

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALPHA VENTURE CAPITAL
PARTNERS LP, CARACCILO
FAMILY TRUST, GREGORY A.
GOULD, LAW OFFICES OF
KENNETH E. CHYTEN DEFINED
BENEFIT PENSION PLAN, GAVIN
MYERS, AND MARTIN PETERSON,
derivatively on behalf of CYTODYN
INC.,

Plaintiffs,

v.

NADER Z. POURHASSAN, SCOTT A.
KELLY, MICHAEL A. KLUMP,
JORDAN G. NAYDENOV, DAVID F.
WELCH, CRAIG S. EASTWOOD,
MICHAEL D. MULHOLLAND,
NITYA G. RAY, and BRENDAN RAE,

Defendants,

-and-

CYTODYN INC., a Delaware
Corporation,

Nominal Defendant.

C.A. No. 2020-0307-PAF

**STIPULATION AND AGREEMENT OF
COMPROMISE, SETTLEMENT, AND RELEASE**

This Stipulation and Agreement of Compromise, Settlement, and Release (“Stipulation”), dated January 27, 2021, is entered into, by and through their undersigned attorneys, among and between: (i) defendants Nader Z. Pourhassan, Ph.D., Scott A. Kelly, M.D., Michael A. Klump, Jordan G. Naydenov, David F.

Welch, Ph.D. (the “Director Defendants”), Craig S. Eastwood, Michael D. Mulholland, Nitya G. Ray, Ph.D., and Brendan Rae, Ph.D. (collectively with the Director Defendants, the “Defendants”), on the one hand; and (ii) Nominal Defendant CytoDyn Inc. (“CytoDyn” or the “Company”), by and through the Special Litigation Committee (the “SLC”) of the Board of Directors of CytoDyn (the “Board”), on the other hand. Defendants and the Company are collectively referred to herein as the “Parties.” The Parties are parties to the derivative action captioned *Alpha Venture Capital Partners LP v. Pourhassan*, C.A. No. 2020-0307-PAF (the “Action”), pending before the Court of Chancery of the State of Delaware (the “Court”).

This Stipulation is intended by the Parties to fully, finally, and forever compromise, resolve, discharge, and settle all Released Claims against the Released Persons and to dismiss the Action with prejudice upon the terms set forth below and subject to the approval of the Court of Chancery of the State of Delaware pursuant to Court of Chancery Rule 23.1.

1. Background of the Action and Investigation

1.1. CytoDyn is a Delaware corporation headquartered in Vancouver, Washington. Founded in 2002, CytoDyn is a pre-revenue, clinical-stage biotechnology company developing innovative treatments for multiple therapeutic indications including HIV, cancer and other immunological conditions. CytoDyn is

currently focused on developing leronlimab, a monoclonal antibody CCR5 receptor antagonist, to be used as a platform drug for a variety of indications, including certain cancers.

1.2. On December 19, 2019, the Board approved a series of equity awards amounting to a total of 9,300,000 stock options and warrants to (a) its five members, (b) three non-director employees, CFO Mulholland, Business Development head Rae, Chief Technology Officer Ray, and (c) a non-party consultant (the “December 2019 Awards”). The awards consisted of the following stock options (or warrant, as indicated):

Recipient	Vesting Event		Totals
	Vyera Transaction	BLA Submission	
Pourhassan	2,000,000	2,000,000 warrant	2,000,000 options 2,000,000 warrant
Kelly	750,000	500,000	1,250,000
Welch	750,000	-	750,000
Klump	750,000	-	750,000
Naydenov	750,000	-	750,000
Rae	300,000	-	300,000
Ray	200,000	400,000	600,000
Mulholland	350,000	350,000	700,000
Patterson	200,000	-	200,000
TOTALS	6,050,000	3,250,000	7,300,000 options 2,000,000 warrant

1.3. The warrant for 2,000,000 shares awarded to Dr. Pourhassan, conditioned on the Company’s submission of its first biologics license application (“BLA”) was awarded outside of the Company’s Equity Incentive Plan (the “Plan”)

because there was an insufficient number of shares available for issuance under the Plan.

1.4. The options and warrant comprising the December 2019 Awards each had an exercise price of \$0.63 per share, the closing price of the Company's common stock on the date of the awards, and were exercisable for ten (10) years. Options to purchase 6,050,000 shares vested on grant. The remaining options and warrant for 3,250,000 shares vested upon the Company's submission of the BLA, which was expected to occur by the end of the following month. The Company began the BLA filing prior to January 9, 2020, and completed it on May 11, 2020, and thus all of the December 2019 Awards have vested.

1.5. On January 28, 2020, the Compensation Committee of the Board approved the award of 11,650,000 performance-based shares, with vesting contingent on: (a) the Company achieving Breakthrough Therapy Designation for cancer using leronlimab within six (6) months of the grant; (b) there being enough shares available for the issuance; and (c) there being no legal issues related to the issuance of the shares (the "January 2020 Awards"). Assuming all conditions were met, Dr. Pourhassan was to receive 6,000,000 shares, Dr. Kelly was to receive 2,500,000 shares, Dr. Welch and Mr. Naydenov were each to receive 1,500,000 shares, and then CFO Eastwood was to receive 150,000 shares. Mr. Klump was not

on the Board at the time of the January 2020 Awards, and therefore he did not approve them, nor was he to receive any of the January 2020 Awards.

1.6. Following the December 2019 and January 2020 Awards (together, the “Awards”), the Plaintiffs served a demand for books and records related to the Awards pursuant to Section 220 of the Delaware General Corporation Law (“DGCL”). In response, the Company produced to Plaintiffs certain documents related to the Awards on April 7, 2020.

1.7. On April 24, 2020, Plaintiffs filed a Verified Stockholder Derivative Complaint (the “Complaint”), which is the operative pleading in this Action. Plaintiffs allege that Defendants breached their fiduciary duties by approving the Awards.¹ Specifically, the Complaint alleges the Director Defendants violated the duty of loyalty by approving unfair and dilutive equity awards, granting some of the Awards outside of the Company’s Equity Incentive Plan, misleading CytoDyn’s stockholders about the true purpose of the Awards, granting the Awards without stockholder approval, and awarding themselves “spring-loaded” stock options—allegedly taking advantage of non-public information about a clinical trial which would be released on December 23, 2019. It also alleges bad faith against the Director Defendants on the theory that they intentionally and knowingly followed

¹ As noted above, Mr. Klump did not approve or otherwise participate in the January 2020 Awards.

an inadequate process in granting the Awards. The Complaint further brings a claim for unjust enrichment against all Defendants based on their receipt of the Awards, as well as a claim for waste against the Director Defendants. Plaintiffs seek rescission of the Awards, damages including interest and attorneys' fees, and a declaration that the Director Defendants breached their fiduciary duties.

1.8. On April 30, 2020, Dr. Pourhassan exercised the options he received in the December 2019 Awards to acquire 2,000,000 shares of common stock by paying the cash exercise price. He also exercised other options (obtained prior to the December 2019 Awards) to acquire an additional approximately 3,381,000 shares of common stock. In a series of sales closed on April 30, May 1, and May 4, 2020, Dr. Pourhassan sold approximately 4,800,000 of the shares at prevailing market rates.

1.9. On May 4, 2020, CytoDyn's Board created the SLC comprised of outside directors Samir Patel, M.D. and Alan Timmins after determining that both Dr. Patel and Mr. Timmins were independent directors. Dr. Patel and Mr. Timmins were appointed to the Board after the Awards were approved. The Board granted the SLC full and plenary power of the Company to act with respect to the Action, including without limitation, the full power to investigate, analyze, and evaluate the claims alleged, consider and determine whether prosecution of the claims in the Action was in the best interests of the Company and its stockholders, and to

determine the actions, if any, the Company should take with respect to the claims in the Action, (including without limitation settling the Action). Among other things, the Board resolution creating the SLC gave full discretion to the SLC with respect to the resolution of this matter. It also empowered the SLC to retain its own independent advisors.

1.10. On May 21, 2020, the SLC issued a directive regarding exercising the challenged Awards to maintain the status quo prohibiting the Defendants from exercising any of the Awards unless they agreed to place the proceeds from any such exercise or sale into an escrow account.

1.11. On May 22, 2020, the SLC moved to stay the Action until the SLC completed its investigation of the claims asserted in the Complaint. On July 2, the Court granted the stay until December 1, 2020.

1.12. On July 27, 2020, the January 2020 Awards were forfeited when the vesting conditions were not met by the stated deadline.

1.13. On November 30, 2020, the Court extended the stay to December 15, 2020 to facilitate efforts on the part of the SLC to negotiate a resolution of the Action on behalf of the Company.

1.14. The SLC conducted a thorough, independent investigation between May and November 2020, which will be detailed in the SLC's Brief in Support of its Motion for Settlement Approval (the "Brief"). The SLC reviewed, with its

counsel, the underlying factual and legal merits of each theory of liability advanced in the Action; obtained expert assistance from an independent compensation consultant; conducted a targeted review over approximately 51,000 documents from 14 custodians; conducted interviews of the critical witnesses involved with the relevant events; and met with Plaintiffs and their counsel in the Action. The SLC met regularly during the investigation and, with assistance of counsel, worked towards completing its investigation by December 1, 2020.

1.15. The SLC concluded that it would be in the best interest of CytoDyn for the SLC to present a settlement offer to Defendants and to attempt to negotiate a reasonable settlement. On November 19, 2020, counsel for the SLC, Wilson, Sonsini, Goodrich & Rosati (“WSGR”), met virtually with counsel for the Defendants to discuss the findings of the SLC’s investigation and the SLC’s settlement proposal. Following this meeting, WSGR sent a formal, written settlement proposal to the Defendants’ counsel. Over the following weeks, the SLC, through WSGR, and the Defendants, through their counsel, conducted extensive arm’s length settlement negotiations. The negotiations included a meeting on November 30, 2020 among the SLC, WSGR, certain of the Defendants, their counsel, and the Company’s general counsel and a meeting on December 8, 2020 among WSGR and certain Defendants and their counsel.

1.16. On December 15, 2020, following additional negotiations, the SLC and the Defendants reached an agreement in principle and executed a memorandum of understanding outlining the key terms of their agreement on December 18, 2020 (the “MOU”). The SLC and the Defendants have resolved to settle the Action pursuant to the terms set forth in this Stipulation. In reaching that determination, the SLC considered the facts and circumstances surrounding the proposed settlement, including among other matters: (i) the strengths and weaknesses in the claims asserted by Plaintiffs and Defendants’ anticipated defenses (including in light of the SLC’s view of these strengths and weakness as a result of the SLC’s investigation); (ii) the time, expenses, risks, and uncertainties of continued litigation; (iii) the effect on CytoDyn of continued litigation; and (iv) the benefits this Settlement affords CytoDyn and the desirability of permitting the Settlement to be consummated according to its terms. With the assistance of its counsel, the SLC will summarize its investigation, its findings and its conclusions in the Brief.

2. Definitions

As used in this Stipulation and unless defined elsewhere in the Stipulation, the following terms have the meanings specified below:

2.1. “Action” means the derivative action pending in this Court captioned *Alpha Venture Capital Partners LP v. Pourhassan*, C.A. No. 2020-0307-PAF.

2.2. “Advisers” means accountants, auditors, underwriters, bankers, investment bankers, attorneys, consultants, and other advisers.

2.3. “Affiliate” means a Person’s respective heirs, assigns, current or former immediate family members, estates, executors, administrators, legal representatives, trusts of which the Person is a settlor, beneficiary, or trustee, or any entity (other than CytoDyn) in which the Person has or had a controlling interest.

2.4. “Current CytoDyn Stockholder(s)” means any Person or Persons who are record holders or beneficial owners of CytoDyn stock as of the Record Date, excluding the Defendants, the officers and directors of CytoDyn, and their respective Affiliates.

2.5. “CytoDyn Related Persons” means: (a) any predecessor, successor, subsidiary, division, or affiliate of CytoDyn; (b) any joint venture, partnership, limited liability company, corporation, or other entity in which CytoDyn has an ownership interest (together with any officer, director, member, partner, limited partner, manager or other Person who held an analogous position with such entity (other than Defendants)); (c) any Advisers of or to CytoDyn or any entity encompassed within subparagraph (b) other than Defendants; (d) any current or former officer, director or employee of CytoDyn other than the Defendants, together with their respective Affiliates; and (e) the SLC and its Advisers.

2.6. “Defendants’ Related Persons” means: (i) any of the Defendants’ respective Affiliates, or other entity controlled by or for the benefit of any Defendant that held CytoDyn securities for the benefit of a Defendant or Defendant’s Affiliate (together with any officer, director, member, partner, limited partner, manager or other Person who held an analogous position with an Affiliate); or (ii) any Adviser who was involved in any respect with a Defendant’s involvement with the Released Claims.

2.7. “Effective Date” means the date as defined in Paragraph 6.1 of this Stipulation.

2.8. “Executive Officers” is defined as in Rule 3b-7 under the Securities Exchange Act of 1934.

2.9. “Final” means the expiration of all time to seek appeal or other review of the Judgment, or if any appeal or other review of such Judgment is filed and not dismissed, after such Judgment is upheld on appeal in all material respects and is no longer subject to appeal, reargument, or review by writ of certiorari or otherwise.

2.10. “Final Approval” of the Settlement means that (a) the Court has entered the Judgment—with no material modification to the form of Judgment—approving the Settlement, dismissing the Defendants from the Action with prejudice on the merits and without costs to any Party (except any costs specifically identified in this Stipulation), and providing for the releases set forth below; and (b) such Judgment

is Final; *provided, however*, and notwithstanding any provision to the contrary in this Stipulation, Final Approval shall not include (and the Settlement is expressly not conditioned on) the award of attorneys' fees or the reimbursement of expenses to counsel for any Person, including any appeal related to any such award.

2.11. "Judgment" means the order and final judgment, substantially in the form attached to this Stipulation as Exhibit D, dismissing this Action with prejudice and, among other things, finding that: (a) the Board vested the SLC with plenary authority with respect to the Action, including the authority to settle the Litigation; (b) the Settlement is fair, reasonable and adequate and in the best interests of CytoDyn and its stockholders; (c) the SLC members were independent and conducted a thorough investigation of the claims asserted in the Action and came to their conclusion that the Settlement was in the best interests of CytoDyn and its stockholders reasonably and in good faith; and (d) approving the Releases.

2.12. "Notices" means the Notices of Pendency of Settlement of Action, substantially in the form annexed to this Stipulation as Exhibits B and C.

2.13. "Parties" means CytoDyn and Defendants.

2.14. "Person" means any individual, corporation, partnership, limited liability company, association, affiliate, parent, subsidiary, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

2.15. “Plaintiffs” means Alpha Venture Capital Partners, L.P., Caracciolo Family Trust, Gregory A. Gould, Law Offices of Kenneth E. Chyten Defined Benefit Pension Plan, Gavin Myers, and Martin Peterson, individually and derivatively on behalf of CytoDyn.

2.16. “Plaintiffs’ Counsel” means counsel of record for the Plaintiffs in the Action.

2.17. “Record Date” means close of business on the date that this Stipulation is filed with the Court.

2.18. “Released Claims” means and includes any and all claims for relief or causes of action, debts, demands, rights, liabilities, losses, and claims whatsoever, known or unknown (including Unknown Claims), fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, that have been or could have been asserted by CytoDyn or any Current CytoDyn Stockholder purporting to act on behalf of CytoDyn in the Action or any other Person purporting to act on behalf of CytoDyn, and that relate in any way, directly or indirectly, to any of the actual, alleged or attempted actions, inactions, conduct, transactions, occurrences, representations, misrepresentations, omissions, events, or any other matters that were, or could have been, alleged, asserted, or described in the Action, or that relate in any way to the investigation or resolution of the Action, including but not limited to claims arising out of or related in any way to (a) the

December 2019 Awards; (b) the January 2020 Awards; (c) CytoDyn's expenditure of Company funds in response to the Action or to other legal actions related to the Awards; and (d) any activities, decisions, or investigations by or relating to the SLC; ***provided, however,*** that it is understood that Released Claims and any release provided by this Settlement shall not include: (i) any claims to enforce the Settlement; (ii) any claims by CytoDyn or Defendants or any other insured to enforce their rights under any contract or policy of insurance; (iii) any claims that relate to Defendants' rights to advancement or indemnification pursuant to CytoDyn's certificate of incorporation, CytoDyn's bylaws, separate indemnity and/or advancement agreements between CytoDyn and any of the Defendants, or pursuant to provisions of the DGCL; or (iv) the claim for violation of Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b), asserted in the action pending in the United States District Court for the Western District of Washington captioned *Alpha Venture Capital Partners LP et al. v. Pourhassan*, Case No. 3:20-cv-05909-JLR (the "Washington Action") and any defense thereto, including any defense alleging that any damages in the Washington Action should be reduced as a result of this Settlement.

2.19. "Released Persons" means all Persons against whom any claims are released pursuant to the Releases.

2.20. “Releases” means the releases of the Released Claims by the Released Persons as set forth in Section 4 of this Stipulation.

2.21. “Scheduling Order” means an order scheduling a hearing on fairness, reasonableness and adequacy of this Stipulation and approving the form of Notices and method of, and directing the giving of, Notices of the Settlement to Current CytoDyn Stockholders, substantially in the form annexed to this Stipulation as Exhibit A.

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

2.23. “Settlement Hearing” means the hearing set by the Court in the Scheduling Order to consider final approval of the Settlement, including any continuances or adjournments of the hearing.

2.24. “Unknown Claims” means any claims that a Party does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against any of the Released Persons, including without limitation those which, if known, might have affected the decision to enter into the Settlement and this Stipulation. With respect to any of the Released Claims, the Parties stipulate and agree that upon Final Approval of the Settlement, the Parties shall be deemed to have, and by operation of the Judgment shall have, expressly waived, relinquished, and released any and all provisions, rights, and benefits conferred by or under Cal.

Civ. Code § 1542 or any law or principle of common law of the United States or of any state or territory of the United States or other jurisdiction, that is similar, comparable, or equivalent to Cal. Civ. Code § 1542. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that they may hereafter discover facts in addition to or different from those now known or believed to be true by them with respect to the subject matter of the Released Claims, but it is the intention of the Parties to completely, fully, finally, and forever compromise, settle, release, discharge, and extinguish any and all Released Claims, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, that now exist or previously existed, without regard to the subsequent discovery of additional or different facts. The Parties acknowledge that the foregoing waiver was separately bargained for and is a key element of this Stipulation and the releases that are part of the Stipulation and was relied upon by each and all of the Parties in entering into the Settlement and this Stipulation.

3. Terms of the Settlement

3.1. The December 2019 Awards to Mr. Klump, Mr. Naydenov and Dr. Welch will be forfeited in their entirety.

3.2. Sixty percent (60%), or 750,000, of the options awarded to Dr. Kelly in the December 2019 Awards will be forfeited.

3.3. The warrant to acquire 2,000,000 shares of common stock of the Company awarded to Dr. Pourhassan in the December 2019 Awards will be forfeited in its entirety. In addition, Dr. Pourhassan will forfeit vested options to purchase 373,000 shares, as follows: (a) 100,200 vested options to purchase 300,000 shares with an exercise price of \$0.57; (b) 116,550 vested options to purchase 350,000 shares with an exercise price of \$0.49; and (c) 156,250 vested options to purchase 375,000 shares with an exercise price of \$0.39.

3.4. Mr. Mulholland, Dr. Ray, and Dr. Rae will retain all of the December 2019 Awards they received.

3.5. The Releases will not affect the existing rights and obligations of the Company and the Defendants as to the December 2019 Awards that were retained by Defendants under this Settlement.

3.6. The Company's current directors will cause the Company to explore adding a new director who meets NASDAQ standards for independence within the next 12 months.

3.7. The Company's current directors will cause the Board to reconstitute the Compensation Committee to consist of at least three independent directors.

3.8. The Company's current directors will cause the Company to adopt a compensation policy that applies to the Company's directors and Executive Officers which must remain in place for five years (unless the stockholders approve an amendment to the policy in the intervening period), which contains the following terms:

3.8.1. Requiring director and executive compensation to be developed and approved by the Compensation Committee;

3.8.2. Requiring the Compensation Committee to retain, and receive written recommendations from an independent compensation advisor to assist the Compensation Committee in determining types and levels of compensation;

3.8.3. Requiring the Compensation Committee to assess the compensation levels and structure of its peer group at least annually based on such factors as the Compensation Committee deems relevant after discussion with its independent compensation advisor, and consider, among other companies as determined appropriate by the Compensation Committee, for selection as peers those companies which are: (a) operating in the same industries as the Company (by reference to GICS code or similar reasonable identifiers, which may change from time to time); and (b) similar in size to the Company (based on market capitalization);

3.8.4. Containing a statement of the Company's general philosophy that director and executive compensation will be determined on an annual basis by the Compensation Committee, except for instances of adding new directors, new executive hires, promotions, and circumstances that are, in the judgment of the Compensation Committee, exceptional; and

3.8.5. Prohibiting bonuses based on Company performance for non-employee directors.

3.9. The terms described in Paragraphs 3.1 through 3.3 are referred to collectively as the "Rescissory Consideration." The changes described in Paragraphs 3.7 and 3.8 are referred to collectively as the "Governance Changes." The Rescissory Consideration and the Governance Changes, along with the term described in Paragraph 3.6, are collectively called the "Settlement Consideration."

3.10. The Defendants shall enact, or shall cause to be enacted, each of the Governance Changes within 30 days of the entry by the Court of the Judgment.

3.11. The Defendants shall, or shall cause, the forfeiture of each of the options or warrants constituting the Rescissory Consideration within 30 days of the entry by the Court of the Judgment.

3.12. The Defendants' failure to effect any portion of the Settlement Consideration will result in termination of the Stipulation as set forth in Paragraph 6.2.

3.13. In consideration of its receipt of the Settlement Consideration and other terms as detailed below, CytoDyn (acting by and through the SLC) will grant each of the Defendants and the Defendants' Related Persons releases from liability for the matters alleged in the Action as described below.

3.14. Defendants have denied and continue to deny they have committed, threatened, or attempted to commit any violations of law or breached any duty owed to Plaintiffs, CytoDyn, or CytoDyn's stockholders. Defendants maintain their conduct was at all times proper, compliant with applicable law, and taken in good faith and in a manner Defendants reasonably believed to be in the best interests of CytoDyn and its stockholders. Nonetheless, Defendants have concluded further litigation of this Action would be protracted and expensive, and it is desirable and beneficial for the Action to be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.

3.15. It is the intent of the Parties that the Settlement and the entry of the Judgment in connection with the Settlement will, upon the Judgment becoming Final and the Effective Date of the Settlement, bar, by the doctrine of *res judicata* and otherwise, all of the claims belonging to CytoDyn that are released as part of the Settlement.

4. Releases

4.1. The Releases described in this Section 4 of this Stipulation shall be effective upon the Effective Date.

4.2. CytoDyn, the CytoDyn Related Persons, and Plaintiffs to the extent they are acting, or purporting to act, derivatively on behalf of CytoDyn, shall, or shall be deemed to have and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims against the Defendants, Defendants' Related Persons, and any other current or former officer, director or employee of CytoDyn.

4.3. Defendants and the Defendants' Related Persons shall, or shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged and extinguished the Released Claims against CytoDyn and the CytoDyn Related Persons.

4.4. Defendants and the Defendants' Related Persons shall or shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged and extinguished the Released Claims against the other Defendants and the other Defendants' Related Persons.

5. Procedure for Approval

5.1. The Parties shall submit this Stipulation together with its exhibits to the Court, and shall apply for entry of the proposed Scheduling Order, requesting: (a) a

further stay of this Action (other than for proceedings contemplated by the proposed Scheduling Order) pending further order of the Court; (b) the approval of the form and proposed manner of giving Notice to Current CytoDyn Stockholders; (c) that the Court consider the fairness, reasonableness and adequacy of the Settlement at a Settlement Hearing; and (d) that the Court set a date for the Settlement Hearing to be included in the Scheduling Order and Notice attached as Exhibit B.

5.2. Notice to CytoDyn stockholders shall be accomplished by the Company: (a) filing a Form 8-K with the Securities and Exchange Commission that discloses the Settlement and attaches the Notices as an exhibit; (b) publishing a summary notice in *Investors' Business Daily*; (c) posting a copy of the Notice attached as Exhibit B and of this Stipulation on the Investor Relations section of its website and shall maintain such postings through the date of the Settlement Hearing; (d) mailing the Notice attached as Exhibit C to all stockholders who have not opted for electronic notifications; and (e) emailing the Notice attached as Exhibit B to all stockholders who have opted for electronic notifications.

5.3. No later than ten (10) business days before the Settlement Hearing, CytoDyn's counsel shall serve on counsel of record in the Action and file with the Court an appropriate affidavit or declaration with respect to the preparation, publication, and posting of the Notice and Stipulation.

5.4. CytoDyn shall be responsible for all costs associated with the giving of notice as the Court may direct. If additional notice is required by the Court, then the cost and administration of such additional notice will be borne by CytoDyn.

5.5. The Parties submit that the proposed content and manner of notice constitutes adequate and reasonable notice to CytoDyn stockholders pursuant to applicable law and due process.

5.6. Pending Final Approval of the Settlement, the Parties agree not to litigate this Action further and not to initiate any other proceedings other than those incident to the Settlement itself; *provided, however*, that nothing in this Stipulation will prevent the Parties from responding to (or otherwise taking actions that such Parties deem necessary or advisable to respond to) actions taken by Plaintiffs or any other Person in connection with the Action.

5.7. The Parties and their counsel agree to use their individual and collective best efforts to obtain entry of the proposed Judgment substantially in the form annexed hereto as Exhibit D and Final Approval of the Settlement. The Parties and their counsel further agree to use their individual and collective best efforts to take all actions and do all things reasonably necessary, proper, or advisable to consummate and make effective, as promptly as practicable, this Stipulation and the dismissal of the Action. Nothing in this Paragraph 5.7 shall be construed as requiring any Party to agree to any substantive modification to this Stipulation.

6. Effectiveness of Settlement; Effect of Disapproval, Cancellation, or Termination

6.1. The Settlement shall become effective on the Effective Date, which shall be the date three (3) business days after the last of all of the following events shall have occurred:

6.1.1. The Court enters the Scheduling Order, approving the form and content of the Notices, which Notices are then given to Current CytoDyn Stockholders in accordance with the Scheduling Order;

6.1.2. The Court enters the Judgment substantially in the form attached as Exhibit D;

6.1.3. The Company adopts resolutions implementing the Governance Changes;

6.1.4. The Defendants provide the Rescissory Consideration;

6.1.5. The Action is dismissed with prejudice; and

6.1.6. The Judgment becomes Final.

6.2. If the Settlement does not become effective in accordance with Paragraph 6.1:

6.2.1. This Stipulation and any Settlement documentation shall be terminated; *provided, however*, that the provisions of Paragraph 7.2 shall remain in full force and effect in any event.

6.2.2. For avoidance of doubt, the Releases shall be null and void, and the Parties and the Plaintiffs shall be restored to their litigation positions on the date immediately before the execution date of this Stipulation.

7. Miscellaneous Provisions

7.1. The terms of the Settlement were negotiated in good faith and at arm's length by the Parties. This Stipulation reflects a Settlement that was reached voluntarily after consultation with competent legal counsel. This Stipulation shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them by reason of authorship. Defendants reserve their rights to rebut, in a manner they determine to be appropriate, any contention made in any public forum that the Action was defended in bad faith or that Defendants' litigation positions were asserted without a reasonable basis.

7.2. Neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referred to in or attached to this Stipulation or any motion seeking approval of the Settlement contemplated by this Stipulation, nor any action taken to carry out this Stipulation or in connection with the Settlement, is, may be construed as, or may be used as, evidence of the factual or legal merit of any of the Released Claims or as an admission, in this Action or any other action or proceeding, whether civil, criminal, or administrative, that the Action had merit when filed or that it currently has merit. If the Settlement does not

become effective, neither the existence of this Stipulation nor its contents shall be admissible in evidence or be referred to for any purpose in the Action or in any other litigation or proceeding.

7.3. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document. Any signature to this Stipulation by means of electronic signature or email transmission shall be treated in all manner and respects as an original signature and shall be considered to have the same binding legal effect as if it were the original signed document.

7.4. All Persons executing this Stipulation thereby represent that they have been authorized and empowered to do so.

7.5. This Stipulation embodies and represents the full agreement of the Parties and supersedes any and all prior agreements and understandings relating to the subject matter of this Stipulation as between or among any of the Parties, including the MOU.

7.6. This Stipulation shall not be modified or amended, nor shall any provision of this Stipulation be deemed waived, unless such modification, amendment, or waiver is in writing and executed by or on behalf of the Parties. The waiver by any Party of any provision or the breach of this Stipulation shall not be deemed a waiver of any other provision or breach of this Stipulation.

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

7.8. Notwithstanding the entry of the Judgment, the Court shall retain jurisdiction over all matters relating to the implementation, enforcement, and interpretation of the terms of this Stipulation as well as all matters relating to the administration and consummation of the Settlement. All Parties submit to the jurisdiction of the Court for purposes of implementing, enforcing, and interpreting this Stipulation.

7.9. The construction and interpretation of this Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware and without regard to the laws that might otherwise govern under principles of conflicts of law applicable hereto. Any action involving this Stipulation shall be brought and maintained solely in the Court, or to the extent the Court does not have jurisdiction, any other court of the State of Delaware. The Parties: (a) irrevocably and unconditionally consent and submit to the *in personam* jurisdiction of such courts in any such action; (b) consent to service of process by courier or certified mail made upon such party and/or such party's agent at the address(es) set forth in Section 9 of the Scheduling Order; and (c) waive any objection to venue in any such Delaware court and any claim that any such Delaware court is an inconvenient forum.

7.10. Without an order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of this Stipulation.

7.11. The following exhibits are annexed hereto and incorporated herein by reference:

- (a) Exhibit A: [Proposed] Scheduling Order with Respect to Notice and Settlement Hearing;
 - (b) Exhibit B: Notice of Pendency of Settlement of Action;
 - (c) Exhibit C: Mailed Notice of Pendency of Settlement of Action;
- and
- (d) Exhibit D: [Proposed] Order and Final Judgment.

IT IS AGREED by the undersigned as of the date noted above.

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Dated: January 27, 2021