



GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MICHAEL DEPINTO, On Behalf of)
Himself and All Others Similarly)
Situated,)
)
Plaintiff,)

Consol. C.A. No. 10742-CB

v.)

JOHN S. STAFFORD, III, BASSIL I.)
DAHIYAT, JONATHAN FLEMING,)
ATUL SARAN, HAROLD R. WERNER,)
BRUCE L.A. CARTER, CHARLES)
STEWART, and DONALD C. FOSTER,)
)
Defendants.)

_____)
IN RE XENCOR, INC.)
SHAREHOLDERS LITIGATION)

[PROPOSED] FINAL ORDER AND JUDGMENT

The Stipulation and Agreement of Compromise, Settlement and Release, dated November 21, 2016 (the “Stipulation”),¹ of the above-captioned action (the “Action”), and the settlement contemplated thereby (the “Settlement”) having been presented at the Settlement Hearing on April 4, 2017, pursuant to the Scheduling Order entered herein on November 28, 2016 (the “Scheduling Order”), which

¹ The capitalized terms used in this Final Order and Judgment shall have the same meaning as they have in the Stipulation (certain of which are repeated here for ease of reference only).

Stipulation was entered into by the Parties, and which is incorporated herein by reference; and the Court having determined that notice of said hearing was given to the Class in accordance with the Scheduling Order and that said notice was adequate and sufficient; and the Parties having appeared by their attorneys of record; and the attorneys for the respective Parties having been heard in support of the Settlement of the Actions; and an opportunity to be heard having been given to all other persons desiring to be heard as provided in the notice; and the entire matter of the Settlement having been considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED this ____ day of April, 2017, that:

1. The Notice of Proposed Settlement of Class Action, Settlement Hearing and Right to Appear (the "Notice") has been given to the Class, proof of the mailing of the Notice has been filed with the Court, and a full opportunity to be heard has been offered to all Parties, the Class and persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of Court of Chancery Rule 23 and due process, and it is further determined that all Class members are bound by the Final Order and Judgment herein.

2. On June 21, 2016, the Court certified a non-opt out Class pursuant to Court of Chancery Rules 23(a) and 23(b)(1) consisting of all former holders of Series A through E Preferred stock of Xencor whose shares were converted to A-1 Stock of Xencor in Xencor's 2013 Recapitalization, excluding defendants and any person, firm, trust, corporation or other entity related to, or affiliated with, any defendant (the "Class").

3. Plaintiff, Michael DePinto, was certified as representative of the Settlement Class. The law firms of Prickett, Jones & Elliott, P.A. and Kessler Topaz Meltzer & Check, LLP were appointed as Class Counsel. Further, the Court now finds, based on the record in the Class Action, that Plaintiff and Class Counsel have fairly and adequately protected and represented the interests of the Class.

4. The Settlement as provided for in the Stipulation, including the Plan of Allocation, is approved as fair, reasonable and adequate, and in the best interests of Plaintiff and the Class, and is hereby approved pursuant to Delaware Court of Chancery Rule 23(e).

5. The Parties (as defined in the Stipulation) are hereby authorized and directed to comply with, and to consummate, the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Final Order and Judgment.

6. This Final Order and Judgment shall not be deemed, construed as, or constitute a presumption, concession, or an admission by any of the Parties of any fault, liability, damages, or wrongdoing as to any facts or claims alleged or asserted in the Action or any other actions or proceedings.

7. “Released Claims” means the Released Defendants’ Claims and the Released Plaintiff’s Claims.

8. “Released Defendants’ Claims” means any Claims (including “Unknown Claims”) that have been or could have been asserted in the Action or any forum by Defendants or Xencor or their respective successors and assigns against Plaintiff, the Class Members, or any of their respective counsel, which arise out of or relate in any way to the institution, prosecution, settlement or dismissal of the Action; provided, however, that the Released Defendants’ Claims shall not include any claims relating to the enforcement of the Settlement.

9. “Released Plaintiff’s Claims” means any and all manner of Claims (including “Unknown Claims”) that were asserted by Plaintiff on its own behalf and/or on behalf of all other Class Members in the Action, or could have been or in the future might be asserted by Plaintiff, any Class Member or the Class in the Class Action or in any other court, tribunal, forum or proceeding that are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, events, conduct, decisions, negotiations, fairness opinions, transactions,

occurrences, statements, representations, misrepresentations, omissions, disclosures, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that relate in any way to or concern the Recapitalization, the Reclassification, or the Note Conversion, including, without limitation, those that were alleged, asserted, or claimed in the Class Action or which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, the events or conduct at issue in the Class Action, provided, however, that the Released Claims shall not include any claims for the enforcement of the Settlement.

10. “Unknown Claims” means any and all claims that otherwise fall within the definition of Released Plaintiff’s Claim and that Plaintiff or any Class Member does not know or suspect exists in his, her or its favor at the time of the release of the Released Claims as against the Released Defendant Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement, and any and all claims that otherwise fall within the definition of Released Defendants’ Claims and that any Defendant or Xencor does not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims as against the Released Plaintiff Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement. With respect to any of the Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiff, Xencor and each Defendant shall expressly and each of the

Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States or other jurisdiction, or principle of common law, which 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.

The Parties acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Parties, and by operation of law the other Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge, and the other Class Members and other Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of

“Released Claims” was separately bargained for and was a key element of the Settlement and was relied upon by the Parties in entering into this Stipulation.

11. The Parties acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Parties, and by operation of law the other Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts.

12. The Released Claims are hereby dismissed with prejudice and without costs (except as provided in the Stipulation) as to all Released Parties, and effective upon Final Court Approval, the Released Claims are hereby absolutely and unconditionally compromised, settled, released, discharged, and dismissed with prejudice by virtue of the proceedings herein and this Final Order and Judgment. The terms of the Settlement and this Final Order and Judgment shall be forever binding on Plaintiff and all Class Members and shall have res judicata and other preclusive effect in all pending and future claims, litigation, or other proceedings maintained by or on behalf of any Class Members or any stockholder of Xencor to

the extent those claims, litigation, or other proceedings involve, directly or indirectly, any of the Released Claims.

13. Plaintiff, all Class Members, Defendants and Xencor, and related parties as set forth in the Stipulation, are hereby barred and enjoined from commencing, instigating, instituting, maintaining, prosecuting, asserting, or participating in any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, or other forum of any kind, whether individual, class, derivative, representative, legal, equitable, or in any other capacity, from asserting any Released Claims, as and to the extent set forth in the Stipulation.

14. Plaintiff is hereby awarded attorneys' fees and expenses in the amount of \$475,000.00, which shall be paid from the Settlement Fund to Plaintiff within twenty-three (23) business days of entry of this Final Order and Judgment, subject to Plaintiff's obligation to refund any amounts by which the award of attorneys' fees and/or expenses may be subsequently reduced upon appeal or by collateral attack. Plaintiff is hereby awarded an incentive award in the amount of \$3,000.00, payable out of the attorney fee award.

15. The effectiveness of the provisions of this Final Order and Judgment and the obligations of the Parties under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Final Order and Judgment that

relates solely to the issue of Plaintiff's application for attorneys' fees and/or expenses.

16. Without affecting the finality of this Judgment in any way, the Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund and the Net Settlement Fund; (c) the Class Members for all matters relating to the Action; and (d) any motion for a Class Distribution Order

Chancellor

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Andre G Bouchard

File & Serve

Transaction ID: 60422433

Current Date: Apr 04, 2017

Case Number: 10742-CB

Case Name: CONF ORDER CONS W/ 11128-CB DePinto, Michael vs John S Stafford III et al, IN RE XENCOR INC.

/s/ **Judge Bouchard, Andre G**