in his or her Expert Report;

(b) Draft reports, draft studies, draft affidavits, or draft work papers; preliminary or intermediate calculations, computations, or data; or other preliminary, intermediate or draft materials prepared by, for or at the direction of the testifying expert witness, unless the testifying expert relies on the aforementioned as the basis for the opinion(s) expressed by that expert during his or her deposition or in his or her Expert Report; and

(c) Any oral or written communication between a testifying expert witness and the expert's assistants and/or clerical or support staff, other expert witnesses, non-testifying expert consultants, or attorneys for the party offering the testimony of such expert witness, unless the testifying expert relies on the aforementioned as the basis for the opinion(s) expressed by that expert during his or her deposition or in his or her Expert Report.

9. In addition to the limitations on discovery set forth in ¶8 above, the parties agree that other data or information that may have been considered by a testifying expert but which was not relied on by the expert in forming her or his opinion(s) need not be disclosed or produced

10 Nothing contained herein is intended to relieve a party of the obligation to disclose the data or other information, regardless of source, relied on by the testifying expert in forming his or her opinion(s), and to identify such data or other information in his or her Expert Report.

11 Nothing contained herein, however, shall be construed to preclude substantive deposition questions with respect to alternative theories, methodologies, variables, data production documents or assumptions that the expert may have considered in preparing his or her Expert Report

12. This Stipulation and Order should not be construed to preclude reasonable questions at deposition going to the expert's compensation, hours expended in preparing his or her report and testimony, or the frequency and duration of meetings with counsel

13. This Stipulation may be executed in counterparts, and will be effective when executed by all parties. The restrictions set forth herein apply to discovery directed to a party as well as to the testifying expert.

DATED: March 13, 2015

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DATED: March 13, 2015

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Counsel for Defendants N. Anthony Coles, Paul Goddard, Antonio J. Grillo-Lopez, Magnus Lundberg, Corinne H. Nevinny, William R. Ringo, Wendell Wierenga, and Thomas G. Wiggans

* * *

ORDER

IT IS SO ORDERED.

DATED: 4/10/15

SAN MATEO SUPERIOR COURT JUDGE

ATTACHMENT 3

FILED
SAN MATEO COUNTY

APR 10 2015

Clerk of the Superior Court
By _____
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

COMPLEX CIVIL LITIGATION

In re ONYX PHARMACEUTICALS INC. SHAREHOLDER LITIGATION

_____/

Master File No. CIV 523789
CLASS ACTION

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

CASE MANAGEMENT ORDER #8

In conformity with the Stipulated Case Management Schedule Order,

IT IS HEREBY ORDERED as follows:

1. COURT TRIAL is set and will commence on **THURSDAY, APRIL 28, 2016 at 9:00 A.M. in Department 2 of this Court.** The trial is anticipated to take 12 court days. No jury fees were timely posted pursuant to C.C.P Section 632.

2. The Pre-Trial Conference is set for **Monday, April 18, 2016 at 1:30 p.m.** in Department 2 of this Court, and is anticipated to take *all day*. At the PTC, the Court will be addressing (1) motions in limine, (2) trial exhibits, (3) deposition testimony proposed to be presented at trial, and objections thereto, and (4) any motion to bifurcate.

3. On or before **March 18, 2016**, in preparation for trial, each party shall file and serve a page-and-line designation of deposition testimony, anticipated to be presented

at trial (whether to be presented in written or oral or videotape or DVD format). Any objections shall be filed and served on or before **April 1, 2016. Other than *short* counter-designations for purposes of completeness, all designations *including "cross-designations"* shall be served in the initial designation.** Counsel for the parties shall meet and confer as to whether they will be proceeding to utilize comprehensive deposition presentations at trial, or present deposition testimony piece-meal by each side.

4. All motions in limine, including any motions to bifurcate, shall be filed and served on or before **April 1, 2016**. Any opposition shall be filed and served on or before **April 11, 2016**. There shall be no reply. The motions in limine will be heard at the Pretrial Conference.

5. Trial exhibits will be marked in sequential order at trial (or the numbers that counsel have stipulated to use as to particular documents), such that there will only be *one* document using the same exhibit number (thus, there will be *no* "Plaintiffs'" Exhibit #1 and "Defendants'" Exhibit #1).

6. On or before **April 1, 2016,** the parties shall exchange their lists of proposed trial exhibits. **Counsel for the parties shall meet and confer regarding trial exhibits, and attempt reach stipulations on foundation and admissibility of all proposed trial exhibits.**

7. On or before the Pretrial Conference, the parties shall file and serve their joint stipulations as to the admissibility of any trial exhibits and/or foundation and authentication of trial exhibits – *by pre-designated trial number* – in order to streamline the presentation of evidence at trial.

8. On or before the Pretrial Conference, the parties shall lodge their trial exhibits with proposed trial exhibit numbers; and present the Court with a tabbed binder of exhibits for its own use.

9. On or before the Pretrial Conference, the parties shall exchange or make available for viewing their demonstrative evidence, such as posters, blow-ups, and Power Points, for use in Opening Statements and for use during the trial itself.

10. On or before **April 8, 2016**, the parties shall file and serve their trial briefs.

11. On or before the Pretrial Conference, the parties shall file and serve their witness lists of all potential witnesses in the case, whether live, by video, or by deposition.

12. Upon commencement of the trial, counsel shall inform opposing counsel by 4:00 p.m. the *prior business day* of the identity of the witnesses he/it anticipates presenting at trial the next court day, regardless of whether the witnesses will be presented live, or by video/DVD, or by deposition transcript.

13. The next Case Management Conference is set for **Tuesday, June 23, 2015 at 10:00 a.m.** in Department 2 of this Court, located at Courtroom 2E, 400 County Center, Redwood City, California.

14. In anticipation of the Case Management Conference, counsel for the parties should be prepared to discuss at the hearing *and* file written case management conference statements (in prose and details, *not* using the standardized Judicial Council form) with a copy mailed directly to Department 2 on or before **June 16, 2015**, as to the following:

a. Status of Class Notice and requests for exclusion;

b. Status of Discovery;

c. Any anticipated motions and proposed briefing schedule;

d. Setting of next CMC date; and

e. Any other matters for which the parties seek Court ruling or scheduling.

DATED: April 10, 2015

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

ABRIDGED SERVICE LIST
In re Onyx Pharmaceuticals, Class Actions
as of March 1, 2015

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DECLARATION OF SERVICE BY E-MAIL

***In re Onyx Pharmaceuticals, Inc. Shareholder Litigation*,**
Lead Case No. CIV-523789

I, Jaime Meske, not a party to the within action, hereby declare that on April 16, 2015, I served the attached Letter to (1) Order Granting Class Certification; (2) Stipulated Case Management Schedule and Order; and (3) Case Management Order #8 on the parties in the within action by e-mail addressed as follows:

COUNSEL FOR PLAINTIFFS:

NAME	FIRM	EMAIL
Randall J. Baron A. Rick Atwood David T. Wissbroecker David A. Knotts	Robbins Geller Rudman & Dowd LLP 655 West Broadway, Suite 1900 San Diego, CA 92101 619/231-1058 619/231-7423(Fax)	RandyB@rgrdlaw.com RickA@rgrdlaw.com DWissbroecker@rgrdlaw.com dknotts@rgrdlaw.com
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COUNSEL FOR DEFENDANTS:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on April 16, 2015, at San Diego, California.

JAIME MESKE