

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MICHAEL BEMIS, et al., Individually and on Behalf)
of All Others Similarly Situated,)
)
Plaintiffs,)
)
vs.)
)
TRIUS THERAPEUTICS, INC., et al.,)
)
Defendants.)

Lead Case No. 37-2013-00060593-CU-BT-CTL
(Consolidated with Case Nos. 37-2013-00061332-
CU-SL-CTL, 37-2013-00061612-CU-SL-CTL, 37-
2013-00061751-CU-BT-CTL, 37-2013-00062038-
CU-BT-CTL, 37-2013-00062069-CU-SL-CTL and
37-2013-00062130-CU-SL-CTL)

CLASS ACTION

JUDGE: Honorable Judith F. Hayes

DEPT: C-68

DATE ACTION FILED: 08/01/13

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT OF CLASS ACTION,
SETTLEMENT HEARING AND RIGHT TO APPEAR**

TO: ALL HOLDERS OF TRIUS THERAPEUTICS, INC. ("TRIUS") COMMON STOCK WHO RECEIVED CONSIDERATION FOR THEIR SHARES IN THE ACQUISITION OF TRIUS BY CUBIST PHARMACEUTICALS, INC. ("CUBIST PHARMACEUTICALS") AND BRGO CORPORATION, A WHOLLY-OWNED SUBSIDIARY OF CUBIST PHARMACEUTICALS ("BRGO" AND TOGETHER WITH CUBIST PHARMACEUTICALS, "CUBIST") AT THE PRICE OF \$13.50 PER SHARE IN CASH AND ONE CONTINGENT VALUE RIGHT PER SHARE, FIRST ANNOUNCED ON JULY 30, 2013 (THE "CLASS")

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THE ACTION REFERRED TO IN THE CAPTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS OR ADEQUACY OF THE PROPOSED SETTLEMENT, AND FROM PURSUING THE RELEASED PLAINTIFFS' CLAIMS (AS DEFINED BELOW).

IF YOU HELD SHARES OF TRIUS COMMON STOCK FOR THE BENEFIT OF ANOTHER INDIVIDUAL OR ENTITY, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL HOLDER.

THE PURPOSE OF THIS NOTICE

1. The purpose of this Notice is to inform you of a proposed settlement (the "Settlement") of the above-captioned action (the "Action") by and among the parties to the Action pending before the Superior Court of the State of California, County of San Diego (the "Court"), and of a hearing to be held before the Court, in Department C-68, 330 West Broadway, San Diego, CA 92101, on October 28, 2016, at 10:30 a.m. (the "Settlement Hearing"). The purpose of the Settlement Hearing is to determine: (a) whether the Court should approve the proposed Settlement of the Action for a total of Nine Million Four Hundred Thousand Dollars (\$9,400,000.00) on the terms and conditions set forth in the Stipulation of Settlement dated November 30, 2015 ("Stipulation"); (b) whether the Court should enter a final judgment in the Action as set forth in the Stipulation¹; (c) whether the Court should approve the proposed plan of distribution; (d) whether the Court should grant the application by Lead Counsel for an award of attorneys' fees and expenses and the expenses of Plaintiffs; and (e) such other matters as may properly come before the Court.

2. The Court has the right to adjourn the Settlement Hearing without further notice. The Court also has the right to approve the Settlement with or without modifications, to enter its final judgment, and to order the payment of attorneys' fees and expenses without further notice.

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THIS ACTION AND OF A HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY WISH TO TAKE IN RELATION TO THIS LITIGATION.

¹ The Stipulation and other settlement documents can be obtained on the case dedicated website at www.triussecuritieslitigation.com.

BACKGROUND AND DESCRIPTION OF THE LITIGATION

3. On July 30, 2013, Trius announced that it had entered into a definitive merger agreement (the “Merger Agreement”) with Cubist, under which Cubist would commence a tender offer (the “Tender Offer”) to acquire all of the outstanding shares of Trius for \$13.50 per share in cash and one Contingent Value Right, entitling the holder to receive an additional cash payment of up to \$2.00 for each share they own if certain commercial sales milestones are achieved (the “Acquisition”).

4. Between August 1, 2013 and August 12, 2013, several putative class action complaints on behalf of Trius common stockholders were filed in this Court alleging, among other things, that the members of Trius’ Board of Directors breached their fiduciary duties in connection with the Acquisition, and that Cubist and Trius aided and abetted those breaches (the “Related Actions”). In addition, several actions alleging substantially the same claims on behalf of the same putative class of Trius common stockholders were filed in the Delaware Court of Chancery (the “Delaware Actions”).

5. On August 13, 2013, Cubist commenced the Tender Offer. On the same date, Trius filed a Schedule 14D-9 Solicitation/Recommendation Statement (the “14D-9”) with the United States Securities and Exchange Commission (“SEC”) in connection with the Tender Offer.

6. On August 21, 2013, Plaintiffs filed a motion seeking consolidation of the Related Actions and the appointment of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as lead counsel.

7. On August 28, 2013, plaintiff Bemis filed an amended complaint (the “Amended Complaint”) which, among other things, included the allegations in the initial complaints in the Related Actions and added allegations that the Defendants violated their fiduciary duties by filing the 14D-9, which allegedly omitted or misrepresented material information.

8. On September 4, 2013, the Delaware Chancery Court consolidated the Delaware Actions (collectively, the “Consolidated Delaware Action”).

9. On September 11, 2013, Cubist consummated the Tender Offer and consummated the Acquisition.

10. On September 24, 2013, Defendants Trius and Cubist filed a motion for an order to stay proceedings (“Motion to Stay”), seeking a stay of the Related Actions in favor of the Consolidated Delaware Action.

11. On October 24, 2013, the Delaware plaintiffs filed a notice and proposed order of voluntary dismissal of the Consolidated Delaware Action without prejudice, which the Delaware Court of Chancery granted the same day. As a result, Defendants took their Motion to Stay off the Court’s calendar.

12. On February 28, 2014, Plaintiffs served their Consolidated Amended Class Action Complaint for Breaches of Fiduciary Duty and Violations of State Law (“Consolidated Complaint”) on Defendants and attempted to file and lodge it with the Court. The Court accepted the Consolidated Complaint on or around September 29, 2014.

13. On March 12, 2014, the Court consolidated the Related Actions into this Action.

14. On March 28, 2014, the Parties filed a stipulation and order for voluntary dismissal of Cubist without prejudice. The Court dismissed Cubist without prejudice on April 11, 2014.

15. On April 24, 2014, Defendants and Trius filed their motion to strike Plaintiffs’ jury demand (“Motion to Strike”).

16. On April 29, 2014, Defendants filed their demurrer to Plaintiffs’ Consolidated Complaint (“Demurrer”).

17. On May 16, 2014, Plaintiffs filed their opposition to Defendants’ Demurrer.

18. On May 16, 2014, Plaintiffs filed their opposition to Defendants’ Motion to Strike.

19. On May 21, 2014, the Parties filed a stipulation and proposed order for voluntary dismissal of Trius with prejudice. The Court dismissed Trius with prejudice on July 22, 2014.

20. On May 22, 2014, Defendants filed their reply briefs in support of their Motion to Strike and their Demurrer.

21. On September 5, 2014, the Court held a hearing regarding Defendants’ Demurrer and Motion to Strike. After hearing the Parties’ arguments, on September 19, 2014, the Court granted Defendants’ Motion to Strike and overruled Defendants’ Demurrer.

22. On September 29, 2014, Defendants filed their Answer to Plaintiffs’ Consolidated Complaint.

23. From December 16, 2014 to January 13, 2015, several plaintiffs from the Related Actions requested voluntary dismissals from the Action, which the Court granted.

24. On January 9, 2015, Plaintiffs filed their motion for class certification.

25. On June 23, 2015, Defendants filed their statement of non-opposition to Plaintiffs' motion for class certification.

26. Also during this period, from approximately September 2014 to June 2015, the Parties engaged in extensive fact discovery concerning the claims alleged in the Consolidated Complaint. The Parties and various non-parties produced approximately 244,550 pages of documents. The Parties completed 13 depositions. Plaintiffs pursued discovery from and served subpoenas on various third parties. The Parties also served and responded to special interrogatories. The Parties also began preparing to engage in expert discovery, including the designation of experts and exchange of initial expert witness lists.

27. On June 8, 2015, after preparing and submitting materials to Jill R. Sperber, Esq. (the "Mediator"), counsel for Plaintiffs and Defendants participated in a mediation session regarding a possible global resolution of the Action before the Mediator.

28. Subsequently, the Mediator issued her recommendation outlining recommended terms for the settlement of the Action, and the Mediator's recommendation was accepted by the Parties.

29. On November 30, 2015, the Parties entered into the Stipulation setting forth the terms and conditions of the Settlement, subject to approval by the Court.

REASONS FOR THE SETTLEMENT

30. Plaintiffs, through their counsel, have investigated the claims and allegations asserted in the Action, as well as the underlying events and transactions relevant to the Action.

31. In evaluating the Settlement, Plaintiffs and their counsel have considered: (i) the benefits to the members of the Class (as defined above) from the Settlement; (ii) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; (iii) the probability of success on the merits and the allegations contained in the Action, including the uncertainty relating to the proof of those allegations; (iv) the desirability of permitting the Settlement to be consummated as provided by the terms of the Stipulation; and (v) the conclusion of Lead Counsel that the terms and conditions of the Settlement are fair, reasonable, adequate, and in the best interests of Plaintiffs and the Class.

32. Defendants have denied, and continue to deny, that they have committed or aided and abetted in the commission of any violation of law or engaged in any of the other wrongful acts alleged in any of the above-described actions, and expressly maintain that they have diligently and scrupulously complied with their fiduciary and other legal duties, and are entering into the Stipulation and Settlement solely to eliminate the burden and expense of further litigation.

SUMMARY OF THE SETTLEMENT TERMS

33. The principal terms of the Settlement are as follows:

(a) In consideration for the full settlement and release of all Released Plaintiffs' Claims (as defined below), Defendants and their insurers will cause a total of Nine Million Four Hundred Thousand Dollars (\$9,400,000.00) (the "Settlement Amount") to be paid for the benefit of the Class.

(b) The full terms of the Settlement are set forth in the Stipulation (for further information, see "Scope of This Notice" below).

DISTRIBUTION OF THE SETTLEMENT AMOUNT

34. If the Settlement is approved, the Settlement Amount, less any Fee and Expense Award and plaintiff service awards approved by the Court, and administrative costs (the "Net Settlement Amount"), will be distributed as follows:

(a) Proof of Claim

Any Class Member who wishes to participate in the distribution of the Net Settlement Amount shall submit to the Claims Administrator a completed Proof of Claim in the form enclosed **postmarked (if mailed) or received (if filed electronically) no later than November 7, 2016**. Any Proof of Claim submitted to the Claims Administrator after such date may be rejected as untimely. The claim form may be submitted online at www.triussecuritieslitigation.com. All Class Members who submit a valid Proof of Claim to the Claims Administrator will be "Settlement Payment Recipients."

(b) Distribution of the Settlement Amount

Following the Effective Date, the Net Settlement Amount will be disbursed by the Claims Administrator to the Settlement Payment Recipients and will be allocated on a per-share basis amongst the Settlement Payment Recipients based on the number of shares of Trius common stock held by the applicable Settlement Payment Recipient upon the closing of the Acquisition and the number of shares of Trius common stock held by all Settlement

Payment Recipients. If there is any balance remaining in the Net Settlement Amount after six (6) months from the date of distribution of the Net Settlement Amount (whether by reason of tax refunds, uncashed checks, or otherwise), then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Amount cash their distributions, any balance remaining shall be re-distributed among Settlement Payment Recipients in an equitable and economic manner. Any distribution and re-distribution will require a \$10.00 minimum.

JUDGMENT AND RELEASE OF CLAIMS

35. If the Settlement is approved, the Court will enter an order and final judgment (the “Judgment”) that will release Released Defendant Parties from any and all manner of claims, demands, losses, rights, causes of action (including Unknown Claims), liabilities, damages, obligations, judgments, suits, disputes, fees, expenses, costs, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, that have been or could have been asserted in the Action, Related Actions, Delaware Actions, or in any court, tribunal, forum or proceeding (including, but not limited to, any claims arising under federal, state or foreign law, common law, statute, rule, or regulation relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws, or otherwise, and including all claims within the exclusive jurisdiction of the federal courts), by any Class Member in his, her, or its capacity as a stockholder of Trius, against the Released Defendant Parties, and that arise out of, relate to, concern, or are based upon the allegations, conduct, facts, events, transactions, acts, occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof embraced, involved, or set forth or otherwise related, directly or indirectly, to: (i) the Action; (ii) the Merger Agreement (including, but not limited to, any deliberations or negotiations in connection with the Merger Agreement); (iii) the Acquisition (including, but not limited to, the consideration received by Class Members in connection with the Acquisition); (iv) any fiduciary obligations of any of the Defendants or Released Defendant Parties in connection with the Acquisition; (v) the negotiations in connection with the Acquisition, including any deal-protection devices; (vi) the disclosures or disclosure obligations of any of the Defendants or Released Defendant Parties in connection with the Acquisition; and (vii) any alleged improper personal benefit or conflict of interest in connection with the Acquisition; provided, however, that the Released Plaintiffs’ Claims shall not include a claim to enforce the Stipulation (the “Released Plaintiffs’ Claims”).

36. The Judgment to be entered by the Court will also release Released Plaintiff Parties from, to the fullest extent permitted by law all claims (including Unknown Claims), demands, losses, rights, and causes of action of any nature whatsoever that have been or could have been asserted in the Action, or in any court, tribunal, forum or proceeding, by any Released Defendant Party against any of the Released Plaintiff Parties, which arise out of or relate in any way to the institution, prosecution or settlement of the Action; provided, however, that the Released Defendant Parties’ Claims shall not include claims to enforce the Stipulation (the “Released Defendant Parties’ Claims”).

37. “Released Defendant Parties,” as used in Paragraphs 35 and 36 above, means: Defendants, Trius, Cubist, and/or any of their families, parent entities, controlling or managing persons or entities, associates, investors, affiliates or subsidiaries and each and all of their past, present, or future officers, directors, stockholders, employees, attorneys, financial or investment advisors, insurers, excess insurers and reinsurers, consultants, accountants, investment bankers, commercial bankers, engineers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates, administrators, and each of their respective heirs, predecessors, successors, and assigns, and investment funds that any of the Defendants managed or advised and such funds’ respective affiliates, agents, employees, directors, predecessors, and successors.

38. “Released Plaintiff Parties,” as used in Paragraph 36 above, means: Plaintiffs, all Class Members, Lead Counsel and/or Plaintiffs’ Counsel.

39. “Unknown Claims,” as used in Paragraphs 35 and 36 above, means:

(a) any and all Released Plaintiffs’ Claims which Plaintiffs or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiffs’ Claims against the Released Defendant Parties, including (without limitation) claims which if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement; and

(b) any and all Released Defendant Parties’ Claims which any Defendant or any other Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties’ Claims against the Released Plaintiff Parties, including (without limitation) claims which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement.

STAY

40. All proceedings in this Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, have been stayed and suspended until further order of the Court.

THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

41. Concurrently with seeking final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees of up to 30% of the Settlement Amount (or up to \$2.82 million) and up to \$250,000 in expenses, plus interest thereon (the "Fee and Expense Application"). At the same time, Lead Counsel may also apply to the Court for service awards to the Plaintiffs of up to \$5,000 each. Any Fee and Expense Award or plaintiff service awards approved by the Court will be paid from the Settlement Fund.

42. Lead Counsel will make the Fee and Expense Application on or before September 30, 2016.

EXCLUSION FROM THE CLASS

43. If you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself from, or "opting out" of, the Class.

44. To exclude yourself from the Class, you must send a letter by mail saying that you want to be excluded from the Class in the following action: *Bemis v. Trius Therapeutics, Inc.*, Lead Case No. 37-2013-00060593-CU-BT-CTL. Be sure to include your name, address, telephone number, and sign the letter. You should also include the number of shares of Trius common stock you held that are subject to the Action. Your exclusion request must be **postmarked no later than October 14, 2016** and sent to the Claims Administrator at:

Trius Securities Litigation
EXCLUSIONS
Claims Administrator
c/o Gilardi & Co. LLC
3301 Kerner Blvd.
San Rafael, CA 94901

You cannot exclude yourself by phone or by e-mail. If you make a proper request for exclusion, you will not receive a Settlement payment, and you cannot object to the Settlement. If you make a proper request for exclusion, you will not be legally bound by anything that happens in this lawsuit.

RIGHT TO APPEAR AND OBJECT

45. Any Class Member who objects to the Settlement, the Judgment to be entered in the Action, the proposed plan of distribution or the Fee and Expense Application, or who otherwise wishes to be heard, may appear personally or by counsel at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that no person or entity (other than counsel for Plaintiffs and Defendants) shall be heard and no papers, briefs, pleadings, or other documents submitted by any person or entity shall be considered by the Court unless, **by October 14, 2016**, such person or entity files with the Clerk of the Court and serves upon counsel listed below a written notice of intention to appear that includes: (i) the person or entity's name, address, and telephone number, and, if represented, their counsel; (ii) a written statement certifying that the person or entity is a member of the Class; (iii) a detailed written statement of such person or entity's objections to any matters before the Court and the grounds therefor or the reasons that such person or entity desires to appear and be heard; and (iv) a copy of all documents or writings such person or entity desires the Court to consider. Such papers shall be served by hand, e-filing, or overnight mail upon the following counsel on or before the date of filing with the Court:

David Knotts
ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101

Koji F. Fukumura
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121

At the same time, these papers must be filed with the Clerk of the Court, San Diego County Superior Court, Hall of Justice, 330 West Broadway, San Diego, CA 92101. Unless the Court otherwise directs, no Class Member shall be entitled to object to the Settlement, or to the Judgment to be entered herein, or to the plan of distribution, or to the award of attorneys' fees and expenses to Lead Counsel, or otherwise to be heard, except by serving and filing written objections as described above. Any person who fails to object in the manner provided above shall be deemed to have waived such objection and shall forever be barred from making any such objection in the Action or in any other action or proceeding. The parties to this Action will submit responses, if any, to any objectors on or before October 21, 2016.

THE ORDER AND FINAL JUDGMENT OF THE COURT

46. If the Court determines that the Settlement, as provided for in the Stipulation, is fair, reasonable, adequate and in the best interests of the Class, the parties to the Action will ask the Court to enter a Judgment, which will, among other things:

(a) approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class and direct consummation of the Settlement in accordance with its terms and conditions;

(b) release the Released Defendant Parties from the Released Plaintiffs' Claims, and release the Released Plaintiff Parties from the Released Defendant Parties' Claims;

(c) effectively prevent the members of the Class from instituting, commencing, prosecuting, participating in, or continuing any action or other proceeding in any court or tribunal of any jurisdiction, either directly, representatively, derivatively, or in any other capacity, asserting any Released Plaintiffs' Claims; and

(d) retain jurisdiction over all matters relating to the administration and consummation of the Settlement described therein.

47. In the event the Settlement is not approved, or such approval does not become final, the Settlement shall be of no further force and effect and each party shall then be returned to his, her, or its respective position prior to the Settlement without prejudice and as if the Settlement had not been entered into.

SCOPE OF THIS NOTICE

48. The foregoing description of the Settlement Hearing, the Action, the terms of the proposed Settlement and other matters described herein does not purport to be comprehensive. Accordingly, Class Members are referred to the documents filed with the Court in the Action. You or your attorney may examine the documents filed in the Action during regular business hours on any business day at the office of the Clerk of the Court, San Diego County Superior Court, Hall of Justice, 330 West Broadway, San Diego, CA 92101 or online at: <https://roa.sdcourt.ca.gov/roa/>.

If you would like further information, you may contact:

Rick Nelson
ROBBINS GELLER RUDMAN & DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
1-800-449-4900

NOTICE TO THOSE HOLDING STOCK FOR THE BENEFIT OF OTHERS

49. Brokerage firms, banks and/or other persons or entities who held shares of Trius common stock for the benefit of others are directed promptly to send this Notice to all of their respective beneficial holders. If additional copies of the Notice are needed for forwarding to such beneficial holders, any requests for such additional copies may be made to:

Trius Securities Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 40007
College Station, TX 77842-4007

PLEASE DO NOT WRITE OR CALL THE COURT.

DATED: July 18, 2016

BY ORDER OF THE COURT
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO