

The Hon. Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH MCGUIRE and DAVID
WILCZYNSKI, on Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

vs.

DENDREON CORPORATION,
MITCHELL GOLD, and DAVID URDAL,

Defendants.

Case No. C07-800 MJP

CLASS ACTION

**ORDER GRANTING
PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEYS' FEES AND
EXPENSES AND CLASS
REPRESENTATIVE COSTS**

1 **WHEREAS,**

2 A. The parties to the above-described class action (the “Action”) entered into a
3 Stipulation of Settlement on October 25, 2010 (the “Settlement”), and the Court, for
4 purposes of this Order, adopts the definitions set forth in the Settlement;

5 B. On November 3, 2010, this Court entered an Order granting preliminary
6 approval to the proposed Settlement and providing for notice to the Class (“Preliminary
7 Approval Order”), and notice has been provided to the members of the Class in accordance
8 with the Preliminary Approval Order;

9 C. Plaintiffs and Class Counsel have applied to the Court for an award of
10 attorneys’ fees and expenses and reimbursement of costs incurred by plaintiffs;

11 D. The Notice disseminated to Class Members in accordance with the
12 Preliminary Approval Order disclosed the maximum attorneys’ fee Class Counsel would
13 seek, the maximum amount of costs and expenses for which Class Counsel would seek
14 reimbursement, and the maximum amount of costs and expenses for which plaintiffs would
15 seek reimbursement;

16 E. Pursuant to the Preliminary Approval Order and as set forth in the Notice,
17 any objections to plaintiffs’ and Class Counsel’s petition for attorneys’ fees and expenses
18 and reimbursement of costs incurred by plaintiffs were to be filed and served by
19 December 10, 2010;

20 F. Pursuant to the Notice and Summary Notice, and upon notice to all parties,
21 this Court held the Settlement Hearing on December 17, 2010, to consider, among other
22 things, whether the application for attorneys’ fees and expenses and the reimbursement of
23 costs incurred by plaintiffs should be approved by the Court; and
24

25 G. The Court has determined that the proposed Settlement of the Action on the
26 terms and conditions provided in the Settlement is fair, reasonable, and adequate and should
27

1 be approved by the Court, and the Final Judgment should be entered as provided for in the
2 Settlement, subject to the waiting period imposed by 28 U.S.C. 1715(d);

3 **WHEREAS**, the Court, having considered all matters submitted to it at the hearing,
4 along with all of the files, records, and proceedings in this Action, and otherwise having
5 determined the reasonableness of the requests set forth in *Plaintiffs' Motion for Award of*
6 *Attorneys' Fees and Expenses and Class Representative Costs*;

7 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

8 1. This Court has jurisdiction over the subject matter of the application and all
9 matters relating thereto, including all members of the Class who have not timely and validly
10 requested exclusion.

11 2. Due and adequate notice of the maximum attorney's fee Class Counsel would
12 request, the maximum amount of costs and expenses for which Class Counsel would seek
13 reimbursement, and the maximum amount of costs and expenses for which plaintiffs would
14 seek reimbursement were directed to all persons who were reasonably identifiable Class
15 members, advising them of their right to object thereto.

16 3. Class Counsel are hereby awarded attorneys' fees in the amount of
17 \$4,125,000, or 25% of the Settlement Fund, including interest thereon at the same rates
18 earned by the Settlement Fund, and reimbursement of expenses in the amount of
19 \$682,017.09, including interest thereon at the same rates earned by the Settlement Fund
20 ("Fee and Expense Award"). This Fee and Expense Award shall be paid by the Escrow
21 Agent from the Settlement Fund to Susman Godfrey L.L.P. subject to the terms, conditions,
22 and obligations of the Settlement, and pursuant to the timing set forth in paragraph 6.2 of the
23 Settlement, and which terms, conditions, and obligations are incorporated herein.

24 4. The Court finds that the amount of fees awarded is fair and reasonable under
25 the "percentage-of-the-recovery" method in light of, *inter alia*:

1 (a) The attorneys' fee award being on par with or below the percentage
2 awarded in comparable cases;

3 (b) The \$16,500,000 Settlement Fund, in light of the relevant
4 circumstances of this Action and the risk to plaintiffs and the Class that they would obtain
5 no recovery from defendants based on, among other things, a failure to prove scienter, loss
6 causation, or damages;

7 (c) The quality of work by and the experience of Class Counsel, and the
8 absence of an SEC or other governmental proceeding;

9 (d) The risks that Class Counsel undertook in pursuing this Action,
10 including the risk that no recovery would be obtained for plaintiffs and the Class;

11 (e) The time and effort involved over more than three years of active
12 litigation, including overcoming motions to dismiss, successfully obtaining certification of
13 the Class, conducting discovery involving the review and analysis of 570,000 pages of
14 documents and taking or defending nineteen depositions, fully briefing plaintiffs' opposition
15 to defendants' motion for partial summary judgment, preparing for trial, and negotiating the
16 Settlement; and

17 (f) The lodestar "multiplier" of approximately 2.55.
18
19 See 15 U.S.C. § 78u-4(a)(6) (fees "shall not exceed a reasonable percentage"); *Rodriguez v.*
20 *West Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (attorney's fees must be "reasonable
21 in the circumstances"); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002)
22 (examining factors, including risk of litigation, financial burden of contingent
23 representation, result achieved, and customary fees for similar cases).

24
25 5. The Court finds that the reimbursement of the costs and expenses requested,
26 including expert fees, the costs of computerized research using services such as Lexis and
27 Westlaw, travel to attend hearings and depositions and mediation, court reporter fees,
28 videographer fees, transcript fees, mediation fees, photocopying and printing costs, and

1 telephone charges, are reasonable under the circumstances and typical of those billed by
2 attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.
3 1994) (looking to whether expenses are of the type typically billed by attorneys to paying
4 clients in the marketplace); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177
5 (S.D. Cal. 2007) (reimbursing expert fees that are “crucial or indispensable to the litigation
6 at hand”); 15 U.S.C. § 78u-4(a)(4) (permitting reimbursement of expenses “directly relating
7 to the representation of the class to any representative party serving on behalf of a class”).

8
9 6. Class Representative Kenneth McGuire is awarded reimbursement of costs
10 and expenses in the amount of \$4250.17. Class Representative David Wilczynski is
11 awarded reimbursement of costs and expenses in the amount of \$ 46.34.


12 7. The Court finds, in the exercise of its discretion, the reimbursement of
13 plaintiffs’ costs to be fair, reasonable, and adequately supported by plaintiffs’ declarations.

14 8. The foregoing awards shall be paid by the Escrow Agent as provided in the
15 Settlement.

16 9. The Court hereby retains and reserves jurisdiction over all matters relating to
17 the administration, consummation, enforcement, and interpretation of the Settlement, and for
18 any other necessary purpose.

19 IT IS SO ORDERED.

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21 Dated: Dec 17, 2010


MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

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[PROPOSED] ORDER AWARDING ATTORNEYS’ FEES
AND EXPENSES AND CLASS REP. COSTS
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