

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN KENDALL, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

Case No. 3:20-cv-1828-H-LL

ODONATE THERAPEUTICS, INC., KEVIN
C. TANG, MICHAEL HEARNE, and JOHN
G. LEMKEY,

Defendants.

STIPULATION OF SETTLEMENT

This Stipulation of Settlement, dated November 18, 2021 (the “Stipulation”), is entered into by and among: (a) Lead Plaintiff Kevin Kendall (“Kendall” or “Lead Plaintiff”), individually and on behalf of all Settlement Class Members; and (b) Defendants Odonate Therapeutics, Inc. (“Odonate”), Kevin C. Tang (“Tang”), Michael Hearne (“Hearne”) and John G. Lemkey (“Lemkey”) (together, “Defendants”). The Stipulation is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims, subject to the approvals of the Court as set forth herein.

I. THE LITIGATION

A. Procedural History

On September 16, 2020, Kendall filed a securities class action complaint in this Court styled *Kendall v. Odonate Therapeutics, Inc., et al.*, No. 3:20-cv-1828 (S.D. Cal.) (Dkt. No. 1) against Odonate, Tang, Hearne, and Lemkey, asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§78j(b) & 78t(a), and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission (“SEC”), 17 C.F.R.

§240.10b-5. By Order dated December 14, 2020, the Court appointed Kendall as Lead Plaintiff and appointed Pomerantz LLP and Holzer & Holzer, LLC as Co-Lead Counsel (Dkt. No. 11).

On February 16, 2021, Lead Plaintiff filed the First Amended Complaint (Dkt. No. 21). After Odonate announced it was discontinuing operations, Lead Plaintiff chose to further amend before the Court ruled on any dispositive motion, and thereafter, on April 13, 2021, filed the operative Second Amended Complaint (“SAC”) (Dkt. No. 24), alleging that Defendants made material misstatements and omissions between December 7, 2017 and March 25, 2021, both dates inclusive (the “Settlement Class Period”).

On May 13, 2021, Defendants filed their motion to dismiss the SAC (Dkt. No. 25-1). On June 26, 2021, Lead Plaintiff filed an opposition (Dkt. No. 30). On July 26, 2021, Defendants filed a reply (Dkt. No. 32).

On August 4, 2021, the Court entered an Order denying Defendants’ motion to dismiss the SAC (Dkt. No. 36). Defendants answered the SAC on September 3, 2021 (Dkt. No. 37).

On September 20, 2021, counsel for Lead Plaintiff and Defendants participated in a full-day mediation before Michelle Yoshida of Phillips ADR Enterprises. In advance of that session, the Parties exchanged detailed, confidential opening mediation statements addressing liability and damages, and Lead Plaintiff also served a responsive mediation statement, all of which also were provided to the mediator. No settlement was reached at the mediation. After further negotiations, the Parties reached an understanding in principle to settle the Action, and, after subsequent continued negotiations, they memorialized it in a Memorandum of Understanding (“MOU”) dated October 19, 2021.

B. Lead Plaintiff’s Assessment of the Claims and Benefits of Settlement

Lead Plaintiff believes that the claims asserted in the Action are meritorious and are supported by the evidence developed to date, including numerous confidential witness statements

referenced in the SAC. Additionally, Co-Lead Counsel is familiar with the applicable law underlying the alleged claims and believes that any defenses Defendants may raise can be refuted and overcome at summary judgment and at trial.

Nonetheless, Lead Plaintiff and Co-Lead Counsel also recognize the expense and length of any further prosecution of the Action through completion of discovery, trial, and appeals (which will occur during Odonate's winding down of its operations). Lead Plaintiff and Co-Lead Counsel are also mindful of inherent problems of proof of, and possible defenses to, the federal securities law violations asserted in the SAC, including, but not limited to, proof of the Defendants' state of mind, given their continued investment of personal funds into the company and their failure to sell any of their individually held shares, which Defendants have already challenged in their motion to dismiss, issues of causation and damages, and practical impediments to judgment enforcement, particularly given the winding down of Odonate's operations. Lead Plaintiff and Co-Lead Counsel, based upon their thorough evaluation, believe that the Settlement set forth in the Stipulation is fair, reasonable, and adequate and in the best interests of the Settlement Class Members and that the Settlement confers substantial benefits upon Settlement Class Members. Lead Plaintiff and Co-Lead Counsel shall use their best efforts to obtain final Court approval of the Settlement.

C. Defendants' Denials of Wrongdoing

Defendants have denied, and continue to deny, that they engaged in any wrongdoing of any kind, or that they violated or breached any law, regulation, or duty owed to Lead Plaintiff or any Settlement Class Member, or that they have liability as a result of any and all allegations made in the Action. Defendants maintain that at all relevant times, they engaged in the earnest pursuit of beneficial cancer therapies and in good faith communications with Odonate's investors.

Nonetheless, taking into account the uncertainty and risks inherent in any litigation,

especially in complex cases such as this one, and the projected litigation costs, Defendants have concluded that further litigation of the Action would be protracted, burdensome, and expensive, and that it is desirable and beneficial that the Settled Claims be fully and finally settled and terminated in the manner and upon the terms and conditions set forth herein.

II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

A. Introduction

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, through their respective undersigned counsel of record, that, subject to approval of the Court under Fed. R. Civ. P. 23(e), in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, as to all Parties, upon and subject to the terms and conditions of this Stipulation.

B. Definitions

As used in this Stipulation, the following terms have the meanings specified below:

1.0 “Action” means *Kendall v. Odonate Therapeutics, Inc., et al.*, Case No. 3:20-cv-1828-H-LL, pending in the United States District Court for the Southern District of California.

1.1 “Authorized Claimant” means a Settlement Class Member who submits a timely and valid Proof of Claim Form in accordance with the requirements established by the Court and whose claim for recovery is allowed pursuant to the terms of this Stipulation.

1.2 “CAFA Notice” means the notice of the Settlement that counsel for Odonate, on behalf of the Defendants, shall serve as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”) and as set forth in ¶ 9.6.

1.3 “Claimant” means a Settlement Class Member who submits a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.4 “Claims Administrator” means the firm that will be hired by Co-Lead Counsel to administer the Settlement, including sending a mailed Notice to Settlement Class Members in the form of either Exhibit B1 or Exhibit B2 hereto, as the Court may order, arranging for publication of Notice in the form of Exhibit C hereto, processing claims, and performing such other administrative functions as are required under this Stipulation.

1.5 “Court” means the court overseeing the Action, the United States District Court for the Southern District of California.

1.6 “Defendant Claims” means any and all counterclaims and bases for relief, whether known or Unknown Claims, that the Defendants, the other Released Parties, or any of their current or former officers and directors, could have raised in the Action against the Lead Plaintiff, Co-Lead Counsel, or any Settlement Class Member, whether arising under state, federal, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, including but not limited to those related to or arising from the commencement, prosecution or settlement of the Action (except for claims to enforce the Settlement) and claims for violations of Fed. R. Civ. P. 11 or any other fee or cost-shifting claim.

1.7 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 8.0 of the Stipulation have occurred and/or been met.

1.8 “Escrow Accounts” mean, collectively, the Notice & Administration Account and the Settlement Account.

1.9 “Escrow Agent” means Huntington National Bank.

1.10 “Exchange Act” means the Securities Exchange Act of 1934, as amended.

1.11 “Fee and Expense Application” means any application or applications for payments to Co-Lead Counsel from the Settlement Fund for: (a) an award of attorneys’ fees; and (b) reimbursement of actual expenses, including without limitation the fees and expenses of experts, consultants, and investigators incurred in connection with prosecuting the Action, including any interest earned on such fees and expenses.

1.12 “Fee and Expense Award” means any award of attorneys’ fees, costs, and expenses approved by the Court.

1.13 “Final,” with respect to this Settlement, means that (a) the Court has entered an order finally approving the Settlement in all material respects, including, but not limited to, certifying a Settlement Class for settlement purposes only, approving the scope of the Releases, and entering the Judgment, and (b) the time to appeal has expired or the Judgment has been affirmed in all respects in any appeal or review and is no longer subject to further appeal or review. However, the Settlement and the degree to which it is Final are expressly not conditioned upon the Court’s approval of a Fee and Expense Award to Co-Lead Counsel or compensatory award to Lead Plaintiff or any appeals solely related thereto.

1.14 “Judgment” means the Order and Final Judgment to be entered by the Court approving the Settlement, certifying the Settlement Class for settlement purposes only, approving the release of the Released Claims, and dismissing the Released Claims with prejudice and without costs to any party, substantially in the form attached hereto as Exhibit E or in a similar form as adopted by the Court.

1.15 “Net Settlement Fund” means the Settlement Fund less any Taxes and Tax Expenses, any Fee and Expense Award to Co-Lead Counsel, any compensatory award to Lead Plaintiff approved by the Court, and Notice & Administration Costs.

1.16 “Notice” means the Notice of Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses, and Settlement Fairness Hearing, which is to be sent to Settlement Class Members substantially in the form attached hereto as either Exhibit B1 or Exhibit B2, as the Court may order.

1.17 “Notice & Administration Account” means an interest-bearing escrow account that may be used only to pay Notice & Administration Costs.

1.18 “Notice & Administration Costs” means the costs and expenses reasonably and actually incurred by, and the reasonable fees charged by, the Claims Administrator in connection with notice dissemination and claims administration upon presentation of customary invoices therefor, which invoices have been approved by Co-Lead Counsel, including, without limitation: the cost of identifying and locating members of the Settlement Class; mailing the Notice and Proof of Claim and publishing the Publication Notice (such amounts shall include, without limitation, the actual costs of publication in national newswires, printing and mailing the Notice and Proof of Claim, and reimbursement to nominee owners for forwarding notice to their beneficial owners), soliciting claims from Settlement Class Members, assisting with the filing of claims, processing Proof of Claim forms, working with Claimants to cure defects in submitted Proof of Claim forms, administering and distributing the Net Settlement Fund to Authorized Claimants, and paying escrow fees and costs, if any.

1.19 “Parties” means, collectively, the Defendants and Lead Plaintiff, on behalf of themselves and the Settlement Class Members.

1.20 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association,

government or any political subdivision or agency thereof, and any business or legal entity and their heirs, successors-in-interest, or assigns.

1.21 “Plan of Allocation” means a plan or formula for allocating the Net Settlement Fund to Authorized Claimants, to be designed by Co-Lead Counsel in its sole discretion, subject to the approval of the Court. Any Plan of Allocation is not part of this Stipulation and Defendants shall have no responsibility or liability with respect thereto.

1.22 “Preliminary Approval Order” means an order by the Court, as set forth as Exhibit A hereto, certifying the Settlement Class for settlement purposes only, preliminarily approving the Settlement, and authorizing notice thereof to the Settlement Class, via the Notice and the Publication Notice, and related matters.

1.23 “Proof of Claim” means the Proof of Claim and Release Form to be submitted by Claimants, substantially in the form attached as Exhibit D.

1.24 “Publication Notice” means the Notice of Pendency and Proposed Settlement of Class Action to be published on a national business newswire, substantially in the form attached as Exhibit C.

1.25 “Released Claims” means the Released Settlement Class Claims and the Released Defendant Claims.

1.26 “Released Defendant Claims” means any and all claims or causes of action of every nature and description, whether known or Unknown Claims, whether asserted or unasserted, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against

Defendants, including without limitation any claims under Fed. R. Civ. P. 11, except for claims relating to the enforcement of the Settlement.

1.27 “Released Settlement Class Claims” means any and all claims and causes of action of every nature and description, whether known or Unknown Claims, whether contingent or absolute, whether suspected or unsuspected, whether asserted or unasserted, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured that Lead Plaintiff or any other Settlement Class members and their successors, heirs, executors, trustees, administrators, predecessors and assigns: (a) asserted in the SAC; or (b) could have asserted in any court or forum that arise out of or are based on the allegations, transactions, facts, matters or occurrences, representations, or omissions set forth in the SAC and that relate to the purchase or acquisition of shares of Odonate common stock on the Nasdaq Global Select Market (NASDAQ: ODT) during the Settlement Class Period. “Released Settlement Class Claims” shall exclude (i) any derivative claims based on the facts alleged in the SAC; and (ii) claims relating to the enforcement of the Settlement.

1.28 “Released Parties” means, for the Released Settlement Class Claims, (a) Defendants Odonate, Tang, Hearne, and Lemkey, (b) Odonate’s current and former officers, directors, and employees, and (c) any persons or entities listed on the Settlement Exclusion List. “Released Parties” means, for the Released Defendant Claims, Lead Plaintiff, Co-Lead Counsel, and the Settlement Class members .

1.29 “Releases” means the release of Released Claims against Released Parties pursuant to ¶¶ 5.0–5.2.

1.30 “Settlement” means the settlement of the Action on the terms set forth in this Stipulation.

1.31 “Settlement Account” means an interest-bearing escrow account established by the Escrow Agent to receive the Settlement Amount, from which a portion will be transferred into the Notice & Administration Account per ¶ 2.6, as may be ordered by the Court.

1.32 “Settlement Amount” means twelve million, seven hundred fifty thousand dollars (\$12,750,000.00) in cash to be paid pursuant to ¶ 2.0 of this Stipulation.

1.33 “Settlement Class” means, for purposes of this Settlement only, all Persons who purchased, or otherwise acquired, the stock of Odonate (NASDAQ: ODT) during the Settlement Class Period. Excluded from the Settlement Class are Defendants; members of their immediate families and their affiliates; any entity in which any Defendant had a controlling interest during the Settlement Class Period; any person who served as an officer or director of Odonate during the Settlement Class Period; the judges presiding over the Action and the immediate family members of such judges; certain Odonate shareholders and their affiliated entities as set forth on the Settlement Exclusion List, as derived from Part III of Odonate’s Form 10-K for the period ending December 31, 2020; and the successors, heirs, and assigns of any excluded person. Also excluded from the Settlement Class are those Persons who submit a request for exclusion from the Settlement Class in such form and manner, and within such time, as the Court shall prescribe.

1.34 “Settlement Class Member” means a Person that is a member of the Settlement Class that does not exclude himself, herself or itself by filing a timely request for exclusion in accordance with the requirements set forth in the Notice. “Settlement Class Members” means all such Persons.

1.35 “Settlement Class Period” means the period between December 7, 2017 and March 25, 2021, both dates inclusive.

1.36 “Settlement Distribution Order” means the Order approving the Claims Administrators’ administrative determinations concerning the acceptance and rejection of the claims submitted by potential Settlement Class Members; approving of any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator; and directing the distribution of the Net Settlement Fund to Authorized Claimants.

1.37 “Settlement Exclusion List” means the list provided by counsel for Defendant to Co-Lead Counsel on October 19, 2021 that details certain persons and entities properly excluded from the Settlement Class, described in ¶9.24 herein.

1.38 “Settlement Fairness Hearing” means a hearing to be held before the Court pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure to determine whether the proposed Settlement of the Action on the terms and conditions in this Stipulation is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; to determine whether a Judgment as provided in the Stipulation should be entered; to determine whether the proposed Plan of Allocation should be approved; to determine any amount of fees, costs and expenses that should be awarded to Co-Lead Counsel (to be distributed by Co-Lead Counsel, in Co-Lead Counsel’s discretion, to any other counsel who contributed to the outcome obtained by Lead Plaintiff for the Settlement Class) for their efforts and any compensatory awards that should be awarded to Lead Plaintiff for his service to the Settlement Class; to hear any objections (if any) by Settlement Class Members to the Stipulation, Plan of Allocation, or any award of fees and expenses to Co-Lead Counsel or compensatory award to Lead Plaintiff; and to consider such other matters as the Court may deem appropriate.

1.39 “Settlement Fund” means the Settlement Amount before any of the expenditures authorized herein, the payment of which will reduce it as described in the Net Settlement Fund definition, *supra*.

1.40 “Supplemental Agreement” means the supplemental agreement between the Parties described in ¶2.13 herein.

1.41 “Taxes” and “Tax Expenses” means: (a) all federal, state, and/or local taxes of any kind on any income earned by the Settlement Fund, together with any interest, penalties, or additions to tax imposed with respect to them; and (b) the reasonable and necessary costs and expenses incurred in connection with the implementation of ¶ 2.10 of the Stipulation, including, without limitation, the reasonable and necessary costs and expenses of tax attorneys and accountants.

1.42 “Unknown Claims” means and includes (a) any and all Released Settlement Class Claims that Lead Plaintiff or any Settlement Class Member do not know or suspect to exist in his, her or its favor, 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 Claims that any Defendant or other Released Party does not know or suspect to exist in his, her, or its favor, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, the Released Parties shall be deemed to have, and by operation of the Judgment, shall have, expressly waived, the provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release

and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Parties acknowledge, and the Settlement Class Members and the other Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Settlement Class Claims and Released Defendant Claims was separately bargained for and a material element of the Settlement.

C. The Settlement

a. Settlement Amount

2.0 In consideration of the full and final settlement of the Released Claims, Odonate shall pay or cause to be paid the Settlement Amount to the Escrow Agent as the Settlement Fund for deposit into the Settlement Account within fifteen (15) business days after the Court’s entry of an order granting preliminary approval of the Settlement.

2.1 The Defendants’ and other Released Parties’ sole financial obligation to Lead Plaintiff, the Settlement Class Members and Co-Lead Counsel under this Stipulation shall be as set forth in ¶ 2.0, and under no circumstances shall the Defendants have any obligation to make any other or greater payment to them for any purpose pursuant to the Settlement. All payments made to Authorized Claimants pursuant to the Plan of Allocation as approved by the Court, the Fee and Expense Award by the Court to Co-Lead Counsel for distribution by Co-Lead Counsel in the Action, and any compensatory award to Lead Plaintiff as awarded by the Court, and all administrative and other approved expenses of the Settlement, including Taxes and Tax Expenses, shall be paid from the Settlement Fund.

b. The Escrow Agent

2.2 At the written direction of Co-Lead Counsel, the Settlement Fund shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States

Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation or (b) secured by instruments backed by the full faith and credit of the United States Government. At Co-Lead Counsel's direction, the Escrow Agent shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Defendants and other Released Parties shall not bear any responsibility for or liability related to the investment of the Settlement Fund by the Escrow Agent.

c. Handling and Disbursement of Funds by the Escrow Agent

2.3 Subject to further order and/or direction as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class as are consistent with the terms of this Stipulation. The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the written agreement of Defendants' counsel and Co-Lead Counsel.

2.4 No monies will be disbursed from the Settlement Fund until after the Effective Date except as provided in ¶¶2.6–2.8 regarding the Notice & Administration Account, ¶2.10 regarding Taxes, and ¶7.1 regarding Attorneys' Fees and Expenses.

2.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall either be distributed or be returned to the parties who deposited such funds pursuant to this Stipulation and/or further order of the Court. Once the Settlement and Judgment become Final, there shall be no reversion whatsoever of any of the Settlement Amount to any of the Defendants or any other Person who or which paid any portion of the Settlement Amount.

d. **Notice & Administration Account**

2.6 Within seven (7) calendar days after payment of the Settlement Amount into the Settlement Fund, the Escrow Agent shall establish a Notice & Administration Account and may deposit into it up to three hundred thousand dollars (\$300,000.00) from the Settlement Account. The Notice & Administration Account may be invested and earn interest as provided for in this Stipulation, and references in this Stipulation to the Notice & Administration Account shall include such interest.

2.7 Without prior approval from the Court, the Notice & Administration Account shall be used by the Escrow Agent to pay Notice & Administration Costs. If Notice & Administration Costs exceed three hundred thousand dollars (\$300,000.00), any such additional costs and expenses shall, subject to approval of the Court, be transferred from the Settlement Account to the Notice & Administration Account. Any residual monies held in the Notice & Administration Account upon the completion of notice and claims administration for the Settlement shall be transferred back into to the Settlement Account.

2.8 In the event the Settlement and Judgment do not become Final or the Settlement is terminated as provided herein, within five (5) business days of entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being terminated, all monies then held in the Notice & Administration Account and Settlement Account, including interest earned, shall be returned to Defendants or any other Person who or which paid any portion of the Settlement Amount, *pro rata* as had been paid by them respectively, per their instructions, except for any monies paid or any then-accrued costs yet-to-be-paid for Notice & Administration Costs, Taxes, and Tax Expenses. Under those circumstances, Co-Lead Counsel shall undertake to return those amounts by taking all steps necessary to cause the Escrow Agent to make the foregoing

repayments. Lead Plaintiff and the Settlement Class shall have no responsibility for the return of such consideration. If, instead, the Settlement and Judgment become Final, once they become Final, there shall be no reversion whatsoever of any monies held in the Notice & Administration Account or Settlement Account to any of the Defendants or any other Person who or which paid any portion of the Settlement Amount.

2.9 The Notice & Administration Account shall not be used to pay any portion of the Fee and Expense Award to Co-Lead Counsel. The Escrow Agent shall maintain a record of all funds disbursed. The Released Parties shall have no obligation to pay any expenses associated with the Notice & Administration Account. In no event shall the Released Parties be responsible to pay any amount for costs of notice and administration.

e. **Taxes**

2.10 The following provisions shall govern the treatment of Taxes and Tax Expenses:

(a) The Escrow Agent will, to the extent possible, agree to treat the Settlement Fund, and by extension, the Notice & Administration Account and Settlement Account, as “qualified settlement funds” within the meaning of Treasury Regulation § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.10, including the “relation-back election” (as defined in Treasury Regulation § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Notice & Administration Account and Settlement

Account (including without limitation the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in ¶2.10(a)) shall be consistent with this ¶2.10 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties on the income earned) shall be paid out of the Settlement Fund.

(c) All Taxes and Tax Expenses relating to the income earned by the Notice & Administration Account and Settlement Account shall be paid out of the Settlement Fund.

(d) Taxes and Tax Expenses shall be treated as and considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent out of the Settlement Account without prior order from the Court.

(e) Lead Plaintiff, the Settlement Class Members, Co-Lead Counsel, Defendants, Defendants' counsel, and the other Released Parties shall have no liability or responsibility for Taxes and Tax Expenses. The Escrow Agent shall indemnify and hold each of the Defendants, Defendants' counsel, Lead Plaintiff, the Settlement Class Members, Co-Lead Counsel, and the other Released Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification).

(f) The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay expenses relating to the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(1)(2)). Lead Plaintiff, the Settlement Class Members, Co-Lead counsel, Defendants, Defendants' counsel, or the other Released Parties are not responsible therefor, nor shall they have any liability with respect thereto.

(g) The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.10. Upon written request, Odonate's counsel agrees to promptly provide the Escrow Agent with the statement described in Treasury Regulation § 1.468B-3(e).

f. **Termination of Settlement**

2.11 The Defendants shall, acting collectively, have the right to terminate the Settlement and this Stipulation, notwithstanding preliminary approval that may be provided by the Court, by providing written notice of their election to do so to all other Parties within ten (10) business days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect without leave to amend and resubmit; (b) the Court's refusal to approve this Stipulation or any material part thereof without leave to amend and resubmit; (c) the Court's declining to enter the Judgment in any material respect without leave to amend and resubmit; or (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. Any decision with respect to any Plan of Allocation, Fee and Expense Award to Co-Lead Counsel, or compensatory award to Lead Plaintiff shall not be considered material to this Stipulation and shall not be grounds for termination.

2.12 Lead Plaintiff shall have the right to terminate the Settlement and this Stipulation, notwithstanding preliminary approval that may be provided by the Court, by providing written notice of their election to do so to all other Parties within ten (10) business days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect without leave to amend and resubmit; (b) the Court's refusal to approve this Stipulation or any material part thereof without leave to amend and resubmit; (c) the Court's declining to enter the Judgment in any material respect as to Defendants without leave to amend and resubmit; or (d) the date upon which the

Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. Any decision with respect to any Plan of Allocation, Fee and Expense Award to Co-Lead Counsel, or compensatory award to Lead Plaintiff shall not be considered material to this Stipulation and shall not be grounds for termination.

2.13 If, before the Settlement Fairness Hearing, any Persons who otherwise would be members of the Settlement Class have timely filed for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto, and such Persons in the aggregate have purchased a number of securities during the Settlement Class Period in an amount greater than the sum specified in a separate Supplemental Agreement between the Parties, the Defendants, acting collectively and in their sole discretion, shall have the option to terminate this Stipulation in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until either a dispute arises among the Parties concerning its interpretation or application or its submission is otherwise ordered by the Court, in which case the Parties will undertake to have its submission to the Court *in camera*, to the extent permitted by the Court.

2.14 If either Defendants or Lead Plaintiff exercise their respective right to terminate the Settlement as provided in this Stipulation:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated without prejudice, and this Stipulation shall be null and void and shall have no further force or effect (except for ¶¶ 2.5, 2.8, 2.10, 2.11, 2.12, 2.13, 2.14, 7.2, 8.2, 8.3, 8.4, 9.1, 9.4, 9.5, 9.14, 9.15, 9.16, 9.18);

(b) The Settlement Amount including any interest accrued thereon, less expenses actually incurred or due and owing for the Notice & Administration Costs, Taxes, and Tax Expenses pursuant to ¶¶ 2.7 and 2.8 above, shall be refunded by check or wire transfer in accordance with the instructions to be provided by counsel for the Defendants; and

(c) The Parties shall revert to their respective positions in the Action prior to the execution of the MOU, the execution of the Stipulation, and the entry of any orders pursuant to the Stipulation.

D. Class Certification

3.0 For the sole purpose of this Settlement, the Parties hereby stipulate, agree, and consent to: (a) certification of the Action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3); (b) appointment of Lead Plaintiff as class representative for the Settlement Class; and (c) appointment of Co-Lead Counsel as class counsel pursuant to Fed. R. Civ. P. 23(g). Following execution of this Stipulation, Lead Plaintiff, with consent of the Defendants, shall apply to the Court for entry of the Preliminary Approval Order substantially in the form attached as Exhibit A hereto, which will certify the Action to proceed as a class action for settlement purposes only. The certification of the Settlement Class shall be binding only with respect to the Settlement and only if the Judgment becomes Final.

E. Preliminary Approval Order

4.0 Promptly after execution of this Stipulation, Co-Lead Counsel and Defendants' Counsel shall jointly submit this Stipulation together with its Exhibits to the Court and shall request entry of a Preliminary Approval Order (substantially in the form of Exhibit A) that will, *inter alia*, (a) grant preliminary approval to the Settlement; (b) certify the Settlement Class for settlement purposes only; (c) authorize dissemination of Notice to the Settlement Class substantially in the form of Exhibits B1 or B2 and C hereto, along with provision of a Proof of Claim and Release

Form substantially in the form of Exhibit D; and (d) request a date for the Settlement Fairness Hearing.

4.1 The Notice as disseminated (or, if the short-form notice in form B2 is adopted for distribution to Settlement Class Members, then the Notice as posted on the Claims Administrators' website) shall describe the Settlement; the proposed Plan of Allocation; the requests for a Fee and Expense Award for Co-Lead Counsel, for distribution by Co-Lead Counsel, and a compensatory award to Lead Plaintiff; the date of the Settlement Fairness Hearing; Settlement Class Members' rights to opt out, object, or otherwise be heard with regard to these matters; and Settlement Class Members' opportunity to file claims upon the Settlement Fund. The Stipulation of Settlement, Notice, Proof of Claim and Release Form, and all papers submitted in support thereof shall be posted on a website to be maintained by the Claims Administrator.

4.2 Within seven (7) days after the Court enters a Preliminary Approval Order, Odonate shall assist the Claims Administrator in obtaining, from Odonate's transfer agent, records of ownership sufficient to identify Settlement Class Members. The cost, if any, associated with compiling and/or delivering these records from the transfer agent to the Claims Administrator shall be payable to the transfer agent from the Notice & Administration Account. Lead Plaintiff, Co-Lead Counsel, and the Claims Administrator agree to maintain this information in confidence and only for the purpose of administering this Settlement.

F. Releases

5.0 The obligations incurred pursuant to this Stipulation shall be in full and final settlement of the Action as to the Lead Plaintiff, the Settlement Class Members, the Defendants, the other Released Parties, and any and all Released Claims.

5.1 Upon the Effective Date of this Settlement, Lead Plaintiff and all Settlement Class Members (whether or not they submit a Proof of Claim or share in the Settlement Fund) on behalf

of themselves, their successors, heirs, executors, trustees, administrators, predecessors, and assigns, shall be deemed to have, and by operation of the Judgment shall have, released, waived and forever discharged all of the Released Settlement Class Claims, and shall be deemed by this Settlement to, and shall be forever enjoined from prosecuting each and every one of the Released Settlement Class Claims.

5.2 Upon the Effective Date of this Settlement, and as a material condition of the dismissal with prejudice of the Action, the Defendants, on behalf of themselves, their successors, heirs, executors, administrators, predecessors, and assigns; any of their current or former officers and directors; and all of the other Released Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and every one of the Released Defendant Claims, and shall be deemed by this Settlement to, and shall be forever enjoined from prosecuting each and every one of the Released Defendant Claims.

G. Administration and Calculation of Claims, Plan of Allocation, and Distribution of the Settlement Fund

6.0 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants. The distribution checks will be drawn upon the Net Settlement Fund.

6.1 Defendants shall have no involvement in reviewing or challenging claims and shall have no responsibility or liability for the allocation of the Settlement Fund among the Settlement Class Members or the allocation of any Fee and Expense Award to Co-Lead Counsel or compensatory award to Lead Plaintiff. Any such awards shall be paid solely by the Settlement Fund.

6.2 The Settlement Fund shall be applied as follows: to pay Taxes and Tax Expenses; to pay Notice & Administration Costs; to pay a Fee and Expense Award to Co-Lead Counsel to

the extent allowed by the Court; to pay a compensatory award to Lead Plaintiff to the extent allowed by the Court; and, upon court approval, to distribute the Net Settlement Fund to the Authorized Claimants as allowed by this Stipulation and the Plan of Allocation.

6.3 After the Effective Date, Co-Lead Counsel, on behalf of Lead Plaintiff, shall apply to the Court, on notice to the Defendants, for the Settlement Fund Distribution Order. The Settlement Fund shall be distributed to the Authorized Claimants, pursuant to the Settlement Fund Distribution Order, only after the Effective Date and after (a) all claims have been processed, (b) all matters with respect to the Fee and Expense Application, the Fee and Expense Award, and any Settlement administration costs and expenses have been resolved by the Court and such resolution is Final; and (c) all costs of the Settlement administration, including the Notice & Administration Costs, Taxes, and Tax Expenses, have been paid.

6.4 The Net Settlement Fund shall be distributed to Authorized Claimants subject to and in accordance with the following:

(a) Each Settlement Class Member claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim Form, substantially in the form of Exhibit D hereto, supported by such documents as are designated therein, including proof of the transactions claimed and the losses incurred thereon, or such other documents or proof as the Claims Administrator, in its discretion, may deem acceptable;

(b) Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim, or who file a Proof of Claim that is rejected, shall be forever barred from receiving any payments pursuant to this Stipulation and Settlement, but will in all other respects be subject to and bound by the provisions of this Stipulation, the Releases, and the Judgment and will be barred and enjoined from bringing any action against Defendants or the

other Released Parties concerning the Released Claims. Notwithstanding the foregoing, Co-Lead Counsel shall have the discretion to accept late-submitted claims for processing by the Claims Administrator but shall not incur any liability for declining to do so.

6.5 Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity of the amount of the Claimant's claim. No discovery shall be allowed of the Claimants, whether on the merits of the Action or Settlement or otherwise, in conjunction with the processing of the Proofs of Claim.

6.6 Payment pursuant to this Stipulation shall be deemed final and conclusive against all Claimants. No Person shall have any claim against Lead Plaintiff, Co-Lead Counsel, Defendants, Defendants' counsel, the Claims Administrator, the Escrow Agent or any other agent designated by Co-Lead Counsel, or any of the other Released Parties based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court.

6.7 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation designed by Co-Lead Counsel, to be described in the Notice, and approved by the Court. However, if there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), the Claims Administrator under the supervision of Co-Lead Counsel shall, if feasible, reallocate such balance among Authorized Claimants in an equitable and economic fashion. These redistributions shall be repeated, if economically feasible, until the balance remaining in the Net Settlement Fund is *de*

minimis and such remaining balance will then be distributed pursuant to a method approved by the Court. Under no circumstances shall Defendants have any interest whatsoever in such remaining balance.

6.8 This is not a claims-made settlement. If all conditions of the Stipulation are satisfied and the Settlement becomes Final, no portion of the Settlement Fund will be returned to the Defendants or any other Person who or which paid any portion of the Settlement Amount.

6.9 Defendants and their respective legal counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (a) any act, omission or determination of Co-Lead Counsel, the Escrow Agent or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (b) the administration, management, investment, allocation or distribution of the Settlement Fund; (c) the Plan of Allocation; (d) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (e) any losses suffered by, or fluctuations in the value of, the Settlement Fund; (f) the payment or withholding of any Taxes and Tax Expenses, or (g) any failure of Notice or failure to identify Settlement Class Members pursuant to ¶ 4.2 above.

6.10 It is understood and agreed by the Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation, and any order or proceedings relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect the finality of the Court's Judgment approving this Stipulation and the Settlement set forth therein, or any other orders entered pursuant to this Stipulation.

H. Attorneys' Fees and Expenses

7.0 Co-Lead Counsel may submit the Fee and Expense Application, in its sole discretion, contemporaneously with or after Lead Plaintiff files his motion seeking Final approval of the Settlement. Co-Lead Counsel reserves the right to make additional applications for fees and expenses incurred, if necessary.

7.1 Any Fee and Expense Award, including any interest thereon, shall be payable to Co-Lead Counsel, for distribution by Co-Lead Counsel in its sole discretion, solely from the Settlement Fund upon entry of the Court's order awarding such fees and expenses, notwithstanding any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to the joint and several obligation of all counsel who receive any award of attorneys' fees and costs to refund such award to the Settlement Fund, plus interest earned thereon if, as a result of any appeal and/or further proceedings on remand or successful collateral attack, the award is lowered or the Settlement is disapproved by a final order.

7.2 If the Fee and Expense Award is reduced or reversed on appeal, Co-Lead Counsel shall make all necessary refunds and repayments into the Settlement Fund no later than thirty (30) calendar days after Lead Plaintiff's counsel's receipt from the Court of notice of any order that reverses or reduces any award of attorneys' fees or expenses, which shall be distributed by the Escrow Agent to the Settlement Class pursuant to the manner directed in the Final order.

7.3 The Fee and Expense Application is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation. Any order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Judgment approving this Stipulation and the Settlement of the Action. However, if the Court were to reduce

the Fee and Expense Award or otherwise reject the Fee and Expense Application, in any material way, and if Lead Plaintiff and Co-Lead Counsel appeal such ruling(s), the Escrow Agent shall hold and retain within the Settlement Account sufficient funds to cover Lead Plaintiff's and Co-Lead Counsels' claim on appeal that shall not be distributed during the pendency of such appeal.

I. Effect of Disapproval, Cancellation or Termination

8.0 The Effective Date of the Stipulation shall be conditioned upon the occurrence of all of the following events:

(a) Approval by the Court of the Settlement, following the period set forth for CAFA Notice, and following notice to the Settlement Class and the Settlement Fairness Hearing, as prescribed by Fed. R. Civ. P. 23;

(b) The Settlement Amount has been paid into the Settlement Fund; and

(c) Entry by the Court of the Judgment, which has become Final, or in the event that the Court enters an order of judgment not in all material respects in the form of the Judgment and none of the Parties elects to terminate this Settlement, the date that such alternative judgment becomes Final.

Any appeal or delay in (i) the approval of the Plan of Allocation, (ii) the consideration of any Fee and Expense Application, or (iii) the granting of a compensatory award to Lead Plaintiff, shall not affect, alter, or delay the occurrence of the Effective Date.

8.1 Upon the occurrence of the Effective Date, any and all interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation. The Settlement Fund shall be distributed in accordance with ¶¶6.2 and 6.3 hereof.

8.2 Unless otherwise ordered by the Court, in the event the Stipulation is terminated, or is canceled, or fails to become effective for any reason, no later than ten (10) business days after

written notification of such event is sent by Defendants' counsel or Co-Lead Counsel to the Escrow Agent, subject to the terms of ¶¶2.11 or 2.12 hereof, the Settlement Amount (including accrued interest), less any expenses and any costs which have either been properly disbursed or are determined to be chargeable to the Settlement Fund pursuant to ¶¶2.3–2.10 hereof, shall be refunded by the Escrow Agent to the appropriate sources of the funds in proportion to their contribution to the Settlement Fund, plus accrued interest attributable to that amount, by check or wire transfer pursuant to written instructions from Defendants' counsel.

8.3 In the event this Settlement is terminated as provided in ¶¶2.11 or 2.12, then the terms and provisions of the Stipulation, with the exception of ¶¶2.5, 2.8, 2.10, 2.11, 2.12, 2.13, 2.14, 7.2, 8.2, 8.3, 8.4, 9.1, 9.4, 9.5, 9.13, 9.14, 9.16, and 9.18 hereof, shall have no further force and effect and shall not be used in this Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation, the amount of any awards to the Lead Plaintiff, or the amount of any attorneys' fees, costs, expenses and interest awarded by the Court to Co-Lead Counsel shall constitute grounds for cancellation or termination of the Stipulation.

8.4 In the event this Settlement is terminated as provided in ¶¶2.11 or 2.12, Lead Plaintiff, the Settlement Class Members, Co-Lead Counsel, the Claims Administrator, and the Escrow Agent shall not have any obligation to repay any amounts actually and properly disbursed from the Notice & Administration Fund. In addition, any expenses already incurred and properly chargeable to the Notice & Administration Fund pursuant to this Stipulation at the time of such termination or cancellation, but which have not been paid, shall be paid by the Escrow Agent in

accordance with the terms of the Stipulation before the balance is refunded in accordance with ¶8.2.

J. Miscellaneous Provisions

9.0 Defendants deny any wrongdoing whatsoever, and this Stipulation shall in no event be construed or deemed to be evidence of, or an admission or concession on the part of Defendants with respect to, any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any defenses that Defendants have asserted or could assert in the Action or any other action.

9.1 This Stipulation, whether or not consummated, and any proceedings taken pursuant to it, shall not be deemed to be, and may not be, argued to be offered or received:

(a) Against any of the Defendants or the other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Defendants or the other Released Parties with respect to the truth of any fact alleged by the Lead Plaintiff in this Action or the validity of any claim that has been or could have been asserted against any of the Defendants or the other Released Parties in this Action, or the deficiency of any defense that has been or could have been asserted in the Action, or of any alleged wrongdoing or liability by any of the Defendants or the other Released Parties.

(b) Against any of the Defendants, the Lead Plaintiff, any Settlement Class Members, or the other Released Parties, as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Defendants, the Lead Plaintiff, any Settlement Class Member, or the other Released Parties, with respect to any liability, negligence, fault, or wrongdoing as against any of the Defendants, the Lead Plaintiff, any Settlement Class Member, or the other Released Parties, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation,

provided, however, that if this Stipulation is approved by the Court, the Defendants, the Lead Plaintiff, and any Settlement Class Member, and the other Released Parties may refer to it to effectuate the liability protection granted them hereunder;

(c) Against any of the Defendants or the other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of them that the Settlement Amount represents the amount which could or would have been received after trial of the Action against them;

(d) Against the Lead Plaintiff or any Settlement Class Member as evidence of, or construed as evidence of, any presumption, concession, or admission by the Lead Plaintiff or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by the Defendants in the Action have any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund; and

(e) Against the Lead Plaintiff or any Settlement Class Member or Co-Lead Counsel as evidence of, or construed as evidence of, any infirmity of the claims alleged by the Lead Plaintiff in the SAC or the Action or of any lack of merit to the claims or the Action or of any bad faith, dilatory motive, or inadequate prosecution of the claims or the Action or any non-compliance with Fed. R. Civ. P. 11 or any similar rule or ethical obligation.

9.2 The Parties intend the Settlement to be a final and complete resolution of all disputes which have been asserted, could have been asserted, or could be asserted by Lead Plaintiff or the Settlement Class Members against the Defendants and their counsel and all Released Parties concerning the Released Settlement Class Claims and against the Lead Plaintiff and Settlement Class Members and their counsel by the Defendants and all Released Parties concerning the Released Defendant Claims. The Parties, and each of them, and their respective counsel agree that

the Action was resolved in good faith, following arm's length bargaining, and that the Settlement reflects a settlement that was reached voluntarily after consultation with experienced legal counsel.

9.3 The Parties (a) acknowledge that it is their intent to consummate this Stipulation, and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Stipulation. Subject to their fiduciary and legal obligations to their clients, Co-Lead Counsel and Defendants' counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation, and the Settlement, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain Final approval of the Settlement.

9.4 Neither Lead Plaintiff, the Settlement Class Members, nor the Defendants shall be bound by the Stipulation if the Court modifies material terms thereof, provided, however, that it shall not be a basis for Settlement Class Members to terminate the Settlement if the Court modifies any proposed Plan of Allocation or criteria for allocation of the Net Settlement Fund amongst Settlement Class Members or if the Plan of Allocation is modified on appeal. Nor shall it be a basis to terminate the Stipulation if the Court disapproves of or modifies the terms of this Stipulation with respect to the distribution of the Net Settlement Fund or if the Court denies, in whole or in part, Co-Lead Counsel's Fee and Expense Application.

9.5 The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for the Fee and Expense Award to Co-Lead Counsel and enforcing the terms of this Stipulation.

9.6 Pursuant to CAFA, no later than ten (10) calendar days after the Stipulation is filed with the Court, Defendants shall serve a proper CAFA Notice of the proposed Settlement upon those who are entitled to notice pursuant to CAFA and provide a copy of that notice and proof of service to Co-Lead Counsel.

9.7 Except as otherwise provided for herein, each Party shall bear his, her, or its own costs.

9.8 Pending preliminary approval by the Court of the Settlement, other than by agreement of the Parties, all proceedings in this Action shall be stayed, except those in furtherance of obtaining preliminary Settlement approval, and the Parties shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Parties.

9.9 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

9.10 The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed as a waiver by the waiving Party of any other prior or subsequent breaches of this Stipulation or a waiver by any other Party of any breach of this Stipulation.

9.11 All of the Exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by this reference. Notwithstanding the foregoing, in the event of a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of this Stipulation shall prevail.

9.12 Once executed, this Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

9.13 Other than the Supplemental Agreement (as described in ¶2.13, *supra*), this Stipulation and the Exhibits attached hereto constitute the entire agreement among the parties

hereto and no representations, warranties, or inducements have been made to any party concerning this Stipulation or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

9.14 Each counsel or other Person executing this Stipulation, any of its Exhibits, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such Person has the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

9.15 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

9.16 This Stipulation shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties.

9.17 The Court shall retain jurisdiction with respect to enforcement of the terms of this Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of enforcing the Settlement embodied in this Stipulation.

9.18 Any disputes arising out of finalizing and implementing this Stipulation or the Settlement itself shall be resolved by mediation before Michelle Yoshida of Phillip ADR Enterprises. If such mediation fails to produce an agreed resolution, the dispute shall be submitted to the Court.

9.19 This Stipulation and the Exhibits thereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California and the rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that State's choice of law principles.

9.20 This Stipulation is deemed to have been prepared by counsel for all Parties, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Stipulation, it shall not be construed more strictly against one party than another.

9.21 Whenever this Stipulation requires or contemplates that a Party shall or may give notice to the other, notice shall be in writing and shall be deemed to have been duly given upon receipt of hand-delivery, overnight courier, emailed PDF or similar-format electronic document, or facsimile transmission with confirmation of receipt. Notice shall be provided as follows:

If to Co-Lead Counsel, then to:

Matthew L. Tuccillo
Jennifer Banner Sobers
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, NY 10016
Tel: (212) 661-1100
Fax: (212) 661-8665
Email: mltuccillo@pomlaw.com
jbsobers@pomlaw.com

Co-Lead Counsel for Lead Plaintiff and the Settlement Class

Corey D. Holzer
Marshall P. Dees
HOLZER & HOLZER, LLC
211 Perimeter Center Parkway, Suite 1010
Atlanta, GA 30346
Tel: (770) 392-0090
Email: cholzer@holzerlaw.com
mdees@holzerlaw.com

Co-Lead Counsel for Lead Plaintiff and the Settlement Class

If to Defendants, then to:

Koji F. Fukumura
Ryan E. Blair
Stephen Ryan Benson Richards
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121-1909

Tel: (858) 550-6000
Fax: (858) 550-6420
Email: kfukumura@cooley.com
rblair@cooley.com
srichards@cooley.com

Counsel for Defendants

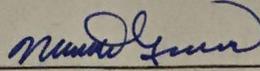
9.22 All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

9.23 The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation.

9.24 The Settlement Exclusion List shall not be filed with the Court and its terms shall not be otherwise disclosed, except that it shall be (1) made available to the Court upon request or disclosed to the Court if a dispute arises among the Parties concerning its interpretation or application, and (2) provided to any Settlement Class Member or objector who requests a copy in writing from the Claims Administrator.

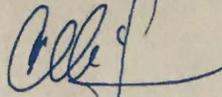
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IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed,
by their duly authorized attorneys, dated November 18, 2021.



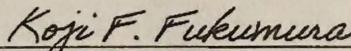
Matthew L. Tuccillo
POMERANTZ LLP
Jeremy A. Lieberman
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*Co-Lead Counsel for Lead Plaintiff and the
Settlement Class*



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*Co-Lead Counsel for Lead Plaintiff and the
Settlement Class*



Koji F. Fukumura
COOLEY LLP
Ryan E. Blair
Stephen Ryan Benson Richards
4401 Eastgate Mall
San Diego, CA 92121-1909

Counsel for Defendants

Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN KENDALL, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ODONATE THERAPEUTICS, INC., KEVIN
C. TANG, MICHAEL HEARNE, and JOHN
G. LEMKEY,

Defendants.

Case No. 3:20-cv-1828-H-LL

**[PROPOSED] ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, an action is pending before this Court captioned *Kendall v. Odonate Therapeutics, Inc., et al.*, Case No. 3:20-cv-1828-H-LL (the “Action”);

WHEREAS, Lead Plaintiff Kevin Kendall (“Lead Plaintiff”) on behalf of himself and all Settlement Class Members, and Odonate Therapeutics, Inc. (“Odonate”), Kevin C. Tang (“Tang”), Michael Hearne (“Hearne”), and John G. Lemkey (“Lemkey”) (together, “Defendants,” and with Lead Plaintiff, the “Parties”) have applied under Fed. R. Civ. P. 23(e) for an order preliminarily approving the Settlement of this Action, in accordance with a Stipulation of Settlement, dated November 18, 2021 (the “Stipulation”), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Action between the Parties and for dismissal of the Action against all Defendants, with prejudice upon the terms and conditions set forth therein; and

WHEREAS, the Court has read and considered the Stipulation and the Exhibits annexed thereto;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed the Stipulation and hereby preliminarily approves the Settlement set forth therein, subject to further consideration at the Settlement Fairness Hearing. Unless otherwise defined, all terms used herein shall have the same meanings as set forth in the Stipulation.

2. Pursuant to Fed. R. Civ. P. 23, the Court preliminarily certifies, for purposes of settlement only, the following Settlement Class: All Persons who purchased, or otherwise acquired, the stock of Odonate (NASDAQ: ODT) between December 7, 2017 and March 25, 2021, both dates inclusive (the “Settlement Class Period”). Excluded from the Settlement Class are:

(a) Defendants; members of their immediate families and their affiliates; any entity in which any Defendant had a controlling interest during the Settlement Class Period; any person who served as an officer or director of Odonate during the Settlement Class Period; the judges presiding over the Action and the immediate family members of such judges; any persons or entities listed on the Settlement Exclusion List (as defined in the Stipulation); and the successors, heirs, and assigns of any excluded person; and

(b) Persons who submit valid and timely requests for exclusion from the Settlement Class.

3. The “Settlement Fairness Hearing” shall be held before this Court on _____, at _____ .m., at the James M. Carter and Judith N. Keep United States Courthouse, 333 West Broadway, San Diego, CA 92101, to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; to

determine whether a Judgment as provided in the Stipulation should be entered; to determine whether the proposed Plan of Allocation should be approved; to determine any amount of fees, costs and expenses that should be awarded to Co-Lead Counsel for their efforts, and any compensatory awards that should be awarded to Lead Plaintiff for his service to the Settlement Class; to hear any objections by Settlement Class Members to the Stipulation, Plan of Allocation, or any award of fees and expenses to Co-Lead Counsel or compensatory award to Lead Plaintiff; and to consider such other matters as the Court may deem appropriate.

4. Pursuant to Fed. R. Civ. P. 23(c), the Court appoints for settlement purposes only the firm of Strategic Claims Services (the “Claims Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Within seven (7) days after the Court enters a Preliminary Approval Order, Odonate shall assist the Claims Administrator in obtaining, from Odonate’s transfer agent, records of ownership sufficient to identify Settlement Class Members;

(b) The Court hereby approves, as to form and content, the Notice of Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses, and Settlement Fairness Hearing (“Notice”), and the Proof of Claim and Release Form (“Proof of Claim”), substantially in the forms annexed to the Settlement Stipulation, and directs that no more than twenty-one (21) days after entry of this Order granting preliminary approval, Co-Lead Counsel, through the Claims Administrator, shall cause a copy of the Notice in the form set forth in Stipulation Exhibit ___ [B1 or B2] and Proof of Claim in the form of Stipulation Exhibit D, to be mailed by First-Class Mail to all Settlement Class Members who can be identified with reasonable effort and to be posted in the form of Exhibits B1, B2, and D on its website;

(c) The Court hereby approves, as to form and content, the proposed form Publication Notice, substantially in the form of Exhibit C to the Stipulation, and directs that no more than twenty-one days (21) after entry of this Order granting preliminary approval, Co-Lead Counsel, through the Claims Administrator, shall cause the Publication Notice to be published once over a newswire service that distributes nationally in the United States; and

(d) Co-Lead Counsel shall, at or before the Settlement Fairness Hearing, file with the Court proof of publication of the Publication Notice.

5. Brokers and other nominees who purchased or acquired Odonate stock (NASDAQ: ODT) for the benefit of another Person during the Settlement Class Period shall be requested to send the Notice and Proof of Claim to such beneficial owners of Odonate stock within ten (10) calendar days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) calendar days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim to such beneficial owners. Additional copies of the Notice and Proof of Claim shall be made available to any nominee requesting same for the purpose of distribution to beneficial owners. The Claims Administrator shall, if requested, reimburse nominees or custodians out of the Settlement Fund solely for their actual, reasonable out-of-pocket expenses, up to \$0.10 plus postage at the current pre-sort rate used by the Claims Administrator per per notice mailed; \$0.05 per notice transmitted by email; or \$0.05 per name, mailing address, and email address provided to Claims Administrator, reasonably incurred in providing notice to beneficial owners/purchasers, which expenses would not have been incurred except for the sending of such notice, and subject to further order of this Court with respect to any dispute concerning such reimbursement.

6. The form and content of the notice program described herein, and the methods set forth herein for notifying the Settlement Class of the Settlement and its terms and conditions, the Fee and Expense Application, any compensatory award, and the Plan of Allocation:

(a) Meet the requirements of Fed. R. Civ. P. 23, § 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, the United States Constitution (including the Due Process Clause), the Rules of Court, and any other applicable law;

(b) Constitute the best notice practicable to Settlement Class Members under the circumstances of this Action;

(c) Are reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (i) the proposed Settlement of this Action; (ii) their right to exclude themselves from the Settlement Class; (iii) their right to object to any aspect of the proposed Settlement; (iv) their right to appear at the Settlement Fairness Hearing, either on their own or through counsel hired at their own expense, if they did not exclude themselves from the Settlement Class; and (v) the binding effect of the proceedings, rulings, orders, and judgments in this Action, whether favorable or unfavorable, on all persons not excluded from the Settlement Class; and

(d) Are reasonable and constitute due, adequate and sufficient notice to all Persons entitled thereto.

7. Other than the costs incurred by Defendants (if any) in providing the names and addresses of record holders of Odonate stock (NASDAQ: ODT) during the Settlement Class Period to the Claims Administrator, all fees, costs, and expenses incurred in identifying and notifying members of the Settlement Class shall be paid from the Settlement Fund as set forth in the

Stipulation, and in no event shall any of the Released Parties bear any responsibility for such fees, costs, or expenses.

8. All Settlement Class Members (except Persons who request exclusion pursuant to ¶12 below) shall be bound by all determinations and judgments in the Action concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable, to the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim or any similar document, any distribution from the Settlement Fund or the Net Settlement Fund.

9. Settlement Class Members who wish to participate in the Settlement shall complete and submit a Proof of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be received no later than _____, 2022. Any Settlement Class Member who does not submit a Proof of Claim within the time provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall nevertheless be bound by any final judgment entered by the Court. Notwithstanding the foregoing, Co-Lead Counsel shall have the discretion to accept late-submitted claims for processing by the Claims Administrator but shall not incur any liability for declining to do so.

10. The Proof of Claim submitted by each Settlement Class Member must satisfy the following conditions, unless otherwise ordered by the Court: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of ¶9; (ii) it must be accompanied by adequate supporting documentation for the transactions in Odonate stock (NASDAQ: ODT) reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found

in a broker confirmation slip, or such other documentation as is deemed adequate by Co-Lead Counsel or the Claims Administrator; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his, her, or its current authority to act on behalf of the Settlement Class Member must be included therein; (iv) it must be complete and contain no material deletions or modifications of any of the printed matter contained therein; and (v) it must be signed under penalty of perjury.

11. Any Settlement Class Member may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Co-Lead Counsel.

12. Any Settlement Class Member may, upon request, be excluded or “opt out” from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion (“Request for Exclusion”), which complies with the requirements set forth in the Notice and is received no later than twenty-one (21) days before the Settlement Fairness Hearing. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any Judgment. A Settlement Class Member may submit a written revocation of a Request for Exclusion up until five (5) days prior to the date of the Settlement Fairness Hearing and still be eligible to receive payments pursuant to the Stipulation provided the Settlement Class Member also submits a valid Proof of Claim prior to the Settlement Fairness Hearing.

13. Any Settlement Class Member and any other interested Person may appear at the Settlement Fairness Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be considered at the hearing, provided,

however, that no Person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court in connection to such matters, unless no later than twenty-one (21) days before the Settlement Fairness Hearing, such Person files with the Court a statement of objection setting forth: (i) whether the person is a Settlement Class Member; (ii) the part(s) of the Stipulation to which the Settlement Class Member or interested Person objects; and (iii) the specific reason(s), if any, for such objection including any legal support the Settlement Class Member or interested Person wishes to bring to the Court's attention and any evidence the Settlement Class Member or interested Person wishes to introduce in support of such objection. Such Settlement Class Member shall also provide documentation sufficient to establish the amount of publicly traded Odonate stock (NASDAQ: ODT) purchased and sold during the Settlement Class Period, and the prices and dates of such transactions. Objection materials must be sent to the following:

CO-LEAD COUNSEL:

Matthew L. Tuccillo
Jennifer Banner Sobers
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, NY 10016

Corey D. Holzer
Marshall P. Dees
HOLZER & HOLZER, LLC
211 Perimeter Center Parkway, Suite 1010
Atlanta, GA 30346

DEFENDANTS' COUNSEL

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

COURT

Clerk of the Court
United States District Court Southern District of California
James M. Carter and Judith N. Keep United States Courthouse
333 West Broadway
San Diego, CA 92101

14. Any member of the Settlement Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Stipulation, to the Plan of Allocation, to the Fee and Expense Award, and to the compensatory award, unless otherwise ordered by the Court.

15. Attendance at the Settlement Fairness Hearing is not necessary. Persons wishing to be heard orally in opposition to approval of the Settlement, the Plan of Allocation, the Fee and Expense Application, or the compensatory award are required to indicate in their written objection their intention to appear at the Settlement Fairness Hearing. Settlement Class Members do not need to appear at the Settlement Fairness Hearing or take any action if they do not oppose any aspect of the Settlement.

16. The Court reserves the right to alter the time or the date of the Settlement Fairness Hearing without further notice to the Settlement Class Members, provided that the time or the date of the Settlement Fairness Hearing shall not be set at a time or date earlier than the time and date set forth in ¶3 above and any new date / time will be promptly posted on the Claims Administrator's website upon being ordered, and the Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

17. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court. There shall be no distribution of any part of the Net Settlement Fund to the Settlement Class until the Plan of Allocation is finally approved and the Court issues the Settlement Fund Distribution Order and until the Order and Final Judgment becomes Final.

18. All papers in support of the Settlement, Plan of Allocation, and any Fee and Expense Application or compensatory award shall be filed and served no later than twenty-one (21) days before the Settlement Fairness Hearing, and any reply papers shall be filed and served no later than seven (7) calendar days before the Settlement Fairness Hearing.

19. The Defendants and their counsel shall have no responsibility for the Plan of Allocation or any Fee and Expense Application by Co-Lead Counsel or compensatory awards to the Lead Plaintiff, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

20. At or after the Settlement Fairness Hearing, the Court shall determine whether the Plan of Allocation, any Fee and Expense Application proposed by Co-Lead Counsel, and any compensatory awards sought by Lead Plaintiff should be approved.

21. Except for the obligation to cooperate in the production of reasonably available information with respect to the identification of Settlement Class Members from Odonate's shareholder transfer records, in no event shall the Defendants or any of the other Released Parties have any responsibility for the administration of the Settlement, and neither the Defendants nor any of the other Released Parties shall have any obligation or liability to the Lead Plaintiff, Co-Lead Counsel, or the Settlement Class in connection with such administration.

22. All reasonable expenses incurred in identifying and notifying Settlement Class Members and administering the Settlement Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither Lead Plaintiff nor Co-Lead Counsel shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to ¶2.7 of the Stipulation.

23. This Order and the Stipulation, whether the Settlement contemplated by the Stipulation is consummated or not, and any statement made or proceedings taken pursuant to them are not, shall not be deemed to be, and may not be argued to be offered or received:

(a) Against any of the Defendants or other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Defendants or other Released Parties with respect to the truth of any fact alleged by the Lead Plaintiff in this Action or the validity of any claim that has been or could have been asserted against any of the Defendants or the Released Parties in this Action, or the deficiency of any defense that has been or could have been asserted in the Action, or of any alleged wrongdoing or liability by any of the Defendants or other Released Parties;

(b) Against any of the Defendants, the Lead Plaintiff, any Settlement Class Members, or the other Released Parties, as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Defendants, the Lead Plaintiff, any Settlement Class Member, or the other Released Parties, with respect to any liability, negligence, fault, or wrongdoing as against any of the Defendants, the Lead Plaintiff, any Settlement Class Member, or the other Released Parties, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation, provided, however, that if this Stipulation is approved by the Court, the Defendants, the Lead

Plaintiff, any Settlement Class Member, and the other Released Parties may refer to the Order or the Stipulation to effectuate the liability protection granted them hereunder;

(c) Against any of the Defendants or other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of them that the Settlement Amount represents the amount which could or would have been received after trial of the Action against them;

(d) Against the Lead Plaintiff or any Settlement Class Member as evidence of, or construed as evidence of, any presumption, concession, or admission by the Lead Plaintiff or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by the Defendants in the Action have any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund; and

(e) Against the Lead Plaintiff or any Settlement Class Member or Co-Lead Counsel as evidence of, or construed as evidence of, any infirmity of the claims alleged by the Lead Plaintiff in the Second Amended Class Action Complaint or the Action, or of any lack of merit to the claims or the Action, or of any bad faith, dilatory motive, or inadequate prosecution of the claims or the Action or any non-compliance with Fed. R. Civ. P. 11 or any similar rule or ethical obligation.

24. The Defendants, Lead Plaintiff, Settlement Class Members, other Released Parties, and each of their counsel may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on the principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

25. All proceedings in the Action are stayed, save for those related to and necessary for the Court's consideration of and decisions on the Settlement. Pending final determination of whether the Settlement should be approved, neither Lead Plaintiff nor any Settlement Class Member, either directly, representatively, or in any other capacity, shall commence or prosecute against any of the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Settlement Class Claims and, conversely, neither the Defendants nor any of the other Released Parties shall, either directly, representatively, or in any other capacity, commence or prosecute against the Lead Plaintiff or the Settlement Class Members or their counsel any action or proceeding in any court or tribunal asserting any of the Released Defendant Claims.

26. In the event that the Settlement does not become Final and effective in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection therewith shall be null and void to the extent provided by and in accordance with the Stipulation, and without prejudice to the rights of the parties to the Stipulation before it was executed.

IT IS SO ORDERED.

DATED: _____

THE HON. MARILYN L. HUFF
UNITED STATES DISTRICT JUDGE

Exhibit B1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN KENDALL, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ODONATE THERAPEUTICS, INC., KEVIN
C. TANG, MICHAEL HEARNE, and JOHN
G. LEMKEY,

Defendants.

Case No. 3:20-cv-1828-H-LL

Class Action

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION, MOTION FOR
ATTORNEYS' FEES AND EXPENSES, AND SETTLEMENT FAIRNESS HEARING**

If you purchased, or otherwise acquired, the stock of Odonate Therapeutics, Inc. ("Odonate") (NASDAQ: ODT) between December 7, 2017 and March 25, 2021, both dates inclusive (the "Settlement Class Period"), you could be entitled to a payment from a class action settlement (the "Settlement").

A federal court authorized this Notice. It is not a solicitation from a lawyer.

- The Court will hold a Settlement Fairness Hearing on _____, 2022 to decide whether to approve the Settlement. If approved by the Court, the Settlement will provide a gross amount of twelve million seven hundred fifty thousand dollars (\$12,750,000.00) (the "Settlement Amount"), plus interest earned thereon, minus attorneys' fees, costs, administrative expenses, and any compensatory award to Lead Plaintiff, and net of any taxes, to pay claims of investors who purchased or otherwise acquired Odonate stock during the Settlement Class Period.
- The Settlement represents an average recovery of \$0.85 per share of Odonate stock for the 15.06 million estimated shares that Lead Plaintiff alleges were damaged and declined in value as a result of Defendants' alleged misconduct during the Settlement Class Period. This estimate solely reflects the average recovery per damaged share of Odonate stock before the deductions outlined in the first bullet-pointed paragraph of this section, above. This is not an estimate of the actual recovery per share you should expect. Your actual recovery will be affected by the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold Odonate stock, and the total number of valid claims filed. See the Plan of Allocation below for more details.

EXHIBIT B1

- To claim your share of the Settlement, you must submit a valid Proof of Claim and Release Form by _____, 2022.
- Co-Lead Counsel for the Settlement Class intend to ask the Court to award them fees of up to one third (33 1/3%) of the Settlement Amount and reimbursement of up to one hundred thousand dollars (\$100,000.00) in out-of-pocket litigation expenses, plus interest earned on such fees and expenses. Since the Action's inception in September 2020, Co-Lead Counsel have expended considerable time and effort in the prosecution of this litigation on a wholly contingent-fee basis (meaning that they have not yet been paid anything) and advanced the expenses of the litigation out of their own pockets in the expectation that, if they were successful in obtaining a recovery for the Class, they would be paid from such recovery. Co-Lead Counsel also intend to ask the Court to grant Lead Plaintiff an award not to exceed five thousand dollars (\$5,000.00). Collectively, the attorneys' fees and litigation expenses and the award to Lead Plaintiff are estimated to average \$0.29 per damaged share of Odonate stock. The average cost per damaged share will vary depending on the number of acceptable Proofs of Claim submitted. If approved by the Court, these amounts will be paid from the Settlement Fund.
- The approximate recovery, after the deduction of attorneys' fees and expenses and award to Lead Plaintiff to be approved by the Court, is an average of \$0.56 per damaged share of Odonate stock. This estimate is based on the assumptions set forth in the preceding paragraph. Your actual recovery, if any, will vary depending on your purchase price and sales price and the number of valid Proof of Claim and Release Forms filed.
- The Defendants are Odonate and the Individual Defendants Kevin C. Tang ("Tang"), Michael Hearne ("Hearne"), and John G. Lemkey ("Lemkey").
- Upon the Effective Date of the Settlement, the Released Settlement Class Claims will be fully, finally, and forever released as to Defendants and all of the Released Parties. Upon the Effective Date, and as a material condition of the dismissal with prejudice of the Action, all Defendants and Released Parties shall release all of the Released Defendant Claims as against Lead Plaintiff, Co-Lead Counsel, and all Settlement Class members.
- The Settlement resolves the lawsuit concerning whether Defendants violated U.S. federal securities laws by allegedly issuing materially false and misleading statements. Defendants and Lead Plaintiff disagree on liability and damages. Defendants deny the lawsuit's allegations and all charges of wrongdoing, fault or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Lead Plaintiff believes that his claims have merit and that, if he prevailed on all his claims and the Court accepted his theory of damages, he would have been able to collect a substantial amount of money, assuming that the full amount of the judgment was collectable. The Parties disagree on how much money could have been won if the investors won at trial.

- Your legal rights will be affected whether you act or do not act. If you do not act, you may permanently forfeit your right to recover on any claim you might have. Therefore, you should read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to get a payment. Proof of Claim and Release Forms must be received no later than _____, 2022 [14 DAYS PRIOR TO SETTLEMENT HEARING].
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against the Defendants or any other Released Parties about the legal claims in this lawsuit. Requests for Exclusion must be received no later than _____, 2022 [21 DAYS PRIOR TO SETTLEMENT HEARING].
OBJECT	Write to the Court about why you do not like the Settlement, the Plan of Allocation, and/or the request for attorneys’ fees, costs, and expenses or the Lead Plaintiff compensatory award. You still will be a member of the Settlement Class. Objections must be received by the Court, Co-Lead Counsel, and Defendants’ counsel by _____, 2022 [21 DAYS PRIOR TO SETTLEMENT HEARING].
GO TO THE HEARING	Ask to speak in Court about the fairness of the Settlement on _____, 2022.
DO NOTHING	Get no payment. Give up your rights.

INQUIRIES

For further information regarding the Action or this Notice or to review the Stipulation of Settlement dated November 18, 2021 (the “Stipulation”), please contact the Claims Administrator toll-free at (866) 274-4004 or at Strategic Claims Services, 600 North Jackson Street, Suite 205, Media, PA 19063. You may also contact representatives of Co-Lead Counsel for the Settlement Class by contacting Matthew L. Tuccillo, Pomerantz LLP, 600 Third Ave., 20th Floor, New York, NY 10016, (212) 661-1100 and/or Corey D. Holzer, Holzer & Holzer, LLC, 211 Perimeter Center Parkway, Suite 1010, Atlanta, GA 30346, (770) 392-0090. **Please do not contact the Court or Defendants regarding this Notice.**

BASIC INFORMATION

1. Why did I get this notice package?
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You or someone in your family may have purchased the stock of Odonate (NASDAQ: ODT) between December 7, 2017 and March 25, 2021 (the “Settlement Class Period”).

The Court directed that this Notice be sent to Settlement Class Members because they have a right to know about the proposed Settlement of this class-action lawsuit and about all of their options before the Court decides whether to approve the Settlement. If the Court approves the Settlement and after objections and appeals—if any—are resolved, the Claims Administrator appointed by the Court will make the payments provided for in the Settlement.

2. What is this lawsuit about?

This case is known as *Kendall v. Odonate Therapeutics, Inc. et al.*, Case No. 3:20-cv-1828-H-LL (the “Action”). The United States District Court for the Southern District of California is in charge of the Action and the case has been overseen by the Honorable Marilyn L. Huff.

This Action brings claims against Defendants for alleged violations of provisions of the Securities Exchange Act of 1934 (the “Exchange Act”). The Second Amended Class Action Complaint (“SAC”) alleges, among other things, that Defendants made misrepresentations and/or omissions of material fact in public statements to the investing public regarding Odonate’s only drug candidate, tasetaxel, including its safety-risk profile, its FDA approval prospects, and its CONTESSA Phase 3 clinical trial enrollment and progress milestones. It further alleges that internal reports of elevated levels of serious adverse events (AEs) and resulting disenrollments by patients, doctors, and trial sites, prompted Defendants to alter CONTESSA’s trial protocol, yet Defendants did not adequately disclose this alteration to the trial protocol. The SAC alleges that, among other things, this conduct was not known to investors and was contrary to law. The SAC further alleges that revelation of Defendants’ alleged fraud caused a statistically significant stock decline, thereby injuring Lead Plaintiff and the Settlement Class of investors. Defendants have consistently denied, and continue to deny, each and every one of these allegations and deny they have committed any act or omission giving rise to any liability or violation of the law.

3. Why is this a class action?

Classes are generally used in lawsuits that affect a large number of individuals. A class action consolidates into a single action all of the claims of individuals allegedly harmed by the same conduct or course of conduct in the same period of time, thus removing the need for members of the class to file their own individual lawsuits to separately seek to recover for the harm alleged. Once the class is certified, the Court is empowered to resolve all issues on behalf of members of the class, except for those class members, if any, who specifically choose to exclude themselves from the class.

As part of the preliminary approval process, Lead Plaintiff will ask the Court to certify a class for settlement purposes only. The proposed Settlement Class will consist of all persons or entities who purchased, or otherwise acquired, the stock of Odonate (NASDAQ: ODT) between December 7, 2017 and March 25, 2021, both dates inclusive. Excluded from the Settlement Class are Defendants; members of their immediate families and their affiliates; any entity in which any Defendant had a controlling interest during the Settlement Class Period; any person who served as an officer or director of Odonate during the Settlement Class Period; the judges presiding over the

Action and the immediate family members of such judges; any persons or entities listed on the Settlement Exclusion List (as defined in the Stipulation); and the successors, heirs, and assigns of any excluded person.. Per terms of the Stipulation, Defendants shall assist in identifying the persons and entities to be excluded from the Settlement Class.

4. Why is there a settlement?

This Action has not gone to trial, and the Court has not decided in favor of either side. Instead, legal counsel for all the parties participated in an all-day mediation before an experienced mediator and, after further negotiations, the Parties agreed to and memorialized the Settlement to avoid the costs and risks of further litigation.

Lead Plaintiff and Co-Lead Counsel believe that the Settlement is in the Settlement Class Members' best interest and provides them with a substantial benefit now, instead of engaging in years of further uncertain and expensive litigation; likely discovery disputes; a contested motion for class certification; the Parties' cross-motions for summary judgment; pre-trial motions and a lengthy trial; likely appeals; and attempts to enforce any judgment (against the backdrop of Odonate winding down its business operations) — much of which could result in Lead Plaintiff receiving no recovery at all. By settling the Action with the Defendants at this point, Lead Plaintiff is not admitting that the Action lacked merit, or that the Settlement Class's ultimate recovery would not have been greater than the Settlement Amount had litigation continued. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Lead Plaintiff or the Settlement Class Members that any of their claims lack merit; that any defenses asserted by any of the Defendants in the Action have any merit; or that damages recoverable in the Action would not have exceeded the Settlement Fund.

Defendants have denied, and continue to deny, all of the allegations made and claims brought by Lead Plaintiff, maintain that they have meritorious defenses, and believe they would prevail at trial. Nonetheless, Defendants have concluded that further litigation of this Action would be protracted and expensive, taking into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Action. Defendants have, therefore, determined that it is desirable and beneficial to fully and finally settle the Released Claims on the terms set forth in the Stipulation.

The Settlement must be compared to the risk of no recovery after contested dispositive motions, trial, and likely appeals. A trial is a risky proposition. The claims in the Action involve numerous complex legal and factual issues, many of which would require expert testimony. The Parties disagree on both liability and damages, and do not agree on the average amount of damages per share, if any, that would be recoverable if Lead Plaintiff were to prevail on each claim alleged against the Defendants. Among their many other disagreements are: (1) whether the Defendants violated the securities laws or otherwise engaged in wrongdoing; (2) whether the misrepresentations and omissions alleged by Lead Plaintiff were material, false, misleading or otherwise actionable; (3) the extent (if any) that the alleged misrepresentations and omissions influenced Odonate's stock price during the Settlement Class Period; and (4) the method for determining whether, and the extent to which, purchasers of Odonate stock suffered injury and damages that could be recovered at trial.

WHO IS IN THE SETTLEMENT

To see if you will get money from this Settlement, you first have to decide if you are a Settlement Class Member.

5. How do I know if I am part of the Settlement?

The Settlement Class includes all persons or entities who purchased or otherwise acquired the stock of Odonate (NASDAQ: ODT) between December 7, 2017 and March 25, 2021, both dates inclusive.

6. Are there exceptions to being included?

Yes. You are not a member of the Settlement Class if you did not purchase or otherwise acquire Odonate stock on or between the dates listed above. If you purchased or otherwise acquired Odonate stock some other time, or did not purchase it at all, you are not included within the Settlement Class.

You are also not a member of the Settlement Class if you are on the list of persons and entities that are specifically excluded from it, per question 3 above.

7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at (866) 274-4004 or at Strategic Claims Services, 600 North Jackson Street, Suite 205, Media, PA 19063, for more information. Or you can fill out and return the Proof of Claim and Release Form enclosed with this Notice package, with appropriate supporting documentation, to see if you qualify.

THE SETTLEMENT BENEFITS — WHAT YOU GET

8. What does the Settlement provide?

In exchange for the Settlement and release of the Released Claims (defined below) as well as dismissal of the Action, Defendants have agreed to pay, or cause to be paid, twelve million seven hundred fifty thousand dollars (\$12,750,000.00) to be divided, after payment of Court-approved attorneys' fees and expenses, the costs of claims administration including the costs of printing and mailing this Notice and the cost of publishing notice, any compensatory award granted to Lead Plaintiff, and Taxes and Tax Expenses (the "Net Settlement Fund"), *pro rata* among all Settlement Class Members who send in a valid Proof of Claim and Release Form.

9. How much will my payment be?

Your share of the Net Settlement Fund will depend on several factors, including the following: how many Settlement Class Members submit timely and valid Proof of Claim and Release Forms; the total Recognized Losses represented by the valid Proof of Claim and Release Forms that the Settlement Class Members send in; your Recognized Losses, based on the number of Odonate

shares you purchased during the Settlement Class Period, how much you paid for them, when you purchased them, and, if you sold them, when and for how much you sold them.

By following the instructions in the Plan of Allocation, you can calculate what is called your Recognized Loss. It is unlikely that you will get a payment for all of your Recognized Loss. After all Settlement Class Members have sent in their Proof of Claim and Release Forms, the payment you get will be a part of the Net Settlement Fund equal to your Recognized Loss divided by the total of everyone's Recognized Losses. See the Plan of Allocation below for more information.

HOW YOU GET A PAYMENT — SUBMITTING A CLAIM FORM

10. How can I get a payment?

To qualify for a payment, you must submit a Proof of Claim and Release Form, which is enclosed with this Notice and may also be downloaded at www.strategicclaims.net/odonate. Read the instructions carefully, fill out the Form completely, include all the documents that the Form asks for, sign it, and mail or submit it online so that it is received no later than _____, 2022 [14 DAYS PRIOR TO SETTLEMENT HEARING].

11. When would I get my payment?

The Court will hold a Settlement Fairness Hearing on _____, 2022 to decide whether to approve the Settlement. If the Court approves the Settlement, there might be appeals afterwards. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Proof of Claim and Release Forms to be processed, including the process of identifying and attempting to cure defects in Proof of Claim Forms that were submitted by Settlement Class members. Please be patient.

12. What am I giving up to get a payment or to stay in the Class?

Unless you timely exclude yourself, you will remain a Settlement Class Member and will be bound by the Release of claims against the Defendants and the Released Parties. That means you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants or the Released Parties about the Released Settlement Class Claims in this Action. It also means that all of the Court's orders will apply to you and legally bind you, and you will release your claims in this Action against the Defendants and the Released Parties. The terms of the Release are included in the Proof of Claim and Release Form that is enclosed.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, and you want to keep the right to sue the Defendants and the other Released Parties on your own about the legal issues that were at issue and litigated in this Action, then you must take steps to remove yourself from the Settlement. This is called excluding yourself from — sometimes referred to as “opting out” — of the Settlement Class. If you decide to exclude yourself from the Settlement Class, and wish to file your own individual lawsuit, Defendants may argue in the future that you face a time bar under applicable statutes of limitation or repose, risks that you should discuss with an appropriate legal advisor.

13. How do I get out of the proposed Settlement?

To exclude yourself from the Settlement Class, you must send a letter by First-Class Mail (e-mail or phone call will not suffice) stating that you “request exclusion from the Settlement Class in *Kendall v. Odonate Therapeutics, Inc.*, Case No. 3:20-cv-1828-H-LL.” Your letter must include the date(s), price(s), and number(s) of all purchases and sales of Odonate stock during the Settlement Class Period. In addition, you must include your name, address, telephone number, and your signature. You must mail your exclusion to be received no later than _____, 2022 [21 DAYS PRIOR TO SETTLEMENT HEARING] to:

Kendall v. Odonate Therapeutics, Inc.
c/o Strategic Claims Services
600 North Jackson Street, Suite 205
Media, PA 19063
Tel: 866-274-4004

If you ask to be excluded, you will not get any payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in the Action.

14. If I do not exclude myself, can I sue the Defendants and the other Released Parties for the same thing later?

No. Unless you exclude yourself from the Settlement Class, you give up any rights to sue the Defendants and the other Released Parties for the Released Settlement Class Claims. The meaning of Released Settlement Class Claims and claims that are excluded are included in the Proof of Claim and Release Form that is enclosed, as well as in the Stipulation that is posted on the Claims Administrator’s website. If you have a pending lawsuit against the Defendants or other Released Parties based on the Released Settlement Class Claims, speak to your lawyer in that case immediately. You must exclude yourself from this Action to continue your own lawsuit. Remember, the exclusion deadline is _____, 2022 [21 DAYS PRIOR TO SETTLEMENT HEARING].

15. If I exclude myself, can I get money from the proposed Settlement?

No. If you exclude yourself, you may not send in a Proof of Claim and Release Form to ask for any money from this Settlement.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court ordered that the law firms of Pomerantz LLP and Holzer & Holzer, LLC shall represent the Settlement Class Members, including you. These lawyers are called Co-Lead Counsel. You will not be personally liable for the fees and expenses incurred by these lawyers, which will be paid from the Settlement Fund, as approved by the Court. If you want to be represented by your own lawyer, you may hire one at your own expense.

<p>17. How will the lawyers be paid?</p>

Co-Lead Counsel have litigated this Action since September 2020 on a wholly contingent basis, meaning that they have not been paid any attorneys' fees for the time devoted to the lawsuit, nor have they been reimbursed their out-of-pocket expenses incurred during that time period. As such, as part of the Settlement approval process, Co-Lead Counsel will move the Court for an award of attorneys' fees in an amount not greater than one third (33 1/3%) of the Settlement Fund and for out-of-pocket expenses in an amount not to exceed one hundred thousand (\$100,000.00) in connection with the litigation, plus interest earned on such fees and expenses. The Court will decide whether to grant this request, and, if it is granted, how much to award Co-Lead Counsel. Such sums as may be approved by the Court will be paid from the Settlement Fund.

Co-Lead Counsel shall file a formal motion with the Court for approval of the Settlement, the Plan of Allocation, the request for attorneys' fees and reimbursement of expenses, and the request for a compensatory award to Lead Plaintiff of up to five thousand dollars (\$5,000.00) no later than _____, 2022 [21 DAYS PRIOR TO SETTLEMENT HEARING].

Co-Lead Counsel believes that the requested attorneys' fees are warranted in light of their efforts, on a wholly contingent basis, to investigate the underlying claims, to work with a private investigator and a damages analyst, to file an initial complaint, to file a first amended complaint after continued investigation and their appointment as Co-Lead Counsel, to file a second amended complaint after further investigation and Odonate's announcement that it would wind down operations, to litigate and fully overcome Defendants' motion to dismiss, to prepare a detailed meditation statement, to mediate the dispute for a full day before an experienced mediator and thereafter to negotiate the Settlement and work to memorialize it in a Memorandum of Understanding then a detailed Stipulation with a proposed proof of claim form and proposed notices, and submit the Settlement to the Court for necessary approvals. Co-Lead Counsel's motion will argue that the requested fees are well within the range of fees awarded to class counsel under similar circumstances in other cases of this type and are reasonable when compared against Co-Lead Counsel's actual time devoted to the litigation of the Action at the applicable billing rates of Co-Lead Counsel's attorneys and paralegals. The Court determines what to award Co-Lead Counsel as fees and expenses from the Settlement Fund, and may award more or less than the amount requested, in its discretion.

OBJECTING TO THE SETTLEMENT

<p>18. How do I tell the Court that I object to the proposed Settlement?</p>

If you are a Settlement Class Member, you can object to the proposed Settlement, the proposed Plan of Allocation, any proposed compensatory award, and/or Co-Lead Counsel's fee, cost, and expense application. You can write to the Court setting out your objection. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed Settlement in *Kendall v. Odonate Therapeutics, Inc.*, Case No. 3:20-cv-1828-H-LL (S.D. Cal.). Be sure to include your name, address, telephone number, and your signature, identify the date(s), price(s), and number(s) of Odonate shares that you purchased or otherwise acquired and sold or otherwise disposed of during the Settlement Class Period, and state the reasons why you object to the proposed Settlement. If you object to either the Settlement, requested attorneys' fees or

reimbursement of expenses, or Lead Plaintiff’s compensatory award, you subject yourself to the jurisdiction of the Court in this matter, and Lead Plaintiff, acting through Co-Lead Counsel, will have the right to take your deposition prior to the Settlement Fairness Hearing. If you refuse to have your deposition testimony taken upon Lead Plaintiff’s request, your objection will be deemed invalid. Your objection must be filed with the Court **and** mailed or delivered to **each** of the following addresses such that it is received no later than _____, 2022 [21 DAYS PRIOR TO SETTLEMENT HEARING]:

COURT	CO-LEAD COUNSEL	DEFENDANTS’ COUNSEL
Clerk of the Court United States District Court Southern District of California James M. Carter and Judith N. Keep United States Courthouse 333 West Broadway San Diego, CA 92101	Matthew L. Tuccillo Jennifer Banner Sobers POMERANTZ LLP 600 Third Avenue 20th Floor New York, NY 10016 Corey D. Holzer Marshall Dees HOLZER & HOLZER, LLC 211 Perimeter Center Parkway, Suite 1010 Atlanta, GA 30346	Koji F. Fukumura Ryan E. Blair COOLEY LLP 4401 Eastgate Mall San Diego, CA 92121

19. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the proposed Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and do not want to seek a payment from the Settlement Fund. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend, and you may ask to speak, but you do not have to do so.

20. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Settlement Fairness Hearing at _____, at _____ .m., at the James M. Carter and Judith N. Keep United States Courthouse, 333 West Broadway, San Diego, CA 92101 for the following reasons: to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class Members and should be approved by the Court; to determine whether a proposed Order and Final Judgment as provided in the Stipulation should be entered; to determine whether the proposed Plan of Allocation should be approved; to determine the amount of fees,

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costs, and expenses that should be awarded to Co-Lead Counsel and any compensatory award to Lead Plaintiff for his service to the Settlement Class; and to consider such other matters as the Court may deem appropriate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing.

At or after the Settlement Hearing, the Court will decide whether to approve the Settlement and whether to grant, and, if so, the amount, of any awards to Co-Lead Counsel and to Lead Plaintiff. We do not know how long these decisions will take.

You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Settlement Class Members, though any revised dates or times will be promptly posted to the Claims Administrator's website. Given the ongoing pandemic, the Court may also choose to hold the Settlement Hearing additionally or exclusively by teleconference or over the Court's virtual (Zoom) service.

21. Do I have to come to the hearing?
--

No. Co-Lead Counsel will answer questions the Court may have and has extensive experience handling settlement-related hearings of this nature. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

22. May I speak at the hearing?
--

If you object to the Settlement, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (see question 18 above) a statement saying that it is your "intention to appear in *Kendall v. Odonate Therapeutics, Inc.*, Case No. 3:20-cv-1828-H-LL." Persons who intend to object to the Settlement, the Plan of Allocation, any proposed compensatory award, and/or the application for an award of attorneys' fees, costs, and expenses and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, all of your claims against the Defendants and the Released Parties will be released, but you will not receive any money from this Settlement, because it is necessary to submit a Proof of Claim and Release Form, with appropriate supporting documentation, to share in the Settlement proceeds.

GETTING MORE INFORMATION

24. Are there more details about the proposed Settlement?

This Notice summarizes the proposed Settlement. More details are in the Stipulation. The Stipulation is the controlling document describing the proposed Settlement and its terms govern anything to the contrary in this Notice. You can get a copy of the Stipulation and obtain answers to common questions regarding the proposed Settlement by contacting the Claims Administrator toll-free at (866) 274-4004 or by downloading it from the Claims Administrator's website at www.strategicclaims.net/odonate.

25. How do I get more information?

For even more detailed information concerning the matters involved in this Action, reference is made to the Stipulation, to the filings in support of the Settlement, to the Orders entered by the Court, and to the other Settlement-related papers filed in the Action, which will be posted on the settlement website at www.strategicclaims.net/odonate.

PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS

The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants based on their respective alleged economic losses as a result of the alleged fraud, as opposed to losses caused by market- or industry-wide factors, or company-specific factors unrelated to the alleged fraud. The Claims Administrator shall determine each Authorized Claimant's share of the Net Settlement Fund based upon the recognized loss formula (the "Recognized Loss") described below.

A Recognized Loss will be calculated for each share of Odonate stock (NASDAQ: ODT) purchased or otherwise acquired during the Settlement Class Period. The calculation of Recognized Loss will depend upon several factors, including when shares of Odonate stock were purchased or otherwise acquired during the Settlement Class Period, and in what amounts, and whether those shares were sold, and if sold, when they were sold, and for what amounts. The Recognized Loss is not intended to estimate the amount a Settlement Class Member might have been able to recover after a trial, nor to estimate the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. The Claims Administrator will use its best efforts to administer and distribute the Net Settlement Fund to the extent that it is equitably and economically feasible.

The Plan of Allocation was created with the assistance of a consulting damages expert and reflects the assumption that the prices of Odonate stock were artificially inflated throughout the Settlement Class Period. The estimated alleged artificial inflation in the prices of Odonate stock during the Settlement Class Period is reflected in Table 1 below. The computation of the estimated alleged artificial inflation in the prices of Odonate stock during the Settlement Class Period is based on certain misrepresentations alleged by Lead Plaintiff and the price change in the stock, net of market- and industry-wide factors, in reaction to the public announcements that allegedly corrected the misrepresentations alleged by Lead Plaintiff. As reflected in Table 1, the first such alleged

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misrepresentation was made on December 7, 2017, thus there was no price inflation in Odonate stock on December 6, 2017 or earlier. Moreover, the last alleged corrective disclosure or event occurred on March 26, 2021, thus all alleged price inflation is alleged to have been removed from Odonate's stock that day.

The U.S. federal securities laws allow investors to recover for losses caused by disclosures which corrected a defendants' previous misleading statements or omissions. Thus, in order to have been damaged by the alleged violations of the federal securities laws, Odonate common stock purchased or otherwise acquired during the Settlement Class Period must have been held during a period of time in which its price declined due to the disclosure of information which corrected a misleading statement or omission allegedly made by Defendants. Lead Plaintiff and Co-Lead Counsel have determined that such price declines occurred on the following dates: August 24, 2020, March 22, 2021, March 26, 2021 (the "Corrective Disclosure Dates"). Accordingly, if a share Odonate common stock was sold before August 24, 2020 (the earliest Corrective Disclosure Date), the Recognized Loss for that share is \$0.00, and any loss suffered is not compensable under the federal securities laws. Likewise, if a share of Odonate stock was both purchased and sold between two consecutive Corrective Disclosure Dates, the Recognized Loss for that share is \$0.00.

Table 1		
Artificial Inflation in Odonate Stock^{1 2}		
From	To	Per-Share Price Inflation
December 7, 2017	August 23, 2020	\$30.86
August 24, 2020	March 21, 2021	\$15.88
March 22, 2021	March 25, 2021	\$0.55
March 26, 2021	Thereafter	\$0.00

The "90-day look back" provision of the Private Securities Litigation Reform Act of 1995 ("PSLRA") is incorporated into the calculation of the Recognized Loss for Odonate stock. The limitations on the calculation of the Recognized Loss imposed by the PSLRA are applied such that losses on Odonate stock purchased during the Settlement Class Period and held as of the close of the 90-day period subsequent to the Settlement Class Period (the "90-Day Lookback Period") cannot exceed the difference between the purchase price paid for such stock and its average price during the 90-Day Lookback Period. The Recognized Loss on Odonate stock purchased during the Settlement Class Period and sold during the 90-Day Lookback Period cannot exceed the difference between the purchase price paid for such stock and its rolling average price during the portion of the 90-Day Lookback Period elapsed as of the date of sale.

¹ Any transactions in Odonate stock executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the next regular trading session.

² For each day during the Settlement Class Period, the artificial inflation in the price of Odonate stock shall be limited to that day's closing price of Odonate stock.

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In the calculations below, all purchase and sale prices shall exclude any fees, taxes and commissions. If a Recognized Loss amount is calculated to be a negative number, that Recognized Loss shall be set to zero.

Calculation of Recognized Loss Per Share of Odonate Stock

For each share of Odonate stock purchased or otherwise acquired during the Settlement Class Period (i.e., December 7, 2017 through March 25, 2021, both dates inclusive), the Recognized Loss per share shall be calculated as follows:

- i. For each share of Odonate stock purchased during the Settlement Class Period that was subsequently sold prior to August 24, 2020 the Recognized Loss per share is \$0.
- ii. For each share of Odonate stock purchased during the period August 24, 2020 through March 21, 2021, both dates inclusive, that was subsequently sold prior to March 22, 2021 the Recognized Loss per share is \$0.
- iii. For each share of Odonate stock purchased during the period March 22, 2021 through March 25, 2021, both dates inclusive, that was subsequently sold prior to March 26, 2021 the Recognized Loss per share is \$0.
- iv. For each share of Odonate stock purchased during the Settlement Class Period that was subsequently sold during the period August 24, 2020 through March 25, 2021, both dates inclusive, and held at the opening of trading on August 24, 2020 or March 22, 2021, the Recognized Loss per share is the amount of per-share price inflation on the date of purchase as appears in Table 1 above, *minus* the amount of per-share price inflation on the date of sale as appears in Table 1 above.
- v. For each share of Odonate stock purchased during the Settlement Class Period that was subsequently sold during the period March 26, 2021 through June 23, 2021, both dates inclusive (i.e., the 90-Day Lookback Period), the Recognized Loss per share is *the lesser of*:
 - a. the amount of per-share price inflation on the date of purchase as appears in Table 1 above; or
 - b. the purchase price *minus* the “90-Day Lookback Value” on the date of sale provided in Table 2 below.
- vi. For each share of Odonate stock purchased during the Settlement Class Period and still held as of the close of trading on June 23, 2021, the Recognized Loss per share is *the lesser of*:
 - a. the amount of per-share price inflation on the date of purchase as appears in Table 1 above; or
 - b. the purchase price *minus* the average closing price for Odonate stock during the 90-Day Lookback Period, which is \$3.41.

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Table 2					
Sale / Disposition Date	90-Day Lookback Value	Sale / Disposition Date	90-Day Lookback Value	Sale / Disposition Date	90-Day Lookback Value
3/26/2021	\$3.09	4/27/2021	\$3.41	5/26/2021	\$3.31
3/29/2021	\$3.12	4/28/2021	\$3.42	5/27/2021	\$3.31
3/30/2021	\$3.14	4/29/2021	\$3.42	5/28/2021	\$3.31
3/31/2021	\$3.21	4/30/2021	\$3.42	6/1/2021	\$3.32
4/1/2021	\$3.25	5/3/2021	\$3.41	6/2/2021	\$3.33
4/5/2021	\$3.26	5/4/2021	\$3.40	6/3/2021	\$3.34
4/6/2021	\$3.29	5/5/2021	\$3.39	6/4/2021	\$3.35
4/7/2021	\$3.36	5/6/2021	\$3.38	6/7/2021	\$3.36
4/8/2021	\$3.38	5/7/2021	\$3.37	6/8/2021	\$3.37
4/9/2021	\$3.43	5/10/2021	\$3.36	6/9/2021	\$3.38
4/12/2021	\$3.44	5/11/2021	\$3.35	6/10/2021	\$3.38
4/13/2021	\$3.43	5/12/2021	\$3.34	6/11/2021	\$3.39
4/14/2021	\$3.43	5/13/2021	\$3.33	6/14/2021	\$3.40
4/15/2021	\$3.41	5/14/2021	\$3.32	6/15/2021	\$3.40
4/16/2021	\$3.41	5/17/2021	\$3.31	6/16/2021	\$3.40
4/19/2021	\$3.40	5/18/2021	\$3.31	6/17/2021	\$3.41
4/20/2021	\$3.39	5/19/2021	\$3.31	6/18/2021	\$3.41
4/21/2021	\$3.39	5/20/2021	\$3.32	6/21/2021	\$3.41
4/22/2021	\$3.39	5/21/2021	\$3.32	6/22/2021	\$3.41
4/23/2021	\$3.39	5/24/2021	\$3.31	6/23/2021	\$3.41
4/26/2021	\$3.40	5/25/2021	\$3.31		

INSTRUCTIONS APPLICABLE TO ALL CLAIMANTS

The payment you receive will reflect your proportionate share of the Net Settlement Fund. Such payment will depend on the number of eligible shares that participate in the Settlement, which is determined based on the number of Proof of Claim and Release forms submitted and accepted as valid, and when those shares were purchased and sold. The number of claimants who send in claims varies widely from case to case.

A purchase or sale of Odonate stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date.

All purchase and sale prices shall exclude any fees and commissions.

If a Settlement Class Member acquired Odonate stock during the Settlement Class Period by way of gift, inheritance or operation of law, such a claim will be computed by using the date and price

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of the original purchase and not the date and price of transfer. To the extent that Odonate shares were originally purchased prior to commencement of the Settlement Class Period, the Recognized Loss for that acquisition shall be deemed to be zero (\$0.00).

Notwithstanding any of the above, receipt of Odonate stock during the Settlement Class Period in exchange for securities of any other corporation or entity shall not be deemed a purchase or sale of Odonate stock.

The first-in-first-out (“FIFO”) basis will be applied to purchases and sales. Sales will be matched in chronological order, by trade date, first against Odonate stock held as of the close of trading on December 6, 2017 (the last day before the Settlement Class Period begins) and then against the purchase of Odonate stock during the Settlement Class Period.

The date of covering a “short sale” is deemed to be the date of purchase of shares. The date of a “short sale” is deemed to be the date of sale of shares. In accordance with the Plan of Allocation, however, the Recognized Loss on “short sales” is zero. In the event that a claimant has an opening short position in Odonate stock, the earliest Settlement Class Period purchases shall be matched against such opening short position and not be entitled to a recovery until that short position is fully covered.

With respect to Odonate stock purchased or sold through the exercise of an option, the purchase/sale date of the stock shall be the exercise date of the option and the purchase/sale price of the stock shall be the closing price of Odonate stock on the date of exercise. Any Recognized Loss arising from purchases of Odonate stock acquired during the Settlement Class Period through the exercise of an option on Odonate stock³ shall be computed as provided for other purchases of Odonate stock in the Plan of Allocation.

Payment according to the Plan of Allocation will be deemed conclusive against all Authorized Claimants. A Recognized Loss will be calculated as defined herein and cannot be less than zero. The Claims Administrator shall allocate to each Authorized Claimant a *pro rata* share of the Net Settlement Fund based on his, her, or its Recognized Loss as compared to the total Recognized Losses of all Authorized Claimants. No distribution will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

Settlement Class Members who do not submit an acceptable Proof of Claim and Release Form, with appropriate supporting documentation, will not share in the Settlement proceeds. The Settlement and the Final Order and Judgment dismissing this Action with prejudice will nevertheless bind Settlement Class Members who do not submit a request for exclusion and/or submit an acceptable Proof of Claim and Release Form.

Please contact the Claims Administrator or Co-Lead Counsel if you disagree with any determinations made by the Claims Administrator regarding your Proof of Claim and Release Form. If you are unsatisfied with the determinations, you may ask the Court, which retains

³ The “exercise of an option” as used in this sentence includes: (1) purchases of Odonate stock as the result of the exercise of a call option, and (2) purchases of Odonate stock by the seller of a put option as a result of the buyer of such put option exercising that put option.

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jurisdiction over all Class Members and the claims-administration process, to decide the issue by submitting a written request.

Defendants, their respective counsel, and all other Released Parties will have no responsibility or liability whatsoever for the processing of Proof of Claim and Release Forms, the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim. Lead Plaintiff and Co-Lead Counsel, likewise, will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If any funds remain in the Net Settlement Fund by reason of uncashed distribution 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 Fund cash their distributions, any balance remaining in the Net Settlement Fund after at least six (6) months after the initial distribution of such funds will be used in the following fashion: (a) first, to pay any amounts mistakenly omitted from the initial disbursement; (b) second, to pay any additional settlement administration fees, costs, and expenses, including those of Co-Lead Counsel or the Claims Administrator as may be approved by the Court; and (c) finally, to make a second distribution to claimants who cashed their checks from the initial distribution and who would receive at least \$10.00, after payment of the estimated costs, expenses, or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. These redistributions shall be repeated, if economically feasible, until the balance remaining in the Net Settlement Fund is *de minimis* and such remaining balance will then be distributed pursuant to a method approved by the Court.

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you purchased Odonate stock during the Settlement Class Period (CUSIP: 676079106) (NASDAQ: ODT) for the beneficial interest of an individual or organization other than yourself, the Court has directed that, **WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS NOTICE**, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased such common shares during such time period or (b) request additional copies of this Notice and the Proof of Claim and Release Form, which will be provided to you free of charge, and within ten (10) days of receipt mail them directly to the beneficial owners of the common stock referred to herein. If you choose to follow alternative procedure (b), upon such mailing, you must send a statement to the Claims Administrator confirming that the mailing was made as directed and retain the names and addresses of the addressees for any future mailings to Settlement Class Members. The Claims Administrator shall, if requested and if appropriate supporting documentation is provided, reimburse nominees or custodians out of the Settlement Fund solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners/purchasers, up to \$0.10 plus postage at the current pre-sort rate used by the Claims Administrator per Notice and Proof of Claim; \$0.05 per Notice and Claim Form transmitted by email; or \$0.05 per name, mailing address, and email address provided to the Claims Administrator, which expenses would not have been incurred except for the sending of such notice, and subject to further order of this Court with respect to any dispute concerning such

reimbursement. All communications concerning the foregoing should be addressed to the Claims Administrator at:

Kendall v. Odonate Therapeutics, Inc.
c/o Strategic Claims Services
600 North Jackson Street, Suite 205
Media, PA 19063
Tel: 866-274-4004

Dated: _____

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Exhibit B2

A federal court has authorized this notice. This is not a solicitation from a lawyer.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN KENDALL, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ODONATE THERAPEUTICS, INC., KEVIN
C. TANG, MICHAEL HEARNE, and JOHN
G. LEMKEY,

Defendants.

Case No. 3:20-cv-1828-H-LL

Class Action

**NOTICE OF PROPOSED
SETTLEMENT OF CLASS ACTION,
MOTION FOR ATTORNEYS' FEES
AND EXPENSES, AND SETTLEMENT
FAIRNESS HEARING**

NOTICE OF PENDENCY OF CLASS ACTION

PLEASE READ THIS NOTICE CAREFULLY.

**IF YOU PURCHASED OR OTHERWISE ACQUIRED THE STOCK OF
ODONATE THERAPEUTICS, INC. ("ODONATE") (NASDAQ: ODT) BETWEEN
DECEMBER 7, 2017 AND MARCH 25, 2021, BOTH DATES INCLUSIVE, YOUR
RIGHTS MAY BE AFFECTED BY THIS CASE.**

YOU ARE HEREBY NOTIFIED that a proposed settlement (the "Settlement") has been reached in this action (the "Class Action" or "Action"). A hearing will be held on _____, 2022, at __:__ a.m., before the Honorable Marilyn L. Huff, United States District Judge, at the courthouse for the United States District Court, Southern District of California, James M. Carter and Judith N. Keep United States Courthouse, 333 West Broadway, San Diego, CA 92101.

The purpose of the hearing is to determine, among other things: (1) whether the proposed Settlement of the Action against the Defendants Odonate, Kevin C. Tang, Michael Hearne, and John G. Lemkey for total gross settlement consideration of twelve million seven hundred fifty thousand dollars (\$12,750,000.00) (the "Settlement Fund") should be approved as fair, reasonable and adequate; (2) whether the Plan of Allocation is fair and reasonable and should be approved; (3) whether Lead Plaintiff's application for reimbursement of expenses not to exceed one hundred thousand dollars (\$100,000.00), Lead Plaintiff's request for a compensatory award in the amount of five thousand dollars (\$5,000.00), and Co-Lead Counsel's application for an award of attorneys' fees not to exceed one third (33 1/3%) of the gross Settlement Fund, all to be paid from the Settlement Fund, should be granted; and (4) whether the Action should be dismissed with prejudice against the Defendants as set forth in the Stipulation of Settlement (the "Stipulation") filed with the Court.

Why Am I Receiving this Notice?

This Notice is issued pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the

United States District Court for the Southern District of California (the “Court”), entered _____, 2021. The Court has certified a class of investors for settlement purposes only (the “Settlement Class” or “Class”). You are receiving this Notice because you may be a member of the Settlement Class (a “Settlement Class Member”). If you are a Settlement Class Member, your rights will be affected by this lawsuit. The purpose of this Notice is to inform you of: (a) the existence of this Class Action; (b) the certification of the Settlement Class; and (c) your right to be excluded from the Settlement Class. If you do not fall within the Settlement Class described below, this Notice does not apply to you.

Who Is a Class Member?

The proposed Settlement Class will consist of all persons or entities that purchased or otherwise acquired the stock of Odonate (NASDAQ: ODT) between December 7, 2017 and March 25, 2021, both dates inclusive (the “Settlement Class Period”). The Settlement Class excludes the Defendants; members of their immediate families and their affiliates; any entity in which any Defendant had a controlling interest during the Settlement Class Period; any person who served as an officer or director of Odonate during the Settlement Class Period; the judges presiding over the Action and the immediate family members of such judges; any persons or entities listed on the Settlement Exclusion List (as defined in the Stipulation); and the successors, heirs, and assigns of any excluded person. Additional details are listed within the long-form Notice, which can be obtained as described below.

Overview And Status Of The Class Action, Co-Lead Counsel

The case has been litigated since September 16, 2020. Lead Plaintiff alleges that, in violation of the U.S. federal securities laws, Defendants made material misrepresentations and omissions, with scienter, concerning Odonate’s clinical trials & business operations, reported results, and internal controls causing Odonate’s stock price to be inflated during the Settlement Class Period. Lead Plaintiff further alleges that revelation of Defendants’ fraud caused a statistically significant stock decline, thereby injuring Lead Plaintiff and the Settlement Class of investors. Defendants have denied and continue to deny these allegations and deny that they committed any act or omission giving rise to any liability or violation of the law. Lead Plaintiff and the Settlement Class are represented by Co-Lead Counsel in the Class Action: Matthew L. Tuccillo, Pomerantz LLP, 600 Third Avenue, 20th Floor, New York, NY 10016, (212) 661-1100 and/or Corey D. Holzer, Holzer & Holzer, LLC, 211 Perimeter Center Parkway, Suite 1010, Atlanta, GA 30346, (770) 392-0090.

HOW YOU CAN LEARN MORE ABOUT YOUR RIGHTS

If you purchased or otherwise acquired Odonate stock during the Settlement Class Period, your rights may be affected by this Action and the Settlement thereof. You may obtain the Stipulation; the detailed long-form Notice of Proposed Settlement of Class Action, Motion For Attorneys’ Fees and Expenses, and Settlement Fairness Hearing; and the Proof of Claim and Release Form (the “Proof of Claim”) free of charge from the Claims Administrator.

The Notice, Stipulation of Settlement, and Proof of Claim form can be accessed and downloaded from the Claims Administrator’s website at www.strategicclaims.net/odonate.

HOW YOU CAN EXERCISE YOUR RIGHTS

If you are a member of the Settlement Class and wish to share in the Settlement proceeds, you must submit

a valid Proof of Claim, with supporting documentation, received no later than _____, 2022, establishing that you are entitled to recovery.

You will be bound by any Judgment entered in the Action, regardless of whether you submit a Proof of Claim, unless you exclude yourself from the Class, in accordance with the procedures set forth in the long-form Notice, received no later than _____, 2022. If you decide to exclude yourself from the Settlement Class and wish to file your own individual lawsuit based on the Released Settlement Class Claims, Defendants in the future may argue that you face a time bar under applicable statutes of limitation or repose, risks that you should discuss with an appropriate legal advisor.

If you do not exclude yourself, you can opt to object to the settlement, the Plan of Allocation, Co-Lead Counsel's request for an award of attorneys' fees and reimbursement of expenses, or Lead Plaintiff's request for a compensatory award in the manner and form explained in the long-form Notice. Any such objections must be filed and served, in accordance with the procedures set forth in the long-form Notice, no later than _____, 2022.

The Claims Administrator

The Claims Administrator hired by Co-Lead Counsel to administer the Settlement is Strategic Claims Services. If you are unable to download the Stipulation, long-form Notice, and Proof of Claim via the Claims Administrator's website, as described above, you may contact the Claims Administrator to obtain copies.

Kendall v. Odonate Therapeutics, Inc.
c/o Strategic Claims Services
600 North Jackson Street, Suite 205
Media, PA 19063
Tel (Toll Free): 866-274-4004
Email: info@strategicclaims.net

Website: www.strategicclaims.net/odonate

Notice To Banks, Brokers And Other Nominees
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The Court has ordered that, if, for the beneficial interest of any other person, you held any Odonate stock that was purchased during the Settlement Class Period, then, within ten (10) days after you receive this Notice, you must either:

- (A) provide a list of the names and addresses of such beneficial owners to the Claims Administrator, preferably in an MS Excel data file, or printed on physical mailing labels; or
- (B) request sufficient copies of this Notice to send copies to all such beneficial owners, send such Notices by first class mail within ten (10) days after receipt of such copies, and confirm in writing to the Claims Administrator that such notice has been sent. If you elect this option, you must also retain your mailing records for use in connection with any further notices that may be provided in this Class Action.

Under either option, upon full and timely compliance and submission of appropriate documentation to the Claims Administrator, per the contact information set forth above, you may obtain reimbursement for the actual administrative costs reasonably incurred in complying with the obligations above, up to 0.10 plus postage at the current pre-sort rate used by the Claims Administrator per notice mailed; \$0.05 per notice transmitted by email; or \$0.05 per name, mailing address, and e-mail address provided to the Claims Administrator, which expenses would not have been incurred except for the sending of such notice, and subject to further order of the Court with respect to any dispute concerning such reimbursement.

Please Retain Your Records And Keep Your Address Current

Settlement Class Members seeking payment pursuant to the Settlement will be required to document their trades in Odonate stock during the Settlement Class Period. *For this reason, please be sure to keep all records of your transactions in these securities.*

To ensure you receive any further notices, please inform the Claims Administrator of any address change. If this Notice was not sent to your current address, please provide it to the Claims Administrator now.

Dated: _____, 2021

**By Order of the Court
United States District Court, Southern District of California**

**PLEASE NOTE: INQUIRIES SHOULD NOT BE DIRECTED TO THE COURT, THE
CLERK'S OFFICE, THE DEFENDANTS, OR DEFENDANTS' COUNSEL.**

Exhibit C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN KENDALL, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ODONATE THERAPEUTICS, INC., KEVIN
C. TANG, MICHAEL HEARNE, and JOHN
G. LEMKEY,

Defendants.

Case No. 3:20-cv-1828-H-LL

Class Action

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

**TO: ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE
ACQUIRED THE STOCK OF ODONATE THERAPEUTICS, INC.
("ODONATE") (NASDAQ: ODT) BETWEEN DECEMBER 7, 2017 AND
MARCH 25, 2021, BOTH DATES INCLUSIVE.**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of California, that a hearing will be held on _____, 2022, at __:__ .m. before the Honorable Marilyn L. Huff, United States District Judge, at the courthouse for the United States District Court, Southern District of California, James M. Carter and Judith N. Keep United States Courthouse, 333 West Broadway, San Diego, CA 92101 for the purpose of determining: (1) whether the proposed Settlement of the claims in the above-captioned Action for consideration in the amount of twelve million seven hundred fifty thousand dollars (\$12,750,000.00) should be approved by the Court as fair, reasonable, and adequate; (2) whether the Plan of Allocation is fair and reasonable, and should be approved; (3) whether Co-Lead Counsel's application for an award of attorneys' fees of up to one third (33 1/3%), and reimbursement of out-of-pocket expenses of not more than one hundred thousand dollars (\$100,000.00) plus interest on such fees and expenses, and a compensatory award for Lead Plaintiff of not more than five thousand dollars (\$5,000.00), all to be paid from the Settlement Fund, should be approved; and (4) whether this Action should be dismissed with prejudice against the Defendants as set forth in the Stipulation of Settlement dated November 18, 2021 (the "Stipulation") filed with the Court.

You are receiving this Notice because the Court has certified a class of investors for settlement purposes only ("Settlement Class") and you may be a member of the Settlement Class ("Settlement

Class Member”). The proposed Settlement Class will consist of all persons or entities who purchased, or otherwise acquired, the stock of Odonate (NASDAQ: ODT) between December 7, 2017 and March 25, 2021, both dates inclusive (the “Settlement Class Period”). Excluded from the Settlement Class are the Defendants; members of their immediate families and their affiliates; any entity in which Defendants had a controlling interest during the Settlement Class Period; any person who served as an officer or director of Odonate during the Settlement Class Period; the judges presiding over the Action and the immediate family members of such judges; any persons or entities listed on the Settlement Exclusion List; and the successors, heirs, and assigns of any excluded person.

If you purchased or acquired Odonate stock during the Settlement Class Period, your rights may be affected by this Action and the Settlement thereof, including the release and extinguishment of claims you may possess relating to your ownership interest in Odonate stock. If you have not received a more-detailed, long-form Notice of Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses, and Settlement Fairness Hearing (“Notice”) and the Proof of Claim and Release Form, you may obtain copies of these documents and the Stipulation by downloading them at the Claims Administrator’s website at: www.strategicclaims.net/odonate. If you are unable to do so, you may contact the Claims Administrator to obtain copies:

Kendall v. Odonate Therapeutics, Inc.
c/o Strategic Claims Services
600 North Jackson Street, Suite 205
Media, PA 19063
Tel: 866-274-4004
Email: info@strategicclaims.net

The case has been litigated since September 16, 2020. Lead Plaintiff alleges that, in violation of the U.S. federal securities laws, Defendants made material misrepresentations and/or omissions of material fact in public statements to the investing public regarding Odonate’s only drug candidate, tesetaxel. Defendants have denied and continue to deny these allegations and that they committed any act or omission giving rise to any liability or violation of the law. The Settlement will resolve the lawsuit and the Released Claims as to the Defendants and other Released Parties. Lead Plaintiff and the Settlement Class are represented by Co-Lead Counsel who may be reached by contacting: Matthew L. Tuccillo or Jennifer B. Sobers, Pomerantz LLP, 600 Third Avenue, 20th Floor, New York, NY 10016, (212) 661-1100 and/or Corey D. Holzer, Holzer & Holzer, LLC, 211 Perimeter Center Parkway, Suite 1010, Atlanta, GA 30346, (770) 392-0090.

If you are a Settlement Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release Form received no later than _____, 2022, establishing that you are entitled to recovery. Unless you submit a written exclusion request, you will be bound by any Judgment rendered in the Action whether or not you make a claim.

If you want to be excluded from the Settlement Class, you must submit to the Claims Administrator a request for exclusion, in accordance with the procedures set forth in the long-form Notice, so

that it is received no later than _____, 2022. If you decide to exclude yourself from the Settlement Class and wish to file your own individual lawsuit based on the Released Settlement Class Claims, Defendants may argue that you face a time bar under applicable statutes of limitation or repose, risks that you should discuss with an appropriate legal advisor. All members of the Settlement Class who have not requested exclusion from the Settlement Class will be bound by any Judgment entered in the Action pursuant to the Settlement Stipulation.

If you are a Settlement Class Member and do not exclude yourself, you can object to the Settlement, Plan of Allocation, or Co-Lead Counsel's request for an award of attorneys' fees and reimbursement of expenses and compensatory award to Lead Plaintiff in the manner and form explained in the detailed Notice and received no later than _____, 2022.

Any questions regarding the Settlement should be directed to Co-Lead Counsel for the Settlement Class.

PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, THE DEFENDANTS, OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.

Dated: _____

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Exhibit D

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN KENDALL, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ODONATE THERAPEUTICS, INC., KEVIN
C. TANG, MICHAEL HEARNE, and JOHN
G. LEMKEY,

Defendants.

Case No. 3:20-cv-1828-H-LL

Class Action

PROOF OF CLAIM AND RELEASE FORM

A. GENERAL INSTRUCTIONS & INFORMATION

1. You are urged to read carefully the accompanying Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Expense, and Settlement Fairness Hearing (the "Notice").
2. To file a claim and recover under the Settlement of this Action, you must submit this Proof of Claim and Release Form (the "Proof of Claim"). However, such filing is not a guarantee that you will share in the proceeds of the Settlement in the Action.
3. **Your completed and signed Proof of Claim must be received on or before _____, 2022, addressed to the Claims Administrator at:**

Kendall v. Odonate Therapeutics, Inc.
c/o Strategic Claims Services
600 North Jackson Street, Suite 205
Media, PA 19063
Tel: 866-274-4004
Email: info@strategicclaims.net

4. If you are a member of the Settlement Class and you do not timely request exclusion, you will be bound by the terms of any judgment entered in the Action.
5. If you are **not** a member of the Settlement Class, **do not** submit a Proof of Claim.
6. **For help completing this Proof of Claim, please contact the Claims Administrator.**

B. INSTRUCTIONS FOR FILLING OUT THE PROOF OF CLAIM FORM

Important additional information regarding the Settlement and this Proof of Claim is contained in the Notice posted on the Claims Administrator's website, www.strategicclaims.net/odonate. Please refer to the Plan of Allocation set forth in the Notice

for a detailed explanation of how a Claimant's Recognized Loss will be calculated.

1. To be eligible to participate in the distribution of the Net Settlement Fund, a claimant ("Claimant") must have purchased, or otherwise acquired, the stock of Odonate (NASDAQ: ODT) between December 7, 2017 and March 25, 2021, both dates inclusive (the "Settlement Class Period").

2. The submission of a Proof of Claim does not ensure that your claim will be upheld or that you will share in any recovery. All claims are subject to verification and investigation. You may be requested to provide further information.

3. All claims must be made by persons or entities who were beneficial owners (as opposed to record holders or nominees) of shares of Odonate stock. (Brokerage firms, banks and other nominees are requested to transmit copies of the Notice and this Proof of Claim to their present or former customers who were such beneficial owners). If the Odonate stock was owned jointly, all joint owners must complete and sign the Proof of Claim.

4. Executors, administrators, guardians, conservators and trustees may complete and sign the Proof of Claim on behalf of persons or entities represented by them, but they must identify such persons or entities and provide proof of their authority (*e.g.*, powers of attorney or currently effective letters testamentary or letters of administration) to do so.

5. You must file a separate Proof of Claim for each differently named account or ownership, such as an individual account, an IRA account, a joint account, or a custodial account, etc. Joint tenants, co-owners, or custodians UGMA should file a single claim. Claimants who file one or more claims (*e.g.*, one in Claimant's name and one for an IRA or joint ownership) must identify the other claims filed.

6. The date of purchase and/or sale of shares of Odonate stock is the "trade" date and not the "settlement" date.

7. The first-in, first-out basis ("FIFO") will be applied to both purchases and sales.

8. Exercise of option contracts will be considered to be purchases or sales of stock. Option premiums will be incorporated into the purchase/sale price of the common stock accordingly.

9. The date of covering a "short sale" is deemed to be the date of purchase of Odonate stock; and the date of a "share sale" is deemed to be the date of sale of Odonate stock. Stock originally sold short will have a Recognized Loss of zero.

10. No cash payment will be made on a claim where the potential distribution is less than ten dollars (\$10.00).

11. You must attach to your claim form **copies** of brokerage confirmations, monthly statements or other documentation of your transactions in Odonate stock for your claim to be valid. If such documents are not available, a complete list of acceptable supporting documentation can be found on the Claims Administrator's website: www.strategicclaims.net/odonate. Failure to provide this documentation could delay verification of your claim or could result in rejection of your claim.

12. If your trading activity during the Settlement Class Period exceeds 50 transactions, you must provide all purchase and sale information required in the Schedule of Transactions in an electronic file. For a copy of instructions and the parameters concerning an electronic submission, contact the Claims Administrator by phone: 866-274-4004; via email: info@strategicclaims.net; or via the website: www.strategicclaims.net/odonate.

14. If you have questions or need additional Proofs of Claim, contact the Claims Administrator via the information in the preceding paragraph. You may make photocopies of this form.

Kendall v. Odonate Therapeutics, Inc.

PROOF OF CLAIM

The Claims Administrator must receive this form no later than _____, 2022.

C. CLAIMANT IDENTIFICATION *(Please Type or Print)*

Beneficial Owner's Name *(as it appears on your brokerage statement)*

Joint Beneficial Owner's Name *(as it appears on your brokerage statement)*

Street Address

City

State

Zip Code

Foreign Province / Country

Social Security or Taxpayer Identification Number

Specify one of the following:

- Individual(s) Corporation UGMA Custodian IRA
- Partnership Estate Trust Other: _____

Area Code Telephone Number (Day) _____ (Evening)
Area Code Telephone Number

Facsimile Number

E-Mail Address

Record Owner's Name and Address *(if different from beneficial owner listed above)*

D. SCHEDULE OF TRANSACTIONS IN ODONATE’S STOCK

Name Social Security or Taxpayer Identification Number

1. State the total number of Odonate shares owned at the close of trading on December 6, 2017, long or short (*if none, enter “0”; if other than zero, must be documented*):
2. Separately list each and every **purchase** of Odonate stock during the period December 7, 2017 **through** March 25, 2021, inclusive, and provide the following information (*must be documented*):

Purchase Date (list chronologically) Month/Day/Year	Number of Securities Purchased	Price Per Share (excluding commissions, taxes, and other fees)	Total Purchase Price (excluding commissions, taxes, and other fees)
____/____/____		\$	\$
____/____/____		\$	\$
____/____/____		\$	\$
____/____/____		\$	\$

3. Separately list each and every **sale** of Odonate stock during the period December 7, 2017 **through** March 25, 2021, inclusive, and provide the following information (*must be documented*):

Sale Date (list chronologically) Month/Day/Year	Number of Securities Sold	Price Per Share (excluding commissions, taxes, and other fees)	Total Sale Price (excluding commissions, taxes, and other fees)
____/____/____		\$	\$
____/____/____		\$	\$
____/____/____		\$	\$
____/____/____		\$	\$

4. State the total number of Odonate shares owned at the close of trading on March 25, 2021 long or short (*if none, enter “0”; if other than zero, must be documented*):

If you need additional space, attach the required information on separate, numbered sheets in the same format as above and print your name and Social Security or Taxpayer Identification number at the top of each additional sheet.

**YOU MUST ALSO READ THE RELEASE AND SIGN THE CERTIFICATION
OR THE W-8 CERTIFICATION BELOW**

E. SUBMISSION TO JURISDICTION OF THE COURT

By submitting this Proof of Claim Form and Release, I/we, and every Settlement Class Member I/we represent, submit to the jurisdiction of the United States District Court for the Southern District of California for purposes of this Action and the Settlement of the Action, as reflected in the Stipulation of Settlement (the "Stipulation"). I/We further agree to be bound by the orders of the Court, agree that this Proof of Claim Form, my/our status or the status of the Settlement Class member I/we represent as a Claimant, and the allowable amount of this claim will be subject to review and further inquiry, and that I/we will furnish such additional documentation with respect to this Proof of Claim as may be required.

F. RELEASE

1. By signing this Proof of Claim and Release Form, and in consideration of the establishment of the Settlement Consideration, as of the effective date thereof, the undersigned claimant ("Claimant") on behalf of himself/herself/itself, his/her/its successors, heirs, executors, administrators, and assigns, hereby releases and forever discharges (a) Defendant Odonate, (b) Defendant Kevin C. Tang, (c) Defendant Michael Hearne, (d) Defendant John G. Lemkey, (e) all other current and former officers and directors of Odonate, (f) all other employees of Odonate, and (g) any persons or entities listed on the Settlement Exclusion List, as defined in the Stipulation (altogether the "Released Parties"), from any and all claims and causes of action of every nature and description, whether known or Unknown Claims, whether contingent or absolute, whether suspected or unsuspected, whether asserted or unasserted, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured that (i) the Lead Plaintiff or any other Settlement Class Members asserted in the Second Amended Class Action Complaint ("SAC"); or (ii) could have been asserted in any court or forum that arise out of or are based on the allegations, transactions, facts, matters or occurrences, representations, or omissions set forth in the SAC and that relate to the purchase or acquisition of shares of Odonate stock on the Nasdaq Global Select Market (NASDAQ: ODT) during the Settlement Class Period (the "Released Settlement Class Claims"). The Released Settlement Class Claims exclude (i) any derivative claims based on the facts alleged in the SAC; and (ii) claims relating to the enforcement of the Settlement.

2. Conversely, Defendants and the other Released Parties, on behalf of themselves, their successors, heirs, executors, administrators, and assigns, hereby fully, finally, and forever release, relinquish, and discharge any and all claims or causes of action of every nature and description, whether known or Unknown Claims, whether asserted or unasserted, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Released Parties, including without limitation any claims under Fed. R. Civ. P. 11, except for claims relating to the enforcement of the Settlement (the "Released Defendant Claims").

3. For purposes of these release provisions, "Unknown Claims" means and includes (i) any and all Released Settlement Class Claims that Lead Plaintiff or any Settlement Class Member do not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement; and (ii) any and all Released Defendant Claims that any Defendant or other Released Party does not know or suspect

to exist in his, her, or its favor, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment, shall have, expressly waived, the provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.” The Parties acknowledge, and Settlement Class Members and the other Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Settlement Class Claims and Released Defendant Claims was separately bargained for and was a key element of the Settlement.

G. REPRESENTATIONS

I/We acknowledge that I/we have read the Notice, and that pursuant thereto I/we file this claim to participate in the Settlement.

I/We hereby warrant and represent that neither I/we, nor any person I/we represent, is a Defendant (as defined in the Notice) with respect to any of the claims asserted in the Action, a member of the immediate family of any of the Defendants, or anyone excluded from the Settlement Class as it is defined in the Stipulation, or a person or entity who has requested exclusion from the Settlement Class.

I/We hereby warrant and represent that I am/we are authorized to execute and deliver this Proof of Claim and Release Form.

H. CERTIFICATION

I/We certify that I am/we are not subject to backup withholding. **(If you have been notified by the IRS that you are subject to backup withholding, strike out the previous sentence.)**

I/We certify that I/we purchased Odonate stock listed in the above Schedule during the period between December 7, 2017 and March 25, 2021, both dates inclusive.

I/We declare and affirm under penalties of perjury that the foregoing information and the documents attached hereto, including the Social Security or Taxpayer Identification Number shown on this Proof of Claim, are true, correct and complete to the best of my/our knowledge, information and belief, and that this Proof of Claim was executed this _____ day of _____, 202_ in:

(City)

(State/Country)

Signature of Claimant

Signature of Joint Claimant, if any

(Print your name here)

(Print your name here)

Signature of Person signing on behalf of Claimant

(Print your name here)

Capacity of person signing on behalf of
Claimant, if other than an individual,
(Executor, President, Custodian, etc.)

SUBSTITUTE FORM W-8: IF YOU ARE NOT A RESIDENT OR CITIZEN OF THE UNITED STATES, COMPLETE THE FOLLOWING:

Permanent residence (principal office if a corporation)

If your claim is connected with a trade or business conducted in the U.S., please provide the name and address of your U.S. business, the type of business, and the Federal Tax Identification Number of the U.S. business.

Name of U.S. Business

Address of U.S. Business

Type of Business

Tax Identification Number

W-8 Certification: Under the penalties of perjury, I certify that the information provided above is true, correct and complete.

Signature(s) _____

Date: _____

Date: _____

THIS SPACE INTENTIONALLY LEFT BLANK

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT
AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Remember to sign the above Release and Certification (or W-8 Certification).
2. Remember to attach only **copies** of acceptable supporting documentation, a complete list of which can be found on the Claims Administrator's website at www.strategicclaims.net.
3. Do not send originals of stock certificates.
4. Keep copies of the completed claim form and documentation for your own records.
5. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested, or its equivalent. **You will bear all risks of delay or non-delivery of your claim.**
6. If your address changes in the future, or if these documents were sent to an old or incorrect address, please send us **written** notification of your new address.

If you have questions or concerns regarding your claim, please contact the Claims Administrator at:

Kendall v. Odonate Therapeutics, Inc.
c/o Strategic Claims Services
600 North Jackson Street, Suite 205
Media, PA 19063
Tel: 866-274-4004

Exhibit E

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN KENDALL, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ODONATE THERAPEUTICS, INC., KEVIN
C. TANG, MICHAEL HEARNE, and JOHN
G. LEMKEY,

Defendants.

Case No. 3:20-cv-1828-H-LL

Class Action

**[PROPOSED] ORDER AND FINAL
JUDGMENT**

Hon. Marilyn L. Huff

On the ____ day of _____, 2022, a hearing having been held before this Court to determine, among other things: (1) whether the terms and conditions of the Stipulation of Settlement dated November 18, 2021 (the “Stipulation”) are fair, reasonable, and adequate for the settlement of all claims asserted by Lead Plaintiff and the Settlement Class against Odonate Therapeutics, Inc. (“Odonate”), Kevin C. Tang (“Tang”), Michael Hearne (“Hearne”), and John G. Lemkey (“Lemkey”) (collectively, the “Defendants”) as a settlement of this litigation (the “Settlement”); (2) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among the Settlement Class Members; (3) whether to approve Co-Lead Counsel’s application for an award of attorneys’ fees and reimbursement of expenses to be paid from the Settlement Fund; and (4) whether to approve Lead Plaintiff’s application for a compensatory award to be paid from the Settlement Fund.

The Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing that the Notice substantially in the form approved by the Court in the Court's Order Preliminarily Approving Settlement and Providing For Notice ("Preliminary Approval Order") was mailed to all reasonably identifiable potential Settlement Class Members; and

It appearing that the Publication Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with the Preliminary Approval Order and the specifications of the Court; and

It appearing that the Stipulation, all forms of the Notice, and the Proof of Claim were posted on the Claims Administrator's website;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Unless indicated otherwise, capitalized terms used herein have the same meanings defined in the Stipulation.
2. The Court has jurisdiction over the subject matter of the Action, Lead Plaintiff, all Settlement Class Members, and the Defendants.
3. In the Preliminary Approval Order the Court certified, for purposes of the Settlement only, the Action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of the Settlement Class consisting of all persons who purchased, or otherwise acquired, the stock of Odonate (NASDAQ: ODT) between December 7, 2017 and March 25, 2021, both dates inclusive (the "Settlement Class Period"). Excluded from the Settlement Class are Defendants; members of their immediate families and their affiliates; any entity in which any Defendant had a controlling interest during the Settlement Class Period; any person who served as an officer or director of Odonate during the Settlement Class Period; the judges presiding over the Action and the immediate family members of such judges; any persons or entities listed on the Settlement

Exclusion List (as defined in the Stipulation); and the successors, heirs, and assigns of any excluded person. Per the terms of the Stipulation, Defendants shall assist in identifying the persons and entities to be excluded from the Settlement Class. Also excluded are those persons or entities who filed valid and timely requests for exclusion in accordance with the Preliminary Approval Order. If any persons or entities have filed such valid and timely requests for exclusion, they are set forth in Exhibit A hereto; if no person or entity has filed such a valid and timely request for exclusion, there is no Exhibit A hereto.

4. The Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions met the requirements of due process and Fed. R. Civ. P. 23 and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation. No Settlement Class Member is relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged and that the statutory waiting period has elapsed. Thus, it is hereby determined that all members of the Settlement Class are bound by this Order and Final Judgment, except those persons (if any) listed on Exhibit A to this Order and Final Judgment.

5. The Settlement, whereby Defendants caused to be paid per the terms of the Stipulation an aggregate gross payment amount of twelve million seven hundred fifty thousand dollars (\$12,750,000.00), is approved as fair, reasonable and adequate, and in the best interests of the Settlement Class. The Court finds that there was no collusion in connection with the Stipulation; the Stipulation was the product of informed, arm's length negotiations among competent, able counsel representing the Parties' interests; and the record is sufficiently developed and complete to have enabled the Lead Plaintiff, Co-Lead Counsel, Defendants, and their counsel to have adequately evaluated and considered their positions before deciding to settle. Lead Plaintiff and Defendants are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

6. Except with respect to any persons who have validly and timely requested exclusion from the Settlement Class (as listed on any Exhibit A hereto), this Action is dismissed with prejudice as to the Defendants.

7. Lead Plaintiff and all Settlement Class Members (regardless of whether they submitted a Proof of Claim or share in the Settlement Fund) on behalf of themselves, their successors, heirs, executors, administrators, and assigns, hereby release, waive, and forever discharge all of the Released Settlement Class Claims against Defendants and other Released Parties. Lead Plaintiff and the Settlement Class Members hereby are permanently and forever enjoined from prosecuting the Released Settlement Class Claims, as set forth in the Stipulation. For purposes of this Order and Final Judgment:

- a. "Released Settlement Class Claims" means any and all claims and causes of action of every nature and description, whether known or Unknown Claims, whether contingent or absolute, whether suspected or unsuspected, whether

asserted or unasserted, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured that Lead Plaintiff or any other Settlement Class members and their successors, heirs, executors, trustees, administrators, predecessors and assigns: (a) asserted in the SAC; or (b) could have asserted in any court or forum that arise out of or are based on the allegations, transactions, facts, matters or occurrences, representations, or omissions set forth in the SAC and that relate to the purchase or acquisition of shares of Odonate common stock on the Nasdaq Global Select Market (NASDAQ: ODT) during the Settlement Class Period. “Released Settlement Class Claims” shall exclude (i) any derivative claims based on the facts alleged in the SAC; and (ii) claims relating to the enforcement of the Settlement.

b. “Released Parties” means, for the Released Settlement Class Claims, (a) Defendants Odonate, Tang, Hearne, and Lemkey, (b) Odonate’s current and former Officers, directors, and employees, and (c) any persons or entities listed on the Settlement Exclusion List (as defined in the Stipulation).

8. Defendants and other Released Parties, on behalf of themselves, their successors, heirs, executors, administrators, and assigns, hereby fully, finally, and forever release, relinquish, and discharge each and every one of the Released Defendant Claims against Lead Plaintiff, any Settlement Class Member, and any of their counsel including Co-Lead Counsel. Defendants and

other Released Parties are hereby permanently and forever enjoined from prosecuting the Released Defendant Claims, as set forth in the Stipulation. For purposes of this Order and Final Judgment:

- a. “Released Defendant Claims” means, as defined in the Stipulation, any and all claims or causes of action of every nature and description, whether known or Unknown Claims, whether asserted or unasserted, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Released Parties, including without limitation any claims under Fed. R. Civ. P. 11, except for claims relating to the enforcement of the Settlement.
- b. “Released Parties” means, for the Released Defendant Claims, Lead Plaintiff, Co-Lead Counsel, and the Settlement Class members.

9. **Bar Order**: All Persons are barred from commencing, prosecuting, or asserting any Barred Claims (as defined below). All Barred Claims are hereby extinguished, discharged, satisfied, and unenforceable. If any term of this Bar Order is held to be unenforceable after the date of entry, such provision shall be substituted with such other provision as may be necessary to afford all Released Parties the fullest protection permitted by law from any Barred Claim. For purposes of this Order and Final Judgment:

- a. “Barred Claim” means any claim, if any, however styled, whether for indemnification, contribution, or otherwise and whether arising under state, federal or common law, against the Defendants or other Released Parties

(including claims asserted by Released Parties against other Released Parties) where the claim is or arises from a Released Claim and the alleged injury to such Person arises from that Person's alleged liability to the Settlement Class or any Settlement Class Member, including any claim in which a Person seeks to recover from any of the Released Parties (i) any amounts such person or entity has or might become liable to pay to the Settlement Class or any Settlement Class Member and/or (ii) any costs, expenses, or attorneys' fees from defending any claim by the Settlement Class or any Settlement Class Member.

10. Notwithstanding the foregoing, nothing in this Order and Final Judgment:
 - a. Will bar the Released Parties from pursuing claims that are outside the scope of or independent of the Released Claims, including but not limited to any claim that any Released Party may have for indemnification related to costs and expenses incurred in conjunction with the Action;
 - b. Will bar or constitute a release of any claim by any of the Released Parties for insurance or reinsurance coverage arising out of, related to, or in connection with this Action or the Released Claims; or
 - c. Shall prevent Lead Plaintiff or any Settlement Class Member from pursuing any claim against Defendants or other Released Parties that are excluded from the Released Settlement Class Claims as set forth above.
 - d. Shall prevent any Person listed on any Exhibit A hereto from pursuing any claim against any Released Party; if any such Person pursues any such claim against any Released Party, nothing in this Order and Final Judgment or in the

Stipulation shall operate to preclude such Released Party from (i) asserting any claim of any kind against such Person, including any Released Claim or (ii) seeking contribution or indemnity from any Person, including any other Released Party, in respect of the claim made by a Person listed on Exhibit A.

11. Lead Plaintiff's counsel are awarded attorneys' fees in the amount of \$ _____, and expenses in the amount of \$ _____, such amounts to be paid from the Settlement Fund upon entry of this Order. In the event that this Judgment does not become Final, and any portion of the Fee and Expense Award has already been paid from the Settlement Fund, Co-Lead Counsel shall within thirty (30) calendar days of entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being terminated, refund the Settlement Fund the Fee and Expense Award paid to Co-Lead Counsel.

12. Lead Plaintiff is awarded the sum of \$ _____, as reasonable costs and expenses directly relating to the representation of the Settlement Class as provided in 15 U.S.C. § 78u-4(a)(4), such amounts to be paid from the Settlement Fund upon the Effective Date of the Settlement.

13. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members.

14. The Court finds that all parties and their counsel have complied with each requirement of Fed. R. Civ. P. 11 as to all proceedings herein.

15. Neither this Order and Final Judgment, the Preliminary Approval Order, the Stipulation (including the exhibits thereto), the Memorandum Of Understanding ("MOU"), nor

any of the negotiations, documents or proceedings connected with them shall be deemed to be, or be, argued to be offered or received:

- a. Against any of the Defendants or other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Defendants or other Released Parties with respect to the truth of any fact alleged by the Lead Plaintiff in this Action or the validity of any claim that has been or could have been asserted against any of the Defendants or the Released Parties in this Action, or the deficiency of any defense that has been or could have been asserted in the Action, or of any alleged wrongdoing or liability by any of the Defendants or other Released Parties;
- b. Against any of the Defendants, the Lead Plaintiff, any Settlement Class Member, or the other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of them with respect to any liability, negligence, fault, or wrongdoing as against any of them in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation, provided, however, that if this Stipulation is approved by the Court, the Defendants, the Lead Plaintiff, any Settlement Class Member, and the other Released Parties may refer to it to effectuate the liability protection granted them hereunder;
- c. Against any of the Defendants or other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of

them that the Settlement Amount represents the amount which could or would have been received after trial of the Action against them;

- d. Against the Lead Plaintiff or any Settlement Class Member as evidence of, or construed as evidence of, any presumption, concession, or admission by Lead Plaintiff or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by the Defendants in the Action have any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund;
- e. Against the Lead Plaintiff or any Settlement Class Member or Co-Lead Counsel as evidence of, or construed as evidence of, any infirmity of the claims alleged by the Lead Plaintiff in the Second Amended Class Action Complaint or the Action or of any lack of merit to the claims or the Action or of any bad faith, dilatory motive, or inadequate prosecution of the claims or the Action or any non-compliance with Fed. R. Civ. P. or any similar rule or ethical obligation.

16. Notwithstanding the foregoing Paragraph 15, the Parties and other Released Parties may file or refer to this Order and Final Judgment, the Stipulation, Preliminary Approval Order, and/or any Proof of Claim Form: (a) to effectuate the liability protections granted hereunder or thereunder, including without limitation, to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (b) to obtain a judgment reduction under applicable law; (c) to enforce any applicable insurance policies and any agreements relating thereto; or (d) to enforce the terms of the Stipulation and/or this Order and Final Judgment.

17. Exclusive jurisdiction is hereby retained over the Parties for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Stipulation or Settlement and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Settlement Class Members.

18. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions in the Stipulation.

19. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Fed. R. Civ. P. 54(b).

20. The finality of this Order and Final Judgment shall not be affected, in any manner, by any appeals concerning the Attorneys' Fees and Expenses awarded herein, the compensatory award to Lead Plaintiff, or the Plan of Allocation.

21. In the event that the Settlement does not become Final and effective in accordance with the terms and conditions set forth in the Stipulation, then the Stipulation, except as otherwise provided in ¶¶2.5, 2.8, 2.10, 2.11, 2.12, 2.13, 2.14, 7.2, 8.2, 8.3, 8.4, 9.1, 9.4, 9.5, 9.14, 9.15, 9.16, 9.18 therein, including any amendment(s) thereto, the Preliminary Approval Order, as set forth in ¶26 thereof, and this Order and Final Judgment, except for ¶¶14, and 20-22 shall be rendered null and void of no further force or effect, and all Parties shall be deemed to have reverted *nunc pro tunc* to their respective status prior to the execution of the MOU, and all Parties shall proceed in all respects as if the MOU and the Stipulation had not been executed and the related orders had not been entered, without prejudice in any way from the negotiation, fact, or terms of the Settlement, and preserving all of their respective claims and defenses in the Action, and shall revert to their respective positions in the Action. In such circumstances, all Parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming litigation of the Action.

22. In the event the Settlement and Judgment do not become Final or the Settlement is terminated in accordance with the terms and conditions set forth in the Stipulation, within ten (10) business days of entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being terminated, all monies then held in the Notice & Administration Account and Settlement Fund, including interest earned, shall be returned to Defendants or any other person or entity who or which paid any portion of the Settlement Fund, *pro rata* as had been paid by them respectively, per their instructions, except for any monies paid or any then-accrued costs yet-to-be-paid for Notice & Administration Costs, Taxes, and Tax Expenses. Under those circumstances, Co-Lead Counsel shall undertake to return those amounts by taking all steps necessary to cause the Escrow Agent to make the foregoing repayments. Lead Plaintiff and the Settlement Class shall have no responsibility for the return of such consideration.

23. If, instead, the Settlement and Judgment become Final, once they become Final, there shall be no reversion whatsoever of any monies held in the Notice & Administration Account or Settlement Account to any of the Defendants or any other person or entity who or which paid any portion of the Settlement Amount.

24. Any Court orders entered during this Action relating to the confidentiality of information shall survive this Settlement.

Dated: _____, 2022

THE HON. MARILYN L. HUFF
UNITED STATES DISTRICT JUDGE