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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

IN RE AFFYMAX, INC. SHAREHOLDER)
DERIVATIVE LITIGATION)

Lead Case No. 113CV243259
(Consolidated with Case No. 113CV243962)

This Document Relates To:)

ALL ACTIONS.)

NOTICE OF PROPOSED SETTLEMENT
AND SETTLEMENT HEARING

Judge: Hon. Peter H. Kirwan
Dept.: 1
Date Action Filed: March 19, 2013

1 **TO: ALL CURRENT RECORD HOLDERS AND BENEFICIAL OWNERS OF THE**
2 **COMMON STOCK OF AFFYMAX, INC. ("AFFYMAX" OR THE "COMPANY") AS**
3 **OF MAY 29, 2014 ("CURRENT AFFYMAX SHAREHOLDERS").**

4 **THIS NOTICE RELATES TO THE PENDENCY AND PROPOSED SETTLEMENT OF**
5 **SHAREHOLDER DERIVATIVE LITIGATION. PLEASE READ THIS NOTICE**
6 **CAREFULLY AND IN ITS ENTIRETY. IF YOU ARE A CURRENT AFFYMAX**
7 **SHAREHOLDER, THIS NOTICE CONTAINS IMPORTANT INFORMATION ABOUT YOUR**
8 **RIGHTS.**

9 **YOU ARE HEREBY NOTIFIED**, pursuant to an Order of the Superior Court of the State of
10 California, County of Santa Clara (the "Court"), a proposed Settlement¹ has been reached by the Parties
11 to the shareholder derivative action brought on behalf of Affymax, captioned *In re Affymax, Inc.*
12 *Derivative Litigation*, Lead Case No. 113CV243259 (the "Action").

13 As explained below, the Court will hold a Settlement Hearing on September 19, 2014 at 9:00
14 a.m., before the Honorable Peter H. Kirwan, Department 1 of the Superior Court of the State of
15 California, Santa Clara County, located at 191 N. 1st Street, San Jose, California 95113, to determine
16 whether to approve the Settlement. You have an opportunity to be heard at this hearing.

17 The terms of the Settlement are set forth in the Parties' Stipulation and summarized in this
18 Notice. If approved by the Court, the Settlement will fully resolve the Action, including the dismissal
19 of the Action with prejudice. For a more detailed statement of the matters involved in the Action, the
20 Settlement, and the terms discussed in this Notice, the Stipulation may be inspected at the Clerk of
21 Court's office, 191 N. 1st Street, San Jose, California 95113. The Stipulation is also available for
22 viewing on the website of Affymax at <http://www.affymax.com>.

23 This Notice is not intended to be an expression of any opinion by the Court with respect to the
24 merits of the claims made in the Action, but is merely to advise you of the pendency and Settlement of the
25 Action.

26 **There is No Claims Procedure.** This case was brought to protect the interests of Affymax and its
27 shareholders. The Settlement has assisted the Company in securing insurance money to settle the related

28 ¹ Except as otherwise expressly provided below or as the context otherwise requires, all capitalized
terms contained herein shall have the same meanings and/or definitions as set forth in the Stipulation of
Settlement dated May 29, 2014 (the "Stipulation").

1 Securities Class Action and will result in changes to the Company's corporate governance, not in payment
2 to individuals, and accordingly, there will be no claims procedure.

3 **I. SUMMARY OF THE ACTION**

4 On March 19, 2013, plaintiff Christopher Scott ("Scott") filed a shareholder derivation action,
5 captioned *Scott v. Orwin*, Case No. 113CV243259, in the Court on behalf of Affymax, alleging
6 breaches of fiduciary duty by the Individual Defendants relating to their alleged misrepresentation of
7 the safety and efficacy, among other things, of the Company's only product, OMONTYS®
8 (peginesatide) Injection ("OMONTYS") (the "*Scott Action*"). Specifically, Plaintiff Scott alleged that
9 the Individual Defendants, inter alia: (i) disregarded red flags alerting them of hypersensitivity (or
10 allergic) reaction experienced by patients using OMONTYS during the drug's Phase 3 clinical trials; (ii)
11 failed to implement additional testing to develop a better understanding of the issues and determine the
12 root cause of the reaction; and (iii) failed to disclose the full extent of the safety issues associated with
13 using OMONTYS and instead consistently touted the Company's business prospects in order to drive up
14 the stock price of Affymax.

15 On April 2, 2013, plaintiff Michael Markland ("Markland") filed a shareholder derivation
16 action, captioned *Markland v. Orwin*, Case No. 113CV243962, in the Court, alleging substantively
17 similar wrongdoings as the *Scott Action*.

18 Counsel for the Settling Parties engaged in arm's-length negotiations concerning the terms and
19 conditions of a potential resolution of the Action, including a mediation before the Honorable Layn R.
20 Phillips (Ret.). After arm's-length negotiations with the assistance and involvement of the Mediator, the
21 Settling Parties were able to reach an agreement-in-principle to resolve the Action. Following the
22 mediation and negotiations, counsel for the Settling Parties reached an agreement providing for the
23 settlement of the Action as documented by the Stipulation.

24 **II. PLAINTIFFS' CLAIMS AND THE BENEFITS OF SETTLEMENT**

25 Plaintiffs believe that the Action has substantial merit, and Plaintiffs' entry into the Stipulation
26 and Settlement is not intended to be and shall not be construed as an admission or concession
27 concerning the relative strength or merit of the claims alleged in the Action. However, Plaintiffs and
28 Plaintiffs' Counsel recognize and acknowledge the unique and difficult circumstances the Company is

1 currently facing. Plaintiffs and their counsel also acknowledge the significant risk, expense, and length
2 of continued proceedings necessary to prosecute the Action against the Individual Defendants through
3 trial and through possible appeals. Plaintiffs' Counsel also have taken into account the uncertain
4 outcome and the risk of any litigation, especially in complex cases such as the Action, as well as the
5 difficulties and delays inherent in such litigation. Plaintiffs' Counsel are also mindful of the inherent
6 problems of establishing demand futility, and the possible defenses to the claims alleged in the Action.

7 Plaintiffs' Counsel have conducted extensive investigation, including, inter alia: (i) reviewing
8 Affymax's press releases, public statements, U.S. Securities and Exchange Commission ("SEC") filings,
9 and securities analysts' reports and advisories about the Company; (ii) reviewing media reports about
10 the Company; (iii) researching the applicable law with respect to the claims alleged in the Action and
11 the potential defenses thereto; (iv) preparing and filing derivative complaints; (v) conducting extensive
12 damages analyses; (vi) participating in informal conferences with Defendants' Counsel regarding the
13 specific facts of the cases, the perceived strengths and weaknesses of the cases, and other issues in an
14 effort to facilitate negotiations and fact gathering; (vii) reviewing and analyzing relevant documents in
15 the Securities Class Action—including the motion to dismiss briefing and the Court's order denying the
16 defendants' motion to dismiss—and evaluating the merits of, and the defendants' potential liability in
17 connection with, the Securities Class Action; (viii) submitting comprehensive briefs prior to mediation,
18 outlining their position, and their claims in the Action; (ix) actively participating in an in-person, full-
19 day mediation to assist in securing, among other things, the settlement of the Securities Class Action;
20 and (x) negotiating this Settlement with Defendants. Based on Plaintiffs' Counsel's thorough review
21 and analysis of the relevant facts and difficult circumstances, allegations, defenses, and controlling legal
22 principles, Plaintiffs' Counsel believe that the Settlement set forth in the Stipulation is fair, reasonable,
23 and adequate, and confers substantial benefits upon Affymax and its shareholders. Based on their
24 evaluation, Plaintiffs, their counsel, and Affymax have determined that the Settlement is in the best
25 interests of Affymax and its shareholders and have agreed to settle the Action upon the terms set forth
26 in the Stipulation.

1 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

2 The Individual Defendants have denied and continue to deny each and all of the claims,
3 contentions, and allegations made against them or that could have been made against them in the
4 Action, and believe the Action has no merit. The Individual Defendants have expressly denied and
5 continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct,
6 statements, acts, or omissions alleged, or that could have been alleged, in the Action. The Individual
7 Defendants assert that they have satisfied their fiduciary duties and have acted in good faith and in the
8 best interest of Affymax and its shareholders at all relevant times. Defendants have thus entered into
9 the Stipulation to avoid the continuing additional expense, inconvenience, and distraction of the Action,
10 as well as the risks and uncertainty inherent in any lawsuit. Defendants believe that it is desirable and
11 beneficial that the Action be settled in the manner and upon the terms and conditions set forth in the
12 Stipulation because, among other things, it will allow the Company to pursue alternatives in the best
13 interests of its shareholders that may not be possible without this Settlement. Further, Affymax, through
14 its Board of Directors, acknowledges that the Settlement is fair, reasonable, and adequate, and in the
15 best interests of Affymax and its shareholders.

16 Neither the Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any
17 document or exhibit referred or attached to the Stipulation, nor any action taken to carry out the
18 Stipulation, is, may be construed as, or may be used as evidence of the validity of any of the Released
19 Claims or an admission by or against the Individual Defendants of any fault, wrongdoing, or concession
20 of liability whatsoever.

21 **IV. THE SETTLEMENT HEARING**

22 The Settlement Hearing will be held before the Honorable Peter H. Kirwan on September 19,
23 2014 at 9:00 a.m., in Department 1 of the Superior Court of the State of California, Santa Clara County,
24 located at 191 N. 1st Street, San Jose, California 95113, to determine whether: (i) the Settlement of the
25 Action upon the terms and subject to the conditions set forth in the Stipulation is fair, reasonable, and
26 adequate and should be approved by the Court; (ii) the Action should be dismissed with prejudice; and
27 (iii) to approve the agreed upon Fee and Expense Amount for Plaintiffs' Counsel's fees and expenses as
28

1 set forth in the Stipulation. The Settlement Hearing may be continued by the Court at the Settlement
2 Hearing, or at any adjourned session thereof without further notice.

3 **V. TERMS OF THE SETTLEMENT**

4 The terms and conditions of the proposed Settlement are set forth in the Stipulation described
5 above. The Stipulation has been filed with the Court and is also available for viewing on the website of
6 Affymax at <http://www.affymax.com>. The following is only a summary of its terms.

7 The Settling Parties have conducted arm's-length negotiations over an extended period of time
8 and have reached an agreement in good-faith to settle the Action with the assistance of the Honorable
9 Layn R. Phillips (Ret.), a former federal district court judge and highly respected mediator with
10 extensive experience in the mediation of complex shareholder derivative actions. As consideration for
11 the Settlement, Affymax has agreed to acknowledge that the Action materially assisted the Company in
12 securing \$6.5 million in insurance proceeds to settle the Securities Class Action and adopt and/or
13 implement certain corporate governance reforms, as discussed below.

14 **Corporate Governance Reforms.** As a result of the filing, prosecution, and settlement of the
15 Action, Affymax has agreed to adopt the corporate governance reforms set forth in section I.A. of
16 Exhibit A to the Stipulation within thirty days after the Effective Date, and to keep such reforms in
17 force and effect for a period of no less than five years. All other provisions set forth in Exhibit A shall
18 be implemented and maintained for a period of no less than five years if Affymax reintroduces
19 OMONTYS to the market or initiates plans to develop any new drug, medical device, product, or other
20 related venture and Affymax continues to be a publicly traded company. Moreover, Affymax, through
21 its Board of Directors, acknowledges and agrees that the securing of the \$6.5 million as set forth above
22 and corporate governance reforms, additions, amendments, or formalizations identified in Exhibit A to
23 the Stipulation confer substantial benefits upon Affymax and its shareholders. Affymax, through its
24 Board of Directors, also acknowledge that the prosecution and settlement of the Action were the sole
25 factors in their decision to adopt and/or implement the corporate governance reforms set forth in Exhibit
26 A.

1 **VI. DISMISSAL AND RELEASES**

2 In connection with the Court's approval of the Settlement, Plaintiffs' Action and all claims
3 asserted by Plaintiffs on behalf of Affymax and against the Individual Defendants will be dismissed
4 with prejudice.

5 Upon the Effective Date, the Releasing Persons shall be deemed to have fully, finally, and
6 forever released, relinquished, and discharged the Released Claims (including Unknown Claims)
7 against the Released Persons. Nothing herein shall in any way impair or restrict the rights of any
8 Settling Party to enforce the terms of the Stipulation or the Judgment.

9 Further, upon the Effective Date, each of the Released Persons shall be deemed to have fully,
10 finally, and forever released, relinquished, and discharged Plaintiffs, Plaintiffs' Counsel, and Affymax
11 from all claims (including Unknown Claims), arising out of, relating to, or in connection with the
12 institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims.
13 Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of
14 the Stipulation or the Judgment.

15 **VII. PLAINTIFFS' COUNSEL'S FEES AND EXPENSES**

16 After negotiating the substantive terms of the settlement, Plaintiffs' Counsel and Affymax
17 negotiated the attorneys' fees and expenses that Affymax's Board of Directors has agreed to cause
18 Affymax and/or Defendants' insurers to pay, or cause to be paid, to Plaintiffs' Counsel, subject to Court
19 approval. As a result of these negotiations, and in recognition of the substantial benefits conferred upon
20 Affymax as a direct result of the prosecution and Settlement of the Action, and as subject to Court
21 approval, Affymax and/or its insurers shall pay, or cause to be paid, to Plaintiffs' Counsel the agreed-to
22 amount of \$375,000 (the "Fee and Expense Amount"). To date, Plaintiffs' Counsel have neither
23 received any payment for their services in connection with the Action, nor have counsel been
24 reimbursed for their out-of-pocket expenses incurred. Neither the Individual Defendants nor Affymax's
25 shareholders are personally liable for the payment of the Fee and Expense Amount.

26 **VIII. THE RIGHT TO OBJECT AND/OR BE HEARD AT THE HEARING**

27 Any Current Affymax Shareholder may object and/or appear and show cause, at their own
28 expense, individually or through counsel of their own choice, if he, she, or it has any concern, why the

1 Settlement should not be approved as fair, reasonable, and adequate, or why the Judgment should not be
2 entered thereon, or why the amount of attorneys' fees and reimbursement of expenses should not be
3 approved. However, unless otherwise ordered by the Court, no Current Affymax Shareholder shall be
4 heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved,
5 the Judgment to be entered thereon approving the same, or the amount of attorneys' fees and
6 reimbursement of expenses to Plaintiffs' Counsel, unless that shareholder has, *at least fourteen*
7 *calendar days prior to the Settlement Hearing*:

8 (1) filed with the Clerk of the Court a written objection to the settlement setting forth:

9 (a) the nature of the objection;

10 (b) proof of current ownership of Affymax common stock, including the number of
11 shares of Affymax common stock and the date of purchase; and

12 (c) any documentation in support of such objection.

13 (2) If a Current Affymax Shareholder intends to appear and requests to be heard at the
14 Settlement Hearing, such shareholder must have, in addition to the requirements of (1) above, filed with
15 the Clerk of the Court:

16 (a) written notice of such shareholder's intention to appear;

17 (b) a statement that indicates the basis for such appearance; and

18 (c) the identities of any witnesses, if any, the shareholder intends to call at the
19 Settlement Hearing and a statement as to the subject of their testimony.

20 If a Current Affymax Shareholder files a written objection and/or written notice of intent to
21 appear, such shareholder *must also simultaneously serve copies of such notice, proof, statement, and*
22 *documentation, together with copies of any other papers or briefs such shareholder files with the*
23 *Court (either by hand delivery or by first class mail) upon each of the following:*

24 Clerk of the Court
25 Superior Court of the State of California
26 Santa Clara County
191 N. 1st Street
San Jose, CA 95113

27 *The Court*

28 Brian J. Robbins

Corey D. Holzer

1 Kevin A. Seely
Joan M. Rabutaso
2 ROBBINS ARROYO LLP
600 B Street, Suite 1900
3 San Diego, CA 92101
Telephone: (619) 525-3990
4 Facsimile: (619) 525-3991

5 *Co-Lead Counsel for Plaintiffs*

6 John C. Dwyer
Jeffrey Kaban
7 COOLEY LLP
5 Palo Alto Square
8 3000 El Camino Real
Palo Alto, CA 94306

9
10 *Counsel for Defendants John A. Orwin,*
Robert F. Venteicher, Jeffrey H. Knapp,
Anne-Marie Duliege, Herb Cross, Kathleen
Laporte, Ted W. Love, Daniel K.
Spiegelman, John P. Walker, Christine Van
Heek, Keith R. Leonard, Jr., Hollings C.
Renton, and Nominal Defendant Affymax,
13 *Inc.*

Marshall P. Dees
HOLZER & HOLZER, LLC
1200 Ashwood Parkway, Suite 410
Atlanta, GA 30388
Telephone: (770) 392-0090
Facsimile: (770) 392-0029

Co-Lead Counsel for Plaintiffs

14 Unless otherwise ordered by the Court, any Current Affymax Shareholder who does not make
15 his, her, or its objection in the manner provided herein shall be deemed to have waived such objection
16 and shall forever be barred and foreclosed from making any objection to the fairness, reasonableness, or
17 adequacy of the Settlement, to the agreed upon Fee and Expense Amount, or to otherwise be heard, and
18 shall otherwise be bound by the Judgment to be entered and the releases to be given.

19 **IX. CONDITIONS FOR SETTLEMENT**

20 The Settlement is conditioned upon the occurrence of certain events described in the Stipulation,
21 which requires, among other things:

- 22 a. approval of the Settlement by Affymax's Board of Directors, which Defendants'
23 Counsel represent has already been accomplished;
- 24 b. entry of the Judgment, in all material respects in the form set forth as Exhibit D
25 annexed to the Stipulation, approving the Settlement, without awarding costs to any party, except as
26 provided herein;
- 27 c. the payment of the Fee and Expense Amount as approved by the Court; and
28 d. the passing of the date upon which the Judgment becomes Final.

1 If, for any reason, any one of the conditions described in the Stipulation is not met and the entry
2 of the Judgment does not occur, the Stipulation might be terminated and, if terminated, will become null
3 and void; and the Settling Parties to the Stipulation will be restored to their respective positions as of the
4 date of execution of the Stipulation.

5 **X. EXAMINATION OF PAPERS AND INQUIRIES**

6 There is additional information concerning the Settlement available in the Stipulation, which
7 may be viewed on the website of Affymax at <http://www.affymax.com>. You may also inspect the
8 Stipulation during business hours at the office of the Clerk of the Court, Superior Court of the State of
9 California, Santa Clara County, located at 191 N. 1st Street, San Jose, California 95113. Or you can
10 call Co-Lead Counsel for Plaintiffs: Robbins Arroyo LLP, 600 B Street, Suite 1900, San Diego,
11 California 92101, Telephone: (800) 350-6003 or Holzer & Holzer, LLC, 1200 Ashwood Parkway, Suite
12 410, Atlanta, Georgia 30338, Telephone: (888) 508-6832, for additional information concerning the
13 Settlement.

14 **PLEASE DO NOT TELEPHONE THE COURT OR**
15 **AFFYMAX REGARDING THIS NOTICE.**

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