

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SEB INVESTMENT MANAGEMENT AB, : CIVIL ACTION

**Individually and On Behalf of
All Others Similarly Situated**

v.

**ENDO INTERNATIONAL, PLC, :
ENDO HEALTH SOLUTIONS INC., :
BLAINE T. DAVIS, RAJIV KANISHKA :
LIYANAARCHCHIE DE SILVA, :
IVAN GERGEL, ALAN G. LEVIN and :
JULIE H. MCHUGH : NO. 17-3711**

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

NOW, this 13th day of December, 2019, upon consideration of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Certification of Settlement Class to Effectuate the Settlement (Document No. 91) and Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (Document No. 92), and after hearings on September 10, 2019 and December 11, 2019, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 10, 2019, the proposed Stipulation and Agreement of Settlement entered into between Lead Plaintiff SEB Investment Management AB and defendants Endo International plc, Endo Health Solutions Inc., Blaine T. Davis, Rajiv Kanishka Liyanaarchchie De Silva, Ivan Gergel, M.D., Alan G. Levin, and Julie H. McHugh on August 22, 2019 ("Settlement Agreement") was preliminarily approved.

2. The Settlement Class as defined and certified for settlement purposes in the Order of September 10, 2019, includes all persons and entities who purchased or otherwise acquired Endo common stock or ordinary shares between November 30, 2012 and June 8, 2017, inclusive (the "Class Period"), and were damaged.

3. Excluded from the Settlement Class are those defined in paragraph 1(xx) of the Settlement Agreement¹ and the five Class Members who timely requested exclusion from the Settlement Class and who are listed on the Exclusion List.²

4. Lead Plaintiff SEB Investment Management AB, the appointed Class Representative, has fairly and adequately protected the interests of the Settlement Class.

5. Kessler Topaz Meltzer & Check, LLP, appointed Lead Counsel for the Settlement Class, has adequately represented the Settlement Class.

6. Notice of the proposed settlement was provided to Class Members in compliance with the September 10, 2019 Order by JND Legal Administration by mailing over 212,000 Postcard Notices and 4700 Notice Packets to potential Class Members and nominees, posting the Notice on the Settlement Website, publishing the Summary Notice in *Investor's Business Daily* and *The Wall Street Journal* and transmitting the Summary Notice over the *PR Newswire*.

7. Notice of the December 11, 2019 hearing to determine: (a) whether this action satisfies the criteria for class certification set forth in Fed. R. Civ. P. 23(a) and (b); (b) whether the settlement of this action on the terms and conditions set forth in the Settlement Agreement should be finally approved as fair, reasonable and adequate; (c)

¹ See Document No. 83-2.

² See Document No. 94-1 at ECF 4, 7.

whether the Plan of Allocation should be approved; (d) whether final approval should be granted; (e) the amount of attorneys' fees and expenses to be awarded to Lead Counsel; and (f) whether a final order and judgment should be entered dismissing the claims of the Settlement Class with prejudice, was mailed to all Class Members.

8. Notice of the proposed settlement constituted the best notice practicable under the circumstances, and included notice to all members who could be identified through reasonable efforts.

9. Notice of the proposed settlement was mailed by Defendants to the appropriate federal and state officials in compliance with the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (the "CAFA Notice").³

10. There are over 200,000 Class Members.

11. Class Members were given the option of excluding themselves from the class by completing, signing and mailing a notice requesting exclusion to the Settlement Administrator no later than November 22, 2019.

12. Five Class Members have requested exclusion from the Settlement Class.

13. The deadline for serving written objections to the settlement and/or to the request by Lead Counsel for an award of attorneys' fees and out-of-pocket expenses was November 22, 2019.

14. No Class Member has objected to the proposed settlement or the award of attorneys' fees and expenses.

³ See Document Nos. 85 and 85-1.

15. Investigation, substantial discovery, litigation of Defendants' motion to dismiss the complaint, briefing of Lead Plaintiff's motion for class certification and extensive settlement negotiations have taken place at substantial expense to the parties.

16. If this settlement is not approved, there will be expensive future litigation.

17. On December 11, 2019, pursuant to Fed. R. Civ. P. 23(e), a final approval hearing was held.

18. The only persons appearing at the December 11, 2019 hearing were Lead Counsel and Defendants' counsel.

The Settlement

19. The settlement terms were reached after Lead Counsel: (a) conducted a substantial investigation of the facts underlying the plaintiff's claims, including reviewing a voluminous public record and contacting former Endo employees and other potential witnesses; (b) drafted a detailed amended complaint; (c) opposed Defendants' motion to dismiss the complaint in briefing and oral argument; (d) engaged in extensive discovery, including reviewing hundreds of thousands of documents, defending the depositions of Lead Plaintiff and Lead Plaintiff's class certification expert, deposing Defendants' class certification expert and preparing for other depositions that were scheduled before reaching the Settlement; (e) briefed the motion for class certification; (f) consulted with financial and industry experts to evaluate loss causation and damages; and (g) engaged in extensive settlement negotiations, including formal mediation and premediation briefing, as well as damages and solvency analyses. All of these actions resulted in an understanding of the strengths and weaknesses of the claims and the Defendants' potential defenses, enabling counsel to make an informed decision that the proposed

settlement is fair, adequate and reasonable, and in the best interests of the settlement class.

20. Settlement negotiations took place over a five-month period in arms' length discussions and with the participation of a mediator.

21. The Settlement Agreement was the product of careful and informed analysis by all parties, taking into consideration the respective strengths and weaknesses of the parties' positions.

22. The parties have been and are represented by counsel experienced in class actions, complex commercial matters and consumer litigation in the federal courts.

23. Defendants have challenged the claims on legal grounds that raise a potential finding of no liability.

24. The parties genuinely believe there are inherent risks in proceeding to trial.

25. Settlement will avoid delay in realizing a benefit for the affected Class Members, will avoid unnecessary litigation costs and will eliminate uncertainty.

26. The absence of objections to the settlement demonstrates support for the approval of this settlement as fair and reasonable.

27. The settlement provides significant relief, which directly responds to the challenged conduct and provides relief to a large group of people with modest individual claims who could not practically seek redress on an individual basis.

28. The Settlement Agreement requires defendants Endo International plc and Endo Health Solutions Inc. to pay Eighty-Two Million Five Hundred Thousand Dollars (\$82,500,000.00) in cash ("Settlement Amount").

29. The Net Settlement Fund, which is the Settlement Amount less any notice and administration costs up to \$750,000.00, any taxes and tax expenses, Lead Counsel's litigation expenses of \$962,916.92, Lead Plaintiff's reimbursement of its expenses of \$32,074.20 and an award for attorneys' fees of \$16,500,000.00, which is 20% of the Settlement Amount, will be distributed to Settlement Class Members entitled to a distribution of the proceeds from the Settlement in accordance with a Plan of Allocation approved by the Court.

30. Under the Plan, a Recognized Loss Amount will be calculated for each share of Endo common stock purchased or acquired during the Class Period that is listed in a Claimant's Claim Form, and the Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims.

31. The formula for the calculation of the claims of Claimants set forth in the Plan of Allocation provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among Settlement Class Members.

32. The Settlement Agreement does not grant preferential treatment to the Class Representative or segments of the class.

**Lead Counsel's Request for Award of Attorneys' Fees
and Expenses and for Class Representative PSLRA Award**

33. Lead Counsel undertook prosecution of this matter on a contingent basis and incurred expenses in its prosecution.

34. Lead Counsel has applied for an attorneys' fees award in the amount of \$16,500,000.00, which is 20% of the Settlement Amount, and for payment of out-of-pocket expenses in the amount of \$962,916.92.

35. Notice of Lead Counsel's intention to apply for an attorneys' fees and expenses award in this amount was provided to all Class Members in the Notice of the proposed settlement.

36. There have been no objections to the requested award of attorneys' fees and expenses.

37. The Lead Plaintiff approves of Lead Counsel's request for attorneys' fees and expenses.

38. Defendants do not oppose Lead Counsel's request for attorneys' fees and expenses.

39. At substantial expense, Lead Counsel conducted a thorough investigation of the facts underlying the plaintiff's claims, engaged in extensive discovery, litigated Defendants' motion to dismiss, briefed Lead Plaintiff's motion for class certification and participated in extensive settlement negotiations.

40. The requested counsel fee award in the amount of \$16,500,00.00, which is 20% of the Settlement, is below fee awards commonly awarded in similar cases, which range from 19% to 45% of the settlement fund.⁴

41. The counsel fees requested are reasonable.

42. The out-of-pocket expenses incurred were reasonable and necessary.

43. Using the lodestar method as a cross-check on the reasonableness of the requested fees, Lead Counsel's lodestar is \$7,488,433.00, which reflects over 17,500 hours of attorney time and 1000 hours of paralegal and other professional support staff time.

⁴ See *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 (3d Cir. 2001) (citation omitted).

44. Given the nature of the services provided, Lead Counsel's experience in consumer class action cases and the rates of other lawyers in the community with similar skills and experience, Lead Counsel's hourly rate is reasonable.

45. The number of hours expended by Lead Counsel was not excessive or redundant, and the work was properly allocated among attorneys and paralegals and other professional support staff of different skill and experience levels to reduce costs.

46. Lead Counsel's requested award for attorneys' fees in the amount of \$16,500,000.00 results in a multiplier of 2.2, which is reasonable.⁵

47. Lead Counsel has applied for an award of \$32,074.20 to Lead Plaintiff as reimbursement of its reasonable costs and expenses incurred when acting as Class Representative.

48. The Private Securities Litigation Reform Act of 1995 ("PSLRA") provides that an "award of reasonable costs and expenses directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4).

49. Notice of Lead Counsel's intention to apply for the PLSRA award was provided to all Class Members in the notice of the proposed settlement.

50. There have been no objections to the requested award.

51. The PLSRA award requested is reasonable.

⁵ See *Cendant Corp. PRIDES*, 243 F.3d at 742 (quoting *In re Prudential*, 148 F.3d 283, 341 (3d Cir. 1998) ("Multipliers ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.")).

CONCLUSIONS OF LAW

Final Approval of the Settlement

1. The settlement of a class action requires Court approval after notice to all members of the class. See Fed. R. Civ. P. 23(e).
2. The settlement comports with Rules 23(a) and 23(b)(3) in all respects.
3. The Plan of Allocation is fair and reasonable to the Settlement Class.
4. The nine factors to be considered in assessing the fairness of a class action settlement are: "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action through the trial; (7) the ability of defendant to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best recovery; and, (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *In re: Google Inc. Cookie Placement Consumer Privacy Litig.*, 934 F.3d 316, 322 & n.2 (3d Cir. 2019) (quoting *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)).
5. In light of these factors, the settlement is fair, reasonable and adequate.

Approval of Lead Counsel's Request for Award of Attorneys' Fees and Expenses

6. An award for attorneys' fees and expenses in the settlement of a class action requires court approval after notice to all class members in a reasonable manner. See Fed. R. Civ. P. 23(h).

7. Notice of Lead Counsel's intention to apply for an award of attorneys' fees and expenses has been provided to all persons in the class in a reasonable manner and satisfies the requirements of Federal Rule of Civil Procedure 23(h)(1).

8. The court may award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h).

9. To evaluate what is an appropriate attorneys' fee in a class action, courts generally apply either the lodestar method or the percentage-of-recovery method. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 279-80 (3d Cir. 2009).

10. Attorneys who create a settlement fund of benefits for class members by virtue of their efforts are entitled to be compensated for their services from that fund. See *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

11. The percentage of recovery method "is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *Ins. Brokerage*, 579 F.3d at 280 (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)).

12. Regardless of the method chosen, it is prudent to use a second method of fee approval to cross-check the initial fee calculation. *Rite Aid*, 396 F.3d at 300; *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821 & n.40 (3d Cir. 1995).

13. In evaluating a counsel fee request using the percentage-of-recovery method, the following factors are considered: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the

skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by class counsel; and (7) awards in similar cases. *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 496 (3d Cir. 2017) (citing *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000)). Additionally, “(8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and (10) any innovative terms of settlement” should be considered. *Halley*, 861 F.3d at 496 (citing *In re Diet Drugs Prod. Liab. Litig.*, 582 F.3d 524, 541 (3d Cir. 2009)).

14. The lodestar method calculates fees by multiplying the number of hours reasonably worked by an appropriate hourly rate based on the given geographical area, the nature of the services provided, and the experience of the attorneys. *Rite Aid*, 396 F.3d at 305. The number of hours expended should not be excessive or redundant, and should be appropriately allocated among attorneys and other staff with the proper skill level to reduce costs. *Hensley v. Eckerhart*, 461 U.S. 433-34 (1983).

15. After determining the lodestar, we calculate the “multiplier” by dividing the proposed fee award by the resulting lodestar.

16. Applying both the percentage-of-recovery and lodestar methods, Lead Counsel's request for an award of \$16,500,000.00 for attorneys' fees and \$962,916.92 for out-of-pocket expenses is fair and reasonable.

/s/ Timothy J. Savage

TIMOTHY J. SAVAGE, J.