



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GREENWOOD HUDSON PORTFOLIO
LLC, derivatively on behalf of
CYTODYN INC.,

Plaintiff,

v.

NADER Z. POURHASSAN, ANTHONY
D. CARACCILO, DENIS R. BURGER,
CARL C. DOCKERY, GREGORY A.
GOULD, DR. A. BRUCE
MONTGOMERY, and JORDAN G.
NAYDENOV,

Defendants,

-and-

CYTODYN INC., a Delaware corporation,

Nominal Defendant.

C.A. No. 2018-0761-AGB

NOTICE OF PENDENCY OF SETTLEMENT OF ACTION

TO: ALL CURRENT STOCKHOLDERS OF CYTODYN INC.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LITIGATION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED SETTLEMENT, OR PURSUING THE CLAIMS DEFINED HEREIN.

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THIS ACTION IS NOT A “CLASS ACTION.” THUS, THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A CLAIM FOR MONETARY PAYMENT. IF YOU DO NOT OBJECT TO THE TERMS OF THE PROPOSED SETTLEMENT OR THE AMOUNT OF ATTORNEYS’ FEES AND EXPENSES DESCRIBED IN THIS NOTICE, YOU ARE NOT OBLIGATED TO TAKE ANY ACTION.

IF YOU HOLD CYTODYN INC. COMMON STOCK FOR THE BENEFIT OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER.

I. WHY ARE YOU RECEIVING THIS NOTICE?

The purpose of this Notice is to tell you about (i) a lawsuit (the “Action”) in the Court of Chancery of the State of Delaware (the “Court”) putatively brought on behalf of CytoDyn Inc. (“CytoDyn” or the “Company”); (ii) a proposal to settle the Action as provided in a Settlement Agreement, which sets forth the terms and conditions of the proposed settlement of this Action (the “Settlement”); and (iii) your right, among other things, to attend and participate in a hearing to be held on _____ at _____ a.m. / p.m., in the Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801 (the “Settlement Hearing”).¹

This Notice describes the rights you may have under the Settlement Agreement and what steps you may, but are not required to, take concerning the proposed Settlement. If the Court approves the Settlement, the Parties will ask the Court to approve an Order and Final Judgment that would end the Action.

THE FOLLOWING DESCRIPTION DOES NOT CONSTITUTE FINDINGS OF ANY COURT. IT IS BASED ON THE PARTIES’ STATEMENTS.

¹ All capitalized terms are defined in the Settlement Agreement unless otherwise noted. The Settlement Agreement may be inspected on Plaintiff’s Counsel’s website at [address] or on CytoDyn’s website at [address].

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II. BACKGROUND: WHAT IS THE ACTION ABOUT?

Plaintiff Greenwood Hudson Portfolio LLC (“Plaintiff” or “Greenwood Hudson”) is a current CytoDyn stockholder.² It alleges that members of CytoDyn’s Board of Directors (the “Board”) and the Board’s Compensation Committee breached their fiduciary duties by awarding excessive stock options to Nader Z. Pourhassan, CytoDyn’s CEO. To support its claim, Plaintiff points out that the Company’s Equity Incentive Plan (the “Incentive Plan”), which CytoDyn stockholders approved in 2012, caps the number of stock options that the Compensation Committee may grant at one million (1,000,000) per individual, per year. Plaintiff contends that the Compensation Committee awarded Pourhassan options to purchase a total of 1,604,545 shares in 2015—an amount that, if accurate, exceeds the cap. Plaintiff alleges that Pourhassan was unjustly enriched as a result of the awards.

The Individual Defendants have denied and continue to deny they have committed, threatened, or attempted to commit any violations of law or breached any duty owed to Plaintiff, CytoDyn, or CytoDyn’s stockholders. They contend that nearly half of the options identified by Plaintiff were previously granted by the Compensation Committee and thus do not count towards 2015’s cap. The Individual Defendants maintain that their conduct was at all times proper and in compliance with applicable law and that they acted in good faith.

Although Plaintiff did not include the allegations in his lawsuit against the Company, it also has claimed during the course of the lawsuit that the Company has failed to properly record gifts of stock conveyed by a Company officer or his family members. In addition, Plaintiff has accused Pourhassan of using material non-public information to trade in stock during a period of time when he was not obligated to report his trading or beneficial ownership under Section 16 of the Securities and Exchange Act of 1934, and it has accused the Individual Defendants of failing to prevent Pourhassan from doing so. The Individual Defendants vigorously deny all of these accusations, too. First, the Individual Defendants point out that the Company already complies with legal requirements regarding gifts of common stock. Second, the Individual Defendants deny that Pourhassan ever traded using material non-public information. Finally, even assuming Plaintiff’s trading allegation has merit, the Individual Defendants aver that the Company

² Greenwood Hudson is represented by McCollum D’Emilio Smith Uebler LLC, Newman Ferrara LLP, and Safirstein Metcalf LLP (collectively, “Plaintiff’s Counsel”).

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already has strong insider trading policies in place that expressly prohibit the actions Plaintiff alleges occurred.

THE COURT HAS NOT FINALLY DETERMINED THE MERITS OF PLAINTIFF'S CLAIMS OR THE DEFENSES THERETO. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW OR THAT RECOVERY COULD BE HAD IF THE ACTION WAS NOT SETTLED.

III. HOW WAS THE SETTLEMENT REACHED?

After an owner of Plaintiff initiated a similar predecessor action, counsel for all Parties engaged in arm's-length negotiations concerning a possible settlement. After those significant arm's-length negotiations and based on the investigation of Plaintiff's Counsel, the Parties reached an agreement on the principal terms reflected in the Settlement Agreement. The Settlement Agreement was later signed by counsel for all parties on October 16, 2018.

IV. WHAT ARE THE TERMS OF THE SETTLEMENT?

As a direct result of the filing, prosecution, and settlement of the predecessor action and this Action, CytoDyn has agreed to rescind the 604,545 Subject Stock Options that Plaintiff alleges exceeded the Incentive Plan's one million per-person, per-year limit. Plaintiff has agreed that the Compensation Committee may re-grant the rescinded options at a later date, provided that the Compensation Committee continues to abide by the limits in the Incentive Plan.

As a direct result of the filing, prosecution, and settlement of the predecessor action and this Action, CytoDyn has confirmed that its current corporate governance policies, posted on the Company's website, are in full compliance with SEC and Nasdaq requirements. CytoDyn has agreed to negotiate in good faith for any future consultants to be bound by an insider trading acknowledgement. This provision is attached to the Settlement Agreement as Exhibit D.

As a direct result of the filing, prosecution, and settlement of the predecessor action and this Action, CytoDyn has agreed that any gifts of stock by any Company officer or his family members shall first be approved in writing by the Company's Audit Committee.

Because the Action was brought for the benefit of CytoDyn, any recovery in the litigation (whether from this or any settlement or through a judgment in favor of Plaintiff) will go to the Company. CytoDyn stockholders will not receive any

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direct payment as a result of the Settlement Agreement and will not need to fill out any kind of claims form as a result of the settlement.

The Settlement Agreement is contingent on receiving approval from the Court.

V. WHAT CLAIMS WILL THE SETTLEMENT RELEASE?

Under the Settlement Agreement, the following releases will occur upon the Effective Date, except as noted below:

Upon the Effective Date, the Releasing Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims against the Released Persons.

Upon the Effective Date, the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice all Claims arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Actions against Plaintiff and Plaintiff's Counsel; provided, however, that such release shall not affect any claims to enforce the terms of the Settlement Agreement.

In addition, the Parties expressly acknowledge, and all Current Stockholders shall be deemed to acknowledge: (i) that he, she, they, or it may hereafter discover facts in addition to those that he, she, they, or it now knows or believes to be true with respect to the Action and the Released Claims; and (ii) that he, she, they, or it may have sustained damages, losses, fees, costs, and/or expenses that are presently unknown and unsuspected, and that such damages, losses, fees, costs, and/or expenses as the Parties and any Current Stockholder may have sustained might give rise to additional damages, losses, fees, costs, and/or expenses in the future. Nevertheless, the Parties expressly acknowledge, and the Current Stockholders shall be deemed to acknowledge, that this Settlement Agreement has been negotiated and agreed upon in light of such possible unknown facts and such possible damages, losses, fees, costs, and/or expenses, and each expressly waives, or shall be deemed to have waived, any and all rights to assert the Released Claims. For avoidance of doubt, upon the Effective Date, the Parties, the Current Stockholders, the Releasing Persons, and the Released Persons shall be deemed by operation of law to have waived, relinquished, and released, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (or any similar, comparable or equivalent provision of any

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law of any state or territory of the United States, federal law, or principle of common law), 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.

“Released Claims” means any and all Claims that have been, could have been, or in the future might be asserted by Plaintiff or any other CytoDyn stockholder, or any other Person acting or purporting to act on behalf of the Company, in the Action or in the former action styled *Van Ness v. Pourhassan, et al.*, Case No. 16-2-01535-6, filed in the Superior Court of Washington for the County of Clark, against the Released Persons, arising out of or relating to (i) allegations that the Defendants or any Released Persons issued options to purchase stock in excess of the cap established by the Incentive Plan; (ii) allegations that the Defendants or any Released Persons failed to properly track gifting of Company stock by any Company officer or his family members; (iii) allegations that Pourhassan traded in Company stock using material non-public information or that the Defendants or any Released Persons did not enforce the Company’s insider trading policy; or (iv) the facts, transactions, events, occurrences, acts, disclosures, statements, or omissions that were alleged in the Action. Notwithstanding the foregoing, Released Claims shall not mean and does not include the Reserved Claims (as hereinafter defined).

“Released Persons” means the Individual Defendants, their family members, and their predecessors, successors, subsidiaries, affiliates, agents, attorneys, insurers, and each of their past or present officers, directors, and employees. “Released Persons” also includes CytoDyn and all of its current and former officers, directors, employees, and their family members who are or could have been named in the Action or any related action.

“Releasing Persons” means Plaintiff (both individually and derivatively on behalf of CytoDyn), any other current or former CytoDyn stockholder acting or purporting to act on behalf of CytoDyn, and CytoDyn. “Releasing Person” means, individually, any of the Releasing Persons.

“Reserved Claims” means: (i) any Claims by the Parties to enforce the terms of the Settlement Agreement; and (ii) Claims based upon conduct occurring after

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the date the Settlement Agreement is executed, including but not limited to Claims for breaches of fiduciary duty relating to the Compensation Committee's granting of additional stock options to officers of the Company.

VI. WHAT ARE THE REASONS FOR SETTling THE ACTION?

Plaintiff believes the Action has substantial merit, and Plaintiff's entry into the Settlement Agreement is not intended to be and shall not be construed as an admission or concession concerning the relative strength or merit of the claims alleged in the Action. However, Plaintiff and Plaintiff's Counsel also recognize and acknowledge the significant risk, expense, and length of continued proceedings necessary to prosecute the Action against Defendants through trial and through appeals. Plaintiff's Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as the Action, as well as the difficulties and delays inherent in such litigation. Plaintiff's Counsel also are mindful of the inherent problems of proof and possible defenses to the claims alleged in such actions.

After a thorough review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Plaintiff's Counsel believe that the Settlement set forth in the Settlement Agreement is fair, reasonable, and adequate, and confers substantial benefits upon CytoDyn and its stockholders.

The Individual Defendants, who deny any and all liability, believe that the Settlement is fair, reasonable, and adequate, and that entering into the Settlement, which will eliminate litigation risk and substantially reduce litigation costs and expenses, is to the benefit of CytoDyn and its stockholders.

VII. HOW WILL THE ATTORNEYS GET PAID?

The Parties negotiated the terms of the Settlement without discussing the appropriateness or amount of expenses, including attorney's fees, to be paid to Plaintiff or Plaintiff's Counsel. Defendants acknowledge, and the Settlement Agreement provides, that Plaintiff's Counsel may apply for the payment by the Company of reasonable expenses, including attorneys' fees, that Plaintiff and Plaintiff's Counsel incurred in prosecuting the Action. Defendants have the right to object to any such application. Except as otherwise provided herein, each of the Parties shall bear his, her, or its own fees and costs.

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VIII. WILL PLAINTIFF BE PAID FOR HIS PARTICIPATION IN THE ACTION?

The Parties negotiated the terms of the Settlement without discussing the appropriateness or amount of any incentive award to be paid to Plaintiff. Defendants acknowledge, and the Settlement Agreement provides, that Plaintiff may apply for an incentive award for his participation in the Action. Defendants have the right to object to any such application.

IX. WHEN WILL THE SETTLEMENT HEARING TAKE PLACE?

The Court has scheduled a Settlement Hearing to be held on _____ at _____ a.m. / p.m., in the Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801.

At the Settlement Hearing, the Court will consider: (i) whether Plaintiff and Plaintiff's Counsel have adequately represented the interests of CytoDyn and its stockholders; (ii) whether the proposed Settlement, on the terms and conditions provided for in the Settlement Agreement, is fair, reasonable, and adequate and in the best interests of CytoDyn and its current stockholders; (iii) whether the Court should finally approve the Settlement and enter Judgment dismissing the Action with prejudice and extinguishing and releasing the Released Claims; (iv) whether the expenses, including attorneys' fees, if any, sought by Plaintiff and Plaintiff's Counsel should be approved; and (v) objections, if any, to the proposed Settlement or any expenses sought by Plaintiff or Plaintiff's Counsel. The Court may also rule on other matters that it deems appropriate.

The Court may adjourn the Settlement Hearing from time to time without further notice to anyone other than the parties to the Action and any Objectors (as defined below). The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modifications as may be consented to by the Parties to the Settlement Agreement and without further notice.

X. DO I HAVE A RIGHT TO APPEAR AND OBJECT?

Any record or beneficial stockholder of CytoDyn who objects to the Settlement, the proposed Judgment to be entered, an application for expenses, including attorney's fees, by Plaintiff or Plaintiff's Counsel, or who otherwise wishes to be heard (an "Objector"), may appear in person or by his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; *provided, however*, that no Objector shall be heard or

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entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon, unless he, she, or it has, no later than ten (10) calendar days before the Settlement Hearing (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), filed with the Register in Chancery, Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, and served (by hand or overnight mail) on Plaintiff's Counsel and Defendants' counsel, at the addresses below, the following: (i) proof of current ownership of CytoDyn stock; (ii) a written notice of the Objector's intention to appear; (iii) a detailed statement of the objections to any matter before the Court; and (iv) a detailed statement of all of the grounds thereon and the reasons for the Objector's desire to appear and to be heard, as well as all documents or writings which the Objector desires the Court to consider. In addition to the aforementioned Court address, the addresses to which such information should be sent (by hand or by overnight mail) are as follows:

MCCOLLOM D'EMILIO SMITH UEBLER LLC
Thomas A. Uebler (#5074)
Little Falls Centre Two
2751 Centerville Road, Suite 401
Wilmington, DE 19808
(302) 468-5960

SAFIRSTEIN METCALF LLP
Peter Safirstein
Elizabeth Metcalf
350 5th Avenue, Suite 5960
New York, NY 10118
(212) 201-2855

NEWMAN FERRARA LLP
Roger A. Sachar Jr.
1250 Broadway, 27th Floor
New York, NY 10001
(212) 619-5400

Attorneys for Plaintiff

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ROSS ARONSTAM & MORITZ LLP
Garrett B. Moritz
Roger S. Stronach
100 S. West Street, Suite 400
Wilmington, DE 19801
(302) 576-1600

Attorneys for Defendants and Nominal Defendant

Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection (including the right to appeal), unless the Court in its discretion allows such objection to be heard at the Settlement Hearing, and shall forever be barred from raising such objection in the Action or any other action or proceeding or otherwise contesting the Settlement, and will otherwise be bound by the Judgment to be entered and the releases to be given. You are not required to appear in person at the Settlement Hearing in order to have your timely and properly filed objection considered.

XI. WHAT SHOULD I DO IF I AM A BENEFICIAL OWNER OF CYTODYN STOCK?

Brokerage firms, banks, and/or other persons or entities who hold shares of the common stock of CytoDyn for the benefit of others are requested to promptly send this Notice to all of their respective beneficial owners. If additional copies of this Notice are needed for forwarding to such beneficial owners, any requests for such copies may be made to [name of agent, address of agent, attn.].

XII. HOW DO I GET ADDITIONAL INFORMATION ABOUT THE SETTLEMENT?

This Notice summarizes the Settlement. It is not a complete statement of the events of the Action.

For additional information about the claims asserted in the Action and the terms of the proposed Settlement, please refer to the documents filed with the Court and the Settlement Agreement available on Plaintiff's Counsel's website at [address] and the Company's website at [address]. You may examine the Court files during regular business hours of each business day at the office of the Register in Chancery, Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801. However, you must appear in person to inspect these documents. The Clerk's office will not mail copies to you.

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For more information concerning the Settlement, you may also call or write to: SAFIRSTEIN METCALF, LLP, c/o Peter Safirstein, 350 5th Avenue, Suite 5960, New York, NY 10118 Telephone: (212) 201-2855.

PLEASE DO NOT WRITE OR CALL THE COURT

BY ORDER OF THE COURT

Dated: _____, 2018

Register in Chancery