

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID E. KAPLAN, et al., Individually and on
Behalf of All Others Similarly Situated,

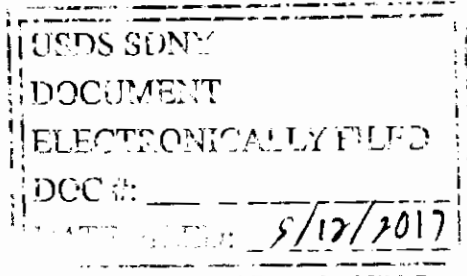
Plaintiffs,

- against -

S.A.C. CAPITAL ADVISORS, L.P., et al.,

Defendants.
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No. 12 Civ. 9350 (JGK) (KNF)



JOHN G. KOELTL, District Judge:

**~~PROPOSED~~ FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE**

WHEREAS, on May 12, 2017, this matter came before the Court for a hearing pursuant to the Order of this Court entered on December 16, 2016 (ECF No. 361, the "Preliminary Approval Order"), adjourned from April 27, 2017, on the application of the Parties for approval of the Settlement set forth in the Stipulation and Agreement of Settlement (the "Stipulation"), dated as of November 30, 2016 and filed with the Court on November 30, 2016 (ECF No. 350-1);

WHEREAS, all capitalized terms used herein have the meanings ascribed in the Stipulation;

WHEREAS, the Court has received declarations attesting to the mailing of the Settlement Notice and publication of the Summary Notice in accordance with the Preliminary Approval Order;

WHEREAS, due and adequate notice having been given to the Classes as required by the Preliminary Approval Order, and the Court having considered all relevant papers filed and

proceedings in this Action and otherwise being fully informed of the matters herein, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this Action, including the terms and conditions of the Stipulation and all exhibits thereto and the Plan of Allocation of the Net Settlement Fund, and over all parties to the Action and all Class Members.

2. This Judgment incorporates the following: (a) the Stipulation filed with this Court on November 30, 2016; and (b) the Settlement Notice and Summary Notice, and Declaration of the Claims Administrator concerning mailing and publication thereof, which were filed with the Court on March 23, 2017.

3. The Court finds that the distribution of the Settlement Notice, the publication of the Summary Notice, and the notice methodology all were implemented in accordance with the terms of the Stipulation and the Court's Preliminary Approval Order, and:

- a. constituted the best practicable notice to Class Members under the circumstances of the Action;
- b. were reasonably calculated, under the circumstances, to apprise Class Members of: (i) the proposed Settlement of this class action; (ii) their right to object to any aspect of the proposed Settlement; (iii) their right to appear at the Settlement Hearing, either on their own or through counsel hired at their own expense; and (iv) the binding effect of the proceedings, rulings, orders, and judgments in this Action, whether favorable or unfavorable, on all persons who are not excluded from the Classes;

- c. were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and
- d. fully satisfied all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d)), the United States Constitution (including the Due Process Clause), Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as added by the Private Securities Litigation Reform Act of 1995, the Rules of the Court, and other applicable law.

4. In light of the benefits to the Classes, the complexity, expense and possible duration of further litigation against the Defendants, and the risks of establishing liability and damages, pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby fully and finally approves the Settlement as set forth in the Stipulation, and finds that the Settlement is, in all respects fair, reasonable and adequate, and in the best interests of the Elan Class Plaintiffs and the other members of the Classes. This Court further finds the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced and well-informed counsel representing the interests of the Elan Class Plaintiffs and the other members of the Classes, and the SAC Capital Defendants. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation.

5. This Action is hereby dismissed with prejudice. The Parties shall bear their own costs, except as otherwise provided in the Stipulation or this Judgment.

6. The Releases, as set forth in paragraphs 4, 6 and 7 of the Stipulation, together with the definitions contained in Section I of the Stipulation relating thereto, are expressly

incorporated herein in all respects, and are set forth in Exhibit 1 hereto. Accordingly, this Court orders that:

- a. Without further action by anyone, upon the Effective Date, the Elan Class Plaintiffs' Released Parties shall: (i) be deemed to have, and by operation of law and of this Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every one of the Released Plaintiffs' Claims against each and every one of the SAC Capital Defendants' Released Parties; (ii) be barred and forever enjoined from commencing, instituting, prosecuting or maintaining any or all of the Released Plaintiffs' Claims against any of the SAC Capital Defendants' Released Parties; and (iii) be deemed to have covenanted not to sue any of the SAC Capital Defendants' Released Parties on the basis of any Released Plaintiffs' Claims or, unless compelled by operation of law, to assist any person in commencing or maintaining any suit relating to any Released Plaintiffs' Claims against any of the SAC Capital Defendants' Released Parties. The foregoing release is given regardless of whether the Elan Class Plaintiffs or Class Members have: (i) executed and delivered a Claim Form; (ii) received the Settlement Notice; (iii) participated in the Settlement Fund; (iv) filed an objection to the Settlement, the proposed Plan of Allocation, any applications for Fee and Expense Awards or Plaintiff Compensatory Awards; or (v) had their Claims approved or allowed. Nothing contained

herein shall, however, bar any action or claim to enforce the terms of the Stipulation or this Judgment.

- b. Without further action by anyone, upon the Effective Date, the SAC Capital Defendants' Released Parties shall: (i) be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every one of the Released Defendants' Claims against the Elan Class Plaintiffs' Released Parties; (ii) be barred and forever enjoined from commencing, instituting, prosecuting or maintaining any or all of the Released Defendants' Claims against any of the Elan Class Plaintiffs' Released Parties; and (iii) be deemed to have covenanted not to sue the Elan Class Plaintiffs' Released Parties on the basis of any Released Defendants' Claims or, unless compelled by operation of law, to assist any person in commencing or maintaining any suit relating to any Released Defendants' Claims against the Elan Class Plaintiffs' Released Parties. Nothing contained herein shall, however, bar any action or claim to enforce the terms of the Stipulation or this Judgment.

7. All Persons whose names appear on Exhibit 2 hereto are hereby excluded from the Classes, are not bound by this Judgment, and may not make any claim with respect to or receive any benefit from the Settlement, and the releases set forth in Paragraph 6 above shall not apply as to those Persons.

8. Neither the Stipulation nor any of the terms of the Stipulation shall be received into any action or proceeding for any purpose, except: (i) in an action or proceeding arising under the Stipulation or arising out of this Judgment; (ii) in any action or proceeding where the releases provided pursuant to the Stipulation may serve as a bar to recovery; or (iii) in any action or proceeding to determine the availability, scope, or extent of insurance coverage (or reinsurance related to such coverage) for the sums expended for the Settlement and defense of the Action.

9. This Judgment, the Stipulation, the MOU, and any of its or their respective provisions, and any negotiations, proceedings or agreements relating to the Stipulation and the Settlement, and any matters arising in connection with settlement negotiations, proceedings or agreements, and all acts performed or documents executed pursuant to or in furtherance of the Stipulation:

- a. shall not be offered against any of the SAC Capital Defendants' Released Parties as evidence of, or construed as, or deemed to be evidence of, any presumption, concession or admission by the SAC Capital Defendants' Released Parties with respect to the truth of any fact alleged by the Elan Class Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the SAC Capital Defendants' Released Parties;
- b. shall not be offered against any of the Elan Class Plaintiffs' Released Parties, as evidence of a presumption, concession or admission with

respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Elan Class Plaintiffs' Released Parties, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that the Parties and the Released Parties and their respective counsel may refer to the foregoing to effectuate the protections from liability granted under the Stipulation and this Judgment or otherwise to enforce the terms of the Settlement or this Judgment;

- c. shall not be construed against any of the Released Parties as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and
- d. shall not be construed against the Elan Class Plaintiffs' Released Parties as an admission, concession, or presumption that any of their claims are without merit, that any of the SAC Capital Defendants' Released Parties had meritorious defenses, or that damages recoverable under the Second Amended Complaint would not have exceeded the Settlement Amount.

10. The Court further orders that:

- a. Any and all Persons are permanently barred, enjoined and restrained, to the fullest extent permitted by applicable law, from commencing, prosecuting or asserting any claim for indemnity or contribution against any of the SAC Capital Defendants' Released Parties (or any other claim

against any of the SAC Capital Defendants' Released Parties where the alleged injury to such Person is that Person's actual or threatened liability to the Classes or a Class Member in the Action), based upon, arising out of or related to the Released Plaintiffs' Claims, whether arising under state, federal or foreign law, as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Action, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere. However, with respect to any judgment that the Classes or a Class Member may obtain against such Person based upon, arising out of or relating to any Released Plaintiffs' Claim belonging to the Classes or a Class Member, that Person shall be entitled to a credit of the greater of (i) an amount that corresponds to the percentage of responsibility of the SAC Capital Defendants for the loss to the Classes or the Class Member or (ii) the amount paid by or on behalf of the SAC Capital Defendants to the Classes or the Class Member.

- b. Each and every one of the SAC Capital Defendants' Released Parties is hereby permanently barred, enjoined and restrained, to the fullest extent permitted by applicable law, from commencing, prosecuting or asserting any claim for indemnity or contribution against any Person (or any other claim against any such Person where the alleged injury to such SAC Capital Defendants' Released Party is that SAC Capital Defendants' Released Party's actual or threatened liability to the Classes or a Class Member in the Action), based upon, arising out of or related to the

Released Plaintiffs' Claims, whether arising under state, federal, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Action, in this Court, in any other federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere. Notwithstanding the foregoing, the SAC Capital Defendants may seek contribution or indemnity from any Person not an Elan Class Plaintiffs' Released Party in this Action.

- c. Nothing in this Paragraph 10 shall prevent any Excluded Person from pursuing any Released Plaintiffs' Claim against any of the SAC Capital Defendants' Released Parties. If any such Person pursues any such Released Plaintiffs' Claim against any of the SAC Capital Defendants' Released Parties, nothing herein or in the Stipulation shall operate to preclude such SAC Capital Defendants' Released Parties from asserting any claim of any kind against such Person, including any Released Defendants' Claims (or seeking contribution or indemnity from any Person, including, but not limited to, any co-Defendant in the Action, in respect of the claim of such Excluded Person).

11. This Court finds that the Elan Class Plaintiffs and Elan Class Counsel adequately represented the Classes under Rules 23(a)(4) and (g) of the Federal Rules of Civil Procedure for the purpose of negotiating, entering into, and implementing the Settlement and at all times during the pendency of this Action.

12. This Court finds that during the course of the litigation, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

13. Nothing in this Judgment constitutes or reflects a waiver, release or discharge of any rights or claims of the SAC Capital Defendants against their insurers, or their insurers' subsidiaries, predecessors, successors, assigns, affiliates, or representatives.

14. The Parties are hereby authorized, without further approval of the Court, to unanimously agree to and adopt in writing amendments to the Stipulation and all exhibits attached thereto, provided that such amendments are done in accordance with the terms of Paragraph 52 of the Stipulation, are not inconsistent with this Judgment, and do not materially affect the rights of Class Members under the Stipulation.

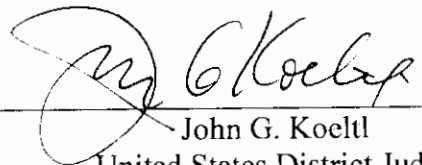
15. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

16. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution from the Settlement Fund, and interest earned thereon; (b) disposition of the Net Settlement Fund; (c) hearing and determining applications for Fee and Expense Awards and Plaintiff Compensatory Awards in the Action; (d) entry of the Cohen Dismissal Order and (e) all Parties for the purpose of construing, enforcing and administering the Settlement.

17. The provisions of this Judgment constitute a full and complete adjudication of the matters considered and adjudged herein, and the Court determines that there is no just reason for delay in the entry of judgment. The Clerk is hereby directed to immediately enter this Judgment.

SO ORDERED.

Dated: New York, New York
5/12, 2017



John G. Koeltl
United States District Judge

EXHIBIT 1

RELEASES AND DEFINED TERMS

Section I

(p) “Effective Date,” with respect to the Settlement, shall occur upon the occurrence or waiver of all of the conditions set forth in ¶ 39 [of the Stipulation].

(s) “Elan Class Plaintiffs’ Released Parties” means the Elan Class Plaintiffs and all other Class Members, Plaintiffs’ Counsel, and each of the respective present and former parents, subsidiaries, divisions and affiliates and their respective present and former employees, members, general and limited partners and partnerships, principals, officers, directors, attorneys, advisors (including, but not limited to, financial advisors), accountants, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives and assigns of each of them, in their capacity as such.

(ii) “Released Claims” means all Released Defendants’ Claims and all Released Plaintiffs’ Claims.

(jj) “Released Defendants’ Claims” means any and all claims and causes of action of every nature and description, including both known claims and Unknown Claims, whether based on federal, state, local or foreign statutory law or common law, rule or regulation, whether fixed or contingent, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, to the fullest extent permitted by law that the SAC Capital Defendants or Cohen could have asserted against the Elan Class Plaintiffs’ Released Parties, in any forum that arise out of, are based upon or are related to the institution, prosecution, assertion, settlement or resolution of the Action or the Released Plaintiffs’ Claims.

(kk) “Released Plaintiffs’ Claims” means any and all claims and causes of action of every nature and description, including both known claims and Unknown Claims, whether based on federal, state, local or foreign statutory law or common law, rule or regulation, whether fixed or contingent, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, to the fullest extent permitted by law that the Elan Class Plaintiffs or any other member of the Classes (a) asserted in the Action, or (b) could have asserted against the SAC Capital Defendants’ Released Parties, in any forum that arise out of, are based upon or are related to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in any complaint filed in this Action relating to the purchase or sale of Elan securities.

(mm) “Released Parties” means each and any of the SAC Capital Defendants’ Released Parties and Elan Class Plaintiffs’ Released Parties.

(pp) “SAC Capital Defendants’ Released Parties” means the SAC Capital Defendants and their respective present and former parents, subsidiaries, divisions and affiliates, and the

respective present and former employees (including, but not limited to, Martoma and Cohen), members, general and limited partners and partnerships, principals, officers, directors, attorneys, advisors (including, but not limited to, financial advisors), accountants, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives and assigns of each of them, in their capacity as such.

(xx) "Unknown Claims" means any Released Claims which the Elan Class Plaintiffs or any other Class Member, the SAC Capital Defendants or any of the other Released Parties, does not know or suspect to exist in his, her or its favor at the time of any of the other Releases, which, if known by him, her or it, might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Elan Class Plaintiffs and the SAC Capital Defendants shall expressly waive, and each of the other Class Members and each of the other Released Parties shall be deemed to have waived, and by operation of the 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 principle of common law, that is similar, comparable, or equivalent to Cal. Civ. 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.

Elan Class Plaintiffs and the SAC Capital Defendants acknowledge, and each of the other Class Members and each of the other Released Parties shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

Paragraphs 4, 6 and 7

4. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action as against all Defendants and shall fully, finally and forever compromise, settle, release, resolve, relinquish, waive, discharge and dismiss with prejudice, the Action and any and all Released Claims against each and all of the Released Parties upon the occurrence of the Effective Date.

6. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, the Elan Class Plaintiffs' Released Parties shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every Released Elan Class Plaintiffs' Claim against the SAC Capital Defendants' Released Parties and shall forever be enjoined from prosecuting any or all of the Released Plaintiffs' Claims against the SAC Capital Defendants' Released Parties.

7. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, the SAC Capital Defendants' Released Parties shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised,

settled, released, resolved, relinquished, waived, discharged and dismissed each and every Released Defendants' Claim against the Elan Class Plaintiffs' Released Parties and shall forever be enjoined from prosecuting any or all of the Released Defendants' Claims against Elan Class Plaintiffs' Released Parties.

EXHIBIT 2

EXCLUDED PERSONS

Mandoni, Mary P.

McGrath, Santa

Mollo Sarno, Ana Rosa

Njust, Bruce M. and Ruth L.

Turner, Roy E.

Westbye, Marilyn J.