

Medina v. Clovis Oncology

COURT: United States District Court for the District of Colorado
CASE NUMBER: 15-cv-2546
CLASS PERIOD: 05/31/2014 - 04/07/2016

This case asserts claims against Defendant Clovis Oncology, Inc. ("Clovis") and certain of its officers ("Officer Defendants") under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against under Section 20(a) of the Exchange Act. The Complaint also asserts claims under the Securities Act of 1933 ("Securities Act") arising from Clovis' July 2015 secondary offering of common stock (the "July 2015 Offering") against Clovis, underwriters of the July 2015 Offering, and certain officers and directors who signed the relevant registration statement. This securities class action is asserted on behalf of investors who purchased (1) the publicly-traded securities of Clovis Oncology, Inc. from May 31, 2014 through April 7, 2016 (the "Class Period"), and/or (2) the common stock of Clovis pursuant to the July 2015 Offering (the "Class").

The Complaint alleges that Defendants made materially false and misleading statements about the efficacy and safety of rociletinib – a developmental drug presented to investors as a breakthrough therapy in the treatment of lung cancer and one of Clovis' most attractive assets. In particular, the Complaint alleges that Defendants reported trial results purporting to show that rociletinib's Objective Response Rate ("ORR") – a measure of the drug's ability to shrink tumors – was similar to that of a competing drug. The Complaint alleges that, unbeknownst to investors, Defendants reported an ORR for rociletinib that, in contravention of the controlling study protocol' mandates and relevant clinical trial standards, included "unconfirmed" responses, which painted a misleading comparison between rociletinib and the competitor drug. The Complaint also alleges that Defendants falsely characterized rociletinib as "safe" and "well-tolerated," while concealing from investors clinical trial data showing the drug dangerously increased heart risk. The Complaint further alleges that the price of Clovis common stock was artificially inflated as a result of Defendants' allegedly false and misleading statements and omissions, and declined when the truth was revealed in two separate disclosures on November 16, 2015 and April 8, 2016.

On February 18, 2016, the Court appointed M.Arkin (1999) LTD and Arkin Communications LTD as Lead Plaintiff for the action, approved Lead Plaintiff's selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel, and consolidated all related actions.

On May 6, 2016, Lead Plaintiff filed the Consolidated Class Action Complaint. (Dkt. No. 65). On July 27, 2016, Defendants filed three motions to dismiss the Complaint. On September 23, 2016, Lead Plaintiff served its papers in opposition to Defendants' motions to dismiss, and briefing was completed on October 14, 2016.

On February 9, 2017, the Court issued a 77-page Opinion and Order denying in part and granting in part Defendants' motions to dismiss the Complaint. The Court dismissed Lead Plaintiff's claims against Defendant Ivers-Read and the Venture Capital Defendants, as well as Lead Plaintiff's claims relating to certain of Defendants' alleged false statements. The Court also dismissed, without prejudice, Lead Plaintiff's claims against the Underwriter Defendants under Section 12(a)(2) of the Securities Act. The Court otherwise sustained the Complaint's allegations in full.

On February 22, 2017, Lead Plaintiff filed an Amended Consolidated Class action Complaint, repleading its Section 12(a)(2) claims against the Underwriter Defendants, as permitted by the Court's February 9, 2017 Opinion and

Order. On March 17, 2017, the Underwriter Defendants, with the exception of Defendant JP Morgan Securities (“Non-Lead Underwriters”), moved to dismiss the Amended Complaint’s repleaded Section 12(a)(2) claims against them. On April 7, 2017, Lead Plaintiff opposed the Non-Lead Underwriters’ motion to dismiss. The Non-Lead Underwriters filed their reply papers on April 21, 2017.

Prior to the Court’s issuance of its February 9, 2017 Opinion and Order the parties retained retired United States District Court Judge Layn Phillips to act as mediator. On February 24, 2017, and again on March 6, 2017, the parties submitted extensive mediation statements to the Judge Phillips. On March 14, 2017, the parties participated in an all-day mediation, at which Defendants gave presentations to Lead Counsel and *vice versa*. That all day session did not result in a settlement and Lead Plaintiff expressed their desire to continue with discovery, rather the settle at the amounts discussed.

As discovery progressed, the parties continued settlement negotiations. These discussions ultimately resulted in Clovis CEO Defendant Patrick Mahaffy travelling to Israel from Colorado to meet directly with Lead Plaintiff and Lead Counsel on May 23, 2017 to discuss the merits of the case. Following this meeting, with the assistance of Judge Phillips, the parties continued discussions concerning the terms of a potential resolution of the action. The parties ultimately agreed to settle and release all claims asserted against Defendants in the action in return for a payment of \$142 million, with \$25 million paid in cash and the remainder paid in Clovis common stock, which Clovis will pay or cause to be paid for the benefit of the Class.

Following a hearing on October 26, 2017, the Court entered a Judgment approving the Settlement as fair, reasonable and adequate, and entered an order approving Lead Counsel’s motion for attorneys’ fees and reimbursement of expenses.

The Settlement Class consists of:

all persons and entities who or which (i) purchased or otherwise acquired Clovis common stock and/or (ii) purchased or otherwise acquired exchange traded call options on Clovis common stock and/or sold/wrote exchange traded put options on Clovis common stock, between May 31, 2014 and April 7, 2016, inclusive (the “Class Period”), and who were damaged thereby.

The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

Case Documents

- June 24, 2019 - Order Approving Distribution Plan
- October 26, 2017 - Judgment Approving Class Action Settlement
- October 26, 2017 - Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses
- September 21, 2017 - Lead Plaintiff’s Notice of Motion and Motion For Final Approval of Class Action Settlement and Plan of Allocation (with Exhibit 1 – Amendment to Stipulation and Agreement of Settlement)
- September 21, 2017 - Memorandum of Law in Support of Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation

- September 21, 2017 - Lead Counsel's Notice of Motion and Motion for An Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- September 21, 2017 - Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorney's Fees and Reimbursement of Litigation Expenses
- September 21, 2017 - Declaration of John C. Browne in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (with Exhibits 1-24)
- August 4, 2017 - Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- July 14, 2017 - Order Preliminarily Approving Settlement and Providing for Notice
- June 22, 2017 - Stipulation and Agreement of Settlement
- February 22, 2017 - Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws and Jury Trial Demand