

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

**DECLARATION OF MARC M.
SELTZER IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
APPROVAL OF NOTICE**

DECLARATION OF MARC M. SELTZER
No. 2:07-cv-0800-MJP
Page 1

SUSMAN GODFREY L.L.P.
1201 Third Avenue, Suite 3800
Seattle, WA 98101-3000
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1 I, Marc M. Seltzer, hereby declare and state as follows:

2 1. I am a partner at Susman Godfrey L.L.P. and Lead Counsel for plaintiffs
3 Kenneth McGuire and David Wilczynski in the above-captioned action. I am a member in
4 good standing of the bar of the State of California. I have been admitted *pro hac vice* by the
5 Court to appear as an attorney for plaintiffs in this action. I have personal knowledge of the
6 matters set forth in this declaration, and if called as a witness, could and would testify
7 competently thereto.

8 2. Before entering into the Stipulation of Settlement, dated as of October 25,
9 2010, a true and correct copy of which is attached as Exhibit 1, the attorneys at my firm
10 working on this matter extensively analyzed the applicable law and facts of this case and
11 developed a thorough understanding of the merits of the claims and defenses asserted in this
12 action. Pretrial discovery had been completed before the parties engaged in their first
13 settlement mediation session. During the course of the litigation, defendants produced to
14 plaintiffs more than 550,000 pages of documents, and the total document production by
15 parties and non-parties amounts to approximately 570,000 pages of documents. Defendants
16 responded to twenty-five interrogatories and served six expert reports. A total of nineteen
17 witnesses were deposed by the parties, including fourteen witnesses associated with
18 defendants and six expert depositions. In addition, plaintiffs produced documents to
19 defendants, responded to sixty-seven interrogatories, and both plaintiffs were deposed.
20 Plaintiffs served six expert reports and presented three experts for deposition. Plaintiffs also
21 obtained discovery from third party witnesses.

22 3. I have extensive experience in presenting and defending securities litigation.
23 My biography and the biographies of the attorneys from Susman Godfrey L.L.P.
24 representing plaintiffs—Drew D. Hansen, Ryan C. Kirkpatrick, Daniel J. Shih, and Jordon
25 Connors—are attached as Exhibits 2, 3, 4, 5, and 6, respectively.
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1 4. Plaintiffs' damages expert estimated the amount of artificial inflation in the
2 market price of Dendreon's common stock attributable to the undisclosed inspectional issues
3 by applying widely used economic methodologies to the opinions of plaintiffs' regulatory
4 experts, who concluded that those inspectional issues would have resulted in regulatory
5 approval delays for Provenge of at least six months, independent of any efficacy issues that
6 might also have affected FDA approval of Provenge. Based on this estimated period of
7 delay, plaintiffs' damages expert estimated the artificial inflation in the market price of
8 Dendreon common stock during the Class Period due to non-disclosure of the inspectional
9 issues was \$1.55 per share. Based on plaintiffs' expert's analysis of the trading volume of
10 Dendreon common stock, and using techniques employed for estimating the number of
11 shares that may be deemed subject to such inflation, plaintiffs' expert concluded that the
12 Class sustained aggregate damages of \$115.1 million, including aggregate damages to the
13 Subclass of approximately \$313,000. These opinions were vigorously disputed and
14 challenged by defendants.
15

16 5. In stark contrast to plaintiffs' damages expert, defendants' damages expert
17 concluded that damages were non-existent, even if it was assumed that plaintiffs were able
18 to prove the violations of the federal securities laws alleged in plaintiffs' operative
19 complaint. According to defendants' expert, if any damages could be shown to exist, the
20 maximum amount of damages sustained by the Class did not exceed \$8.8 million.
21

22 6. The settlement set forth in the Stipulation of Settlement was achieved in this
23 case as a result of arm's-length negotiations conducted in good faith with the assistance of
24 the mediator selected by the parties, the Hon. Daniel J. Weinstein, Judge of the California
25 Superior Court (Retired). Plaintiffs' counsel believe, based on their extensive analysis of the
26 strengths and weaknesses of the claims and defenses asserted in this action, that the
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